Introduction

On 15 August 1993, a Greek vessel arrived at the Black Sea shores of Abkhazia in order to rescue Greeks of ethnic origin who were fleeing the war. About a thousand people were taken aboard, given Greek passports and transferred to Greece. According to the Greek government, the Abkhazian Greeks were "repatriating" to Greece, although most of these people had never set foot in Greece before (De Waal, 2010: 154).

On 27 June 2008, the French Conseil d'État upheld a previous government decision to refuse granting citizenship to Faiza Silmi, despite the fact that she had lived in France for eight years, spoke fluent French, was married to a French citizen and had three French children. The Conseil d'État reasoned that Faiza's way of life, including her wearing a veil that fully covered her face, was incompatible with French values, particularly with the principle of gender equality (Augustin, 2008).

In February 2011, Ilona Tamásová, a Slovak citizen of Hungarian ethnicity from a town in southern Slovakia, received a request from the Slovak government to surrender her citizenship documents (Kusa, 2012). Although a Slovak citizen since birth, Ilona's citizenship lapsed automatically when she acquired Hungarian citizenship voluntarily.

On 22 November 2012, Spain's foreign minister, José Manuel García-Margallo, announced that descendants of Sephardic Jews who were expelled from the Spanish Kingdom in the fifteenth century could obtain Spanish citizenship through a simplified procedure. He claimed that the policy served "to recover Spain's silenced memory" by undoing the historical wrong done to Sephardic Jews (Hadden, 2013).

On 7 July 2007, David Hicks, an Australian citizen detained at Guantánamo Bay on suspicion of terrorism, obtained British citizenship after a long battle in court. The status of British citizenship would have allowed Hicks to claim diplomatic protection from the United Kingdom.

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Within a few hours after the acquisition of citizenship, however, the British Home Secretary took away Hick's British citizenship on grounds that he constituted a threat to national security (Dodd, 2007).

The above are stories about people who acquired, failed to acquire, lost, or re-acquired citizenship. They may seem exceptional to most people, because for most people matters of acquisition and loss of citizenship impact little on their lives. This is because the overwhelming majority of people receive their citizenship automatically at birth through descent from citizens or due to birth in the country and they never lose this citizenship or attempt to acquire another. However, there is nothing natural about this distribution of citizenship at birth or after birth. Firstly, despite being a common practice, sanctioned by international law, the ascription of citizenship at birth or birthright citizenship is not immune to normative questioning. For why should contingent facts about birth determine admission to membership of a liberal democratic state? By "membership" I refer here to both "nationality," which is the common legal term that defines the legal connection between an individual and the state as recognised by the international community, and "citizenship," which is a term mainly used by social scientists to designate the rights, and duties attached to legal membership of a state. Note that although the acquisition or loss of nationality usually determines the acquisition and loss of citizenship, the legal status of nationality does not strictly include political rights. Secondly, questions about membership are even more stringent when it comes to the acquisition or loss of citizenship after birth. As the examples above suggest, legal rules regarding the acquisition and loss of citizenship take into account considerations as various as: ethno-cultural belonging, individual allegiance, historical ties, national security, etc. The question is whether these considerations can justifiably inform principles of inclusion and exclusion suitable for a liberal democratic state.

This book was born out of the puzzling observation that many citizenship laws grant preferential access to citizenship to certain categories of foreigners. In general, citizenship laws are devices that allow states to determine who their citizens are at any point in time; so, from the perspective of the state, a person is either a citizen or a non-citizen. However, citizens and non-citizens do not always enjoy the same quality of citizenship and non-citizenship. For example, foreigners who are perceived as related to the state may be granted citizenship without having to comply with regular conditions of admission. Moreover, certain categories of citizens, such as naturalised or dual citizens, may be denied access to certain public offices or they may have their citizenship status withdrawn on grounds that are not applicable to other

groups of citizens. It appears that states do not strictly divide people into foreigners and citizens, but they use citizenship regulations to establish complex hierarchies of membership. These hierarchical structures of membership include various categories of foreigners, not-quite-foreigners, not-quite-citizens and citizens. Since citizenship laws are multi-purpose tools, in general, the rationales behind these hierarchies of membership are also diverse. In this book, I focus on one such rationale, namely the inclusion or exclusion of people on grounds of ethno-cultural belonging. For example, Greece turned ethnic Greeks from Abkhazia into citizens over night not (only) because they were people in dire need of help, but because they were regarded as members of the enduring Greek nation, bound to Greece by ties of blood and descent. As for Ilona Tamásová, her act of taking up citizenship of the state that claims to represent people of her ethnicity was considered by her state of residence as offensive and threatening. Although Slovak citizenship law does not discriminate directly on grounds of ethnicity, the ban on dual citizenship, which was introduced immediately after Hungary invited former citizens living outside Hungary to re-apply for citizenship, disproportionally affects those Slovak citizens of Hungarian ethnicity who are inclined to take up Hungarian citizenship.

Citizenship regulations that rely on ethno-cultural considerations are not exceptional or insignificant. In several European countries rules of preferential acquisition of citizenship based on ethno-cultural affinity constitute the primary channel of citizenship acquisition. In some cases, these rules target virtually all or significant parts of the population of other states. For example, most citizens of Moldova can claim preferential citizenship in Romania, most citizens of Macedonia qualify for expedited citizenship in Bulgaria (Smilov, 2013), a great number of Romanian, Slovakian and Ukrainian citizens can claim Hungarian citizenship (Pogonyi et al., 2010), and Serbia's rules of preferential admission to membership targets virtually all inhabitants of the territories that belonged to the Yugoslav federation (Rava, 2013). The sheer number of people who benefit from these rules of preferential membership is also impressive. According to estimates, between 1998 and 2010 Italy granted citizenship to one million non-resident people of Italian descent (Tintori, 2012). Between 2011 and 2013 Hungary granted citizenship to 320,000 persons living in neighbouring countries (Politics.hu, 2013). Between 1991 and 2012 Romania granted citizenship to about 226,000 persons mainly from the Republic of Moldova and Ukraine (Iordachi, 2012: 361). Since 1990 Germany handed passports to more than 200,000 ethnic Germans living in Poland (Kamusella, 2003: 707). These preferential admission policies have complex implications

with regard to regional stability, individual protection and democratic integrity. The Hungarian–Slovak dispute on the issue of dual citizenship is instructive in this regard. In 2011 Hungary amended its citizenship law to allow former citizens (and their descendants) to acquire Hungarian citizenship without conditions of residence in Hungary. Slovakia responded promptly by outlawing dual citizenship acquired at will in an attempt to dissuade Slovak citizens of Hungarian ethnicity from acquiring Hungarian citizenship (Bauböck, 2010b). The row intensified nationalist rhetoric in the region and threatened to destabilise diplomatic relations between several neighbouring states. As a consequence, people like Ilona Tamásová were left without the legal protection and the full set of rights offered by the status of citizenship in their country of residence. As Hungary moves torward granting non-resident citizens voting rights in national elections, these struggles over citizenship are expected to have a greater impact on democratic politics in Hungary and to stir further nationalist antagonisms in the region.

Modern citizenship is closely linked to nationalism. The modern state was shaped by the nationalist ideal according to which the boundaries of the state and those of the nation should coincide (Gellner, 1983). In the era of nationalism, sorting out people according to their ethno-cultural traits and assigning individuals to their "own" nation-state was generally accepted as a legitimate goal even though this sometimes implied massive population transfers, large-scale deprivation or collective imposition of citizenship. The spread of liberal and human rights norms and institutions in the last half-century seems to have put significant brakes on these nationalist policies. As a consequence, the citizenship rules of contemporary states have become, at least in the West, increasingly liberal and de-ethicised (Joppke, 2005a, 2005b, 2008a, 2008b). Although the thesis about the liberalisation of citizenship may be true in general, a closer look at the myriad of citizenship rules of European countries reveals important exceptions. Bulgarians by origin, ethnic Germans, people of Greek ethnicity, people of Irish descent or associations, Italian by descent are just a few of the many groups of people who enjoy preferential treatment with regard to acquisition or loss of citizenship in the European countries that recognise them as linked to the state through ethno-cultural ties. Lastly, ethnicity and nationalism remain important aspects of citizenship policies not only in Eastern Europe but also in a number of Western European countries that seek to assert ties with emigrants and to reaffirm national identities in response to immigration.

This book investigates empirically and normatively legal rules of acquisition and loss of citizenship. The first aim of the book is to

identify citizenship rules that differentiate among people on ethno-cultural grounds. To this end, the book develops a comparative analysis of contemporary citizenship laws (2013) of thirty-eight European countries and a discussion of ethno-cultural rules of citizenship in these countries. The countries included in the analysis are: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. These countries are old and new European democracies which span from West to East and which are or are not part of the European Union. Faced with pressures related to international migration, and caught in between conflicting normative commitments, such as between nationalism and human rights, many of these European countries have recently amended their citizenship laws. Surveying a relatively large number of cases, allows us to chart recent developments with regard to membership in Europe and also to test traditional scholarly dichotomies, such as between civic-Western and ethnic-Eastern Europe. The survey of citizenship laws uses data from online databases and specialised reports on citizenship produced within the framework of several research projects: Acquisition and Loss of Citizenship in and across Modern European States (CITMODES),[1] Acquisition of Nationality in EU Member States: Rules, Practices and Quantitative Developments (NATAC),[2] Citizenship Policies in the New Europe (CPNEU),[3] Access to Citizenship and its Impact on Immigrant Integration (ACIT),[4] Electoral rights and participation of third-country citizens in EU member states and of EU citizens in third countries (FRACIT),[5] The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia (CITSEE),[6] Involuntary Loss of European Citizenship (ILEC),[7] and the research of the EUDO (European Union Democracy Observatory) on Citizenship.[8]

The second aim of the book is to assess normatively justifications for one the most important ethno-cultural rules of citizenship, namely preferential admission to citizenship for people who are regarded as ethno-culturally related to the state. Here I analyse ethno-cultural citizenship in view of positive legal norms (international law) and of theoretical arguments about membership of several types of political communities (free associations, democratic people, and nations). The assessment starts from general claims about inclusion and exclusion and then moves to more specific and contextual aspects, such as patterns of historical injustices and the treatment of ethno-cultural minorities.

The third aim of the book is to provide a normative framework for analysing membership of a liberal democratic state. In this respect, I challenge the common view of a unitary model of national citizenship that bundles together legal, political, and identity memberships and claim that questions of membership should be answered by taking into account constraints imposed by the international system of autonomous states and fundamental individual and community interests related to membership. The proposal is to reconcile major concerns about membership by applying distinct principles of inclusion to different types of membership. I take for granted the international system of sovereign states and of their separate membership regimes. The key question is not why should there be citizens and non-citizens, but why a person should be a citizen of one state rather than another. Furthermore, the normative proposals address primarily liberal-democratic states, defined broadly as states that uphold liberal-democratic norms and institutions such as regular and free elections, the rule of law and human rights. I consider that all thirty-eight European states in the survey qualify as liberal-democratic states. The emphasis on liberal democratic states is due to fact that I assess membership rules in light of general norms that such states are presumably committed to. So the question is whether membership rules of particular liberal-democratic states are consistent with their assumed normative commitments.

Questions about who is or should be a citizen of a particular state are not usual in political theory. Although citizenship is a widely celebrated concept in the discipline, the issue of admission to citizenship has rarely been in the spotlight. Citizenship is a complex and contested political concept that is commonly described as a combination of three elements: (1) a formal status that links individuals to particular states and preconditions a set of rights and duties, (2) various forms of participation in a political community, and (3) a collective identity shared by individuals who possess the same status (Carens, 2000: 162–75). According to Linda Bosniak (2006: 13), there are three major questions about citizenship. The first question is about the substance of citizenship or about the specific combination of rights and duties entailed by citizenship. The second question is about the domain of citizenship or about where citizenship should take place. The third question is about the subjects of citizenship or about who should be recognised as citizen. Political theorists have typically focused on the first two questions. This is true for both mainstream ideological traditions of citizenship, republican and liberal. The republican tradition, which is rooted in the polis of ancient Greece and the city-states of medieval Europe, focuses

on political participation, civic virtues, and freedom from domination. The liberal tradition, which goes back to the ancient Roman republic, is primarily concerned with the rights and legal protections of citizens (Pocock, 1995). Despite ideological divergences, these two traditions of citizenship are equally "inward-looking" (Bosniak, 2006: 2–5), because they focus primarily on issues of the substance and domain of citizenship, and take for granted the contingent composition of national citizenship.

In a classic formulation, modern citizenship unfolds as a story of gradual thickening and continual inclusion (Marshall, 1965). Driven by an inherent ideal of equality, modern citizenship has expanded to include ever more rights – civil, political, and social – and to embrace ever more people – the poor, women, and ethno-racial minorities. However, this "tale of progressive incorporation" (Bosniak, 2006: 29) assumes the contingent boundaries of citizenship and the naturalness of the divide between citizens and foreigners. Whereas "internally inclusive" citizenship is also "externally exclusive" (Brubaker, 1992a: 21) because it divides the world into members and non-members, including the former and excluding the latter. As Rogers Brubaker put it, citizenship is a "powerful instrument of social closure" (1992a: 23). The exclusionary function of citizenship seems at odds with basic liberal-democratic principles, such as moral equality, individual freedom, and democratic inclusion. For example, discrepancies between commitments to moral equality and the apparently arbitrary division between citizens and non-citizens beg questions about the legitimacy of citizenship boundaries. As Sophia Nasström (2007: 649) argues, "like the constitution of government, the constitution of the people raises a claim of legitimacy."

The question about the legitimacy of boundaries has been addressed in the relatively recent debates about immigration. In a seminal chapter on membership, Michael Walzer (1983: 31–63) defends the right of "communities of character" to control immigration by virtue of their fundamental right to self-definition. For Walzer, the problem of membership is primarily a problem of territorial admission. Once an alien is resident in the territory of the state, she or he should be seen as "a citizen too or at least a potential citizen" (Walzer, 1983: 52). Joseph Carens (1987: 252) focuses more clearly on membership as citizenship when he denounces the contingent and feudal-like character of birthright citizenship. To dissolve this contingency, Carens argues, state borders should be (more) open. But why open borders rather than open citizenship? Carens's shift from citizenship to borders may lead us to think that a world of open borders is normatively acceptable even

when states maintain quasi-feudal rules of admission to citizenship. The debate about immigration has recently thickened in response to increased immigration in Western countries and to perceived failures of immigration policies (Joppke, 1998; Castles, 2004; Castles and Miller, 2009). The normative side of the debate has been fostered by a new literature on the ethics of immigration (Bader, 2005; Wellman and Cole, 2011; Carens, 2013) that linked the question of membership to more prominent arguments about equality, justice, legitimacy and self-determination. This immigration-driven literature, however, does not engage consistently with the issue of citizenship as a normatively autonomous form of membership that is independent of, albeit connected to, immigration. In this book I propose to shift the focus of the membership question from immigration to citizenship. Notice that although admission to citizenship entails rights of admission to territory, territorial borders do not strictly delimit the boundaries of citizenship. Moreover, admission to citizenship is not always preconditioned by territorial presence or immigration.

The traditional answer to the question of membership as citizenship is that the boundaries of the state should coincide with the boundaries of the nation. Citizenship and nationalism are tied by complex historical, conceptual and normative links. First of all, most states are nation-states that seek to promote particular national languages, traditions and identities (Kymlicka, 1995, 2001a). As Joppke (2005a: 48) points out, modern immigration and citizenship policies often serve the purpose of "reproducing internally homogenous yet externally sharply bounded collectivities […] by selecting newcomers on the basis of their ethnicity, race, or national origins." The link between national membership and liberal democracy can also be seen as conceptual and normative. It can be argued, for example, that inclusionary liberal democracy depends on exclusionary nationalism (Wimmer, 2002). To achieve political equality among citizens, a liberal-democratic state must have exclusive boundaries (Whelan, 1983; Collyer, 2013) or, at least, it must retain the right ultimately to exclude non-members (Walzer, 1983; Blake, 2005; Wellman, 2011). Furthermore, liberal nationalists claim that nationalism is a legitimate principle of membership because it serves fundamental individual interests related to national identity (Kymlicka, 1989; Miller, 1988; Tamir, 1993) or because it fosters a common identity that is instrumental to the preservation of liberal democratic institutions (Miller, 1995; Mill, 2008 [1861]).

In the debates about global justice, critics of state-bounded theories of justice argue that the issue of membership should not be removed

from the discussion leading to the establishment of principles of justice (Pogge, 1989; Beitz, 1999). To alleviate some of the unfair consequences of the arbitrary system of birthright citizenship, Ayelet Shachar (2009) proposes to introduce a birthright citizenship levy through which citizens born in rich states sponsor the development of those less fortunate people who were born in poor states. This proposal turns citizenship into an instrument of (global) justice. Shachar's second proposal is that citizenship should be based on a genuine link (*jus nexi*) between individuals and states. The ambiguous relationship between these two proposals is telling about the complex and conflicting normative issues regarding membership of a liberal democratic state.

The membership question can be also answered by invoking democratic principles. However, these principles are not able to prescribe the boundaries of democratic communities. The "boundary problem" (Whelan, 1983) or the problem of "democratic inclusion" (Dahl, 1989) is that the demos cannot democratically decide on its own composition because the democratic method requires that the composition of the demos is already given. Proposals to solve this problem range from maintaining that contingent democratic units should be allowed to define their own composition (Schumpeter, 1994) to upholding that the demos should be unbounded (Abizadeh, 2008). However, I think that focusing only on democratic inclusion makes us oblivious to other important aspects of the membership of a liberal democratic state. From a normative perspective, membership of a state does not coincide with franchise, so an answer to the question of who should be included in the demos does not automatically settle the question of who should be a member of a state. For example, certain categories of citizens, such as children and convicts, do not enjoy democratic (voting) rights in most contemporary democracies (Beckman, 2009), and in some democracies non-citizens enjoy certain democratic rights (Arrighi et al., 2013).

Despite signs of resilient links between citizenship and ethnicity and culture in Europe, we still lack a thorough discussion of the issue of ethno-cultural citizenship. Rogers Brubaker (1990, 1992a) considers the issue when he makes the case for two paradigmatic models of nationhood: a civic nationhood epitomised by France, and an ethnic nationhood, exemplified by Germany. In this context, he argues that "politics of citizenship vis-à-vis immigrants has been informed by distinctive national self-understandings, deeply rooted in political and cultural geography and powerfully reinforced at particular historical conjunctures" (Brubaker, 1990: 379). Brubaker's culturalist explanation is problematic because it locks countries into rigid normative frames

that leave little room for other explanatory factors, such as politics. Christian Joppke (2003, 2005b, 2008a) draws a more complex picture of membership policies in the West by revealing two underlying forces: one pushing towards ethnicisation and the other pushing towards re-ethnicisation. The general trend is, nevertheless, one of increasing liberalisation and de-ethnicisation. According to Joppke, the nation-state has become "infected by the universalistic logic" (2005a: 44) as it relinquished the aim to "reproducing internally homogenous yet externally sharply bounded collectivities" (2005b: 48). This dramatic "decoupling of citizenship and nationhood" is visible in the way in which "micro-rules of access to citizenship […] have generally become non-discriminatory, in the sense of shunning group-level exclusions on the basis of ethnicity or race, and which do not require a particular cultural identity as a prerequisite for citizenship" (Joppke, 2008b: 543). Although the forces of re-ethnicisation are still active, they are greatly diminished and the few instances of ethnicised citizenship represent "nuances within, not a rollback to, the overall liberalisation of the access to citizenship" (Joppke, 2010: 32). For example, recent changes of naturalisation policies in Europe, such as the introduction of language and citizenship tests, are seen as restrictive moves that take place "within an overall liberal framework" (Joppke, 2008a: 24).

Joppke's' sociological approach is suitable for uncovering general trends of membership policies in (Western) Europe. In this book, I am also interested in marginal cases and exceptions. I claim that the issue of resilient ethno-cultural citizenship in contemporary European countries is both sociologically intriguing and normatively significant. I thus propose to draw a map of ethno-cultural rules of citizenship in the wider Europe. There are several suggestions in the literature regarding ethnic rules or aspects of citizenship. For example, André Liebich (2009: 2) argues that the persistence of unrestricted rules of *ius sanguinis* in Eastern Europe are indicative for the predominantly ethnic character of citizenship in the region. The absence of provision of *ius soli* in countries exposed to long-term immigration also generates suspicions about ethnic citizenship (Bauböck et al., 2006c: 30). For Joppke (2008a: 18) this is also the case with respect to the practice of allowing "dual citizenship for emigrants, but not for immigrants." Lastly, the most obvious cases of ethno-cultural rules of citizenship are those rules that explicitly target co-ethnics (Brubaker, 1996a; Iordachi, 2004; Pogonyi et al., 2010; Žilović, 2012), etc. One useful suggestion is to distinguish between two contexts of the ethnicisation of citizenship in Europe. In Western Europe citizenship is (re-)ethnicised by attempts of states to extend membership status and privileges to emigrants and their descendants

(Joppke, 2003: 442) and by the adoption of restrictive naturalisation policies "in response to growing Muslim and non-European immigrant populations" (Brubaker, 2008: 5). In Eastern Europe the (re-) ethnicisation of citizenship is part of a larger strategy through which "nationalising" states (Brubaker, 1996a: 415) seek to ensure "ethnodemographic security" (Brubaker, 1992b) or to recreate the unity of the nation beyond the territorial borders of the state (Pogonyi et al., 2010; Žilović, 2012). However, the division between Western and Eastern European contexts is not always accurate as many countries from both Eastern and Western Europe enforce ethno-cultural rules of citizenship. In fact, the first countries to grant preferential treatment or special status to co-ethnics in post-war Europe were "Western": Germany (1953), Austria (1979) Greece (1991) and Italy (1991) (Horvath, 2008: 152). Analysing contemporary diaspora engagement policies in the world, Alan Gamlen (2006: 11) argues that these are not driven by ethnic conceptions of membership because they are adopted by all kinds of states, including by those who adhere to civic models of membership. The problem with this argument is that it assumes pre-established divisions between civic and ethnic nations. My claim is that diaspora policies should be factored in already when distinguishing between ethnic and civic nations because these policies are part of the diagnosis as to whether a state has civic or ethnic citizenship regimes.

Recent empirical research on citizenship has identified several models of membership, revealed major trends and ranked countries using more or less complex membership indexes (Castles, 1995; Koopmans and Statham, 2000; Howard, 2006; Goodman, 2010a). These works are typically selective about the citizenship rules and pay little attention to ethno-cultural aspects. The tendency is to posit general models of membership in which selective rules of citizenship are counted as evidence for wider models or philosophies of incorporation. My worry is that by mixing policies of immigration, citizenship and social integration, this approach loses sight of the normative significance of citizenship. It surely matters whether admission to citizenship is seen as a means to or the endpoint of social integration. However, both these views share the assumption that newcomers must integrate into an established community of citizens. My claim is that we should address issues of integration after we have examined more basic questions about the scope of membership. We then ought to question the theoretical background against which discussions about admission and integration are now staged.

Apart from testing the empirical scope of ethno-cultural citizenship rules in Europe, in this book I also propose to evaluate justifications for such rules. Unfortunately, as Joppke (2005b: 15) remarks with regard

to ethnic immigration, there is "no agreement, not even among liberal theorists, sometimes not even within the same liberal theorist, on the normative status of ethnic selectivity." A common tendency in the literature is to oppose ethnic membership to civic membership (Kohn, 1944; Brubaker, 1990; Smith, 1991). This leads typically to asserting general, dichotomist models of membership that suppose to characterise countries or entire geopolitical regions over longue durée. One of the major problems of this approach is that it fails to grasp the complexity and variety of purposes of citizenship regulations (Vink and Bauböck, 2013). My approach is to zoom-in and to examine specific rules of citizenship in a definite point in time. Obviously, recognising ethnocultural rules of citizenship requires careful interpretation. Moreover, the mere labelling of certain rules of citizenship as "civic" or "ethnic" tells us little about the normative meaning of these rules. The common understanding is that "civic" is good because it is inclusive, whereas "ethnic" is bad because it is exclusive. In this view, inclusive rules of citizenship, such as automatic *ius soli* or easy naturalisation requirements are often regarded as civic (Brubaker, 1990) or liberal (Howard, 2009), while exclusive rules of citizenship, such as (exclusive) *ius sanguinis* and difficult naturalisation rules are ethnic (Brubaker, 1990). However, the simple test of inclusion versus exclusion is normatively inconclusive for at least two reasons. Firstly, citizenship rules often apply unevenly across different categories of people. The question that one should ask is: inclusive for whom? For example, Greece has very inclusive naturalisation policies towards ethnic Greeks, but not towards other immigrants of other ethnic origin. Secondly, from a normative perspective, inclusion is not always justified, whereas exclusion is sometimes required. For example, rules of naturalisation that carefully exclude people who do not fulfil certain minimum citizenship requirements, such as the possession of basic linguistic competences, may be seen as warranted, whereas rules of citizenship that generously include particular groups of people, such as non-resident co-ethnics, may be seen as problematic (Dumbrava, 2010). Lastly, the civic versus ethnic dichotomy by no means exhausts the normative categories in which various rules and configurations of rules of citizenship can be classified. For example, certain seemingly "civic" rules of citizenship, such as citizenship tests, can be regarded as normatively problematic even if they cannot be classified as ethnic rules. Equally, some obviously "ethnic" rules of citizenship can be judged as normatively acceptable in certain circumstances, such as when strong claims of remedial justice are mixed with claims about co-ethnic solidarity.

Because ethnicity and national belonging are typical "essentially contested concepts" (Gallie, 1955), any attempt to define ethno-cultural rules of citizenship is prone to controversy. I define ethno-cultural rules of citizenship broadly as rules driven by conceptions or understandings of membership that celebrate ethnic descent and shared ethno-cultural identity. According to such conceptions of membership, access to citizenship should be preconditioned by the possession of certain ascriptive and unalterable individual characteristics. To ascertain whether specific rules of citizenship are ethno-cultural and whether they are normatively justified I take into account the context in which these rules apply. I expect that a particular rule of citizenship takes an ethno-cultural overtone in some contexts, but not in others. For example, restrictive rules of *ius soli* can be seen as inspired by ethno-cultural understandings of membership in a country with large numbers of long-term foreign residents but not in a country that has very few immigrants. It may also be the case that, depending on the context, certain recognisably ethno-cultural rules of citizenship are more justified than others. For example, special transitory rules of restoration of citizenship to non-resident former citizens may be acceptable in the context of post-authoritarian regimes.

In the assessment of ethno-cultural rules of citizenship I focus less on the declared or hidden, "subjective" intentions of legislators or stakeholders with respect to the purpose of specific rules and more on the "objective" normative and practical implications of such rules. I do not ask whether certain rules actually serve their intended purposes or whether those who made these rules or those who are affected by them are happy about these rules. My question is whether specific rules of citizenship are consistent with normative principles and related constraints pertaining to membership of a liberal democratic state.

The remainder of the book is organised as follows. Part I is a comparative study of the citizenship laws of thirty-eight European countries and in which I identify rules of citizenship that seem to be driven by ethno-cultural understandings of membership. There is currently no systematic empirical or normative research on the issue of the ethno-cultural rules of citizenship in Europe. Christian Joppke's (2005b) wrote an exceptional study on ethnic selection but he focused primarily on immigration and on Western European countries. Without claiming to be comprehensive,[9] I examine four of the most important modes of acquisition and loss of citizenship in Europe: rules of acquisition of citizenship through birth or birthright citizenship (Chapter 1), rules of acquisition of citizenship based on residence in the country or ordinary

naturalisation (Chapter 2), rules of acquisition of citizenship based on special links with the country or preferential naturalisation (Chapter 3), and rules of voluntary and involuntary loss of citizenship (Chapter 4). These modes were selected not only because they are the most important channels through which people acquire or lose citizenship, but also because they are most likely to include ethno-cultural rules of citizenship. For each of these sets of rules I provide a comparative overview and a discussion of ethno-cultural aspects supported by references to specific cases and historical contexts.

Part II is a discussion of the justifications for ethno-cultural rules of citizenship. I distinguish between two general views. According to the first view, states may adopt ethno-cultural rules of citizenship because they can. They are entitled to do so because they are sovereign and self-determining political entities. The second view is that states ought to promote ethno-cultural rules of citizenship in order to attain valuable goals such as national self-determination, the protection of kin minorities or remedial justice. Whereas the first view considers ethno-cultural rules of citizenship as mere incidences of the right of states to decide any kind of citizenship policies, the second view points at the intrinsic value of ethno-cultural rules of citizenship. Surely, these two views often overlap. For example, the argument about the right of states to democratic self-definition is often linked to arguments about the protection of national minorities. I examine three major types of justifications for ethno-cultural rules of citizenship. In Chapter 5 I look into positive norms of international law and assess the claim that states have a sovereign right to regulate citizenship matters and, implicitly, the discretion to pursue ethno-cultural citizenship policies. In Chapter 6 I address arguments about the right of constituted communities to self-definition. In this respect, I discuss claims advanced on behalf of free associations, democratic people and nations. In Chapter 7 I examine arguments that seek to justify preferential ethno-cultural citizenship by reference to remedial justice. I focus on claims that states should remedy wrongs suffered by former citizens, co-nationals and ethno-cultural relatives.

Part III is where I put forward a proposal for a normative framework of membership appropriate for a liberal democratic state. In Chapter 8 I draw a conceptual map of membership to illuminate ways for reconciling competing principles of inclusion. In this respect, I distinguish between two normative domains of membership (admission and core of membership), between three types of membership (legal, political, and identity), and between (community) expectations and (formal) requirements. In Chapter 9 I sketch a regulatory framework suitable for the membership policies of a liberal democratic state.

Part I
Citizenship Rules in Europe

1
Birthright Citizenship

The overwhelming majority of people in the world acquire citizenship at birth through descent from citizen parents (*ius sanguinis*) or through birth in the country (*ius soli*). These two methods of acquisition of citizenship at birth (birthright citizenship) are not mutually exclusive because people can simultaneously acquire citizenship due to birth in the territory and also through descent from citizen parents. Despite the existence of different legal traditions in respect to rules of attribution of citizenship (Weil, 2001), nowadays an increasing number of countries use both methods of birthright citizenship. Recent research shows that countries have made comparable adjustments of citizenship laws, converging towards a model in which rules of *ius soli* and *ius sanguinis* are applied complementarily and conditionally (Hansen and Weil, 2001; Joppke, 2007a). In this chapter I first provide an overview of legal provisions of birthright citizenship in thirty-eight European countries and then discuss rules and aspects of birthright citizenship that appear to be inspired by ethno-cultural understandings of membership.

Ius sanguinis citizenship

The rule of ascribing citizenship at birth automatically to children of citizens is the most widespread rule of acquisition of citizenship in the contemporary world. Citizenship laws of all European countries included in the survey have *ius sanguinis* provisions. In fourteen countries *ius sanguinis* provisions apply unconditionally (see Table 1.1). In the remaining cases, *ius sanguinis* provisions apply with one or more qualifications. The major types of qualifications to *ius sanguinis* provisions concern: (a) the marital status of parents – whether the child is born in or out of wedlock, (b) the place of birth of the child – whether

Table 1.1 Rules of birthright citizenship in Europe (2013)

	Ius sanguinis		Ius soli			
	Born in the country	**Born abroad**	**Irrespective of parents' place of birth**	**Parents born in the country**	**Facilitated acquisition after birth**	**Stateless children**
Albania	Automatic	Automatic	n.a.	n.a.	n.a.	Automatic
Austria	Automatic or Conditional *	Automatic or Conditional *	n.a.	n.a.	Naturalisation *****	Automatic or Naturalisation *****
Belgium	Automatic	Automatic or Declaration **	Declaration ****	Automatic ****	Naturalisation *****	Automatic
Bosnia and Herzegovina	Automatic	Registration	n.a.	n.a.	n.a.	Automatic
Bulgaria	Automatic	Automatic	n.a.	n.a.	Naturalisation *****	Automatic
Croatia	Automatic	Automatic or Registration ***	n.a.	n.a.	Naturalisation *****	Automatic ******
Cyprus	Automatic	Automatic or Registration	n.a.	n.a.	n.a.	n.a.
Czech Republic	Automatic	Automatic	n.a.	n.a.	Naturalisation *****	Automatic ****/******
Denmark	Automatic	Automatic/ Conditional *	n.a.	n.a.	n.a.	Naturalisation ******
Estonia	Automatic	Automatic	n.a.	n.a.	n.a.	Declaration *****
Finland	Automatic	Automatic	n.a.	n.a.	Declaration *****	Automatic

France	Automatic	Automatic	n.a.	Automatic	Automatic/ Declaration *****	Automatic *****
Germany	Automatic	Automatic or Registration **	Automatic ****	n.a.	n.a.	n.a.
Greece	Automatic	Automatic	n.a.	Automatic ****	n.a.	Automatic
Hungary	Automatic	Automatic	n.a.	n.a.	Declaration *****	Automatic ****/******
Iceland	Automatic	Automatic or Conditional *	n.a.	n.a.	n.a.	Declaration *****
Ireland	Automatic	Automatic or Registration **	Declaration ****	n.a.	n.a.	Automatic
Italy	Automatic or Declaration *	Automatic or Declaration *	n.a.	n.a.	Declaration or Naturalisation *****	Automatic
Latvia	Automatic	Automatic or Registration ***	n.a.	n.a.	n.a.	Automatic ****/******
Lithuania	Automatic	Automatic	n.a.	n.a.	n.a.	Automatic ****/******
Luxembourg	Automatic	Automatic	n.a.	Automatic	n.a.	Automatic
Macedonia	Automatic	Automatic or Registration ***	n.a.	n.a.	n.a.	Automatic ******
Malta	Automatic or n.a. *	Automatic or n.a. *	n.a.	n.a.	n.a.	n.a.

(*continued*)

Table 1.1 Continued

	Ius sanguinis		Ius soli			
	Born in the country	**Born abroad**	**Irrespective of parents' place of birth**	**Parents born in the country**	**Facilitated acquisition after birth**	**Stateless children**
Moldova	Automatic	Automatic	n.a.	n.a.	n.a.	Automatic ******
Montenegro	Automatic	Automatic or Registration ***	n.a.	n.a.	n.a.	Automatic
Netherlands	Automatic or Conditional *	Automatic or Conditional *	n.a.	Automatic	Declaration *****	Automatic
Norway	Automatic	Automatic	n.a.	n.a.	n.a.	n.a.
Poland	Automatic	Automatic	n.a.	n.a.	n.a.	Automatic
Portugal	Automatic	Declaration **	Declaration ****	Automatic ****	Naturalisation ****	Automatic
Romania	Automatic	Automatic	n.a.	n.a.	Naturalisation *****	n.a.
Serbia	Automatic	Automatic or Registration ***	n.a.	n.a.	Naturalisation *****	Automatic
Slovakia	Automatic	Automatic	n.a.	n.a.	Naturalisation *****	Automatic *****
Slovenia	Automatic	Automatic or Registration ***	n.a.	n.a.	Naturalisation *****	Automatic ******

Spain	Automatic or Declaration *	Automatic or Declaration *	n.a.	Automatic	Naturalisation *****	Automatic
Sweden	Automatic	Automatic or Registration *	n.a.	n.a.	n.a.	Declaration *****
Switzerland	Automatic	Automatic	n.a.	n.a.	n.a.	n.a.
Turkey	Automatic	Automatic	n.a.	n.a.	n.a.	Automatic
United Kingdom	Automatic	Automatic or Registration **	Registration ****	n.a.	n.a.	Registration *****

* This rule applies to children born out of wedlock to a father citizen and a foreign mother.
** This rule applies to children born abroad to parents who were also born abroad.
*** This rule applies to children born to a parent citizen and a foreign parent.
**** This rule includes requirements regarding the residence of the parents.
***** The rule includes requirements regarding the residence of the person concerned.
****** The rule applies only if the parents are stateless.
Sources: compiled and actualised data from (Vink et al., 2013b; Vonk et al., 2013; Vink and De Groot, 2010b; Honohan, 2010).

the child is born in the country or abroad, (c) the citizenship status of the parents – whether one or both parents are citizens, and (d) the method or circumstances in which the parents of the child acquired citizenship status – whether the parents acquired citizenship through descent or through other procedures.

There are a number of countries in the survey that make distinctions between children born within wedlock and children born out of wedlock when only the father is a citizen. Malta is the only country where children born out of wedlock to a foreign mother and a father citizen cannot acquire citizenship through *ius sanguinis* provisions. Whereas the majority of countries grant citizenship to children born out of wedlock to father citizens once paternity is established, the establishment of paternity has no effect on the citizenship status of these children in Austria and Denmark (Vonk et al., 2013: 52). In these two cases, children can acquire the citizenship of the father only if the parents marry. In Iceland and the Netherlands it is also possible for the father to recognise the child born out of wedlock, in which case, proof of a biological link with the child should be provided (in the Netherlands this rule applies if the child is older than seven). Cases where the legal recognition of the family relationship between parent and child has no effect on the citizenship status of the child, as well as cases where states impose substantive requirements for the application of *ius sanguinis* provisions, such as DNA evidence, are problematic and constitute contraventions to the provisions of the European Convention on Citizenship (1997 Convention) (Vink and De Groot, 2010b: 14).[1] In Denmark, Finland and Sweden, the distinction between children born within wedlock and children born out of wedlock is relevant for the application of *ius sanguinis* provisions only when children are born abroad. In these cases, a child born out of wedlock to a father who is a citizen and a foreign mother can acquire citizenship if the father registers the child with the relevant public authority.

It is common that countries impose additional conditions for the acquisition of citizenship through *ius sanguinis* abroad. According to the citizenship laws of Croatia, Latvia, Macedonia, Montenegro, Serbia, and Slovenia, children born abroad to a parent citizen and to a parent non-citizen do not acquire citizenship automatically, but through special procedures of registration or declaration. Several countries impose additional conditions for the acquisition of citizenship via *ius sanguinis* abroad, but only starting with the second generation of citizens born abroad. In Portugal such restriction applies also to children born abroad to citizens who were born in the country but reside permanently abroad. In Belgium, Cyprus, Germany,[2] Ireland, Malta, and the

United Kingdom, children born abroad to citizens who were also born abroad can acquire citizenship only through registration or declaration. In the United Kingdom, the registration procedure includes a residential requirement. British citizens who were born abroad (citizens by descent) can register their children born abroad as British citizens only if they (parents) have resided for at least three years in the country.

Ius soli citizenship

According to the general principle of *ius soli*, citizenship is ascribed at birth to children who are born in the country. Rules of *ius soli* are less widespread than rules of *ius sanguinis*. Despite evidence that citizenship laws in Europe are increasingly converging towards a regime that combines elements of *ius soli* and *ius sanguinis*, the rule of *ius soli* "is by no means as firmly established in European citizenship regimes as it is often assumed" (Honohan, 2010: 23). First of all, no country in Europe provides for automatic and unconditional acquisition of citizenship by children of non-citizens born in the country (pure *ius soli*). Ireland was the last European country to maintain such a rule until 2004. Fifteen countries in the survey do not have any provisions regarding the acquisition of citizenship on grounds of birth in the country: Albania, Cyprus, Denmark, Estonia, Iceland, Latvia, Lithuania, Macedonia, Malta, Montenegro, Norway, Poland, Sweden, Switzerland, and Turkey (see Table 1.1). In those several countries where the principle of *ius soli* applies at birth, the acquisition of citizenship is conditioned by at least one of the following factors: (a) the place of birth of the parents, (b) the residential status or residential history of the parents, and (c) the occurrence of dual citizenship.

