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### Between Past and Future: The Democratic Potential of EU Citizenship<sup>1</sup>

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#### Introduction: The Context of EU Citizenship

The late 1980s witnessed a renewed interest in citizenship by both academics and policy makers that has continued up to the present. Various perceived dangers to social cohesion and democratic accountability prompted this return to the citizen (Kymlicka and Norman 1994; Beiner 1995). A number of observers feared the growth in multiculturalism would generate social conflicts and fuel the rise of the extreme right and religious fundamentalism. Commentators on the right as well as the left worried the contemporary emphasis on markets risks promoting self-interested behaviour and a decline in civic responsibility. Globalisation - the process that many regard as defining the present age – appeared to reinforce both trends, rendering private and public power harder to control in the process. It was no wonder, these analysts concluded, that citizens had become increasingly disinterested and disenchanted with politics. The crucial task was to reengage them in ways that promoted social integration. However, the resulting revival of citizenship theory and policy has taken two divergent and not entirely compatible directions – the one drawing inspiration from the past, the other pointing towards new kinds of citizenship supposedly more suited to the future

Those who advocate a return to the past see the revitalizing of older types of citizenship as a way of fleshing out a commitment to justice by relating it to specific obligations to others within our local and national communities. Following an established tradition, many writers have sought inspiration in the ancient Greek or Roman meaning of citizenship for this purpose (Oldfield 1990). Others, while not uninterested in this classical heritage, have focussed on later periods and explored the development of democratic citizenship within the state building projects of the eighteenth, nineteenth and twentieth centuries (Barbalet 1988; Janoski 1998; Miller 2000). By contrast, though, several political analysts have contended the very phenomena that prompted a revival of citizenship have made these past conceptions unsustainable (Ignatieff 1995). They claim multiculturalism undermines appeals to national communities, while global markets mean democratic control of economic and social processes cannot be plausibly obtained via the state without huge inefficiencies and a loss of freedom. Citizenship has to be reconceived, in part at least, in ways that transcend the confines of national political communities and the types of party centred politics traditionally associated with them

This proposed reconceptualisation of citizenship has also taken a number of forms. One strand, particularly popular among the social democratic left, looks to the universality of rights norms as a source of new, transnational, forms of political community (e.g. Habermas 1992; Soysal 1994; Linklater 1998). Adherents of this camp note how many political activists have channelled their civic action away from traditional political parties and into rights-based social movements. Several of these movements, such as those concerned with environmental protection, poverty and the condition of women, have a global dimension. They see international legal norms as a prime

mechanism for pursuing their ends and challenging the self-interested policies of even democratic states and governments.

However, another strand, favoured mainly by the right, though similarly prioritising rights, emphasises economic over social and political liberties. Members of this group counter the criticism that markets encourage self-interested behaviour that corrode social and moral bonds by associating entrepreneurship and even consumption with notions of civic and ethical responsibility. The market freedoms to work, move and trade are held to advance individual liberty and prosperity more generally. By extension, global markets become the promoters of a cosmopolitan citizenship (Willett 1992: 182, 186; Saunders 1993: 85). They also note how parallel changes are occurring at the domestic level. They claim the bureaucratic and paternalist character of state intervention has led to using private contractors and regulators to deliver public services. They link these methods to new notions of democratic accountability and responsiveness (Barry 1990). Among other mechanisms, consultation with user groups, cooperation with voluntary associations, rights of legal redress, and consumer pressure, repackaged as a civic right to choose, are all seen as offering greater democratic input and control than a state run system nominally overseen by elected politicians (Bellamy 1999: Ch . 6). Indeed, extensive privatisation has led most social democrat governments to accept such mechanisms for much of the formerly state owned public sector.

By and large, the first strategy of reviving the past seems premised on the nation state and its subunits. As we shall see, it is unclear how far it could be extended to a transnational body such as the EU. The second, post-traditional, strategy, while adopted in part in most advanced industrial nations, supplements but also has a tendency to

supplant and, on some accounts (Crouch 2004), even subvert the more conventional modes of state-centred citizenly activity. The distinctiveness of EU citizenship lies in its main features and practices belonging more or less entirely to this new type (Harlow 1999; Bellamy and Warleigh 2001). Indeed, the EU provides an exemplar of the novel post-statist politics of legal regulation, market pressure and voluntary coordination - of governance rather than government (Andersen and Burns 1996). The key rights enjoyed by EU citizens derive mainly from the market freedoms that provide the EU with its principal *raison d'être* (Everson 1995). Meanwhile, the European Court of Justice, the EU Ombudsman and the vast array of pressure groups found in Brussels arguably offer more effective channels for protecting and voicing citizen's interests than an EU Parliament that fewer than 50% of EU citizens bother to vote for.<sup>2</sup>

Though a growing body of commentators defend the effectiveness of these new kinds of citizenship at the EU level (e.g. Majone 1998; Héritier 1999; Moravscik 2002), there remain numerous critics who bemoan the EU's democratic deficit (Decker 2002; Lord 2004, Føllesdal and Hix 2005). Some suggest overcoming these weaknesses by further elaborations of the new towards some form of post-national citizenship (Habermas 1992; Kostakopoulou 2001). Others believe the EU must adopt more elements of the old (Lord and Beetham 2001). Consequently, this chapter explores the adequacy of the new and the prospects for instituting the old within the EU context. I begin by looking at how traditional styles of democratic citizenship came to be established in nation states and compare their continuing strengths, weaknesses and complementarities with the emerging new varieties. I then turn to an assessment of the mix of old and new within the EU. To anticipate my conclusion, I shall argue that governance only works when framed

by government, and a governmental capacity possessing democratic endorsement is only possible at present within the Member States. As a result, the new types of citizenship offered by the EU need to remain under the control of the older kinds provided by the Member States. The challenge is to devise mechanisms whereby this can be achieved.

### The Nature of Modern Democratic Citizenship

The rise of modern democratic citizenship in Europe is typically related to the three-fold processes of state-building, the evolution of a commercial and industrial society, and nation-making (Rokkan 1974; Marshall 1950; Bellamy 2004; Weale forthcoming, Ch. 1). Though analytically distinct, and to some degree historically phased, these processes fed into and promoted each other.

The first, state-building, phase established central political control over a given geographical territory. The resulting territorial borders demarcated the legitimate sphere of operations of political authority and defined its subjects. The state became responsible for the physical security and economic welfare of those residing on its soil. For example, it aspired to hold the monopoly of violence within its realm, and to regulate the inward and outward flow of material and labour resources in ways necessary to promote the public welfare. It could also impose duties on its subjects, notably military service and the payment of taxes. The second phase, which saw the emergence of markets, undermined ascribed status. It established the need for a regular system of law in which individuals had equal rights freely to exchange their labour, goods and services, to hold property and amass capital. The third, nation making, phase saw the creation of a common language and uniform systems in such areas as weights and measures, industrial

standards and education. There was also considerable infrastructural investment, particularly in transport. These measures helped consolidate both a unitary market and a demos.

