INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

ProQuest Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600

UMI[®]

A Kojèvean Citizenship Model for the European Union

By Erik de Vries, M.A.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of
Doctorate of Philosophy

Department of Political Science
Carleton University
Ottawa, Ontario
Canada

© Erik de Vries 2002

**National Library
of Canada**

**Acquisitions and
Bibliographic Services**

**395 Wellington Street
Ottawa ON K1A 0N4
Canada**

**Bibliothèque nationale
du Canada**

**Acquisitions et
services bibliographiques**

**395, rue Wellington
Ottawa ON K1A 0N4
Canada**

Your file Votre référence

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-71934-0

Canada

The undersigned hereby recommend to
the Faculty of Graduate Studies and Research
acceptance of the thesis,

A Kojèvean Citizenship Model for the European Union

submitted by

Erik W. de Vries, B.J., M.A.

in partial fulfilment of the requirements
for the degree of Doctor of Philosophy

Chair, Department of Political Science

Thesis Supervisor

External Examiner

Carleton University
April 17, 2002

Abstract

This dissertation constructs a postnational citizenship model adequate to the European Union (EU), drawing principally on the thought of French philosopher and public administrator Alexandre Kojève. Its thesis is that citizenship, even as nation states decline in power, retains political elements not particular to nation states, including a conception of strict equality and the delineation between friends and enemies.

The project is driven by three factors. The introduction of EU citizenship in the Maastricht Treaty of 1992 did not create a new citizenship, but created a context for a discussion of the subject. Second, the dominant schools of contemporary thought on transnational citizenship, including cosmopolitanism, liberal nationalism and radical pluralism address it as an extension of civil society rather than as a political phenomenon. Third, Kojève's work has been, in general, poorly interpreted and underread, particularly among English-speaking scholars.

The rehabilitation of Kojève is undertaken in two stages. First, Kojève's *Introduction à la lecture de Hegel* is analyzed, along with his exchange with Leo Strauss. Kojève emerges not as the complacent technocrat implementing global liberal democracy, as the Fukuyama thesis would have it, but as first and foremost a philosopher with a strong interest in rule. In the second, Kojève's *Esquisse d'une phénoménologie du Droit* supports a model of citizenship with roots in the thought of G.W.F. Hegel, but also of Thomas Hobbes and the jurist Carl Schmitt. This model of citizenship incorporates "classic" Kojèvean political elements, particularly the universal need for recognition and the resulting master-slave dialectic, but elaborates these basic

elements to resemble citizenship in a familiar way: it includes accounts of citizenship as a relation between governors and the governed, as incorporating rights of different kinds, and as a measure of inclusion and exclusion through the friend-enemy concept developed by Schmitt.

The closing chapter applies this model to the existing institutions of the EU most closely associated with citizenship. On the argument that an EU federation constitutes the minimum structure under which a corresponding citizenship would be possible, foreign and security policy is identified as the most pressing area requiring integration for the development of EU citizenship.

Acknowledgements

During the years this dissertation was researched and written, I received boundless encouragement from my family, among whom I include the many Masemanns into whose numbers I married. From the elders of both halves I also benefited from much needed financial assistance during lean years. Without the moral and fiscal support of my family, this project would never have seen completion, and I am very grateful to all of them. George and Jennifer Rigg provided my wife and me with spacious accommodation and gardening space for very low rent, effectively giving us a much-needed subsidy. The members of my committee, particularly my supervisor, Tom Darby, provided invaluable advice and the occasional kick in the pants.

Most of all, I am indebted to my wife Charlotte, whose love, encouragement, and forthcoming baby were all that I needed to finish.

Contents

ABSTRACT	I
ACKNOWLEDGEMENTS.....	III
CONTENTS.....	IV
GUIDE TO ABBREVIATED TITLES	VIII
INTRODUCTION	1
CHAPTER 1: CITIZENSHIP LITERATURE IN REVIEW	6
Problems of definition	7
T.H. Marshall's legacy	14
Introduction to the pluralist paradigm.....	15
Citizenship I: Before the pluralist paradigm.....	18
"Thin" identity: Cosmopolitanism.....	21
"Thick" identity: Liberal nationalism	33
Citizenship II: The pluralist paradigm.....	37
Identity and Sovereignty 1: Neo-medievalism.....	46
Identity and Sovereignty 2: Citizenship as overlapping consensus.....	58
Final provisions	74
CHAPTER 2: A RE-INTRODUCTION TO THE READING OF KOJÈVE ...	78
The Seminar.....	83
Kojève and the practice of esoteric writing.....	85
The master-slave dialectic	95
Reflection and rule I: a Platonic reading of the master-slave dialectic.....	96
Reflection and Rule II: Kojève's reading of the master-slave dialectic.....	104
Kojève on Time, Eternity and the Concept.....	114
The relation between Time and Eternity	114
The origin of freedom	118

Kojève's ontological dualism.....	124
Action and Discourse as history	126
The philosopher as actor	129
The Sage at the end of history	134
Citizenship at the end of history	139

CHAPTER 3 CITIZENSHIP IN THEORY: FROM HOBBS TO KOJÈVE. 147

T.H. Marshall and the language of rights.....	152
Hobbes and citizenship's dangerous schism	154
Hegel's response: Ethical life	161
Schmitt and Kojève	187
Kojève's European Empire.....	206

CHAPTER 4..... 219

CITIZENSHIP IN PRACTICE: THE EUROPEAN UNION 219

A preliminary excursus on realism and cosmopolitanism.....	224
Realism.....	224
Cosmopolitanism	227

Methodological problems connected with understanding EU citizenship.....229

National sovereignty vs. EU autonomy.....236

Outline of the empirical study.....239

I. EU citizenship policy.....	242
1. EU citizenship in the Treaties	242
2. EU citizenship in legislation	245
3. EU citizenship in the ECJ.....	248

First pillar policies **251** |

II. The Common Market	251
1. The common market in the Treaties	251
2. The common market in legislation	254
3. The common market in the ECJ and in Commission decisions	257
Reflections on the common market and citizenship	260

III. Social Policy.....261

1. Social policy in the EC Treaty	262
2. Social policy in legislation	264
3. Social policy in the ECJ	266
Reflections on social policy and citizenship	267
IV. Finance	267
1. Finance in the Treaties	268
2. Finance in legislation	268
3. Finance in the ECJ	270
Reflections on EU finance and citizenship	270
V. Justice and Home Affairs	271
1. Justice and Home Affairs in the Treaties	271
2. Justice and Home Affairs in legislation	273
3. Justice and Home Affairs in the ECJ	275
Reflections on EU Justice and Home Affairs and citizenship	275
VI. Foreign policy	275
A. Institutional aspects of foreign policy	276
1. Foreign policy in the Treaties	276
2. Foreign policy in legislation	282
The creation of common foreign and defence policy	288
3. Foreign policy in the ECJ	291
B. Recent developments in EU foreign policy	294
The St. Malo Declaration	294
Joschka Fischer's Humboldt Speech	298
Reflections on foreign policy and citizenship	300
Analysis	304
CONCLUSION	307
The problem of recognition	307
Problems of citizenship discourse	310
Closing remarks	314
BIBLIOGRAPHY	316
Texts cited	316
Legislation cited	330
European Commission proposals	330

Council Directives.....	331
Council Decisions	332
Council Framework Decisions.....	332
Joint Actions.....	332
European Court of Justice cases cited	333
Court of First Instance cases cited.....	334
Commission Decisions cited	334

Guide to Abbreviated Titles

- CP* Schmitt, Carl. *The Concept of the Political*. Trans. George Schwab. Chicago and London: University of Chicago Press, 1996 [1932].
- EJ* Kojève, Alexandre. "The Emperor Julian and His Art of Writing." Trans. James H. Nichols, Jr. In Joseph Cropsey, Jr., ed. *Ancients and Moderns: Essays in the Tradition of Political Philosophy in Honor of Leo Strauss*. New York: Basic Books, 1964.
- EPD* Kojève, Alexandre. *Esquisse d'une Phénoménologie du Droit*. Paris: Gallimard, 1981.
- EPF* Alexandre Kojève, "Esquisse d'une doctrine de la politique française." Unpublished manuscript, 1945.
- HMC* Kojève, Alexandre. "Hegel, Marx and Christianity." Trans. Hilail Gildin. *Interpretation* 1 (1970): 21-42.
- ILH* Kojève, Alexandre. *Introduction à la lecture de Hegel*, 2nd ed. Paris: Gallimard, 1968.
- IRH* Kojève, Alexandre. *Introduction to the Reading of Hegel*. Trans. James H. Nicols, Jr., trans. Ithaca and London: Cornell University Press, 1980.
- KES* Kojève, Alexandre. "Kolonialismus in europäischer Sicht." In Piet Tommissen, *Schmittiana: Beiträge zu Leben und Werk Carl Schmitts*, vol. VI. Berlin: Duncker & Humblot, 1998. 126-140.
- KFD* Kojève, Alexandre. "Christianity and Communism." Trans. Hugh Gillis. In "Kojève-Fessard Documents." *Interpretation* 19, 2 (Winter 1991-92).
- Lev.* Hobbes, Thomas. *Leviathan*. C.B. Macpherson, ed. London: Penguin Books, 1985 [1651].
- OT* Strauss, Leo. *On Tyranny*. Victor Gourevitch and Michael Roth, eds. New York: The Free Press, 1991.
- PhG* Hegel, G. W. F. *Phenomenology of Spirit*. Trans. A.V. Miller. Oxford: Oxford University Press, 1977.
- PP* Kant, Immanuel. "To Perpetual Peace: A Philosophical Sketch." In Hans Reiss, ed., H.B. Nisbet, trans. *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. 93-130.
- PR* Hegel, G. W. F. *Philosophy of Right*. Trans. T.M. Knox. Oxford: Clarendon, 1967.
- PT* Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Trans. George Schwab. In Thomas McCarthy, ed. *Studies in Contemporary German Social Thought*. Cambridge, MA: MIT Press, 1985 [1934].
- Rep.* Plato. *The Republic of Plato*, 2nd ed. Trans. Allan Bloom. Chicago: Basic Books, 1991.
- STG* Locke, John. *Second Treatise on Government*. In David Wootton, ed. *Political Writings*. London: Penguin Books, 1993. 261-387.
- TW* Kojève, Alexandre. "Tyranny and Wisdom." In Leo Strauss, *On Tyranny*, Victor Gourevitch and Michael Roth, eds. New York: The Free Press, 1991.

- UH* Kant, Immanuel. "Idea for a Universal History with a Cosmopolitan Intent." In Hans Reiss, ed., H.B. Nisbet, trans. *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. 41-53
- WE* Kant, Immanuel. "An Answer to the Question: What is Enlightenment?" In Hans Reiss, ed., H.B. Nisbet, trans. *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. 54-60.

Introduction

The purpose of this project is to establish a functional citizenship model for the European Union. The very idea of a citizenship model has only recently returned to favour in political science, whose disciples have generally been more interested in the benefits and applications of citizenship than its anatomy. As we will see in the subsequent chapters, however, the problem of citizenship anatomy is an ancient one studied by students of politics from Plato to Kojève.

This study is divided into four chapters. The first is a survey and short critique of the principal strains of citizenship-related literature, particularly in political science, of the last few decades. In this chapter, I argue that the sociologically-oriented study of citizenship inaugurated by T.H. Marshall had an undue influence on the development of political science studies of citizenship, owing to an almost complete absence of political science literature in the field until the late 1980s. As a result, political science studies became preoccupied with the relation between citizenship and equality. At almost exactly the same time, a fissure appeared in citizenship studies between scholars viewing citizenship along the liberal-communitarian axis on the one hand, and those concerned with citizenship as an emblem of group recognition on the other. I examine citizenship-related arguments from both poles of the first set of debates, represented in the cosmopolitan and liberal nationalist schools. Tracing the cosmopolitans' origins to the thought of Immanuel Kant, John Locke and Lord Acton, I argue that participants in this debate by and large neglect to provide a comprehensive account of the link between rights and identity in citizenship; their premises and conclusions fall entirely within the liberal horizon, and

are therefore attractive but unconvincing. Liberal nationalism, on the other hand, provides a pragmatic account of national citizenship, but is of no help at all in developing a model of citizenship applicable to a multinational entity such as the EU.

The second of these factions, working under what I have called a “pluralist paradigm” here, dismisses citizenships constructed around nations and states as oppressive, and favours a model built on voluntary, overlapping and flexible memberships in different groups. I argue that the pluralist paradigm, in its “neo-medieval” and “overlapping consensus” forms, while potentially useful in the study of civil societies of existing polities, is of little use in developing a citizenship model for the European Union, which lacks some of the state’s basic functions.

With a view to creating a political theory of citizenship that overcomes these weaknesses, I turn to the work of Alexandre Kojève. The theoretical portion of this project fills two chapters. The first of these is devoted to an analysis of Kojève’s early works, particularly his *Introduction à la lecture de Hegel*. The dialectic of master and slave, which is the best-known aspect of Kojève’s interpretation of Hegel, is read here as part of a broader discussion of the relation between philosophy and politics. This chapter is, in part, an attempt to correct the prevailing views of Kojève’s work as fundamentally liberal, Marxist, or simply a sloppy reading of Hegel. I argue, instead, that Kojève’s account of the master-slave dialectic contains a discussion of the relation between philosophy and rule which is ultimately incompatible with these views. By reading Kojève’s account of the master-slave dialectic against the backdrop of Plato’s development of the just city in the *Republic*, I show Kojève to be concerned not simply with the master-slave dialectic as an expression of history’s inexorable

logic, but with the quandary of the philosopher, who stands with only one foot inside that dialectic.

The political meaning of this discovery is profound; whereas Kojève famously proclaimed the end of history and the advent of the universal and homogeneous state, his own actions look nothing like those of the posthistorical citizens he portrays, in his famous footnote to the *Introduction*, as enjoying sports, art, sex and working as little as possible. By contrast, he works, both philosophically and, after the war's end, as the *eminence grise* of the French delegations to the European Economic Community and the General Agreement on Tariffs and Trade. I conclude that the period Kojève characterises as the end of history *in principle* is a far cry from the portrait of idyl suggested in the famous footnote, but rather represents an interregnum period which remains dialectical and therefore political. The political form of this interregnum is, for Kojève, an empire. It remains for us to determine what corresponding form citizenship will take in it.

This determination is the object of Chapter 3. The primary work of interest by Kojève here is his *Esquisse d'une phénoménologie du Droit*, written in southern France in 1943. This is a more explicitly political work, and shows a broader range of influences than the *Introduction*; I show how it responds to other modern citizenship models constructed by Thomas Hobbes and Hegel (in the *Philosophy of Right*) by drawing on the thought of jurist Carl Schmitt, with whom Kojève later became friends. In the *Esquisse*, Kojève fleshes out his political portrait of the master-slave dialectic with Schmitt's account of the friend-enemy distinction as being at the heart of the political. In its rudimentary form, the human need for recognition produces only

masters, slaves and enemies. Masters and slaves are only archetypes, for Kojève; citizens of the modern West would scarcely identify themselves with either portrait in the *Introduction*. In the *Esquisse*, therefore, Kojève shows how the master-slave dialectic becomes an element of citizenship itself: friendship and enmity are external reflections of that dialectic.

The remainder of Chapter 3 spells out the relation between the twin justices of the master and the slave in modern conceptions of citizenship. To the master belongs the notion of equality, to the slave that of equivalence. Through the historical dialectic, these principles are, in principle, synthesized in a form Kojève calls equity. As I argue, however, to the extent that this synthesis is not complete, the dialectic between master and slave is not closed, and a genuinely political citizenship of the interregnum empire embodied in federalist visions of the European Union remains a necessity.

The final chapter assesses the extent to which the European Union is constructed to accommodate this model of citizenship. Analyzing six broad areas of citizenship-related policy as formulated through the founding Treaties, EU legislation and decisions of the European Court of Justice, I determine the respects in which the EU represents a polity capable of supporting citizenship. The weakest and most important of these areas, foreign policy, has undergone some surprising recent political advances towards integration, largely in response to the EU member states' operational weaknesses -- several and combined -- and I evaluate these developments as potential harbingers of a constitutional federation in which full EU citizenship is possible.

My conclusions contain no predictions for the EU's future, but I argue that the historical logic leading to the transnational, "imperial" formations Kojève anticipated is now palpable to the governments of member states. This logic can be resisted in favour of nationalist political programs, but, if Kojève was correct, only at tremendous cost.

Chapter 1:

Citizenship literature in review

“The establishment of one sovereign world state, far from being the prerequisite for world citizenship, would be the end of all citizenship. It would not be the climax of world politics, but quite literally its end.”

- Hannah Arendt, *Men in Dark Times*¹

The notion of an EU citizenship – formally introduced in the Maastricht Treaty of 1992 – is in one way the beginning, rather than the end, of the quest for a citizenship suited to an age in which political affinity or friendship can be conceived on a basis other than nation. As an institution, EU citizenship is, so far, a bare-bones affair comprising few of the trappings to which liberal democracies have become accustomed; it guarantees the portability of work and residence rights, as well as some democratic rights, to its citizens across all member states. Rudimentary features of citizenship, such as security, education and social rights, as well as taxation and military duties, remain anchored at the level of the member states. EU citizenship, now little more than an idea, leads us to ask the question concerning the possibility of post-national citizenship, but does not, in itself, provide an answer.

As is evident in this chapter, the literature on citizenship generally and that on EU citizenship have become increasingly integrated. Until the late 1980s, most scholarship was concerned with domestic citizenships of existing nation-states. With the tremendous advances in integration manifested in the Single European Act (1986) and the Treaty on European Union (1992), officials began to speak of the EU’s “citizens” instead of its workers, and attaching rights to the former category.

¹ Hannah Arendt, “Karl Jaspers: Citizen of the World?” pp. 81-94 in *Men in Dark Times* (New York: Harcourt, Brace & World, Inc., 1968) 82.

Scholarly discussions of citizenship in the EU have, by and large, taken their cue from the state-oriented literature that preceded it. For this reason, in this chapter I move freely between discussions of citizenship, whether they are addressed at concepts of citizenship at the state, transnational or abstract levels.

It would be neither helpful nor possible to list or engage intelligently with all of the definitions and conceptions of citizenship of even the last fifty years here. In our time, citizenship has been variously associated or identified, in varying degrees, with national identity and linguistic affinity, individual security rights and rights to group recognition, pluralism and uniformity, patriarchy and racism, tolerance and intolerance, solidarity and bourgeois selfishness, cosmopolitanism and parochialism.

Problems of definition

The project of developing a theory of citizenship suited to a transnational body such as the EU is not a new one, but the plethora of literature dedicated to this topic attests to the complexity of the task. The very notion of developing such a theory implies the possibility of reaching an understanding of citizenship which is somehow both responsive to new political conditions and simultaneously attentive to citizenship's essential components. In this respect, my project is no different from any of these others. Clearly, however, scholars disagree on which of the elements familiar to us through national citizenship are the essential ones to be transposed to a transnational citizenship.

This is a philosophical study of citizenship, which is to say that I take it as given that politics is a natural phenomenon with universal properties. This approach precludes both the conception of citizenship as a malleable construction and the

historical study of citizenship as simply a series of “clusters” of meaning such as status, identity, loyalty, rights and shared conceptions of the good.² A philosophical study of citizenship seeks an understanding of citizenship and its parts as expressions of human nature and must therefore comprehend the human capacity to construct political meanings, yet must not give itself over to those created meanings. My principal aim, then, is to develop a theory of citizenship not contingent on any of those particular meanings (the most immediate of which is nationhood), but applicable to citizenships of any flavour.

This attempt at a universal understanding of citizenship is daunting in the face of most recent citizenship literature, which, in spite of its tremendous volume, thwarts such a project by avoiding the question of what citizenship is in favour of addressing one or another of its parts. In a typical such formulation, Juan Delgado-Moreira writes: “In its classic definition citizenship is linked to participation in the polity of nation-states, and is thus the most political of all forms of cultural identity or membership. It is originally tied to nationality and even to nationalism of the French-English style.”³ Rainer Bauböck, although making a different argument, nonetheless engages in the same evasive wordplay: “A comprehensive concept of citizenship which contains individual as well as collective rights, civil and political as well as social rights can only be institutionalized within communities bounded both territorially and in terms of membership.”⁴ Eder and Giesen suggest citizenship is “an

² For an example of this approach, see Derek Heater, *Citizenship: The Civic Ideal in World History, Politics and Education* (London and New York: Longman, 1990) 161, 167.

³ Juan M. Delgado-Moreira. *Multicultural Citizenship of the European Union*. (Aldershot: Ashgate, 2000) 19.

⁴ Rainer Bauböck, *Transnational Membership*. (Aldershot: Edward Elgar, 1994) 19.

interface relating the state and civil society, government, and the people, the territorial political organization and its members,”⁵ while for Philippe Schmitter, it “seems to begin with the acquisition of a status or condition, protected by law, that grants to a select group – usually native born (*ius soli*) or genetically correct (*ius sanguinis*) adults – a general equality of opportunity and treatment with respect to a (varied) bundle of rights and obligations.”⁶ According to Richard Bellamy, “Citizenship is frequently identified with mere membership of a given system and possession of the entitlements that follow. However, the most important entitlement is the leverage such membership gives for changing its terms and conditions.”⁷ None of these interpretations of citizenship is demonstrably wrong, but the vagueness of the language therein (“is linked to,” “an interface relating,” “seems to begin with”) reflects the difficulty of developing a coherent account linking the essential and contingent parts of citizenship.

The naturalist model of political philosophy underpinning this project should also be seen as distinct from the much more common pragmatic brand of political theory oriented to accounts of particular institutions. When two scholars partial to this approach wrote, “The new Europe is not simply an example; it is a form of political

⁵ Klaus Eder and Bernhard Giesen, “Introduction: European citizenship: An Avenue for the Social Integration of Europe,” pp. 1-17 in Eder and Giesen, eds. *European Citizenship between National Legacies and Postnational Projects* (Oxford and New York: Oxford University Press, 2001) 4.