Children born in Belgium, Germany, Ireland, Portugal and the United Kingdom are entitled to *ius soli* citizenship in the respective countries regardless of the place of birth of their parents. Whereas in Germany and in the United Kingdom, children born in the country receive citizenship automatically, in Belgium, Ireland, and Portugal they acquire *ius soli* citizenship only after their parents register or declare them as citizens. In all these countries, however, a child is entitled to citizenship only if his or her parents have been residents in the country for a minimum period of time before his or her birth. The minimum period of residence is three years in Ireland, five years in Portugal and the United Kingdom, eight years in Germany and ten years in Belgium. The case of Greece is noteworthy. According to the Greek citizenship law of 2010, children born in Greece to foreign parents can acquire Greek

citizenship by way of declaration if their parents completed five years of residence in Greece as permanent residents. However, in February 2013 the Greek Council of the State ruled that *ius soli* provisions are unconstitutional because their automatic character does not allow for a "personalised judgment as far as the applicant's 'national consciousness'" (Christopoulos, 2013). AQ1

A more qualified version of *ius soli* requires that both the child and the parent(s) be born in the country (double *ius soli*). Provisions of double *ius soli* exist in: Belgium, France, Greece, Luxembourg, the Netherlands, Portugal, and Spain. Whereas in France, Luxembourg and Spain, this rule applies automatically and unconditionally, in the other countries *ius soli* provisions include residential requirements with regard to parents. In Portugal and the Netherlands parents must be residents in the country. In Greece they must enjoy the status of permanent residence, and in Belgium they must have been residents in the country for at least five years before the child's birth. In the Netherlands, a child qualifies for (double) *ius soli* citizenship if she or he is "born to a father or mother who has her or his main habitual residence in the Netherlands, the Netherlands Antilles or Aruba at the time of its birth, and if this father or mother was born to a father or mother habitually residing in one of these countries at the moment of the birth of her child, provided the child has also her or his main habitual residence in the Netherlands" (Vink and De Groot, 2010b: 26).

Apart from rules of *ius soli* that apply at the moment of birth, there are other provisions that take into account the fact of birth in the country. Eighteen countries in the survey have provisions of facilitated acquisition of citizenship after birth based on the fact that the person was born in the country (*ius soli* after birth). Whereas seven of these countries have also *ius soli* provisions at birth (Belgium, France, Greece, the Netherlands, Portugal, Spain and the United Kingdom), in eleven cases these are the only type of *ius soli* provisions. These countries are: Austria, Bulgaria, Croatia, the Czech Republic, Finland, Hungary, Italy, Romania, Serbia, Slovakia, and Slovenia. Provisions of facilitated acquisition of citizenship after birth based on the fact of birth in the country always include, among others, requirements regarding residence in the country. The minimum period of residence required in these cases varies greatly among countries – between one year in Spain and eighteen years (since birth) in Italy and the Netherlands (Vink and De Groot, 2010b: 28–9). It is important to mention that in Austria, Belgium, Finland, France, Greece, Italy, the Netherlands, Portugal, Spain, and the United Kingdom provisions of *ius soli* after birth amount to an entitlement to citizenship.

The inclusive character of *ius soli* citizenship depends greatly on whether the country accepts dual citizenship at birth as the majority of children born in the country to foreign citizens are usually entitled to another citizenship through *ius sanguinis*. In Germany children who acquire German citizenship via *ius soli* provisions are obliged to renounce any other citizenship they possess between the ages of 18 and 23. The failure to renounce other citizenship causes the loss of German citizenship. Apart from Germany, *ius soli* provisions are incompatible with dual citizenship in Austria, Croatia, the Czech Republic and Spain. Whereas Germany and the Czech Republic allow for significant exceptions, such as in cases where it would be impossible or unreasonable to require the renunciation of another citizenship, Spain allows dual citizenship at birth for citizens of certain countries[3] (Honohan, 2010: 12).

Lastly, most citizenship laws contain special rules regarding the acquisition of citizenship at birth by children found in the country (foundlings) and by children who are stateless at birth. Except for Cyprus, all countries in the survey provide for the automatic acquisition of citizenship by children found in the territory. It should be noted that these provisions are based on the presumption that the parents of the child are citizens, in which case the child acquires citizenship through a presumption of *ius sanguinis*. Cyprus, Germany, Malta, Norway, Romania, and Switzerland do not have provisions regarding the acquisition of citizenship at birth by children who are otherwise stateless. In Czech Republic, Estonia, Hungary, Latvia and Lithuania, the acquisition of citizenship by stateless children is condition on the residential status of parents, although this contravenes international norms[4] (Vonk et al., 2013: 40, n.155). In Croatia, the Czech Republic, Hungary Latvia, Macedonia, Moldova, and Slovenia, children born stateless can acquire citizenship through a special procedure only if their parents are also stateless or without citizenship. This condition is problematic because statelessness can occur also when both parents are citizens, such as when neither of the parents can transmit their citizenship to the child (Vonk et al., 2013: 42). Lastly, in Belgium, Finland, France, Ireland, Portugal and Turkey children born stateless are not granted citizenship at birth if they are entitled to another citizenship.

Ethno-cultural rules of birthright citizenship

There is an ongoing debate about the normative meaning of birthright citizenship. According to one view, *ius soli* and *ius sanguinis* are derived from different philosophies of membership. Roger Brubaker (1992: 187) AQ2

argues that the two rules of birthright citizenship "express deeply rooted habits of national self-understanding." Brubaker claims that the transmission of citizenship through bloodline indicates membership of an ethnic community, whereas the attribution of citizenship due to birth in the country denotes membership of a civic community. His dichotomist and culturalist view was justly criticised for its reductionism (Yack, 1996; Joppke, 2007a) and disproved by later reforms of citizenship laws in Europe. For example, in 2000 Germany – which epitomised the "ethnic" model of nationhood – adopted *ius soli* provisions, thus moving towards the "civic" end of Brubaker's dichotomy (Weil, 2001).

In a historical perspective, there is no necessary link between legal rules of birthright citizenship and the civic or ethnic character of nations. In the common law tradition, the community of subjects was seen as a community of allegiance to the monarch and not as a territorial or ethnic community. As asserted by the judgment in *Calvin v. Smith* (1608),[5] the ascription of allegiance at birth was derived from the powers that the sovereign had over territory. In post-revolutionary France *ius soli* provisions were adopted to cope with problems generated by large-scale immigration. The major issue was that resident foreigners refused to acquire French citizenship in order to avoid military service. In this context, the adoption of automatic and compulsory *ius soli* served to impose on people born in France "*l'egalité des devoirs*" (Weil, 2009: 78). The adoption of *ius soli* in the United States was not related to immigration. It was constitutionalised through the 14th Amendment of 1868, in which the citizenship clause overruled the decision of U.S. Supreme Court in *Dred Scott v. Sandford* (1857),[6] according to which Americans of African descent were not US citizens.

The adoption of *ius sanguinis* in modern Europe had less to do with the spread of nationalism than with the attempts of states to cope with modern problems. The French Civil Code of 1803 provided that children born to French fathers, in France or abroad, acquired French citizenship at birth. Although this rule was derived from a Roman tradition, at that moment *ius sanguinis* expressed "a quintessentially modern understanding of membership" in which "the individual [was] no longer seen as the property of the feudal overlord, who had owned all the products of the soil, people included" (Joppke, 2005a: 53). Citizenship was thus conceived as an attribute of the person that could be transmitted to children like the family name (Weil, 2009: 53–4). In the nineteenth century, most countries in continental Europe adopted this "French" rule. Moreover, when Prussia (Germany) also adopted provisions of *ius sanguinis*, it did not seek to exclude people of other ethnicity, such as

Poles and Jews, and it did not offer citizenship to ethnic Germans from beyond its borders (Weil, 2001: 30).

From a conceptual point of view, the rule of *ius sanguinis* does not imply ethno-cultural membership. The rule prescribes that children acquire the citizenship of their parents regardless of their ethnicity. Whether *ius sanguinis* serves to preserve the purity of the nation depends entirely on the composition of the citizenry and, in the context of international migration, on whether alternative modes of acquisition of citizenship are available. Joppke (2003: 435) argues convincingly that the rules of *ius soli* and *ius sanguinis* are "flexible legal-technical mechanisms that allow multiple interpretations and combinations." Although I agree that these general principles of birthright citizenship at birth are not necessarily ethnic or civic, I claim that certain versions and configurations of these rules can be seen as derived from ethno-cultural understandings of membership.

The most obvious example of ethno-cultural rules of birthright citizenship is offered by rules of *ius sanguinis* that apply without restrictions beyond the territory of the state. Granting citizenship to children born abroad solely on grounds of descent from citizens weakens the genuine link quality of citizenship (Joppke, 2008a: 29). This argument refers to the famous judgement of the International Court of Justice (ICJ) in the *Nottebohm case*[7] in which citizenship is defined as "a genuine connection" between a person and the state. Regardless of difficulties in establishing the nature of this genuine connection, one can make the case that people born and residing abroad have a weaker connection with the country than people residing in the country. This reasoning can be traced in the provisions of the European Convention on Nationality, which permit State Parties to withdraw citizenship from persons who habitually reside abroad provided that they are not rendered stateless.[8] The Explanatory Report to the European Convention on Nationality explicitly states: "for the purposes of this article, the term 'lack of a genuine link' applies only to dual citizens habitually residing abroad […] for generations."[9]

Granting access to citizenship to persons who are not genuinely connected with the country can be interpreted as a policy of privileged inclusion of people who "belong to an ethnic nation imagined as a community of shared descent" (Vink and Bauböck, 2013: 631). It can be argued that there are good reasons for allowing the transmission of citizenship to the first generation of children born outside the country. Apart from concern about statelessness, such rule may offer children of citizens the opportunity to develop connections with the

country where their parents enjoy citizenship. Extending entitlements to citizenship beyond this generation, however, generates suspicions about ethno-cultural conceptions of citizenship (Bauböck, 2009b: 484; Dumbrava, 2013: 12). In the context of increased immigration control, such entitlements are problematic because they create unfair immigration privileges.

Reflecting on the issue of ethno-cultural citizenship in Central and Eastern European countries, André Liebich (2010: 3) argues that the prevalence of *ius sanguinis* in this region demonstrates the "gulf between conceptions of citizenship in East and West." However, Liebich fails to say that all European countries have *ius sanguinis* provisions and that many of them allow for the perpetual transmission of citizenship to descendants abroad. In the survey no less than sixteen countries grant citizenship to children of citizens born abroad without any formal restrictions. These countries are: Albania, Bulgaria, the Czech Republic, Estonia, France, Greece, Hungary, Lithuania, Luxembourg, Moldova, Norway, Poland, Romania, Slovakia, Switzerland, and Turkey. There is no obvious cleavage between Eastern and Western European countries in this respect. Moreover, in countries where *ius sanguinis* provisions are qualified it is often the case that these qualifications create additional problems rather than reinforce the genuine link quality of citizenship. With regard to the discriminatory treatment of children born out of wedlock, Vink and Bauböck (2013: 629) suggest that such practice is only weakly associated with an ethno-cultural dimension of citizenship. However, the reluctance to grant membership to children whose ties with the father are questionable could be regarded as deriving from a concern with the ethno-genetic preservation of the nation.

A number of countries in Europe condition the acquisition of citizenship at birth upon the registration of children of citizens born abroad either generally or starting with the second generation born abroad. However, in most cases the procedure does not involve substantive requirements. In the United Kingdom children born abroad to parents who were also born abroad can be registered as British citizens only if their parents have resided in the country for three years, or take up residence there with their child for three years. In Belgium, Denmark, Finland, Iceland, Spain, Switzerland, and Sweden the *ius sanguinis* provisions are not restrictive, but the law contains specific provisions regarding the withdrawing of citizenship from persons who were born and lived abroad and who cannot prove a genuine connection with the country. Although states maintain full discretion in establishing

whether such genuine connection exists, in practice, persons can retain citizenship simply by submitting formal declarations. A number of countries also provide for the loss of citizenship after a certain period of residence abroad or when acquiring another citizenship. In this way, rules of loss of citizenship are used to counteract the over-inclusive effects of *ius sanguinis* provisions.

Ius soli is at the centre of debates about birthright citizenship. On the one hand, *ius soli* is praised for its inclusionary character. This rule is often considered a basic feature of a civic-territorial conception of citizenship. On the other hand, critics complain that *ius soli* is arbitrary and non-consensual. Indeed, as Shachar (2009: 7) notices, both rules of ascription of citizenship at birth are arbitrary: "one is based on the accident of birth within particular geographical borders while the other is based on the sheer luck of descent." It is fair to say that, despite sometimes waving arguments about consensual citizenship, critics of *ius soli* citizenship are not always inspired by genuine liberal ideals. For example, in the 1980s right-wing opponents of French automatic *ius soli* argued that the imposition of *ius soli* on children of foreigners was unfair and illiberal. However, their actual motivations were "to purge France of non-European foreigners and former colonial subjects, who were the majority of new French citizens, and whom the right considered undesirable" (Bertossi, 2010: 8).

The arbitrary and non-consensual character of *ius soli* citizenship does not make this rule ethno-cultural. The suspicion is rather that the absence of inadequate rules of *ius soli* is problematic because the sole reliance on rules of *ius sanguinis* makes citizenship "an ethnic privilege derived from descent" (Bauböck et al., 2006c: 30). This ethno-cultural charge is particularly strong in the context of a long history of immigration. For example, although the proportion of foreign population is above ten per cent of the population in Cyprus, Estonia, and Latvia (Vasileva, 2010: 1), none of these countries have provisions regarding *ius soli*. The lack of adequate *ius soli* provisions also contrasts sharply with the spread of unqualified rules of *ius sanguinis*. For example, the citizenship laws of Albania, the Czech Republic, Lithuania, Moldova, Norway, Poland, Switzerland and Turkey allow for the perpetual transmission of citizenship via *ius sanguinis* abroad, but provide no possibility to acquire citizenship via *ius soli*. Cyprus, Norway and Switzerland do not even grant *ius soli* citizenship to children born stateless. Lastly, although Greece adopted *ius soli* provisions in 2010, the State Council effectively blocks these provisions on grounds of unconstitutionality. The State Council

invoked the distinction between the "people" and the "nation," arguing that "the nation is different from the people seen as a simple arithmetic whole" and that the will of the nation "is qualitatively more important than the people's will" (Christopoulos, 2011).

Ius soli provisions vary greatly across countries. As Iseult Honohan (2010: 2) shows, differences with regard to procedures and various conditions attached to rules of *ius soli* "determine how liberal or inclusive in effect we should judge these to be." Heavily conditional *ius soli* provisions may, in fact, be regarded as more problematic than the lack of such provisions. For example, in 1999 Germany introduced *ius soli* provisions, but imposed the condition that persons who obtain German citizenship via *ius soli* renounce any other foreign citizenship they may possess between age 18 and 23. If they fail to do so, they lose German citizenship (Hailbronner, 2012: 6–7). This "option model" is problematic because it distinguishes between two categories of German citizens by birth: citizens through *ius soli* and citizens through *ius sanguinis*. Unlike German citizens who obtain citizenship via *ius soli*, those who obtained citizenship via *ius sanguinis* do not have to make a choice at majority. Discriminatory treatment of children according to the method through which they acquired citizenship at birth also exists in Austria, Croatia, the Czech Republic, and Spain (Honohan, 2010: 12). Interestingly, the European Convention on Nationality does not clearly prohibit such distinctions. According to the Article 5.2 of the Convention, "Each State Party *shall be guided* by the principle of non-discrimination between its citizens, whether they are citizens by birth or have acquired its citizenship subsequently" (emphasis added).[10]

Lastly, despite its allegedly civic-inclusionary character, the rule of *ius soli* can also be used to pursue certain ethno-cultural goals. This is the case when the law defines the scope of the "territory" relevant for the application of the rule in ethno-cultural terms. For example, in the post-imperial and post-colonial era, European states have successively redrawn the boundaries of their citizenship by redefining what counts as national territory for the purpose of *ius soli*. Ever since 1989 the French law provides that children born on French territory to parents also born on French territory acquire citizenship automatically at birth. However, an amendment of 1993 removed territories of former colonies from the scope of the "French territory" relevant for the application of the rule of *ius soli*. This limitation was imposed also on French-born Algerians despite the fact that Algeria had been part of France before independence (Bertossi, 2010: 9–10). In 2006 the exemption of residence for citizens from the former French colonial territories was

also discarded, thus eliminating the distinction between people from former colonies and other immigrants (Bertossi, 2010: 24). Although in 1998 another amendment restored the entitlement to double *ius soli* to descendants of French-born Algerians, the exclusion from *ius soli* citizenship of descendants of former citizens from former French colonies and territories remains.

In Ireland the entitlement to birthright citizenship is granted to all people born on the island of Ireland (Ireland and Northern Ireland). According to Article 2 of the Irish Constitution, the national territory of Ireland encompasses the whole island of Ireland, its islands and the territorial seas. The 1956 Irish Citizenship Act stipulated that the rule of *ius soli* applied extraterritorially "pending the re-integration of the national territory." This explicit irredentist provision survived until the Good Friday Agreement of 1998. After this Agreement, the Irish government formally abandoned the territorial claim and recognised "the birthright of all the people of Northern Ireland to identify and be accepted as Irish or British or both, as they may so choose." In this way, people born on the island of Ireland could become citizens simply by performing an "act that only an Irish citizen is entitled to do," such as applying for a passport or seeking entry into the register of voters in presidential elections (Handoll, 2010: 10). The reform of the Irish citizenship law in 2004 addressed the over-inclusive effects of the rule of *ius soli* by requiring parents to have resided in the country three years out of the last four consecutive years prior to the child's birth. However, this requirement only concerns children born in Ireland to immigrant parents because children born on the island of Ireland to parents who are Irish citizens (or entitled to Irish citizenship) enjoy an entitlement to Irish citizenship.

2
Ordinary Naturalisation

Naturalisation is the major mode of acquisition of citizenship after birth. In the context of increased international migration, legal provisions regarding the naturalisation of foreigners in Europe have become progressively more contested and politicised. Today's heated debates about citizenship tests and about integration clauses in the process of naturalisation breathe new life into older questions about the relationships between citizenship, social integration, cultural specificity and nationalism. It is important to notice that naturalisation raises issues that go beyond these topical concerns about the incorporation of immigrants. Naturalisation provisions may also concern emigrants and their descendants and people who have never crossed international borders but who have seen borders moved over them. Whereas residence in the country is the major, though never the only, requirement for naturalisation, states sometimes grant citizenship through simplified naturalisation procedures to non-residents. In this analysis I consider "naturalisation" to include all the procedures regarding the acquisition of citizenship after birth, regardless of specific legal terminology. This is because the main analytical distinction in this survey is that between the acquisition of citizenship at birth (birthright citizenship) and the acquisition of citizenship after birth (naturalisation). However, I distinguish between ordinary naturalisation that applies generically to foreign residents, and preferential naturalisation that targets particular groups of people regardless of their residential status. In this chapter I discuss rules of ordinary naturalisation leaving rules of preferential naturalisation for the next chapter.

The procedures of ordinary naturalisation are usually complex and cumbersome. Naturalisation is also often a discretionary procedure, meaning that states maintain the right to deny access to citizenship

even to applicants who fulfil all legal requirements. The most important requirement of ordinary naturalisation is residence in the country. Apart from residence, naturalisation rules typically include conditions regarding dual citizenship, knowledge of languages, economic self-sufficiency and good character. In this chapter I first provide an overview of rules of ordinary naturalisation in thirty-eight European countries and then discuss rules and aspects of ordinary naturalisation that raise suspicions with regard to the ethno-cultural understandings of membership.

Residence

Nowadays it is broadly accepted that people residing in the country for a long period of time have a strong claim to citizenship. The procedure of ordinary naturalisation expresses this general view, although residence alone is never a sufficient condition for naturalisation.

In practice, citizenship laws use different definitions and standards of residence. They commonly distinguish, for example, between actual and past residence, between simple, legal, and permanent residence, or between degrees of the continuity of residence. Many countries have rules of naturalisation that require qualified forms of residence, such as legal or permanent residence (Vink and De Groot, 2010a; De Groot and Vink, 2013). Several citizenship laws require applicants to have been resident in the country for a period of time after they acquired a permit of permanent residence. In this case, the actual duration of required residence increases. Taking this into account, the minimum period of residence required for naturalisation in the countries included in the survey varies as follows: 13 years (Macedonia), 12 years (Switzerland), 10 years (Austria, Bulgaria, the Czech Republic, Estonia, Italy, Latvia, Lithuania, Moldova, Montenegro, the Netherlands, Slovenia, Sweden and Spain), 9 years (Denmark), 8 years (Bosnia and Herzegovina, Croatia, Germany, Hungary, Romania, Poland, and Slovakia), 7 years (Greece, Iceland, Luxembourg, and Norway), 6 years (Portugal), 5 years (Albania, Belgium, Cyprus, Finland, France, Ireland, Malta, Turkey, and the United Kingdom), and 3 years (Serbia) (see also Table 2.1).[1] There is still uncertainty whether the Greek and the Hungarian citizenship laws specify continuous or permanent residence. If the latter is true for both cases, then Greece requires applicants to reside in the country for 12 years and Hungary 13 years before they can apply for naturalisation (De Groot and Vink, 2013: 3–4).

Table 2.1 Rules of ordinary naturalisation in Europe (2013)

	Entitlement	Residence (years)	Renunciation	Command of language	Knowledge about the country	Good character	Self-sufficiency	Loyalty oath
Albania	Yes	5	No	Yes	No	Yes	Yes	Yes
Austria	No	10*	Yes***	Yes	Yes****	Yes	Yes	Yes
Belgium	No	5	No	No	No	Yes	No	Yes
Bosnia and Herzegovina	Yes	8	Yes***	Yes	No	Yes	No	No
Bulgaria	No	5+5**	Yes	Yes	No	Yes	Yes	No
Croatia	Yes	8*	Yes***	Yes	No	No	No	No
Cyprus	No	5?	No	No	No	Yes	No	No
Czech Republic	No	5**	Yes	Yes	No	No	No	Yes
Denmark	No	9*	Yes***	Yes	Yes****	Yes	Yes	Yes
Estonia	No	8*	Yes	Yes	Yes****	No	Yes	Yes
Finland	No	5	No	Yes	No	No	Yes	No
France	No	5	No	Yes	Yes	No	Yes	Yes
Germany	Yes	8*	Yes***	Yes	Yes****	Yes	Yes	No
Greece	No	7	No	Yes	Yes	Yes	Yes	Yes
Hungary	No	8	No	Yes	Yes****	Yes	Yes	Yes
Iceland	No	7	No	Yes	No	Yes	Yes	No

Ireland	No	5	No	No	No	Yes	Yes	Yes	
Italy	No	10	No	No	No	Yes	Yes	Yes	
Latvia	No	5+5**	Yes	Yes	Yes****	Yes	Yes	Yes	
Lithuania	No	10*	Yes***	Yes	Yes****	Yes	Yes	Yes	
Luxembourg	No	7	No	Yes	Yes	Yes	No	No	
Macedonia	Yes	8+5**	Yes	Yes	No	Yes	Yes	Yes	
Malta	No	5	No	Yes	No	Yes	No	Yes	
Moldova	No	10	Yes***	Yes	Yes****	No	Yes	Yes	
Montenegro	No	10	Yes	Yes	No	Yes	Yes	No	
Netherlands	Yes	5+5**	Yes***	Yes	Yes****	No?	No	Yes	
Norway	No	7*	Yes***	Yes	Yes	Yes	No	No	
Poland	Yes	3+5**	Yes***	Yes	No	No?	Yes	No	
Portugal	Yes	6	No	Yes	No	Yes	No	No	
Romania	No	8	No	Yes	Yes****	Yes	Yes	Yes	
Serbia	No	3	Yes***	No	No	No	No	Yes	
Slovakia	No	8	No	Yes****	Yes	Yes	Yes	Yes	
Slovenia	No	10*	Yes***	Yes	No	Yes	Yes	Yes	
Spain	Yes	10	Yes***	Yes	No	Yes	No	Yes	

(continued)

Table 2.1 Continued

	Entitlement	Residence (years)	Renunciation	Command of language	Knowledge about the country	Good character	Self-sufficiency	Loyalty oath
Sweden	No	5+5**	No	Yes?	No	Yes	Yes	No
Switzerland	No	12	No	No	No	Yes	Yes	Yes
Turkey	No	5	No	Yes	Yes	Yes	Yes	No
United Kingdom	No	5	No	Yes	Yes****	Yes	No	Yes

* The applicant is required to have a permit of permanent residence at the moment of the application (or some time before the application, bot not during the whole specified period).
** The applicant is required to have a permit of permanent residence during the whole specified period. The added period stands for the minimum period of time necessary in order to acquire a permit of permanent residence in the country.
*** There are considerable exceptions to this rule.
**** The assessment of this knowledge is made through a comprehensive citizenship test.
Sources: compiled and actualised data from (Goodman, 2010; Vink and De Groot, 2010a; De Groot and Vink, 2013; Vink et al., 2013b).

Renunciation of other citizenship

One of the major contemporary trends in the regulating of citizenship is the increasing tolerance of dual (multiple) citizenship. This is mainly due to a general acceptance of the principle of gender equality, which implies that parents of different citizenships can transmit citizenship to their children, and due to a growing number of cases where children can acquire different citizenships through the simultaneous application of rules of *ius sanguinis* and *ius soli*. In the survey, however, half of the countries require applicants to renounce their foreign citizenship in order to naturalise. These countries are: Austria, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Germany, Latvia, Lithuania, Macedonia, Moldova, Montenegro, the Netherlands, Norway, Poland, Serbia, Slovenia, and Spain. Among the states that reject dual citizenship to candidates for naturalisation many provide for considerable exceptions. For example, in Denmark it is estimated that a steady 40% of all naturalised foreigners retain their foreign citizenship (Ersbøll, 2010: 26). In Germany, in 2006, 51% of naturalised citizens maintained their foreign citizenship (Hailbronner, 2012: 27). In the Netherlands, the renunciation requirement was abolished in 1991 but reintroduced in 1997. However, the exceptions provided by the law "concerned the majority of the immigrants that applied for naturalisation" (Van Oers et al., 2013: 16). Considerable exceptions are also made in the Czech Republic, Lithuania, Slovenia, and Spain. In Poland, public authorities have full discretion to decide whether naturalised citizens can retain foreign citizenship (Górny and Pudzianowska, 2010: 14).

Language and knowledge about the country

The general idea behind the requirement that foreigners speak the local language(s) or possess certain knowledge about the country in order to naturalise is that this facilitates the social integration of would-be citizens. Whether this is the actual policy rationale of these requirements and whether the idea really makes normative sense is, of course, a contentious matter. In the survey, the overwhelming majority of countries have naturalisation requirements regarding the command of language(s).[2] It is only in Belgium, Cyprus, Ireland, Serbia, Sweden, and Switzerland that applicants for naturalisation do not have to prove that they know the language(s) of the country. Although the level of required linguistic competence varies across countries, in the majority of countries candidates for naturalisation are expected to be proficient

speakers. Denmark stands out as the country that officially imposes the highest level of command of language: upper intermediate (or B2 level, according to the coding of the Common European Framework of Reference for languages[3]). It must be added that in many countries these linguistic requirements are not fully specified and public authorities retain great discretion with regard to assessment. There is a tendency in Europe to formalise the assessment methods by using standardised tests instead of informal interviews (Goodman, 2010: 16).

Many countries in the survey have naturalisation requirements regarding the knowledge of particular aspects of the country's legal and political system, history, society or culture. These provisions include knowledge of: "democratic order and history" (Austria), "basic constitutional issues" (Hungary), "society, culture and history" (Denmark), "rights and duties of citizens" (France), issues of "public order" (Germany), "history and culture" (Greece), "the Constitution, the anthem and the history" (Latvia), "culture and civilization, of the Constitution, and anthem" (Romania), history, law, politics, society and manners (the United Kingdom). Knowledge about the country is assessed by means of interview (France, Greece, and Slovakia), written exam (Hungary, Latvia, Lithuania, Romania), or citizenship test (Austria, Denmark, Estonia, Germany, the Netherlands, and the United Kingdom). As in the case of linguistic requirements, there is the tendency to assess applicants' knowledge about the country through formal tests (Goodman, 2010: 17). Standardised citizenship tests exist in Austria, Denmark, Estonia, Germany, Hungary, Latvia, Lithuania, Moldova, the Netherlands, Romania, Slovakia and the United Kingdom.

Self-sufficiency and good character

The overwhelming majority of countries in the survey require applicants for naturalisation (adults) to be economically self-sufficient. This economic self-sufficiency is assessed either by looking at applicants' sources of income or by scrutinising applicants' skills and capacities for work. For example, applicants for naturalisation in Albania, Macedonia, and Montenegro must prove that they have adequate dwelling or housing. In Ireland they have to be economically independent or capable of working. In Germany beneficiaries of welfare or unemployment benefits cannot naturalise, except for when they are deemed not "personally responsible for their situation" (Hailbronner, 2012: 12). A record of reliance on social assistance is also an obstacle for naturalisation in Denmark and Iceland. Applicants who have outstanding public debts

can be denied naturalisation in the Czech Republic, Denmark, Finland Montenegro, Slovakia, and Slovenia.

All countries in the survey have naturalisation provisions regarding applicants' good character. Good character is usually assessed through the review of applicants' criminal records. Many citizenship laws contain additional clauses about candidates' behaviour, loyalty, integration and moral standards. Such references include: "affirmative attitude towards the Republic" (Austria), "no serious facts with respect to the person" (Belgium), "deemed to be a suitable citizen" (Malta), "decent life and manners" (France), "effective connection to the community" (Portugal), "good moral character" (Slovakia), "good civic conduct" and "adaptation to culture and lifestyle" (Spain), "respectable life" (Sweden), "attachment to the state and people" (Romania) and "good moral standards" (Turkey). For example, France explicitly requires applicants for naturalisation to prove that they have assimilated. In this case, the assessment goes beyond checking linguistic assimilation; it takes into consideration membership in religious groups, family relationships and even dress codes (Bertossi, 2010: 12).

Lastly, twenty-four countries in the survey require applicants for naturalisation to sign declarations or to take oaths of allegiance to the country. In a number of countries, such as France, Denmark, Germany, Ireland, the Netherlands, and the United Kingdom, newly naturalised persons are invited to official citizenship ceremonies to mark the importance of becoming a citizen.

AQ1

Ethno-cultural rules of ordinary naturalisation

According to a common argument in the comparative literature on citizenship laws, citizenship policies in Europe have gradually converged towards more liberal regimes (Weil, 2001; Joppke, 2007a; Howard, 2009). In this respect, Joppke (2008a: 4) describes three major liberalising trends: the extension of legal entitlement to citizenship on the part of second- and third-generation immigrants, the relative relaxing of naturalisation requirements, and the increased toleration of dual citizenship. These trends add to another important liberal development, namely the removal of gender and racial discrimination from citizenship laws. When Germany changed its highly restrictive citizenship law in 1999 to include conditional *ius soli* for second-generation immigrants, the liberalisation trend seemed beyond any doubt.

Despite signs of an overall liberalisation of citizenship laws, ordinary naturalisation rules in many European countries have become more

restrictive. This "restrictive turn" in citizenship policies (Joppke, 2008a: 6–7) is best illustrated by the widespread adoption of language requirements and comprehensive citizenship tests. It appears that ordinary naturalisation has gradually transformed from a prerequisite of integration into the crowning of a completed integration process (Bauböck et al., 2006a: 24), or "the end-point of, or reward for, integration" (Joppke, 2008a: 12). Overtly restrictive rules of ordinary naturalisation can be interpreted as an ethno-culturally motivated attempt to make the admission of unwanted aliens as difficult as possible. However, they can also be seen as stemming from badly calibrated civic-territorial ideals of political community or, as Bauböck (2008: 8) suggests, from forms of "illiberal civic nationalism." What seems to be at stake is a relative reversal of liberaliszation (Joppke, 2008a: 3–4), a move towards "illiberal liberalism" (Orgad, 2010), in which liberal norms are applied "in an exclusionary fashion" (Adamson et al., 2011: 845) and defended through "illiberal means (Spiro, 2011: 743). However, there are several rules and aspects of ordinary naturalisation that raise concerns about ethno-cultural conceptions of membership. Firstly, the highly discretionary and prohibitive character of the procedures of ordinary naturalisation can be instrumental for ethno-cultural selection. Secondly, naturalisation rules that demand a high level of socio-cultural integration of immigrants are closely associated to ethno-cultural understandings of membership. Thirdly, policies of asymmetrical dual citizenship that require immigrants to renounce their citizenship of origin but allow citizens to retain their citizenship when they naturalise elsewhere reinforce ethno-cultural assumptions about the degree of loyalty and trustworthiness of different categories of citizens.

Whereas states enjoy discretionary powers with regard to the regulation of citizenship, in general, these powers are even greater in the process of naturalisation. Discretionary selection in the naturalisation process works in two ways. On the one hand, states can bar from admission people who are deemed unworthy of membership, such as the unskilful, the ignorant and the low-spirited (negative selection). On the other hand, states can offer privileged admission to people who are regarded as membership-worthy, even if they have none of the skills or virtues required from other people (positive selection). Rules of ordinary naturalisation are mainly used to negatively select among foreigners.

Only nine countries in the survey provide that applicants for naturalisation have an entitlement to citizenship. Many citizenship laws stipulate open-ended clauses about national interests. For example, the Dutch citizenship law mentions concerns about "public decency"

(Van Oers et al., 2013: 21) and the French law includes provisions about "bonnes vie et moeurs" (Hagedorn, 2001: 248). In the Czech Republic naturalisation is regarded as "an act of mercy by the state" (Baršová, 2013: 3). In Estonia the Supreme Court upheld that naturalisation is a privilege not a right (Järve and Poleshchuk, 2013: 9) and in Ireland the state has "absolute discretion" in the procedure of naturalisation (Handoll, 2010: 15). Moreover, certain citizenship tests seem to be designed to prevent people from actually acquiring citizenship (Groenendijk et al., 2009). For example, in 2007 Denmark introduced a citizenship test that assessed candidates' knowledge about Danish culture, history and society. When it became known that the passing rates of the citizenship test were too high, Denmark introduced a new, harsher test. The change caused a fall in the pass rate from 97% to 22% (Ersbøll, 2010: 23). Danish citizenship law also requires candidates for naturalisation to pass a language test that is the most difficult in Europe (level B2). This has exclusive effects, especially among certain categories of applicants, such as the elderly, persons with little schooling or those with learning difficulties (Ersbøll, 2010: 27).

Residence plays a key role in theoretical arguments about the incorporation of immigrants. Theorists argue that long-term residents should be naturalised to avoid creating a class of people that is ruled by others (Walzer, 1983) or because residents are members of the society (Rubio-Marín, 2000: 60; Carens, 2010: 24–26). Residence is also a key "objective biographical circumstance" (Bauböck, 2007a: 2421) that demonstrates the existence of a stake in the political community. In practice, however, conditions of residence can serve different purposes. Firstly, requiring people to reside in the country for very long periods of time before they can apply for naturalisation can be seen as an indicator of an ethno-culturally inspired reluctance to accept newcomers. In the survey, Macedonia and Switzerland specify especially long periods of residence in the country for the purpose of naturalisation (13 and 12 years, respectively). Secondly, certain definitions of residence can be used to promote specific ethno-cultural goals. This is particularly relevant when borders or statehood change. For example, in Estonia immigrants from the period when the republic was incorporated into the Soviet Union (1940–1991) were refused automatic access to citizenship after independence. When these people were allowed to apply for naturalisation, the law required that they prove residence in the country for three years, but only residence after 30 March 1993 was to be counted. This rule was not inspired by an argument about the socialisation virtues of residence. It served the ethno-cultural purpose of keeping

non-ethnic Estonians (Russian-speaking immigrants) from taking part in the processes of institution-building in the restored state (Järve and Poleshchuk, 2013).

Naturalisation provisions are not only tools through which states turn foreigners (residents) into citizens; they are also instruments for promoting certain models of good citizenship. By linking naturalisation and socio-cultural integration, the state seeks to select and reproduce citizens that are sufficiently integrated into the society. The question, however, is whether socio-cultural integration can be achieved through naturalisation processes. It may be argued that states are justified in worrying about the social integration of immigrants, as well as generally. However, the recent emphasis on testing candidates' linguistic and non-linguistic skills raises a series of important problems. The first problem is about the content and expectations of these tests. What exactly should candidates know, feel, and believe to be accepted as citizens? For example, the often cited "interview guide" adopted by the German state of Baden-Württemberg in 2005 aimed to scrutinize the attitudes of applicants of Islamic background towards delicate socio-cultural issues such as homosexuality, the equality of women, and Islamic terrorism (Joppke, 2008a: 12). Amid criticism, the guide was scrapped and a new German federal test was adopted in 2008, which included more general questions about German history, culture, geography, constitution, symbols, and customs. In Joppke's (2008a: 8) view, instruments such as Baden-Württemberg's interview guidelines constitute a "veritable morality test that is driven by the normatively and constitutionally questionable vision of the liberal state as a state for liberal people only." Unlike tests that ask for specific factual knowledge that "can be learned and mechanically reproduced," a "citizenship test that scrutinizes a candidate's 'inner disposition' does raise eyebrows, precisely for transgressing the thin line that separates the regulation of behaviour from the control of beliefs" (Joppke, 2008b: 542). Other citizenship tests avoid moral scrutiny, but inevitably reinforce contentious assumptions about what a citizenship should know or how a citizen should behave. For example, the Danish citizenship test contains questions that cover wide aspects of Danish history and culture: from Vikings, to football-related performances and Danish Nobel prize laureates (Orgad, 2010: 24–25). The Dutch citizenship test also asks applicants to be able to behave as Dutch in hypothetical social situations (Van Oers, 2013). Lastly, the reformed "Life In The UK test" is telling about the difficulties facing any attempt to define and test socio-cultural integration. After the removal of some contentious issues about common British culture and identity,

the new test includes a series of "trivial" questions, such as one about the age of Big Ben, which, according to some, makes it look like a "bad pub quiz" (Parkinson, 2013).

Even if one accepts that states are justified to put illiberal means in the service of liberal goals, doubts remain about whether citizenship tests can serve their intended purposes. One of the main alleged advantages of these tests is that they reduce administrative discretion. However, the use of formalised tests "do not provide sufficient flexibility in judging relevant skills" (Bauböck et al., 2006c: 13). It is unlikely that asking applicants to learn about some aspects of national history and culture, such as through "Blitzkrieg-style" integration courses (Orgad, 2010: 30), would make them identify with the particular country, especially when the whole process is set up to discourage rather than foster such identification.