Democratic citizenship only emerged gradually from these three processes as states and their rulers came to depend on the voluntary cooperation of ever more of their subjects and they, in their turn, sought to ensure those governing them did so for the common rather than any particular interests. However, all three played a mutually supportive role in constituting citizenship. This emerges when we consider the standard three criteria for inclusion as a citizen (e.g. as in Dahl 1989, Ch. 9). The first is that one's interests are affected in a sustained and largely unavoidable way by the decisions of the political body concerned. In other words, one is not a temporary visitor to the state in question and unavoidably involved in schemes of social and economic cooperation with other persons within its sphere of authority. The second concerns possession of the requisite competence to be a citizen. At one level, this criterion simply involves an acknowledgment of equal status. Children are usually excluded from citizenship because in their case a degree of paternalism and guardianship is deemed justifiable. They are not yet fully autonomous. More controversially, adults with severe mental health problems are also often excluded. However, other aspects of this criterion relate to the possession of an appropriate national consciousness. Basic competence in one of the main national languages is often a requirement for naturalization, as is some knowledge of the political history and culture of the adopted country. Civic lessons also have a special place in the school and even university curriculum of an increasing number of countries. These factors

play an even more important part in the third criterion for inclusion as a citizen - feelings of national solidarity and trust.

Solidarity and trust are required if citizens are to be committed to the welfare of the community and their fellow citizens (Offe 2000: 67-8). Solidarity leads citizens to feel certain obligations towards their fellows, while trust gives them faith that others will be as responsible as they are in fulfilling them. Without such sentiments, citizens are unlikely to recognise the authority of the state – even a state they can control through the democratic process. To some degree, having a more or less permanent stake or interest in the polity is sufficient to generate such commitments and beliefs (Niada-Rümelin 1997). However, self-interest alone is unlikely to produce a fair or stable economic or political system (Galston 1991: 215-20). The temptation will always exist for individuals and groups to defect from, or free ride on, even mutually beneficial collective arrangements if they feel it is in their interest to do so. A sense of justice creates a more stable bond, perhaps (Rawls 1971: 457, 474; Føllesdal 2000). But the ties of justice apply to all human beings – not just one's fellow citizens, and are themselves deeply contested. As such, they are too thin and controversial to bind citizens to a specific state as the locus where disagreements about their collective interests and rights might be appropriately negotiated and decided.<sup>3</sup> The feeling of identification with co-nationals through sharing a common history and values – however artificial such a national identity may have been in origin – leads citizens to consider they possess a common fate and to internalise the demands of justice (Miller 1995: 83, 93). As a result, the co-operation and self-restraint needed for most public policies to succeed and societies to flourish become easier.

The importance of national solidarity and trust as well as interests and rights in defining citizenship is worth stressing because many theorists find notions of nationality and community controversial, even distasteful, and redundant. Regrettably, jingoism and xenophobia are all too often the other side of patriotism and civic responsibility. Yet, without those latter qualities, support for the political institutions that promote our interests and justice is likely to founder. After all, citizenship goes beyond those rights and interests we share with others simply by virtue of our common humanity. A citizen is a member of a particular political club. As such, citizens are entitled to more care and protection from their fellow citizens than would be accorded them simply as members of the human race. However, these additional entitlements also engender correspondingly heavier obligations. A sense of national belonging helps generate the commitment to fulfil these extra, and often onerous, responsibilities (Miller 1995: Ch 3). Thus, civic duty and pride, as well as mutual interest and a sense of fairness, lie behind such activities as voting, paying taxes, not dropping litter, driving carefully and so on (Galston 1991: 221-4). Coercing people to act civically is simply too costly and holds dangers of its own. Yet, assuming all will always be convinced by the justice or justifiability of most public policies, even if they have no personal interest in them, overlooks the profound disagreements that often surround such measures (Waldron 1999: 151-3). Citizens have to believe they belong to a collectivity, the rules of which they are obliged to abide by – even when they think them wrong or misguided. They also need to feel a degree of responsibility for their fellow citizens as well as themselves. Otherwise, as studies of communities that lack such ‘social capital’ indicate, the public sphere is likely to decline and many aspects of the public good go neglected (Putnam 1993).

For similar reasons, democracy will not work simply as a mechanism whereby different individual or group interests keep each other in check. People will also need to acknowledge the right of others to check them, be prepared to devote time to participating, show self-restraint when they fail to get their way, tolerate those with different views and be willing to work with them, and so on (Galston 1991: 227). Though we can specify certain generic liberal democratic principles and virtues that can serve to distinguish the arrangements and practices of liberal democracies from those of other regimes, these values do not in themselves indicate the language, borders or members of any given liberal democracy, or the precise forms in terms of electoral rules and so on it may take. It is these elements that are ‘nationalised’, so to speak, in order to create a ‘demos’.

A fairly obvious objection to ascribing such solidaristic and trusting feelings to nationality arises at this point: namely, that very few countries do not contain substantial ethnic and national minorities. Multiculturalism and multinationalism are increasingly the norm rather than the exception. As is now commonly acknowledged, the two forms of pluralism need to be distinguished (Kymlicka 1995: Ch 2). However, neither need be incompatible with the existence of an overarching national identity for a single political unit.

Multiculturalism standardly results from immigrant communities, often arising from colonisation by the host country of their native land. Though usually indirectly related to ethnicity, the focus of a cultural minority may be culture rather than ethnicity. Take the case of Catholics and Muslims in Britain: many members of these two religious groups may be of Irish or Asian origin respectively, but not all – and in the case of the

former not even the majority. Even when ethnicity is the focus, membership of a cultural minority need not be linked to a specific political identity with the aim of leading to a distinct, self-governing community. Not only are ethnic and cultural minorities frequently territorially dispersed, even if concentrated pockets of such groups may exist in certain regions or urban centres, but also they either identify with the homeland they chose or were forced to leave, and to which they hope to return, or seek to acquire acceptance as co-nationals of their adopted country. Normally, that involves a degree of mutual accommodation on both sides (see Miller 1995: Ch. 5). On the one hand, the immigrant group will have to accept elements of their adopted country's political culture, even if aspects of both the generic liberal democratic values and the particular national variation prove to be at odds with their culture. For example, the immigrant group will have to become reasonably fluent in the national language(s), accept liberal marriage laws and so on. On the other hand, the host nation will almost certainly need to remove discriminatory elements from the national culture. For example, it may need to re-evaluate its colonial past, and acknowledge its oppressiveness along with the positive contribution of the colonised people to national life, making suitable changes were necessary. In general, areas within the core political settlement, such as gender equality, prove less negotiable than those that do not, such as religious holidays, but the distinction between the two is far from clear cut. Moreover, as we shall explore below, there is a certain cultural path dependency in the trajectory of such negotiations (Bellamy 2002). Nevertheless, over time an overarching national identity develops capable of being compatible with distinctive ethnic identities, as is the case today with British Jews and Italian Americans.