⁶ Philippe Schmitter, “The Scope of Citizenship in a Democratized European Union”, pp. 86-121 in Klaus Eder and Bernhard Giesen, eds. *European Citizenship between National Legacies and Postnational Projects* (Oxford and New York: Oxford University Press, 2001) 86.

⁷ Richard Bellamy, “The ‘Right to have Rights’: Citizenship Practice and the Political Constitution of the EU”, pp. 41-70 in Richard Bellamy and Alex Warleigh, *Citizenship and Governance in the European Union* (London and New York: Continuum, 2001) 41.

life which should have its own corresponding distinctive political theory.”⁸ they indicated a branch of political science which sacrifices universality for precision and applicability. Students of EU citizenship employing this pragmatic political theory have access to analytical tools not available in naturalist political philosophy. The reliance of pragmatic political theory on the conventional practices of established institutions can lead, however, to the arbitrary reduction of political concepts to this or that political practice. T.H. Marshall, for example, described the evolution of citizenship in Britain over three centuries through the progressive universalization of economic, political and social rights. Apart from the problem of transposing Marshall’s citizenship model to other polities,⁹ it presents a narrow view of citizenship as fundamentally a legal relation – a view that has been reflected in subsequent accounts of citizenship.¹⁰

Richard Bellamy takes a republican and democratic view of citizenship, arguing that its “most important entitlement is the leverage such membership gives for changing its terms and conditions . . . citizenship practice is a continuously reflexive process, with citizens reinterpreting the basis of their collective life in new

⁸ Percy Lehning and Albert Weale, “Citizenship, democracy and justice in the new Europe”, pp. 1-14 in Lehning and Weale, eds. *Citizenship, Democracy and Justice in the New Europe* (London and New York: Routledge, 1997) 3.

⁹ Such a transposition was never Marshall’s intention, but the specific nature of his conclusions nonetheless limits their applicability to other instances of citizenship. For examples of critiques of Marshall’s account of citizenship, see Percy B. Lehning, “Pluralism, contractarianism and European Union”, pp. 107 - 124 in Percy Lehning and Albert Weale, eds. *Citizenship, Democracy and Justice in the New Europe* (London and New York: Routledge, 1997) 109; Anthony Giddens, *Profiles and Critiques in Social Theory* (London: Macmillan, 1982) 171-173; Michael Mann, *The Sources of Social Power*, vol. 1: *A history of power from the beginning to A.D. 1760* (Cambridge: Cambridge University Press, 1986) 340.

ways that correspond to their evolving needs and ideals.”¹¹ The conflation of one kind of citizenship practice, which takes the form of various kinds of political participation¹², with citizenship itself, supports Bellamy’s conception of citizenship as, above all, the source of constitutions¹³ and of EU citizenship as the necessary source of a constitution for Europe.

In a similar vein, Juan Delgado-Moreira’s understanding of citizenship as participation in a “bounded community”¹⁴ underpins his proposal for both the conceptual and political extension of this citizenship as participation from the single bounded community of the nation (“national citizenship”) to other self-identifying groups or cultures (“cultural citizenship”). Delgado-Moreira’s understanding of citizenship as participation permits him to bypass the principle of sovereign authority which grounds political conceptions of citizenship.¹⁵ This de-politicized version of citizenship, in turn, sustains his argument for a European multicultural citizenship on the model of the “tangled hierarchies” researchers have found in various parts of EU policy.¹⁶ but obviates the need to articulate the nature of the relation between classical sovereign functions (such as the monopoly on violence or the development of foreign

¹⁰ For example, see Thomas Faist, “Social citizenship in the European Union: Nested membership”, pp. 37-58 in *Journal of Common Market Studies* 39 (1) (March, 2001) and Elizabeth Meehan, “European integration and citizens’ rights: A comparative perspective,” pp. 99-121 in *Publius* 26 (4) (Fall, 1996), both of which manipulate the concept of citizenship by treating its legal dimension as citizenship’s essence.

¹¹ Bellamy (2001) 65.

¹² Bellamy (2001) 45.

¹³ Bellamy (2001) 59. As a sociological account of citizenship, Bellamy’s view understates the importance of rights in identifying citizenship. As a functional account, however, it does not adequately describe the origins of citizenship, but links it vaguely with ethnic conceptions of *demos* (61), religion and ideology (59).

¹⁴ Delgado-Moreira (2000) 31.

¹⁵ Delgado-Moreira (2000) 178. Delgado-Moreira accomplishes this, in part, by interpreting the Commission’s approach to EU citizenship as founded on the principle of a hierarchy of identity rather than of political functions.

policy) and citizenship.

But pragmatic political theory risks more than precision in thought. In her proposed remedy to the problem of the democratic deficit which plagues EU governance, Abromeit suggest that regional and sectoral groups be empowered with a veto over relevant legislation at the EU level.¹⁷ On the one hand, the strength of this approach is immediately obvious: whatever the practical obstacles to implementing a plan of this kind, both the problem (the democratic deficit) and its potential solutions are treated as administrative or technical matters, to which the vast array of practical rationality deriving from decades of public administration can be applied. On the other hand, where technical questions are not at stake, pragmatic political theory operates deductively from whatever conventional principles are at hand. Thus, Abromeit derives both the rationale for, and the practice of, regional representation for a more democratic EU from the legal practice of federalism; regions already part of federations have “an innate right” to such representation, but other self-identifying regions are to acquire this right only through national legislation.¹⁸ By contrast, Abromeit exempts sectoral minorities, which have no standing under most existing political institutions, from these legal restrictions, but rather designates as legitimately empowered any group “united by rather intense preferences or else strong feelings of ‘shared risks’”.¹⁹ The dangers of pragmatic political theory are as clear from this example as are its strengths: Abromeit anticipates criticisms of her democratic

¹⁶ Delgado-Moreira (2000) 166.

¹⁷ Heidrun Abromeit, “How to democratise a multi-level, multi-dimensional polity,” pp. 112-124 in Albert Weale and Michael Nentwich, eds. *Political Theory and the European Union: Legitimacy, constitutional choice and citizenship*. (London and New York: Routledge, 1998) 118.

¹⁸ Abromeit (1998) 119.

construction, but they are geared almost exclusively to its expected efficiency.²⁰

Abromeit's pragmatism leads her to adopt a conservative position on regional representation, but normative pluralism appears the only experience available to guide her view on sectoral representation, whose radical nature warrants a defence with much greater urgency than any anticipated inefficiencies.

This critique should not be overstated; the charge I have levelled against pragmatic political theory is not that its account of citizenship is wrong, but that it, like the general accounts of citizenship discussed above, is partial. All of the aspects of citizenship in these examples – rights, participation, culture, nationality and status – are important parts of citizenship's history. Marshall's study of the tension between social rights and capitalism provided a valuable instrument in the comparative study of social rights, as well as provoking a debate on the functional relation of the three groups of rights. My principal concern in this dissertation, however, is not with any single aspect, but with citizenship as a whole. To do this effectively requires that its parts (such as rights, identity, and equality) be ordered into a coherent whole, and the causal links between them be identified.

That the philosophical thrust of this dissertation so obviously goes against the grain of recent citizenship literature is in some ways perplexing. Many other perennial concepts in political science, including those connected with the study of the EU, continue to be treated as more or less stable and coherent, including the state, civil society, constitutions and the market. Why, then, has scholarship on citizenship encountered such a high degree of fragmentation? In the condensed review of the

¹⁹ Abromeit (1998) 120.

relevant literature of the last twenty years I undertake below, two factors appears as seminal: first, the importance of T.H. Marshall, and sociological approaches generally, and second, the advent of a new pluralist paradigm in citizenship studies beginning in the late 1980s.

T.H. Marshall's legacy

Herman van Gunsteren argues that three concurrent accounts of citizenship prevailed, almost invisibly, from 1945 to about 1980: liberal, communitarian and republican. Until the end of this period, there was little debate among political scientists about citizenship, and very little attention paid to the tensions between these three accounts. The identification of citizenship as an institutional aspect of sovereign states, and the reification of states themselves placed citizenship in the background of other projects; in van Gunsteren's words, "as the concept of citizenship became so all-encompassing, it lost virtually all significance."²¹ The reasons for the rise in serious discussion of citizenship that began, slowly, in the early 1980s have been widely speculated on, but have little bearing on this project.²² To understand the tenor of the contemporary debates on the topic, however, a brief account of predominance of sociology in citizenship studies during this period is vital. During the 1980s, political

²⁰ Abromeit (1998) 121.

²¹ Herman van Gunsteren. *A Theory of Citizenship: Organizing Plurality in Contemporary Democracies*. (Boulder, CO: Westview Press, 1998) 14.

²² Van Gunsteren (1998) attributes the problematization of citizenship in the 1980s as a function of a new mentality of individualization, the "de-hierarchization" of political orders, and the decline of public-spiritedness (pp. 15-16); Bryan Turner attributes it to the rise of neoliberalism and consequent decline of the welfare state, thus opening the question of citizenship via a crisis in social rights (Bryan S. Turner, "Outline of a theory of citizenship," pp. 189-217 in *Sociology* 24 (2) (May, 1999) 189-190.

science was virtually silent on the subject²³, but sociologists returned to the study of citizenship in the spirit with which T.H. Marshall had undertaken it. Their concern, as Marshall's had been, was with citizenship as an instrument of social equality or inequality.²⁴ By the time political science began to take seriously the study of citizenship in the late 1980s, sociology's instrumentalist conception of citizenship was adequately entrenched to be adopted by political scientists working in the field.²⁵ The tensions between citizenship's three stories came into sharper focus, but political science accounts of these tensions remained preoccupied with their meaning for equality.

Introduction to the pluralist paradigm

Iris Marion Young's 1989 article, "Polity and Group Difference"²⁶ heralded the tenor of the citizenship debate which has dominated political science to the

²³ I am overlooking a number of historical and empirical studies of citizenship undertaken by some comparativists during this period, most of which take an institutionalist approach to the study of citizenship. Rogers Brubaker is perhaps the pre-eminent heir to this strand of scholarship, which remains peripheral to the dominant sociologically-inspired discourse I discuss here. See, for example, "Citizenship and Naturalization: Policies and Politics," pp. 99-127 in Brubaker, ed. *Immigration and the Politics of Citizenship* (Lanham, MD: German Marshall Fund and University Press, of America, 1989); and *Citizenship and Nationhood in France and Germany* (Cambridge, MA and London: Harvard University Press, 1992). A sporadic discussion among some political theorists concerning the place of citizenship in the liberal-communitarian debate during the 1970s and 1980s blossomed beginning toward the end of the latter decade; the arguments developed during that period formed important foundations for the "non-pluralist" discussions I examine below. For examples of work from that period, see, for example, Edward B. Portis, "Citizenship and Personal Identity," pp. 457-472 in *Polity* 18 (3) (Spring 1986); Stephen Macedo, "Capitalism, Citizenship and Community," pp. 113-139 in *Social Philosophy & Policy* 6 (1) (Autumn 1988).

²⁴ E.g. Giddens 1982; P. Lucas, "After citizenship, multi-citizenships", pp. 239-252 in *Cahiers internationaux de Sociologie* 79 (July, 1985); Maurice Roche, "Citizenship, social theory and social change," pp. 363-399 in *Theory and Society* 16 (3) (May, 1987); Michael Mann, "Ruling Class Strategies and Citizenship," pp. 339-354 in *Sociology* 21 (3) (August, 1987); and Bryan Turner, *Status* (Minneapolis: University of Minnesota Press, 1988).

²⁵ For an example that predates Iris Marion Young's watershed contribution discussed below, see D.S. King and Jeremy Waldron, "Citizenship, Social Citizenship and the defence of welfare provision" in *British Journal of Political Science* 18 (October 1988) 415-443.

²⁶ Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", pp. 250-274 in *Ethics* 99 (2) (1989).

present. Driven by a postmodernist preoccupation with the promotion of diversity and the deconstruction of power structures, Young's argument was nonetheless clearly an extension of the sociological tradition. Like sociologists Anthony Giddens and Michael Mann, Young emphasised the struggle which characterized the extension of citizenship during the last two centuries, and asked the question familiar to students of Marshall: "why extension of equal citizenship rights has not led to social justice and equality."²⁷ Unlike her sociological colleagues, however, Young did not analyse inequality as an expression of relative class or status, but as a function of "group difference in capacities, needs, culture and cognitive styles".²⁸ The relatively fixed categories characteristic of the sociological study of citizenship in the 1980s gave way, in political science, to a pluralist paradigm which related membership in groups of various kinds to common or shared citizenship, while retaining the preoccupation with equality found in earlier models. For Young, this entailed reformulating equality to mean the granting of special rights for oppressed or disadvantaged groups.²⁹

The pluralist paradigm in citizenship studies thrust the contradictions between the liberal, communitarian and republican accounts into the spotlight. By stressing membership in groups not conventionally understood as political, the pluralist idea raised new questions concerning both the internal and external aspects of the three stories of citizenship. Whereas liberals had traditionally viewed citizenship as the source of individual rights, the pluralist paradigm severed that bond, resuscitating

²⁷ Young (1989) 250.

²⁸ Young (1989) 268.

²⁹ Young (1989) 269.

universalist rights theories³⁰ and raising the problem of group rights³¹.

Communitarianism, which had stressed citizenship as a function of the shared public sphere which lent meaning to individual lives³², now confronted a host of competing “publics,” each laying claim to this same function³³. Republican conceptions of citizenship, previously dominated by accounts concerned with participation and public virtue³⁴, were now challenged by scholars denying the necessity – or even the possibility – contained in these classical accounts of distinguishing between public and private ends.³⁵

Two attributes of the ensuing avalanche of citizenship literature are noteworthy. First, the preservation of the three stories of citizenship in the pluralist paradigm radically increased the fragmentation of citizenship scholarship, which turned to tackle the new fronts opening up between the old and new paradigm, as well as the new expressions of tensions between citizenship’s three stories. Second, pluralism became entrenched as an axiomatic problem in citizenship studies of all

³⁰ Most prominently Alan Gewirth, “The epistemology of human rights”, pp. 1-24 in *Social Philosophy and Policy* 1 (2) (Spring 1984).

³¹ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995) and “The Good, the Bad, and the Intolerable”, pp 22-30 in *Dissent* 43 (3) (Summer 1996).

³² Michael J. Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy* (Cambridge, MA: Belknap Press of Harvard University Press, 1996); Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press, 1998); Alasdair MacIntyre, *After Virtue* (Notre Dame, Indiana: University of Notre Dame Press, 1981); Charles Taylor, “The politics of recognition,” pp. 25-73 in Amy Gutmann, ed. *Multiculturalism and ‘The Politics of Recognition’* (Princeton, NJ: Princeton University Press, 1992).

³³ E.g. Renato Rosaldo, “Social justice and the crisis of national communities”, pp. 239-252 in Francis Barker, Peter Hulme and Margaret Iversen, *Colonial Discourse/Postcolonial Theory* (Manchester and New York: Manchester University Press, 1994).

³⁴ E.g. Hannah Arendt, *The Human Condition* (Garden City, NY: Doubleday Anchor, 1959); Adrian Oldfield, “Citizenship: An Unnatural Practice?”, pp. 177-187 in *The Political Quarterly* 61 (2) (April-June 1990); Michael Walzer, “The Problem of Citizenship”, pp. 203-228 in *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, MA: Harvard University Press, 1970); Mary Dietz, “Feminism and Theories of Citizenship,” pp. 1-24 in *Daedalus* 116 (4) (Fall 1987).

³⁵ For example, Ernesto Laclau, “Universalism, Particularism and the Question of Identity,” pp. 93-108 in John Rajchman, ed. *The Identity in Question* (New York: Routledge, 1995).

schools.³⁶

In the face of the tremendous fragmentation I have observed here, a complete account of the manifold resulting efforts is clearly impossible. Moreover, the various approaches to the study of citizenship now occupy such a widely dispersed normative, methodological and ontological territory that any effort to concoct a universal account of citizenship by mediating between them is sure to fail.

In the specific area of EU citizenship studies, however, the scholarship has concentrated on the relations between four political elements: nationality, identity, rights and sovereignty. As with the broader discussion of citizenship, there is a sharp division here between discussions outside and within the pluralist paradigm. Outside the pluralist paradigm, sovereignty is rarely directly discussed; even among cosmopolitans, for example, few scholars stray from the moral plane and advocate unconditional international intervention for the sake of enforcing universalist principles. Pre-pluralist debates are constructed largely on a realist basis, and focus on relating nationality, identity and rights in ways more or less consistent with the geopolitical structure. As we will see below, it is only with the advent of the pluralist paradigm that states, and, with them, theories of citizenships built on shared identity, have been (theoretically) disassembled.

Citizenship I: Before the pluralist paradigm

The enthusiasm with which scholars have participated in contemplating or even developing a post-national citizenship without an account of citizenship

³⁶ For a detailed account of this development, see Matteo Gianni, "Taking multiculturalism seriously: Political claims for a differentiated citizenship," pp. 33-56 in Karen Slawner and Mark E. Denham, eds. *Citizenship after Liberalism* (New York: Peter Lang, 1998).

adequate both to the post-national as well as the more familiar national variety is perhaps explained by the tremendous appeal of eliminating from citizenship the nationalism intimately connected to the political horrors of the last century.

Normative scholarship in this area is united in seeking the conceptual separation of citizenship from nationality and identity. With the introduction of the pluralist paradigm, the volume of research in this area mushroomed, but the project of expunging “primordial” nationalism from identity antedates the pluralist paradigm considerably.

Lord Acton’s famous essay on nationality, written in 1862, is a prototype for a succession of subsequent arguments attempting to separate the “ethnic” from the “civic” aspects of nationhood. Acton compares the French and English concepts of nationality – “connected in name only” – which correspond to these categories. Of the “French,” or ethnic, view of nationhood, Acton writes:

...nationality is founded on the perpetual supremacy of the collective will, of which the unity of the nation is the necessary condition, to which every other influence must defer, and against which no obligation enjoys authority, and all resistance is tyrannical. The nation is here an ideal unit founded on the race, in defiance of the modifying action of external causes, of tradition, and of existing rights. It overrules the rights and wishes of the inhabitants, absorbing their divergent interests in a fictitious unity; sacrifices their several inclinations and duties to the higher claim of nationality, and crushes all natural rights and all established liberties for the purpose of vindicating itself.³⁷

By contrast, Acton sees the “English,” or civic, conception of nationality as

an essential, but not a supreme element in determining the forms of the State. It is distinguished from the other [ethnic nationalism], because it tends to diversity and not to uniformity, to harmony and not to unity; because it aims not at an arbitrary change, but at careful respect for the existing conditions of political life, and because it obeys the laws and results of history, not the aspirations of an ideal future. While the theory of unity makes the nation a source of despotism and revolution, the theory of liberty regards it as the bulwark of self-government, and the foremost limit to the

³⁷ John Acton, “Nationality”, pp. 166-195 in Gertrude Himmelfarb, ed. *Essays on Freedom and Power*. (Glencoe, Ill.: The Free Press, 1948) 183-184.

excessive power of the State.³⁸

Acton's aim is the articulation of the properties of a patriotism which, like those of the British and Austrian Empires, "include[s] various distinct nationalities without oppressing them."³⁹ Acton thus distinguishes between ethnological nationalities, such as the French, Italian, and German, on the one hand, and political nationalities, such as the Swiss, on the other; the claims of the latter type, according to Acton, have both political and ethical priority over those of the former.⁴⁰

Acton's use of the concept of patriotism retains the centrality of *identity* in the constitution of citizenship, even while purging that identity of ethnic elements. No serious modern scholar advocates an ethnic or otherwise primordial model of identity as necessary to citizenship, although many states (including most of those in the EU) continue to grant citizenship partly or even principally on grounds that are basically ethnic. Two points of contention regarding identity remain, however. One debate hinges on the question of what kind of identity is necessary for citizenship, and therefore necessarily invokes questions of what non-nationalist manifestations of identity are adequate to postnational citizenship. A second and considerably more muted discussion concerns the structural relation between identity and the outwardly more visible aspects of citizenship, mainly rights and duties.

Few scholars deny the factual and necessary contribution of identity, in some guise, to citizenship. Disagreement prevails over the required "thickness" of this

³⁸ Acton (1948) 184.

³⁹ Acton (1948) 193.

identity, which nevertheless always involves two components: a shared understanding of the human good, and the recognition by citizens of their fellows. These two components are bound up together in the concept of *demos*, of which most scholars see the nation as but a single (if the dominant) instance. Outside of the complications created by the pluralist paradigm (which we will examine in a moment), the range of stances among citizenship scholars on the requisite thickness of shared citizenship identity occupies the spectrum from optimistic cosmopolitanism at one end to a kind of utilitarian nationalism at the other.