Responding to allegations that citizenship tests are a new form of nationalism, Soysal (2012: 52) claims that these tests "do not represent a return to nation-centred citizenship projects, but convey an integration and cohesion model that takes individuality, and individuals' capacities and efforts, as its premise." However, even if most of the tests do not contain ethno-cultural elements – except, perhaps, that of language – the very introduction of these tests tell us something about the shift towards national particularism (Koopmans, 2012: 29). What is at stake is the reassertion of a nativist ideology that opposes "us" to "them" and affirms the discretionary right of the insiders to exclude or "transform" outsiders.

The last aspect of regular naturalisation that raises issues about ethno-cultural membership is about policies on dual citizenship. The trend towards increased acceptance or toleration of dual citizenship is an important element in the general thesis about the liberalisation of citizenship regimes in Europe (Joppke, 2008a). However, the acceptance of dual citizenship is not uniform across countries and not even within the same citizenship regime. There are cases in which the law imposes different conditions regarding dual citizenship to foreigners who naturalise in the country (incoming naturalisation) and to citizens who naturalise elsewhere (outgoing naturalisation). Seven countries in the survey maintain a general obligation to renounce another citizenship in the procedure of regular naturalisation, but allow citizens to retain citizenship when they naturalise elsewhere. These countries are: Bulgaria, Croatia, Macedonia, Moldova, Poland, Serbia, and Slovenia (see Table 2.2). Apart from these countries, the Czech Republic, Estonia, Norway, and Spain maintain a general ban on dual citizenship, but exempt citizens by birth from the prohibition of dual citizenship for outgoing naturalisation.

Table 2.2 Rules of dual citizenship in Europe (2013)

	Acceptance of dual citizenship			
	Birthright		Regular naturalisation	
	Ius sanguinis	***Ius soli*** **(including facilitated naturalisation after birth)**	**Outgoing naturalisation**	**Incoming naturalisation**
Albania	Yes	n.a.	Yes	Yes
Austria	Yes	No	No*	No
Belgium	Yes	Yes	Yes	Yes
Bosnia and Herzegovina	Yes	n.a.	No*	No
Bulgaria	Yes	Yes	Yes	No
Croatia	Yes	No	Yes	No
Cyprus	Yes	n.a.	Yes	Yes
Czech Republic	Yes	No*	No**	No
Denmark	Yes	n.a.	No	No
Estonia	Yes	n.a.	No**	No
Finland	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes
Germany	Yes	No*	No*	No*
Greece	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	Yes
Iceland	Yes	n.a.	Yes	Yes
Ireland	Yes	Yes	No**	Yes
Italy	Yes	Yes	Yes	Yes
Latvia	Yes	n.a.	No	No
Lithuania	Yes	n.a.	No	No
Luxembourg	Yes	Yes	Yes	Yes
Macedonia	Yes	n.a.	Yes	No
Malta	Yes	n.a.	Yes	Yes
Moldova	Yes	n.a.	Yes	No
Montenegro	Yes	n.a.	Yes	Yes
Netherlands	Yes	Yes	No	No

(*continued*)

Table 2.2 Continued

	Acceptance of dual citizenship			
	Birthright		**Regular naturalisation**	
	Ius sanguinis	***Ius soli* (including facilitated naturalisation after birth)**	**Outgoing naturalisation**	**Incoming naturalisation**
Norway	Yes	n.a.	No*/**	No
Poland	Yes	n.a.	Yes	No
Portugal	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes
Serbia	Yes	Yes	Yes	No
Slovakia	Yes	n.a.	No	Yes
Slovenia	Yes	Yes	Yes	No
Spain	Yes	No	No**	No
Sweden	Yes	n.a.	Yes	Yes
Switzerland	Yes	n.a.	Yes	Yes
Turkey	Yes	n.a.	Yes	Yes
United Kingdom	Yes	Yes	Yes	Yes

* There are considerable exceptions to this rule.
** This rule does not apply to citizens by birth.
Sources: compiled and actualised data from (Goodman, 2010; Honohan, 2010; Vink and De Groot, 2010a; Vink et al., 2013b; Vink et al., 2013c).

The policies of asymmetrical dual citizenship can be seen as driven by ethno-culturalist suspicions about the loyalty of naturalised citizens. According to Spiro (2011: 737), this discrepancy will "not be able to withstand antidiscrimination critiques" and "dual citizenship will [soon] be broadly accepted however acquired." I think that the two situations should be analysed from different perspectives. In the case of incoming naturalisation, the question is whether allowing immigrants to retain the citizenship of the state of origin is compatible with the process of admission. In the case of outgoing naturalisation, the question is whether allowing citizens to retain citizenship after they naturalise abroad is compatible with the idea of equal citizenship. In this

framework, it can be argued that a state should accept dual citizenship for immigrants and reject it for emigrants. This view, however, does not take into account states' obligations within the international system. In a context in which a state's policy of dual citizenship for outgoing naturalisation is accepted by other states, refusing dual citizenship in cases of incoming naturalisation violates what Bauböck (2006b: 158) calls the principle of "generalizability" of citizenship policies. According to this principle, "[s]tates should refrain from adopting citizenship laws and policies that would inherently conflict with similar laws and policies adopted by other states." Nevertheless, this does not change the fact that incoming and outgoing naturalisation raise slightly different normative concerns.

In the survey Slovakia and Ireland do not ask applicants for naturalisation to renounce another citizenship, but they do withdraw citizenship from outgoing citizens who naturalise elsewhere. In the Slovak case, the aim is to counteract the Hungarian initiative that offered external dual citizenship to kin minorities living in the neighbouring states (Bauböck, 2010b). In the Irish case, the withdrawal clause applies only to those AQ3 who acquired citizenship otherwise than by birth since citizens by birth cannot lose their Irish citizenship unless they renounce it. Both cases are problematic. Slovakia denaturalises residents who are citizens by birth. It also denaturalises members of an historic ethnic minority, who, in line with actual standards of minority protection, should enjoy more rather than less legal protection and accommodation. There is a strange symmetry in this case: Slovakia denaturalises dual citizens who are residents, whereas Hungary naturalises foreigners who are not residents. In the case of Ireland, the law discriminates among citizens on grounds of particular mode of acquisition of citizenship. Both policies reinforce problematic distinctions between original and non-original citizens.

3
Preferential Naturalisation

Many citizenship laws have provisions regarding the preferential naturalisation of foreigners who are considered to have special ties with the state. Such preferences can be based on several grounds, such as family bonds between foreigners and citizens, special contributions to the state, cultural affinity with the country, or specific international agreements. In this chapter I focus on rules of preferential naturalisation that concern people who have ethno-cultural links with the country. I call these people public relatives because the preferential treatment they enjoy is not based on a family relationship with particular citizens, as in the case of spouses or children of citizens (private relatives), but primarily on a presumed special relationship with the state and the community subsumed by the state. I further distinguish between two categories of public relatives: (1) political relatives; and (2) ethno-cultural relatives. In the case of political relatives, preferential access to citizenship is triggered by the possession, in present or in the past, of a particular status of citizenship. This category includes: (1a) citizens of privileged states, and (1b) former citizens and descendants of former citizens. In the case of ethno-cultural relatives, preferential access to citizenship is based on the existence of national, ethnic, or cultural ties between foreigners and the state. This category includes: (2a) persons who share certain cultural features with citizens of the state; and (2b) members of an ethno-cultural community. The difference between the two groups of ethno-cultural relatives is that in the first case (2a), what matters is the possession of discrete ethno-cultural features such as language and religion, whereas, in the second case (2b), the emphasis falls on ascribed or self-asserted membership of a particular ethno-cultural community. I think that these distinctions are analytically useful, although there is a certain overlap between the resulting categories. For example, political

relatives are sometimes welcomed as ethno-cultural relatives and ethno-cultural relatives are honoured as fellows in an imagined or absolute political community.

Citizens of privileged states

Rules of preferential naturalisation for citizens of privileged states derive from formal or informal agreements between states. Such rules are found usually in countries with a colonial history and in countries that are engaged in projects of regional cooperation or integration.

Despite successive redefinitions of citizenries following the independence of colonies, several ex-colonial states maintain residual provisions concerning the preferential naturalisation of people from former colonial territories. In the 1950s Spain concluded a series of treaties on dual citizenship with Latin American countries. Although these treaties did not establish dual citizenship, they permitted citizens to switch between Spanish and the other citizenship when changing residence (Marín et al., 2012: 6). Following the decision by the European Court of Justice (ECJ) in the *Micheletti case*,[1] Spain renegotiated these agreements to allow for proper dual citizenship (De Groot, 2002). Spain also grants citizens of Latin American countries[2] preferential access to citizenship by exempting them from the ordinary requirement regarding the renunciation of other citizenship.

In Portugal the principle of maintaining privileged ties with Portuguese-speaking (Lusophone) countries is inscribed in the Constitution and is also one of the major pillars of Portuguese Foreign Policy (Piçarra and Gil, 2010: 29). Citizens of Lusophone countries[3] enjoy a wide range of rights in Portugal, such as local and national voting rights and access to professions that are normally open only to Portuguese citizens. They can also naturalise after a shorter period of residence and without having to pass a language examination.

Rules of preferential naturalisation for citizens of privileged states can also be part of a broader framework of regional cooperation. Beginning with the 1890s, Denmark, Finland, Iceland, Norway and Sweden developed a Nordic cooperation in matters of citizenship (Bernitz, 2010: 9). As a result, citizens of Nordic countries enjoy preferential treatment when they (re)acquire the citizenship of another Nordic country. For example, Denmark, Finland and Sweden restore citizenship on preferential terms to persons who lost the citizenship of the country but acquired another Nordic citizenship. In Denmark, former citizens[4] can reacquire Danish citizenship by declaration if they

are citizens of another Nordic state, re-establish residence in Denmark and renounce the other citizenship. A person who lost his or her Swedish citizenship and had thereafter continuously been a citizen of another Nordic country can reacquire Swedish citizenship by notification if she or he takes up residence in Sweden. Similarly, a person who, after losing Finnish citizenship, became a citizen of another Nordic state can reacquire Finnish citizenship by declaration after taking up residence in Finland.

Lastly, membership of the European Union (EU) also triggered the adoption of preferential rules of naturalisation in several EU member states. It must be noted that the EU law does not interfere directly with the right of member states to regulate citizenship. However, a number of EU countries provide for preferential rules of naturalisation for citizens of other EU countries. These countries are: Austria, Germany,[5] Greece, Hungary, Italy, Romania and Slovenia. The facilitated naturalisation of citizens of other EU states consists mainly in the shortening of the period of required residence[6] and in the toleration of dual citizenship.

Former citizens and descendants

It is common that countries offer preferential admission to citizenship to former citizens. Apart from generic provisions regarding the reacquisition of citizenship, many countries have legal provisions regarding the restoration of citizenship as a way of undoing historical wrongs. The Austrian citizenship law provides for the preferential reacquisition of citizenship by survivors of the Holocaust and by political emigrants of the Third Reich (Çınar, 2013: 16). In Greece and Spain the law provides for the facilitated reacquisition of citizenship by people who fled as refugees during the civil wars. Post-communist countries, such as Bulgaria, the Czech Republic, Hungary, Poland, and Romania, maintain rules of preferential reacquisition of citizenship for persons who were deprived of citizenship during the communist regimes (Vink et al., 2013b).

Provisions regarding the reacquisition of citizenship by certain categories of former citizens (and descendants) can be used to reconstitute the boundaries of original national communities altered through foreign occupation. After proclaiming their independence from the Soviet Union in the early 1990s, Estonia, Latvia and Lithuania reinstated their pre-Soviet citizenship laws to restore citizenship to their pre-Soviet citizens and their descendants. Whereas Lithuania also granted citizenship to long-term residents (Kūris, 2010), Estonia and Latvia denied

automatic access to citizenship to people who immigrated during the Soviet era. The effect was the creation of large populations of resident non-citizens, many of them stateless persons.

Several countries use citizenship policies to counteract the effects of imposed territorial changes. In the post-Cold War era Hungary re-affirmed the commitment to protect ethnic Hungarians who were left outside borders after the fall of the Austro-Hungarian Empire. After several attempts to officialise links with ethnic Hungarians living in the neighbouring countries,[7] in 2011 Hungary amended the citizenship law by granting preferential access to citizenship to former Hungarian citizens and descendants who live outside Hungarian borders and who speak Hungarian (Kovács and Tóth, 2013: 11). Although it condemned Hungary's policies towards former citizens, Romania also adopted generous rules regarding the acquisition of citizenship by former Romanian citizens. Among the several categories of former citizens (and descendants) who qualify for preferential re-acquisition of citizenship, the Romanian law includes former citizens who "were stripped of Romanian citizenship against their will or for reasons beyond their control, and their descendants." These provisions aimed to restore Romanian citizenship to former citizens and their descendants who inhabited territories lost by Romania in 1940, namely Bessarabia, now the Republic of Moldova, and Northern Bukovina and Southern Bessarabia, now part of Ukraine (Iordachi, 2013: 11).

Policies of restoration of citizenship to people from former territories or states are implemented by several other states. For example, An Italian ministerial circular of 1991 permitted the restoration of citizenship to descendants of Italian emigrants, provided that their ancestors had not voluntarily renounced Italian citizenship. This led to an odd situation in which "even a person who can prove descent from an Italian who emigrated before the unification of Italy in 1861 is entitled to Italian citizenship, provided that the Italian ancestor was alive at the time of the unification." In 2000 Italy granted citizenship by simple declaration to Italians by origin residing in areas that in the past belonged to the Austro-Hungarian Empire. In 2006 the possibility to acquire citizenship by declaration was also given to people of Italian descent from Slovenia and Croatia (Joppke, 2008: 37–38). (Margiotta and Vonk, 2010: 8). Zincone and Basili (2013: 5) speak of 60 million of "latent Italians" (people of Italian origins), most of whom "never visited their supposed motherland, do not speak or even understand Italian, know very little about Italian history, culture, and basic constitutional principles, and presumably far less about Italian politics." AQ1

Ethno-cultural relatives

The category of ethno-cultural relatives refers to persons who are perceived as ethno-culturally related to the state despite the fact that they or their ancestors were not citizens of the state. These people qualify for privileged access to citizenship because they display or possess certain ethno-cultural features, such as language, religion, and ethnicity and/or because they originate from certain cultural-geographical areas (see Table 3.1). Denmark grants facilitations in the acquisition of citizenship to persons who were born in the German region of Southern Schleswig and who are "Danish-minded." France facilitates the naturalisation of citizens of francophone states who have been educated in French. Germany offers facilitated naturalisation to citizens of Liechtenstein, Austria or other areas in Europe where German is an official or colloquial language. Portugal offers preferential naturalisation to citizens of Portuguese-speaking countries. In several countries religious affiliation plays an independent role in triggering facilitated access to citizenship.[8] Greece offers special naturalisation to monks who serve at Mount Athos (Christopoulos, 2010). The Spanish Civil Code of 1982 provided that descendants of Sephardic Jews who were expelled from the Spanish Kingdom in 1492 could acquire Spanish citizenship after only two years of residence in the country (Marín et al., 2012: 24). This facilitation was extended in 2012 when the Spanish government removed the condition of residence from the naturalisation procedure applicable to Sephardic Jews (Minder, 2012). In 2013 Portugal also introduced rules of preferential naturalisation for descendants of Sephardic Jews who were persecuted in the 16th century (Krich, 2013). AQ2

Some countries have special repatriation policies for former citizens or co-ethnics who live in specific territories. After the Second Word War, Germany granted special immigration rights to ethnic Germans who fled Eastern Europe. The policy was gradually phased out after the 1990s. Apart from Germans who repatriated, Germany also granted preferential citizenship to co-ethnics living in Polish Silesia (Kovács and Tóth, 2013: 14). These people were allowed to take up German citizenship without taking up residence in the country and without renouncing Polish citizenship. In Poland, the Repatriation Act of 2000 entitles former Polish citizens and ethnic Poles who were forcefully relocated in several Asian Soviet Republics during the communist regime to immigrate and to acquire Polish citizenship. Apart from descent and territorial origin, the law also asks applicants to prove "attachment to Polish culture" and commitment to Polish language, traditions and customs

Table 3.1 Rules of preferential naturalisation in Europe (2013)

	Persons of ethnic origin	Descendants of former citizens	Citizens of privileged countries
Albania	Persons of Albanian origin*	Descendants of former citizens (up to 2nd generation)*	n.a.
Austria	n.a.	Children of deceased citizens*	Citizens of EEA states**
Belgium	n.a.	Children of deceased citizens*	n.a.
Bosnia and Herzegovina	n.a.	Emigrants and descendants (up to 2nd generation)*	n.a.
Bulgaria	Persons of Bulgarian origin*/***	Children of deceased citizens*	n.a.
Croatia	Persons of Croatian ethnicity */***	Emigrants and descendants*/***	n.a.
Cyprus	n.a.	Children born after 16/08/1960 of deceased citizens*	Citizens of UK and colonies of Cypriot descent**
Czech Republic	n.a.	n.a.	Slovak citizens who were citizens of Czechoslovakia before 31/12/1992*/***
Denmark	Danish-minded' persons from Southern Schleswig**	Children of former citizens by birth**	Citizens of other Nordic states**
Estonia	n.a.	Children of persons who were citizens as of 16/6/1940*	n.a.
Finland	n.a.	n.a.	Citizens of other Nordic states**
France	Persons with French as mother tongue or educated in French**	n.a.	Citizens of francophone states**

(*continued*)

Table 3.1 Continued

	Persons of ethnic origin	Descendants of former citizens	Citizens of privileged countries
Germany	German ethnics from CEE (expellee)**/***	Children of former citizens*/ Emigrants of German ethnic origin*/***	Citizens of European states where German is an official or colloquial language**/***, citizens of EU countries and Switzerland***
Greece	Persons of Greek origin*	Descendants of former citizens*	Citizens of EU states**
Hungary	n.a.	Descendants of former citizens of declared Hungarian ethnicity*	Citizens of other EU states
Iceland	n.a.	n.a	Citizens of other Nordic states**
Ireland	Persons of Irish descent or Irish associations**	n.a.	n.a.
Italy	n.a.	Descendants of former citizens by birth (up to 2nd generation)**	Citizens of EU states**
Latvia	Person is of Latvian ethnicity*/***	Descendants of persons who were Latvian citizens as of 17/6/1940*	Persons who were citizens of Lithuania, Estonia or Poland before the Soviet occupation (and descendants)**
Lithuania	Persons of Lithuanian origin*	Descendants of emigrants and persons deported after 1940 (up to 3rd generation)**	n.a.
Luxembourg	n.a.	n.a.	n.a.
Macedonia	n.a.	Children of former citizens*/***	n.a.

(*continued*)

Table 3.1 Continued

	Persons of ethnic origin	Descendants of former citizens	Citizens of privileged countries
Malta	n.a.	n.a.	n.a.
Moldova		n.a.	n.a.
Montenegro	n.a.	Descendants of former citizens (up to 3rd generation)**/***	n.a.
Netherlands	n.a.	n.a.	n.a.
Norway	Descendant of former citizens who emigrated to Murmansk**	n.a.	Citizens of other Nordic states**
Poland	Persons of Polish descent repatriated from Russia**/***	n.a.	n.a.
Portugal	Persons of Portuguese ancestry or who belong to Portuguese communities abroad*; Descendants of Sephardic Jews*	Descendants of former citizens (up to 2nd generation)*	n.a.
Romania	n.a.	Descendants of former citizens by birth (up to 3rd generation)*	Citizens of other EU states born in Romania**
Serbia	Members of the Serbian nation; persons born in SFRY or belonging to another nation on the territory*/***	Children of former citizens by birth*/***	n.a.
Slovakia	Person of Slovak ethnicity**	n.a.	n.a.
Slovenia	Persons belonging to Slovene minorities in neighbouring states*/***	Descendants of former citizens (up to 4th generation)**/***	Citizens of other EU states (if reciprocity)***

(*continued*)

Table 3.1 Continued

	Persons of ethnic origin	Descendants of former citizens	Citizens of privileged countries
Spain	Sephardic Jews**	Descendants of former citizens (up to 2nd generation)**/***	Citizens of Latin American countries, Andorra, Philippines, Equatorial Guinea and Portugal**/***
Sweden	n.a.	n.a.	Citizens of other Nordic states**
Switzerland	n.a.	Children of former citizens*	n.a.
Turkey	n.a.	Children of former citizens*/ Persons of Turkish descent**	Citizens of the Turkish Republic of Northern Cyprus**
United Kingdom	n.a.	n.a.	n.a.

* This rule does not include a residential requirement (other conditions may apply).
** The residential requirement specifies a period of minimum residence that is shorter than in the case of ordinary naturalisation (other condition may apply).
*** The procedure does not include a requirement about the renunciation of other citizenship (other condition may apply).
Source: compiled and actualised data from (Vink et al., 2013b).

(Górny and Pudzianowska, 2010: 10). Greek citizenship law distinguishes between two categories of persons: persons of Greek Orthodox descent or *homogenis*, and persons of other descent or *allogenis*. Greek citizenship law provides for a special procedure of acquisition of citizenship to ethnic descendants of Greek citizens who reside or have resided in particular territories, such as Pontic Greeks from the Soviet Union who left Turkish territory before 1924 (Christopoulos, 2010). If descent from a Greek citizen or attestation of residence cannot be proven, applicants may still be eligible for facilitated naturalisation if they can "prove to the competent Greek authorities both that they are of Greek descent and that they 'behave as Greeks'"[9] (Christopoulos, 2010: 1). Lastly, Turkey grants preferential naturalisation to citizens of the self-proclaimed Turkish Republic of Northern Cyprus (Kadirbeyoglu, 2013: 16) on the basis of presumed ethno-cultural links.

Several countries maintain rules of facilitated acquisition of citizenship by ethno-cultural relatives without territorial qualifiers. For example, Bulgarian law grants facilitated access to citizenship to

"Bulgarians by origin," who are persons of Bulgarian "blood" (Smilov, 2013: 11). The main purpose of this policy seems to be to "symbolically restore the Bulgarian Exarchate through some modern surrogate, which would institutionalise links with the ethnic Bulgarians abroad" (Smilov, 2013: 21). Ethnic Serbs from the former Yugoslavia can be granted Serbian citizenship if they submit a declaration in which they "consider Serbia to be their country" (Štiks, 2013: 31). Rules of preferential naturalisation of people of specific origin, descent or ethnicity exist also in Albania, Croatia, Ireland, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia, and Turkey.

Ethno-cultural rules of preferential naturalisation

Rules of naturalisation that differentiate between people on ethno-cultural grounds are by definition ethno-cultural. In the countries included in the survey we find the following categories of ethno-cultural relatives: persons of origin (Albanian, Bulgarian, German and Greek), persons of ethnicity (Croatian, Latvian, and Lithuanian), person of descent (Irish, Polish, Slovak, and Slovenian) and persons belonging to a nation or community (Serbian, Portuguese and Slovenian). It is important to notice that the distinction between people of ethnic origin and former citizens and descendants is not always very sharp. Nevertheless, when rules of preferential naturalisation refer explicitly to former citizens and descendants, they sometimes introduce additional conditions with ethno-cultural significance. For example, Greece grants preferential admission to citizenship to former citizens of Greek ethnicity. Hungary offers facilitated admission for former citizens who can speak Hungarian. Several countries distinguish between former citizens by birth and other former citizens. In Denmark, Greece, Italy, Ireland, Lithuania, Luxembourg, Malta, Romania, Slovenia, Spain, and Sweden the rules of preferential naturalisation for former citizens apply only to former citizens by birth. Denmark, Italy, Romania, and Serbia also differentiate between (former) citizens of birth and other former citizens when they apply rules of preferential naturalisation for descendants of former citizens. Furthermore, these problematic distinctions between categories of former citizens apply sometimes even in cases when preferentialism is grounded in considerations of remedial justice. For example, the 1991 Lithuanian citizenship law stipulated that descendants of persons who were Lithuanian citizens prior to 15 June 1940 could re-acquire citizenship provided that they are not citizens of any other state and that they or their ancestors did not "repatriate." This rule excluded

from the scope of the restoration policy those former citizens of non-Lithuanian ethnic origin who emigrated to their ethnic homeland after 1940 (Kūris, 2010: 22).[10] Another case is that of the Spanish Historical Memory Act of 2007 that provides for the restoration of citizenship to descendants of Spaniards by origin who were forced to go into exile and renounce Spanish citizenship (Marín et al., 2012: 27).

In some cases legal provisions do not refer explicitly to ethnicity, but the ethno-cultural character of these rules becomes apparent from the context. For example, since 1991 Romania grants preferential access to citizenship to former citizens who were deprived of citizenship against their will. One of the undeclared purposes of this policy is to re-create the national membership of pre-war "Greater Romania" (Iordachi, 2009: 177), which was altered due to territorial losses. In the post-Soviet republics of Lithuania and Estonia, the decision to restore citizenship to former citizens was regarded as an act of restorative justice. However, this act is shadowed by the reluctance to grant citizenship to Soviet-era immigrants. The exclusion (non-inclusion) of Russian immigrants from citizenship served to ensure ethno-cultural control over state institutions on the context of a fragile ethno-demographic balance (Krūma, 2010; Järve and Poleshchuk, 2013).

Rules of preferential naturalisation for citizens of privileged states may also reinforce ethno-cultural conceptions of membership. For example, the Portuguese and the Spanish postcolonial initiatives to establish Lusophone and Hispanic transnational communities can be regarded as "nested within essentially panethnic constructs of state-transcending community" (Joppke, 2005b: 25). Such suspicion can appear even in cases of preferential naturalisation for citizens of other EU countries. According to Kovács and Tóth (2013: 1), Hungary's adoption in 2003 of EU preference in naturalisation was partly triggered by "the supposed ethnic proximity of applicants in adjacent states."

Lastly, dual citizenship can sometimes be used as "a tool for expanding the national community beyond state borders" (Bauböck, 2007b: 70). The toleration of dual citizenship is, on the one hand "part of the general trend from ethnic toward territorial citizenship" (Joppke, 2010: 48) and, on the other hand, part of a "counter-trend [...] of re-linking citizenship with ethnicity" (Kovács and Tóth, 2013: 11). The re-ethnicisation of citizenship through dual citizenship is visible in the policies of cross-border citizenship in Eastern Europe and in the initiatives taken by Western European states to strengthen citizenship ties with emigrant diasporas (Joppke, 2003). As in the case of rules that allow for the unrestricted transmission of citizenship via *ius sanguinis*

abroad, naturalisation rules that allow people to acquire (dual) citizenship from outside the country create a special privilege that suggests an ethno-cultural understanding of membership. This privilege is particularly problematic if one considers that most countries in Europe allow non-resident citizens to vote from abroad (Dumbrava, 2013; Arrighi et al., 2013). In the survey the following countries do not impose ordinary residential conditions on ethno-cultural relatives: Albania, Bulgaria, Croatia, Greece, Latvia, Lithuania, Serbia, and Slovenia. All or certain categories of descendants of former citizens can acquire citizenship from abroad on preferential terms in: Albania, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Macedonia, Portugal, Romania, Serbia, Switzerland and Turkey. Typical rules of preferential naturalisation for ethno-cultural relatives are generally concerned with the "origin" of persons and do not impose temporal limits. Rules of preferential naturalisation for descendants of former citizens sometimes specify generational limits. Albania, Bosnia and Herzegovina, Italy, Portugal and Spain limit the scope of the preferential access to citizenship for ethno-cultural relatives to two generations; Lithuania, Montenegro, Romania to three generations; and Slovenia to four generations. No such temporal limits are specified in the citizenship laws of Croatia, Germany, Greece and Hungary. Lastly, in Bulgaria, Croatia, Germany,[11] Latvia, Poland, Serbia, and Slovenia ethno-cultural relatives are also exempted from the ordinary requirement of renunciation of another citizenship.

4
Loss of Citizenship

Recent research on citizenship has shown little interest in rules of loss of citizenship. It is true that these rules affect much fewer people than the rules of acquisition of citizenship. Nevertheless, rules of loss of citizenship are a privileged site for ethno-cultural selectivity. The right of states to decide who is or becomes a citizen has as a corollary the right of states to decide who loses or retains citizenship. In this chapter I first survey rules regarding the voluntary and non-voluntary loss of citizenship in Europe and then flag those aspects that can be regarded as inspired by ethno-cultural understandings of membership.

Voluntary loss of citizenship

None of the countries in the survey imposes a general ban on voluntary loss of citizenship. In line with international norms regarding the avoidance of statelessness, all countries condition the renunciation of citizenship on the possession of another citizenship (see Table 4.1). Problems may arise because the release from citizenship is sometimes granted before applicants actually acquire another citizenship. These problems occur when countries have no adequate provisions regarding the reacquisition of citizenship if applicants eventually fail to acquire another citizenship. AQ1

The majority of countries in the survey require citizens who wish to renounce citizenship to reside abroad. This is a mandatory condition in: Bulgaria, the Czech Republic, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Moldova, Montenegro, Serbia, Slovenia, Spain and Switzerland. In several countries if the person a dual citizen residing abroad she or he is exempted from other renunciation conditions. In Denmark, Germany, Iceland, Norway and Sweden the application

Table 4.1 Rules of voluntary loss of citizenship in Europe (2013)

	Possession of another citizenship	Residence abroad	Charges of criminal offences	Satisfied military service (or alternative)	Obligations towards state authorities
Albania	Yes*	n.a.	Yes	n.a.	Yes
Austria	Yes	Not mandatory (5 years**)	Yes	Yes	n.a.
Belgium	Yes*	n.a.	n.a.	n.a.	n.a.
Bulgaria	Yes	Current	n.a.	n.a.	n.a.
Bosnia and Herzegovina	Yes*	Not mandatory (Current**)	Yes	Yes	n.a.
Croatia	Yes*	Not mandatory (Current**)	n.a.	n.a.	Yes
Cyprus	Yes	n.a.	n.a.	n.a.	n.a.
Czech Republic	Yes	Current	n.a.	n.a.	n.a.
Denmark	Yes*	Not mandatory (Current***)	n.a.	n.a.	n.a.
Estonia	Yes	n.a.	n.a.	Yes	Yes
Finland	Yes	Current	n.a.	Yes	Yes
France	Yes	Current****	n.a.	n.a.	n.a.
Germany	Yes	Not mandatory (10 years***)	n.a.	Yes	n.a.
Greece	Not mandatory	Not mandatory (Current**)	n.a.	n.a.	n.a.
Hungary	Yes	Current	n.a.	n.a.	n.a.
Iceland	Yes	Current ***/****	n.a.	n.a.	n.a.
Ireland	Yes	Current	n.a.	n.a.	n.a.
Italy	Yes	Current****	n.a.	n.a.	n.a.
Latvia	Yes	n.a.	n.a.	n.a.	Yes

(*continued*)

Table 4.1 Continued

	Possession of another citizenship	Residence abroad	Charges of criminal offences	Satisfied military service (or alternative)	Obligations towards state authorities
Lithuania	Yes*	n.a.	Yes	n.a.	n.a.
Luxembourg	Yes	n.a.	n.a.	n.a.	n.a.
Macedonia	Yes*	n.a.	Yes	n.a.	Yes
Malta	Yes	n.a.	n.a.	n.a.	n.a.
Moldova	Yes	Current	n.a.	n.a.	n.a.
Montenegro	Yes*	Current	n.a.	n.a.	n.a.
Netherlands	Yes	n.a.	n.a.	n.a.	n.a.
Norway	Yes*	Current***	n.a.	n.a.	n.a.
Poland	Yes	n.a.	Yes	n.a.	n.a.
Portugal	Yes	n.a.	n.a.	n.a.	n.a.
Romania	Yes	n.a.	Yes	n.a.	Yes
Serbia	Yes	Current	Yes	Yes	Yes
Slovakia	Yes	n.a.	Yes	n.a.	Yes
Slovenia	Yes*	Current****	Yes	Yes	Yes
Spain	Yes	Current	n.a.	n.a.	n.a.
Sweden	Yes*	Current***	n.a.	n.a.	n.a.
Switzerland	Yes*	Current	n.a.	n.a.	n.a.
Turkey	Yes*	n.a.	Yes	Yes	Yes
United Kingdom	Yes*	n.a.	n.a.	n.a.	n.a.

* The release from citizenship is revoked if another citizenship is not acquired.
** If this condition is satisfied, no other conditions apply (except for the requirement regarding dual citizenship).
*** If this condition is satisfied, the application cannot be rejected.
**** If this condition is not satisfied, renunciation is possible only under special circumstances.
Sources: compiled and actualised data from (De Groot and Vink, 2010; Vink et al., 2013c).

for renunciation of citizenship submitted by non-residents who possess another citizenship cannot be rejected. In many countries people cannot renounce citizenship if they face charges for criminal offences. This is the case in: Albania, Austria, Bosnia and Herzegovina, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia and Turkey.

The failure to fulfil obligatory military service is a reason for reject applications for renunciation of citizenship in: Austria, Bosnia and Herzegovina, Estonia, Finland Germany, Serbia, Slovenia and Turkey. Lastly, a number of countries refuse to release persons from citizenship if they have outstanding obligations or debts towards state authorities, natural or legal persons. Thus is the case in: Albania, Croatia, Estonia, Finland, Latvia, Macedonia, Malta, Romania, Serbia, Slovakia, Slovenia, and Turkey.

It is important to notice that states maintain a wide discretion with regard to voluntary loss of citizenship, not least because the rules regarding the renunciation of citizenship are often imprecise and ambiguous. For example, according to the Maltese law, the Minister can refuse an application for renunciation of citizenship if she or he considers that "it would otherwise be contrary to public policy." In the case of Latvia, the condition regarding the "unfulfilled obligations towards Latvia" gives the state the power "to arbitrarily deny the right to change citizenship" (Kruma, 2009: 79).

Non-voluntary loss of citizenship

The comprehensive survey of rules of loss of citizenship published online by the EUDO Citizenship Observatory (Vink et al., 2013c) distinguishes between fourteen grounds of non-voluntary loss of citizenship. In this brief analysis I consider only five major grounds of non-voluntary loss of citizenship: (1) residence abroad, (2) voluntary acquisition of another citizenship, (3) service in foreign army or other services for foreign countries, (4) disloyalty or treason, and (5) fraud in acquisition of citizenship.

Thirteen countries in the survey have general rules of loss of citizenship on grounds of residence abroad (see Table 4.2). However, in most of these cases non-residents do not lose citizenship automatically but only if the state takes specific action in this regard. In Belgium, Denmark, Finland, Iceland, Norway, Spain, Sweden, and Switzerland this ground of loss is applicable to persons who were born abroad and have resided abroad since birth, unless they demonstrate a genuine link with the country. In Cyprus, Ireland and Malta, citizens can lose citizenship if they have resided for more than seven years abroad (provided they do not work in the service of the country). In the Netherlands, this rule of non-voluntary loss of citizenship concerns citizens who have resided in countries outside the European Union for an uninterrupted period of ten years. Citizens who work in the

diplomatic service or for an international organisation are exempted from this rule. In Spain such a rule does not apply to Spanish citizens who are also citizens of Latin American countries, Andorra, the Philippines, Equatorial Guinea or Portugal. In France a person can lose their citizenship due to residence abroad if she or he resides abroad, has never registered with a French authority, has never resided in France and their ancestors lived abroad for more than fifty years without registering with a French authority.

In fourteen countries the non-voluntary loss of citizenship is triggered by the voluntary acquisition of another citizenship. These countries are: Austria, Bosnia and Herzegovina, the Czech Republic, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Montenegro, the Netherlands, Norway, Slovakia and Spain.

Citizens who enrol in foreign armies or render services to foreign countries can lose citizenship in: Austria, Bosnia and Herzegovina, Cyprus, Denmark, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Romania, Spain, and Turkey. No less than eighteen countries in the survey provide for the

Table 4.2 Rules of non-voluntary loss of citizenship in Europe (2013)

	Residence abroad	**Voluntary acquisition of another citizenship**	**Service in foreign army/ other service**	**Disloyalty/ treason**	**Fraud in acquisition**
Albania	n.a.	n.a.	n.a.	n.a.	n.a.
Austria	n.a.	Yes***	Yes	n.a.	Yes
Belgium	Yes*	n.a.	n.a.	Yes**	Yes
Bosnia and Herzegovina	n.a.	Yes	Yes	n.a.	Yes
Bulgaria	n.a.	n.a.	n.a.	Yes**	Yes
Croatia	n.a.	n.a.	n.a.	n.a.	n.a.
Cyprus	Yes**	n.a.	Yes	Yes**	Yes
Czech Republic	n.a.	Yes**	n.a.	n.a.	n.a.
Denmark	Yes*	Yes	Yes	Yes	Yes
Estonia	n.a.	Yes**	Yes**	Yes**	Yes
Finland	Yes*	n.a.	n.a.	n.a.	Yes

(*continued*)

Table 4.2 Continued

	Residence abroad	Voluntary acquisition of another citizenship	Service in foreign army/ other service	Disloyalty/ treason	Fraud in acquisition
France	Yes	n.a.	Yes	Yes**	Yes
Germany	n.a.	Yes***	Yes	n.a.	Yes
Greece	n.a.	n.a.	Yes	Yes	Yes
Hungary	n.a.	n.a.	n.a.	n.a.	Yes
Iceland	Yes*	n.a.	n.a.	n.a.	n.a.
Ireland	Yes**/***	Yes**	n.a.	Yes**	Yes
Italy	n.a.	n.a.	Yes	n.a.	n.a.
Latvia	n.a.	Yes	Yes	n.a.	Yes
Lithuania	n.a.	Yes***	Yes	Yes**	Yes
Luxembourg	n.a.	n.a.	n.a.	n.a.	Yes
Macedonia	n.a.	n.a.	n.a.	n.a.	Yes
Malta	Yes**/***	n.a.	n.a.	Yes**	Yes
Moldova	n.a.	n.a.	Yes	Yes	Yes
Montenegro	n.a.	Yes	Yes	Yes	Yes
Netherlands	Yes	Yes***	Yes	Yes	Yes
Norway	Yes*	Yes	n.a.	n.a.	Yes
Poland	n.a.	n.a.	n.a.	n.a.	n.a.
Portugal	n.a.	n.a.	n.a.	n.a.	Yes
Romania	n.a.	n.a.	Yes**	Yes**	Yes
Serbia	n.a.	n.a.	n.a.	n.a.	Yes
Slovakia	n.a.	Yes	n.a.	n.a.	Yes
Slovenia	n.a.	n.a.	n.a.	Yes	Yes
Spain	Yes*	Yes**	Yes**	n.a.	Yes
Sweden	Yes*	n.a.	n.a.	n.a.	n.a.
Switzerland	Yes*	n.a.	n.a.	Yes	Yes
Turkey	n.a.	n.a.	Yes	Yes	Yes
United Kingdom	n.a.	n.a.	n.a.	Yes	Yes

* The rule applies to persons who were born abroad and who reside abroad.
** The rule applies only to naturalised citizens.
*** There are considerable exceptions to this rule.
Sources: compiled and actualised data from (De Groot and Vink, 2010; Vink et al., 2013c).

non-voluntary loss of citizenship on grounds of disloyalty or treason. For example, according to the Irish citizenship law, citizens can lose citizenship due to "failure of duty of fidelity to the state." In Malta citizenship can be lost if (naturalised) citizens are "disloyal or disaffected towards the nation, President or the government." In Switzerland non-voluntary loss of citizenship can be triggered if a person "displays conduct adverse to the interests or the reputation of Switzerland." In the United Kingdom the Secretary of State has wide powers to deprive persons (dual citizens) of British citizenship is this "is conducive to the public good" (Wray, 2013).