National minorities, particularly when nationality is associated with a distinct language, usually do make territorially based claims to self-government. However, such claims need not lead to secession (Miller 2000: Ch 8). Once again, an intertwined history often serves to bolster mutual interests, so that considerable degrees of regional autonomy can nonetheless be embedded in a broader political system and national identity. For example, David Miller has noted how the Scots share a common Reformation heritage with the English that gave the majority in both nations an interest in a Protestant monarch, that involvement in Imperialism helped shape a certain Britishness in Scotland and so on (Miller 2000: 132-36). Of course, there are asymmetries in the relationship – the English feel no such call for a dual English-British identity, or even for political institutions for England or its constituent parts. There is also a fairly consistent minority in Scotland who desire independence. Nevertheless, on the whole devolution has been a mechanism for keeping Scotland within the fold of British politics, not a means for leaving it. After all, it remains part of the heartland of the current ruling party, contributing several key ministers to the government.

These challenges to, and reworkings of, national identity are part of the practice of democratic citizenship itself (Bellamy 2004: 7-14). Common interests, a sense of national belonging and even many civil and social rights were established among the peoples of most industrial states long before their transformation into democracies. By and large, people became first subjects, then co-nationals and only in the late nineteenth and twentieth centuries finally obtained the right to participate as citizens. However, once full adult suffrage was established, the prevailing views of the collective interest and the

nature of rights, as well as the character of belonging, all became the focus of political disagreement and contestation.

As Lipset and Rokkan (1967) famously argued, the party systems of European democracies developed around two main cleavages – left and right, on the one hand, and centre-periphery, on the other. The first arose out of the social divisions spawned by industrialisation between capital and labour, employer and employee, agriculture and manufacturing, town and country. The second reflected ethnic, linguistic and religious divisions that had been only partly overcome by state centralisation and the imposition of a national culture. The character of these divisions, along with their relative importance and the degree and nature of the disagreements they provoked, has varied widely. The pace of industrialisation, the presence, size and composition of national or religious minorities, the impact of contingent events, notably war – these and other factors have all influenced how these cleavages have been configured and the types of conflicts to which they have given rise. Nevertheless, to a greater or lesser extent all states have witnessed debates over the functional and territorial spheres and interests they ought to secure, which rights all citizens require to be treated equally, and the character of the national public culture. So, left and right have debated the legitimacy of different degrees and kinds of intervention in the economy and other areas of civil society, such as the family; while conflicts between centre and periphery have generated debates over regional autonomy, language rights and multiculturalism.

These political divisions have produced considerable variation between the EU Member States in the construal of public and private and the organisation of the different levels and branches of government (Bellamy, Castiglione and Santoro 2004; Eder and

Giesen 2001). Though all are liberal democracies, they have very different approaches to economic regulation, religious toleration, educational and welfare policy and so on, and distribute the powers of central and local government, the executive, legislature and the judiciary, in diverse ways. However, while in some states political disagreements on such matters have sparked quite severe conflicts, once democracies have been established they have rarely produced dictatorship or revolution, on the one hand, or secession, on the other. With the partial exception of some minority nationalist parties, rival political parties have attempted – either on their own or in coalition with others, to offer a vision of the collective interests and rights of citizens to which all can belong as equals, even if highly differentiated political arrangements might be necessary to achieve it. In other words, they remain committed to the ultimate integrity and fairness of the system as a whole and offer governmental programmes covering the whole range of concerns of citizens.

Commentators on citizenship often focus on its exclusions – workers and women in the past, immigrant groups in the present. However, the other side to this exclusionary aspect is the inclusive logic of the practice of democratic citizenship. In various ways, it can be seen as a struggle by the different ideological, social, ethnic, religious and other groups within the political society to be included on equal terms with others (Bellamy 2001; Tully 1999). In the process, they are often led to redefine the ways in which citizens are similar and dissimilar to each other, and hence the mechanisms required to ensure they are accorded equal concern and respect – not least the way the state and its regime are organised. Even when stressing differences or demanding special treatment, though, appeal is standardly made to strengthening inclusion by ensuring the parity of the

aggrieved or hitherto excluded group with fellow citizens. Though policies and state structures may become less centralised and more differentiated and complex, they belong to a national political system that seeks to integrate all these demands. As a result, there is a certain path dependency to the way new demands often develop. As Carens has noted, appeals to fairness in politics are often to some notion of even handedness rather than liberal neutrality (Carens 1997). Excluded groups tend to look within the existing political culture for reasons justifying how they might be treated the same or differently to others in order to achieve equality of concern and respect with them

The new forms of citizenship also conform to this pattern. Contracting out or even privatising public services is usually done in the name of rendering them more flexible and responsive to the diversity of citizens' needs. New social movements campaign to get certain interests and issues onto the political agenda. Moreover, these new forms are prevented from simply serving sectional interests through operating within the traditional political system. Even privatised services remain subject to public regulation, the effectiveness and scope of which continue to be publicly debated. Likewise, successful single issue campaigns get taken up by political parties and integrated into their programmes. Of course, it would be wrong to view this as a Whiggish story of ever greater inclusiveness. All groups will experience reversals as well as advances, with each new settlement excluding new groups as well as including certain others.

Some commentators have seen the EU as simply the outgrowth of domestic politics – the response of governments to the transnational interests of particular industrial and political groups (Moravcsik 1999). Others, though, believe the EU has grown beyond the purely intergovernmental stage and that it has taken on new state-like

characteristics of its own (Christiansen, Jorgensen and Wiener 1999). As I noted, the main characteristics of EU citizenship correspond to the new forms and, I shall argue, certain of the phases preceding the establishment of traditional democratic citizenship within the Member States. However, some of the attributes of democratic citizenship are also present, including EU wide elections for a Parliament – even if that body does not operate as the EU’s legislature. This mixture of old and new prompts a number of questions that I will seek to explore in the sections that follow. First, what are the prospects for establishing democratic citizenship at the EU level? Second, how adequate are the new forms - indeed, is the EU transforming the character of citizenship away from the traditional citizenship altogether? Finally, if – as I shall suggest – the answer to these questions is largely negative, how can an adequate mix of old and new be obtained in the EU?

#### State, Nation and Democratic Citizenship within the EU

The last section argued that democratic citizenship emerged from, and then shaped, the three fold processes of state-building, nation-making and the emergence of a commercial and industrial civil society. If a pan-EU democratic citizenship depends on a parallel set of circumstances, as has been claimed (Munch 1996: 379, 384-5; Harlow 1999: 1-9), have these developments gone sufficiently far at the EU level?