“Thin” identity: Cosmopolitanism

Characteristic of the “thinnest,” most cosmopolitan end of this spectrum is a boldness of vision which owes much of its impact to the obfuscation of the boundary between moral ends which have historically been in tension with one another. The cosmopolitan position extends the standard of tolerance and accommodation prevalent in ideal-types of liberal democratic civil societies to global proportions. As Richard Falk argues, a cosmopolitan view of citizenship draws “upon a long tradition of thought and feeling about the ultimate unity of human experience, giving rise to a politics of desire that posits for the planet as a whole a set of conditions of peace and justice and sustainability.”⁴⁰ Thomas Pogge distinguishes between legal and moral cosmopolitanism, the first rooted in the ideal that all people “are fellow citizens of a universal republic” and thus share equivalent rights and duties, the second echoing Kant’s moral philosophy: “...we are required to respect one another’s status as

⁴⁰ Acton (1948) 190.

ultimate units of moral concern.”⁴²

In both these articulations of cosmopolitanism two lines of thought, or dimensions, are apparent. First, both Falk’s “politics of desire”, along with its resulting conditions, and Pogge’s legal cosmopolitanism function in precisely the same way as any liberal zero-sum arrangement of rights and duties constructed around competing desires. Henry Shue’s concise description of this arrangement summarizes the cosmopolitan position adequately: “For every person with a right, and for every duty corresponding to that right, there must be some agents who have been assigned that duty and who have the capacity to fulfill it.”⁴³ Although their institutional solutions to it vary, the problem, cosmopolitans agree, is the tension between the universality and equality of human needs on the one hand, and the moral imperative to satisfy them equally on the other. Without a defence through the second dimension, however, the first is a de-ontologized liberalism which rests entirely on the unmediated acceptance of a posited moral code.⁴⁴

The second dimension of cosmopolitan thought grounds this moral imperative in an anthropological theory which binds the imperative to a universal human characteristic or set of characteristics. Arguments in this line, whatever their particular form, are a necessary counterpart to the first dimension, since without them the argument for universal rights assumes the appearance of nothing more than a wish

⁴¹ Richard Falk, “The making of global citizenship”, pp. 39-50 in Jeremy Brecher, John Brown Childs and Jill Cutler, eds. *Global Visions: Beyond the New World Order* (Montreal and New York: Black Rose Books, 1993) 41.

⁴² Thomas Pogge, “Cosmopolitanism and sovereignty”, pp. 48-75 in *Ethics* 103 (1992) 49.

⁴³ Henry Shue, “Mediating Duties,” pp. 687-704 in *Ethics* 98 (July, 1988) 689.

list⁴⁵. The most difficult obstacle to overcome in assembling a moral defence of cosmopolitanism is undoubtedly the transition from “is” to “ought” – specifically, in citizenship studies, the creation of a compelling defence of a transition from citizenships rooted in sovereign nation-states to a global citizenship without borders. In general, exponents of cosmopolitan citizenship draw on two sources of authority for their defence of the transition from descriptive to normative theory: the political philosophies of John Locke and of Immanuel Kant.

Cosmopolitanism I: John Locke

The appeal to liberal principles for a defence of cosmopolitanism alone is logically coherent, but only because the *ought* is already ensconced, one way or another, in liberal discourse before it appears in the cosmopolitan argument. For instance, consider Joseph Carens’ defence of the moral necessity of open borders. In Carens’ argument, the rights of citizens to engage in free commerce with one another have nothing to do with their status as citizens of a particular state: “They possess this right as individuals, not as citizens. The state may not interfere with such exchanges so

⁴⁴ According to one critic, the failure of liberalism “to articulate its own ideal of the good citizen” forces liberal citizenship theorists to rely implicitly on non-liberal citizenship models which imperil the liberal project itself. See April Carter, “Liberalism and the Obligation to Military Service,” pp. 68-81 in *Political Studies* 46 (1) (March, 1998) 81.

⁴⁵ In his critique of attempts at ethics in the field of international relations, Mervyn Frost observes that this second dimension is, too often, lacking. Consequently, ethical studies in IR generally lack “the detailed engagement with the classic questions of political ethics, what forms of political authority are just, what is freedom, what limits on it are justifiable, what (re)distributions are fair, what forms of participation will secure individual autonomy, what trade-offs between liberty and equality are ethically acceptable and so on.” (Mervyn Frost, “Ethics in IR at the millennium,” pp. 119-132 in *Review of International Studies* 24 (Special Issue: The Eighty Years Crisis 1919-1999) (December 1998) 129; on the other hand, Joseph Raz denies that there is any purpose in engaging in these classic questions, arguing that the works of theorists such as Locke and Kant are temporally and geographically specific and thus irrelevant to contemporary discussions. (Joseph Raz, “Multiculturalism: A Liberal Perspective,” pp. 155-176 in Joseph Raz, *Ethics in the Public Domain* (Oxford: Oxford University Press, 1994) 156.

long as they do not violate someone else's rights."⁴⁶ Carens continues: "Moreover, we can take it as a basic presupposition that we should treat all human beings, not just members of our own society, as free and equal moral persons."⁴⁷ The moral imperative of the liberal argument, thus presented, is at least implicitly rooted in a Lockean conception of the state of nature as the origin of liberal norms.⁴⁸

The cosmopolitan interpretation of Locke's defence of natural law relies on a one-sided reading of his account of the state of nature – a one-sidedness problematic even where Locke is not explicitly invoked in defence of cosmopolitan positions. Kimberly Hutchings' presentation contrasting the Lockean state of nature to that of Hobbes is illustrative. Whereas Hobbes famously saw the state of nature as a war of all against all, Locke (according to Hutchings) sees political life

as a continuation of the natural order but now guaranteed by the coercive power of the state which acts to limit the 'inconveniences' of the natural condition. The state's coercive power itself remains fettered by the requirements of natural law, so that the legitimacy of any given political order is lost if natural right is violated.⁴⁹

It is true that Locke locates the origin of the law of civil society in the state of nature, and finds the *ought* that transforms his argument from a descriptive to a normative one in the human faculty of reason.⁵⁰ But Locke sees the "inconveniences" of the state of nature as greater than the casualness of his language here might suggest; they follow from the problem "that he who was so unjust as to do his brother an injury will

⁴⁶ Joseph Carens, "Aliens and citizens: the case for open borders", pp. 229-253 in Ronald Beiner, ed. *Theorizing Citizenship* (Albany, NY: SUNY Press, 1995) 231.

⁴⁷ Carens (1995) 234.

⁴⁸ Carens (1995) 231; Kimberly Hutchings, "Political theory and cosmopolitan citizenship," pp. 1-32 in Kimberly Hutchings and Roland Dannreuther, eds. *Cosmopolitan Citizenship* (New York: St. Martin's Press, 1999) 5.

⁴⁹ Hutchings (1999) 5.

⁵⁰ John Locke, *Second Treatise on Government* (henceforth *STG*) pp. 261-387 in *Political Writings*, David Wootton, ed. (London: Penguin Books, 1993) § 6.

scarce be so just as to condemn himself for it.”⁵¹

Locke’s inclusion of the unjust brother in the state of nature precludes a romantic interpretation of that state of nature, and directs us to Locke’s own appreciation of the tension between his initial presentation of the state of nature as “men living together according to reason”⁵² and man’s natural capacity to act unreasonably. The philosophical difficulty presented by this tension is magnified in Locke’s examination of how human reason copes with the existence of this capacity. For a person confronted with a threat to her property or well-being, Locke argues, it is “reasonable and just that I should have a right to destroy that which threatens me with destruction. . . and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion...”⁵³ The burden of judgment, for any individual, on the question of who might constitute “an enmity to his being” is both tremendous and susceptible to a wide variety of interpretations. It is only with the creation of the state, Locke argues, that this burden passes, with specific exceptions, from the individual to the sovereign. Those exceptions apply strictly to the situations where the sovereign fails, one way or another, to defend the life and property of the citizen: for example, where a thief attacks in the absence of police presence,⁵⁴ or where the state confiscates citizens’ property without their consent.⁵⁵

The transition from the state of nature to a political state does not, therefore,

⁵¹ *STG* §13.

⁵² *STG* §19.

⁵³ *STG* § 16.

⁵⁴ *STG* § 19.

⁵⁵ *STG* §138.

eliminate either the human capacity to act unreasonably, nor the burden of judgement concerning who constitutes the enemy. It does, however, reflect the *aspirations* to eliminate the possibility of unreasonable action – that is, to guarantee civility between citizens – and to relieve citizens of the burden of judgment concerning the enemy. According to Locke, the first of these aspirations is satisfied by the existence of a legitimate justice system,⁵⁶ but the second does not bring about a corresponding civility between states; rather, Locke says, “all princes and rulers of independent governments all through the world are in a state of nature.”⁵⁷

The cosmopolitan argument which relies on a Lockean naturalist philosophy overlooks the absence of analogy in Locke’s thought between the rights to property and to self-preservation. The right of the individual to defend and retain property is, for Locke (and in contrast to Hobbes), a higher law than the sovereign’s right of rule and thus justifies rebellion. But the right to self-preservation (as in Hobbes’ thought) does not supersede the sovereign’s right to declare war and send the soldier into battle: “For the preservation of the army, and in it of the whole commonwealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them.”⁵⁸ The disjuncture between these two sets of rights prevents the foundation of a cosmopolitan normative theory on Locke’s theory of natural law. Locke ultimately prescribes civility – that is, symmetrical rights of self-preservation and of property – between citizens, as well as the absolute right of property of citizens against the state; his

⁵⁶ STG §87.

⁵⁷ STG §14.

⁵⁸ STG §139.

retention of the right of war precludes a normative theory of global civility grounded on Lockean principles.

Locke's preservation of the tension between individual and shared security, or between the civilised and natural states, signals his recognition of two contradictory, but equal, aspects of human nature. The inclination to individual security or civility, bound up with the exercise of property rights and a concomitant understanding of the right to liberty, is rooted in the same soil as the spirited instinct provoked by an attack on one's property or person in the state of nature. In Locke's state of nature, there is no tension between these two inclinations, and both are, moreover, vital to the constitution of political society. For this reason, Locke's thought cannot be easily modified to cosmopolitan ends by simply abstracting the ethical foundation for civility alone from the natural context which equally engenders spiritedness.⁵⁹

Cosmopolitanism 2: Immanuel Kant

Whereas Lockean theories of natural law are usually invoked only implicitly in cosmopolitan arguments, Immanuel Kant is often explicitly cited in support of cosmopolitan theory, particularly among international relations theorists. In several

respects, Kant's account of politics resembles Locke's: he employs a naturalist theory of politics, and he recognizes and distinguishes between the conflicting human ends of civility and war, locating both these impulses in nature.⁶⁰

While interpretations of the applicability of Kant's thought to a cosmopolitan theory of citizenship differ, all take their inspiration from Kant's argument in favour of a "civil society which can administer justice universally"⁶¹ governed by a cosmopolitan law and overseen by a federation of nations. The struggle within the field of international relations on the best way to order the ends of human rights on the one hand, and state sovereignty on the other, has been reproduced within discussions of Kant among IR scholars. By contrast with Lockean cosmopolitans, then, IR specialists have been, by and large, unwilling to abandon the state altogether, instead attempting to use Kant's thought to substantiate a middle position which preserves both sovereignty and rights. Among students of the EU, Kant has been

⁵⁹ This modification is made much easier because Lockean natural law often serves as a model for modern cosmopolitans, who usually nonetheless make scant or no mention of Locke. For example, in his defence of a moral view of international relations, Charles Beitz attacks Hobbes for reducing morality to a function of self-interest (p. 58), and contrasts this with a "moralized" perspective he attributes to Locke (p. 61) (Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979). Henry Shue participates equally in this kind of abstraction when he defends the universality of subsistence rights on the grounds that they are necessarily prior to any other rights (such as the right to liberty). Shue's argument is plausible only if we either revert to the de-ontologized liberal position discussed above, or we perform the abstraction discussed here. See Henry Shue, *Basic Rights: subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996), esp. pp. 24-25; Michael Freeman makes the same leap by interpreting Locke's argument in defence of the universal validity of transactions and promises between a Swiss and an Indian beyond the reach of political authority to mean that the "necessary human bond provided by the just community must also exist between individuals across communities." (Michael Freeman, "Nation-State and Cosmopolis: A Response to David Miller," pp. 79-87 in *Journal of Applied Philosophy* 11 (1) (1994) 80).

⁶⁰ On civility: Immanuel Kant, "Idea for a Universal History with a Cosmopolitan Intent" (henceforth *UH*), pp. 41-53; on war: Immanuel Kant, "To Perpetual Peace: A Philosophical Sketch" (henceforth *PP*) pp. 93-130; both in H.B. Nisbet, trans. *Kant's Political Writings* (Cambridge: Cambridge University Press, 1970).

⁶¹ *UH* 45.

favoured by those who identify his concept of a “peaceful federation”⁶² of republican states as an intellectual antecedent to the EU.⁶³

Kant was never an advocate of world government – indeed, he opposed the idea as despotic⁶⁴ – and his IR followers have, in general, avoided this version of cosmopolitanism (although, as we will see below, some theorists have imputed this version of cosmopolitanism to Kant). For the student of citizenship, the resulting political models thus require the possibility of some kind of distributed citizenship, by which I mean the apportioning of various citizenship functions to different kinds of regime. This interpretation of Kant is especially appealing for students of EU citizenship because the dominance of commercial relations in EU institutions dovetails well with Kant’s observation concerning the role of international commerce in furthering the ends of individual civil freedoms such as freedom of religion.⁶⁵ Furthermore, a number of cosmopolitans have developed or “corrected” Kant’s notion of a league or federation of peaceful states⁶⁶ in the formulation of political or moral orders with jurisdiction over certain “universal” human rights, but at the same time

⁶² *PP* 104.

⁶³ See, for example, Charles Covell, *Kant, Liberalism and the Pursuit of Justice in the International Order* (Münster and Hamburg: Lit, 1994), esp. pp. 66-67; Francis Fukuyama, *The End of History and the Last Man* (New York: Avon Books, 1992) 283; Robert Howse and Bryan-Paul Frost, “Introductory Essay: The Plausibility of the Universal and Homogenous State,” pp. 1-27 in Alexandre Kojève, *Outline of a Phenomenology of Right*, translated by Bryan-Paul Frost and Robert Howse (Lanham, MD: Rowan & Littlefield, 2000) 12.

⁶⁴ *PP* 101.

⁶⁵ *UH* 50-51.

⁶⁶ *PP* 104.

defended the preservation of states with residual powers.⁶⁷

Because they fail to address ambiguities and tensions in Kant's works, however, almost all cosmopolitan interpretations of Kant in IR distort his thought to suit particular political programs.⁶⁸ For example, Kant's ambiguity concerning the ontological function of nature in his moral theory is often overlooked. On the one hand, Kant adopts a teleological view of nature, and a natural view of man, and concludes that human nature must therefore be understood teleologically.⁶⁹ On the other hand, Kant anchors the seeds of human discord ("social incompatibility, enviously competitive vanity, and insatiable desires for possession or even power"⁷⁰) in this same natural sphere. The "perfectly just civil constitution" which for Kant occupies the place of nature's "highest purpose" is the synthesis resulting from a dialectic of *both* natural principles.⁷¹ Kant gives no indication that these natural inclinations are eradicated in this synthesis. On the contrary, his federation of peaceful states relies on the determination of those states to preserve their "power and influence in relation to the others."⁷² Moreover, Kant cautions against the supposition

⁶⁷ See, for example, David Held, "Cosmopolitan Democracy and the Global Order," pp. 235 - 251 in James Bohman and Matthias Lutz-Bachmann, eds. *Perpetual Peace: Essay's on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997); Beitz (1979); Wilfried Hinsch, "Global distributive justice," pp. 58-78 in *Metaphysics* 32 (1/2) (Jan. 2001); Vincenzo Ferrari, "Citizenship: Problems, Concepts and Policies" pp. 51-64 in Massimo La Torre, ed. *Citizenship: An Institutional Challenge* (The Hague: Kluwer Law International, 1998).

⁶⁸ Mark Franke provides both a comprehensive review of IR readings of Kant and an account of Kant's thought addressing them in his "Immanuel Kant and the (Im)Possibility of International Relations Theory," pp. 279-322 in *Alternatives* 20 (1995). The most astonishing example of this kind of partial reading of Kant is the widespread habit of reading him as an advocate of democracy. Franke (p. 320 n.134) provides a long list of scholarship in this line; see also Norberto Bobbio, "Democracy and the International System," pp. 17-41 in Daniele Archibugi and David Held, eds. *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995).

⁶⁹ UH 42.

⁷⁰ UH 45.

⁷¹ UH 45-46.

⁷² UH 50.

that a peaceful federation can ever be anything more than a check on “man’s inclination to defy the law and antagonise his fellows,” since “there will always be a risk of it bursting forth anew.”⁷³ In short, Kant sees sociability and unsociability as permanent parts of human nature as well as essential components of political life. A number of neo-Kantian interpreters have avoided the necessity of this conclusion by jettisoning one or another of these components. Consider two examples: first a Stoic interpretation of Kant by Martha Nussbaum, and, second, James Bohman’s reading of Kant, which falls under what I have described as the pluralist paradigm.

For Nussbaum, the notion of natural teleology, unattractive to secular moderns, is really only Kant’s “wishful thinking” and “a kind of reassurance to the faint-hearted”; it is expendable without weakening what Nussbaum’s sees as Kant’s core moral teaching concerning humanity: “it is what it is and it compels respect.”⁷⁴ As for the problem of natural human passions which lead to discord, Nussbaum argues that Kant would have done better to adopt the ancient Stoics’ goal of eliminating the passions altogether than to include them in his theory of human nature.⁷⁵ What is left after gutting Kant’s argument in this way is nothing other than the de-ontologized liberalism we encountered above, consisting of the exhortation to extend the practice of civilisation to a global scale:

[W]here we see suspicion and hatred of the foreigner, we can always try to address it

⁷³ *PP* 105. Immediately following this statement, Kant quotes from Virgil’s *Aeneid*, but omits an illuminating part of the original. This extract is the last sentence of Jupiter’s prophecy of the founding of Rome: “And the terrible iron-constricted Gates of War shall shut; and safe within them shall stay the godless and ghastly Lust of Blood, propped on his pitiless piled armoury, and still roaring from gory mouth, but held fast by a hundred chains of bronze knotted behind his back.” (translation from Virgil, *The Aeneid*, W.F. Jackson Knight, trans. (Baltimore, MD: Penguin, 1958) 36).

⁷⁴ Martha Nussbaum, “Kant and Stoic Cosmopolitanism,” pp. 1-25 in *Journal of Political Philosophy* 5 (1) (1997) 18.

⁷⁵ Nussbaum (1997) 21.

through programs of education that will make the Stoics' and Kant's idea of world citizenship real in our schools and universities, teaching young people to regard the alien ... as one from whom they might actually learn something and, indeed, someone whom, given a change of situation, they might themselves be.⁷⁶

Bohman looks past the constitutive function of the Kantian dialectic described above by using already stable pluralist societies (that is, states where a synthesis incorporating the dialectic has materialised) as a model for global cosmopolitanism.⁷⁷ Bohman thus constructs a model of "international civil society"⁷⁸ using an amalgam of purely domestic elements – such as "salons, clubs, theaters, union halls, and other meeting places" and the reflexive and critical "concern of the public for the existence of a public sphere."⁷⁹ On the one hand, Bohman silently employs Kant's teleological structure in his observation of the "emerging cosmopolitan public."⁸⁰ On the other hand, he entirely overlooks the function of the social contract as the synthetic origin of the "public" itself in Kant's thought. For Bohman, new "publics" can somehow form themselves, and political institutions unwilling to accommodate them can be counted on to "lose their legitimacy."⁸¹ Bohman's use of the relations of domestic civil society as the basis of international civil society relies entirely on the abandonment of the social contract, which Kant held to be the primary association, necessary for the generation of all others. That Kant held this position is clear from his defence, in "What is Enlightenment?", of the maxim, attributed to Frederick II:

⁷⁶ Nussbaum (1997) 23.

⁷⁷ James Bohman, "The public spheres of the world citizen," pp. 179-200 in J. Bohman and Matthias Lutz-Bachmann, eds. *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997).

⁷⁸ Bohman (1997) 191.

⁷⁹ Bohman (1997) 189.

⁸⁰ Bohman (1997) 191.

⁸¹ Bohman (1997) 192.

“Argue as much as you like and about whatever you like, but obey!”⁸² Kant’s preoccupation in “What is Enlightenment?” is, in fact, the protection of precisely the kind of association with which traditional pluralists are concerned, specifically of religious association, but he locates this pluralism within a sovereign commonwealth.⁸³

The notion of “world citizenship,” to which both Nussbaum and Bohman allude, does not appear in Kant’s thought, but only in that of *neo*-Kantians.⁸⁴ Kant’s own conception of cosmopolitan right – that is, the moral sphere shared by all humans, irrespective of nationality – was limited to the universal right of hospitality of strangers.⁸⁵ Kant links this cosmopolitan right to the natural end of perpetual peace, for only through the right of hospitality can strangers enter into relations⁸⁶ with one another, promoting the “spirit of commerce”⁸⁷ which connects republican states in their federation of peace.

“Thick” identity: Liberal nationalism

The “thickest” end of the spectrum concerning the relation between identity and citizenship rests on a nationalist foundation, but follows Acton’s model of

⁸² Immanuel. Kant, “An Answer to the Question: What is Enlightenment?” (henceforth *WE*) pp. 54-60 in Hans Reiss, ed. And H.B. Nisbet, trans. *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991) 59.

⁸³ Thus, Kant limits freedom of speech where the state’s well-being might be threatened by it, arguing that “it would be very harmful if an officer receiving an order from his superiors were to quibble openly, while on duty, about the appropriateness or usefulness of the order in question,” and that the refusal to pay taxes “may be punished as an outrage which could lead to general insubordination” (*WE* 56).

⁸⁴ This does not constrain some from invoking Kant in defence of the world citizenship. See, for example, Ferrari (1998) 64; Daniele Archibugi, “From the UN to cosmopolitan democracy,” pp. 121-162 in D. Archibugi and David Held, eds. *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995) 134-135; Bohman (1997) 197-198.

⁸⁵ *PP*, 105-108.