Lastly, discovered fraud in the procedure of acquisition of citizenship constitutes a ground of non-voluntary loss of citizenship in all but seven countries. In France and Luxembourg the loss of citizenship due to fraudulent acquisition takes effect even if this leads to statelessness (De Groot and Vink, 2010: 16).

Ethno-cultural rules of loss of citizenship

Rules of citizenship that allow people who have no genuine connection with the state to acquire and retain citizenship may indicate ethno-cultural conceptions of membership. According to the European Convention on Nationality, states can withdraw citizenship from persons (dual citizens) who habitually reside abroad on grounds of lack of genuine link. Sixteen countries in the survey do not have provisions for the loss of citizenship on grounds of residence abroad or on grounds of voluntary acquisition of another citizenship. These countries are: Albania, Bulgaria, Croatia, Greece, Hungary, Italy, Luxembourg, Macedonia, Moldova, Poland, Portugal, Romania, Serbia, Slovenia, Turkey and the United Kingdom.

The most problematic aspect of the rules of loss of citizenship is the differentiated treatment between categories of citizens. It must be noted that the European Convention on Nationality does not prohibit such differentiation. Article 5.2 of the Convention only recommends each State Party to "be guided by the principle of non-discrimination between its citizens." Distinctions between categories of citizens in rules of loss of citizenship occur in two ways: through the award of special guarantees against loss of citizenship to certain groups of citizens, and through imposing certain rules of loss of citizenship only to certain categories of citizens. Several countries enforce a general ban on non-voluntary loss of citizenship. This is the case, for example, of countries emerging from authoritarian regimes. Provisions of this type exist

in: the Czech Republic, Poland, Hungary, and Portugal. In Bulgaria, Estonia, Ireland, Romania and Spain the law establishes a special protection against the non-voluntary loss of citizenship, but only for citizens by birth or citizens by origin. For example, in Bulgaria "Bulgarians by birth" are protected by the Constitution against the deprivation of citizenship (Smilov, 2013) and in Romania "natural citizens" are outside the scope of provisions regarding the loss of citizenship on grounds of "work abroad against the interests of the country or who enrolled in an enemy army" (Iordachi, 2013).

In Cyprus, Ireland and Malta only naturalised citizens can lose citizenship on grounds of residence abroad. In the Czech Republic, Estonia, Ireland, Norway, Slovakia, and Spain only naturalised citizens can lose citizenship if they acquire another citizenship voluntarily. Citizens by birth are excluded from the scope of the rule regarding the loss of citizenship due to disloyalty or treason in: Belgium, Bulgaria, Cyprus, Estonia, France, Ireland, Lithuania, Malta, and Romania. The case of Estonia offers a good example about the inconsistency between rules of dual citizenship and rules of loss of citizenship. Although the acquisition of another citizenship constitutes a ground for the loss of Estonian citizenship, there is a constitutional rule that provides that citizens by birth cannot lose Estonian citizenship against their will. This leads to numerous "de facto" cases of dual citizens, including among members of the Estonian Government and Parliament (Järve and Poleshchuk, 2013).

Finally, it is common for citizenship laws to provide for the annulment of naturalisation decisions in cases of proven fraud in the naturalisation procedure. In several countries naturalised citizens can be denaturalised also if they commit certain crimes after their naturalisation: Cyprus, France, Malta, Spain, and the United Kingdom. For example, the French Conseil d'État has the power to denaturalise citizens if they commit certain crimes during the ten-year period following naturalisation. This also includes "crimes that were committed before the person became a French citizen, but were only recently discovered" (Bertossi, 2010: 17).

Part II
Ethno-Cultural Citizenship

5
A Sovereign Right

Many citizenship laws in Europe differentiate between categories of citizens and foreigners for the purpose of attribution or removal of citizenship. In the previous chapters I catalogued rules and aspects of citizenship that seem to differentiate among people on ethno-cultural grounds. In the following chapters I examine normative justifications for rules of preferential naturalisation that target ethno-cultural relatives. I focus on these ethno-cultural rules because they raise particularly important questions about the nature of state membership and because they typically generate important consequences with regard to, for example, democratic process, the accommodation of national minorities and international relations.

The power to regulate citizenship constitutes an essential attribute of state sovereignty. This exclusive power to determine citizenship allows states to define their permanent population, which is one of the basic elements of statehood.[1] Citizenship is thus a sorting mechanism through which "states designate individuals to themselves in dealing with other states" (Blackman, 1998: 1148–49). In international law, citizenship [nationality][2] is also defined as the legal bond between a person and the state that is recognised by the international community. Despite the fact that citizenship plays an essential role in structuring the international legal system, its regulation falls almost exclusively within the *domaine reservé*[3] of states. As Article 1 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930 Convention) establishes: "[i]t is for each State to determine under its own law who are its citizens [citizens]."[4] Although frequently quoted in this form, this article contains a second part that says: "[t]his law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles

of law generally recognised with regard to citizenship." Although this "curious" juxtaposition of two apparently contradictory statements is puzzling (Brownlie, 2008: 387), we can understand that the state has a sovereign right to regulate citizenship according to its laws, but that the recognition of such regulations is dependent upon the acquiescence of other states (Sloane, 2009: 4). In this chapter I ask whether the international law sets limits to the sovereign right to regulate citizenship. In this respect I examine the following legal doctrines and principles: the doctrine of genuine link, the principles of avoiding dual citizenship and statelessness, the principle of non-discrimination, and norms regarding national self-determination and the protection of national minorities. I also consider the influence of the EU law on the regulation of citizenship by EU member states.

The doctrine of genuine link

In 1955 the International Court of Justice delivered its famous judgment in *Liechtenstein v. Guatemala* where it defined nationality as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties."[5] Nottebohm was a German citizen who lived and conducted business in Guatemala over many years. In 1939, after the beginning of the war that brought Germany and Guatemala into conflict, Nottebohm applied for and swiftly acquired citizenship in Liechtenstein – a neutral state – with the effect of losing German citizenship. Despite this, Guatemala considered Nottebohm a German citizen, thus an enemy alien, and deprived him of liberty and properties. Seeking to exercise its sovereign right of diplomatic protection with regard to its citizen, Liechtenstein complained against Guatemala to the International Court of Justice (ICJ).

In its Judgment, the ICJ carefully rejected Liechtenstein's claim, by arguing that, despite having legally acquired the citizenship of Liechtenstein, Nottebohm had no "genuine connection" with that country and thus Liechtenstein could not offer Nottebohm diplomatic protection. The ICJ did not contest that Nottebohm had acquired the citizenship of Liechtenstein. As Dugard argues, "faced with the choice between finding that Liechtenstein had acted in bad faith in conferring citizenship on Nottebohm and finding that he lacked a "genuine link" of attachment with Liechtenstein, the Court preferred the latter course as it did not involve condemnation of the conduct of a sovereign State."[6] The Court also abstained from asserting positive obligations incumbent

upon states with regard to ascription of citizenship (Blackman, 1998: 1158). The doctrine of genuine link served the Court only to avoid "imputing bad faith to a sovereign state, Liechtenstein – even though mindful of the abusive manner in which Liechtenstein had conferred its citizenship on Nottebohm" (Sloane, 2009: 26). As codified in the second part of the first article of the 1930 Convention, states have the right not to recognise decisions on citizenship made by other states if these decisions are taken in bad faith.

Regardless of what the ICJ intended in the Nottebohm case, some commentators worry about the dangers of embracing the genuine link doctrine unreflectively. Two main problems stand out. The first problem is that, if applied consistently, the test of genuine link will seriously undermine established practices in the area of citizenship. As argued by Judge Reads in his dissent,[7] applying the genuine link doctrine in a world of increased mobility will endanger the status of millions of persons who reside and do business outside of the country of their nominal citizenship. Unsurprisingly, in the post-Nottebohm era "no comparable case amounting to a refusal of diplomatic protection has ever been decided by international courts" (Hailbronner, 2006: 60). The second problem is related to the conceptual indeterminacy of the doctrine of genuine link. The "definition" of citizenship given by the ICJ contains a series of elements, such as "attachments," "interests," and "sentiments," that are ambiguous and cannot be easily codified in law (Brownlie, 2008: 414–15). This ambiguity raises concerns about possible discriminatory effects. If the attachment is taken as a criterion for the acquisition or loss of citizenship, then an ethno-culturalist version of attachment could serve to justify policies of exclusion of non-ethnic citizens or of inclusion of non-citizen co-ethnics.

Although the doctrine of genuine link has not developed into a fully blown principle of international law, it has received some attention in human rights law. One case in point is the jurisprudence developed by the European Court of Human Rights (Strasbourg Court). Although the Strasbourg Court has no legal basis to rule directly on matters of citizenship, it has interpreted certain provisions of the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms[8] (1950 Convention) in a manner that limits the sovereign right of states to control immigration. Under the Article 3 of the 1950 Convention foreigners may receive protection against expulsion if the Court identifies credible threats against their life or there is the danger that they will be submitted to torture, inhuman or degrading treatment at the destination. Under Article 8 non-citizens who have their

family or social life in a country may enjoy protection against forced removal. For example, in *Beldjoudi v. France*[9] the Court argued that an Algerian citizen who had spent his whole life in France was sufficiently "connected to French society," so that his removal from the country, on grounds of public order, would disproportionately affect his right to private and family life. The Court found that, although a formal citizen of Algeria, Beldjoudi had no genuine link with that country. Such development is quite revolutionary. As Judge Martens argues in his concurring opinion, "mere citizenship does not constitute an objective and reasonable justification for the existence of a difference as regards the admissibility of expelling someone from what, in both cases may be called his 'own country'." It must be stated, however, that by asserting the principle of effective citizenship, the Strasbourg Court does not alter state regulations on citizenship but rather circumvents them.[10] Certain rights that were traditionally linked to citizenship, such as the right to entry, stay and exit, are re-interpreted as linked to social membership.

In the established jurisprudence of the Strasbourg Court the genuine link between a person and a country is evidenced by residence and by the existence of social and family life in the country. In *Genovese v. Malta*[11] the Strasbourg Court found that the acquisition of citizenship status has effects on the social identity of a person. Genovese was born out of wedlock to a British mother and a Maltese father. When he applied for Maltese citizenship by virtue of descent from a citizen, his request was refused because the Maltese law does not allow fathers to transmit citizenship to children born out of wedlock.[12] The Strasbourg Court found that the provisions of Maltese citizenship law were discriminatory and that the "denial" of Maltese citizenship had a negative impact on Genovese's social identity (De Groot and Vonk, 2012: 319). The ruling constitutes an ingenious way to bring matters of citizenship under the scope of the 1950 Convention. Despite the inclusionary effects of this approach, the idea of linking citizenship and social identity may prove risky. It could lead to actually denying formal membership to those who refuse to or who fail to develop particular ties and identities. The recognition of Genovese's claim to a status of citizenship in a country where he never lived and where he did not enjoy family ties seems at odds with the idea of genuine link. However, the Court developed the argument about social identity in strict connection to discrimination. Genovese's social identity was affected because he was discriminated against and denied a status that was granted to others who were in a comparable situation to his. The question of whether

Genovese and people who live outside the country and who have no genuine connections with the country should be granted or allowed to retain citizenship is beyond the scope of this Court's decision.

The 1961 Convention on the Reduction of Statelessness[13] provides that "a naturalised person may lose his citizenship on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his citizenship." This provision is a clear instance where problematic distinctions between categories of citizens are sanctioned by international law. The 1997 Convention permits states to withdraw citizenship from citizens who habitually reside abroad and who lack a genuine link provided that they are not rendered stateless. It is interesting to note that this provision does not target only naturalised citizens. The 1997 Convention leaves to the state to assess the quality of the link sufficient for retention of citizenship. From the Explanatory Report we understand that non-resident citizens and their descendants could prove their link with the country by way of registration, application for national documents or declaration of the intention to retain citizenship. A situation where a state makes the transmission of citizenship for citizens abroad *sine die* is then perfectly compatible with the 1997 Convention.

Dual citizenship

The interdependence of citizenship laws has long been a source of international conflicts. In a world where people are naturally incorporated into the states where they are born, and where they remain until their death, the issue of turning foreigners into citizens is of little importance. But in a world where people move regularly across state borders, the question of regulating citizenship promptly arises. In the latter context, the exercise of the sovereign right to regulate citizenship may easily obstruct similar sovereign rights of other states. For example, conflicting regulations of citizenship were the main cause of dispute between the United States and several European states in the nineteenth century (Spiro, 2011). The Bancroft treaties ended these conflicts by establishing conditions under which states would recognize the naturalisation of citizens by other states. Early efforts to develop international norms in the area of citizenship stemmed from the need to solve such coordination problems related to the attribution of citizenship, namely, problems of under-attribution (statelessness) and over-attribution (dual citizenship).

The 1930 Convention addressed exclusively the two issues of dual citizenship and statelessness and proclaimed a principled opposition to both. Acknowledging that cases of multiple citizenship could not be fully eliminated, the Convention focused on the issues of the reduction of multiple citizenship and of the mitigation of some of its adverse consequences. Article 3(1) of the 1930 Convention established the principle according to which "a person having two or more [citizenships] may be regarded as its [citizen] by each of the States whose citizenship he possesses."[14] The 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality[15] (1963 Convention) further introduced the distinction between the acquisition of citizenship "of free will" and the automatic acquisition of citizenship, maintaining that the latter should be accepted even if it produced dual citizenship. This distinction is still used by a number of states to prevent multiple citizenship. Slovakia, for example, has recently re-introduced the rule of loss of citizenship due to acquisition of another citizenship by free will.

One of the most impressive developments of the last decades is the widespread toleration of dual citizenship (Vink et al., 2013a). The main causes for this development are the alignment of citizenship laws with the principle of gender equality and the mounting pressure on (Western) states to integrate long-term immigrants and their descendants. In 1983 the Second Protocol amending the 1963 Convention[16] extended the list of cases where dual citizenship could be tolerated to include second-generation migrants, spouses of mixed marriages and their children. The 1997 Convention favoured a neutral approach on dual citizenship by providing that "each State is free to decide which consequences it attaches in its internal law to the fact that a citizen acquires or possesses another citizenship."[17] This Convention requires state Parties to tolerate multiple citizenship in cases of automatic acquisition of citizenship (due to marriage or by birth) and in cases where renunciation is not reasonably to be expected. It allows states to ask for the renunciation of a previous citizenship by immigrants who seek to naturalise in the country and to withdraw citizenship from emigrants who naturalise elsewhere. There is no reference to cases where countries prohibit dual citizenship in one situation and tolerate it in the other.

Avoiding statelessness

After the horrors of the Second World War there was an impetus to shift the focus of international law "from a system of coordination of

sovereign states to wellbeing of human beings" (Hailbronner, 2006: 3). In this context, it was recognised that individuals have fundamental interests in citizenship[18] (Spiro, 2011: 710). In 1948 the Universal Declaration of Human Rights[19] (UDHR) affirmed the universal right to a citizenship (Article 15(1)) and two correlative rights, namely, the right not to be arbitrarily deprived of citizenship and the right to change citizenship (Article 15(2)). However, the International Covenant on Civil and Political Rights[20] (ICCPR), which gave legal force to the civil and political rights listed in the Declaration, failed to establish positive rights to citizenship. ICCPR only codified the more specific right of "every child to acquire citizenship" (Article 24).

Recent developments in international law suggest "a strong presumption in favour of the prevention of statelessness in any change of citizenship" (Blackman, 1998: 1183). It is important to note that international concerns with statelessness preceded the human rights movement. Statelessness was considered from the beginning a challenge to international law and a source of "frictions between States" (Spiro, 2011: 709). However, it is with the affirmation of human rights that the principle gained wide recognition. There is now an impressive number of international instruments that address the issue of statelessness.[21] The two most important instruments are the Convention relating to the Status of Stateless Persons[22] and the Convention on the Reduction of Statelessness[23] (Waas, 2011). The European Convention on Nationality affirmed the principle of the prevention of statelessness in relation to all major modes of acquisition and loss of citizenship. The principle of avoiding statelessness has also received considerable attention in the context of cases of state succession. In the Declaration on the Consequences of State Succession for the Nationality of Natural Persons,[24] the European Commission for Democracy through Law (Venice Commission) recommended that "the successor State shall grant its citizenship to all citizens of the predecessor State residing permanently on the transferred territory without discrimination on grounds of ethnic origin, colour, religion, language or political opinions." Article 2 of the Convention on the Avoidance of Statelessness in Relation to State Succession[25] (2006 Convention) recognised the right to the "citizenship of a State concerned" for "everyone who, at AQ1 the time of the State succession, had the citizenship of the Predecessor State and who has or would become stateless as a result of the State succession." The 2006 Convention, however, failed to match rights with obligations in matters of access to citizenship. Even in cases of state succession – where there may be a relative consensus as to who the

"states concerned" are – there is no clear identification of the parties who are obliged to grant citizenship to individuals.

Non-discrimination

The exercise of state sovereignty in the area of citizenship had often gone hand in hand with wide discriminatory policies towards various groups of people. In the second half of the twentieth century, however, we witnessed an impressive expansion of the norm of non-discrimination. Equality and non-discrimination have become the "idioms of the new world" (Joppke, 2007b: 49). In international law, Brownlie (2008: 572–3) argues, "there is a considerable support for the view that there is a legal principle of non-discrimination which applies in matters of race […] and sex."

The United Nations Charter contains several articles[26] that refer to human rights and freedoms "without distinction as to race, sex, language or religion" (Brownlie, 2008: 272). The UDHR stipulates a non-discrimination clause (Article 2) that concerns "all the rights and freedoms set forth in this Declaration." Since the Declaration contains a right to citizenship, this means that the principle of non-discrimination also should govern matters of citizenship. The 1950 Convention prohibits "discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (Article 14). However, this prohibition applies only to "[t]he enjoyment of the rights and freedoms set forth in this Convention" and thus not to issues related to citizenship. The limitation to the scope of Article 14 is removed by Protocol No. 12 to the 1950 Convention,[27] which stipulates a general prohibition of discrimination in the "enjoyment of any right set forth by law" (Article 1).

A series of Conventions that target specific forms of discrimination also touch upon issues of citizenship. Regarding gender equality, the 1930 Convention breaks with the principle of the unity of the family[28] and states that neither marriage nor change in the citizenship of the husband should automatically affect the citizenship status of his wife (Articles 8–10). The Convention on the Nationality of Married Women[29] reaffirms the independence of the status of married women, maintaining that married women should be offered the possibility to acquire the citizenship of the husband under a facilitated procedure (Article 3). Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women[30] confers women "equal rights with

men to acquire, change or retain their citizenship," as well as equal rights with regard to transmission of citizenship to children.

Concerning the link between race, ethnicity and citizenship, the International Convention on the Elimination of all Forms of Racial Discrimination (CERD)[31] obliges State Parties "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" (Article 5). The CERD defines "racial discrimination" in a broad way to include "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (Article 1(1)). Interestingly, the right to citizenship was included on the list of rights to be upheld with full regard to non-discrimination (Article 5(iii)). However, Articles 1(2) and 1(3) of the CERD stipulate that its provisions "shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens" and that its provisions should not "be interpreted as affecting in any way the legal provisions of States Parties concerning citizenship, citizenship or naturalisation, provided that such provisions *do not discriminate against any particular citizenship*" (emphasis added). Article 1(4) allows states to take certain measures of positive discrimination, such as "special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms." These measures are permitted as long as they "do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved." In General Recommendation 30 (2004), the Committee on the Elimination of Racial Discrimination affirmed that "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim."[32] With regard to matters of access to citizenship, the Committee recommended that state parties should "ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalisation."

The ICCPR prohibits "any discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 2(1) upholds the obligation of states "to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognised in the Covenant without distinction of any kind," while Article 26 provides that "all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds."[33] The right to non-discrimination under Article 26 is thus conceived of as an autonomous right that applies to "any field regulated and protected by public authorities," including matters of citizenship.

The prohibition of arbitrary discrimination is also one of the guiding principles of the 1997 Convention. Article 5(1) of this Convention provides that "the rules of a State Party on citizenship shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin." However, with regard to access to citizenship, the 1997 Convention explicitly allows for certain forms of preferential treatment. As argued in the Explanatory Report, this is because "the very nature of the attribution of citizenship requires States to fix certain criteria." Such criteria may legitimately lead to "preferential treatment in the field of citizenship," such as preferential treatment based on linguistic competence or citizenship of another state. Moreover, in certain circumstances, facilitated access to citizenship is not only acceptable but also required by the 1997 Convention. This is the case with several categories of people: spouses of citizens, children of citizens born abroad, children of persons who acquire citizenship, children adopted by citizens, persons born or brought up in the state, persons who are legal and habitual residents from before majority age, stateless persons and recognised refugees with lawful and habitual residence (Article 6(4)). The 1997 Convention also urges states "to facilitate, in the cases and under the conditions provided for by it in internal law, the recovery of its citizenship by former citizens who are lawfully and habitually resident on its territory" (Article 9). In what concerns the rights and privileges of citizens, the Convention states that "each State Party shall be guided by the principle of non-discrimination between its citizens, whether they are citizens by birth or have acquired its citizenship subsequently" (Article 5(2)). Obviously, this provision does not amount to full prohibition of differentiations between different categories of citizens. It only addresses

an invitation to state Parties to consider this matter in the light of the principle of non-discrimination.[34]

It appears that the various international provisions regarding non-discrimination prohibit explicit discriminations on grounds of race or ethnicity, but that there is still room for states to differentiate between people on such grounds if they can claim that special actions are demanded to attain legitimate purposes, such as the protection of vulnerable groups.

The protection of national minorities

The protection of national minorities[35] is a pervasive matter in international relations. From the pledges of European Powers to protect Christians in the Ottoman Empire and the Treaty of Westphalia to the Peace Treaty of Versailles and the post-Yugoslav settlements, "international attempts to influence the relationship between rulers and minority groups within their own country have been an enduring characteristic of international relations" (Krasner, 1999: 76).

After the First World War the "nationality problem" in Central and Eastern Europe was addressed by the establishment of a complex system of minority protection supervised by the League of Nations and the International Court of Justice. This system was intended to provide a "compensation for the denial of self-determination to certain national groups" (Kovács, 2003: 439). Unlike previous international arrangements that relied on the willingness of the Great Powers, the League system was an attempt to ground minority protection in "impartial" international law (Pentassuglia, 2002: 26). Constitutional guarantees of minority protection were imposed in the Treaty with Poland, which served as a model for others.[36] The system was based on three pillars: access to citizenship, non-discrimination, and special rights of cultural preservation (Vrdoljak, 1998: 47). The League system failed dramatically partly because of the reluctance of states to implement minority provisions. Ironically, Hitler used claims of minority protection as a pretext for invasion and war.

After the Second World the idea of minority rights seemed compromised and attempts to establish international schemes for the protection of national minorities were abandoned.[37] Symptomatically, neither the UN Charter, nor the UDHR and the 1950 Convention contain provisions on minority rights. The new paradigm was the respect for human rights, equality of treatment and non-discrimination. Article 27 of the ICCPR only states the right of "persons belonging to" minorities

"to enjoy their own culture, to profess and practice their own religion, or to use their own language." The collective dimension of such a right was reduced to a mere associational feature and the duties imposed on states were only negative.

The problem of national minorities re-appeared after the end of the Cold War when many countries in Central Eastern Europe re-affirmed commitments towards co-ethnics living outside their borders. Most Constitutions in the region contain such commitments (Horvath, 2008: 141–2). The majority of these countries also adopted special "kin laws" (Fowler, 2002; Shevel, 2010) to provide a series of benefits to individuals by virtue of their membership in the nation.[38] These laws are interesting because they concern people who are not citizens and, sometimes, not even residents in the state that issues the benefits. AQ2 Some of these laws create privileges with regard to access to citizenship whereas others condition access to benefits on the non-possession of the citizenship of the issuing state. At first glance kin laws seem to offer a genuine solution to a salient problem. They aim to redress historical "wrongs" and present "misfortunes" without reviving revisionist territorial claims.

The debate generated by the Hungarian Law LXXII (Status Law) is worth discussing. Since 1990 Hungary has re-affirmed a strong commitment to protect ethnic Hungarians left outside the borders of the Hungarian state after the fall of the Austro-Hungarian Empire. As part of this strategy, the Status Law of 2001 granted co-ethnics living in most neighbouring countries (Serbia and Montenegro, Croatia, Slovenia, Romania, Ukraine and Slovakia) a series of educational, cultural, and social benefits.[39] Most of the benefits were delivered in the state of residence provided that beneficiaries did not seek Hungarian citizenship. The Law also provided for the creation of a special identity card issued by the kin state in consultation with ethnic organisations from the states of residence. The governments of Romania and Slovakia – two neighbouring countries that host important ethnic Hungarian communities – reacted promptly and vehemently (Kovács and Tóth, 2013). The Romanian government stressed that the Romanian nation includes all citizens regardless of their ethnic origin. It argued that Romania was committed to protect national minorities, as shown by the participation in a series of multilateral or bilateral agreements in the area of minority rights. Romania recognised the interest of other states with regard to their kin, but held that any action that is not taken through "international recognised channels" and "in a spirit of mutual co-operation and understanding" is unlawful.[40]

In the 1990's, amid fears of widespread ethno-cultural conflicts in Europe, the international community viewed the issue of national minorities as a cornerstone of regional stability. The new or restored states resulting from the reconfiguration of the political space in Europe were thus pressured to accept a series of Versailles-style clauses on the protection of national minorities. After a short period of enthusiasm and experimentalism, the initial tendency to empower national minorities through the means of collective rights, including territorial autonomy, was replaced by a more traditional approach that promoted limited cultural rights (Kovács, 2003: 443). In this context, no agreement was reached with regard to the international regulation of the "triadic relationship" (Brubaker, 1996b: 55) between host state, kin state and national minorities. For example, the several new international instruments dealing with minority protection do not include provisions of access to citizenship. There are, however, three general international norms that can be useful in addressing the issue of kin minorities: the duty to facilitate self-determination of people; the responsibility to protect; and the obligation to respect the right of people to establish and maintain cross-border contacts.

The principle of self-determination is at the same time a passionate political claim, a controversial theoretical principle and a revolutionary but ambiguous legal right. Woodrow Wilson is often credited with affirming the principle of self-determination as a solution for the reorganisation of the European map after the fall of the Austro-Hungarian, Prussian and Ottoman empires. Although Wilson's idea of self-determination mainly implied the right of peoples to choose their own government through democratic means (Vrdoljak, 1998), in his famous "Fourteen Points" Wilson (1918) repeatedly referred to "nationality" as a criterion for implementing the right to self-determination.[41] This mix of democratic and nationalist ideas nurtures the debate on self-determination to this day.

The political principle of self-determination was later recognised as a fundamental principle of international law[42] and as a fundamental human right.[43] Unfortunately, the legal codification of the principle of self-determination did not bring much clarification. The twin questions of who is the "self" and what "determination" means continue to trouble lawyers and theorists to this day. On the one hand, self-determination is a universal right that "all peoples" enjoy. On the other hand, only few peoples have been able to successfully invoke it. The right to self-determination was recognised only in the case of colonial territories that sought independence,[44] albeit "with little respect for

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natural or cultural boundaries" (Mccorquadale, 2001: 139). Apart from the colonial context, the legal right to self-determination remained toothless. For example, after the dissolution of the Soviet Union and Yugoslavia, the right to self-determination was not accepted as a ground for secession and independence. When new states were recognised, this was wrapped in different legal packaging, including: restoration of statehood (the Baltic states), negotiated partition (Czechoslovakia), and formal state dissolution (the Soviet Union). In the Yugoslav case, the preferred solution was the principle of *uti possidetis juris* – an international principle used during the South-American movements of independence that recommended the partition of territories along internal state boundaries (Kovács, 2003).[45]

Article 1(3) of the two Human Rights Covenants asserts the duty of states to "take positive action to facilitate realisation of and respect for the right of peoples to self-determination." Such provisions could be interpreted by kin states as an invitation to act in support of the self-determination claims of their kin minorities. However, this approach may be seen as "interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination [of states of residence]."[46] The appeal to self-determination is unlikely to legitimise kin state policies. Kin states cannot support directly kin groups that seek external self-determination (independence) without breaching the right to self-determination of the states where these groups reside. Kin states could also claim that they support the internal self-determination of kin minorities. The concept of internal self-determination, which initially meant adequate representation and non-discrimination, has expanded to include considerations about the preservation of cultural identity. However, under current international law, the primary actor responsible for the implementation of this right is the state where national minorities live. In special cases, kin states may claim that their support for kin groups living in other states is derived from the *erga omnes* character of the right to self-determination.[47] Nevertheless, any state actions in support of the self-determination of "peoples" are heavily constrained by other major principles of international law.

The argument from the emerging international norm of responsibility to protect holds that a state may seek to protect kin minorities when the state of residence fails to exercise its duty to ensure the self-determination of all of its constituent groups. In this case it can be argued that, of all states, the kin state is in the best position to "provide much-needed assistance and fill capacity gaps, preventing and resolving

minority tension" (Turner and Otsuki, 2010: 3). Notice that the privileged position of the kin state derives from "technical" considerations, related to the capacity and willingness to intervene. In any case, the kin state must act as "responsible members of the international community with respect to minorities under the jurisdiction of other states" (Turner and Otsuki, 2010: 6). Kin state actions should fulfil a general duty to protect all persons instead of a particularistic duty to care for one's own kin. As with the appeal to the duty to facilitate the self-determination of "all peoples," the norm about the responsibility to protect faces a major test when confronted with the principle of state sovereignty.

Lastly, a series of international instruments affirm the right of persons belonging to national minorities to establish and maintain peaceful contacts across borders. The European Charter on Regional and Minority Languages[48] of 1992 urges States to promote regional and minority languages and encourages cross-border exchanges "in the fields of culture, education, information, vocational training and permanent education" (Article 14). The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities[49] recognises the right to association, and the right to establish and maintain "contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties" (Article 2(5)). States were encouraged "to cooperate on questions relating to persons belonging to minorities" in full accordance with their international obligations and paying respect to UN principles of sovereign equality, territorial integrity and political independence of State (Article 8). The Framework Convention for the Protection of National Minorities[50] establishes a negative duty incumbent upon states "not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage" (Article 17(1)). Similar provisions can also be found in the Bolzano Recommendations on National Minorities in Inter-State Relations.[51]

In its Report on the Preferential Treatment of National Minorities by their Kin-State the Venice Commission acknowledges that the "emerging of new and original forms of minority protection, particularly by kin-states, constitutes a positive trend in so far as they can contribute to the realisation of this goal."[52] However, the Commission maintains that kin states can assume a positive role only by observing the relevant principles of international law, such as territorial sovereignty, *pacta sunt servanda*, friendly neighbourly relations, respect for human rights and

fundamental freedoms, and non-discrimination. Thus the responsibility for the protection of national minorities lies primarily with the state that hosts these minorities and any initiative taken of other states should comply with existing international agreements and be implemented in good faith. Any unilateral award of benefits to citizens of other states in their respective territory is unlawful.[53]

The Bolzano Recommendations of the OSCE High Commissioner on National Minorities acknowledges "a State may have an interest […] to support persons belonging to national minorities residing in other States."[54] However, the High Commissioner cautions "this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State without that State's consent." Although the Recommendations provide that "[s]tates may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad," this is conditional upon states respecting the principles of friendly neighbourly relations and territorial sovereignty. The Explanatory Note to the Bolzano Recommendations acknowledges that granting citizenship to individuals abroad "can be a highly sensitive issue," but offers little guidance other than referring back to the doctrine of genuine link. The recommendation addressed to states is that they should pay "full consideration to the consequences of bestowing citizenship on the mere basis of ethnic, national linguistic cultural or religious ties, especially if conferred on residents of a neighbouring State."

European Union law

Apart from constraints of public international law, the regulation of citizenship in Europe is also influenced by the development of the EU legal order and of EU citizenship. I consider here three issues: (1) the relation between EU citizenship and the citizenship of EU member states (MS), (2) the obligation of solidarity shared by MS, and (3) the clause related to the respect for national identity.

The Treaty on European Union established that "[e]very person holding the citizenship of a Member State shall be a citizen of the Union" (Article 8(1)).[55] The Declaration on Nationality attached to the Treaty added that "the question whether an individual possesses the citizenship of a Member State shall be settled solely by reference to the national law of the Member State concerned […] Member States may declare, for information, who are to be considered their citizens

for Community purposes." This clarification is restated in the text of the Edinburgh Agreement of 1992.[56] This point is formalised in the Treaty of Amsterdam,[57] which provides that "citizenship of the Union shall complement and not replace national citizenship" (Article 17(1)). Finally, in the consolidated version of the Treaty on the Functioning of the European Union (TFEU)[58] – which also includes the Treaty of Lisbon (2007) – the formulation "shall complement" is replaced by the words "shall be additional to" (Art 20 (1)).[59]

Several member states sought to define who is to be counted as a national for the purpose of European Community law (EC law) even before the establishment of EU citizenship. In 1957 Germany declared that in all that concerns EC law the term "German citizens" included all citizens of the German Democratic Republic as well as ethnic Germans from Eastern Europe covered by the Article 116 of Basic Law (De Groot, 2002). In 1972 and 1982 the United Kingdom issued special declarations designating those categories of British citizens who were recognised as citizens for the purpose of EC law[60] (De Groot, 2004).

According to a straightforward reading of the Treaty, EU citizenship is derivative from and additional to Member State (MS) citizenship. It is "derivative" because it does not have a mechanism of self-reproduction but relies entirely on autonomous decisions on citizenship by each and every MS. EU citizenship is "additional" to the citizenship of the MS because it generates a set of rights that supplement the rights of MS citizens. Against the view that EU citizenship is a "secondary" status, the European Court of Justice (ECJ) has progressively broadened the scope of EU citizenship (Shaw, 2011). In a series of landmark cases the ICJ affirmed that citizenship of the Union is intended to be "the fundamental status" of citizens of the member states.[61] The ICJ also re-interpreted general principles of international law concerning the sovereign right of states to regulate citizenship by incorporating considerations of EU law. In this respect, the ICJ argued that, "under international law, it is for each Member State, *having due regard to Community law*, to lay down the conditions for the acquisition and loss of citizenship"[62] (emphasis added). As Advocate General Maduro stated, "primary law as well as general principles of Community law can constrain the Member States' legislative power in citizenship law."[63]

The most obvious situation where MS rules of citizenship undermine EU citizenship is when MS law provides that citizenship can be lost due to residence abroad. If "abroad" means another MS, then the national rule contradicts the logic of EU citizenship as it prescribes that the exercise of a basic EU citizenship right – freedom of movement within

EU – should lead to the loss of MS citizenship and, consequently, of EU citizenship. The ICJ was faced with such situation in the *Rottman case*. Rottman renounced Austrian citizenship to naturalise in Germany, but then lost German citizenship when it was discovered that he acquired this citizenship by fraud. As Rottman was unable to re-acquire Austrian citizenship, he became stateless. For the ICJ the problem was that Rottman also lost EU citizenship in the process. In its judgement, the ECJ stated Rottman's situation fell "by reason of its nature and its consequences, within the ambit of European Union law."[64] The ECJ thus invited national courts to apply a "proportionality test" when looking into cases of loss of citizenship in order to establish "whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original citizenship."[65] This view surely "challenge[s] the scope of national citizenship law" (Shaw, 2010: 17).

In the *Micheletti case*[66] the ICJ was confronted with Spain's refusal to guarantee fundamental freedoms established by EC law to a dual Argentine–Italian citizen on grounds that the Argentine citizenship took precedence over the Italian one. Dismissing arguments about Micheletti's "effective" Argentine citizenship, the ICJ judged that "it is not permissible for a Member State to restrict the effects of the grant of the citizenship of another Member State by imposing an additional condition for recognition of that citizenship with a view to the exercise of the fundamental freedoms provided for in the Treaty."[67]

Although the Treaty does not give the EU competences in the area of citizenship, the ECJ has identified circumstances in which the rights of EU citizenship should be asserted against, or independent of, the citizenship of the member states. In the *Chen case* the ICJ granted a non-EU citizen or third country national (TCN) the right to stay on the territory of a MS because the TCN was the primary caregiver for a minor EU citizen. The ICJ rejected arguments about the alleged abuse of the procedures concerning the acquisition of citizenship. Chen allegedly gave birth to a child in Ireland for the sole purpose of obtaining Irish citizenship for her child, which then entitled her to rights of residence and freedom of movement within the EU. In subsequent cases, such as *Zambrano*[68] and M*cCarthy*[69] the ECJ further established that EU law prohibits MS from depriving EU citizens of "the very enjoyment of the substance of rights conferred by the status of EU citizenship" (Coutts, 2011). The major point behind the ECJ's "minor *coup d'etat*" (Davies, 2011) or "judicial avant-gardism" (De Groot and Seling, 2011) is that the EU should have

control over those decisions that impact dramatically on the rights of EU citizenship. However, since EU citizenship is fundamentally tied to national citizenship, one could argue that many of the member states' decisions on the acquisition and loss of citizenship have consequences for EU citizenship. For example, the refusal to grant citizenship to non-EU citizens amounts to effective prevention from the acquisition and exercise of EU citizenship rights (Davies, 2011).

Article 4(3) of the Treaty on the Functioning of the EU specifies the duty of MS to act "pursuant to the principle of sincere co-operation" and to "refrain from any measure which could jeopardize the attainment of the Union's objectives."[70] Although there is no formal obligation on MS to coordinate citizenship rules, we saw previously that several MS introduced a series of facilitations for the naturalisation of the citizens of other EU countries. Germany and Slovenia also refrain from withdrawing citizenship from their citizens if they naturalise in another EU country.

The issue of MS solidarity arises in cases where member states grant immigration rights or citizenship to a great number of non-EU citizens. According to Hailbronner (2006: 91), "it would seem a violation of the obligation of loyalty to the Community if a Member State were to grant citizenship to a category of persons who obviously do not intend to make use of their citizenship in the Member State of citizenship, but in another Member State." For example, the EU reacted negatively against Spain's decision in 2005 to regularise the stay of 700,000 illegal immigrants. The Romanian policy on the restoration of citizenship to Moldovan residents was also met with criticism. On this occasion, the Italian government asked the European institutions to "closely watch this situation"[71] and threatened not to recognise the Romanian citizenship of Romanian–Moldovan citizens on grounds of these people's lack of effective citizenship with Romania. This suggestion obviously blatantly disregards the ECJ's conclusion in the *Micheletti case*. The European institutions have not yet dealt seriously with these issues.