If the definition of statehood is sovereignty over the key functions within a given territory, then the EU can be regarded as only being at best state-like in certain areas (Schmitter 2000: 15-19). There is some uncertainty over, and a lack of congruence between, both the territorial and the functional spheres of the EU’s authority. The EU will

almost certainly expand to include more states. Yet, as the controversy over Turkey's candidacy illustrates, which states, and when, are deeply disputed issues. Meanwhile, unlike a state the EU does not have a monopoly of all functions within its territory. Indeed, some of those functions, notably EMU, only operate in certain zones of the EU. Its tax raising powers are limited and indirect, it possesses only partial control over the movement of goods and persons within its domain, and lacks that hall mark of state sovereignty - a monopoly of legitimate violence within its borders and the power to defend itself against external enemies. Nevertheless, it can generate and allocate revenue, regulates wide areas of public and private behaviour, possesses diplomatic status, conducts and concludes binding international negotiations in certain trade and security matters and organises elections. Though even the new Constitution has the formal status of a treaty, so that its powers and competences are loaned it by the Member States, which will now possess a right to secede, the treaties form the basis for an independent legal system with a huge impact on domestic law.

Thus, the EU conditionally represents and secures some of the collective interests of different groupings of Member State nationals. This partial and limited statehood is matched by a similarly selective attachment between EU citizens to both each other and to the EU. There have been sporadic attempts to establish an EU wide sense of national identity. The EU anthem, flag and the European version of the national passport, along with the very status of EU citizenship, have given the EU the symbolic trappings of nationhood. However, these symbols lack any deep resonance within a shared European culture, history or values. The dispute over whether to associate allegedly European political values with Christianity in the preambles to the Charter of Fundamental Rights

and the Constitutional Treaty revealed the degree to which national differences are as important as any similarities in the cultural sphere. For parallel reasons, the Euro notes came to be decorated with fantasy bridges, any real bridges, individuals or artefacts having a primarily national significance. Discussions of Europeanness tend to be equally abstract. Though the Constitutional Treaty (Preamble) contains references to a shared European commitment to liberal democracy and the rule of law, these commitments are shared with all democracies world wide. There are as many disparities and resemblances between Member States as there are between any one of them and any non-EU liberal democracy.

While a majority of European citizens support membership of the EU, such backing is lukewarm and fragile,<sup>4</sup> with only a small minority strongly committed to efforts to unify Europe. Moreover, the EU is valued primarily for its importance in reinforcing national status and the benefits it offers to Member States. If around 50% of European citizens have consistently declared that their countries benefit from membership of the EU, with smaller countries being particularly favourable, far fewer have seen themselves as European. For example, among the old EU 15 only 3% of citizens generally view themselves as 'Europeans' pure and simple, and only 7% say a European identity is more important than their national one. By contrast, approximately 40% will describe themselves as national only and 47% place nationality first and Europeanness second. Indeed, though 89% of these citizens usually declare themselves attached to their country and 87% to their locality, only 58% feel attached to the EU.<sup>5</sup>

The absence of either statehood or nationhood at the EU level is also reflected in the relative lack of any EU wide public sphere. For example, there are no European wide

newspapers, radio stations or TV channels. Despite the widespread knowledge of English, the one attempt at an English newspaper targeted at an EU audience, *The European*, proved a failure. The only English language newspapers with a readership across the EU are probably the American *International Herald Tribune* and the London based *Financial Times*. Both have a moderately Eurosceptic outlook and are largely read by a business and professional elite. Of course, EU issues are reported in the national and some of the regional media of the Member States. However, as a result it is always refracted through a national or regional lens. This domestic perspective is reflected in interest in EU politics more generally. Except in countries with compulsory voting, turn out in EU elections is lower than in national ones and is largely fought by national parties on domestic issues.<sup>6</sup>

It is sometimes argued that both the partial character of the EU's statehood and the selective character of identification it attracts are no more problematic than the division of functions and loyalties between local and national government within most of the Member States (Weale 1997). Accordingly, a two-level form national-EU citizenship ought to be no trickier to imagine than the regional-national forms of dual citizenship most Member State citizens already possess (Soysal 1994). However, the two situations are very different. As we saw, though semi-autonomous, local and regional government - and often identities too - are nested within national political systems. Of course, such nestedness lacks the neatness of a Russian doll. Different functions often map onto different territorial sub-units. Asymmetries of power and identity can exist between similar sub-units within a country - so that the Scots enjoy more local powers and have a stronger regional identity than the residents of East Anglia, say. Groups also frequently

contest the way levels are drawn. Even in such contestations, though, there is still an established hierarchy of decision-making and identification, with the higher levels encompassing and being more inclusive than the lower. Consequently, the potentially adverse knock-on effects of sub-national decisions for either other regions or national policies are capable of being compensated for at the national level. Indeed, the allocation of powers to sub-national units forms part of national politics and is subject to nationwide trade-offs and compromises.<sup>7</sup>

By contrast, EU politics fails to fit into national politics in such a neat way, or vice versa. In fact, European citizens do seem to regard the EU in ways that are somewhat analogous to their attitudes towards local government. As we saw, most see it as a functionally useful level for dealing with certain problems, but one that in terms of its utility and their identification with it ought properly speaking to be nested within the domestic politics of their Member State. In other words, they see it as a legitimate solution for certain kinds of domestic problems. To a degree, the prominence of intergovernmental bargaining in EU decision-making can allow national governments to portray it in these terms. For example, the adverse effects on a given region, such as the Western Isles of Scotland, of a generally beneficial EU wide policy, can be mitigated by the promotion of other policies that favour it, tailor made opt outs and so on. However, national governments will not always get their way. The very size and diversity of the EU makes it harder to accommodate all demands – indeed, such accommodation can itself increase the costs and diminish the benefits of the policy overall. Infra-national bargaining will also often have to give way to inter-national bargains. Policies that it might be hard to push through in a purely domestic forum might succeed in an

international arena because the issue has higher salience or greater support in the second compared to the first. The Common Agricultural Policy, for example, remains key to coalition building at the EU level even if such agricultural subsidies would be rejected at the national level by many of the Member States that feel obliged to support it. Moreover, because EU policy rarely has a significant influence on domestic elections, governments have relatively weak incentives to ensure their EU voting always accords with the concerns of their domestic supporters.

The solution might seem to be to nest national politics within EU politics. Certainly, the self-image of EU institutions – most notably the ECJ – is that they are superior to national governments, parliaments and courts within their sphere of competence.<sup>8</sup> As we have seen, though, the competences of the EU are not inclusive in anything like the manner of a state and there is little support for them becoming so. That makes it hard for either EU institutions or European citizens acting through them to ensure EU policies operate in ways that are fair for all concerned. It is sometimes suggested that the superiority of EU over national law can be reconciled with this situation because EU matters operate in a discreet sphere to most other domestic concerns. However, this is not the case – EU regulations often have profound consequences for a whole range of domestic policies, many of which mainly effect locals and only indirectly or potentially citizens of other EU countries.