⁸⁶ Nisbet aptly translates Kant’s use of *Verkehr* with the equally general term “relations”; in both languages, the term carries social and commercial meanings.

rejecting essentialist or ethnic bonds as necessary to that foundation. Liberal nationalists appeal to the ready-made solidarity and identity characteristic of stable national communities, through which the rights sought by cosmopolitans are guaranteed to all their members. In one sense, the normative burden on liberal nationalists is virtually nil, because of the obvious fact that rights of all kinds are, by and large, primarily reliant on protection by nation-states. Liberal nationalists need make no attempt to justify the privileged political status of nationality over other identities in the constitution of states. “There can,” in David Miller’s words, “be no question of trying to give rationally compelling reasons for people to have national attachments and allegiances. What we can do is to start from the premise that people generally do exhibit such attachments and allegiances, and then try to build a political philosophy which incorporates them.”⁸⁸ Michael Ignatieff, in all other respects a confessed cosmopolitan, is more bluntly pragmatic: “Without a nation’s protection, everything that an individual values can be rendered worthless. . . It is only too apparent that cosmopolitanism is the privilege of those who can take a secure nation state for granted.”⁸⁹

For Miller, the acceptance of national affinity as the basis of ethical relations between citizens has two principal attractions. First, by contrast with universalist theories such as those espoused by liberal cosmopolitans, liberal nationalism is much more likely to be acceptable to citizens embedded in national contexts than pure

⁸⁷ *PP* 114.

⁸⁸ David Miller, “In Defence of Nationality,” pp. 3-16 in *Journal of Applied Philosophy* 10 (1) (1993) 4.

⁸⁹ Michael Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (Toronto: Viking, 1993) 6, 9.

abstract reason.⁹⁰ Second, Miller views nationalism purely instrumentally: “It is because we already share an attachment to our compatriots that we support the setting up of mutual benefit practices and the like.”⁹¹ Liberal nationalism, at least of Miller’s pragmatic brand, thus treats national identity as a very useful but mysterious black box, the deconstruction of which is not simply normatively pointless or neutral, but potentially dangerous. Miller’s cosmopolitan critics have made much of his equation of practicability with morality, but these arguments are simply restatements of the de-ontologized liberalism above.⁹²

What is of most interest in an inquiry into the relation between identity and citizenship, however, is that Miller’s attempt to situate his argument pragmatically emphasises the unattainability of the cosmopolitan project rather than defending the ethical status of nationality. Although he sets his defence of nationalism (which Miller calls “nationality”) in opposition to an “ethical universalism”⁹³ more or less synonymous with the de-ontologized cosmopolitanism we explored above, his instrumental defence of it shows Miller’s deeper commitment to the same liberal ends sought by universalists.⁹⁴ Miller argues that nationalism provides the “large-scale solidarity” necessary to create in citizens the sense of “social duties to act for the common good ... to help out other members when they are in need, etc. Nationality is

⁹⁰ David Miller, “The Ethical Significance of Nationality,” pp. 647-662 in *Ethics* 98 (July 1988) 650-651.

⁹¹ Miller (1988) 652.

⁹² Freeman 79-87; Charles Jones, “Revenge of the Philosophical Mole: Another Response to David Miller on Nationality,” pp. 73-86 in *Journal of Applied Philosophy* 13 (1) (1996); and Andrew Vincent, “Liberal Nationalism: an Irresponsible Compound?” pp. 275-295 in *Political Studies* 45 (1997).

⁹³ Miller (1988) 649.

⁹⁴ This point is also made by Freeman (1994) 83.

de facto the main source of such solidarity.”⁹⁵ We might interpret Miller’s argument as meaning that solidarity is itself an ethical end rather than a means, particularly when he uses the solidarity principle to justify national secession.⁹⁶ This turns out to be an illusion, however, since Miller goes on to limit the scope of legitimate cases for secession to those where a) no compromise between national groups is possible; b) a clear and viable division of territory is possible; c) remaining minorities in both new states do not suffer because of the division.⁹⁷ These conditions suggest that national solidarity is, in fact, itself only a means to higher moral ends not explicitly stated here by Miller but nonetheless underpinning it. These ends, which clearly include peace and the recognition of minorities, clearly occupy a higher position in Miller’s ontology than does social solidarity. In a later article, Miller is more forthright about this presupposition: “To the extent that the public can be weaned away from its national prejudices toward a more cosmopolitan outlook, it should be.” This outlook, he goes on, includes “democracy and social justice”⁹⁸ – laudable ends in themselves, but, as we have seen, difficult to ground ontologically outside the context of liberalism itself.

If Miller’s brand of liberal nationalism puts us no further along the road to understanding the nature of the link between identity and citizenship than cosmopolitanism does, neither does the work of other liberal nationalists, whose arguments run along similar lines. Neil MacCormick’s defence of nationality is that it

⁹⁵ Miller (1993) 9.

⁹⁶ Miller (1993) 12-13.

⁹⁷ Miller (1993) 13.

⁹⁸ David Miller, “The Left, the Nation-State, and European Citizenship,” pp. 47-51 in *Dissent* 45 (Summer 1998) 48.

– like all other “human communities”⁹⁹ – lends substance to the individual at the centre of liberal theory: “human individuality presupposes social existence.” MacCormick writes.¹⁰⁰ For Yael Tamir, similarly, nationality is valuable primarily as a “constitutive factor of personal identity”¹⁰¹ and is compatible with liberalism’s “respect for personal autonomy, reflection, and choice.”¹⁰² Will Kymlicka’s defence of multicultural citizenship relies, in part, on his view of nationality as “a meaningful context of choice” which permits individuals to enjoy freedom and equality.¹⁰³

In all of these cases, we are cast from the question of the relation of citizenship to nationality (or, more generally, to identity), back to the problem of the normative justification of liberalism. All of these liberal nationalists agree that, while the prejudices which underpin national identity are irrational and can lead to brutal excesses, they are also likely ineradicable and lead to greater solidarity than abstract reason can be expected to provide. Liberal nationalism’s inclination to address the relation between identity and civility in citizenship instrumentally hives it off from attempts to develop a more comprehensive theory of citizenship not reliant on national identity, such as would characterize EU citizenship.

Citizenship II: The pluralist paradigm

The pluralist paradigm is scarcely a “school,” but perhaps better understood as a loosely connected set of arguments grounded on a set of principles concerning the relation between nationality, identity, sovereignty and rights. With respect to

⁹⁹ Neil MacCormick, *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford: Clarendon Press, 1982) 247.

¹⁰⁰ MacCormick (1982).

¹⁰¹ Yael Tamir, *Liberal Nationalism* (New Jersey: Princeton University Press, 1993) 73.

¹⁰² Tamir (1993) 6.

nationality, the pluralist paradigm abandons both the pragmatism of liberal nationalism and the scepticism of cosmopolitans concerning the constitutive importance of identity; instead, it advocates de-privilege nationality altogether in favour of the view that humans are constituted by a set of multiple and overlapping identifications not restricted to nationality. The radical nature of the pluralist paradigm does not lie in this observation (which is evident), but in the political implications of de-privileging the *state* as the legitimate holder of sovereignty and the guarantor of rights. For students of citizenship, the dismantling of the state (if only in speech) is dangerous for the obvious reason that no other guarantor of the rights associated with citizenship appears to be on the horizon. Neo-pluralists¹⁰⁴ take the position, however, that the nation-state and its citizenship are constructed on harmful, dangerous, false and surmountable suppositions of homogeneity and domination. The various stages of this argument are taken up by different scholars, but I will try to present them here as coherently as possible without distorting their original presentations. Having done this, I will show the particular effects of the pluralist paradigm on discussions of EU citizenship.

Virtually all accounts of the connection between citizenship and nation over the last decade point out that the two have been linked together only since the French

¹⁰³ Kymlicka (1995) 93.

¹⁰⁴ I use this term only to distinguish scholars arguing from within the pluralist paradigm from traditional liberal pluralists; for a different perspective on neo-pluralism from the one I provide, see Mary Dietz, "Merely Combating the Phrases of This World: Recent Democratic Theory," pp. 112-139 in *Political Theory* 26 (1) (Feb. 1998), 122 ff.

Revolution.¹⁰⁵ Jürgen Habermas, the most prominent and influential scholar to address this relation over the last decade, like Acton, separates ethnic from civic conceptions of identity by arguing that the historical connection between modern republicanism and nationalism, which resulted in the confusion of *ethnos* with *demos*, was functionally convenient at the time of the French Revolution, but ultimately self-contradictory.¹⁰⁶ The ethnic-civic distinction is not particular to the pluralist paradigm, but has been adopted, particularly by liberal scholars, both within and without it.¹⁰⁷

The application of this discovery within the pluralist paradigm differs profoundly from its appearance among liberal nationalists. Whereas the latter recognize and accept nationality's privileged position in the formation of political structures for the sake of particular normative ends, neo-pluralism denies this privilege. For this initial step in the dismantling of the historic link between nationality and citizenship, the barbarisms performed in the name of nationalism in the last (and, alas, the new) century offer a powerful impetus. Where cosmopolitan liberals respond to nationalism with a doctrine of universal and supreme rights, the pluralist paradigm entails a commitment to some level of group autonomy which

¹⁰⁵ Most prominently, Jürgen Habermas, "Citizenship and National Identity: Some Reflections on the Future of Europe", pp. 1-19 in *Praxis International* 12 (1) (April 1992) 4; but also see David Jacobson, *Rights across Borders: Immigration and the Decline of Citizenship* (Baltimore and London: Johns Hopkins University Press, 1997) 7; Brubaker (1992) 39-49; Bernhard Giesen, "National Identity and Citizenship: The cases of Germany and France", pp. 36-58 in Klaus Eder and Bernhard Giesen, eds. *European citizenship between National Legacies and Postnational Projects* (Oxford: Oxford University Press, 2001) 55.

¹⁰⁶ Habermas (1992) 4; Acton (1948) 173-174.

¹⁰⁷ For an account of how liberals tend to overdraw the ethnic-civic distinction, see Paul Thomas, "Modalities of Consent, Compliance, and Non-Compliance: *Exit, Voice, and Loyalty* Reconsidered," pp. 3-18 in Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, MD: Lexington Books, 2001).

stands in tension with universalist codes. Consequently, neo-pluralists have devoted considerable attention to devising ethical models of group membership which both recognize and validate that membership while attenuating those groups' powers in order to prevent violent excesses. Iris Marion Young, for example, advocates a group-differentiated citizenship model with special rights for oppressed groups, accorded on the grounds of "a positive assertion of specificity in different forms of life."¹⁰⁸ Omar Dahbour sketches out a plan to legitimize "self-determination without nationalism," which, like Young's scheme, aims to increase equality by acting as "a remedy for specific injustices or inequities."¹⁰⁹ Whereas Young takes the state as political backdrop for granted in her argument, Dahbour expressly cautions against state autonomy for newly-recognized national groups:

...because nothing is necessarily gained and much could be lost by turning regions into separate states: achieving state power leads to new structures of domination in order to preserve state sovereignty, while regional autonomy leads to limiting the power of states in relation to substate regions.¹¹⁰

Delgado-Moreira, by contrast, attempts to carve out a legitimate space for group identity while preventing nationalistic excesses by arguing that nationalism is not an identity at all, but an ideology.¹¹¹ Ross Poole argues that the nation-state is obsolete on the grounds that "[t]he world no longer provides us with an overarching framework in terms of which we can order" loyalties "to families and friends, to professions, to political programmes, to religions, to cultural affiliations, a sense of

¹⁰⁸ Young (1989) 271.

¹⁰⁹ Omar Dahbour, "Self-Determination without Nationalism," pp. 57-71 in Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, MD: Lexington Books, 2001) 67.

¹¹⁰ Dahbour (2001) 67.

¹¹¹ Delgado-Moreira (2000) 61.

national identity,” etc.¹¹² Joseph Weiler advocates the replacement of the concept of the national *demos* underpinning modern citizenship theory with “co-existing multiple *demos*” with multiple, overlapping affinities.¹¹³ For neo-pluralists, the nation’s aspirations to political sovereignty and cultural homogeneity lead to the suppression of other, competing identities. Observations of increasing sub- and supra-national social and political activity such as migration, international social movements, international trade, and cultural independence movements have led many neo-pluralists to herald (such as Poole) or praise (Weiler) a post-national age in which diverse loyalties will acquire greater significance and recognition than is possible under the nation-state.¹¹⁴

The neo-pluralist argument on this point relies on a rather exaggerated account of the nation’s capacity and aspiration for total homogeneity. The origins of this account are postmodernist or constructivist analyses of identity and culture highlighting the constructed nature of national and ethnic identities. The anthropologist James Clifford, for example, writes:

I think we are seeing signs that the privilege given to natural languages and, as it were, natural cultures, is dissolving. These objects and epistemological grounds are now appearing as constructs, achieved fictions, containing and domesticating heteroglossia. In a world with too many voices speaking at once ... an urban multinational world of institutional transience ... it becomes increasingly difficult to attach human identity and meaning to a coherent ‘culture’ or ‘language’.¹¹⁵

¹¹² Ross Poole, *Nation and Identity* (London and New York: Routledge, 1999) 164.

¹¹³ Joseph Weiler, “Introduction: European Citizenship – Identity and Differentity,” pp. 1-24 in Massimo La Torre, ed. *European Citizenship: An Institutional Challenge* (The Hague: Kluwer Law International, 1998) 17.

¹¹⁴ See also Lehning (1997) 109; Gisela Kaplan, “Pluralism and Citizenship: The Case of Gender in European Politics,” pp. 73-95 in Leslie Holmes and Philomena Murray, eds. *Citizenship and Identity in Europe* (Aldershot, UK: Ashgate, 1999) 79; Steven Dijkstra, Karin Geuijen and Arie De Ruijter, “Multiculturalism and Social Integration in Europe,” pp. 55-84 in *International Political Science Review* 22 (1) (2001).

¹¹⁵ James Clifford, *The Predicament of Culture* (Cambridge, MA: Harvard University Press, 1988) 95.

The postmodernist approach has been readily adopted by political theorists such as

Theodora Kostakopoulou, who argues:

Regional, local, ethnic, linguistic and other identities can no longer be absorbed by the national state and overridden by a monolithic national identity. Citizens enjoy their plural identifications and have flexible commitments as a result of their shifting participation in various levels of government and their engagement with various projects.¹¹⁶

There are two significant distinctions between Clifford's and Kostakopoulou's postmodernist accounts here. First, where Clifford writes of "heteroglossia" (the overlap and intersection of languages¹¹⁷) being *contained* and *domesticated* by national cultures, Kostakopoulou characterizes national, or "old" citizenship as *absorbing* and *overriding* non-nationalist identities. The different terms employed might be thought to reflect only a semantic difference, but for Kostakopoulou's characterization of new or postnational citizenship as permitting citizens to "enjoy their plural identifications and have flexible commitments." Kostakopoulou and other neo-pluralists rely on a rhetorical overstatement of the homogeneity of old, or national, citizenship to substantiate the case for new citizenship. In fact, it is difficult to conceive of any period in the history of the nation in which other identities were successfully "absorbed." The overlap between self-identified nations and coercive states has historically been imperfect far more often than perfect.¹¹⁸ The history of the nation-state is filled with class, ethnic, religious and nationalist conflicts – that is, with conflicts built around political identities never absorbed by nations. It also

¹¹⁶ Theodora Kostakopoulou, "European Union citizenship as a model of citizenship beyond the nation state: Possibility and limits," pp. 158-171 in Albert Weale and Michael Nentwich, eds. *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship* (London and New York: Routledge, 1998) 159-160.

¹¹⁷ The term *heteroglossia* originates with Mikhail Bakhtin (Clifford (1998) 23).

contains a large number of past or present states and empires containing multiple nations and languages (and therefore subject to the condition of heteroglossia), themselves obviously incapable of absorbing or homogenizing the broader political schemes of which they were a part: these include Switzerland, the British and Austro-Hungarian empires, the Soviet Union, the former Yugoslavia, South Africa, Belgium, Canada, Finland and modern Great Britain.

The second important distinction between the anthropological and political-theoretical accounts of pluralism is the addition of a political dimension to the latter. The tendency of neo-pluralism to overestimate nationalism's capacity to homogenize culture leads some neo-pluralists to address the apparent dissolution of the bond between nation and state by assigning some or all of the specifically political functions of "old" citizenship directly to nationality. Ross Poole expresses this relation thus: "The citizen's relationship with the State – the nation-state – is constituted by his or her national identity."¹¹⁹ John Solomos targets what he calls "new right political discourses" which "attempt to fuse culture within a tidy formation that equates nation, citizenship and patriotism with a racially exclusive notion of difference."¹²⁰ There is no question that nationality, ethnicity and race have served, and continue to serve, as the basis of political exclusion and oppression; nor is there

¹¹⁸ See Eric Hobsbawm, *Nations and Nationalism since 1780* 2nd ed. (Cambridge: Cambridge University Press, 1992) 132ff.

¹¹⁹ Poole (1999) 108.

¹²⁰ John Solomos, "Race, Multi-Culturalism and Difference," pp. 198-211 in Nick Stevenson, ed. *Culture & Citizenship* (London: SAGE, 2001) 205. See also John Gerard Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," pp. 139-174 in *International Organization* 47 (1) (Winter 1993), esp. 172-174; Jan Zielonka, "Enlargement and the Finality of European Integration," pp. 151-162 in Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*. Badia Fiesolana, Italy: European University Institute, 2000, 156 ff.

any doubt that the rules surrounding citizenship acquisition have, by and large, been the principal legal avenue for that exclusion. Nonetheless, the overstated dichotomy between “old” and “new” citizenships underpinning the pluralist paradigm is built on caricatures: of nations as omnipotently homogenizing, of the political component of national citizenship as a function of nationalism itself, and of de-nationalized (or “new”) citizenship as somehow purged of some or all political elements.

This false dichotomy is enabled by the undertheorization of the nexus between identity and citizenship and the consequent understanding of nationalism as intrinsically convertible into political sovereignty, and concomitantly, of nationality as convertible into “old” citizenship. Despite the extensive documentation on the subject by scholars such as Benedict Anderson and Eric Hobsbawm, who depict nationalism as an instrument of power rather than as the source of power relations, political science has made little advance in explaining how and why national citizenship in particular bridges the gap between culture, identity and nationality on the one hand and power structures on the other. If we leave aside the temptation to dismiss nationalism out of hand as irrational¹²¹, we are left with only two general types of theory relating nation and state. On the one hand, we can see nationalism as a function of some extrinsic, more fundamental dynamic –of industrialisation¹²², for example – which requires a politicized community on the scale only a nation can provide. On the other hand, we might argue that political aspirations are intrinsic to nationalism,

¹²¹ This approach is favoured by Robert Goodin and Philip Pettit, *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 1993) 3.

¹²² See Ernst Gellner, *Nations and Nationalism* (Oxford: Blackwell, 1983).

whatever its origins.¹²³

It is not my purpose to provide a defence or a comprehensive critique of either of these views here. What is of consequence for this project is the obscurity of the historic connection between national identity and its particularly political aspirations. That the schism between identity and politics is often overlooked¹²⁴ is reflected, as we will see below, in treatments of citizenship which take the link for granted. Where “identity citizenship” and “political citizenship” (for lack of better terms) are not explicitly distinguished, they are often conceptually bound together in considerations of post-national citizenship, where the error is reproduced and magnified.

It should be clear by now that the reasons I have laid out for resisting the neo-pluralist infusion of identity with political meaning are distinct from that of liberal nationalism. Although my preoccupation, particularly in this chapter, is with the analysis of citizenship theory than with taking a normative position on one particular version of it, this short note should clarify my normative perspective on nationalist and neo-pluralist versions of citizenship. It is true that the twentieth century, dominated by nationalist discourse, saw more atrocities committed than any other. Nonetheless, even if the nationalist element of citizenship is declining, we have no reason to believe *a priori* that new citizenships purged of nationalism and built on other identities will be intrinsically more civilised. As Hedley Bull wrote of the prospect of new medievalism, “if it were anything like the precedent of Western

¹²³ For example, see John Stewart Mill, “Representative Government,” pp. 175-393 in *Utilitarianism, Liberty and Representative Government* (London: J.M. Dent, 1914) 359-66.

Christendom, it would contain more ubiquitous and continuous violence and insecurity than does the modern states system.”¹²⁵

As we saw from our reading of liberal nationalists, the under-theorization of the identity-politics relation is not itself particular to neo-pluralism.¹²⁶ This absence of theory is a particularly critical lacuna for neo-pluralism, however, because neo-pluralism subjects the concept of citizenship to radical transformations not attempted by liberal nationalists. These transformations are of two kinds. The first, neo-medievalism, relies on the separation of good (voluntary, republican, participatory) from bad (ethnic, inclined to domination) politics, attaching the first conception to citizenship by treating it simply as one kind of group membership.¹²⁷ The second, closely associated with the thought of Jürgen Habermas and John Rawls, retains a minimalist power structure, but retains and isolates the solidaristic identities associated with national citizenships in a shared civic identity for the foundation of a “new” citizenship. There is a considerable literature devoted to both lines of argument, and my presentation of them here is necessarily simplified.

Identity and Sovereignty I: Neo-medievalism

The term “new medievalism” was coined by international relations scholar

¹²⁴ Tuija Pulkkinen, examining the lasting effects of Swedish colonialism in Finland, shows how this conflation is embedded in the Finnish language itself. See Tuija Pulkkinen, “Nations within Nations – Nationalism and Identity Politics,” pp. 43-56 in Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, MD: Lexington Books, 2001) 51.

¹²⁵ Hedley Bull, *The Anarchical Society* (London and Basingstoke: Macmillan, 1977) 255.

¹²⁶ On this point, also see Ronald Beiner, “Why Citizenship Constitutes a Theoretical Problem in the Last Decade of the Twentieth Century,” pp. 1-28 in R. Beiner, ed. *Theorizing Citizenship* (Albany: SUNY Press, 1995).

¹²⁷ I exclude from my analysis the only scholar I could find anticipating at least the possibility of an indefinite period of violent neo-medievalism, namely Michael Reisman, “Private Armies in a Global War System,” pp. 252-303 in *Law and Civil War in the Modern World*, John Norton Moore, ed. (Baltimore: Johns Hopkins University Press, 1974).