Many EU countries maintain special ties with peoples or countries outside the EU on the basis of colonial history (e.g. Portugal, Spain, France the United Kingdom), past emigration (e.g. Spain, Ireland, Italy), or ethno-national solidarity (e.g. Germany, Hungary, Serbia). These countries usually celebrate such special ties through a variety of policies and initiatives, including through preferential economic agreements and cultural cooperation, as well as through special immigration and citizenship arrangements. Recently member states' preferential immigration and citizenship schemes have come under scrutiny due

to their potential disruptive effects on EU integration. Following the establishment of EU freedom of movement and of citizenship of the Union, the possession of a passport of an EU country became an even more valuable resource because it gave the holder immigration rights in all EU countries.

A series of alarmist news reports talk about Americans who suddenly rediscover their Irish roots (Lang, 2006), Argentinians who line up before Italian consulates to "escape the Old World" (Rother, 2012), Moldovans who enter the EU through the "back door" opened by Romania (Telegraph, 2010), Macedonians who "invade UK" waving Bulgarian passports (Focus News, 2014), etc. What this anecdotic evidence suggests is that there might be people who use special citizenship schemes to pursue pragmatic reasons that undermine the more sophisticated rationales put forward by the advocates of these policies. As with other types of facilitated admission, such as investor citizenship schemes (Dzankic, 2012), the procedures of preferential ethno-cultural citizenship are likely to encourage illegal practices and corruption. For example, a large-scale investigation carried out in Romania in 2012 unveiled a complex illegal network of intermediaries who facilitated the acquisition of Romanian citizenship and residence visas (Mediafax, 2012). It was discovered, for example, that a flat owner in Bucharest had registered, for a fee, a total of 3,600 tenants, all from the Republic of Moldova (Dumbrava, 2012). Several Romanian officials were convicted for offences such as influence-peddling, bribery, receiving undue benefits (Stavila, 2012).

Despite criticism, countries invoke that citizenship constitutes a fundamental attribute of national sovereignty even in, or especially in, the European Union. Unlike EU citizenship, which may be seen as a post-national, legalistic, and rights-based type of membership, the citizenship of member states remains strongly associated with stories of belonging in historical national communities. The Treaty also acknowledges this reality. According to Article 4(2) of the TFEU, "[t]he Union shall respect the equality of Member States before the Treaties as well as their national identities." The Preamble of the Charter of Fundamental Rights of the EU[72] stipulates that "preserving the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Members States" is a legitimate goal of the EU. However, the problem remains that schemes of preferential citizenship for large numbers of non-EU citizens based on arguments about national identity and special ties seem, in the EU context, self-defeating because similar schemes adopted by other members states may

undermine such national identity projects through intra-EU migration (Margiotta and Vonk, 2010). If more EU states invoke the argument of national identity, the issue boils down to an impossible choice between competing claims to the preservation of national identity. In this case, it is unsurprising that the EU institutions have largely avoided getting involved in this debate. Interestingly, the EU Commission has reacted vehemently only when the matter was securely outside the scope of the national identity debate, as in the case of the Maltese proposal for an investor citizenship scheme in 2014 (Shachar and Bauböck, 2014). In this case, the European Commission threatened to file infringement proceedings against Malta arguing that the "selling" of Maltese citizenship to non-EU citizens who are not even required to take up residence in Malta violates the EU principle of sincere cooperation between member states (Rettman, 2014). No similar reaction on behalf of EU institutions can to found in controversies about schemes of preferential citizenship based on historical, national or cultural ties. For example, in 2009 the Czech EU presidency only expressed "serious concern" vis-à-vis allegations that Romania planned to hand over one million passports to Moldavian citizens through its policy of restoration of citizenship to former Romanian citizens (Reitman, 2009).

Limits of international norms

It emerges that, despite the enlarged scope of international and human rights law, citizenship remains an area where the state is very much in charge. States have the discretion to adopt over-exclusive, over-inclusive and group-differentiated rules of citizenship that can be regarded as inspired by ethno-cultural understanding of membership. Public international law imposes only minimal and imperfect constraints upon the sovereign right of states to regulate citizenship.

Early efforts to develop international rules in the area stemmed from the need to solve coordination problems related to the attribution of membership – problems of under-attribution (statelessness) and over-attribution (dual citizenship). While the principle of preventing statelessness in now broadly accepted, the twin principle of preventing dual citizenship has been gradually, though not completely, discarded. The proclaimed right to citizenship is only partially coupled with specific duties of states to grant citizenship to particular individuals. The prohibition of discrimination on arbitrary grounds is probably the most important contribution of the human rights revolution in the area of citizenship. The principle of gender equality

and the prohibition of racial and ethnic discrimination are firmly established. However, one can still find traces of unequal treatment as, for example, in the case of children born out of wedlock. New challenges also arise with regard to competing socio-cultural conceptions of family and marriage as well as related to the development of new reproductive technologies.

Despite its apparent revolutionary character, the doctrine of "genuine link" asserted by the ICJ in the Nottebohm case has only marginally influenced public international rules of citizenship. Public international law generally accepts the two main principles of attribution of citizenship at birth – *ius soli* and *ius sanguinis*. This holds true especially after the recognition that multiple citizenship caused by simultaneous application of automatic birthright principles is acceptable. With such a potential source of conflict minimised, the major issue that remains is the problem of statelessness. For example, the 1997 Convention obliges state parties to grant citizenship automatically to foundlings and to facilitate the naturalisation of stateless children. The general principle of avoiding statelessness is also important with regard to the regulation of loss of citizenship. International law prohibits collective de-naturalisation and arbitrary deprivation of citizenship. The 1997 Convention provides an exhaustive list of grounds for loss of citizenship and maintains only one exemption to the general prohibition of loss if leading to statelessness (in cases of fraud). In line with norms on dual citizenship, states can request renunciation of another citizenship as a condition for naturalisation or withdraw their citizenship in cases of voluntary acquisition of another citizenship. However, the unrestricted transmission of citizenship abroad via rules of *ius sanguinis* is not prohibited by international law.

The long lasting general ban on dual citizenship in naturalisation procedure has been recently relaxed. While the 1963 Convention still prohibited dual citizenship in cases where the second citizenship is acquired by free will – naturalisation, option or recovery – the 1997 Convention only provides that state parties can ask their immigrants and emigrants to renounce their citizenship when they naturalise, except for cases where renunciation cannot be reasonably expected. There is no further guidance as to what happens if a state decides to enforce the renunciation requirement with regard to immigrants but not to emigrants (or vice versa). Discrimination between citizens by birth and other citizens in procedures are also not clearly prohibited. The 1997 Convention only recommends that state parties "shall be guided by the principle of non-discrimination."

Generally, it is accepted that states may offer facilitations in acquisition of citizenship to various categories of persons. Indeed, the 1997 Convention requires that states offer facilitations to certain categories of persons, such as spouses, adopted children, stateless persons, and refugees. The Convention also recommends that states provide for the recovery of citizenship by former citizens who are "lawfully and habitually resident on its territory." Although the principle of non-discrimination is fully established in international law, citizenship law does not fall fully under its scope. This is because citizenship laws are, by definition, instruments of selection. In the specific matter of ethno-cultural preferentialism, international law provides that distinctions between non-citizens are legitimate if they do not discriminate against particular nationalities, and as long as they take the form of positive discrimination. According to the CERD, preferential measures targeting racial or ethno-cultural groups are acceptable if they: (1) have a legitimate goal, such as "securing adequate advancement" and the "equal enjoyment or exercise of human rights and fundamental freedoms" of certain racial or ethnic groups; (2) respect the principle of proportionality between means and goals; and (3) have a temporary character.

Finally, EU countries face an additional set of constraints due to their membership of the European Union. Although the regulation of citizenship is a sovereign matter of states, the ECJ has asserted that because MS decisions on citizenship can undermine the enjoyment of EU citizenship rights, these decisions should pay due regard to European law. Limited constraints also emerge from two Treaty principles, namely the obligation of solidarity among member states and the duty to respect national identities. However, the two principles seem to neutralise each other as policies informed by considerations about national identity may conflict with expectations regarding MS solidarity and also with competing claims about preserving national identities.

Attempts to directly link admission to citizenship with ideas of minority protection or self-determination have been cautiously rejected by the international community due to challenges that they pose to the principle of state sovereignty. Recent state initiatives aiming to establish legal ties with non-resident populations on grounds of ethno-cultural links reveal a certain unpreparedness of international law to deal with such issues. The recent Hungarian–Slovak row on the issue of dual citizenship shows the limits of positive international norms with regard to preferential citizenship. In 2011 Hungary amended its citizenship law to allow former Hungarian citizens (and their descendants) living in neighbouring states to acquire Hungarian citizenship without moving

to Hungary. To prevent a considerable part of its population – the Hungarian minority concentrated in the border region – from acquiring Hungarian passports, Slovakia outlawed dual citizenship and threatened to withdraw citizenship from Slovak citizens who acquire another citizenship (Bauböck, 2010b). Both, the Hungarian rule of granting citizenship to non-residents and the Slovak rule of withdrawing citizenship from dual citizens are compatible with international norms. The 1997 Convention, for example, does not prohibit the granting or restoring of citizenship to non-residents and lists the acquisition of foreign citizenship as a valid ground for withdrawal of citizenship. In this case the few international norms in the area seem to fuel disputes over the boundaries of citizenship, through providing indecisive arguments to both camps, instead of facilitating their resolution.

6
A Right to Self-Definition

States are not only sovereign entities. They are also political communities that exercise power in the name of the people that constitute them. These constituted communities claim legitimacy on the grounds that their members authorise them to exercise political power on their behalf. As legitimate political communities, states claim to have a moral right to self-definition and that maintaining full control over the regulation of membership is an essential aspect of self-definition. In this chapter I analyse claims to self-definition advanced by political communities and by ethno-cultural communities and their compatibility with claims about ethno-cultural preferentialism in citizenship policies. Obviously, in the real world we cannot distinguish between pure political communities and pure ethno-cultural communities and claims to self-definition often combine the two justificatory strategies. I, nevertheless, think that it is useful to start the examination of various claims to self-definition by posing the question of what kind of "self" are these claims supposed to serve.

Political self-definition

I examine two ideal types of political communities: free associations and democratic people. I assume here that both these types of political communities are legitimate, either because they have received proper authorisation to exercise political power or because they serve fundamental interests of their members. The question is whether this legitimacy to rule implies a discretionary right to determine membership policies and ultimately to exclude (from) or select people for membership. Notice that current debates on this issue mainly address the issue of the right of states to control borders and immigration (Wellman,

2008; Abizadeh, 2008). While I engage with these arguments, I will try to refocus the discussion from the issue of immigration onto that of citizenship.

One of the foundational myths of modern political thinking is that political communities are associations of freely consenting individuals. A theory of legitimacy based on the idea of individual consent is appealing because it "reconciles power with equality and liberty in a way that respects autonomy" (2002: 698). On the one hand, a government is legitimate because it is based on the free consent of its citizens. On the other hand, citizens who are under a legitimate government are under a general obligation to obey its laws. I do not pursue here questions about the legitimacy of government or about the political obligations of citizens. My question is whether legitimate political associations have the right to control membership. Have members of such political associations a discretionary right to define the boundaries of their association? I address this question mainly by engaging critically with Christopher Wellman's (2008, 2011) argument in defence of the right of states to exclude immigrants based on a principle of freedom of association.

It must be said that Wellman does not address the issue of ethnocultural citizenship or the issue of citizenship proper. However, I think that, if it proves correct, Wellman's argument can be used to defend an equivalent discretionary right to exclude people from citizenship. Like most authors who theorise about membership (Walzer, 1983; e.g. Blake, 2006), Wellman claims that immigration is the paradigmatic boundary of membership and, in his case, the relevant act of association. In response to Fine's (2010: 343) point that his argument is better suited for citizenship than for immigration, Wellman (2011: 100) argues that states are "necessarily territorial" and that resident citizens are entitled "to keep foreigners out of their association *and off their territory*" (emphasis in original).[1] The three premises of Wellman's (2011: 13) argument are: (1) legitimate states enjoy the right to self-determination; (2) freedom of association is an important element of self-determination; and (3) freedom of association entitles one not to associate with others. The conclusion is that legitimate states have the right to exclude non-members by virtue of the freedom of association of their members. Wellman carefully reserves this right to legitimate states, namely those states that provide justification for their recourse to non-consensual coercion. He argues that this justification is given when the state "adequately protects the human rights of its constituents and respects the rights of all others" (2011: 16).

Like other associationist theories, Wellman's faces the classical objection that real political communities are not free associations. This objection is important here because Wellman is clear about the practical implications of his argument, namely for immigration policies – which are only enforced by states. Unlike free associations, states are "compulsory associations, that claim jurisdiction over all residents from the time of their birth or arrival within their borders" (Whelan, 1983: 26). Most people are born into their political communities without ever consenting to membership (Simmons, 1979) and for those few who chose to voluntarily acquire membership, the mere expression of consent is never a sufficient condition for admission. As Joppke (2010: 16) notices, "in the end, it is everywhere the state and not the individual who consent." To treat states' acquiescence to accept new members as a form of consent is, I think, to misconstrue the idea of consent.

Wellman (2011: 74) admits that states are not voluntary associations and that only "mere luck [that] determines whether one is born inside or outside any state." However, the non-consensual basis of political associations is less worrisome to Wellman than the prospect of the "utterly horrible life [that] would be in the absence of political stability" (Wellman, 2011: 75). I find that Wellman's liberal endorsement of freedom of association is eclipsed by an incomplete account of the legitimacy of membership of associations. This is not only an issue about the initial stage of the constitution of membership, but also about the on-going process of membership-making through concrete membership policies. It seems odd that an argument about freedom of association relies on the acceptance of non-consensual membership. According to this view, although people are not individually free to associate with one another or with other people from outside borders, they are nevertheless free to collectively reject those who seek to associate with them. This is a defence of the right of non-associations to freedom of (non) association.

An alternative vision of the political community is that of a democratic people. A democratic community describes a "civic life of ruling and being ruled in turn" (Aristotle, 1995: 117 [1283b]). Members in such a community are both subjected to law and law-makers. Apart from lending support to arguments about the inclusion of all those subjected to democratic power, this idea can also be used to justify the exclusion of anybody else. Each democratic people has the right to define its membership and thus to exclude non-members. The question is, of course, who constitutes a democratic people.

Democracy can be defined, in Lincoln's (1863) words, as the "government of the people, by the people, for the people." At Gettysburg, Lincoln had little doubt about who were the people he referred to: they were the American people. It is maybe not accidentally that one of our most memorable definitions of democracy was given on a battlefield at the end of a bloody civil war that threatened the very unity of a people. This is one of the many cases in which the question of membership of the people is answered by contingent history. For a long time political theorists have not even bothered with the question of political membership. It is only recently that some of them have confronted the "chicken and egg problem" of the democratic membership that "lurks at democracy's core" (Shapiro and Hacker-Cordón, 1999: 1). The problem of democratic membership or the "boundary problem" (Whelan, 1983) is that a people cannot democratically choose its own membership by using the democratic method.

In a pioneering study, Frederick Whelan (1983) addressed the question of democratic membership by examining prominent theories of democracy. He concluded that "democratic methods themselves are inadequate to establish the bounds of the collectivity" (Whelan, 1983: 22). One way to overcome this problem is to suggest that the demos should be left to decide on its own composition. Joseph Schumpeter (1994: 244), for example, argues that "populus in the constitutional sense may exclude slaves completely and other inhabitants partially." In this view, military juntas or aristocratic regimes in which tiny groups of people use democratic methods to reach decisions that are then imposed on many others should be regarded as democratic systems. However, in this way democracy becomes "conceptually, morally, and empirically indistinguishable from autocracy" (Dahl, 1989: 120). An alternative proposal is that we should conceive of democracy to designate not only a democratic method, but also a set of values and norms (Miller, 2009; also Arrhenius, 2005), which could help us to illuminate the problem of membership.

An intuitive answer to the problem of membership is that everyone who is affected by a collective decision should be able to participate in the process of decision-making (Dahl, 1970: 64–65; also: Shapiro, 1999: 37; Young, 2000: 27; Gould, 2004; Goodin, 2007). However, this principle of all affected interests has important shortcomings. Above all, in its basic formulation, the principle is logically incoherent. We cannot know who is affected by a decision before the decision is actually taken (Goodin, 2007: 43; Miller, 2009: 215). Secondly, this principle assumes that the only way to justify power to people who

are affected by it is through democratic inclusion (Beckman, 2009: 45). However, that democratic inclusion can generate additional problems both for those included and for those who include them. Firstly, imagine a scenario in which a big state occupies a smaller one and then offers participatory rights to the occupied people as a justification. Apart from being ineffective, taking that the occupied people constitute only a small minority in the extended political community, these participatory rights can also be viewed as offensive to those over whom they are imposed. The principle of all affected interests supports the claim of those affected to have their interests taken into account (Bauböck, 2009a: 18). This claim can be addressed by means other than democratic inclusion, such as by offering them compensation for negative effects (Goodin, 2007: 66–7). Secondly, tying democratic inclusion and democratic membership to being affected by collective decisions may threaten the stability of democratic communities. The crucial advantage that the principle of all affected interests has, for example in comparison to the nationalist principle, is that it does not assume a prior membership of a privileged moral or ethno-cultural community that pre-determines membership in the democratic community. It prescribes admission to membership to all those affected by collective decisions regardless of their consent, identity, predispositions and so on. However, this advantage also constitutes one of its great problems, namely, that it fails to provide a plausible account of a stable political community. If thoroughly applied, the principle of all affected interests leaves us with a series of ad hoc constituencies, one for each round of decision-making (Whelan, 1983: 19).

One way to adjust the principle of all affected interests is to interpret being affected by collective decisions as being subjected to (coercive) law. Arguments about membership that rely on subjection to law can take democratic and liberal forms. These arguments typically start from the premises that subjection to law "invade[s] an agent's autonomy" (Abizadeh, 2008: 40) and thus the agent must receive adequate justification. They differ, however, with regard to strategies of justification. Wellman's (2011) argument about legitimate political associations, for example, offers a typical liberal justification in which coercion is justified by reference to the provision of adequate protection and rights. Alternatively, democratic justifications require granting people subjected to law a voice in the process of the law-making.

In a liberal fashion, Michael Blake (2002, 2005) argues that admission to membership and access to distributive benefits attached to it is owed by the state (only) to those who are subjected to its coercive

power. Special obligations of inclusion do not derive from consent or from shared identity, but from the fact that citizens are bound by a set of coercive institutions. This special political relationship between citizens also justifies the exclusion of non-citizens. Similarly, according to Thomas Nagel (2005: 121), "justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation." In this case, states do not have "obligations to enter into that [political] relation with those to whom we do not and, more importantly, "they also can actively prevent such contacts in order to justify the limited scope of their system of justice" (Nagel, 2005: 121). AQ1 Because state borders demarcate "the boundaries of shared liability to a political state" (Blake, 2005: 226) and because this morally significant political relationship is substantially altered by immigration, the state has the right to refuse entry to foreigners. Moreover, since more people means more responsibilities, states are justified to refuse entry to immigrants by virtue of the right of their citizens to refuse to take on obligations towards new people (Blake, 2013). Blake contends that, in exceptional cases, citizens may be seen to have an obligation to accept new obligations, such as in the context of federal arrangements. This argument focuses only "on currently existing relationships of politics rather than on the historical story of how such relationships came to be" (Blake, 2013: 108). However, I think that this view dismisses too quickly the complex history behind the contemporary international system. Modern history is a long unfolding of violence, oppression and injustice and, as Phillip Cole (2000: 197) warns us, the tendency of (liberal) political philosophy to ignore this history counts as "one vast act of racialised forgetting." In this light, it may be the case that citizens of contemporary states have stronger "obligations to become obliged" to particular non-citizens than Blake acknowledges.

Like Wellman, Blake admits that state borders are arbitrary, and that "[s]overeignty is, indeed, often found against a backdrop of theft and imperialism" (Blake, 2006: 4). However, questions about the boundary-making do not seem to upset the moral relationship that is established through membership in jurisdictional projects. How does one become party to such morally relevant political relationship? Blake mentions in passing that individuals born in the state "have a right to continue to live in the political community of their birth." But why should birth in the territory count as admission to membership? The preservationist argument about the right of members to exclude non-members says little about how one becomes a member and about what principles of membership states should apply.

By taking an alternative view on state coercion, Arash Abizadeh (2008) reaches a different conclusion. He argues that the very fact of establishing boundaries constitutes an act of coercion that affects both insiders and outsiders. Hence the state has an obligation to justify borders and immigration policies to both residents and non-residents. This justification should be "consistent with the ideal of autonomy," meaning that it should allow people "to see themselves as the free and equal authors of the laws to which they are subject" (Abizadeh, 2008: 40). Challenging the conventional view according to which democracy requires clearly delimited boundaries (e.g. Whelan, 1983), Abizadeh (2008: 38) claims that "the demos of democratic theory is in principle unbounded." As most theorists interested in the issue of membership, Abizadeh is primarily concerned with territorial admission and is silent about the issue of citizenship. Whereas Carens (1987) shifts the argument from contingent birthright membership to open borders, Abizadeh takes a different path by moving from coercive borders to unbounded demos. In both cases, there is a problematic conversion of arguments from one type of boundary to another. As Beckman (2009: 15) argues, "the problem of inclusion re-emerges whether or not political borders are themselves morally legitimate." By focusing exclusively on the coercive character of borders Abizadeh's argument is weakened because the obligation to include seems to depend on the contingent fact that borders are coercive (Beckman, 2009: 46). However, in an ideal world of non-coercive borders the questions about membership may not disappear. The European Union is the closest case of an ideal world of no (internal) borders following the decision of the member states to remove checks at common borders. But the joining of borders did not lead to the abolishment of jurisdictional boundaries of EU states or to the abolition of national citizenship regimes. A thorough argument about membership should then address issues about admission to citizenship independently of issues of borders and immigration.

The argument of unbounded demos also raises concerns about the stability of democratic communities. However, we can conceive of unbounded demos without necessarily making a case for global demos. The thesis of unbounded demos does not recommend the inclusion of all people but only the inclusion of those who are in a relevant moral relationship with the community. The crucial point here is that a demos does not have an absolute right to self-containment because the very act of self-containment creates obligations of inclusion.

The arguments of political self-definition derive a discretionary right to control the boundaries of the membership from the imperative to

give expression to and preserve the special moral relationship established between the members of constituted political communities. I claim that these arguments face three major objections. Firstly, preservationist arguments do not properly address questions about the nature of membership that they claim to defend. For example, Wellman defends the right to exclude based on freedom of association, but disregards the non-consensual character of these associations. Blake defends the right of states to refuse entry to immigrants without questioning the moral justification of the pre-existing boundaries of coercion. These incomplete accounts of the legitimacy of boundaries severely weaken the claim to self-definition of the (arbitrarily) constituted political communities. Secondly, constituted political communities/states face externality problems related to the amount of coercion that they generate through their boundary-making policies. It is not only that these constituted communities cannot tell a consistent story about their constitution; they also fail to justify the coercion produced through ongoing policies of membership. Thirdly, self-preservationist arguments often overlook the distinction between two important questions: the question of who should decide and the question of what should be decided. This appears most clearly in the arguments about the inclusion of all affected interests where claims to justification advanced by people affected by collective decisions should not be seen as implying that these people should necessarily be included in the decision-making process. Several of the arguments I discussed in this chapter are often understood as arguments for the exclusion of non-members based on the legitimate right of members to self-definition. I think that it is important to note that what is actually argued for, in most cases, is the right of members to decide on membership and not necessarily the right to exclude non-members. In the end, as long as we have separate membership regimes, there should always be somebody to take decisions on membership for each of these regimes. There are maybe good reasons for arguing that constituted communities are in the best position to decide on their membership policies. However, these decisions should take into account major concerns regarding membership of constituted communities in particular contexts. I will say more about these concerns in the remainder of this book.

Ethno-cultural self-definition

The world is not made of pure political associations; it is made of a French nation, an Italian nation, a Russian nation, and so on. This

is how Joseph de Maistre (2006) would probably have sounded had he extended his critique of abstract notions of man to ideas of pure political associations. States are commonly seen as historical communities with a shared sense of identity and culture. This is usually taken to imply that states have a fundamental interest in preserving their specific ethnic, national and cultural character. To ensure the preservation of this "character," nationalists claim, states must retain the right to control their membership. I examine here arguments of national or ethno-cultural self-definition that claim to be compatible with liberal-democratic norms. Obviously, there are a number of nationalist arguments that fall outside the liberal-democratic canon. For example, David Ben Gurion – Israel's first Prime Minister – claims that the right of all Jews to immigrate to the Land of Israel[2] "is not granted by the authority of the state, but rather, is a natural right that exists prior to the establishment of the State of Israel" [emphases in original] (Ernst, 2009: 566). There is little a theorist can do to "verify" such claim. My attention thus goes towards more earthly arguments. I first discuss liberal nationalist views about the moral significance of ethno-cultural communities and then I examine two arguments for preferential ethno-cultural citizenship. The first argument is about the moral claims of ethno-cultural communities to control the state and its membership policies. The second argument focuses on the instrumental value for states in promoting a sense of ethno-cultural identity, such as through ethno-cultural membership policies.

The political principle according to which "the political and the national unit should be congruent" (Gellner, 1983: 1) lies at the heart of the modern international system. Although nationalism is most visible in the struggles of national groups to attain statehood, it does not retire once the nation state is established. States that experience national crisis are prone to become what Brubaker (1996a: 431) calls "nationalising states," that is states "of and for a particular ethno-cultural core nation." A nationalising state has the mission to protect the nation not only by defending it from other (nation) states, but also from particular groups of people living outside or within its borders. In this respect, membership policies are an excellent tool because they enable states to exclude, sometimes physically, unwanted people and also to include, sometimes only symbolically, people who are perceived as belonging to the nation. Whereas nobody defends now extreme nationalist policies such as ethnic cleansing or mass deportation, there are several voices which argue for a legitimate principle of nationalism.

Nationalism has rarely been articulated as a fully fledged political theory; political theorists have preferred to ignore it, take it for granted or demonise it. Recently, however, a series of theories have attempted to justify nationalist claims by referring to liberal-democratic principles such as moral autonomy, liberty and justice. This development can be linked to a more general shift in the focus of political philosophy from economic distribution to culture and identity (Tebble, 2006).

Liberal nationalists view national identity as a fundamental individual interest that ought to be recognised and promoted. Their claims usually involve complex twinning between arguments about identity, justice and democratic self-determination. Will Kymlicka (1989, also 1995) makes the case for the importance of culture for individual autonomy. Having access to a "societal culture" provides an essential resource and structures the overall context of individual choices that make possible the development and pursuit of individual plans of life. Societal cultures are essential for developing "meaningful ways of life across the full range of human activities, including social, educational, religious and economic life, encompassing both public and private spheres" (Kymlicka, 1995: 76). Cultural membership is thus seen as a prerequisite of individual freedom. One important objection to this argument is that it does justify the individual interest in a particular societal culture. One could argue that policies of cultural assimilation are legitimate because, although they displace minority cultures, they provide access to the broader culture of the majority and thus to a more resourceful base for individual choices. More than a century ago, John S. Mill (2008 [1861]: 432) was already speaking of the great advantages of cultural assimilation for the "inferior and more background portions of the human race." Such view, however, is disappointing for other liberal nationalists because it fails to grasp the intrinsic value of membership of particular national communities. As Yael Tamir (1993: 26, 160) argues, individuals are not merely interested in having access to a culture, but they need to have access to their own culture. Non-instrumental arguments of liberal nationalism focus then on the moral significance of national identity as a "constitutive factor of personal identity" (Tamir, 1993: 32–34). Nations are conceived of as ethical communities (Miller, 1988, 1995) in which individuals have "a fundamental, morally significant interest in adhering to their culture and to sustain it for generations" (Gans, 2003: 39).

One important implication of the moral view on the nation is that membership of a nation is seen to generate special obligations towards co-nationals. According to David Miller (1995: 49), "I owe special

obligations to fellow members of my nation which I do not owe to other human beings." For Miller this does not mean that we do not have duties towards outsiders, but that the "duties we owe to our compatriots may be more extensive than the duties we owe to strangers" (Miller, 1988: 655; also Tamir, 1993: 99). Thomas Hurka (1997: 141) distinguished between two main arguments about national partiality: a meta-ethical argument, and a perfectionist one. According to the meta-ethical argument, the national community is the source of morality, in the sense that morality is always our morality. The major problem with this argument is that it confuses the source of morality with the object or the sphere of its application (Hurka, 1997: 143). Although it may be the case that morality, like many other things, is learned in a particular community, this does not mean that the scope of moral concern should be limited to the community. According to the perfectionist argument for national partiality, membership of a community constitutes a fundamental individual good. From this interest, partialists extract the idea that members should be partial towards co-members. However, this strategy unjustifiably shifts the focus from the form of the partialist ethical concern – that is to care more for the good of co-members –, to the content of the ethical concern – that refers to the nature of the good of co-members. However, Hurka (1997: 143) argues, "no claims about what people's good consists in can justify the idea that we ought to care more about some people's good than about others."

AQ2

Another important question is whether arguments about moral partiality towards co-nationals could translate into arguments for ethnocultural preference in citizenship policies. Let us agree that nations are moral communities and that some sort of national partiality is justified. The crucial question is then: "co-national partiality *with respect to what*?" (emphasis in original) (Tan, 2005: 52). Take the analogy between state membership and the family. Many would accept that we have special obligations of care and love towards our parents, siblings or children. However, as Kok-Chor Tan (2005: 58) points out, one cannot reasonably argue that we should have considerations of justice only towards our family. If one assumes that partiality is a "psychological truth about human beings," one should offer an argument for why the boundaries of the nation state should be the focus of partiality and not, say, those of the city, town or neighbourhood (Dagger, 1985: 441). Why stop at these particular sites of duties and not go downward (family), or upward (region, world)? In fact, nation-states are a result of an impressive process of extending our moral universe. As Tan (2002: 454) remarks, "if anything, nationalism shows us that it is possible to overcome the near

and the familiar and to include strangers in our moral world as well." Finally, acknowledging that a relationship is special and that there are some moral duties deriving from it does not say anything about how one becomes part of such special relationship or about who can join it. In the case of citizenship, the establishment of a political and moral co-citizen relationship "does not provide fellow citizens with a right to prevent others from becoming part of it" (Mason, 2011: 274).

We can distinguish between two major liberal nationalist arguments in defence of preferential ethno-cultural citizenship. The first argument focuses on the intrinsic values of ethno-cultural membership, claiming that, because nations are ethical communities whose preservation serve fundamental interests of the members, nation (states) have a right to define membership and thus to select people on an ethno-cultural basis. The second argument puts emphasis on the instrumental role that national identities play in supporting liberal-democratic institutions and claims that (nation) states should promote a sense of national identity and take this into considerations when selection people for membership.

Michael Walzer (1983) makes a case for the fundamental right of political communities to control admission to membership. Without such right, Walzer (1983: 62) argues, "there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life" (emphasis in original). For Walzer the fundamental boundary of membership is the territorial border. The community has no comparable discretionary right to refuse admission to political membership (citizenship) to those who are already in the country. On the contrary, these communities have the obligation to include all permanent residents because to deny these people political membership is to treat them like servants "ruled, like Athenian metics, by a band of citizen-tyrants" (Walzer, 1983: 58). Apart from a blank right to control territorial admission, Walzer also defends the "kinship principle" that justifies preferential immigration for "national or ethnic 'relatives'" (1983: 41) and, by extension, for those people who have a strong "connection to our way of life" (1983: 49).

The major objection to Walzer's claims is that states cannot be regarded as "communities of character." Although Walzer prefers to talk of political communities instead of states, he admits that "[t]he politics and the culture of a modern democracy probably require the kind of largeness, and the kind of boundedness, that states provide" (Walzer, 1983: 39). States are then the communities of character of our days.

However, taking into account the fact of ethno-cultural diversity and political pluralism of the modern states, it becomes impossible and even dangerous to try to define and defend a state's "character" (Bader, 1995: 217–18). As most contemporary states are heterogeneous political sites shaped by old and new ethno-cultural, social and political struggles, the assumption of some distinct overall "characters" of such states is, at best, "sociologically naïve" (Joppke, 2005b: 11).

If one takes seriously the role of these internally heterogeneous states in the contemporary system, one should be prepared to accept a series of constraints that trump the right of states to self-definition. Walzer concedes that the decisions taken by communities of character/states should be evaluated according to moral standards. He argues, for example, that, although states have the right to decide on membership, they would decide wrongly if they chose to deny political membership to those who are subjected to their laws. This is because "to say that states have a right to act in certain areas is not to say that anything they do in those areas is right" (Walzer, 2008 [1981]: 154). For the same reason states should not expel non-ethnic residents because, "the state owes something to its inhabitants simply, without reference to their nationality" (Walzer, 2008 [1981]: 157). Walzer also denounces the US's discriminatory immigration policies of the 1920s that aimed to preserve a homogenous white protestant country as "immoral" and "inaccurate."

I claim that in the context of modern pluralism any attempt to select immigrants based on ethno-cultural similarities with certain groups of citizens disregards the interests of those citizens who do not share those ethno-cultural characteristics. One way to defend ethno-cultural preference is to argue for a quota-based system of admission in which each ethno-cultural group of citizens is allowed to bring in its own ethno-cultural relatives according to their share in the total population. This argument is defended, for example, by Chaims Gans (2003: 139) who makes the "case of the continuing sons," where preferential immigration policies are used to ensure the preservation of the ethno-cultural status quo. This proposal comes to refute the alternative model of "the founding fathers" where an ethno-cultural group uses immigration policies to take or maintain control over the state. However, both models are problematic because they assume that the state belongs to (one or more) ethno-cultural groups and because they claim that state should be in the business of ethno-cultural engineering.

The second strategy for defending preferential ethno-cultural citizenship is to argue that ethno-cultural homogeneity is instrumental for the well-functioning of liberal-democratic institutions. David Miller (1988,

1995) puts forward a complex argument about the mutual reinforcement between the nation and the state. On the one hand, the state enforces pre-political national duties and ensures the preservation of the national culture. On the other hand, a strong common national identity breeds social trust, which is a precondition for maintaining liberal-democratic and welfare institutions. I will focus here on this second part of the argument.

As Walzer, Miller starts with a more sophisticated model of national community, but then concedes that, in modern circumstances, the state should be considered a rough approximation of such national community. The first objection to Miller's instrumental nationalism is that there is no solid evidence of a necessary link between social trust and common national identity. As Abizadeh (2002: 507) argues, "people can affectively identify with each other despite not sharing particular norms or beliefs." Moreover, the kind of common national identity that Miller invokes can be seen as a result of institutional design (Pevnik, 2009: 149–50) and of membership in exclusive state institutions (Chwaszcza, 2012) rather than as a pre-political form of solidarity. From a historical perspective, it can also be argued that "[t]here is no automatic linkage between nationhood and citizenship" and that "citizenship's prenational past suggests the possibility of postnational culture" (Joppke, 2010: 19). Miller is well aware of the possibilities to engineer forms of common identity. When confronted with the case of multinational states, such as Switzerland and Canada, he introduces the concept of overarching "communal identity" that cuts across internal ethnocultural boundaries. In the end, national identity seems to be anything that gives citizens "a sense that people belong together" (Miller, 1995: 25). Even if one agrees that a common identity is essential for the well-functioning of political institutions, the question remains as to why such common identity should be of national kind.

Taking into account the inherent multicultural character of most national cultures, the task of defining the features of national identity seems daunting. Recently, this task was undertaken by several European countries with a view to defining the parameters for the national integration of immigrants. For example, faced with the difficult question of "what is Britishness?," the former Tory chairman Norman Tebbit proposed jokingly that immigrants could prove their Britishness if they cheer for the English team even when it played against their country of origin (BBC, 2002). The 2003 report "Life in the United Kingdom" AQ5 defines Britishness in terms of "respect(ing) the laws, the elected parliamentary and democratic political structures, traditional values of

mutual tolerance, respect for equal rights and mutual concern" and "allegiance to the state (as commonly symbolised in the Crown) in return for its protection."[3] The list seems to contain only one particular feature that distinguishes the British from other liberal-democratic nations, namely allegiance to the Crown, which, as Joppke (2008b: 537) notices, "appositely appears only in brackets, subsumed under an anonymous, exchangeable 'state'." The British state thus seems "caught in the paradox of universalism: it perceives the need to make immigrants and ethnic minorities part of this and not that society, but it cannot name and enforce any particulars that distinguish the 'here' from 'there'" (Joppke, 2011: 165).

Miller's argument for a state-promoted national identity lends only weak support to claims of preferential ethno-cultural citizenship. This is mainly because Miller's view combines (liberal) nationalism with a republican conception of citizenship. Miller distinguishes between obligations of citizenship (legal membership), which are based on reciprocity, and obligations of nationality (ethno-cultural membership), which derive from common ties of identity. In this regard, Miller (1995: 59) warns "we need to be clear whether we are trying to assess the ethical significance of nationality as such, or instead the ethical significance of membership of a scheme of political co-operation." In the same vein, Miller (2008: 38) claims that states should only exceptionally restrict immigration for the sake of protecting national identify, such as in the case when there was a sudden influx of a large number of non co-ethnic immigrants.[4] This is because immigrants are expected to develop "a common national identity." Miller (2008: 384) also maintains that naturalisation procedures should only require immigrants to "accept the basic principles of liberal democracy, as these are instantiated in the laws and practices of the state," know the language of the place, and have some familiarity with the history and the institutions of the country. Tougher conditions on naturalisation, such as citizenship tests, are problematic because "they overstep the line that divides private from public culture by requiring immigrants to engage with cultural matters that have no intrinsic connection with citizenship itself" (emphasis added) (Miller, 2008: 385). This is a surprising attack on ethno-cultural rules of citizenship coming from a (liberal) nationalist.

In sum, I claim that liberal nationalist arguments face serious difficulties in justifying ethno-cultural rules of citizenship. Apart from problems about establishing the boundaries of national communities, claims of national self-definition do not take into account normative constraints related to membership of a liberal democratic state. For a

modern state is not an abstract legal creation or a mere political association or a pure ethno-cultural community. It is all of these together. Designing membership principles and policies for such a complex entity requires paying attention and trying to reconcile various normative concerns about membership that include but do not limit the scope of the analysis to concerns about political and national self-definition.

7
A Remedial Right

Defenders of preferential ethno-cultural citizenship often combine claims about freedom of association, democratic self-definition, national solidarity and just inclusion. In this chapter I address arguments for preferential inclusion that rely primarily on claims about the duty of states to include ethno-cultural groups on grounds of remedial justice. I distinguish between claims of restitution of citizenship to former citizens who have been unjustly deprived of citizenship status in the past and claims of preferential admission to citizenship grounded in the duty to ensure the survival of the nation and the adequate protection of ethno-cultural minorities.