We seem faced with a quandary, therefore. On the one hand, the nation and state building preconditions for EU level democratic citizenship have yet to develop and seem unlikely to do so. Given the strength of national political cultures and their associated state structures, it is doubtful these will be superseded by a pan-European political

identity and arrangements. Regional identities were absorbed within national ones in a pre-democratic era, at a period of huge social transformation and under the threat of war. If anything, the current trend is in the opposite direction, with minority nationalities reasserting themselves and demanding greater regional autonomy within the Member States. Moreover, the very size and diversity of the EU poses problems for a pan-European democratic politics. As many commentators have noted, strengthening the power of the European Parliament in these circumstances risks deepening rather than assuaging the EU's democratic deficit (Weiler 1996: 111). The multiplicity of languages and political cultures mean there is no EU wide public sphere or demos. The party blocks within the parliament fail to mirror these national differences. On the other hand, EU politics is only very imperfectly nested within the democratic systems of the Member States and while improvements, explored below, could be made, there are limits to how far this could ever be achieved. If the EU seems unsuited to old style democratic citizenship, though, many have argued that new styles might be more appropriate. It is to this issue that I now turn.

### Post- national Citizenship?

A number of commentators have argued that the EU has promoted the emergence of a new and superior basis for citizenship: namely a post-national citizenship founded on rights and the rule of law (e.g. Habermas 1992; Soysal 1994; Føllesdal 2000; Kostakopoulou 2001). As I noted above, the development of a national civil society involving equality before the law provided one of the preconditions for traditional democratic citizenship. The economic and social transformations conventionally

associated with globalisation, together with the construction of an EU wide legal system, have certainly helped create many of the key elements of a European civil society.

Advocates of a new form of post-national citizenship argue these changes in themselves are sufficient and can substitute for the other components of democratic citizenship stemming from statehood and nationality. Indeed, they take us beyond the need for the closed borders, overarching power and exclusiveness connected with state sovereignty and national identity.

The strongest advocate of this view, Jürgen Habermas, has argued that the new Charter of Rights and Constitution can provide the focus for a European constitutional patriotism (Habermas 2001). He and his followers also claim that by grounding the normative pre-requisites for the private and public autonomy needed for free and rational deliberation, the Charter and Constitution also offer the basis for an EU wide democracy (Eriksen, Fossum, and Menéndez 2002; Fossum 2003). There is no need for either a sovereign demos or a sovereign state authority. Instead, what unites and binds people is a consensus on justice that is guaranteed by law. To the extent that European civil society can be viewed as a European Rechtsstaat, in which the peoples of Europe can formally relate to each other through the medium of law, then the requirements for a new (and superior) form of European citizenship have been satisfied. Though a European-wide democratic legislature can be built on these foundations, it will necessarily be constrained by the legal constitution that continues to be rooted in civil society (Habermas 1992; 1996; 1997; 2001).

As I acknowledged above, a law governed European civil sphere certainly exists. After all, the most tangible, transnational right offered by the EU is the ‘free movement

of citizens' between Member States along with those rights associated with it, such as the right to reside. Though clearly of economic origin (Everson 1995), the ECJ has gradually extended these rights so that they refer not just to workers or other economic agents, including 'consumers' such as tourists, but persons more generally. For example, European law has played an important role in securing same sex couples a legal status equivalent to married heterosexual couples and in combating discrimination against women (Stychin 2001). Moreover, while EU citizenship can only be conferred on nationals of Member States, many of the entitlements associated with it can be enjoyed by third-country nationals working within the Union. Indeed, some commentators have seen the rights conferred by EU law as gradually undermining and supplanting all national distinctions. As one particularly lyrical judgement has put it, 'Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality.'<sup>9</sup>

These developments may seem to support the view that the rule of law offers a basis for a new style of denationalised and non-statist citizenship within the EU. However, it should be noted that these rights are for the most part not the rights of political citizens but of private subjects acting within civil society. Such activity can be empowering, as in some kinds of public interest litigation (Harlow 1999: 49-52). However, legal avenues tend to be exploited disproportionately by corporate bodies (Harding 1992). Used excessively, litigation can also stunt the evolution of democratic, collective problem solving, and divert attention to ultimately self-defeating forms of individual redress, particularly in the area of compensation and liability (Harlow 1996).

EU level decisions can also undermine the interpretation of rights that people have made as democratic citizens of the Member States. As Niamh Nic Shuibhne (2005) has neatly put it, though the Member States share roughly the same set of liberal democratic values, their valuations of them frequently diverge (see too de Witte 1991/2; Weiler 1999:102). These different valuations result from democratic citizenship shaping, as well as being shaped by, the character of the state and national culture (Bellamy 2001). They reflect the particular ways the conflicts over redistribution and recognition that animate modern politics have played out in the different contexts of each Member State (Bellamy 2004). If most Member States have written constitutions presided over by constitutional courts, national judicial decisions long-term follow majority public opinion and are themselves shaped by the prevailing political culture (Dahl, 1957). After all, it was challenges from the constitutional courts of certain Member States, notably Italy and especially Germany, concerned about the ways EU law might conflict with various domestic constitutional principles, which first obliged the ECJ to develop a rights-based jurisprudence.<sup>10</sup> Though the ECJ asserted its competence to decide such conflicts, it has in practice usually done so in ways that make some form of compromise possible.<sup>11</sup> Nevertheless, even in such key areas as abortion,<sup>12</sup> the ECJ has a natural tendency to view rights through the prism of the fundamental freedoms of the Union (Phelan 1992). In other words, it establishes a form of market citizenship that, while justified within its own sphere and not without many positive effects outside it, risks creating a European version of the *Lochner* era in the United States (Coppel and O'Neill 1992; though see too Weiler and Lockhart 1995).

Does the Constitutional Treaty get over these problems? The Conventions, especially the one leading to the Charter, have been portrayed by some as deliberative democratic forums that provided a near ideal environment for producing a European consensus on fundamental rights and constitutional principles (Eriksen, Fossum, and Menéndez 2002) However, both conventions reflected the main cleavages to be found within most of the Member States: namely, left and right, on the one hand, and centre-periphery (or in this case enthusiasm for the EU or a more moderate or sceptical stance) on the other (Bellamy and Schönlau 2004a; 2004b; Magnette and Nicolaïdes 2004). Indeed, that these documents represent a compromise between the main democratic divisions within the Union, rather than a factitious supra-political consensus, largely adds to rather than detracting from their legitimacy. Yet, because there is neither a pan-European demos nor a public sphere, they cannot be regarded as reflecting a genuinely pan-European view. Instead, the issue of differing national valuations of the Charter rights was largely skirted around by specifying them at such a high level of abstraction that they could be compatible with almost any reading of them. Meanwhile, the Constitution entrenches the European Court's ultimate authority to decide their bearing in any given case (Article I-6, III-365).