Hedley Bull in his *Anarchical Society*. Bull described new medievalism in his consideration of various scenarios which might be expected to follow the international state system as understood by realists. He described new medievalism as “modern and secular counterpart of [the Middle Ages] that embodies its central characteristic: a system of overlapping authority and multiple loyalty.”¹²⁸ Bull was no neo-pluralist, however; he defended the state against critics arguing that the state should be stripped of its monopoly on violence on the grounds that a partially unjust order might be more easily reformed than violent disorder.¹²⁹ But Bull’s presentation of new medievalism reflects the under-theorization of the identity-politics relation; he does not explain how “multiple loyalty” and “overlapping authority” might be functionally connected.

This undertheorization is reproduced in neo-pluralist accounts of neo-medievalism. While traditional pluralists overlay the political structures of the state (a single, sovereign authority) with a liberal conception of civil society which tolerates or encourages memberships in multiple and overlapping groups, neo-pluralism’s conflation of identity and politics leads to the interpretation of social or cultural pluralism as necessarily entailing political pluralism. This interpretation has led some neo-pluralists to develop “post-Westphalian” political models parallel and analogous to the cultural pluralist frameworks discussed above. Andrew Linklater, for example, argues that

One of the tasks of the post-Westphalian state is to harmonise the diversity of ethical spheres including sub-national or sub-state, national and wider regional and global

¹²⁸ Bull (1977) 254.

¹²⁹ Hedley Bull, “The state’s positive role in world affairs,” pp. 111-123 in *Daedalus* 108 (4) (Fall 1979) 118, 123.

affiliations, and to do so by creating forms of citizenship which pass beyond sovereignty to institutionalise advances in universality and diversity.¹³⁰

David Jacobson's argument is similar, although it emphasizes the declining importance of territory in an age of massive international immigration:

The patchwork, intersecting boundaries that we observe in Europe today are in part an expression of that desacralization – borders, in becoming less sacrosanct, can be 'crossed,' superseded, and complemented by other kinds of authorities (and *their* boundary markers) . . . In this limited respect, Western Europe of today reflects medieval Europe.¹³¹

Yasemin Soysal contends that national citizenship is being supplanted by membership in other groups, as manifested by increasing participation in those groups:

I would like to direct our attention to the emerging forms of solidarity and claims-making . . . they are evidence of a proliferation of new forms of participation, and multiple arenas and levels on which individuals and groups enact their citizenship.¹³²

In each of these examples, the authors concerned imbue identity with a political meaning by employing concepts historically connected with nation states. In each case, because the identity-politics relation derived from the nation-state model is imported into post-national theories, the nation's dissolution is seen as requiring a concomitant dissolution of state sovereignty *simpliciter*. Thus, Jacobson's forecast of the imminent end of the ethnic conception of nation in Western states is followed by an announcement of the state's reduction to an "administrative unit of a supranational legal and political order based on human rights."¹³³ For Linklater and Soysal, the same result is effected by importing the identity-politics schism within the concept of citizenship itself, but retaining only the civil elements of politics.

¹³⁰ Andrew Linklater, *The Transformation of Political Community* (Cambridge, UK: Polity Press, 1998) 197-198.

¹³¹ Jacobson (1997) 132.

¹³² Yasemin Soysal, "Changing Boundaries of Participation in European Public Spheres," pp. 159-179 in Klaus Eder and Bernhard Giesen, *European Citizenship between National Legacies and Postnational Projects* (Oxford: Oxford University Press, 2001).

¹³³ Jacobson (1997) 133.

Neo-pluralism casts citizenship into a politically ambiguous relation with membership in other groups; it is frequently unclear in neo-pluralist analyses such as these whether citizenship, along with all group identities, is to be de-politicized (that is, reduced to “new forms of participation” compatible with “participation” in any number of other overlapping groups), or whether they are all to be genuinely politicized (so that “participation” might include not only peaceful meetings or protests, but also demands for special recognition or sovereignty, threatened or actual violent action, and organized crime). The world of overlapping group memberships and participations described by Jacobson, Linklater and Soysal overcomes real or perceived aspirations to exclusivity in the sphere of identity by abolishing *political* exclusivity. It is in defence of this concept of overlapping political authority that neo-pluralism turns to the medieval political order as a precedent.¹³⁴

Just as the neo-pluralist presentation of nationalism and identity relies on an overstatement of national identity’s capacity or aspiration for perfect homogeneity, neo-pluralism’s dichotomous presentation of medieval and “Westphalian” politics is built on an exaggerated account of the political and social multiplicity of the former

¹³⁴ Because of the relatively narrow focus of my interest in it, the debate concerning the relation of the Middle Ages to contemporary world politics as presented here excludes substantial arguments which have, in my view, no bearing on my arguments. What is of significance for my argument is the question of whether the Middle Ages constitutes an exceptional or typical case in the study of politics. What is of little significance for my project is the considerable literature discussing whether the study of medieval politics supports the realist theory of international relations. This question is debated at some length by various authors, especially John Gerard Ruggie, “Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis,” pp. 261-285 in *World Politics* 35 (Jan. 1983); see also Markus Fischer’s response to Ruggie and others in “Feudal Europe, 800-1300: Communal Discourse and Conflictual Practices,” pp. 427-466 in *International Organization* 46 (2) (Spring 1992).

and the political homogeneity of the latter.¹³⁵ In all of the arguments concerning a post-Westphalian model cited above¹³⁶, their neo-pluralist authors uniformly justify the “neo” label I have given them by identifying the operative post-modern political memberships, groups, and solidarities as different from those found in classic presentations of civil society. Let us briefly examine the historical record on medieval multiplicity and Westphalian homogeneity in the political sphere to evaluate the neo-pluralist claim on this front.

Joseph Strayer and Dana Munro’s classic description of the medieval political order, cited by neo-pluralists Jacobson and John Gerard Ruggie¹³⁷, lends some credence to the neo-pluralist view of politics:

Most feudal lordships rapidly became a patchwork of overlapping and incomplete rights of government. One vassal might have jurisdiction over a road, but not over the fields through which it ran, or jurisdiction over theft but not over murder. Moreover, no lord could demand unlimited services from his vassals; he was limited by the agreements he made with them or by ancient custom. Many feudal lords were inclined to be tyrants, but power was so fragmented that it was almost impossible for them to make themselves absolute rulers of their districts.¹³⁸

Also often cited is Perry Anderson’s *Lineages of the Absolutist State*, in which the European medieval political landscape is described:

Its political map was an inextricably superimposed and tangled one, in which different juridical instances were geographically interwoven and stratified, and plural allegiances, asymmetrical suzerainties and anomalous enclaves abounded.¹³⁹

It is apparent from these sources (whose reliability there is no reason to doubt) that medieval European political structures did not fall into the tidy delineations embodied

¹³⁵ For a more extensive critique of this error in political science generally, see Yale Ferguson and Richard Mansbach, *Politics: Authority, Identities, and Change* (Columbia: University of South Carolina Press, 1996).

¹³⁶ Also see, for example, Dijkstra, Geuijen and De Ruijter (2001).

¹³⁷ Ruggie (1993) 149; also Ruggie (1983) 274.

¹³⁸ Joseph R. Strayer and Dana C. Munro, *The Middle Ages: 395-1500* 4th ed. (New York: Appleton-Century-Crofts, 1959) 115.

in the ideal type of modern sovereignty. Before we can accept the medieval political model as viable (even as modified by neo-pluralists) in the contemporary world, three critical features of it must be considered.

First, however multiple and overlapping the affinities of medieval politics, its diverse political structures were universally legitimized by membership in Christian society.¹⁴⁰ It is perhaps tempting to view the medieval separation of secular *potestas* from papal *auctoritas* as a precursor analogous to the contemporary division between politically-oriented identities and liberalism. As we will see in our examination of Habermas and Rawls below, some have suggested that an “overlapping consensus” of liberal principles might perform this function, although, as I argue there, the analogy is questionable. Moreover, it should be noted that the discourse of medieval Christianity was not limited to particular aspects of social, cultural, or moral life, but stressed the indivisibility of man – that is, it precludes any possibility of a separation between public and private identities, which is a wholly modern concept. In the words of Walter Ullmann, “Christianity seized the whole of man – man was whole and indivisible: every one of his actions was thought to have been accessible to the judgment by Christian norms and standards.”¹⁴¹ Clearly the medieval doctrine of the totality of man is incompatible with liberal, let alone neo-pluralist, conventions.

Second, the degree to which political loyalty and authority can be said to have “overlapped” during either the early or late Middle Ages is probably inadequate to the

¹³⁹ Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1974) 37-38.

¹⁴⁰ For this reason, Carl Schmitt argues that the only genuinely *political* division in medieval Europe was between Christianity and Islam (Carl Schmitt, *The Concept of the Political*, trans. George Schwab. (Chicago and London: Methuen, 1996) 29).

neo-pluralist position. Where medieval political authorities intersected, any “overlap” was overcome through one of three mechanisms: a system of hierarchies¹⁴², conflict and commercialisation. Medieval secular rule, from the lowliest king to the emperor himself, invariably required the sanction of the pope – a relation Ullmann describes as “grace within a governmental framework.”¹⁴³ This requirement bound secular rule (*potestas*) to the pope’s sovereign will (*auctoritas*), itself a reflection of divine will. Papal authority was, at least in principle, enforced by the pope’s power to excommunicate princes attempting to exceed their prescribed powers, a measure with severe consequences.¹⁴⁴

Hierarchy was also characteristic of the (often violated) ideal-type of vassalage, most apparent in its early Frankish form, the later institution of liege homage, as well as in Japanese feudalism.¹⁴⁵ During extended periods of the Middle Ages, multiple fealties – which certainly did overlap during peacetime – were common, but, in times of crisis, resulted in chaotic conflicts over the priority of the vassal’s loyalty.¹⁴⁶ The increasing instability of feudal relations after the Carolingian period amplified the power of local “castle lords,” or castellans and diminished that of

¹⁴¹ Walter Ullmann, *Principles of Government and Politics in the Middle Ages*, 4th ed. (London: Methuen & Co., 1978) 33.

¹⁴² James Anderson points out that overlapping membership was constituted through “nested hierarchies (for example, parish, bishopric, archbishopric, ... papacy; manor, lordship, barony, duchy, kingdom, ... Holy Roman Empire)” (James Anderson, “New Medieval and Postmodern Territorialities?” pp. 133-153 in *Environment and Planning D: Society and Space* 14 (1996) 141).

¹⁴³ Ullmann (1978) 58.

¹⁴⁴ For example, to kill one excommunicated would not constitute murder; other consequences of the victim include social segregation and exclusion from the Church (Ullmann (1978) 77).

¹⁴⁵ Marc Bloch, *Feudal Society* v. 1: *The Growth of Ties of Dependence*, translated by L.A. Manyon (Chicago: University of Chicago Press, 1961) 211 ff.

¹⁴⁶ Bloch (1961) 213.

their superiors, owing to the fickle loyalties of the former.¹⁴⁷ This instability declined only when liege homage was transformed into an essentially commercial relation in which service became a function of a knight's estates rather than of his person, and when liege relations themselves could be bought and sold.¹⁴⁸

From this glimpse of the patterns by which loyalty and authority were ordered during periods in which multiple fealties were common, it is apparent that political overlap (that is, of simultaneous loyalty to multiple authorities), if it existed at all, was effected through a dialectic of hierarchy and chaos. The "diversity of ethical spheres," of which Linklater writes, resisted being harmonised for centuries. While some warriors were prone to swear service to more than one lord, the execution of these multiple loyalties became impossible when those lords entered into conflicts with each other.¹⁴⁹ At best, then, the multiple political loyalties of knights, where they were not rationalised through hierarchy or commercialisation, were in fact either *several* or *conflicting* rather than *overlapping*, an arrangement that favoured instability on a broad scale and the dominance of local lords on a smaller scale. In these instances, particularly during the eleventh and twelfth centuries, authority was a matter of force wielded locally by castellans and their henchmen, and loyalty a matter of no relevance for the peasants who had to serve them.¹⁵⁰ These peasants, lacking the mobility of knights, endured the overlapping authority of the castellan on the one hand and the widespread extortion imposed on peasants by impoverished knights¹⁵¹ on the other – a

¹⁴⁷ Fischer (1992) 439.

¹⁴⁸ Bloch (1961) 217.

¹⁴⁹ Bloch (1961) 213.

¹⁵⁰ Thomas N. Bisson, "Medieval Lordship," pp. 743-759 in *Speculum* 70 (4) (October 1995) 752.

¹⁵¹ Bisson (1995) 749.

condition which might be described as overlapping authority only to the same extent that organized crime is in contemporary society.

Third – and this point is by now obvious – to the extent that loyalty and authority overlapped in the ways described, we can speak of something like medieval “citizenship” only in a fractured sense, and only in a way almost completely foreign to the modern understanding of the term. Insofar as autonomy is a facet of citizenship, and one which distinguishes it from mere subjecthood, the class of knights was perhaps the most favoured in this regard. On the one hand, particularly from the eleventh century onward, knights enjoyed considerable freedom. On the other hand, this autonomy was a function of the knights’ armed status and was manifested in the entire class’s exemption from the jurisdiction of the courts binding the peasantry.¹⁵² This exemption meant that disputes involving knights could be settled only through either direct violent action or excommunication.¹⁵³ The peasantry, by contrast, enjoyed (?) the protection of banal laws which commonly reduced them to little more than slaves.¹⁵⁴ The disjuncture between these two facets of citizenship – autonomy and security – has been overcome, at least in principle, in modern (particularly democratic) citizenships which bind identity to sovereignty and codified rights. Considerations of the notion of neo-medieval citizenship urgently require a normative consideration of the effect of dissolving “Westphalian” sovereignty, but also an account of how or whether the modern fusion of liberty and security might be achieved in post-Westphalian scenarios.

¹⁵² Georges Duby, *The Chivalrous Society*, translated by C. Postan (London: Edward Arnold, 1977) 43, 46.

¹⁵³ Duby (1977) 48.

Neo-medievalism and post-Westphalianism

Over the last decade, the concept of sovereignty in Westphalian state, as conceived by international relations scholars¹⁵⁵, has been subject to revision. In an effort led by IR specialist Stephen Krasner¹⁵⁶, the notion of Westphalian state sovereignty as exclusive political control over a clearly-defined territory has undergone considerable scrutiny and modification. Krasner attempts to overturn the view, prevalent among IR scholars, that the Treaty of Westphalia marked a radical transition from the medieval to the “Westphalian” political order. Krasner’s thesis emphasizes both the existence of instances of exclusive (or aspiring to be exclusive, at any rate) territorial authorities before 1648, and of porous borders, contested areas of authority, and of medieval structures of authority (such as the Catholic Church and the Ottoman Empire) long afterward.

There are, to be sure, differences important in IR discussions between the medieval and the modern political orders, particularly with respect to the function of territory.¹⁵⁷ But the contiguity Krasner indicates between medieval and modern political orders bears directly on the neo-pluralist conception of overlapping authorities and loyalties as particular to the postmodern world. The pluralist paradigm

¹⁵⁴ Bisson (1995) 749.

¹⁵⁵ For an extensive list of IR literature which takes the Treaty of Westphalia as a clear demarcation between medieval and modern sovereign political orders, see Andreas Osiander, “Sovereignty, International Relations, and the Westphalian Myth,” pp. 251-287 in *International Organization* 55 (2) (Spring 2001) 261.

¹⁵⁶ Stephen D. Krasner, “Westphalia and all that,” pp. 235-264 in Judith Goldstein and Robert O. Keohane, eds. *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Cornell and London: Cornell University Press, 1993); the point is also raised by Darel E. Paul, “Sovereignty, Survival and the Westphalian Blind Alley,” pp. 217-231 in *Review of International Studies* 25 (2) (April 1999), esp. pp. 229-231.

retains and relies on the myth of the Westphalian order as constituted by states with absolute control over demarcated territories; moreover, through its conflation of identity and politics, neo-pluralist discourse imputes to Westphalian sovereignty a principle its IR defenders never adopted: national homogeneity. Linklater, for example, argues:

Post-Westphalian structures which promote developmental pressures to recognise multiple authorities and loyalties must uncouple citizenship from sovereignty, shared nationality and territoriality. The practical task is to envisage forms of citizenship which are appropriate to the post-Westphalian condition of multiple political authorities and allegiances.¹⁵⁸

Jacobson sees the Westphalian order as engendering a system of states “with unified and coherent populations (in the national sense),” and, in a remarkable misreading of both Latin and of history, ascribes to Westphalia the *cuius regio eius religio* principle “which anticipated the principles of sovereignty and national self-determination.”¹⁵⁹ Soysal contrasts her deeply pluralist vision of transnational citizenship with an old-fashioned one which affixes solidarities to national boundaries and the “nation-state mode of political community,” in which “‘public’ and ‘people’ overlap with ‘nation’.” and nationality “constitutes the source of rights and duties of individuals.”¹⁶⁰ Dijkstra et al. set their prognostication of a multicultural global society over against an older

¹⁵⁷ See, for example, Ruggie (1993); Mark Zacher, “The Territorial Integrity Norm: International Boundaries and the Use of Force,” pp. 215-250 in *International Organization* 55 (2) (Spring, 2001); Jan Zielonka, “How New Enlarged Borders Will Reshape the European Union,” pp. 507 – 536 in *Journal of Common Market Studies* 39 (3) (Sept. 2001); J. Anderson (1996).

¹⁵⁸ Linklater (1998) 200.

¹⁵⁹ Jacobson (1997) 20. *Cuius regio eius religio* (“whose the region, his the religion”), a principle entrenched in the Treaty of Augsburg in 1555, gave princes (not, as Jacobson claims, regions) the authority to determine the religious denomination of their populations. The principle was, in fact, abandoned in 1648 because it had led to political upheaval in areas with substantial religious minorities. The Peace of Westphalia instead attempted to restrain sovereigns by protecting the rights of Protestant and Catholic minorities to practice their religion and have their children privately educated. See Krasner (1993) 242; Osiander (2001) 272.

¹⁶⁰ Soysal (2001) 161-162.

order in which people are “exclusively associated with and dedicated to a specific national group culture of a certain national state.”¹⁶¹

The arguments of Krasner and his followers take a good deal of wind out of the sails of neo-pluralism, which takes its cue from the discourse, rather than the scholarship, concerning sovereignty and citizenship of the nation-state – a discourse built on the principles of state autonomy and social homogeneity – without observing the numerous empirical contradictory patterns. The professed autonomy of states has monopolized neither human associations nor the practice of politics. Multinational corporations, international unions, and activist groups such as Greenpeace developed during the height of the nationalist Westphalian order. Overlapping, fluctuating identities are not particular to the post-modern condition, but have been identified as an intrinsic part of the state, mediated by civil society, at least since Hegel.¹⁶²

The continuity between Westphalian and post-Westphalian political orders as socially pluralist is visible in the description of pluralist civil society Gabriel Almond and Sidney Verba’s presented in their classic work on citizenship, *The Civic Culture*. Their view of a properly-functioning pluralist civil society is, in parts, notably similar to that of the neo-pluralists. For Almond and Verba, the Western civic culture is “a pluralistic culture based on communication and persuasion, a culture of consensus and

¹⁶¹ Dijkstra, Geuijen and de Ruijter (2001) 60.

diversity.”¹⁶³ Almond and Verba’s civic culture has a principally instrumental value for democratic stability, however, as a citizens’ training ground for political participation¹⁶⁴ and a “reserve of influence” preventing political excesses by governing elites.¹⁶⁵ More importantly for our purposes, however, *The Civic Culture* was intended only as a comparative study of political culture within sovereign states, and makes no mention of political pluralism in the sense suggested by neo-pluralists.

While neo-medievalism, as presented here, is inadequate as a citizenship model, the political dynamics which serve as its impetus remain: the declining power of the state, an increase in inter-state association and activity, and, at the very least, the prospect of a new kind of political formation in the EU. The dispersion of, and conflicts between, political authorities during the Middle Ages is no model for any kind of citizenship, but is instead a function of the *absence* of the kind of political order that gives rise to citizenship. It remains to be determined how citizenship might be preserved in a post-national form without disappearing in the chaos of a violent, neo-medieval world.

Identity and Sovereignty 2: Citizenship as overlapping consensus

Neither Jürgen Habermas nor John Rawls could reasonably be described as

¹⁶² Hegel is, mystifyingly, frequently cast as a virulent nationalist, particularly among IR scholars. Kennan Ferguson, for example, identifies Hegel with the “demand that all people behave, talk, and think in one allegedly correct way.” (Kennan Ferguson, “Nationalism, Sovereignty, and Pluralism: The Case of William James,” pp. 115-129 in Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, MD: Lexington Books, 2001) 126); Hegel writes that civil society rests on twin pillars: one is the interdependence of the people in it; the other is “a totality of wants and a mixture of caprice and physical necessity”. As we see in Chapter 3, Hegel’s goal is not to homogenize civil society, but to unite the diversity inherent in it with the universality of the state through ethical life (see G.W.F. Hegel, *Philosophy of Right*, T.M. Knox, trans. (Oxford: Oxford University Press, 1967) esp. §§182-188; §237).

¹⁶³ Gabriel Almond and Sidney Verba, *The Civic Culture* (Princeton: Princeton University Press, 1963) 8.

¹⁶⁴ Almond and Verba (1963) 163-164.

pluralists in any but the liberal sense, but their fundamentally liberal political theories have been adopted and interpreted by neo-pluralists resistant to the chaotic promise of neo-medievalism. Like their neo-medievalist counterparts, however, neo-pluralists arguing in the Habermasian vein achieve ontological order only by clouding, ignoring or altogether expunging politics (or at least “bad” politics) from their accounts of citizenship. I cannot hope to give anything like a complete account of either thinker’s work, particularly that of Habermas, whose multifaceted political project to resuscitate Enlightenment goals under postmodern conditions is connected only indirectly with the problem of citizenship. I will, however, show how Rawls’ and Habermas’ perspectives on citizenship are weakened through reliance on questionable premises, and argue that the adoption of their arguments by neopluralists amplifies this weakness.