The restitution of citizenship

It is common for states to offer preferential admission to citizenship to people who were wrongly deprived of citizenship in the past. Generally, this is "a matter of rectificatory justice" (Bauböck, 2007a: 2436). For example, post-authoritarian states could rightly adopt citizenship rules that restore citizenship to former citizens who were deprived of this status on ideological or other arbitrary grounds. However, such rules of restitution of citizenship are often contested or contestable. They may be contested, for example, because they make references to lost territories or because they grant entitlements across many generations.

As our survey in the previous chapter shows, policies of restoration of citizenship to former citizens are sometimes used to "solve" disputes over territory. For example, the Romanian citizenship law grants preferential access to citizenship to former citizens who lost Romanian citizenship "against their will or for other reasons not imputable to them." These provisions aim to restore Romanian citizenship to former AQ1

citizens (and descendants) who inhabit territories lost by Romania in 1940, namely Bessarabia, now the Republic of Moldova, Northern Bukovina and Southern Bessarabia, now part of Ukraine (Iordachi, 2012: 343). According to Traian Basescu, the Romanian President, this policy is justified because "[i]t is not citizen Dumitrescu from Cahul who has decided to lose his [Romanian] citizenship, it's Stalin who has decided for him" (Euractiv, 2010). The Romanian government argues that the restoration policy does not promote ethno-cultural conceptions of membership. Unlike policies adopted by other states in the region, such as Bulgaria, Croatia, or Greece, the provisions of the Romanian citizenship law do not target people according to their ethnic origin but all former Romanian citizens regardless of ethnicity. This means that these provisions also concern ethnic Bulgarians from Cadrilater, Tatars, Jews and ethnic Germans who emigrated from Romania before or after the establishment of the communist regime. For the same reason, the restoration provisions do not apply to ethnic Romanians who were never Romanian citizens and who live in territories that never belonged to the Romanian state, such as Vlachs from Serbia or Aromanians from Albania. In 2012 a group of Romanian MPs proposed a law[1] that would provide preferential access to citizenship for all members of the Romanian Diaspora. The proposal was rejected because, unlike the provisions of the citizenship law, it detached the claim of preferential restoration of citizenship from the condition of a formal link of previous membership of the state. However, despite this careful wrapping of the current citizenship policy in the language of justice, there are still several elements that indicate the presence of ethno-cultural considerations. Firstly, it was clear from the beginning that, apart from delivering justice to individuals, the restoration policy also served the nationalistic goal of recreating the national community of the pre-communist state. Secondly, several amendments of the citizenship law in 2009–2010 restricted the privilege of facilitated reacquisition of citizenship to former citizens by birth (Iordachi, 2012: 373). The amended law provides that the restoration procedure concerns "persons *who obtained the Romanian citizenship at birth* or through adoption and who lost it for reasons not imputable to them or who had their citizenship withdrawn against their will, as well as their descendants down to the third-degree" (emphasis added). Although the justification based on the duty to repair unjust deprivation is maintained, the amendment differentiates between (former) citizens through birth and other (former) citizens. For example, descendants of naturalised Romanians who were born after their parents lost Romanian citizenship "for reasons not imputable to

them or who had their citizenship withdrawn against their will" do not qualify for the preferential re-acquisition of Romanian citizenship after 2009, although they could have qualified for it between 1991 and 2009. The new emphasis on birthright entitlement suggests a conception of membership that celebrates inherited and organic connections between individuals and the state.

The Romanian example is useful because it illustrates two other problematic aspects of schemes of preferential citizenship based on arguments of restitutive justice. The first aspect concerns the generational scope of the restitution of citizenship. In the Romanian case, it is not only former citizens who can claim citizenship on grounds of restitution, but also their descendants up to the third generation. As we saw previously, other countries with similar schemes of restitution of citizenship, such as Greece and Hungary, do not even specify a generational stopping point. As in the case of rules of *ius sanguinis* abroad, the endless transmission of entitlement to re-acquisition of citizenship is problematic. Andrei Stavila (2010: 11) asks whether the transmission of citizenship should be seen as "endless" "when we are talking about second and third generations." The answer is certainly contextual. With regard to Hungary's policy, Joachim Blatter (2010: 14) claims that "90 years usually would count as 'over generations' but we have to take into account the fact that the boundary moved and not the individuals." Secondly, in many countries, including Romania and Hungary, the preferential re-acquisition of citizenship is possible even if the applicants reside outside the country. The controversy is thus not only about the offer of preferential admission but also about the specific kind of membership that is offered. For example, soon after extending the rule of preferential naturalisation for former citizens to include people who live outside the country, Hungary amended its electoral law to allow non-resident Hungarian citizens to vote in parliamentary elections (Kovács and Tóth, 2013). A number of other countries that have rules of preferential naturalisation for non-resident people, such as Croatia, Italy, and Romania, also grant significant voting rights for non-resident citizens (Dumbrava, 2013: 10).

The offer of preferential access to citizenship to people living abroad that includes access to extensive voting rights raises a series of practical and theoretical concerns. One major worry is that, in certain circumstances, "external voters acquire an unduly large influence on domestic electoral outcomes without actually being exposed to most political consequences of their votes" (Pogonyi et al., 2010: 4). Concerns about the significant impact of the external voting have been raises in several

cases. Ragazzi and Stiks (2013: 14) argue that "the diaspora voting machine, based mainly in the Croat-populated Western Herzegovina, has been repeatedly used by the main Croatian right-wing party (HDZ) at the time of elections as a political chip in Croatian internal politics." In 2007 the Croat Democratic Union (HDZ) won the parliamentary elections by a tiny margin mainly due to overwhelming support received from Croats from Bosnia-Herzegovina. In the Italian elections of 2006 the centre-left coalition led by Romano Prodi managed to secure a majority in the Senate thanks also to the external vote (Pogonyi et al., 2010: 14). In Romania before the presidential elections of 2009 the incumbent president, Traian Basescu, was accused of using the policy of restoration of citizenship as strategy of "hunting for votes" across the border. These allegations were later "confirmed" when Basescu won the second tour of the presidential elections by a tiny fraction of votes (71,000 votes) after gaining the overwhelming support of voters from abroad (Dumbrava, 2012).

Rules of preferential citizenship for non-residents also raise issues about the meaning of and conditions for political membership. Whereas certain former citizens may have a moral claim to the restitution of citizenship, this does not imply that they have a right to acquire full citizenship regardless of other circumstances. The case of the descendants of former citizens who acquire both citizenship status and political rights in the country of their ancestors without actually living there is even more problematic. In this situation we have a weak claim of restitutive justice that is rewarded with an undeserved and potentially unfair political privilege.

National survival

A special version of the remedial justice argument in relation to citizenship is the claim that states have a duty to ensure the survival of the nation. Such claim is typically articulated in moments when the nation appears weak and vulnerable and when the state is mandated "to redress previous discrimination or oppression suffered by the core nation" (Brubaker, 2008: 18). The case of the post-Soviet Baltic republics is instructive in this respect. In 1990 Estonia and Latvia proclaimed their independence from the Soviet Union by invoking the principle of "legal continuity" according to which the republics re-established their pre-Soviet statehood, and thus reversed half a century of Russian occupation. They reinstalled the pre-Soviet constitutions and citizenship laws without granting the Soviet-era immigrants automatic access

to citizenship. This led to the denationalising and disenfranchising of more than one-third of their resident populations (Chinn, 1996). When these (Russian-speaking) people were allowed to apply for naturalisation, difficult language requirements made sure that only a few of them could qualify. The special claim of justice invoked by the two states appeased external criticism and forced international actors to concentrate on side issues, such as the rights of stateless children (Gelazis, 2000).

It is hard to ignore the claims of Latvians and Estonians to regain control over their own polity. However, I think that the debate is wrongly and unnecessarily framed in nationalist terms. Members of a polity are justified in being concerned about the commitment to membership of fellow members or of candidates to membership. However, membership of an ethno-cultural community is not evidence for the existence of such political commitment. In the case of non-ethnic settlers in the restored Baltic republics, what should matter is not their ethnicity but whether they are subjected to laws and whether they are willing to share political membership on reciprocal terms. The difficulty is that these settlers are seen as "occupiers." They seem to have immigrated without caring for or even to the detriment of the interests of the republics. I doubt that all or the great majority of these settlers were opposed to the self-government project of the republics. Most of them were probably simple immigrants in search of better economic opportunities. Although the new elites of the independent states are justified in delaying membership to those who have acted against the interests of the polities, they should not consider mere immigration during the Soviet time as an act directed against the interest of these polities. In the end, these states recognised a special status of non-citizen for those who did not qualify for full citizenship. The problem remains with the fact that the transition from the status of special protection to the status of full citizenship is still a complicated process.

By seeking to repair an injustice – towards Estonians and Latvians – the Estonian and Latvian elites created another injustice – towards Soviet-era migrants and their descendants (Reinikainen, 2012: 158). The remedial claim to restore national membership went beyond the legitimate right to recover republican citizenship for all citizens of the pre-Soviet states. It was based on the more controversial right to recover the national polity that had been altered during the Soviet time. This part of the argument is grounded in a problematic nationalist doctrine about the nation owning the state.

Protection of kin minorities

One variation of the argument about national survival is the claim that nation-states have duties to protect kin (ethno-cultural) minorities. Granting preferential admission to citizenship may be, in this case, one way to discharge such duties.

According to Michael Walzer, states may give preference to those who have stronger "connection to our way of life" (1983: 49). Drawing on the analogy between states and families, Walzer formulates the "kinship principle", according to which states may welcome "particular group[s] of outsiders, recognized as national or ethnic 'relatives'" (1983: 41). Membership in a "national family", which "is never entirely enclosed within their [states'] legal boundaries", creates legitimate claims of inclusion equally for those who ended up "on the wrong side" and for "the children and grandchildren of emigrants" (Walzer, 1983: 41). Walzer admits that special consideration may be given in cases where a state bears responsibility for the flight of the people and if their suffering is related to their association with the state via ideological or ethnic ties. He refers to episodes of historical distress such as the Greek–Turkish transfers of populations and the post-war expulsion of Germans from Eastern Europe. However, his argument for privileged access is not grounded primarily in considerations of remedial justice but in the existence of family national bonds.

Claims about the protection of national minorities appeal to the responsibilities of the nation-state even in the absence of direct state action towards particular individuals or groups. These claims are often supported by stories of state "inaction," as in the case of alleged abandonment of co-ethnics when settling new borders. The argument of protection goes beyond the mere affirmation of commonality. Its strength derives from the combination between moral duties of justice (assistance) and special duties of co-nationality. Zsolt Nemeth, a Hungarian Foreign Minister, justified the proposal to grant special benefits to Hungarian ethnics outside Hungary by arguing that "[Hungarian minority individuals] do not get the benefits because they are Hungarians, but because they have problems, stemming from their Hungarianness, to which they expect solutions from Hungarian state" (quoted in Horvath, 2008: 182).

The German policy regarding the repatriation of co-ethnics is a classic example of preferential admission based on claims of protection of kin minorities. In the aftermath of the Second World War, Germany adopted a special policy for welcoming ethnic Germans who

fled Eastern Europe (Brubaker, 1998). According to German Basic Law (Article 116), and the Federal Expellees Act of 1953, ethnic Germans expelled as a result of post-war measures, including their relatives and descendants, are entitled to repatriation and privileged acquisition of German citizenship. Amid criticism about the relevance of these provisions in the post-Cold War world, Germany has gradually changed its repatriation policy. Following several reforms in 1993, 2000 and 2005, the repatriation policy was redesigned to include immigration quotas and stricter entry requirements for claimants – language examination and proof of descent. The reform resulted in a dramatic drop in the number of ethnic Germans who repatriated. In 2006 only 7,626 persons from the former Soviet Union were accepted under these provisions, which contrasts sharply with 35,369 persons in 2005 (Hailbronner, 2012: 21). The only major facilitation that remained is the privilege of dual citizenship.

Claims for protection of kin minorities are also voiced in terms of positive discrimination. According to international law, distinctions between non-citizens are legitimate if they do not discriminate against particular groups or if they enable policies of positive discrimination. In the report on co-ethnic laws, the Venice Commission states that a less favourable treatment of non-citizens based on non-belonging to a specific ethnic or cultural group is "not, in itself, discriminatory, nor contrary to international law."[2] Ethnic preferentialism is seen as legitimate when the targeted group is "genuinely linked with the culture of the State" and when the measures ensure that their "genuine linguistic and cultural links remain strong." Enikő Horvath (2008) criticises the position of the Venice Commission for failing to clearly distinguish between ethnic and cultural links. She correctly argues that, while "differentiating among individuals who have actual ties to the given culture that the state promotes is reasonable," "differentiating among individuals because their ancestors were 'Greek' or 'Slovak' on the assumption that this guarantees links, without any further proof of ties required, is not" (Horvath, 2008: 179).

Notwithstanding positive norms of international law, it is my contention that there are at least two types of discrimination implied by rules of preferential ethno-cultural citizenship: (1) discrimination against non-ethnic citizens, and (2) discrimination against non-ethnic foreigners. In the first case, the preferential admission of co-ethnics discriminates against those citizens who do not share the ethno-cultural features of the majority.[3] For example, Coleman and Harding (1995: 53) argue that "policies of family reunification and those permitting access to

non-members with cultural or historical ties" are justified as a way of satisfying the interest of actual members. However, they do not ponder whether such policies affect negatively the interests of those members who do not share such cultural or historical ties. As Wellman (2008: 139) points out, preferential admission (immigration) "would wrongly disrespect those citizens in the dispreferred category." In the context of modern multi-ethnic democracies, ethnic selectivity in admission will make some people feel "second class citizens" while "seeking to eliminate the presence of a given group from your society by selective immigration is insulting to the members of that group already present" (Blake, 2005: 233). Since there is hardly a state in the world that is ethno-culturally homogeneous, policies targeting particular groups inevitably discriminate against all other ethno-cultural groups within the state. They violate the liberal norm of state neutrality that is anchored in the ontology of value pluralism. As Joppke (2005b: 11) argue, "if there is no domestic agreement about the 'good life', related concerns of religion, culture, and customs cannot be made a criterion of immigrant selection." Critics may retort that a culturally neutral state is a chimera, both historically and conceptually, "a cover by which the majority nation extends its language, institutions, mobility rights, and power at the expense of the minority" (Kymlicka and Norman, 2000: 11). However, scepticism about the possibility of actual or hypothetical neutrality does not legitimise strategies of nationalising admission policies.

The second type of discrimination implied by preferential ethno-cultural citizenship is against non-ethnic foreigners. In the context of increased border control, polices of preferential admission of some will inevitably discriminate against all others willing to enter. Referring to generous rules of *ius sanguinis* abroad, Bauböck (2009b: 484) claims that "inherited external citizenship is a morally arbitrary criterion for allocating opportunities among the pool of potential immigrants." Miller (2005: 204) also maintains that "to be told that they belong to the wrong race or sex (or have the wrong colour) is insulting, given that these features do not connect to anything of real significance to the society they want to join." Framing ethno-cultural selectivity as positive discrimination is also problematic. Joppke (2005a: 46), for example, notes that the infamous discriminatory policy of "White Australia" was, in fact, a policy of "positive" discrimination; it was intended to privilege the admission of whites, which incidentally led to the exclusion of non-whites.

The problem of non-discrimination is not the only normative concern with regard to preferential citizenship. We can imagine a random

ascription of citizenship that satisfies the principle of non-discrimination but still generates concerns about the normative significance of citizenship. One of the problems is that these preferential policies create controversial privileges, such as the possibility to acquire citizenship status and to exercise citizenship rights from outside the country. Another problem is the strategy of using citizenship as an instrument of remedial justice or protection of kin minorities. In this case, doubts also exist on whether preferential citizenship is the right tool for the job.

Despite admirable goals, initiatives of preferential citizenship for kin minorities may prove to be self-defeating. This is because by granting citizenship to kin minorities the kin state may weaken the claims and prospects of self-government of these minorities. If kin minorities are granted citizenship on preferential grounds but under the condition that they take up residence in the country, the worry is that this will, in effect, worsen the situation of those members of the minority group that decide to stay put. If the kin state grants kin minorities external citizenship, the state where these minorities live may react negatively by pausing efforts to accommodate these minorities or even, as in the Slovak case, by withdrawing formal citizenship from those who acquired a second citizenship. This is what Bauböck (2007b) calls the trade-off between transnational citizenship and self-government. According to Bauböck (2007a: 2421), "successful accommodation of national minorities leads to internally differentiated citizenship, but will generally not involve external citizenship in a kin state."

In the Hungarian case of external dual citizenship, "the claim that dual citizenship will help to protect Hungarian minorities abroad is hypocritical" because members of Hungarian minorities seem confronted with "a dilemma between emigration to Hungary and assimilation" (Bauböck, 2010b: 2). According to Florian Bieber (2010: 20), external citizenship for kin minorities may, in fact, "help to diffuse conflicts" because "it lowers by implication the importance of the citizenship of the country of residence" and it offers minorities "a sort of insurance policy, combined with an exit ticket" for cases when they may find themselves in trouble. This perspective, however, takes a too-instrumental approach on citizenship. It also assumes that minority oppression is always likely to occur, which in turn may become a self-fulfilling prophecy (Bauböck, 2010a: 41). In light of recent developments in the Hungarian-Slovak conflict, it seems that "Hungarians in Slovakia who apply for Hungarian external citizenship may end up with a status that resembles the status of migrants with no effective link to the state of their new *de iure* citizenship and with their rights as citizens

withdrawn in the state of their permanent residence and original citizenship" (Pogonyi et al., 2010: 12). This is confirmed by Zsolt Simon, a political leader of the Hungarian minority in Slovakia, who complains that the Hungarian government "does not understand the situation" of Hungarian ethnics in Slovakia and who believes that the Hungarian offer of external citizenship for co-ethnics living in neighbouring countries is intended to bring political advantages to the governing Fidesz party without actually serving the interests of the Hungarian minority in Slovakia (Popławski, 2012).[4]

Lastly, the unilateral decision to grant preferential access to citizenship to people living in other countries is prone to generate inter-state or regional disputes. In Central and Eastern Europe frequent tensions on the issue of dual (external) citizenship arise between: Romania and Moldova, Serbia and Montenegro, Macedonia and Bulgaria, Greece and Albania, Ukraine and Romania, Russia and Ukraine, Romania and Hungary, Poland and Lithuania and Slovakia and Hungary (Pogonyi et al., 2010: 10). I illustrate this point by looking briefly into the Romanian case. The Romanian policy of restoration of citizenship to former citizens who live outside borders affected Romania's relations with Moldova, Ukraine, and Hungary. Although the Romanian law does not make reference to specific territories, it is obvious that this policy targets primarily residents of territories that were lost by Romania in 1939 and who now belong to Moldova and Ukraine. Whereas ethnic Romanians (former Romanian citizens) form only a small minority in Ukraine, the majority of Moldovan citizens could qualify for the restoration of Romanian citizenship (Pogonyi et al., 2010: 4). The tensions between Romania and Ukraine concerning the issue of citizenship are aggravated by the fact that Ukraine does not accept dual citizenship. Ukrainian citizens who acquire Romanian citizenship risk this losing Ukrainian citizenship (Iordachi, 2012: 292). The relations between Romania and Moldova became particularly tense during the Moldovan political crisis in the spring of 2009. Following political unrest in Moldova, the Romanian government decided to speed up the process of the restoration of citizenship, to which the Moldovan government retaliated by imposing visas for Romanian citizens, incidentally violating an agreement with the EU concerning the visa-free regime for EU citizens. In 2012 a group of deputies from the opposition Communist Party of the Republic of Moldova (PCRM) asked the Romanian ambassador in Chisinau to withdraw Romanian citizenship from several Moldovan high officials holding dual Moldovan–Romanian citizenship.[5] The deputies alleged that the respective officials

were acting against the interests of Moldova and that dual citizenship was threatening the relations between the two countries. In is worth mentioning that in 2010 the European Court of Human Rights ruled that the Moldovan practice of banning dual citizens from holding political office was in breach of human rights (Gasca, 2010). Finally, citizenship issues also play a role in the relations between Romania and Hungary. In this case, however, it is Romania who usually reacts against Hungary's policies targeting part of its population. Hungarian minorities represent about 6.6% of Romania's population and they live mostly in territories that belonged to the Hungarian Kingdom before 1920. In 2003 Romania reacted vehemently against the adoption of the Hungarian kin law that provided special benefits to Hungarian ethnics living outside Hungary. Although the amendment of Hungarian citizenship law in 2010, creating the possibility for persons of Hungarian ancestry to acquire Hungarian citizenship without moving to Hungary, generated strong reactions in Slovakia and Ukraine (Shevel et al., 2010), the issue was largely unnoticed in Romania. This unusual "silence" can be explained by the key role that the main Hungarian party in Romania, the Democratic Alliance of Hungarians in Romania (UDMR), played in the Parliament at that moment. From this short note we can already see how countries can use double standards when assessing the issue of preferential citizenship, namely by rejecting other states' kin policies that target their populations while promoting their own kin policies towards people living outside the countries' borders.

Justifications for preferential ethno-cultural citizenship usually combine claims about positive rights of states, the rights of constituted communities to self-definition, and claims of remedial justice for nations and ethno-cultural minorities. According to positive legal norms, states have a near-absolute right to define and implement rules of citizenship. From a theoretical perspective, states can also be seen as political communities that enjoy a fundamental moral right to self-determination. According to one reading, the right to self-determination implies that states/peoples can adopt whatever citizenship rule they see fit, including preferential rules for particular categories of people. Peter Spiro (2010: 7) seems to embrace this argument when he comments that "if the Hungarian people want to define themselves to include those living abroad of Hungarian ancestry, that is Hungary's business." Spiro invokes Hungarians' right of freedom of association and the right of Hungary to actuate ties with non-residents "to better reflect organic social memberships." However, arguments about freedom of association, natural membership or social integration cannot support a blanket

right of states to exclude. Although it is sometimes argued that preferential admission of some does not amount to an explicit exclusion of others, in practice, hardening the rules of naturalisation for ordinary immigrants while facilitating the admission of "special" foreigners has strong discriminatory effects.

Not all rules of preferential admission are equally problematic. Rules that target former citizens and citizens of other states, for example, become problematic only when they are too wide in scope and when they entail too many privileges. Rules concerning the restitution of citizenship to those who were unjustly deprived of citizenship are the least controversial. However, it is not always easy to define what destitutions should be considered "unjust." Whereas deprivation of citizenship during dictatorial regimes can easily qualify as unjust, claims of restitutions based on, say, historical roots of ancestors are less straightforward. Rules that distinguish between people on ethno-cultural grounds or rules that reward certain ethno-cultural traits in the admission process are the least justifiable.

Part III
Differentiated Membership

8
Normative Framework

Citizens make laws and laws make citizens. Most political theorists have assumed that membership of a political society is a natural fact in which "members enter [...] only by birth and leave [...] only by death" (Rawls, 1993: 12). But there is nothing natural about state membership. In one country new-borns are made citizens with the stroke of a pen, in others they aren't. Some people of ethnic origin can become citizens overnight whereas other people have to wait for decades without the guarantee that they will ever become citizens. Moreover, holding citizenship in one country rather than another can affect dramatically a person's life opportunities. It is thus very important to examine citizenship rules and to identify normative principles that can help us improve these rules.

In the previous Part of this book I focused on ethno-cultural preferentialism, which I considered to be one particularly problematic aspect of citizenship policies. The resilience of ethno-cultural preferentialism in contemporary citizenship rules exposes, I think, our inherited half-liberal, half-nationalist conceptions about membership of a state. I cast doubt over a series of claims about the legal, moral and political legitimacy of membership policies that exclude, include or differentiate among people on ethno-cultural grounds. My next task is to draw a wider circle and to sketch a normative framework of membership that reconciles major concerns about membership of a liberal democratic state.

There are several normative principles that aim to determine the boundaries of the membership suitable for a liberal democratic state. The first such principle is that membership of a state should coincide with membership of a nation. This nationalist proposal promises to cater for fundamental individual interests in the public recognition of their national identity and to address the interests of liberal democratic

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states in the preservation of their political and welfare institutions. As previously shown, this principle has several important shortcomings. Firstly, it is not very useful for determining the boundaries of citizenship because the nation has either the ethereal boundaries of an ethical community or the contingent boundaries of a (nation) state. Secondly, arguments that link cultural homogeneity to the preservation of liberal-democratic institutions fail to show why a shared national culture is superior to, or even distinguishable from, a general political culture. National cultures are, to a great extent, the result of state action rather than preconditions for it. Thirdly, the kind of national engineering that it would take to sort people according to their national identity should be viewed with suspicion. Even if we were to challenge state borders and to bracket internal diversity, the question remains as to whether citizenship in a liberal democratic state should be conceived of as an instrument for national closure.

An alternative to the nationalist principle of membership is the argument about the will of free associations. Although the modern idea of free political association is, I think, important for defining political membership, it alone does help us in establishing the boundaries of state membership. The principle of consent leads to the problem of serial consent because it requires that "*every* individual consent not just to his or her inclusion or exclusion, but also, in the case of willing would-be insiders, to the inclusion of *each* other willing individual" (Abizadeh, 2012: 9) (emphases in original). Because people may legitimately refuse to consent to their own exclusion, Abizadeh argues, serial consent would inevitably lead to global membership. This objection adds to the more obvious criticism about the inaccuracy of describing actual states as consensual communities. I claim that membership of a contemporary state raises complex normative issues that go beyond the liberal concern with consensual politics. The structure of the contemporary international system that leaves no *vacuis locis* where people can move and assemble freely and the ubiquitous character of state coercion generate claims of inclusion that are independent of individual or peoples' consent. However, if we conceive of states as demarcating not only systems of legal coercion but also political communities, I think that it is essential to salvage the consensual element of membership.

The question of membership can also be approached from within the theory of democracy. Unfortunately, democratic theorists have not yet solved the "boundary problem." The problem is that we cannot answer the question about who are the people by asking the people because we do not know whom to ask in the first place. The people should be

constituted before the democratic project can get off the ground. One solution is to include in the decision-making process all those people who are affected by collective decisions. However, this proposal is still imperfect because we cannot know who is affected by a decision before the decision is actually taken. The best way to make sure that no affected interests are left out is to include "anyone who might possibly be affected by any possible outcome of any possible question that might possibly appear on any possible ballot" (Goodin, 2007: 55). In response to Goodin's critique, David Owen (2012) argues that a principle of actually (rather than hypothetically) affected interests is theoretically coherent. However, this principle is not sufficient for determining the boundaries of membership. Apart from concerns about jeopardising conditions for democratic life, the principle of all affected interests cannot establish that being affected by a decision requires inclusion in the decision-making process or admission to citizenship. A more specific version of this principle focuses on the more precise relation generated through subjection to laws. According to the "all subjected principle," membership is owed to all those who are bound by collective decisions because these decisions diminish their personal autonomy. As legal-coercive entities, states ought to include as members all those people on whom they impose coercive laws.

Difficulties arise with regard to the exact scope of coercion, as to whether, for example, the obligation to include concerns all residents or only residents. More conventional views that confine subjection to law to territorial boundaries (Dahl, 1989; López-Guerra, 2005) are challenged by those who argue that non-resident citizens are also subjected to the law (Owen, 2011) or that foreigners who face closed borders are coerced by the state (Abizadeh, 2008). I would add to this that we should not consider only the coercion that individual states exercise (primarily) within their jurisdictions but also the amount of coercion generated through the international system that forces people into a membership or, more exactly, puts them in the position where they have to have a membership. One could argue that it is not the international system as such that generates this coercion, but the individual states that uphold this system. This is true, but I think that it is worth distinguishing between the coercion exercised by a state towards those under its jurisdiction and outside their borders, and the fuzzier but still important coercion generated by the state through its support of an international system in which all other states exercise coercion towards their people and outside their borders. For example, the French state exercises coercion not only over French citizens, residents, and would-be immigrants

(and would-be citizens), but also over, say, people who wish to immigrate (and to become citizens) of Mexico but face legal coercion there due, in part, to the support that the French state lends to an international system that legitimises Mexico's exercise of coercion with regard to its membership policies. I claim that this systemic coercion with regard to membership generates a collective obligation of states to grant individuals access to a position where they could claim membership of a particular state. Notice that this is not an argument for universal inclusion but for a universal opportunity for inclusion. This means that individual claims of inclusion addressed to particular states should still be judged in light of appropriate principles of inclusion.

There is a family of arguments that seeks to solve the problem of membership by referring to membership of a society. According to Ruth Rubio-Marín (2000: 60), immigrants should be granted citizenship automatically after some time of residence in the country on the grounds that, by living in society, they "already belong to the polity." In this case, membership is owed to long-term residents not only because they reside in the country, but also because they depend on the host society in their pursuit of the good life. Joseph Carens (2009, 2010) argues that justifications based on social membership do not rely on shared national identity or on individual or people's consent status. Instead, AQ2 Carens (2010: 24–26) claims, the mere passage of time should provide sufficient evidence of social membership. However, this argument relies on a contested empirical assumption, namely that all residents develop a network of social relationships and a sense of belonging in the local community (Seglow, 2009: 795). It disregards the fact that certain residents live in social and cultural isolation from the local community sometimes for generations. The major objection to the principles of social membership, however, is that it takes for granted the boundaries of national societies/ states. The argument of social membership is not very useful to determine legal membership of a state because social membership is "deeply shaped by legal membership and affected by the legal rules regulating it" (Laegaard, 2012: 44).

Rainer Bauböck (2007a) puts forward a complex principle of membership based on the idea of stakeholder citizenship. He argues that political membership is owed to "individuals whose circumstances of life link their future well-being to the flourishing of a particular polity" (Bauböck, 2007a: 2423). Admission to membership (naturalisation) should then be based on three main factors: (1) dependency on the community for the protection of basic rights, (2) subjection to the political authority for a significant period of time, and (3) an interest

in membership. Although this membership principle has both retrospective and prospective dimensions, it is primarily determined by an interest in the fate of a particular democratic community. This interest can be demonstrated by evidence of actual or past subjection, actual and future dependency on the political community, and by immigrants' commitment to "link their own future with that of the country of settlement" (Bauböck, 2007a: 2419) through their decision to naturalise. The addition of this prospective dimension of membership may challenge conventional views about inclusion since, as "'stakes' correspond to future prospects for well-being, it is questionable whether the borders of existing polities approximate relevant circles of stakeholders" (Beckman, 2009: 40). However, Bauböck's (2007a: 2421) list of "indicators for a presumptive interest in membership" is populated by rather traditional elements, such as present and past residence, descent from or marital links to citizens. Like other proposals discussed here, stakeholder citizenship does not (and does not claim to) challenge the boundaries of the state and the coercion generated through boundary policies and through the state's participation in the coercive international system. The theory does, nevertheless, offer an example of how to combine considerations about objective ties with the country and concerns about subjective commitments to political community to define more complex principles of membership.

From this brief overview of various principles of membership I draw several conclusions. Firstly, a lot of the divergence among membership principles is due to the fact that they are built for different types of membership. Some principles are concerned with territorial admission, others with national membership or membership of a democratic community. If we conceive of membership of a state as a complex overlap of legal, political and identity memberships, we should clarify the normative scope of these principles and then try to reconcile their different perspectives. Secondly, we see that issues of membership are often confronted with the tension between choice and fact. One illustration of this is the "antinomy of incorporation" (Owen, 2011: 651) that comes up in the debate about the inclusion of immigrants. Rubio-Marín, for example, argues that long-term immigrants should be automatically granted citizenship by virtue of their membership in the society. In reply, Bauböck claims that political membership should be offered to those who "link their own future with that of the country." The challenge facing a theory of admission to membership is to take into account the important concerns that inform these two positions without sacrificing one for the sake of the other. Thirdly, membership principles are

also confronted with the tension between individual and communal interests in matters of membership. On the one hand, these interests are inter-related: states cannot exist without people, and people face a bitter fate without state membership. On the other hand, the relationship between the two parties is tremendously unbalanced because the state has discretionary power to make and unmake citizens whereas people have few possibilities to challenge membership policies or to disconnect from a system that entrusts states with powers over membership. In light of this uneven relationship, it is imperative that a regulatory framework of membership should provide individuals with effective guarantees against exclusion and effective opportunities of inclusion. Taking into account these three tensions of membership – between legal, political and national memberships, between the choice and the fact of membership, and between individual and communal interests in membership, I propose a normative framework based on a differentiated model of membership suitable for a liberal democratic state.

Theorists of citizenship have traditionally been more concerned with questions about the substance and domain of citizenship and less interested in the question about admission to citizenship (Bosniak, 2006). Theorising about the "return of the citizen" in political theory, Kymlicka and Norman (1994: 353) argue that "we should expect a theory of the good citizen to be relatively independent of the legal question of what is to be a citizen." This is because questions about citizenship-as-legal-status or formal membership are distinct from questions about citizenship-as-a-desirable-activity or good citizenship. I claim that the distinction between formal membership and good citizenship is important not because it delimits the legal (non-normative) domain from the theoretical (normative) domain, but because it describes two distinct normative domains of membership. There are certainly important differences between the concepts of the legal citizen and that of the good citizen. However, I argue that these differences should be the starting point of the normative inquiry rather than a reason to prioritise one concept over the other. I propose to explore the connections between formal citizenship and good citizenship through a series of distinctions. Firstly, I distinguish between two normative domains of membership: the boundary of membership and the core of membership. Secondly, I distinguish between three types of memberships that are typically bundled together: legal membership, political membership, and identity membership. Thirdly, I dissociate between legal requirements of membership and community expectations with regard to membership (see Table 8.1).

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Table 8.1 Differentiated membership of a liberal democratic state

	Boundary of membership (admission)		Core of membership	
	Community Expectations	Legal requirements	Legal requirements	Community Expectations
Legal membership	Willingness to abide by law	Residence	Law abidance, legal duties (residents)	Social integration, willingness to take up political membership
Political membership	Readiness for political participation and for civic life	Residence Commitment (language)	Legal duties (citizens)	Political participation, civic virtues
Identity membership	Sense of belonging	–	–	Identity practices

*Shaded cells: legal rules of acquisition of membership(s).

Normative domains of membership

The distinction between the boundary of membership and the core of membership is based on the idea that the "membership" of the would-be members is normatively different from the membership of those who are already members. On the one hand, the domain of the boundary of membership encompasses expectations and requirements that should govern the transition from non-membership to membership. These sets of expectations and requirements differ according to the different types of membership in which admission is sought. On the other hand, the core of membership contains the set of expectations and requirements that should govern the membership of the members. As with the case of the domain of the boundary of membership, these sets of expectations and requirements should depend on the type of membership they apply to.

I illustrate the difference between the two domains of membership with an analogy between the admission regimes of public universities and those of states. Public universities are purposeful communities that aim at advancing and transmitting knowledge and at producing knowledgeable and skilful graduates. Their student admission policies are thus geared towards recruiting people who are likely to graduate and who would eventually contribute to furthering knowledge in their specific field of study. Ideally, these universities would prefer to take in people who are likely to become Nobel laureates. However, they cannot raise the bar of admission too high. More importantly, public universities cannot ask candidates for admission to possess a level of knowledge that is equivalent to that of their actual students and they cannot demand AQ4 that pre-selection candidates know and obey internal regulations that apply to already-selected students. Obviously, the analogy between universities and political communities is loose because universities are selective and meritocratic institutions that can justifiably require of candidates for admission evidence that they possess a level of knowledge or competence that is not accessible to everyone. Similar arguments about selective admission policies for membership of a state based on intellectual competence are controversial. However, the point of this analogy is not about the legitimacy of distinctions within the pool of candidates, but about distinctions between candidates and actual members.

Would-be members should not be treated as if they were members and what is expected and required from members should not be expected and required from non-members. This intuition is sometimes expressed in the form of a proportionality test. For example, Richard

Bellamy (2008: 95) argues that "it is invidious to set the membership criteria higher than most existing citizens could attain, for example, by demanding a standard of literacy in the dominant language only achieved by the highly educated." I claim that the standards of admission to membership(s) should not be lower, higher or proportional to standards applicable to actual members, but should be of a different sort. This is because the difference between the boundary and the core of membership is not one of degree but of kind. Thus criteria for assessing the (good) membership of the members should be qualitatively different from those used for assessing the readiness for membership of would-be members.

Legal, political and identity membership

In modern times citizenship plays three distinct and often conflicting roles. Firstly, citizenship qua nationality provides individuals with a status of legal recognition in the state to which they are connected. Nationality also serves as a mechanism that ensures that states have members and that (ideally) all individuals are allocated to states. Secondly, citizenship qua political membership describes a political relationship between citizens and political communities. Although nationality is nearly always a precondition for citizenship,[1] political membership is available only in countries with functional democratic institutions. Thirdly, citizenship qua identity describes various ties of belonging in national, ethno-cultural communities. Despite the fact that the modern world was marked by the powerful ideology of nationalism, which prescribed that state and national boundaries should coincide (e.g. the United Nations), most contemporary states have ethno-culturally heterogeneous societies. I argue that this paradigmatic model of national citizenship that bundles together legal, political and identity membership is problematic normatively and practically. Normatively, it forces us to sacrifice certain important normative concerns for the sake of others by abridging different principles of inclusion to define a one-fit-all model of membership. Practically, this national model of citizenship generates significant problems in terms of membership allocation, such as under-allocation (statelessness), over-allocation (external citizenship), and contested allocation (contested multiple membership). My proposal is to disaggregate this model of national citizenship by distinguishing between three types of membership (legal, political, and identity), which are determined by specific normative principles of inclusion.

Before I say more about these memberships, let me briefly consider several suggestions about alternative models of membership and which were triggered mainly by reflections on the implications of recent waves of international migration. Yasemin Soysal (1994) shows that residents in several Western European countries enjoy a set of national rights that are disconnected from the formal status of citizenship. Linda Bosniak (2006) examines the membership of "aliens" in the American context and describes the blurred boundaries between alienage and citizenship. Elisabeth Cohen (2009) identifies four types of semi-citizenship regimes grouped according to the nature and scope of the rights of residents. Apart from issues about sociological accuracy, these studies raise important questions about the normative significance of citizenship. Citizenship is often praised as a status of full and equal membership of a state. I think blurring the boundaries between citizenship and alienage and applauding forms of partial citizenship that are disconnected from a normative ideal of citizenship as full membership is a misguided approach. Critics of denizenship theories are right to worry that promoting limited forms of membership weakens the premise of equality on which modern citizenship is built. As Randall Hansen (2009: 20) clearly points out, "a literature that celebrates denizenship, permanent residence with economic and social but not political rights, that trivializes national citizenship, is a tribute to mass disenfranchisement." Moreover, the lure of partial inclusion offered by denizenship arrangements is also dangerous because it may discourage people from pursuing full inclusion through naturalisation (Bauböck, 2011a). My worry is that these approaches do not pay sufficient attention to the different types of membership that are combined in the concept of citizenship and to the mechanisms by which people access, loose or transit through these memberships. Bosniak, for example, explored the blurred boundaries between citizens and aliens in the US but did not consider the boundary-crossing mechanism through which aliens become citizens or the other way around (Bauböck, 2011a). I argue that membership categories such as citizens, aliens, denizens, semi-citizens should not be regarded only through the prism of the rights and privileges they enjoy in a particular context, but also through the lens of admission policies that precondition the access to rights and privileges.