For various reasons, that authority is likely to be particularly unconstrained within the EU context (Shapiro 1999: 321-27). As I noted above, within domestic politics courts are influenced by national public opinion. Although they can resist ephemeral fluctuations in people's views, constitutional interpretations generally evolve in parallel with social and political change. Federalism undeniably weakens that influence. The strongest constitutional courts are in federal systems, such as the United States, where the

executive and legislature are often weaker than in unitary one's and they rule on disputes over competence and jurisdiction as well as the compatibility of laws with rights. In the EU, there is the additional problem of there being no EU wide public sphere. After all, the supremacy of the Supreme Court to be *the* authoritative interpreter of the US Constitution has often come under sustained democratic challenge, and it has shied away from federal adjudication for long periods (Devins and Fisher 2004). Potentially Article I-5 (1) gives lee-way for national constitutional courts to continue to assert their constitutional autonomy, but this power is relatively mooted (Shaw 2005: 142). If there were uncontroversial interpretations of rights that were obvious to all reasonable persons, then the isolation of courts from normal political pressures might be regarded as a good thing. However, as disagreements between judges in many key cases and the above mentioned clashes between the ECJ and national constitutional courts both testify, such incontrovertible agreement does not exist. Moreover, isolation from formal political influences merely lays the Court more open to the informal lobbying of those factions and special interests with the means and contacts to obtain access to it. Hitherto, the need to engage with national constitutional courts has in many respects helped generate a European jurisprudence that is sensitive to national legal and political traditions and opinion (Weiler 2003). In practice, that may continue to be the case. The risk, though, is that far from providing a new basis for democratic citizenship, the constitution replaces it with judicial discretion.

Constitutions can certainly be the symbolic focus of a polity as well as denoting a type of regime, whereby power is distributed and constrained according to certain specified rules and principles. The prime instance of such constitutional polity-making

remains the United States, whereby the constitution partly brought into being the people who were its putative authors. However, the US constitution was embedded within old style nation and state building. As immigrants discovered, its significance was shaped by a particular national culture, and its sway defined by the power of the state to assert its sovereignty over a given territory, as the civil war all too dramatically revealed. The proposed constitution cannot of itself bind the European people and define the Union. Its very abstraction makes that impossible. However, unless it becomes embedded within a European democratic culture that has rather different sources, there is a danger that it could undermine national democracy without offering the basis for any democratic compensation at the European level.

### Delegated Citizenship?

The delegation of human rights protection at the EU level to the ECJ is but one instance of a more general trend towards assigning key regulatory tasks to trusted experts (Majone 1996; 2001). Advocates of this policy claim that the regulation of much financial and economic activity has to be removed from democratic control because it is either too technical for politicians and citizens to understand, or prone to attracting rent seeking or other kinds of self-serving, or simply myopic, behaviour on their part. Take the judicial protection of rights against potentially tyrannous (or plain careless) majorities, or the setting of interest rates by independent banks to guard against their manipulation for electoral advantage by politicians. Supporters of these strategies argue one can assume that people want their rights upheld and sound money. However, given that democracy in these areas is allegedly more likely to jeopardise than secure these goals, government *for*

the people is best promoted by removing them from control *by* the people or their representatives (Scharpf 1999: 2, 6, 23, 203).

A number of commentators have argued that because the EU is chiefly concerned with regulatory policies of the kinds delegated to non elected expert bodies even within the Member States, talk of a democratic deficit at the European level is misconceived (Majone 1998; Moravcsik 2002). That aspect of the representative function of democracy that helps ensure policies attend to relevant differences between Member States and the groups within them to whom they apply, can be met by filling the various committees with national appointees, often from the relevant sectors, and consulting users. Meanwhile, the process by which regulations are formulated may also claim certain democratic credentials through being open and deliberative. Indeed, the procedural niceties can themselves be upheld through being challengeable in their turn via Ombudsmen or in the courts.

The aim is to produce an ‘objective’ consensus, unsullied by self-interest. To achieve that goal, they aspire to separate policy making from politics. Prior to formulating any policy, political considerations can get factored in and appropriate control achieved through its being a political decision to have such regulations in the first place. There is also the possibility of *post hoc* compensatory measures to alleviate any excessive burdens imposed on a given group by an otherwise fair and generally beneficial policy. However, policy making itself is conceived as a pure form of apolitical democracy.

In this scheme, democracy means a degree of representativeness among decision-makers, consultation, transparency, procedural correctness, and deliberation in order to

produce an ‘objective’ assessment of the public interest in a given policy area (Héritier 1999). In other words, it offers a delegated form of democratic citizenship by expert proxies and civil society groups charged with defending putative collective interests. Citizens are supposedly not bothered who provides them with certain benefits just so long as they are provided in as efficient a manner as possible.<sup>13</sup> However, this proposal assumes the collectivity and its interests are uncontroversial matters. Yet, people often disagree about where their interests lie, the appropriate measures to address them and the level at which such decisions should be taken. Indeed, we saw most political debate is about just these questions, with both the left-right and the centre-periphery divisions of contemporary politics raising the issues of who should do what, when, where and how. As we shall see, the failure to address these issues proves a major lacuna within the EU where, in contrast to the Member States, these new modes of governance are not nested in systems of democratic government in which party competition offers a rough guide to the overall balance of national opinion.

Within the EU, there are a range of expert regulatory systems - from those that put flesh on directives desired by the Council of Ministers via the comitology process, ultimately producing regulations that have the force of law, through to much softer forms of largely voluntary coordination and persuasion via the formulation of benchmarks by such mechanisms as the Open Method of Coordination. In all cases, Member State governments can exercise a degree of control prior to and following policy making, even being able to veto measures in certain areas or, with the ‘softer’ forms, only complying so far as they find it convenient to do so. However, their main claims to democratic legitimacy derive from the procedural norms governing their deliberations which are said

to produce policies in the public interest (European Commission 2001: 10). How far do these two mechanisms of Member State control and procedural correctness satisfy democratic concerns?

For a start, as I noted above, the domestic analogy fails. At national levels, technocratic bureaucracies are subordinate to, and embedded within, electorally accountable national governments. In the US, for example, they were very much the creatures of the Roosevelt Presidency, with its huge electoral mandate (Shapiro 2004: 5-6). Though still hard for democratically elected politicians to control, those difficulties are greatly exacerbated within the EU, where unelected bureaucrats supply the executive. As I observed *a propos* courts, within the Member States delegated powers are also subject to national public opinion. For example, the national media can mobilise criticism of a given measure, agency or official in ways that place them under political scrutiny and can lead to changes. For the reasons explored earlier regarding the absence of an EU wide public sphere, that is much harder to achieve at the European level.