Both Habermas and Rawls ground their theories of political community on three principles: first, that moral views of the good are both conceptually and politically separable from *right*; second, that the best possible institutional embodiment of this right is permanently dialogical in character; finally, that a universalist conception of right is immanent in all moral views of the good. I will first summarize the presentation of each of these points by both authors, provide a short critique of their position, and then show how neo-pluralist arguments informed by this position are subject to the same critique.

If I have read him correctly, Habermas has assimilated a liberal pluralist argument to his understanding of lifeworlds, themselves a component of his more

¹⁶⁵ Almond and Verba (1963) 481 ff.

general theory of communicative action. For Habermas, all communication simultaneously reflects the diverse contents of subjective, social and objective spheres.¹⁶⁶ Lifeworlds are linguistically and culturally constituted horizons of meaning which provide their members with pre-formed “unproblematic, common, background convictions” which permit them to resolve disagreements created because of conflicts between the three spheres.¹⁶⁷ The shared context of “lifeworld knowledge” is not composed of rationally arrived-at truths, but provides actors with “well-established solidarities and proven competences” which support their feeling of “absolute certainty” concerning “knowledge of what one can count on.”¹⁶⁸ According to Habermas, the inevitable conflicts between actors communicating with different lifeworlds at their backs, such as in encounters between nations (rather than states), cannot be legitimately resolved by reference to the background elements that make up the lifeworld. We therefore see the first principle reflected in Habermas’ argument that a legitimate resolution is possible only with reference to “moral principles that claim a general validity that extends beyond the limits of any concrete legal community”¹⁶⁹ – that is, to a standard of right that transcends the norms given by nationalist (or other) lifeworlds.¹⁷⁰

The second principle is evident in the arguments flowing from Habermas’ scepticism concerning the universality of truth-claims inherent in any particular

¹⁶⁶ Jürgen Habermas, *The Theory of Communicative Action* v. 2: Lifeworld and System: A Critique of Functionalist Reason, translated by Thomas McCarthy (Boston: Beacon Press, 1987) 120.

¹⁶⁷ Habermas (1987) 126.

¹⁶⁸ Habermas (1987) 135.

¹⁶⁹ Jürgen Habermas, *The Inclusion of the Other*, Ciaran Cronin and Pablo De Greiff, eds. (Cambridge, MA: MIT Press, 1998) 245.

¹⁷⁰ See also Habermas (1992) 7; Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: Polity, 1990) 93.

lifeworld. This scepticism, coupled with his confidence in the existence of a universal standard of right, provides the foundation for what appears to be a strictly procedural theory of justice. In his often-cited essay on EU citizenship, Habermas defends this theory, in different places, under the rubrics “constitutional patriotism”¹⁷¹ and “democratic citizenship”¹⁷². In both cases, Habermas grounds the legitimacy of his theory of justice in the dialogical character of the (often imagined) legal institutions embodying it. Thus, for example, in response to Dieter Grimm’s claim that there is no European *demos* on which to construct a European citizenship, Habermas writes:

The ethical-political self-understanding of citizens in a democratic community must not be taken as a historical-cultural *a priori* that makes democratic will-formation possible, but rather as the fluid content of a circulatory process that is generated through the legal institutionalization of citizens’ communication.¹⁷³

While Habermas’ argument here seems to cast us back against the insurmountable barrier between empirical and normative claims we encountered among neo-Kantian theorists above, he circumvents this roadblock with his introduction of the third principle: he makes the astonishing claim that the ethics rooted in “historical-cultural” lifeworlds, including nations, universally contain the elements necessary to construct the legal institutions that will otherwise transcend those lifeworlds. Thus, Habermas argues, an EU citizenship founded on shared political culture is possible, but only under the following conditions:

One’s own national tradition will, in each case, have to be appropriated in such a manner that it is related to and relativized by the vantage points of the other national cultures. It must be connected with the overlapping consensus of a common, supranationally shared political culture of the European Community. Particularist anchoring *of this sort* would in no way impair the universalist meaning of popular sovereignty and human rights.¹⁷⁴

¹⁷¹ Habermas (1992)

¹⁷² Habermas (1998)

¹⁷³ Habermas (1998) 161

¹⁷⁴ Habermas (1992) 7

John Rawls' *Theory of Justice* and most of his more recent work contain the same three principles we have just seen in Habermas. Although his language is less opaque than that of Habermas, the same three principles appear. For "lifeworlds," Rawls employs the term "comprehensive doctrines" of the good, such as those contained in religious moral codes.¹⁷⁵ First, these comprehensive doctrines, according to Rawls, are separable from a standard of right ("justice as fairness"¹⁷⁶) which, as in Habermas' thought, is capable of transcending them. Rawls' conceptual instrument for articulating the principles of this right, the original position, is so well known as to not require explanation here,¹⁷⁷ but it should be noted that Rawls specifies that the parties in the original position, while deprived of the particular ends connected with their culturally-determined comprehensive doctrines, retain their moral autonomy and rational capacity behind the veil of ignorance.¹⁷⁸

The second principle concerning the permanently dialogical character of right is more muted in Rawls' thought than in Habermas' theory of communicative action, but is nonetheless present in the provision that justice as fairness necessarily entail "reasonable pluralism," a tenet particular to just societies, which draw on it to provide "the best available standard of justification of competing claims that is mutually acceptable to citizens generally."¹⁷⁹

On the third principle, Rawls, like Habermas, uses the term "overlapping

¹⁷⁵ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) 14; 175.

¹⁷⁶ See, for example, John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972) 11-17; Rawls, of course, uses this term throughout his work, however.

¹⁷⁷ Rawls (1972) 118 ff.

¹⁷⁸ John Rawls, "Kantian Constructivism in Moral Theory" pp. 515-572 in *Journal of Philosophy* v. 77 (9) (Sept. 1980) 568.

¹⁷⁹ Rawls (1993) 188.

consensus” to described the embodied transcendent principle of right. According to Rawls, under the overlapping consensus

each of the comprehensive, religious, and moral doctrines accepts justice as fairness in its own way; that is, each comprehensive doctrine, from within its own point of view, is led to accept the public reasons of justice specified by justice as fairness. We might say that they recognize its concepts, principles, and virtues as theorems, as it were, at which their several views coincide. But this does not make these points of coincidence any less moral or reduce them to mere means.¹⁸⁰

Habermas and Rawls’ adoption of these three principles is both normatively and conceptually attractive because of their implied promise to resolve the contradictions between liberalism and (classic) pluralism. Yet the arguments supporting them rest on assumptions which, if questionable in the contexts in which Habermas and Rawls frame them, do not lend themselves well to those in which neo-pluralists would adopt them.

The first principle, the separability of good from right, relies on the premise, espoused by both Habermas¹⁸¹ and Rawls¹⁸², that a transcendent, intersubjective standard of right can be constructed on a “political” foundation without reference to a metaphysical ontology. Put more simply, it relies on two related claims: first, that right is exclusively a function of agreement between autonomous individuals, and, second, that right is found only and always where such agreement occurs. Insofar as this principle simply recounts politically-significant agreements (which might equally take the form of constitutions as of the social contract) it is descriptive without being explanatory; agreements between previously conflicting groups have occurred (the state of Switzerland is a favourite Habermasian example), but neither Habermas nor

¹⁸⁰ John Rawls, “Justice as Fairness: Political not Metaphysical” pp. 223-251 in *Philosophy and Public Affairs* 14 (3) (Summer 1985) 247.

¹⁸¹ Habermas (1998) 251.

Rawls aims to account either for their success or for the failure of other apparently similar discussions (for example in Northern Ireland or in Israel). In fact, the principle of separation of right from good owes its popularity not to its philosophical strength, but, as numerous critics have pointed out, to its normative appeal to basic liberal principles.¹⁸³

The teleological view of agreement as the common end of citizens in the thought of Habermas and Rawls must, however, be separated from the appeal to liberal principles. Each thinker takes such a teleological view of citizens in a slightly different way. Habermas advocates a model of democratic citizenship which he builds into *already-existing* institutions of citizenship. This model, Habermas argues, “relies precisely on those conditions of communication under which the political process can be presumed to produce rational results because it operates deliberatively at all levels.”¹⁸⁴ Because Habermas’ theory of communicative action is primarily linguistic and thus hinges on the willingness of communicating actors to reach common understanding¹⁸⁵, it takes no notice of aspects of citizenship not contributing to the domestic regulation of communicative action between citizens. Rawls similarly

¹⁸² Rawls (1985) 225.

¹⁸³ Numerous critics have made this argument about Habermas’ work. For example, see Beiner (1995) 8; Stanley Rosen, *Hermeneutics as Politics* (New York and Oxford: Oxford University Press, 1987) 15; Perry Anderson, “Nation-States and National Identity,” pp. 7-8 in *London Review of Books* 13 (9) (May 9, 1991). Rawls, whose attack on liberalism extends only to classical liberalism’s toleration of economic inequality, is more forthrightly identifiable with reform liberalism (see Rawls (1972) 73-75), but this forthrightness does obviously not do away with the difficulties inherent in the separation of good from right. For a critique of Rawls on this point, see John Gray, “Where Pluralists and Liberals Part Company,” pp. 85-102 in Maria Baghramian and Attracta Ingram, eds. *Pluralism: The Philosophy and Politics of Diversity* (London and New York: Routledge, 2000); and David Dyzenhaus, “Liberalism after the Fall: Schmitt, Rawls and the Problem of Justification,” pp. 9-37 in *Philosophy and Social Criticism* 22 (3) (1996).

¹⁸⁴ Habermas (1998) 245-246.

presupposes these institutions, which he embeds in the concept of the “well-ordered society,”¹⁸⁶ although he does so more explicitly than does Habermas.¹⁸⁷ In both cases, the authors defend liberal positions concerning the best way to order citizenship while preserving social stability and individual rights. Neither, however, gives a thorough account of either the historical origins or the substructures (those presupposed in the domestic accounts of Habermas and Rawls) of citizenship.

The exclusively domestic character of the arguments supporting the first principle lead easily to the second, namely the normative value of institutions supporting permanently dialogic exchange between citizens. As in the arguments above, the fact that “citizens” exist before they begin communicating¹⁸⁸ underlines the absence of a political theory of citizenship in Habermas’ or Rawls’ thought. Habermas’ and Rawls’ arguments on this point reflect the normative value attached to a dynamic and pluralistic civil society in *The Civic Culture*, but go no further. In considering the prospect of citizenship in the EU, we do not have the luxury of beginning with an institutional citizenship grounded in recognizable lifeworlds or a well-ordered society, nor of an identifiable European civil society. Insofar as the creation of citizenship is possible only through the establishment of a political order, a future EU citizenship will require the foundation of some political fixtures which cannot, and should not, be permanently dialogical. In every political order, some

¹⁸⁵ Jürgen Habermas, *The Theory of Communicative Action* vol. 1: Reason and the Rationalization of Society, translated by Thomas McCarthy (Boston: Beacon Press, 1981) 95; see also Habermas (1990) 134-135; Habermas (1998) 138.

¹⁸⁶ Rawls (1972) 453ff.

¹⁸⁷ A more detailed account of this critique of Habermas and Rawls appears in John Crowley, “War, Politics, and Sovereign Violence,” pp. 75-97 in Fred Dallmayr and José M. Rosales, eds. *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, MD: Lexington Books, 2001).

¹⁸⁸ As in Habermas (1992) 11.

questions *are* closed, whether explicitly by law (as in the prohibition against Holocaust denial in Germany), or, more commonly, implicitly in the way public discussion is framed by political institutions and the elites governing them (as in the case of minimum required thresholds for election in proportional-representation systems). In the EU, the latter of these modes of fixity can already be observed. For example, whatever the intentions of the Irish majority that rejected the Treaty of Nice in June, 2000, both the Commission and the Irish government have construed the referendum outcome as a legal problem rather than, say, a nationalist or racist rejection of the EU's eastern enlargement. To take another example, the Greek government's inclination to discriminate between men and women in social security programs has been treated by the EU as strictly a juridical matter to be settled in the European Court of Justice, rather than as a problem of cultural particularity, subsidiarity, or democracy. In all of these examples, the "ethical-political self-understanding of citizens," to use Habermas' terms, *is* treated as an *a priori* outside the realm of public deliberation – not for the preservation of ethnic or religious domination, but for the sake of civil peace.

The third principle found in Habermas and Rawls, which holds that an overlapping consensus is an immanent capacity of every lifeworld or comprehensive moral doctrine, is a matter of faith, substantiated by the reconstructive method both thinkers employ. To be sure, such faith is necessary among the state's citizens to preserve their mutual solidarity, since none can possibly ever know all their fellows personally; an overlapping consensus is thus evident in all stable states, and Habermas' and Rawls' studies make important contributions to accounting, after the

fact, for how this consensus is achieved. An overlapping consensus is not the *inevitable* outcome of disagreeing parties, however; as Rainer Bauböck observes, *contra* Habermas, “Participants in cultural discourse need not necessarily aim at convincing others of their view. They may as well aim at stating the irreconcilability of their perspectives with others.”¹⁸⁹ Such disagreement is tolerable, perhaps even desirable, in civil society. When conflict of this kind becomes genuinely political, and politicized identities become part of the discussion between lifeworlds, however, it strikes at the heart of existing political orders and promises to create new ones. For instance, the 1947 transformation of India and Pakistan from British dominions into states brought about a concomitant transformation of British subjects into Indian and Pakistani citizens.

The preoccupation with the domestic aspects of citizenship – which Habermas unites in his concept of *Weltinnenpolitik* (world domestic policy)¹⁹⁰ – ignores or denies the connection between what George Armstrong Kelly has called the “civil” and the “civic” in modern citizenship.¹⁹¹ The school of Habermas and Rawls is preoccupied with civil relations, which initially took the form of civil society and commercial relations, but, in the last century, also spilled over into the welfare state. The “civil society” view of civility, Kelly argues, is compatible with a nomocratic, as opposed to a telocratic, conception of the state; the nomocratic state is neutral with

¹⁸⁹ Rainer Bauböck, “Social and Cultural Integration in Civil Society,” pp. 91-119 in Catriona McKinnon and Iain Hampsher-Monk, eds. *The Demands of Citizenship* (London and New York: Continuum, 2000) 112.

¹⁹⁰ Jürgen Habermas, *The Past as Future*, translated by Max Pensky. (Lincoln and London: University of Nebraska Press, 1994) 9.

¹⁹¹ George Armstrong Kelly, “Who needs a theory of citizenship?” pp.21-36 in *Daedalus* 108 (4) (Fall 1979) 28 ff.

respect to the various private ends of its citizens, civil associations and even governments.¹⁹² By contrast, “welfare state” civility is telocratically engaged in the satisfaction of the various desires of citizens, associations and governments – a task Habermas views as a function of the lifeworld’s colonisation by the systems of economy and state by converting lifeworld members into consumers and clients.¹⁹³ On this question, at least, Habermas and Rawls are superficially divided. Habermas’ awareness of the attempts of various parties (and the eventual success of the Nazi party) to hijack the Weimar state underpins his opposition to telocratic states and his emphasis on dialogical processes; Rawls’ program, by contrast, explicitly favours welfare-state institutions.¹⁹⁴ Nonetheless, the telocracy essential to Rawls’ theory of justice does not translate into general theories of state or of citizenship which explain the relation of telocracy to citizenship. This lack is not so much a failing on the part of Rawls (whose purpose is the development of a robust, if abstract, standard of justice) as on the part of disciples who attempt to apply the theory of justice to the EU. By contrast with the fictional well-ordered state in which Rawls sets his theory of justice, the EU’s *nomos* is far from clear and, as is evident from the struggles and compromises which emerge from the Council, the EU often more closely resembles the utilitarian *modus vivendi* model Rawls repudiates¹⁹⁵ than an overlapping consensus.

Kelly calls the state’s “civic” elements those which enable citizens to put their political community ahead of private interests. The civic aspect of citizenship is of

¹⁹² Kelly (1979) 29.

¹⁹³ Habermas (1987) 347ff.

¹⁹⁴ Rawls (1972) 276 ff.

particular importance in the study of EU citizenship because nationalism, the dominant civic form of recent modern citizenship, cannot play the same role in a future EU citizenship. The form a future civic citizenship of the EU might take is, of course, opaque to us, but this is an inadequate reason to expunge the civic from a *theory* of citizenship. If for no other reason, citizenship relies on the civic for the resources to discern telocratic actions from civil ones and to resist these actions as necessary.¹⁹⁶ Modern citizenship relies on an overlapping consensus, but that consensus must be made up of civic as well as civil elements. Habermas, and to a greater degree other advocates of constitutional patriotism, avoid the ethnically tainted civic sphere using what one critic calls a “strategy of redirection”¹⁹⁷ – that is, simply by directing the affect sustaining nationalist solidarity – that is, the civic – towards universal (i.e. liberal and civil) principles. The strategy of redirection, while a potentially useful instrument in reducing identity-based conflict in established states¹⁹⁸, cannot serve as a model for the *development* of EU citizenship, where there is little evidence of a civic element. Margaret Canovan provides a concise critique of the strategy of redirection:

The claim that an impartial state can form a benign umbrella soaring above rival national or ethnic identities and attracting patriotic loyalty ignores the most crucial political question, namely where is the state to draw its power from? What holds up the umbrella?¹⁹⁹

¹⁹⁵ Rawls (1985) 247.

¹⁹⁶ Kelly (1979) 33.

¹⁹⁷ Patchen Markell, “Making Affect Safe for Democracy? On ‘Constitutional Patriotism’,” pp. 38-63 in *Political Theory* 28 (1) (Feb. 2000) 39.

¹⁹⁸ See, for example, David Hollinger, *Postethnic America: Beyond Multiculturalism* (New York: Basic Books, 1995).

¹⁹⁹ Margaret Canovan, “Patriotism is Not Enough,” pp. 276-297 in Catriona McKinnon and Iain Hampshire-Monk, eds. *The Demands of Citizenship* (London and New York: Continuum, 2000) 284.

Neopluralists as well as conventionally liberal scholars²⁰⁰ have drawn on the concept of overlapping consensus for the development of citizenship models. These models reflect the three principal characteristics we found in the thought of Rawls and Habermas; in the evaluation of the relation between citizenship and identity pluralism in more or less stable states, overlapping consensus is a useful normative tool for liberal criticism²⁰¹. Because neopluralist citizenship models operate without the political pre-eminence of states, however, they cannot rest, as do the theories of Rawls, Habermas and their liberal followers, on the foundation provided by the stable political order. Three examples of this neo-pluralist “overlapping consensus” strain in EU citizenship studies follow.

Andreas Føllesdal, a prominent exponent of constitutional patriotism as a model for EU citizenship, argues that citizenship debates between liberals and communitarians can be overcome through “Liberal Contractualism”²⁰². As presented by Føllesdal, Liberal Contractualism contains all three elements of overlapping consensus theory. Liberal Contractualism avoids having to choose between liberal and communitarian arguments on whether justice is a function of reason or of communal standards with the argument that new binding rules and institutions (such as those establishing European citizenship) must meet both standards to become applicable: that is, they must be defended both as just (and here Rawls is the arbiter of justice)

²⁰⁰ For example, see John Charvet, “The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights,” pp. 523-541 in *Millennium* 27 (3) (1998).

²⁰¹ For example, see Judit Hell and Ferenc L. Lendvai on constitutional patriotism as a citizenship model for Eastern Europe (“Multiculturalism and Constitutional Patriotism in Eastern Europe,” pp. 241-252 in Fred Dallmayr and José Rosales, eds. *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, MD: Lexington Books, 2001).

and as a part of the community's "shared history."²⁰³ This arrangement clearly submits good (i.e. the shared history) to the constraints of right ("the just"), and, if we can safely assume that its proponents believe it to be applicable and not merely an abstraction, takes the immanence of the right in all instances of the good as given. That it is also permanently dialogical is apparent in Liberal Contractualism's founding maxim: that humans by nature "desire to act in accordance with principles that could not reasonably be rejected by people seeking an agreement with others"²⁰⁴ As we saw in our readings of Habermas and Rawls, this view of humans as agreement-seekers applies only within existing civic spheres, but provides no guidance on the creation of a new civic sphere. However laudable Føllesdal's attempt to build a credible case for an EU-wide welfare regime (for which, as he himself notes, little agreement has been sought among the principal actors²⁰⁵), Liberal Contractualism's force is rhetorical rather than explanatory. Nonetheless, in his adoption of the overlapping consensus perspective Føllesdal raises an important point for students of EU citizenship. At the purely pragmatic level, a rhetoric of European citizenship may in fact be the best way of fostering an EU citizens' lifeworld or civic sphere and creating bonds of solidarity now absent across national borders.

Percy Lehning elaborates a similar overlapping consensus model of EU

²⁰² Andreas Føllesdal, "The Future Soul of Europe: Nationalism or Just Patriotism? A Critique of David Miller's Defence of Nationality," pp. 503-518 in *Journal of Peace Research* 37 (4) (2000); and "Union Citizenship: Unpacking the Beast of Burden," pp. 313-343 in *Law and Philosophy* 20 (2001).

²⁰³ Føllesdal (2000) 515.

²⁰⁴ Brian Barry, *Theories of Justice: A Treatise on Social Justice, I*. (Berkeley: University of California Press, 1989) 8; cited in Føllesdal (2000) 512.