Legal membership

I conceive of legal membership as a concept that is similar to that of nationality as prescribed by contemporary international law.

Nationality describes the legal bond between a person and a state that is recognised by other states (Hailbronner, 2006: 36) and a status that entails obligations of protection on the side of the state and duties of allegiance on behalf of the person. In international law this status is linked with a set of important rights, such as diplomatic protection and immigration rights. The right to diplomatic protection has been traditionally regarded as a right of states to protect their citizens, based on the doctrine that "an injury to a state's national was an injury to the state itself" (Spiro, 2011: 704). The rights of citizens to exit from and re-entry into the territory of the state are more recent developments related to the affirmation of human rights. The only adjustment I make to this legal concept is that, in my view, legal membership should entail an entitlement to acquisition of political membership. It must be noted that the term "nationality" can be misleading because it is sometimes associated with ethno-cultural identity (EUDO Citizenship Observatory, 2013). I do not draw any formal link between identity membership and legal membership because I claim that identity membership is not relevant for admission to legal (or political) membership.

Apart from few exceptions, Earth's surface is neatly divided among sovereign states and the people who live on it are methodically distributed among states. As Catherine Dauvergne (2008: 44) notices, "the geography of the globe is 'nationalized'" and "there is no empty, non-national space where people can live beyond the reach of nation." In this system, it is imperative that individuals possess a status of formal membership of a state. Otherwise, they risk falling "between the cracks of the international legal system" (Kesby, 2012: 42). The development of human rights norms in the last decades seems to suggest that citizenship has progressively lost in importance. However, this perspective disregards the key role that citizenship plays in guaranteeing the security of legal status and the access to important privileges. It also fails to acknowledge that citizenship remains a crucial principle in substantive areas of international law, including in core areas of human rights, such as refugee law. It is hard to deny that membership regimes of liberal democratic states have undergone significant changes in recent decades, especially due to increased international migration. In this context, we can see a partial de-linking of certain rights from the status of citizenship. Nevertheless, such forms of 'denizenship' (Hammar, 1990), residential or post-national membership (Soysal, 1994; Jacobson, 1996; Schuck, 1998) remain limited, uneven and uncertain. Even in the European Union, which is one of the most sophisticated post-national projects, EU citizens enjoy full membership rights only in their country

of citizenship (Kofman, 2002), whereas non-EU citizens enjoy more or less generous bundles of rights depending on the EU country in which they reside (Koopmans, 2012b). AQ5

The status of citizenship "determines what rights and duties people effectively have in the state-centric world" (Laegaard, 2012: 44) and having no such status anywhere is a condition of extreme vulnerability. Hannah Arendt (1973) depicts a disturbing account of the condition of statelessness that she equates to a condition of rightlessness. The loss of citizenship means the loss of 'the right to have rights," the loss of the status of legal protection and of "the entire social texture into which they [the stateless people] were born and in which they established for themselves a distinct place in the world" (Arendt, 1973: 293). Although Arendt's account has a precise historical reference, namely the treatment of Jews in Nazi Germany, it should be noted that stateless people face a condition of great vulnerability and disadvantage even in less exceptional circumstances. There are twelve million people in the world, including about 700,000 people in Europe, who do not enjoy a status of citizenship in any country (United Nations, 2011). For these people "only the (re) acquisition of a citizenship brings with it the guarantee of access to the entire gamut of human rights" (Waas, 2011: 29).

If we accept the legitimacy of the international system that recognises states as having the power to grant and withhold citizenship, we must uphold that states have a collective obligation to avoid statelessness. But which state should grant legal membership to which people? A system AQ6 that would distribute people to states at random would ensure that every person acquires a status of legal recognition somewhere. However, this method will probably violate two sets of interest related to legal membership: the interests of persons in the acquisition of legal membership in the state where they live, the interests of states to recognise as members people living in their territories. I argue that the justification for the incorporation of particular people into particular states should be based primarily on the obligation of states to recognise as legal members those people who are subjected to their laws. This basic principle of legal membership is also feasible because every inhabitable square meter of the surface of the planet falls under the jurisdiction of a state and every person in the world is, at any moment, subjected to the laws of a particular state.

Lastly, in democratic states nationals (legal members) are also citizens (political members). Although the concept of nationality in international law does not include political membership, in practice, nationality is a precondition for access to political rights in countries where

these rights are granted. I claim that the link between legal membership and political membership should be normative not contingent. The automatic status of legal membership should include an entitlement to acquire (voluntarily) political membership in order for states to provide an adequate justification of coercion to those subjected to laws.

Political membership

The idea of consent is essential for a liberal-democratic conception of membership. According to John Locke (2003 [1689]: 141), "[m]en being […] by nature all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent." With regard to children Locke (2003 [1689]: 152), argues that "by the practice of governments themselves, as well as by the law of right reason, that a child is born a subjected of no country or government […] [h]e is under his father's tuition and authority till he comes to age of discretion; and then he is a freeman, at liberty what government he will put himself under, what body politic he will unite himself to." Notice that this view challenged the conventional legal doctrine at the time according to which the membership status of children was derived from the natural bond between father and child. Locke contends that residence in the country and the enjoyment of the protection of government could be regarded as a form of tacit consent that obliges a person to "submit to the government." However, he claims that "submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, makes not a man a member of that society" (Locke, 2003 [1689]: 151). The background assumption of Locke's argument about consensual membership is that a person is "at liberty to go and incorporate himself into any other commonwealth; or to agree with others to begin a new one, in *vacuis locis*, in any part of the world they can find free and unpossessed" (Locke, 2003 [1689]: 153). However, these options are not really available to people today, if they ever were to their predecessors. Locke justifies the obligation of residents to obey laws on grounds that they enjoy the protection of government. However, the state should also have obligations towards its subjects (non-citizens) by virtue of the fact that its coercive laws apply evenly to all people in the territory. My adjustment to the Lockean model on consensual membership is the proposal to incorporate non-politically those who are subjected to the law, regardless of their consent. I claim that, whereas admission to political membership should be conditional on individual consent, access to legal membership should be automatic by virtue of subjection to law.

One objection to the argument about consensual political membership is that imposing conditions on admission to political membership prevents the state from adequately justifying coercion to people who are subjected to its law. According to a democratic view on political legitimacy, the state can adequately justify coercion to these people only by granting them the unconditional right to participate in the making of the law. As David Owen (2011: 652) argues, political membership is "a necessary condition of political autonomy." In this respect, Owen distinguishes between conditions of political autonomy and exercises of political autonomy. Whereas citizens' decisions to cast votes in particular elections constitute exercises of their political autonomy, the possession of the status that confers on them the right to cast votes is a condition of political autonomy. The latter cannot depend on a voluntary decision because individuals cannot morally choose to refuse a status that enables them to be autonomous. However, access to a status of full political inclusion is not the only way to justify legal coercion; it is not even the only democratic way. Owen (2012: 147) argues elsewhere that, in the case of people who are affected differently by collective decisions, the justification implies "an equal right of participation," which is not the same as "a right to equal participation." I claim that legal members and political members stand in a different position with regard to membership and that treating them as equals obscures the importance of political membership. Political membership should ultimately be based on a commitment to (long-term) membership of a political community. I admit, however, that democratic legitimacy requires that all residents should have a say in the democratic community. In my view, they should be granted limited participatory rights. As temporary entitlements granted to non-political members who are subjected to law, these limited participatory rights should be strictly conditional on residence in the country. Although they may include voting rights at both local and national levels, these entitlements should not include candidacy rights. This is because political representatives act on behalf of the political community and at least presumptively in the pursuit of a common good. If legal members wish to represent the community, they should express this publicly by becoming political members.

The qualitative difference between political membership, on the one hand, and legal membership and limited participatory rights, on the other hand, is reinforced by conditions regarding the intergenerational transmission of memberships. I argue that only political members should be entitled to transmit legal membership because this creates preconditions for the intergenerational continuity of political

community. Legal members who are unable or unwilling to commit to political membership should not enjoy the right to transfer legal membership to their children (via *ius sanguinis*). It is important to clarify that this limitation is relevant only for the case of children born to legal members outside the country. This is because all children born in the country should be entitled to legal membership by virtue of subjection to law (via *ius soli*).

Another objection to consensual membership is that the requirement of consent/commitment is not sufficient to ensure that would-be members are fit for political membership. There is a wide consensus nowadays that liberal democracies require not only fair procedures and principles of justice, but also citizens who share certain community-oriented qualities, attitudes, and identities (Kymlicka and Norman, 2000). Promoting good citizenship is an important, albeit delicate, business of the state. Many public policies do, in fact, foster civic values, attitudes and dispositions. Policies, such as public education, do not only aim to influence individual behaviour by encouraging or discouraging certain courses of actions, they also promote certain modes of thinking and feeling about actions and things. It can be argued that the state has a "duty to create a certain kind of political culture and to foster certain attitudes and dispositions" (Carens, 2013: 53). The problem arises when the state is confronted with newcomers. Because immigrants typically arrive in the country as adults, they are not thoroughly exposed to various state policies promoting good citizenship. It seem legitimate then for the state to use the admission process as a fast-track channel for promoting certain values, dispositions and skills that are essential for the well-functioning of a liberal-democratic community.

In line with the distinction between the boundary of membership and the core of membership, I argue that liberal democratic states should not translate directly concerns about good citizenship into principles and criteria of admission to (legal and political) membership. I agree that a democratic community has a fundamental interest in the continuity of its project of self-government. However, I claim that this interest should be filtered through a series of normative constraints related to membership of a liberal democratic state. One of these constraints is that legal members have an entitlement to political membership by virtue of the fact that they are subjected to law. In my view, the fundamental interest of political communities in the continuity of the democratic project only justifies the requirement addressed to would-be members to publicly commit to political membership.

Identity membership

Liberal nationalists argue that nations are important moral communities and that we should care for their survival. They celebrate national identity because it is constitutes a fundamental individual interest and also because common national identities are instrumental for the well-functioning of democratic and welfare institutions. Although I agree that culture and identity are important individual interests and that politics cannot happen in a cultural vacuum, I worry about the ways in which states undertake to promote and reproduce national cultures.

It is a fact that nearly all states are engaged "in the business of nation building" (Tan, 2005: 51). Democratic politics is "politics in the vernacular" (Kymlicka, 2001a) and, as Carens (2004: 121) put it, "there is no political equivalent to vegetarianism when it comes to culture." Liberal nationalists justify this state of affairs by arguing that national identity is a fundamental individual interest that ought to be recognised and supported by the state. Interestingly, claims about the protection of ethno-cultural identity are uttered equally by minorities and majorities (Bader, 1995: 220). On the one hand, minorities demand the dissolution of the cultural monopoly of national citizenship in the name of ethno-cultural justice (e.g. Kymlicka, 1995). On the other hand, majorities claim control over the boundaries of membership to preserve the cultural integrity of the nation (e.g. Miller, 2000). In this war of position, "majority" nationalists often borrow justifications from "the ethical and rhetorical resources of multiculturalism" (Tebble, 2006: 466). As Joppke (2010: 25) notices, there is a sort of "pact with the nation state," in which national minorities agree that states should regulate nationality/citizenship in exchange for the recognition of minority rights. This is apparent in Kymlicka's (1995: 125) point about the right of liberal states to control immigration "not only to protect standards of rights and opportunities of individuals, but also to protect people's cultural membership." Kymlicka (2001b: 267) argue elsewhere that states can justify their projects of nation building, including the control over admission to territory and citizenship, only "so long as there is no gross economic inequalities between nations." In the context of pervasive global inequalities, states may lose their right to control borders and boundaries if states fail to discharge their duties of (global) justice. However, I think that discretionary state policies of admission are problematic even in an ideal world where issues of global justice do not arise.

If we accept liberal nationalist claims about the importance of national identity for individuals and groups, we should also agree with the "establishment of certain nationalised institutions for the purpose

of promoting and securing a cultural identity in the name of self-determination" (Tan, 2002: 438). Notwithstanding complex issues about national self-determination, I accept that domestic projects of nation building are, in principle, justifiable. Apart from a concern with respect for liberties, freedoms and democracy, states should also address claims advanced by individuals and groups in the name of identity and culture. States can also use domestic policies to promote models of good citizenship and foster national identities. They should, for example, "promote a distinctly multinational conception of citizenship if they are to be fair and effective" (Kymlicka, 2011). However, I claim that membership policies should not be among these nationalised institutions.

Lastly, there is the question of whether states could promote ethnocultural ties across borders. I argue that that they could as long as such trans-border and trans-national policies do not create entitlements and privileges of legal and political membership. As we saw in the case of kin laws in Central and Eastern Europe, these policies of belonging are often riddled with dilemmas and they are likely to generate international tensions. This is why states which design such policies should state clearly that these links are not substitutes for legal or political membership. They should also take into account the view of other states concerned. Such policies should resemble those of the *Organisation internationale de la Francophonie* rather than the collective naturalisation policies of the Third Reich.

Legal requirements and community expectations

The third and last conceptual layer of my framework is given by the distinction between community expectations and legal requirements. This distinction applies in both normative domains of membership and across all three types of memberships. However, because I claim that identity membership falls outside the scope of laws of admission, this distinction only applies to legal and political memberships. Apart from the qualitative difference between the membership of would-be members and the membership of members, the distinction between community expectations and legal requirements is intended to illuminate the general limits of law with regard to policies of membership.

Legal requirements that aim to assess peoples' beliefs, commitments or subjective belonging are problematic because they blur the boundary between morality and legality. As Christian Joppke (2008b: 542) argues, rules of membership that scrutinise people's "inner disposition" transgress "the thin line that separates the regulation of behaviour from

the control of beliefs." Although it is desirable that citizens possess certain civic attitudes and beliefs, such beliefs and attitudes "cannot be controlled by legal stipulation and government declaration" (Seglow, 2009: 789). Concerns about the social and cultural integration of immigrants are surely not trivial, but this integration remains "simply an aspiration" (Carens, 2005: 39). Apart from issues of moral intrusiveness, membership rules that prescribe standards of socio-cultural integration or belonging are dangerous because they entrust public authorities with discretionary powers. As Carens (2009) worries, "there is something presumptuous in imagining that one person can make nuanced judgments about how deeply another belongs to the society in which she lives."

9

The Regulation of Legal and Political Membership

AQ1

In this chapter, I develop the proposal for a differentiated membership by explaining how legal and political memberships relate to each other and how they reinforce one another through rules and conditions regarding the acquisition and loss of memberships. Before I delve into these arguments, I address an important critique of (birthright) citizenship from the perspective of global justice.

It is no mystery that in the contemporary world the possession of a particular citizenship has a significant impact on individual prospects of welfare and opportunities. Children born in rich states or to citizens of rich states enjoy, on average, greater opportunities than children born in poor states or to citizens of poor states. According to a prominent view, the distribution of citizenship is not a matter of social justice. For example, Rawls' (1999: 7) theory of social justice applies only within the bounds of closed [national] societies. Rawls (1999: 118) does not count citizenship among those contingent individual features, such as class position, social status, natural assets and abilities, that should be put behind the veil of ignorance, which is set up to help reaching an agreement on principles of justice. However, critics retort, the distribution of citizenship at birth is also arbitrary (Carens, 1987: 252; Pogge, 1989: 247; Beitz, 1999: 138). Excluding contingent citizenship from the scope of justice leads us to the situation in which "an arbitrary distinction is responsible for the scope of the presumption against arbitrariness" (Nagel, 2005: 128).

Shachar (2009) offers a powerful critique of birthright citizenship, which she blames for contributing to the preservation of the current unjust global system. Shachar aims to reform the system of citizenship allocation without making radical changes in the structure and the scope of citizenship. Firstly, she proposes to establish a birthright

levy through which citizens of rich states compensate those less fortunate people who were born in poor states. Secondly, she puts forward the principle of *jus nexi* citizenship, according to which citizenship is attributed to persons who demonstrate "real and effective link" with the polity (Shachar, 2009: 165). Shachar seems to hesitate between, on the one hand, preserving birthright citizenship for the sake of taxing it to benefit the global poor and, on the other hand, abandoning birthright entitlements for the sake of establishing citizenship on sounder normative grounds. Although she hopes to "free up citizenship from its current umbilical cord attached to fixed inheritance regimes that lock the vast majority of the world population in countries in which chance, not choice, has placed them" (Shachar, 2011: 15), her proposal may allow states to pay a birthright citizenship levy in exchange for keeping borders closed. This could, in fact, strengthen the said umbilical cord as states would chose to pay to prevent people from moving in. Shachar is right to question the actual system of membership making, but she is too quick to link directly admission to citizenship to remedies for global inequalities. I share with Shachar the belief that focusing on the transfer mechanism of citizenship constitutes a promising way forward and also the belief that we could strike a better balance between different normative perspectives, global justice included, that are relevant for the issue of membership. But I think that, despite Shachar's efforts to strike such a balance "without substantively detracting from the participatory and enabling qualities of membership of a self-governing polity" (2009: 22), she finishes by prioritising the perspective of justice over the perspective of political membership.

The acquisition of legal membership

The principle of birthright citizenship lies at the heart of the contemporary system of membership. Apart from criticism about the ethnocultural character of birthright citizenship, critics also deplore that this mechanism of citizenship attribution is unjust and illiberal. It is unjust because it allows for the perpetuation of global inequalities and it is illiberal because it ascribes citizenship on the basis of arbitrary facts of birth. In what follows I argue that birthright membership can be justified in the form of birthright legal membership. Legal membership ascribed at birth guarantees the legal inclusion of children who are subjected to the authority of the state. This principle also serves the interests of the parents in securing for their children the opportunity to participate in their own political project. Moreover, birthright legal

membership ensures the continuity of democratic community because it generates an entitlement to acquire political membership.

Ius soli membership

There is a wide consensus amongst theorists about the obligation of states to offer resident immigrants the possibility to acquire citizenship. With regard to the obligation to make citizenship available to children of immigrants, the consensus is even wider. In practice, however, only a minority of countries grant citizenship to children born on their territory and they usually do so by imposing additional conditions. In what follows, I develop two arguments for why states should grant legal membership to children born on their territory. The first argument is about the collective obligation of states to avoid statelessness. The second argument is about the obligation of states to justify coercion to those who are subjected to their law.

In today's world it is imperative that each individual enjoys legal membership of a state. Because the world is neatly divided in autonomous states, stateless people have a strong claim to citizenship in the country where they live. The claim is even stronger when it comes to children and especially to children who are stateless at birth. A further distinction can be made between stateless children and children who are found in the territory of the state (foundlings). In the latter case, children not only lack membership but also lack identifiable parents. Because the condition of foundlings is one of extreme vulnerability, I argue that the state of residence should grant them legal membership automatically. Stateless children should also be entitled to legal membership in the state where they are born because they have no other state to turn to. One could imagine a situation in which a country might volunteer to grant legal membership to stateless children despite AQ2 those children not having been born in that country and not residing in that country. This solution is insufficient because stateless children have a strong claim to legal membership in the country where they were born and in which they reside.

The fact is that most children are entitled to citizenship at birth by virtue of descent from citizens. Does this waive the state's obligation to grant citizenship to children born in the country? I argue that the fact that a child is entitled to another legal membership does not release the state where the child was born and where the child resides from the obligation to grant that child access to legal membership. States are territorial systems of legal coercion. Children born on the territory of a state are thus legally coerced by the state from the very moment of their

birth. In fact, state coerces the "person" even before his or her birth, for example through regulations regarding prenatal testing or abortion. The law can be seen as predetermining, to some extent, the very birth and existence of a person. This enhanced dependency of new-borns on the state persists long after birth through the web of norms and institutions that regulate her life and that of her parents. For example, state policies regarding access to vaccines and care institutions have tremendous effects on children. The same can be said about regulations regarding the rights and benefits of their parents. This condition of great vulnerability and enhanced dependency of children on state regulations and institutions creates a strong obligation on states to grant children born on the territory a status of legal recognition. Although I focus here on children born on the territory, the argument can be extended more generally to children born abroad but residing in the country.

AQ3

One objection to this argument is that, although states may have moral obligations to provide assistance to children born on the territory, granting these children access to adequate care without actually making them legal members fulfils these obligations. This objection assumes that all countries apply a Western standard of legal protection and that access to welfare institutions is always independent from the status of legal membership. Although this may be true for many countries in our survey, this is far from a global reality. Even in those countries where such standards apply currently there is no certainty that this may not change in the future. I claim that the condition of vulnerability and dependence of children requires that they enjoy a secure status of legal protection and access to adequate welfare institutions that only legal membership in the country of residence can securely provide.

AQ4

Another objection to *ius soli* membership is about the abuse of this entitlement in the context of state efforts to control immigration. As the experience of countries that maintain unqualified rules of *ius soli* shows, foreigners may circumvent immigration policies by arranging to give birth to a child on the territory. This phenomenon goes under many names, such as "maternity tourism," "citizenship tourism," "anchor babies," "passport babies" (Grossman, 2008: 112). For example, in the case *Chen v. Home Secretary*, it was alleged that Man Lavette Chen, a Chinese women working in Great Britain, gave birth in Ireland for the sole purpose of obtaining Irish citizenship for her child and thus for securing for herself the right to reside and move within the European Union by virtue of the fact that she was the primary caregiver for a EU citizen. This and other similar allegations forced Ireland to amend its *ius soli* provisions by introducing additional conditions with regard

to minimum residence of parents. In the US the debate is fought over the interpretation of the 14th Amendment of the Constitution that recognises as citizens "all persons born or naturalised in the United States, and subjected to the jurisdiction thereof." The contention is about whether this clause should include children born to people who entered the country without authorisation, as it is currently interpreted, or whether these children should be regarded as not being "subjected to the jurisdiction thereof" (Freere, 2010). As Schuck and Smith (1996: 21) argue, the entitlement to automatic citizenship for children of illegal migrants jeopardises community's power of self-definition.

In light of criticism about accidental or abusive birthright entitlements, I accept that states could delay the granting legal membership to non-stateless children born in the territory. This delay also serves the purpose of avoiding the imposition of legal membership on non-stateless children who are born incidentally in the country. If children continue to reside in the country, they should be granted legal membership automatically after a certain period of time. The worry is that this may give states an incentive to deport parents (and children) before they are entitled to automatic membership. Although I do not address issues of immigration directly in this project, I assume that states face important normative constraints with regard to immigration policies (see Carens, 2013) that may preclude at least some of these initiatives. Lastly, although normative theory cannot provide an uncontested answer to the question regarding the length of the period of time during which states can delay granting membership to people, I would argue that this period should not be longer than the one specified by rules regarding the naturalisation of adults.

The last objection I discuss here is that *ius soli* provisions are not needed because most children receive legal membership from their parents. First of all, this argument underestimates the importance of those cases in which children fail to acquire legal membership through descent. Secondly, the entitlement to birthright membership is based on the obligation of states to justify coercion to those who are subjected to law, which is independent of whether children enjoy citizenship in another state. This argument is also independent of the moral or legal relationship established between children and parents. In this view, states should protect children born on their territory as if they were foundlings. This is not to say that states should not recognise and cherish family bonds. It is to say that, in the context of membership policies, these bonds are less relevant than the obligation of states to justify legal coercion to persons born and residing in the territory.

Currently there are very few countries in the world that grant *ius soli* citizenship without conditions regarding facts about parents (e.g. the US, Canada). The most common condition of *ius soli* is related to parental status (legal status, length of residence). All countries in Europe that have *ius soli* provisions require that parents should have been residents for some time before the birth of the child or that the parents themselves should also have been born in the country. I think that these additional requirements unjustifiably bring considerations of immigration policy into the domain of membership. Such conditionality is not justified in light of the state obligation to justify coercion to those who are subjected to law. In this case, the status of parents is irrelevant for the moral claim of the children to legal recognition (Lister, 2010: 214–15). As Ngai (2006: 2526) maintains, "to deny citizenship to a person based on her parents' illegal status is to punish the child for the behaviour of the parent, something we have long recognised as morally and legally wrong." Although parental residence may indicate a strong connection with the country, conditioning access to membership on this fact is unfair towards children because "it introduces a condition that the child cannot fulfil" (Honohan, 2010: 8). Children's claim to *ius soli* membership does not rely primarily on their bond with their parents or on the links established between their parents and the state. This claim should be based on the unmediated relationship of coercion and dependency that exists between children and the state.

Ius sanguinis membership

The predominant method of attribution of citizenship at birth in the contemporary world is through descent. It is, indeed, surprising that "*ius sanguinis* provisions have received relatively little attention in political debates as well as in the academic literature" (Vink and De Groot, 2010a: 5). I discuss here three justifications for *ius sanguinis* (legal) membership. The first justification is that granting legal membership to children of citizens ensures that children do not become stateless. The second justification is that attributing legal membership to children of members recognises constitutive ties between children and parents. The third justification is that the mechanism of transmitting membership through descent ensures the intergenerational continuity of the community.

The argument about avoiding statelessness seems pertinent if one takes into account that only a handful of countries have comprehensive rules of *ius soli*. In an ideal world in which all states have adequate *ius soli* provisions, the argument about the obligation of states to grant

ius *sanguinis* in order to avoid statelessness loses force. In the real world, however, in the absence of *ius sanguinis* provisions, children of citizens born abroad in countries that do not have *ius soli* provisions become stateless.

The second argument for *ius sanguinis* membership is about protecting the constitutive ties existent between children and parents. Defending a fashionable doctrine in his time, Emmerich de Vattel (2008 [1797]: 218) argued that "it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it… the country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent." This conservative argument is rejected by Locke (2003 [1689]: 124) who, although maintaining that fathers have a duty to "care of their offspring during the imperfect state of childhood," claims that children are "subjected to no country or government." What Locke means is that children do not become citizens (political members) by virtue of their natural bonds to their parents, but only after they give their consent to political membership. However, although children should not yet be considered political members, I claim that they should be recognised as legal subjects in the state where they are born and reside. As argued before, this generates a strong claim to *ius soli* citizenship that is independent of the constitutive ties between children and parents.

Should these constitutive ties be relevant in the case of children born outside the country where their parents enjoy citizenship? Carens (1992: 27) argues that birthright membership "is morally required because children are born into a community with ties to others that should be acknowledged." Even Shachar (2009: 153), who delivers a sweeping critique of inherited citizenship, contends that "an affiliation-oriented relational approach that takes family ties and intergenerational continuity seriously provides strong support for inherited membership entitlements." The question is whether the mere fact of descent should be regarded as a sufficient indicator of a genuine relationship between the child and the country where his or her parents enjoy membership. In response to criticism about the uncertainty related to whether children would eventually actualise their inherited ties, Carens (2013: 25) argues that, in any case, "citizenship policy should err on the side of inclusion." Carens' prudential argument in favour of (over-) inclusion makes sense if one takes seriously the risk of statelessness.

In *Genovese v Malta* the Strasbourg Court linked the acquisition of citizenship with the social identity of a person. Despite the obviously inclusionary character of this development, one should not overlook

the dangers that lie behind proposals to link citizenship and social identity. As mentioned with regard to theoretical arguments about social membership, conditioning membership on social ties or identity may actually lead to the exclusion of those who refuse or fail to develop particular ties and identities. Moreover, the recognition of Genovese's claim to the citizenship of a country to which he had fairly tenuous links contrasts sharply with the less audible claims of those countless immigrants who struggle to acquire citizenship in the country where they live.

Entitlements based on descent and family ties lead to a series of problems related to gender equality and the legal definition of the family. Although more traditional practices of gender discrimination with regard to the acquisition and transmission of citizenship have generally faded out, one can still find problematic cases, such as when men are denied the right to transmit citizenship to their children when they are born out of wedlock and to a foreign mother. Although this may be considered a rare case in which discrimination is directed against men (Vink and De Groot, 2010b: 12), it also reinforces "gender-based stereotypes of female caregiving and bonding as the paradigmatic case of 'real, everyday ties' between a parent and a child that merits recognition by the state" (Shachar, 2009: 156). Additional challenges arise with regard to competing legal and socio-cultural conceptions of family and marriage, as well as with regard to new reproductive technologies. For example, the spread of surrogacy arrangements – "prefertilization agreement to carry a child for another" (Mortazavi, 2012: 2250) – poses novel legal, ethical and philosophical challenges that have direct relevance for the issue of citizenship. In the case of cross-border surrogacy, where people go abroad and arrange with foreign surrogate mothers to give birth to "their" children, there are serious risks that the resulting children remain stateless due to conflicts of citizenship laws. For example, according to British and German laws, the surrogate mother is the legal parent and she should be able to transmit her citizenship to children resulting from a surrogacy arrangement via descent, regardless of whether she is genetically related to the child or not. However, countries that encourage surrogacy services, such as Ukraine and India, do not recognise the surrogate mother as the legal parent and thus the resulting child cannot acquire the citizenship of the surrogate mother via *ius sanguinis*. These and related issues about the legal recognition of constitutive ties between gays, lesbians, or unmarried people are important challenges to the development of membership regulations, which are unlikely to be addressed successfully by relying on traditional interpretations of *ius sanguinis*.

The last argument in defence of *ius sanguinis* membership I address here concerns the intergenerational character of political communities. As Arendt (1993: 61) notices, the "human world is constantly invaded by strangers, newcomers whose actions and reactions cannot be foreseen by those who are already there and are going to leave in a short while." This "existential" condition of human communities generates concerns about the intergenerational preservation of these communities. It must be noted that the argument about intergenerational continuity can be invoked with regard to different types of communities: the state (population), the democratic community (demos), or the ethno-cultural community (nation). In the first case, the concern is about ensuring that the state does not run out of people thus failing to satisfy the basic condition of statehood, which requires states to have permanent populations. In the second case, the concern is about the capacity of a democratic community to produce and reproduce citizens who have a minimum set of civic skills and attitudes to make democratic politics possible. In the third case, the argument is about preserving the intergenerational project of a particular ethno-cultural community.

The method of attributing membership at birth can be seen as a convenient administrative tool because birth is usually an officially recorded event. However, although considerations of convenience can explain the prevalence of birthright membership rules, they cannot justify them (Shachar, 2009: 141). Bauböck (2011b: 667) argues that the allocation of membership at birth is morally defensible because it underpins the "formation of stable political communities with a potential for comprehensive self-government." Since democracy requires a stable and bounded demos (Bauböck, 2007a: 2420), the method of birthright membership ensures that membership in the democratic community is not random or erratic. According to Christine Chwaszcza (2007: 176), birthright citizenship can be regarded as a "convention of recognition" that helps identify those individuals who are sufficiently connected to the community is a way of ensuring democratic unity and political continuity. The method of birthright citizenship can also be seen as "a shorthand for interdependence" (Honohan, 2002: 287) and a "proxy for future involvement in the country" (Shachar, 2009: 112). I claim that these arguments are suited for defending birthright legal membership and not birthright political membership. For example, it seems problematic to assume that children born in the country or those born to citizens are more prepared for political membership than others. Chwaszcza (2009: 464) admits that "democratic unity…require[s], first, shared political institutions and second, a fit of mutual political

attitudes, neither of which can be considered a privilege of citizens by birth." Although I agree that democracies have a fundamental interest in promoting a set of civic attitudes and virtues, I do not see how attributing political membership at birth would guarantee that members actually uphold civic attitudes and virtues.

The idea of intergenerational continuity can be used by nationalists to defend preferential ethno-cultural membership. We saw that liberal nationalists claim that members of a nation have a fundamental interest in having access to an autonomous public sphere in which they can express and develop their national project. They also insist that members of a nation have an interest in ensuring the preservation of the meaningfulness of their inter-generational endeavours (Tamir, 1993; Gans, 2003). As I showed previously, these claims are problematic on many counts. My point is that, because nationalist arguments cannot specify the boundaries of the nation and because claims about the moral importance of the nation cannot be translated into ethno-cultural criteria of membership, we should dismiss nationalist considerations when establishing principles of legal and political membership.

The acquisition of legal membership after birth

Admission to legal membership should not be a function of people's identity, loyalty or socio-cultural integration. States owe legal membership to all those who are subjected to their laws. This straightforward principle runs into problems because it recommends that tourists and people transiting the country should automatically be granted legal membership. This problem arises because the principle of membership that relies on the subjection to law is a "non-scalar principle" (Owen, 2010: 64), meaning that we cannot argue that permanent residents are more subjected to law than temporary residents. To avoid the problem of over-inclusion, I accept that states can be justified in delaying admission to legal membership to people who are subjected to its law to protect the integrity of the process of membership-making. To provide adequate legal protection to those subjected to their law, states must, at least, be able to knowwho are their subjects at any point in time. The grant of legal membership to tourists and people in transit is likely to undermine the state's capacity to make predictions about the needs of their members and about the adequate allocation of scarce resources.

There is little we can say about the duration of the waiting period before states should grant legal membership, apart maybe from saying that denying residents access to legal membership for too long

is problematic. But how long is too long? Marc Howard (2006; 2009) suggests that naturalisation conditions that ask up to five years of residence indicate "liberal" citizenship. The 1997 Convention imposes an upper limit of ten years for the same requirement. My proposal is that residents should not be arbitrarily denied the opportunity to vote in two consecutive parliamentary elections in the country where they live. Taking that the average time span between two consecutive parliamentary elections in democratic countries is four years (Nordsieck, 2013), this implies that residents should be granted legal membership and, hence, an entitlement to acquire political membership, within eight years after they enter the country. In the meantime, however, non-members who are subjected to laws should enjoy basic legal protection. When these non-members are granted legal membership, they will enjoy a greater bundle of rights and privileges, namely: security of residence, immigration rights, the right to diplomatic protection, and, most importantly, the entitlement to acquire political membership. It is, however, not before these legal members acquire political membership, that they should enjoy full political rights in the country.

The acquisition of political membership

There is an important normative difference between legal membership and political membership. Whereas legal membership is owed by the state to all those subjected to law, political membership, I argue, requires the establishment of a political connection between the person and the political community. I claim that legal members should become members of political communities only through an act of explicit public commitment. This implies that all legal members, including the "native" ones, should give their explicit consent before they can be recognised as political members. Because I conceived of political membership as based on a consensual and unrepeatable relationship between a person and a political community, one cannot inherit political membership. Children could certainly inherit an expectation to develop a consensual political relationship with the political community of their parents, but this expectation should be later actualised through legal membership and through an explicit act of public commitment to political membership. To use another term from current membership language, every new-born is a political foundling. In Lockean fashion, I claim that new-borns are not yet members of any political community and that no political membership should be imposed on them at birth or afterwards.

So far I have argued that admission to legal membership is due to all those who are subjected to law. To avoid accidental or abusive conferral of citizenship, states may delay granting such status for a certain period of time. Beyond this period, however, residents should automatically be recognised as legal members. Moreover, the status of legal membership includes an entitlement to acquire political membership if legal members make an explicit commitment to political membership. The difficult question is whether the political community can refuse political membership to legal members who wish to become political members. It is important to note that claims to political inclusion are not claims against states in the way that claims to legal inclusion are. Claims to political inclusion are claims against political communities that exist within states. In this case, the right to acquire political membership, although an entitlement of all legal members, should be reconciled with the fundamental interest of political communities in democratic continuity. This means that rules of membership should not threaten the project of democratic self-government to which would-be members wish to adhere. Thus, in principle, legal members can be refused or delayed access to political membership in order to ensure democratic continuity. However, the power of democratic communities to refuse or delay access to political membership is greatly limited by other normative constraints regarding membership of a liberal democratic state.

The fundamental interest of political communities in democratic continuity can be addressed by applying the principle of democratic recognition. This principle requires that would-be citizens recognise other citizens and are recognised in return as equal members in a self-governing polity. To be recognised as political members, individuals should be willing and able to publicly commit to political membership. Unlike arguments that link democratic continuity to national identity (Miller, 2008) or intergenerational community (Bauböck, 2011a), the principle of democratic recognition reaffirms the essentially consensual character of democratic membership. The requirement that would-be political members publicly commit to political membership serves two purposes. Firstly, voluntary commitment to political membership ensures that this membership is not imposed on people at birth or afterwards. This is consistent with the conception of political membership that is based on a consensual relationship between a peon and a political community. Secondly, the requirement of public commitment is intended to reassure citizens that would-be members recognise the existing members as equal members of a political community. It reassures the members that "others share basic political attitudes and

commitments" (Chwaszcza, 2009: 462). According to Chwaszcza (2009: 461), "liberal theorists must concede that the functioning of democratic practice requires some form of unity of the people that is understood as a moral qualification of the political attitudes of citizens or, as may be said, political virtues." With regard to admission to membership, Chwaszcza (2007: 176) claims that "it is the privilege of a democratic demos to define its criteria of recognition horizontally *within the limits of normatively and socially justifiable reasons*" (emphasis added). I claim that the privilege of self-definition conceded to the demos is heavily constrained by a series of "normatively and socially justifiable reasons."

Arguments against the discretionary right of democracies to regulate membership have been raised from different perspectives. Deploring the exclusion of long-term immigrants in Western societies, Walzer (1983: 58) argues that a democratic people cannot legitimately prevent long-term residents from acquiring full political membership. According to Rubio-Marín (2000: 60), a political community does not have the right to exclude those "whom it should consider full members according to democratic principles." Joseph Carens (2010: 40) also argues that "the question of who belongs should not be seen as simply a matter of discretionary choice whether made by political authorities or even by the majority of the citizenry." Bauböck argues that the justifications of democratic membership should be centred on the idea of self-government. Although "everybody has a right to equal membership of a self-governing political community" (Bauböck, 2009b: 478), this does not imply that everybody has a right to membership of any political community. Even those who satisfy the conditions for admission to citizenship should not be granted citizenship automatically. In Bauböck's (2007a: 2419) view, to be recognised as citizens, immigrants should make an explicit gesture of commitment to the political community by "visibly link[ing] their own future with that of the country of settlement." I agree with Bauböck that admission to citizenship should be based on some sort of explicit commitment to the political community. But I insist that "citizenship" should mean only political membership. In my view, long-term residents who, for some reason, fail to link their future with that of the country should, nevertheless, be granted the status of legal membership in virtue of their mere subjection to law.

The right of democratic communities to control membership is not only limited by a true reading of democratic principles, but also by other constraints related to membership of a contemporary state, including the imperative to avoid statelessness, the obligation to justify coercion, constraints derived from the distinction between the boundary and the

core of membership and between legal requirements and social expectations. This should be kept in mind when translating the principle of democratic recognition into criteria of admission to (and loss of) political membership. First of all, these criteria should take into account that legal members have an entitlement to acquire political membership in virtue of their subjection to law. I argue that the principle of democratic recognition can be satisfied through the requirement that legal members commit publicly to political membership. This act of commitment has two crucial features: voluntariness and publicity. The condition of voluntariness ensures that a genuinely consensual link is established between the person and the political community. It also mitigates the problem of non-consensual membership by leaving the person "at liberty what government he will put himself under" (Locke, 2003: 152). The condition of publicity guarantees that the commitment of the would-be citizen is actually heard and understood by the current members of the political community. This can be achieved by asking would-be political members to take an oath and sign a declaration of commitment in the language(s) spoken in the country.