In fact, the EU employs technocratic governance in part to substitute for the absence of a European collective or public. The separation of policy-making from politics is said to be possible because of a putative distinction between regulatory and redistributive measures. Unlike the latter, the former supposedly require little or no democratic endorsement because they do not involve transfers from one group to another, but rather consist of fair and mutually beneficial general rules that apply equally to all (Scharpf 1999). However, this distinction is too neat (Føllesdal and Hix 2005: 10-12). Well designed regulations may produce diffuse, long term benefits, but even they are not costless to implement and often impose particular and immediate burdens on specific,

geographically located groups, not all of whom were previously enjoying unjustified privileges. When these decisions form part of a programme of government within a unitary system, the additional burdens on specific groups and regions can be eased or offset by some form of log-rolling. Sometimes such compensation relates directly to the costs of the given policy, at other times to supporting a quite different initiative of greater concern to the group or region. In the international arena such trade-offs are harder to organise. For example, it may make sense within the overall scheme of British politics, say, to compensate Cornish farmers, but this trade off proves less compelling for other states. As a result, no policy might get made, especially if a Member State can exercise a veto.

Technocratic governance supposedly overcomes this problem (Majone 2001, European Commission 2001: 29). Notionally, the fact that technocrats are national appointees, often from government sponsored research departments, ensures Member State interests are protected. In reality, though, they have no electoral or other incentive to consult these concerns. Given that technocrats share a common professional interest and discourse, what actually emerges is a technocratic consensus. However, that does not make it necessarily 'objective' let alone 'efficient' or in the 'public interest'. The interests and concerns of experts may not be those of the population at large, while they are no more expert on the ethical and ideological context within which most policies have to be placed than ordinary citizens (Shapiro 2004: 9-10). For example, experts on nuclear power are likely to find its promotion a desirable matter and will no doubt offer a highly technical, and in their view satisfactory, evaluation of its costs and risks. But that does

not mean an efficient nuclear energy policy is in the 'public interest', however deliberatively the experts concerned may have arrived at their views.

As in the United States, such expert consensus can be counter balanced by a requirement to consult and the ability of interest groups to contest the findings (Shapiro 2004: 10, 12-13). The EU appears to be gradually moving towards this scenario with its new emphasis on participation in the White Paper on European Governance (European Commission 2001: 11-19), the development of administrative law and the probable adoption of something like the American Administrative Procedure Act (Shapiro 1996). However, despite the rhetoric about involving the 'general public' (European Commission 2001: 11), the main proposals for consultation refer to 'civil society organisations', 'interested parties', 'partners' and 'stakeholders' (European Commission 2001: 14, 15, 17, 21; Magnette 2003: 149-50). There is a single, ritually pious, reference to the importance of European political parties (European Commission 2001: 16) and none at all to their rather more substantial national counterparts. Although the White Paper recognises the dangers of consulting what are often self-selecting and unaccountable bodies, the proposals it offers for overcoming the resulting biases are largely superficial (Føllesdal 2003). Therefore, this policy still risks favouring well funded special interest groups able to sponsor their own team of counter experts, whose own interest is often at variance with that of the public at large (Crouch 2004). None of these groups need be particularly democratic themselves and involve the citizens they allegedly speak for in their decisions. They too claim to act as proxy citizens. This tactic is even truer of most consumer and public interest organisations than of certain producer groups. After all, unions at least have a degree of internal democracy. Worse, the ability

of many NGOs to criticise regulatory proposals is constrained by their reliance on EU funds, itself a sign of their low levels of membership (Warleigh 2001). Meanwhile, the focus remains on the particular policy and certain specific problems that might arise from it rather than policy-making overall.

Throughout the document, the Commission styles itself the ultimate guardian of putative European interests. Yet, it provides no reasons for why it should be so regarded beyond an unsubstantiated claim to be above sectional interests (e.g. European Commission 2001: 29). In other words, it makes a virtue of its very lack of democratic accountability (Føllesdal 2003). The other potential people's tribunes within this scheme are unelected judges (European Commission 2001: 8, 25). Though portrayed as defenders of procedural rectitude, they will inevitably end up making substantive as well as procedural judgements, especially as the US experience suggests they will have to become themselves experts in the given field rather than legal generalists in order to cope with competing expert testimony (Shapiro 2001: 6). Certainly, the political dimensions of EU law will become ever more apparent, rendering its decisions open to contestation by rival political actors (Shapiro 1996; Harlow 1996: 224-5; 1999: 52)

These criticisms should not be taken as suggesting that transparency and consultation with NGOs and stakeholders can serve no democratic purpose (Héritier 1999; Magnette 2003: 150-51). Obviously, more active citizens can benefit others beside themselves and such scrutiny has increasingly played an important role in mature democracies. However, they cannot provide all the benefits of democracy. Nor can technocratic government be shown to render such democratic accountability unnecessary.

Technocrats and experts rarely possess the unquestioned legitimacy that the delegatory model assumes. At an everyday level, the public are all too aware that professionals, such as doctors, may for one reason or another make mistakes or be governed by professional codes or interests that are not necessarily in line with the concerns of those they purport to serve. Moreover, the high reliance of modern governments on technocratic advisors also means that they tend to be treated with much the same distrust as politicians. For example, the BSE scandal tarnished politicians and experts alike and led many to doubt the advice given in its aftermath. Though most modern democracies do delegate power to outside agencies, these are usually – however imperfectly, subject to greater democratic scrutiny and influence than can be the case in the EU. Indeed, they are most widely used not as regulatory bodies but as service providers (Shapiro 2001: 14). In these cases, a managerial ethos seems more appropriate and government control less difficult to obtain – not least by being able to fire managers who become electoral liabilities.

Thus, delegation cannot substitute for traditional democracy at the EU level. The issues concerned can rarely be decided on technical criteria alone, which in any case may be contested among experts, and need to be placed within the broader context provided by democratic decision making. Nor do technocrats necessarily possess more legitimacy or prove less self-interested or prone to error than politicians. Here too, democratic accountability appears desirable. Though the new forms of citizenship provided by appeals to Ombudsmen or the courts, greater transparency, and consultation with stakeholders and NGOs partly fill this gap, they also suffer from some of the same

problems. They too act as proxies for participation by citizens themselves and tend towards the technocratic and the particularistic.

### Conclusion: Between National and Transnational Citizenship

EU policies need a degree of old style democratic endorsement and accountability that the new forms of citizenship prove unable to provide. Neither rights nor interests alone can create or legitimise either a European demos or an EU wide public sphere. Yet, without such a people or sphere, there can be little hope of creating a truly collective democratic decision-making procedure at the EU level, capable of aggregating citizens' interests in a fair manner. Taken on its own, therefore, the EU will always suffer a democratic deficit.