²⁰⁵ Føllesdal (2000) 504.

citizenship, drawing explicitly on Habermas and especially Rawls for support.²⁰⁶ The three now-familiar elements of the arguments analysed above are here, and appear much as they do in Føllesdal's presentation of it. In Lehning's version, however, European citizenship appears as one side of a triangle completed by the overlapping consensus on the one hand and a European federation on the other. The triangle is as logically integrated as is Rawls' just political society, but it exists only in the imagination. So do its parts: "Transnational federalism," Lehning writes, is "the most adequate institutional form of government that fits the requirements of the liberal-democratic conception of citizenship on a pan-national scale"²⁰⁷; yet "the reigning integration project is certainly not a federalist one."²⁰⁸ European citizenship exists, Lehning points out, at the "objective" or legal level, but most EU citizens feel political affinity (or "subjective citizenship") primarily for "a shared history, a shared culture, a shared language, perhaps even some sense of shared descent, even a shared ethnos."²⁰⁹

Like Føllesdal and Lehning, Attracta Ingram identifies the absence of a European identity as a critical problem in the development of EU citizenship, instead invoking a postnational model as a necessary substitute.²¹⁰ For Ingram, the capacity of individuals to recognize themselves and to act as members of a nation reflects a more fundamental ability "to engage in acts involving collective intentionality."²¹¹ As with

²⁰⁶ Percy Lehning, "European Citizenship: Towards a European Identity?" pp. 239-282 in *Law and Philosophy* 20 (2001).

²⁰⁷ Lehning (2001) 258.

²⁰⁸ Lehning (2001) 276.

²⁰⁹ Lehning (2001) 274.

²¹⁰ Attracta Ingram, "Constitutional Patriotism," pp. 1-18 in *Philosophy and Social Criticism* 22 (6) (Nov. 1996).

²¹¹ Ingram (1996) 10.

neo-pluralists generally, the political element requisite for citizenship enters Ingram's model too late, however; she makes no distinction between national identities striving for or attaining statehood on the one hand and identities with only domestic-level aspirations on the other. In Ingram's example, the strategy of redirection is the most pronounced of the three we are examining here. The argument in support of constitutional patriotism here is weak; the claim that constitutional patriotism is possible relies too heavily on this frail reed: the tendency of people to view themselves as members of a nation does not mean, Ingram writes, "that they do not, and cannot, adopt the standpoint of themselves as a political people who have become who they are by building and sustaining their version of political institutions governed by the principles of a liberal democratic order."²¹² As with the relevant works of Rawls and Habermas, Ingram's treatment of constitutional patriotism is suited to the normative criticism of actually-existing states, particularly, as she argues, of immigration policy.²¹³ It cannot serve, however, as anything but a fantastic model for EU citizenship, for a reason Ingram herself acknowledges: the strength of actual citizenships rests on civic (i.e. nationalist, for now at any rate) rather than civil identities such as those suggested by the concept of constitutional patriotism. For the project of EU citizenship in particular, the greatest obstacle is the tendency of citizens to "continue to be motivated to put the well-being of their own state ahead of others, thereby reproducing the divisions of national interests."²¹⁴

Notwithstanding the criticisms I have levelled against neo-pluralism here,

²¹² Ingram (1996) 12.

²¹³ Ingram (1996) 14.

²¹⁴ Ingram (1996) 16.

some of its exponents bring to the fore several concepts useful for a political theory of citizenship we might bring to bear on the study of the EU. The most important of these is the notion of the multi-level polity, or a kind of “super-federation” as the basic organizing principle of the EU.²¹⁵ An EU federation would, above all, permit member states to retain autonomy over particular policy areas, precisely as is the case in other federations.²¹⁶ Nonetheless – and in this respect the version of citizenship I defend in this dissertation contrasts with that of neo-pluralism – such a federation could come about only with the establishment of a European civic identity fulfilling the same function as nationalism served in its member states over the last 150 years. Both the EU’s growing reliance on skilled immigration and the fuzzy borders dividing current from prospective members preclude a civic identity constructed on ethnic grounds.

Another important aspect, for this project, of some neo-pluralist arguments is John Ruggie’s view of territoriality as a contingent rather than a central feature of politics.²¹⁷ Ruggie’s position pertains to the EU case because it emphasizes the absence of clear boundaries characterizing the Westphalian state model. Although I will defend, in the chapters that follow, a conception of *citizenship* that precludes overlapping authority and multiple loyalties at the civic level, the EU’s political

²¹⁵ See, for example, Elizabeth Meehan, *Citizenship and the European Community* (London: Sage, 1993); Lehning (2001). Unlike Meehan, I do not include, in this conception of the multi-level polity, representative and socially active bodies which overlap state borders, such as the advisory Committee of the Regions. While these bodies are sponsored by the EU, they operate almost exclusively at the level of civil society, and are therefore only tangentially related to a political understanding of citizenship. The exclusion of these organizations is not meant to diminish their potentially integrative function in the development of a future EU identity, but to retain as parsimonious a conception of citizenship as possible.

²¹⁶ *Contra* Lehning (2001), who views an EU federation as “the mirror image of federalism within a country” (p. 258).

sphere is characterized by “fuzzy borders” between certain policy fields and, indeed, states along the EU’s frontier. Applicant states, as is spelled out in more detail in chapter 4, receive EU assistance through such schemes as the Accession Partnerships, the Europe Agreements and the Phare program. Existing member states have demanded (and, in the past, successfully received) time-limited suspensions of Union-wide worker mobility rights for citizens of new EU states, extending still further the status of these frontier states as not-quite-full EU members.

Final provisions

In this survey, I have posed a number of related objections to some of the most prominent assumptions and conclusions appearing in the recent literature pertaining to the question of EU citizenship. In this closing section, I would like to lay out more clearly the elements comprising the framework for analysis on which the rest of this dissertation is constructed.

First, keeping with the naturalistic approach of my inquiry about citizenship, I view as a serious lacuna the absence of an anatomical theory connecting the distinct parts of citizenship Kelly calls civic and civil, but which we also encountered in this chapter as “identity” and “rights”. The claim that the civil necessarily precedes the civic, i.e. that solidarity follows from rights regimes, is frequently made, particularly by practitioners of the strategy of redirection²¹⁸, but without empirical or, more importantly, theoretical support. Functionalist theories of EU integration which anticipate full political union as a necessary outcome of economic integration follow a

²¹⁷ Ruggie (1993).

similar logic. In practice, however, the agreement-seeking behaviour which has generally characterized the EU's economic integration has not spilled over into the political sphere, as we will see in some detail in the chapter 4. The nature of the bond between the civic and the civil is therefore something of a mystery, and an account of it which draws on Kojève's work is one aim of this dissertation.

Second, if my preoccupation with the civic as an essential aspect of citizenship appears unduly narrow, it is because I am concerned with a specifically political conception of citizenship; that is, I want, first and foremost, to articulate citizenship as a function of power. The notion of cultural identity (however defined) as the basis of citizenship which characterizes neo-pluralist approaches (as well as liberal citizenship theories such as Kymlicka's) therefore has no place in this analysis. Identity nonetheless appears here, but as an element of citizenship ontologically posterior to the power relations established by the social contract.

Third, a naturalistic theory of citizenship is necessarily tied to a theory of human nature. In the second chapter, I sketch Alexandre Kojève's appropriation of Plato's tripartite anatomy of the human soul: *logos*, *eros*, *thumos*. The first two of these elements, reason and desire, occupy a prominent place in most of the theories I have described above, most coherently and explicitly in the cosmopolitan literature and the work of John Rawls. *Thumos*, spiritedness, for Plato both the reason for political philosophy and at the origin of politics itself, is overlooked in citizenship theories which take their cue from peaceful and domestic models. The parties behind

²¹⁸ As, for example, in Lehning (2001); Ingram (1996); Carlos Closa, "Between EU Constitution and Individuals' Self: European Citizenship," pp. 345-371 in *Law and Philosophy* 20 (2001) 366; and Greg Hill, "Citizenship and Ontology in the Liberal State," pp. 67-84 in *Review of Politics* 55 (1993).

Rawls' veil of ignorance or exchanging action plans in Habermas' theory of communicative action make no attempt to kill or enslave one another because these encounters take place in a context in which *thumos* has already been contained. Hannah Arendt noted that, without the "right to have rights" that characterizes genuine citizens, any talk of "universal" rights (that is, of rights in the civil sense) is moot.²¹⁹ To grasp the civic basis of citizenship adequately requires a satisfactory account of the establishment of this right to have rights.

The process of this establishment, in the argument I lay out in this dissertation, entails not only the containment of *thumos* (a task which alone could be accomplished through medical treatment, imprisonment or enslavement), but its education; a stable and robust citizenship requires not only that citizens be prepared to tolerate one another's differences or respect their rights to security and property, but that they be willing to commit to action in defence of their fellows. In the awkward but irreplaceable term from Aristotle (but introduced to me by Thomas Lindsay)²²⁰, citizenship requires, above all else, an enthymeme ("speaking to *thumos*"): an education. The untrained or misguided *thumos* is undoubtedly the greatest threat to civic – and therefore also to civil – citizenship in our time or any other. The brutal disregard of the democratic Assembly for the Athenian constitution Socrates

²¹⁹ Hannah Arendt, *The Origins of Totalitarianism*, 3rd ed. (New York: Harcourt, Brace & World, 1966) 296. "Man," Arendt continues, "it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity." (297)

²²⁰ Thomas K. Lindsay, "Aristotle's Defense of Spiritedness" pp. 443-448 in *American Journal of Political Science* 44 (3) (July 2000) 443.

encountered (and resisted) in the famous trial of the generals²²¹ was the result of thumotic indignation; so was the relatively easy introduction of the “anti-terrorism” bills, in Western states, which have recently superseded formerly fundamental liberal principles such as *habeas corpus*. An account of the education of the *thumos* for citizenship is a critical juncture in the argument that follows in the next two chapters.

²²¹ For an account of this case and the circumstances leading to it, see Xenophon’s *Memorabilia*, E.C. Marchant, trans. (Cambridge, MA: Harvard University Press, 1923) I.1.18 and *Hellenica*, Carleton J. Brownson, trans. (Cambridge, MA: Harvard University Press, 1985) I.6-7, respectively. Plato relates Socrates’ own account of his role in the trial of the generals in *Apology*, pp. 63-97 in Thomas G. West and Grace Starry West, trans. *Four Texts on Socrates* (Ithaca, NY: Cornell University Press, 1984) at 32b-c.

Chapter 2:

A re-introduction to the reading of Kojève

“As one develops a reading of his work ... it becomes more difficult to know what it means to take him seriously, as the content of his discourse seems to be at odds with the form and the point of his pedagogy. That is, the ironic component of his writings becomes more important over time, and the philosophic point of his writings less clear.”

- Michael S. Roth, *Knowing and History*¹

The version of Alexandre Kojève's *Introduction to the Reading of Hegel*² popularized by Francis Fukuyama in the early 1990s³ provides the foundation for an optimistic view of citizenship's future with remarkable similarities to the cosmopolitan perspectives on citizenship we explored in the opening chapter. There is, in fact, much in Kojève's work to suggest a cosmopolitan reading. The “universal and homogeneous state” Kojève described at the end of history engenders the decline of the political significance of social characteristics such as class and ethnicity, the universal and bloodless recognition of all by all, and a citizenship based on the equity of all citizens.⁴

Unlike other Marxists, Kojève treated the end of history as already present, the remaining internal contradictions as mere problems of the “alignment of provinces” – that is, objects for resolution through rational administration rather than violent struggle. Kojève's post-war career as a high-level bureaucrat in the French Department of Economic Affairs allowed him to participate in the early development

¹ Michael S. Roth, *Knowing and History: Appropriations of Hegel in Twentieth-Century France* (Ithaca and London: Cornell University Press, 1988) 84.

² Alexandre Kojève, *Introduction à la lecture de Hegel*, 2nd ed. (Paris: Gallimard, 1968) (henceforth *ILH*); some sections have been translated in English as *Introduction to the Reading of Hegel*, James H. Nicols, Jr., trans. (Ithaca and London: Cornell University Press, 1980) (henceforth *IRH*).

³ Francis Fukuyama, *The End of History and the Last Man* (New York: Avon, 1992) 310-312.

⁴ Alexandre Kojève, *Esquisse d'une phénoménologie du Droit* (Paris: Gallimard, 1981) 308.

of the European Community and the General Agreement on Tariffs and Trade. Both institutions, particularly the EC, were close in spirit to the universal and homogeneous state insofar as they favoured the aims of economic integration and the consequent impossibility of warfare anticipated by Robert Schuman at the EC's founding.

Kojève's writings, however, contain ambiguities and tensions which cannot be accounted for simply by reference to the inevitability of the universal and homogeneous state. I outline four of these here, but, as becomes clear in this chapter, the tensions I outline here both overlap with each other and extend into other spheres.

Foremost among these contradictions in Kojève's thought is perhaps the puzzle of his exploitation of Hegel for his pre-war lectures. The notion of the universal and homogeneous state is Kojève's, not Hegel's.⁵ For the development of a theory of citizenship, in fact, Hegel provides a considerable theoretical promise contrary to this version of Kojève; any student of citizenship is necessarily concerned with the relation between difference on the one hand and identity (or homogeneity) on the other. Hegel addresses this need with a dialectic of rights and duties which are linked through ethical life (*Sittlichkeit*) – the set of traditions and shared understandings which give a community substance and enable its members to distinguish friends from enemies. In the next chapter, I give this aspect of Hegel's thought more thorough consideration. But Kojève's writings demonstrate little interest in Hegel's version of ethical life, which, after all, relies on the kind of politicized differences the universal and homogeneous state strives to overcome.

⁵ *Contra* Fukuyama (1992) 300.

A second problem with reading Kojève strictly through the logic of the universal and homogeneous state is that it is never quite clear what the signs of its full arrival will be. As we will see here and in the next chapter, Kojève seems to reflect this logic with his Heideggerian perspective on the deep-seated similarity between the policy goals of the Americans, Soviets and Chinese during the Cold War. Nonetheless, the obvious difficulties with an interpretation of the political tensions of that period as reflective of universality and homogeneity led Kojève to interpolate an age of empires between the end of the nation-state and the full realization of the universal and homogeneous state. Kojève's "alignment of the provinces" defence of the claim that war and revolution have been impossible since the universal and homogeneous state's founding in 1806 relies on the classification of conflicts between these post-historical empires as "police actions," and of dissatisfied, violent miscreants as criminals to be incarcerated or eliminated.⁶ The political meaning of the interregnum between the arrival of the universal and homogeneous state "in principle" and the full alignment of the provinces is not adequately fleshed out in Kojève's works, but there is no suggestion, in contrast to Fukuyama's suggestion, that liberalism or democracy are requisite elements. The universal and homogeneous state is not – at least during this interregnum – a single regime (let alone a liberal democracy), but a universal agreement on the fundamental question for all relevant ideologies and governments: what is the best way to distribute goods? For Kojève in 1957, this entailed a commitment by first-world states to generous foreign-aid

⁶ Alexandre Kojève's letter of May 21, 1956, to Carl Schmitt in Piet Tommissen, *Schmittiana: Beiträge zu Leben und Werk Carl Schmitts*, vol. VI (Berlin: Duncker & Humblot, 1998) 119; a translation of this

programs for the poor states which representing their export markets – not on moral grounds, but because poor clients are “bad, or even dangerous, clients.”⁷ Since then, many of the West’s poor clients have remained so, and some have become demonstrably more dangerous. Kojève openly doubted that everybody could satisfy their desire for recognition in the universal and homogeneous state, and in this doubt lingers the possibility that the transition from the end of history “in principle” to “in practice” can last indefinitely.

A third reason for doubt concerning the unambiguous Fukuyama version of the universal and homogeneous state’s inevitability arises from Kojève’s contradictory conclusions on the function of philosophy at history’s end. On the one hand, Kojève embeds philosophy in the historical dialectic itself, so that the end of history brings about the end of philosophy. Simply put, the revelation of universal homogeneity at the end of history both satisfies and obviates the philosophical desire to uncover unity in the world’s heterogeneity. On the other hand, Kojève himself engaged in philosophy, most publicly with Leo Strauss and Carl Schmitt. I will address this contradiction in this chapter.

Finally, a fourth tension in Kojève’s thought appears in the ambiguous way he relates the universal human need for recognition to the spiritedness that drives some humans, alone among living things, to value survival less than the attainment of

letter can be found in Alexandre Kojève and Carl Schmitt, “Correspondence,” translated and edited by Erik de Vries, pp. 94-115 in *Interpretation* 29 (1) (Fall 2001) 109-110.

⁷ Alexandre Kojève, “Kolonialismus in europäischer Sicht,” (henceforth *KES*) pp. 126-140 in Piet Tommissen, *Schmittiana: Beiträge zu Leben und Werk Carl Schmitts*, vol. VI (Berlin: Duncker & Humblot, 1998) 139; see also the translation of Kojève’s “Düsseldorf speech” in Alexandre Kojève, “Colonialism from a European Perspective,” translated by Erik de Vries, pp. 115-128 in *Interpretation* 29 (1) (Fall 2001) 127.

symbols of recognition. The dissatisfaction that appears at the geopolitical level discussed above, is reflected at the individual level, particularly for those unlikely to be satisfied by the largely economic forms of recognition accruing to the citizen of the universal and homogeneous state. In this chapter, I argue both that Kojève is aware of such people, and that in his account of them he also preserves the possibility of a genuine politics.

In this chapter, I will draw on Kojève's *Introduction à la lecture de Hegel*, as well as some of his other early works, to develop a foundation both for a theory of citizenship adequate to the EU, and for an adequate account of Kojève's own post-war writings and work. This chapter focuses on Kojève's early works, while the next chapter discusses his later works and the influence of other thinkers on his later thought. This chapter is divided into three broad sections. The first of these is devoted to the problem of interpreting Kojève itself. In this section, I will argue that Kojève writes prudently or esoterically, so that he needs to be read with as much care as any other political philosopher, which is less than he usually receives. The second section comprises a comparison between the development of the guardians in Plato's *Republic* and Kojève's treatment of the master in the master-slave dialectic; the purpose of this section is to demonstrate the analogy between Kojève's and Plato's concerns with respect to the relation of reflection and rule in the city, particularly an ambivalence concerning the desirability of rule by philosophers. The third section of this chapter considers the conditions necessary for the emergence of the universal and homogeneous state. I argue that the apparent contradiction between Kojève's arguments concerning philosophy and action in the modern world on the one hand,

and his findings concerning the necessity of the universal and homogeneous state on the other, leave open a path for political action. This path suggests an opening for citizenship activity beyond the bourgeois consumerism characterizing Fukuyama's citizen of the universal and homogeneous state.

The Seminar

Kojève's influence on an entire generation of French scholars has gone largely unnoticed. Among the students who attended his seminar on Hegel during at some time between 1933 and 1938 we find important thinkers such as Georges Bataille, Eric Weil, Raymond Aron, Jacques Lacan, Maurice Merleau-Ponty, Gaston Fessard, Raymond Queneau, and Robert Marjolin, who would later give Kojève his job with the French civil service.⁸ Many of his students spoke very highly of his influence on them, as well as of his charisma and humour.⁹ Jean Wahl notes that Kojève's argument, against Hegel, that the dialectic which characterizes human history cannot be found in nature, was the first of its kind in France, and it came to be a central part of French existentialism.¹⁰

Kojève is as remarkable for his apparent philosophical and political ecumenicalism as for his influence. His avowed loyalty to Stalin¹¹ coexisted with a very high opinion of Martin Heidegger¹², a deep appreciation of the ancient thinkers, and long-lasting friendships with both Leo Strauss and Carl Schmitt. In addition to his

⁸ Dominique Auffret, *Alexandre Kojève: La philosophie, l'Etat, la fin de l'Histoire* (Paris: Bernard Grasset, 1990) 238.

⁹ See, for example, Jacques Lacan's "Le Séminaire" v. XX, *Encore*, 1972-73 (Paris: Seuil, 1975); Raymond Aron, *Mémoires* (Paris: Juillard, 1983) 94-101.

¹⁰ Jean Wahl, *Tableau de la philosophie française* (Paris: Gallimard, 1962) 170-171.

¹¹ Aron (1983) 731-732; Auffret (1990) 13.

¹² Alexandre Kojève, "Kojève : les philosophes ne m'intéressent pas, je cherche des sages," (Interview with Gilles Lapouge). *La Quinzaine Littéraire* 53 (July 1, 1968).

long-lasting influence on French philosophy, after the war Kojève both taught and made a considerable impact on some of Strauss's best-known students, including Allan Bloom, Stanley Rosen and Hilail Gildin. If there is a locus for debate between the French existentialists and their intellectual heirs on the one hand and the conservative, constitutionalist Straussians on the other, it lies in Kojève's exchange with Strauss: here, too, we should find the shared understandings of fundamental things which made both their exchange and their friendship possible.

It goes almost without saying, then, that Kojève's reading of Hegel is radical. The seminar, which met for three hours twice a week through six academic years, was devoted exclusively to a line-by-line reading of Hegel's *Phenomenology*. In the early 1930s, the *Phenomenology* was virtually unread in France, the *Logic* then being more commonly read. It is largely for this reason that Kojève was able to read the *Phenomenology* as radically as he does. Kojève's reading of the *Phenomenology* owes as much to Nietzsche as it does to Hegel himself; he valorizes spontaneous human action above almost everything else, denies, ultimately, the necessity of Hegel's logic, and does away with Hegel's philosophy of nature altogether.¹³ Yet Kojève's reading of Hegel is not a compromise between the bourgeois aspects of Hegel's political philosophy and Nietzsche's longing for superhuman action; it is, instead, an interpretation which attempts to comprehend Hegel on the basis of his own premises, and not simply of the text of the *Phenomenology*. In Kojève's own words, "I was intending to make not a commentary on the *Phenomenology*, but an *interpretation*.; to

¹³ On this point see Stanley Rosen, *Hermeneutics as Politics* (New York: Oxford University Press, 1987) 126.

put it another way, I tried to rediscover the profound premises of the Hegelian doctrine, and to reconstruct it by logically deducing from these premises.”¹⁴

Kojève and the practice of esoteric writing

The interpretation of Kojève’s *Introduction* which follows, then, makes no attempt at a critique of his reading of Hegel on the basis of orthodox Hegelian precepts: Kojève is open concerning the nature of his disagreement with Hegel in the text itself, and the task of “correcting” Kojève in this way has, moreover, been undertaken already.¹⁵ The task at hand is, rather, to unravel a number of critical contradictions and ambiguities in Kojève’s writing in order to construct a coherent understanding of the universal and homogeneous state in which Kojève himself ultimately appears both as political philosopher and political actor.¹⁶

The *Introduction* is a difficult text for a different reason than Hegel’s *Phenomenology* itself is; where Hegel is often simply obscure, Kojève is both forthright and frequently audacious within individual lectures. But he is also bafflingly self-contradictory in different presentations of the same theme, so that the resulting account is often ambiguous. The master-slave dialectic, the lens through which Kojève reads the entire *Phenomenology*, is not simply a phase of consciousness which precipitates the historical dialectic, but appears (in a different form) in every stage of history; Kojève’s account of this history is an attempt to show what has

¹⁴ From a letter to Tran Duc Thao from Oct. 7, 1948 in Auffret (1990) 249.