Political communities do not presuppose linguistic or cultural homogeneity (Abizadeh, 2002). My insistence on a linguistic requirement for admission to political membership (and not for admission to legal membership) does not derive from a concern about national identity or about the socio-cultural integration of citizens. It originates from a concern about the effective communication of a political disposition that makes possible political membership. In practice, of course, there are serious concerns about the effectiveness of such a minimalistic linguistic condition. Almost anyone could learn several sentences by heart and then repeat them mindlessly before an audience. For this reason I think that it is permissible for states to require would-be political members to attend free language courses or to ask those who want to be exempted from these to do a language test. It is also important to organise membership recognition ceremonies in which would-be members could effectively express their commitment to political membership.

Harsher admission requirements, such as citizenship tests and social integration clauses, are problematic because they translate concerns about good citizenship into unwarranted criteria of admission. Although it can be argued that political commitment can be fostered by a shared national identity, or by feelings of cultural belonging or social integration, it is not pre-conditioned by any of these. According to Iseult Honohan (2002: 287), continuous residence in the territory for some time and a "declared and evident intention to remain living

in the country" should constitute proofs of commitment to membership. I agree that admission to political membership should imply an explicit act of commitment, but I think that the object of such commitment should be the intention to remain living in the political community rather than in the territory. Issues about the membership of non-resident citizens are certainty important but they are better assessed in the context of norms regarding the transmission and loss of membership.

The loss of membership(s)

In principle, legal members should lose their legal membership after a period of residence abroad, provided that they possess a status of legal membership in another state. This territorial character of membership is due to the fact that admission to legal membership is triggered by subjection to law and because I define subjection to law in terms of residence. The condition of dual membership for the enforcement of rules of loss of membership has to do with the state obligation to avoid statelessness. This is because statelessness remains a problem even if all states adhere to the admission principles proposed in this book. For example, imagine that a person is a legal member of a country but lives abroad changing her or his country of residence every, say, four years, before any of these countries of residence grants her or him legal membership. If the country of origin withdraws legal membership to this person on grounds of residence abroad, the person becomes stateless. It is thus reasonable to argue that the period of residence abroad that triggers the loss of legal membership should be considerably longer than the one required for the admission to legal membership. It is also reasonable to argue that re-establishment of residence in the country for a period of time before the procedure of loss of membership begins, should reset the clock.

The case of political members is different because these members have established a political relationship with the country. However, because democracies are essentially territorial projects of self-government, the political relationship established between members and the community fades in the absence of a residential link. It is thus justified to withdraw political membership from people who reside abroad for a long period of time. This period may be at least as long as the one specified by the procedure for withdrawing legal membership from non-resident legal members. In this situation, the state should first withdraw political membership, but allow the person to retain legal membership. If the

person does not take up residence in the country for a period of time she or he also loses legal membership. AQ6,7

The link between legal membership and political membership is reinforced through the inter-generational transmission of membership. If legal members do not choose to become political members, they should not be able to transmit legal membership to their children. If their children are born in the country and continue to reside there for a period of time, they will, nevertheless, receive legal membership through provisions of *ius soli*. The children of legal members who are not born in the country, however, cannot receive legal membership from their parents. This restriction should not apply to children of political members who should be able to receive legal membership from their parents, regardless of whether they are born in the country or abroad. This distinction is justified because one of the justifications for *ius sanguinis* membership is that political members have a legitimate expectation that their children will develop ties with their political community. I think that such expectation is weak in the case of children born to parents who, although legal members, failed to develop political ties with the community.

Lastly, I shall say a few words about dual or multiple membership. First of all, this analysis assumes a state-centric perspective because it is concerned with the question of membership of a contemporary liberal-democratic state. Claims of membership are assessed here mainly by exploring the nature of the relationships established between persons and particular states. The two major claims are that everybody should be a member somewhere and that every person should have the opportunity to acquire membership of the state to which she or he is genuinely linked. Although I have interpreted genuine link as residential link, this does not exclude the possibility that people may enjoy multiple memberships, at least for a certain period of time. AQ8 Multiple legal memberships can occur at birth when children of non-resident political members acquire a legal membership via *ius sanguinis* as well as a membership through birth in a particular country. Multiple legal membership can also occur when adult legal members acquire other legal memberships due to residence in other countries before losing legal membership in the first country on grounds of long-term residence abroad. These situations are conceivable because, as I have argued, the period of residence in the country required for the acquisition of legal membership should be considerably shorter than the period of residence abroad that triggers the loss of legal membership. A similar argument can be made with regard to multiple political membership. I have

argued that the acquisition of political membership should be based on a voluntary public commitment to political membership. In the context of increased international mobility generating complex individual ties across different countries, persons may wish to commit to membership of more than one political community. However, the enjoyment of multiple political membership should be conditioned by the maintenance of genuine links with each of these political communities.

Due to international migration it is possible for people to enjoy simultaneously memberships of different countries. Unfortunately, this phenomenon may also cause situations in which persons do not enjoy political membership in any country. Unlike legal members who fail to become political members by not committing to political membership AQ9 in the country of residence, super-mobile people who move successively to different countries before they can acquire political membership in any of these countries cannot enjoy full political membership anywhere even if they wish to do so. In such extreme situations, people can, at least, participate politically in the country where they reside temporarily by making use of limited participatory rights.

Conclusion

Who should be a citizen of a liberal democratic state? What principles should guide state policies regarding the acquisition and loss of citizenship? Political theorists have rarely asked questions about admission to citizenship. They usually assume the naturalness of state boundaries and move on to tackle questions, such as, those about the justification of political power. But the boundaries of membership and the legal-political processes that create them are also instances of political power that beg the question of normative justification. This justification is ever more urgent in a world where formal membership of a state constitutes an essential precondition for effective access to rights and opportunities. Citizenship is a consequential status in the contemporary world and a key concept in modern thinking about political life. Thus, principles governing the distribution of such important status cannot be chosen too hastily. They must be judged in the light of major (competing) concerns about membership of a liberal democratic state.

The point of departure in this book was the puzzling observation that, in matters of membership, states do not only differentiate between citizens and foreigners, but also between different categories of foreigners, as well as between different categories of citizens. The analysis focused on one particular rationale for such hierarchical stratification of membership, that is the instrumentalisation of citizenship to serve ethno-cultural conceptions of membership. According to Christian Joppke (2005a: 49), in (Western) migration policies "the only legitimate group distinction left is that between 'citizens', who have a right to enter and cannot be expelled, and 'aliens', who have no such rights, and who are subject to a state's 'immigration' or 'foreigners' policies." However, this book shows that certain group distinctions are still relevant for legal rules that determine who those "citizens" are.

There are three modalities in which citizenship laws serve ethno-cultural purposes: (1) exclusion, (2) preferential inclusion, and (3) differentiation. Firstly, ethno-cultural rules of citizenship can be found in cases where non-ethnics or cultural aliens are arbitrarily refused or delayed access to citizenship. Secondly, ethno-cultural considerations are obvious in the case of preferential (re)acquisition of citizenship by people who are perceived as ethno-culturally related to the state. Thirdly, suspicions about ethno-cultural conceptions of membership

also arise with respect to rules that differentiate among categories of citizens, as in distinctions between citizens by origin and naturalised citizens. More concretely, in the first part of this book I identified seven categories of citizenship rules and aspects that seem driven by ethno-cultural conceptions of membership: (1) unrestricted rules of *ius sanguinis* abroad, (2) unequal birthright citizenship, (3) discretionary and prohibitive rules of naturalisation, (4) asymmetric dual citizenship, (5) preferential naturalisation of ethno-cultural relatives, (6) external dual citizenship for ethnic-relatives, and (7) discriminatory rules of loss of citizenship. It is important to note that these rules and aspects of citizenship raise important normative questions even if the proposed diagnosis is disputed. One could argue, for example, that the adoption of prohibitive citizenship tests does not stem from a concern with ethno-cultural membership, but from attempts to preserve the liberal culture in societies confronted with the large-scale immigration of "illiberal" people. However, the presumably "non-ethnic" character of these rules does not make them normatively acceptable. I also do not claim that the rules and aspects of citizenship highlighted in this book are equally problematic. In the normative discussion I focused mainly on rules of preferential naturalisation that target ethno-cultural relatives because I considered that these ethno-cultural rules raise more serious normative issues than others.

Why is ethno-cultural preferentialism problematic? What is the problem if Greece or Hungary grants preferential citizenship to ethnic Greeks or Hungarians? Is not Greece the country of all Greeks and Hungary the country of all Hungarians? Have people not gone to wars and died to establish a country of their own where people of their own kind could live? And is not the admission to citizenship a matter for the Greeks and for Hungarians to decide upon? I claim that rules of preferential ethno-cultural citizenship, such as those that grant preferential admission to citizenship to persons of a particular ethnicity or to remote descendants of (former) citizens, are problematic on two grounds: they establish citizenship on arbitrary grounds, that is ethnicity, remote ancestry; and they disregard the normative significance of legal and political membership.

Generally, rules of admission that target people according to ethno-cultural features are problematic because they involve multiple types of discrimination. Such differentiation can be justified only exceptionally and contextually, such as in cases where states have strong obligations of remedial justice towards people who were arbitrarily deprived of citizenship in the past. In these cases, however, preferential treatment

should be based primarily on consideration of justice and not on ethno-cultural ties. Moreover, even when preferential treatment is justified on grounds of remedial justice, access to citizenship may not always be the best currency for delivering justice. Claims of remedial justice in the context of citizenship policies are stronger if the injustices that they are supposed to remedy are connected to citizenship and if they can be redressed without undermining the normative integrity of citizenship as legal and political membership. For example, Spain and Portugal have provisions for the reacquisition of citizenship by descendants of Sephardic Jews whose forefathers were deprived of citizenship more than five centuries ago. The declared aim of these provisions is to redress the injustice made to those "expelled, killed or forced to convert during the dark days of the 16th century Inquisition" (Krich, 2013). Although the acknowledgement of past wrongs is a laudable act, it is questionable whether preferential access to citizenship is, in this case, the right method for delivering justice. History is a place where states often do horrible things to citizens and foreigners alike. If it were to trace back these wrongs and to distribute passports to victims (and descendants) accordingly, the citizenship map of the world would probably change dramatically. In that case our idea of citizenship as a legal and political bond between living persons and enduring states would probably have to change as well.

The discussion of preferential ethno-cultural citizenship shows that the problem of membership goes beyond controversies about specific regulations of citizenship. The major question is about what general principles should determine the membership policies of liberal democratic states. I deliberately focus on state and state membership because it is states – with their mandatory laws, courts of justice, police forces and gunned border guards (Carens, 1987: 251) – that establish and enforce citizenship rules.

I approach the membership question by problematising the paradigmatic model of national citizenship that bundles together three types of membership: legal, political, and identity. My claim is that, by separating these three memberships, normatively and institutionally, we can address more fittingly important normative concerns about membership and make better use of the available principles of membership. I argue that the current model of citizenship that binds legal membership (nationality), political membership (citizenship) and identity membership (belonging) is unnecessarily restrictive because it makes the admission to membership a one-off event of tremendous normative and practical significance. Citizenship policies that are built

on the assumption of a coincidence between legal, political and identity memberships are likely to disregard specific fundamental interests related to inclusion to more precise forms of membership.

The problem of membership is significant in the context of the contemporary international system that entrusts states with the power to regulate citizenship thus leaving persons without an effective alternative but to seek admission to citizenship in a state. In this circumstance, a state that denies citizenship to a (stateless) person on grounds of political or cultural incompatibility fails to address the vital interest of that person in having a status of fundamental legal recognition. My argument is that, as components of the coercive international system, states have the obligation to justify to everyone the amount of coercion that they generate through their membership policies and through their participation in the international system. This justification should be given through a generalised obligation to (legally) include stateless people and to offer everyone opportunities for legal inclusion to minimise the risk of statelessness. As territorial systems of legal coercion, states also have the obligation to justify coercion to all those subjected to law. This justification should be given through the automatic legal inclusion of all those subjected to law, that is all residents.

The state is not just a coercive legal system. As constituted political communities, states have legitimate concerns about the continuity of their political projects. In the case of democratic states, this generates a legitimate expectation that members and especially new members share a set of civic attitudes and dispositions that are instrumental for the wellfunctioning of democratic institutions. Moreover, states and political communities are presumably also backed by particular communities with shared histories, cultures and ethno-national identities. The coincidence between legal community, political community and cultural-national community is one of the basic assumptions of the model of national citizenship. The problem with this model is that it creates unrealistic normative expectations and demanding principles of inclusion. If full membership is open only to those people who, simultaneously, have a case for legal inclusion, demonstrate political preparedness, and share cultural and ethno-national features with the community, it is very likely that individuals are not given an effective opportunity for inclusion and that states fail to live up to their obligations to justify coercion.

This approach has important advantages. By distinguishing between different types of membership we can employ simultaneously different principles of inclusion and thus minimise some of the inevitable

normative trade-offs. For example, the principle of consent cannot be considered as the main principle of inclusion in the unitary model of citizenship because the admission to citizenship is, in that case, a normatively competitive site. However, if we (partly) dissociate political membership from legal membership, we can then use the principle of consent more appropriately, namely as the main principle of *political* inclusion.

This framework is also useful for addressing the issue of legitimate exclusion. The model of unitary citizenship is normatively deficient not only because it fails to generate adequate inclusion, but also because it cannot deal properly with cases where (at least partial) exclusion is justified. For example, one could argue that citizens who live outside the country for a long time should lose their political rights in the country (political membership). However, by mixing legal, political, and identity memberships the conventional model of unitary citizenship overburdens the discussion with unnecessary concerns about, say, statelessness and national solidarity. I claim that this issue becomes considerably clearer if we approach the issue only from the perspective of relevant membership concerns. Although legal membership and political membership are closely linked, I argue that, in this case, there is enough divergence of scope to allow us to argue for the withdrawal of political membership without the (immediate) withdrawal of legal membership.

Following my criticism of nationalist arguments with regard to ethno-cultural citizenship, I make the case for the denationalisation of legal and political memberships and for the removal of ethno-cultural considerations from admission policies. I concede, however, that the state may pursue limited nationalising policies domestically, provided that these policies are consistent with relevant liberal democratic norms. One may object that the two arguments are incompatible, because denationalising admission undermines a state's efforts to foster a common identity. For example, commenting on recent trends in international law towards the affirmation of an international right to citizenship that limits the right of states to regulate admission, Peter Spiro (2011: 969) worries that this "could undermine the solidarities on which state capacities may depend," thereby "weakening the state as a location for identity." However, admission policies in the Western world have come a long way to reach this level of liberalisation. If the liberalisation of membership has weakened the identity function of the nation state, I think this is a price worth paying for achieving, say, gender equality and the elimination of racial discrimination. In the

contemporary world the stakes are simply too high to make admission to membership dependent on national identity or ethno-cultural belonging. The removal of ethno-cultural concerns from admission makes it possible to refocus our attention on the normative significance of legal and political memberships.

There are several issues that are conspicuously absent from this book. Firstly, I do not tackle the issue of immigration neither at the level of policy nor theoretically. Although I make the case for a "citizenship turn" in the literature on normative membership, I admit that there are important normative and policy links between immigration and citizenship that are not fully explored in this book. Secondly, I do not engage significantly with the issues of transnational, global or regional citizenship. Equally, I have little to say about sub-state forms of membership or local membership regimes. Although I discuss EU citizenship and norms and configurations of dual citizenship, my perspective remains state-centric. Thirdly, I also stay away from complex debates about sessions, border changes and ethno-national conflict. The main reason for these omissions is that I deliberately take for granted states and their internationally recognised borders. I analyse state citizenship laws and I seek to define membership principles suitable for a liberal democratic state. This approach is maybe ill suited for addressing new challenges of citizenship, such as global citizenship, genetic citizenship, e-citizenship etc. However, this book deals with an old problem.

The modern answer to the question of membership is that the nation constitutes the people and prescribes the state boundaries. Where national membership appears natural and unproblematic, the coincidence between national, juridical, and political boundaries provides an easy solution to the problem of membership. In this book I challenge this view by offering a critique of more concrete cases of preferential ethno-cultural citizenship and by sketching a more general normative framework of membership suitable for a contemporary liberal democratic state. I argue for the denationalisation and the de-naturalisation of legal and political membership. I claim that whereas legal membership should be mainly derived from the obligations of states to justify coercion, political membership should be based on a consensual link between the individual and the political community. The combination of automatic legal membership and consensual political membership addresses the twin problem of the justification of coercion and of non-consensual membership. It also tackles the problem of arbitrary, inherited (political) membership, by arguing that children should be seen as a kind of political foundling. However, unlike less-fortunate actual

foundlings (children of unknown parents), political foundlings should be automatically "adopted" by the state and they should be given the opportunity to join in the political community when they are able and willing to commit to political membership. Because everyone accedes to political membership through explicit public consent we need not worry anymore about problematic distinctions between "native" and "naturalised" citizens.

Ethno-cultural belonging should have no place in the admission to citizenship. Although the link between citizenship and ethno-culture is only rarely asserted straightforwardly nowadays, a review of citizenship laws in Europe shows that there are still plenty of niches in the membership of the liberal democratic state where the ghost of ethno-nationalism takes shelter.

Notes

Introduction

1. The project Acquisition and Loss of Citizenship in and across Modern European States (CITMODES) provided a platform for collecting online data and reports on citizenship regulations in Europe. It was funded by the British Academy and operated under the aegis of the Europa Institute at the University of Edinburgh and the European Democracy Observatory (EUDO) at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute, Florence. Details about this project are available online at: http://www.citmodes.ed.ac.uk.
2. The project Acquisition of Nationality in EU Member States: Rules, Practices and Quantitative Developments (NATAC) investigated rules of acquisition and loss of citizenship in the fifteen pre-2004 EU member states. The project was coordinated by the Institute for European Integration Research at the Austrian Academy of Sciences. The main findings, including a comprehensive methodology for comparing citizenship regulations, were published in two volumes: (Bauböck et al., 2006a, 2006b). Details about this project are available online at: http://www.imiscoe.org/index.php?option=com_content&view=category&layout=blog&id=26&Itemid=31.
3. The project Citizenship Policies in the New Europe (CPNEU) examined citizenship policies in the ten EU accession states of 2004 and Turkey, The project was managed by the Network of Excellence on International Migration, Integration and Social Cohesion in Europe (IMISCOE). The main findings were published in (Bauböck, et al., 2009).
4. The project Access to Citizenship and its Impact on Immigrant Integration (ACIT) compared how European states regulated the acquisition of citizenship and the impact of citizenship on the socio-economic and political participation of immigrants. It was carried out jointly by the European University Institute, the Migration Policy Group, University College Dublin, the University of Edinburgh and Maastricht University. The findings of the project were publicised by the EUDO Observatory on Citizenship of the European University Institute. Details about this project are available online at: http://eudo-citizenship.eu/about/acit.
5. The project Electoral and Participation of Third-country Citizens in EU Member States and of EU Citizens in Third Countries (FRACIT) examined the electoral rights of third country citizens residing in the European Union, and of European citizens in third countries. It was jointly carried out by the European University Institute, University of Edinburgh, University College Dublin, University of Sussex and a network of country experts. The finding of the project are publicised by the EUDO Citizenship Observatory. Details about this project are available online at: http://eudo-citizenship.eu/about/fracit.
6. The project The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia (CITSEE) provides data and analyses on citizenship in

seven successor states of the former Yugoslavia. The project is managed by the University of Edinburgh (School of Law). Details about this project are available online at: http://www.law.ed.ac.uk/citsee.

7. The Project Involuntary Loss of European Citizenship (ILEC) examines rules and administrative procedures applicable to loss of citizenship in EU countries and their relation to existing European and international legal standards. The project is coordinated by the Centre for European Policy Studies and the University of Maastricht. Details about this project are available online at: http://www.ilecproject.eu/The%20Project.
8. The EUDO Citizenship Observatory is a research platform hosted at the Robert Schuman Centre of the European University Institute. The Observatory managed a number of comparative research projects and established a comprehensive database on citizenship regulations in Europe and neighbouring countries. It publishes regularly country reports, comparative reports, analyses and news about citizenship in Europe. Details about the Observatory are available online at: http://eudo-citizenship.eu.
9. For a comprehensive overview of citizenship regulations in 41 countries in Europe (including those covered in this survey), see the databases on acquisition and loss of citizenship maintained by the EUDO Citizenship Observatory at the European University Institute. These databases are built on a typology that distinguishes among 27 modes in which citizenship can be acquired and 15 modes in which it can be lost (Waldrauch, 2006a, 2006b).

1 Birthright Citizenship

1. Council of Europe, European Convention on Nationality, opened for signature 6 November 1997 ETS 166 (entered into force 1 March 2000), Preamble.
2. In Germany, this rule applies to persons born abroad to citizens who were born abroad after 31 December 1999 and who live abroad.
3. These countries are: Latin American countries, Andorra, Philippines, Equatorial Guinea and Portugal.
4. The 1961 Convention on the Reduction of Statelessness gives a comprehensive list of conditions that can be applied in the case of the acquisition of citizenship by stateless children. State Parties are allowed to impose, among others, requirements regarding the residence status of the child. However, requirements regarding the residential status of parents are not permitted. See UN General Assembly, Convention on the Reduction of Statelessness, opened for signature 30 August 1961, United Nations, Treaty Series vol. 989 (entered into force 13 December 1975) Article 1(2).
5. *Calvin v. Smith*, 77 Eng. Rep. 377 (K.B. 1608). The case was about the right to inherit land in England by a Scottish-born child after the establishment of the joint rule of England and Scotland by King James. The Court decided that such child should be considered an English subject and thus entitled to the benefits of English law.
6. US Supreme Court. *Scott v. Sandford*, 60 U.S. 19 How. 393 (1857).
7. *Liechtenstein v. Guatemala*, Second Phase 1955 ICJ Reports 4 (Judgment of 6 April), 23.
8. The 1997 Convention, Article 7(1.e).
9. Council of Europe, The Explanatory Report to the European Convention on Nationality, 1997 ETS 166 § 32. § 70.

10. The Explanatory Report adds: "the words 'shall be guided by' [...] indicate a declaration of intent and not a mandatory rule to be followed in all case." § 45.

2 Ordinary Naturalisation

1. To account for the period of time necessary for the acquisition of the required permit of permanent residence, I have added 5 years for Bulgaria, Greece, Latvia, Macedonia, Poland, and Sweden and 2 years for Estonia.
2. In several countries applicants can choose between two or more languages for the examination. This is the case in Finland (Finnish or Swedish), Luxembourg (Luxembourgish and German or French), and Malta (Maltese or English).
3. Council of Europe, Common European Framework of Reference for Languages: Learning, Teaching, Assessment (CEFR). Available on line at: http://www.coe.int/t/dg4/linguistic/cadre1_en.asp.

3 Preferential Naturalisation

1. In the Micheletti case, the ECJ found that the refusal by Spain to guarantee fundamental freedoms of Community law to a dual Argentine-Italian who was considered in Spain only as an Argentine citizen (due to Micheletti's previous habitual residence in Argentina) was in breach of EU law. Case C-369/90 *Mario Vinente Micheletti and Others v. Delegation del Gobierno en Cantabria* [1992] ECR I-4329.
2. These countries are: Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay, Peru and Uruguay. In addition, this rule applies to citizens from Andorra, the Philippines and Equatorial Guinea, and Portugal.
3. The cooperation between Portuguese speaking countries was formalised in 1996 with the establishment of the Community of Portuguese Language Countries. The Community includes Brazil, Angola, Cape Verde, Guinea-Bissau, Mozambique, Portugal, and São Tomé and Príncipe. East Timor joined in 2002.
4. This rule concerns only Danish (former) citizens who were citizens by birth.
5. The provision for the loss of citizenship due to acquisition of another citizenship does not apply if the person acquires the citizenship of a EU Member State or of Switzerland.
6. In those EU countries that require candidates for naturalisation to have a permit of permanent residence, citizens of other EU countries are in a privileged position because they do not need to have such permits.
7. In 2001 Hungary adopted the Law LXXII (better known as Status Law) that granted co-ethnics living in several neighbouring countries (Serbia and Montenegro, Croatia, Slovenia, Romania, Ukraine and Slovakia) a series of educational, cultural, and social benefits. The law also envisaged the creation of a special identity card to be issued for Hungarian ethnics of non-Hungarian (legal) citizenship. Amid vehement criticism from several neighbouring countries, the modified version of the law passed in 2003 removed some of the elements that brought the status of "co-ethnicity" enjoyed by ethnic Hungarians abroad very close to that of citizenship.

8. Religious affiliation can also play a role in the procedure of special naturalisation as evidence of ethnic identity in countries such as Bulgaria, Greece and Poland.
9. While the number of regular naturalisations is extremely low (fewer than 15,000 in the last 25 years) the numbers of *homogenis* that acquired Greek citizenship is estimated at several hundreds of thousands (Christopoulos, 2010: 2).
10. The condition of non-repatriation was removed in 2006 after the Lithuanian Constitutional Court ruled it unconstitutional.
11. The rule concerns emigrants of German ethnic origin.

5 A Sovereign Right

1. The Montevideo Convention lists the four basic elements that a state should have to be recognised as such by the international community: (1) a permanent population, (2) a defined territory, (2) a government and (4) the capacity to enter into relations with other states. Montevideo Inter-American Convention on the Rights and Duties of States, opened for signature 26 December 1933, League of Nations Treaty Series, vol. 165, pp. 20–43 (entered into force, 26 December 1934).
2. The terms citizenship and nationality are often used interchangeably to denote the formal status of membership of a state. Although "nationality" is the preferred term in legal terminology, I use citizenship to refer to a legal status of membership.
3. Nationality Decrees Issued in Tunis and Morocco on 8 November 1921 Advisory Opinion 1923 PCIJ (ser. B) No. 4 (7 February) 40.
4. Convention on Certain Questions Relating to the Conflict of Nationality Laws, opened for signature 12 April 1930 League of Nations Treaty Series vol. 179 No. 4137 89 (entered into force 01 July 1937). Article 1.
5. *Liechtenstein v Guatemala*, 23
6. J. R. Dugard, "First Report on Diplomatic Protection" (2000) International Law Commission, United Nations A/CN.4/506 37.
7. Judge Reads argues that "the State is a concept broad enough to include not merely the territory and its inhabitants but also those of its citizens who are resident abroad but linked to it by allegiance … [m]ost States regard non-resident citizens as a part of the body politic … [m]any of these non-resident citizens have never been within the confines of the home State." *Nottebohm Case*.
8. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953).
9. *Beldjoudi v. France*, European Court of Human Rights, 12083/86, 26 February 1992.
10. In *Karassev v. Finland* the Strasbourg Court rejected the claim to citizenship of a child born in Finland to Russian parents in the aftermath of the collapse of the Soviet Union even despite the fact that there was uncertainty about whether the child was entitled to citizenship in the successor Russian state. *Karassev v. Finland*, European Court of Human Rights, 31414/96, 12 January 1999.

11. *Genovese v Malta*, European Court of Human Rights, 53124/09, 11 January 2012.
12. Ironically, Genovese could have qualified for Maltese citizenship by way of declaration as a descendant of a person born in Malta whose parent was also born in Malta. This procedure was introduced in 2007 and does not differentiate between children born in wedlock or out of wedlock (de Groot and Vonk, 2012: 318).
13. UN General Assembly, Convention on the Reduction of Statelessness, opened for signature 30 August 1961, United Nations, Treaty Series vol. 989 (entered into force 13 December 1975) Article 7(4).
14. Chapter II of the 1930 Convention contained rules on military obligations in cases of multiple citizenship to ensure that persons with multiple citizenship are not required to carry out their military obligations in more than one State Party.
15. Council of Europe, Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, opened for signature 6 May 1963 ETS 43 (entered into force 28 March 1968).
16. Council of Europe, Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, opened for signature 2 February 1983 ETS 149 (entered into force 24 March 1995).
17. The 1997 Convention, Preamble. Moreover, The Convention stipulates that that the provisions on multiple nationality do not affect "the rules of international law concerning diplomatic or consular protection by a State Party in favour of one or its nationals who simultaneously possesses another nationality" (Article 17.2).
18. For example, the Preamble of the 1997 Convention provides that "in matters concerning citizenship, account should be taken both of the legitimate interests of States and those of individuals.
19. UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
20. International Covenant on Civil and Political Rights, opened for signature 19 December 1966 999 UNTS 171 (entered into force March 23 1976) Article 19(1).
21. The most important international legal instruments that contain provisions on statelessness are: the Hague Protocol Relating to Certain Cases of Statelessness (1930), the UN Convention Relating to the Status of Stateless Persons (1954), the UN Convention on the Status of Married Women (1957), the UN Convention on the Reduction of Statelessness (1961), the International Covenant on Civil and Political Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the Convention to reduce the number of cases of statelessness of the International Commission on Civil Status (1977), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the UN Convention on the Rights of the Child (1989), the European Convention on Nationality (1997), the Convention on the Avoidance of Statelessness in Relation to State Succession (2006).

22. UN General Assembly, Convention relating to the Status of Stateless Persons, opened for signature 28 September 1954, United Nations, Treaty Series, vol. 360 (entered into force 6 June 1960).
23. UN General Assembly, Convention on the Reduction of Statelessness, opened for signature 30 August 1961, United Nations, Treaty Series vol. 989 (entered into force 13 December 1975), Article 7(4).
24. The European Commission for Democracy through Law, Declaration on the consequences of State succession for the citizenship of natural persons, 14 September 1996 CDL-NAT (1996) 007.
25. Council of Europe, Convention on the Avoidance of Statelessness in Relation to State Succession, opened for signature 15 March 2006, CETS 200 (not entered into force).
26. United Nations Charter, Art. 1(3), Art. 13(1), Art. 55, Art. 56, Art. 62(2), Art. 76 (see Brownlie, 2008: 272).
27. Council of Europe, Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination, opened for signature 4 November 2000, ETS (entered into force in 1 April 2005).
28. According to this principle, to maintain the unity of citizenship within families formed through international marriages, the wife should automatically lose her citizenship for the one of the husband and the children should acquire only the citizenship of the father.
29. UN General Assembly, Convention on the Nationality of Married Women, opened for signature 29 January 1957 (entered into force 11 August 1958).
30. UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 18 December 1979 United Nations Treaty Series vol. 1249 13 (entered into force 3 September 1981).
31. UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, United Nations Treaty Series vol. 660 195 (entered into force 4 January 1969).
32. Committee of the Elimination of Racial Discrimination, CCPR General Recommendation 30: Discrimination Against Non Citizens, 64th Session of the Human Rights Committee 10 January 2004, p. 4.
33. The term "discrimination" in the Covenant relies on the definition provided by the CERD. See ICCPR General Comment No. 18: Non-discrimination, 37th Session of the Human Rights Committee, 10 November 1989, p. 12.
34. According to the Explanatory Report to 1997 Convention, "the words 'shall be guided by' in this paragraph indicate a declaration of intent and not a mandatory rule to be followed in all cases." Explanatory Report to 1997 Convention, § 45.
35. I use the terms "national minorities" and "ethnic minorities" interchangeably, without entering the on-going conceptual and normative debates about minority rights.
36. Provisions on the protection of national minorities were included in the treaties signed with Poland, Austria, Czechoslovakia, Yugoslavia, Turkey, Bulgaria, Romania, Hungary and Greece, in declarations of admission to the League of Nations of Albania, Lithuania, Latvia and Estonia, in the Convention between Poland and the Free City of Danzig (1920),

the Convention on the Aaland Islands (1921), the Convention between Germany and Poland Relating to Upper Silesia (1923), and the Convention Concerning the Territory of Memel (1924).

37. On several occasions, the "minority problem" was solved in old-style fashion, by way of population transfer; e.g. the expulsion of Germans from Central and Eastern Europe.
38. Council of Europe, European Commission for Democracy through Law (Venice Commission), Report on the Preferential Treatment of National Minorities by their Kin-State, October 19–20 2001, Document CDL-INF (2001).
39. Among others, the Status Law provided co-ethnics with the following benefits: scholarship for students, financial and logistic support, training, facilitated access to cultural institutions and programs, travel grants, short-term working permits, exceptional rights of temporary residence.
40. Council of Europe, Report on the Preferential Treatment.
41. Some of Wilson's proposals included: the readjustment of Italy's frontiers "along clearly recognizable lines of nationality" (§ 9), the granting of the "freest opportunity to autonomous development" for the "peoples of Austro-Hungary" (§ 10), the setting of relations among Balkan states on "friendly counsel along historically established lines of allegiance and nationality" (§ 11), "an absolutely unmolested opportunity of autonomous development" for nationalities under Turkish rule" (§ 12).
42. The UN Charter states that one of the purposes of the organisation is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace" (Article 1 (2)). Similar formulations can be found in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States (1970), the Helsinki Final Act (1975), the African Charter of Human and Peoples' Rights (1981), the Charter of Paris for a New Europe (1990), the UN Declaration on the Rights of Indigenous Peoples (2007).
43. Although the Universal Declaration of Human Rights did not make reference to the principle of self-determination, the two Human Rights Covenants share the Article 1 (1) that proclaims the right to self-determination.
44. UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, Res. 1514, UN GAOR, 15th Session, Supp. No. 16, UN Doc. A/4684 (1960) 66.
45. The principle of *uti posidetis* could not be used in the case of Kosovo, which was not a federal unit of Yugoslavia. Kosovars' claims to independence have been primarily grounded in the highly contested principle of remedial secession.
46. Office of the High Commissioner of Human Rights, General Comment No. 12: The right to self-determination of peoples (Art. 1), Twenty-first session 1984 § 6.
47. Western Sahara, Advisory Opinion of 16 October 1975, ICJ Reports 1975 12; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004 136.
48. Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148.

49. UN General assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992, A/RES/47/135.
50. Council of Europe, Framework Convention for the Protection of National Minorities, opened for signature 1 February 1995, ETS 157 (entered into force 1 February 1998).
51. OSCE High Commissioner on National Minorities. The Bolzano Recommendations on National Minorities in Inter-State Relations & Explanatory Note, June 2008. Recommendation 8.
52. Venice Commission, Report on the Preferential Treatment, Section D.
53. The Venice Commission states clearly: "it is not conceivable, in fact, that the home-State of the individuals concerned should not have a word to say on the matter." Report on the Preferential Treatment.
54. OSCE High Commissioner on National Minorities, The Bolzano Recommendations.
55. Treaty on European Union, 7 February 1992, 1992 Official Journal C 191. 1, 31 I.L.M. 253 (entered into force 1 November 1993). The rights of EU citizenship are: the right to move and reside freely within the territory of the -, the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, the right to enjoy protection of the diplomatic and consular authorities of any Member State in the territory of a third country in which the Member State of which they are citizens is not represented, the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union (Art 20–25 Consolidated Treaty of the European Union).
56. Decision of the Heads of State and Government, meeting within European Council, concerning certain problems raised by Denmark on the Treaty of European Union, 13 December 1992, Official Journal C 348, 31/12/1992 P. 0001 – 0001.
57. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2 October 1997, Official Journal (C 340) 1, 37 I.L.M. 56 (entered into force 1 May 1999).
58. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 30 March 2010, Official Journal C 83.
59. The provision is repeated in Article 9 of the Consolidated version of the Treaty on European Union.
60. These declarations left outside the scope of the EC law the following categories of citizens: British Dependent Territories Citizens, British Overseas Citizens, British Subjects without Citizenship and British Protected Persons. Subsequent amendments have extended the scope of citizenship for Community purpose by including citizens of Gibraltar and Falkland Islands and all British Overseas Territories Citizens.
61. e.g. *Case C-209/03 The Queen, on the application of Dany Bidar v. London Borough of Ealing and Secretary of State for Education and Skills* [2005] ECR I-2119; *Case C-184/99 Grzelczyk* [2001] ECR I-6193 (para 31); Case *C-413/99 Baumbast and R* [2002] ECR I-7091, (para 82), etc.
62. Case C-200/02 *Kunqian Catherine Zhu & Man Lavette Chen v. Secretary of State for the Home Department* [2004] ECR I-9925.
63. Case C-135/08, *Janko Rottmann v Freistaat Bayern*, Opinion of Advocate General Maduro on 30 September 2009.

64. *Rottman case*, para 42.
65. Ibidem, para 56.
66. Case C-369/90 Mar*io Vinente Micheletti and Others v. Delegation del Gobierno en Cantabria* [1992] ECR I-4329.
67. The ECJ judgment affected the system of reciprocal citizenship privileges established between Spain and Latin American countries, through which non-citizens could access important citizenship rights when resident in another contracting state. After *Micheletti*, Spain renegotiated these agreements in order to allow individuals to enjoy active citizenship simultaneously in Spain and in the respective Latin American countries (De Groot, 2002).
68. Case C-34/09 *Ruiz Zambrano v Office National de L'emploi*, (ONEM) [2009] OJ C90/15.
69. Case C- 434-09 *Shirley McCarthy v. Secretary of State for the Home Department*. Judgement of 5 May 2011.
70. The full article reads: "[p]ursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardize the attainment of the Union's objectives."
71 Presidenta dei Consiglio dei Ministri. Moldova, Ronchi: Preoccupazione su cittadinanza romena a moldavi, Communicazione, 23 aprile 2009. Available online at: http://www.politichecomunitarie.it/comunicazione/16576/moldova-ronchi-preoccupazione-su-%20cittadinanza-romena-a-moldavi.
72. Charter of Fundamental Rights of the European Union, Official Journal C 83, 30 March 2010.

6 A Right to Self-Definition

1. This focus on residence forces Wellman (2011: 55, n. 1) to include all residents (including non-citizens) within the scope of the association and to exclude citizens living abroad.
2. Israel's Law of Return (1950) grants to all Jews the right to immigrate to Israel. Israel's Citizenship Law (1952) grants citizenship to every immigrant within the scope of the Law of Return.
3. Report of Crick Commission 2003, p. 11.
4. Gans (2003: 134) is right to be suspicious about the exceptional character of this clause. In practice, it could easily be used as justification for regular immigration policies.

7 A Remedial Right

1. Romanian Parliament, 2012, "Propunere legislativă pentru modificarea şi completarea Legii cetăţeniei române nr.21/1991, republicată," Pl-x nr. 15/2012. Available online at: <http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12070>.
2. Report on the Preferential Treatment.

3. I assume that the ethno-cultural majority has control over the decision-making, but it may be the case that a powerful minority controls policymaking.
4. Zsolt Simon's party, Most-Híd, is depicted by Fidesz as "a threat to the identity and national culture of Hungarians in Slovakia" (Popławski, 2012).
5. "Moldovan Communists want state officials with Romanian citizenship to step down," *Nine O'clock*, 26 January 2012. Available online at: <http://www.nineoclock.ro/moldovan-communists-want-state-officials-with-romanian-citizenship-to-step-down>.

8 Normative Framework

1. There are several cases in which the law formally distinguishes between the two statuses of nationality and citizenship: (a) where certain citizens are not nationals for the purpose of international law (e.g. British Oversees Citizens); and (b) where certain nationals are not citizens for the purpose of domestic law (e.g. Puerto Rican American nationals).

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