Fortunately, though, the EU is not a stand alone organisation but remains in certain crucial respects an intergovernmental and international body. Blending old and new forms of citizenship within the EU is to a large degree a matter of so mixing the national and transnational that it is to the advantage of both. Though this chapter has concentrated on the democratic weaknesses of the EU, it is important to acknowledge those respects in which it supports democracy at the national level. The EU assisted the transition to democracy in Greece, Spain and Portugal and will no doubt similarly bolster democracy in the new Member States from Central and Eastern Europe. The emphasis on human rights and the rule of law has also had beneficial effects in established democracies. Membership has given many of the smaller Member States an international status and influence they previously lacked, while all have gained some benefits through having a say in the management of certain processes and externalities associated with the

other Member States that affect their domestic economies. EU law and regulations can also be a further resource whereby individuals and a whole variety of interest and citizen groups can challenge the actions of their national governments.

However, in other respects the EU weakens the domestic democratic control of executive action. As we have seen, executives can often push through measures at the EU level that would be insufficiently supported or even bitterly opposed in the domestic context. Likewise, EU legal norms may clash with, and occasionally subvert, equally valid national legal norms that possess the additional legitimacy of democratic endorsement. Delegation within the EU goes beyond that at the domestic level and is freer from public sway or accountability. Though, as noted above, new forms of citizen action can make these agencies and the regulations they produce a democratic resource, they can also further advantage certain already privileged interest groups and deepen inequalities in traditional forms of participation and influence at the domestic level.

These considerations suggest there are democratic limits to the EU. Nor can the EU's weakening of certain forms of democratic accountability be simply traded off against the benefits it brings. For these very benefits are lessened and even turned into burdens through not being subjected to the democratic process, since they may fail to respond to relevant citizen concerns as a result. In part, these limits can be monitored and even partially overcome by strengthening the role national democracies in EU policy making (Harlow 1999: 19-23). Governments can be made more accountable for their European policy before national parliaments and their committees, as is the case in Denmark. EU institutions, particularly the Council, can also be made more transparent in their negotiations, making it harder for Ministers to obscure their true position.

The Constitutional Treaty contains some moves in this direction – for example, by imposing an obligation on the Commission to keep national parliaments adequately informed of EU developments and giving them a limited role in policing infractions of subsidiarity (Protocol on the Role of National Parliaments in the EU). Of course, how far they become a real resource for more informed discussion of EU politics at the domestic level is a matter for national politicians themselves. Even such limited measures are sometimes criticised for being largely negative – a way of constraining further integration. That need not be the case. They may also work to give integration greater legitimacy. By highlighting not just national but also ideological divisions over European policy, many of which cut across national borders, they could also help revitalise EU elections as reflecting European and not simply domestic policy concerns (Magnette 2003: 155-6). However, the fact remains that democratic legitimacy is largely lent to the EU through the old forms of democratic citizenship that prevail in the Member States. Given that there is no prospect in the foreseeable future of the EU developing adequate comparable mechanisms of its own, European citizenship must continue to be but an adjunct to national citizenship. Bringing the one more firmly under the scrutiny of the other, particularly with regard to decisions by the Court and other unelected bodies, and to some degree limiting the scope for European integration itself, provides the only viable way to enhance democracy within the EU.

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<sup>2</sup> Average turnout in the June 2004 election was 45.7 %. It should be remembered this was the first election following accession by the ten new members and that some countries have compulsory voting, e.g. Belgium, and turnouts of over 90%.

<sup>3</sup> Arguably Rawls himself partly acknowledges this fact when he explicitly assumes cultural attachments as undergirding agreement on the principles of justice in Rawls 1993: 277.

<sup>4</sup> Although over 50% of EU citizens support membership, other data – such as the question on feelings towards dissolution that has now been dropped from Eurobarometer surveys- suggest this support to be weak with Euroenthusiasm (like Euroscepticism) a minority pursuit and apathy and ignorance the norm. (Blondel, Sinnott and Svensson 1998: 62, 239-40).

<sup>5</sup> These figures come from Eurobarometer 60 (published February 2004 and based on fieldwork October-November 2003), and the results of earlier studies reported there. I have used results based on the old 15 rather than the new 25 because these can be placed in the context of a general trend. Figures from Eurobarometer 62 (Field work October-November 2004, Publication December 2004) reveal the new members to be on average a little more positive about the benefits coming from the EU. As a result, the slow decline in approval of the EU from the high point reached in the early 1990s appears, temporarily at least, to have been slightly reversed. In fact, new members almost always boost average support for the EU, after which it declines slightly. The figures relating to identity have been remarkably stable over the past decade or so (see Blondel, Sinnott and Svensson 1998: 62-65).

<sup>6</sup> For electoral trends in the EU, see:

[http://www.elections2004.eu.int/epelection/sites/en/results1306/turnout\\_ep/turnout\\_table.html](http://www.elections2004.eu.int/epelection/sites/en/results1306/turnout_ep/turnout_table.html)

<sup>7</sup> Even arguments for secession by national minorities have to respect this nestedness to some extent. For, the knock-on effects for the larger entity have to be taken into account to some degree. If secession left the remainder unviable, say, or significantly less well-off, then most accounts would view it as unjust.

<sup>8</sup> See in particular the assertions of the supremacy of EU law enunciated by the ECJ in the early ‘federalising’ cases, e.g. Case 6/64 *Costa v. ENEL* ([1964] ECR 585) and Case 11/70 *Internationale Handelsgesellschaft* ([1970] ECR 1125).

<sup>9</sup> Case C-184/99 *Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve* [2001] ECR I-6193, para. 31

<sup>10</sup> In case 11/70, *Internationale Handelsgesellschaft*, [1970] ECR 1125, 1134. See too case 29/69, *Stauder v. Ulm*, [1969] ECR 419, at 425 where the Court first stated that fundamental rights were ‘enshrined in the general principles of Community law and protected by the Court’.

<sup>10</sup> In case 4/73, *Nold (II)*, [1974] ECR 491, 507.

<sup>11</sup> E.g. Case 362/88 *GB-INNO - BM v. Confédération du commerce luxembourgeois* [1990] ECR I-667, Case C-384-93 *Alpine Investments BV v. Minister van Financiën* [1995] ECR I-1141 and commentary in Jorges 1997.

<sup>12</sup> See especially Case C-159/90 *Society for the Protection of the Unborn Child (SPUC) v Grogan* [1991] ECR I-4685

<sup>13</sup> As Romano Prodi put it in July 1999, ‘at the end of the day, what interests them [citizens] is not who solves these problems, but the fact they are being solved’. (Quoted in Magnette 2003: 148)