¹⁵ For orthodox Hegelian critiques of Kojève, see Dennis Goldford, “Kojève’s Reading of Hegel” in *International Philosophical Quarterly* v. 22 (1982) 275-294; and John Burbidge, “Man, God and Death in Hegel’s *Phenomenology*” in *Philosophy and Phenomenological Research* v. 42, 2 (Dec. 1981) 183-196; Richard A. Lynch, “Mutual Recognition and the Dialectic of Master and Slave: Reading Hegel Against Kojève,” pp. 33-48 in *International Philosophical Quarterly* v. XLI (1) (March 2001); and Patrick Riley, “Introduction to the reading of Alexandre Kojève,” pp. 5-48 in *Political Theory*, 9 (1) (Feb. 1981).

remained constant throughout that history: action. Insofar as action entails the unnecessary risk of life by the master, Kojève's account is clear. But who are history's masters? At times, as in the description of the pagan warriors of the Greek city, they are citizens (*ILH* 242); at others, they are only statesmen (*ILH* 369); their "action" ranges from simply defending their property (*ILH* 62) to founding a new world (*ILH* 146). Kojève's critique of Hegel's ontology is perhaps still more difficult; as I will argue below, Kojève overtly rejects the possibility of a philosophy of Nature, yet his own philosophy implies this very possibility. While we have the option of treating these inconsistencies as simply obscure and hermetic,¹⁷ there is, at the very least, a good biographical reason to investigate the validity of such a claim: Kojève appears to have been a *convincing* writer and, above all, speaker – not only to his students, but to his philosophical and political friends. Were he merely a sophist, its convincing quality will be all we find; should an analysis of his work yield a coherent philosophical account, then we have a much better reason to pursue his argument further. It is with a view to both these biographical and philosophical ends that I undertake this initial analysis of Kojève's *Introduction*, as well as several other related documents.

Let us now turn to the question of Kojève's multifaceted presentation of the master-slave dialectic. In this section, I will argue that the common foundation upon which Kojève's debate with Strauss is grounded lies in their understanding of the permanent tension between philosophy and politics in the city. Kojève's view of the

¹⁶ Auffret (1990) 20

¹⁷ Robert B. Pippin, "Being, Time and Politics: The Strauss-Kojève Debate," pp. 138-161 in *History and Theory: Studies in the Philosophy of History* 32, 2 (1993) 154.

difficult relation between reflection and action is crucially aligned with the Platonic presentation of the same problem in the *Republic*. That Kojève knew the classics well is not in doubt, but his apparent dedication to Hegel, and, particularly, his reading of the master-slave dialectic, might suggest a fundamental modernism in Kojève's political philosophy – that is, a commitment to the concept of man as radically autonomous and mutable. His repeated insistence on the ontological and metaphysical separation between man and nature must, it would seem, set him apart from Plato or the other ancients. The nub of the philosophical division between Kojève and Plato would, in short, seem to be human freedom; whereas for Kojève, the possibility for man to risk his life in a struggle for recognition, and thus become a master, remains perpetually open, Plato's Socrates argues in terms of virtues which set the standard for the good life. In this section, I will argue that Kojève and Plato share an understanding of the problem of the philosopher in the city, although they diverge significantly on the nature of the solution to that problem; and it is this same shared understanding which precipitates the Kojève-Strauss debate.

I will argue, to begin, that no such division of Kojève from Plato exists. Any illusion to the contrary is supported by Kojève's participation in what Leo Strauss called "esoteric teaching,"¹⁸ and Kojève himself called, more bluntly, "propaganda"¹⁹. Kojève, like Plato, moderates his speech for the sake of prudence; that is, in his lectures, Kojève's method is to proceed by peeling back layers of meaning, exposing it in parts – that is, to speak esoterically about the truth, for the simple reason that to

¹⁸ Leo Strauss. "On a Forgotten Kind of Writing," pp. 221-232 in *What is Political Philosophy? and Other Studies* (Glencoe, Ill.:Free Press, 1959) 222.

¹⁹ Kojève in a 1948 letter to Tran Duc Thao; cited in Auffret (1990) 249.

speak bluntly about it is politically dangerous, for the speaker, for the student, and, potentially, for the polity itself. Strauss argues that the prudent writer's art is such that its practitioners

employ a peculiar manner of writing which would enable them to reveal what they regard as the truth to the few, without endangering the unqualified commitment of the many to the opinions on which society rests. They will distinguish between the true teaching as the esoteric teaching and the socially useful teaching as the exoteric teaching; whereas the exoteric teaching is meant to be easily accessible to every reader, the esoteric teaching discloses itself only to very careful and well-trained readers after long and concentrated study.²⁰

To answer the question of whether Kojève consciously partook in the habit of esoteric teaching is indispensable to a reading of his work. All philosophical works must, of course, be read prudently, but in this case Kojève took the trouble to express his view in opposite ways in different writings. On the one hand, his 1954 reply to Strauss's essay *On Tyranny* opposes esoteric writing because the ensuing division of initiates from the rest of world deprives them of the means to verify their prejudices. On the other hand, in three other places, Kojève suggests not only that he wrote esoterically, but that he also spoke so in his seminar.

Kojève's 1959 essay "The Emperor Julian and His Art of Writing" openly espouses the practice, and here Kojève demonstrates his attraction to both reading and writing esoterically – the former with a radical reading of Julian's attacks on Cynics, and the latter with an ironic conclusion:

Telling of Julian's art of writing, I hope I have not betrayed his secret – nor for that matter anyone's secret – by writing the preceding pages. For these pages will say nothing of interest to those whom the Emperor wanted to exclude from the small

²⁰ Strauss (1959) 222.

number of comprehending readers of his philosophic writings. They will indeed say nothing at all.²¹

In a second document, a 1948 letter to Tran Duc Thao, Kojève writes, in a private letter, of his Hegel seminar:

I taught a course of philosophical anthropology by drawing on Hegelian texts, but by only saying that which I considered to be the truth, and in letting fall that which seemed to me to be, in Hegel, an error. Thus, for example, by renouncing Hegelian monism, I consciously moved away from this great philosopher. Moreover, my course was essentially a work of propaganda intended to strike minds [*frapper les esprits*].²²

Remaining with the strictly philological aspect of this note, we can see that Kojève saw his seminar not as a strict presentation of Hegel's work, but only of those aspects Kojève saw as true. This one-sidedness, however, indicates only that Kojève is a philosopher, and not that his teaching contains an esoteric component. The introduction to Kojève's use of the term "propaganda" here, however, is brief, for he does not explain what he means by the term here, while the "moreover" opening the last sentence indicates that it is something more than the one-sidedness he has already described.

A clue to Kojève's understanding of propaganda appears in a third document, "Christianity and Communism," a 1946 review of Gaston Fessard's *France, prends garde de perdre ta liberté!*, a critique of Communism. Kojève's review divides Fessard's book into two sections, one-tenth excellent critical analysis, the other nine-

²¹ Alexandre Kojève. "The Emperor Julian and His Art of Writing," pp. 95-113 in James H. Nichols, Jr., trans. (henceforth *EJ*), in Joseph Cropsey, Jr., ed., *Ancients and Moderns: Essays in the Tradition of Political Philosophy in Honor of Leo Strauss* (New York: Basic Books, 1964) 109. See also Kojève's letter to Strauss on his study of Julian in Leo Strauss, *On Tyranny*, Victor Gourevitch and Michael Roth, eds. and trans. (New York: The Free Press, 1991) (henceforth *OT*) 265-274.

²² From a letter from Kojève to Tran Duc Thao, as cited in Auffret (1990) 249.

tenths “anticommunist propaganda”.²³ Kojève opts for a critique of the Fessard’s propaganda in the review, claiming that a discussion of his brilliant critique “would lead us too far”.²⁴ But his description of propaganda as a technique illuminates his own approach to interpreting Hegel: “One says the truth, nothing but the truth, but not the whole truth. Thus, in passing off an isolated aspect of reality for an adequate description of that reality, one disfigures it profoundly without having ‘invented’ anything.”²⁵ In short, Kojève here provides both a justification for, and an implicit account of, his seminar.

To read a text for its “true” or esoteric content by separating out its exoteric content is both difficult and risky. It is difficult simply because, by definition, there can be no established or exact method by which a “true” reading can be extracted from the text; indeed, it is between competing esoteric interpretations of texts such as the *Republic* that the academic discourse between students of this school occurs. An esoteric reading is risky for three reasons. First, if the reader is, against all odds, successful in both uncovering the writer’s original intention and grasping in this intention a truth, then the reader herself is subject to the same political dangers as accompany all speech about truth; she must, therefore, be cautious in revealing her findings, even to the point of, ironically, presenting them in an esoteric way herself. Second, as Kojève points out, there is no independent mechanism to verify that the message found between the text’s lines is, in fact, the intended one; Kojève compares this method to that of the detective, with the crucial difference that the interrogation

²³ Alexandre Kojève. “Christianity and Communism.” Hugh Gillis, trans. In “Kojève-Fessard Documents,” (henceforth *KFD*) pp. 185-200 in *Interpretation* 19, 2 (Winter 1991-92) 192.

²⁴ *KFD* 193.

of the text cannot lead to the confession of the criminal.²⁶ Third, there is always the risk that the interrogator's light is shed on a text not meant to be read between the lines. Against the first two risks, there is little that can be done here. But the last risk is the most immediate for this interrogation, because Kojève seems to reject the practice of esoteric writing altogether in his reply to Strauss in their debate on Xenophon's dialogue *Hiero*.

In his reply to Strauss, Kojève argues against the practice of esoteric writing by attacking the "Republic of Letters" in which the few ("the elect") are separated from the many ("the uninitiated"), through the philosopher's "*esoteric* instruction (preferably oral) which permits him, among other things, to select the 'best,' and to eliminate those of 'limited capacity' who are incapable of understanding hidden allusions and tacit implications."²⁷ According to Kojève, the practice of esoteric instruction derives from an "aristocratic prejudice" for the approval or recognition of the select, and itself perpetuates prejudices which remain unchallenged because of the cloister's isolation.²⁸ Returning to Hegel, Kojève argues that any philosopher who recognizes that human reality is essentially historical must also realize that the isolated cloister is, consequently, "left behind by events."²⁹ The consequence, Kojève argues is that "even what was 'true' at a given time can later on become 'false,'

²⁵ *KFD* 194.

²⁶ Cited in Strauss (1959) 231-232.

²⁷ Alexandre Kojève, "Tyranny and Wisdom" (henceforth *TW*) in Leo Strauss, *On Tyranny*, Victor Gourevitch and Michael Roth, eds. (New York: The Free Press, 1991) 154.

²⁸ *TW* 154-155.

²⁹ *TW* 155.

change into a ‘prejudice,’ and only the cloister will fail to notice what has happened.”³⁰

It must be noted that Kojève here is raising two distinct arguments, one which addresses the specific practice of esoteric teaching, the other the question of whether the philosopher’s motivation for conducting philosophy is, in fact, pure truth, pure recognition, or some combination of these goals. Beyond the initial connection we have seen here, however, Kojève never links the two things, and indeed, never again mentions esoteric teaching in his reply to Strauss. An obvious question remains unanswered: why would the occupants of a cloister *ever* require esoteric teaching, given that the threat of exposure is eliminated by virtue of their isolation? Surely, in fact, the opposite is true: the cloistered (and this includes those isolated in the academy) – and only they – can be completely frank, whereas an uncloistered philosopher such as Socrates, speaking in the marketplace, must speak prudently, and the philosopher with no intimate friends at all must speak especially prudently.³¹

Kojève’s attack on the attempt to restrict the philosopher’s friends to “the few” rests on three premises: first, the philosopher cloistered with friends is indistinguishable from the isolated philosopher, insofar as each is subject to the possibility that his “subjective certainty” might be contradicted by external reality³²; second, that in all its forms this contradiction is one and the same, but that it is manifested as insanity when the individual’s subjective certainty contradicts the

³⁰ *TW* 155.

³¹ The emperor Julian, according to Kojève, resorted to esoteric writing after the departure of his friend Sallustius left him without a friend with whom to argue, i.e. one who could “compel me [Julian] to think and to wonder other than as I wish...” (from Julian’s *Consolation*, cited in *EJ* 96); also cf. *ILH* 273, note 1.

truth³³, and as a cult when the conflict occurs between a cloistered group and society³⁴; and, finally, that truth can be uncovered not simply through dialogue, but through historical verification.³⁵ But here Kojève handles the terms “truth” and “external reality” with an ambiguity found not only in his discussion with Strauss, but throughout the *Introduction*. Kojève’s reading of Hegel is such that truth exists verifiably only where the Idea passes into the concrete world; before this synthesis of real and ideal transpires, the truth exists only in abstraction; afterwards, only in memory.

All of this suggests that Kojève is not concerned here with the existence of merely intellectual “Republics” isolated from the broader society in which they float, but with the intrinsic problem of seeing historical synthesis as the only measure of truth: so long as there are competing groups of prejudices (in other societies, for example), none can appeal to anything other than a locally and socially sanctioned subjective certainty as its standard of truth. And it is for this reason that Kojève draws from Hegel’s *Phenomenology* the need for the idea of a universal and homogeneous state, in which no further opposition between competing prejudices is possible.

Meanwhile, he finds himself in a world in which such opposition between particulars is commonplace, and, moreover, he finds that the prejudices which sustain a “Republic of Letters” are indistinguishable – at least, to the philosopher who seeks

³² TW 153 and 155.

³³ TW 159.

³⁴ TW 155.

³⁵ TW 167.

verification – from those which sustain any republic or state at all.³⁶ Kojève's opposition to the practice of esoteric teaching rests on a justifiable philosophical resistance to parochial prejudice, but his presentation of esoteric teaching as an Epicurean "garden" isolated from the city is completely one-sided; as we have seen, it neglects the question of prudence in philosophical speech outside the "Republic of Letters" and in the city.

From Kojève's silence concerning the need for prudence in philosophical speech we can draw two possible interpretations. The first is that this silence is deliberate; on this view, Kojève's one-sided argument concerning the nature of esoteric teaching is itself an expression of his esotericism, his neglect of the question of prudent speech itself an act of prudence. The second possible interpretation is that he simply did not see the need for prudence to begin with. Of these interpretations, the former is the less satisfying for its inconclusiveness, but the second is difficult to credit, both because of the evidence to the contrary cited above, and because Kojève was clearly conscious of the political conflict between the philosopher and the city on the one hand, and the philosopher's need for the city on the other.³⁷ As Stanley Rosen argues, *all* reflective people use esotericism to some degree; in the case of philosophers, then, the central question is not *whether*, but *why* they engage in

³⁶ The universal and homogeneous state, then, stands in Kojève's thought not simply for a description of political reality, but for a standard which transcends that of "truths" particular to one place or time.

³⁷ See *IRH* 179-180; here Kojève simply describes the political risks (ranging from censure to execution) that accompany the philosopher's attempts at dialectic. For a more radical expression of the philosopher's threat to the city, see, for example, *ILH* 404, where he goes so far as to claim that a philosopher lies at the root of every historic revolution.

esotericism.³⁸ The answer to this “why” necessarily entails a careful reading of the work in question.

We can conclude our examination of Kojève and the problem of esoteric teaching with two observations. First, from Kojève’s description of the sect which is by definition inimical to philosophical openness, we can see that, from the philosopher’s perspective, there is no difference between the prejudices of the Epicurean “garden” and the conventions which bind the city; both stand over and against the philosopher’s natural and necessary scepticism. Kojève’s hostility to the Republic of Letters, then, stems not from an opposition to prudent speech itself, but to the isolation inherent in any attempt to fraternize with a class of “initiates” living apart from the fray of the city insofar as that isolation contributes to the illusion that the group’s “intersubjectivity” is itself truth. Second, if political isolation is anathema to philosophy, so is friendship vital to it; it is only by surrounding oneself with possible philosophical opponents (that is, friends who will not resort to violence during the dialogue) that he can test and improve his understanding. This, in turn, means that the recognition the philosopher seeks, as we see it in Kojève’s exchange with Strauss, is but a *means* to philosophy. Hence, the philosopher will always speak esoterically in order to win and retain friends.³⁹

The master-slave dialectic

Let us now turn to the core of Kojève’s reading of Hegel – the master-slave dialectic – in order to see how his writing reflects the characteristics of esoteric writing just examined. At the outset, Kojève’s presentation of the confrontation

³⁸ Rosen (1987)123.

embodying man's projection of value onto recognition instead of things is nearly identical with the one Hegel provides in the *Phenomenology*. In a struggle to the death, each combatant demands of the other submission to his will – that is, recognition. If one or both combatants die, the result of the fight is nil, but if one gives way – valuing biological life over the desire for recognition – he becomes the slave of the other, thus paying him recognition. The fight for recognition marks the possibility of man's independence from his biological fate, for it enables him to connect his own death with his will. The master, then, is human in a purely non-animal way, for the simple reason that he values recognition more highly than his own survival. In his preface to the *Introduction*, Kojève writes, "It is only by being 'recognized' by another, by many others, or – in the extreme – by all others, that a human being is really human, for himself as well as for others."

The key to understanding the significance of Kojève's interpretation of the master-slave dialectic lies in the meaning attached to the risk of life the master is willing to undertake. While the standard account of the encounter leading to lordship and bondage, such as the one presented immediately above, attaches recognition (that is, slavery) to the master's action, Kojève develops the theme of the master's action throughout the *Introduction* so that it emerges as a complex, dynamic and multifaceted concept. In all intra-historical situations, however, the nature of recognition varies according to the type of action to which it is connected. With history's termination in the universal and homogeneous state that recognition is

³⁹ The pleasure which results from this recognition has no bearing on this argument. Cf. *TW* 159.

supposed to be universally accorded to all; just what this recognition entails remains, as yet, an open question.

Reflection and rule I: a Platonic reading of the master-slave dialectic

This analysis of the master-slave dialectic will proceed in three stages. First, I will argue that Kojève's development of the master replicates Plato's dichotomous account of the guardian into true guardians and auxiliaries in the *Republic*. Second, I will show that Kojève follows Plato in decoupling the connection between philosophy and rule. Third, I will undertake a close reading of Kojève's lectures on the meaning of time for an interpretation of his understanding of the relation between reflection and rule. Kojève's position on this point leads to both the Platonic position that the best possible rule is, nonetheless, by philosophers, and to the position (possible only in modernity) that philosophy and action can be undertaken simultaneously. From here, we will turn to the implications of the resolution of this second dialectic for Kojève's concept of the universal and homogeneous state.

At the outset, the introduction of the guardians in Plato's *Republic* appears as a thing altogether different from the way the master appears in Kojève's account. Yet the two archetypes in fact arise from the same set of circumstances: that is, the spontaneous expansion of the faculty of desire beyond the realm of the (biologically) necessary. More generally, this moment marks the transition from the purely economic life into the political.

Let us consider, first of all, Plato's account of this transition in Book II of the *Republic*. In the city of pigs, the first attempt by Socrates and his interlocutor, Adeimantus, to find justice in the city, we find all the conventional institutions of an

economy: the division of labour,⁴⁰ farmers, tradesmen and merchants,⁴¹ currency,⁴² and waged labour⁴³. Adeimantus' position is Kantian: he speculates that the justice in this city lies "somewhere in the need these men have of one another."⁴⁴ The world thus constructed, however, is adequate to fulfil only the most utilitarian – if socially and environmentally responsible – understanding of justice. Socrates says,

...let's consider what manner of life men so provided for will lead. Won't they make bread, wine, clothing, and shoes? . . . For food they will prepare barley meal and wheat flour; they will cook it and knead it. Setting out noble loaves of barley and wheat on some reeds or clean leaves, they will stretch out on rushes strewn with yew and myrtle and feast themselves and their children. Afterwards they will drink wine and, crowned with wreaths, sing of the gods. So they will have sweet intercourse with one another, and not produce children beyond their means, keeping an eye out against poverty or war.⁴⁵

It is the interruption by Adeimantus' brother Glaucon which destroys the balance of the city of pigs and introduces the feverish city; "You seem," Glaucon says, "to make these men have their feast without relishes".⁴⁶

With the introduction of relishes, the city expands beyond the realm of necessity: houses, clothes and shoes are supplemented by art and adornments; the vegetarian diet is expanded to include meat; and the effects of such excesses are addressed with the introduction of doctors.⁴⁷

The characters of Adeimantus and Glaucon in the dialogue themselves demonstrate the impossibility of a city of pigs; while there are always moderate, Kantian citizens such as Adeimantus, their attempts to establish and maintain a

⁴⁰ Plato, *The Republic of Plato*, 2nd ed. Allan Bloom, trans. (Chicago: Basic Books, 1991) (henceforth *Rep.*) 370b.

⁴¹ *Rep.* 370c-371b.

⁴² *Rep.* 371b.

⁴³ *Rep.* 371e.

⁴⁴ *Rep.* 372a.

⁴⁵ *Rep.* 372a-c.

⁴⁶ *Rep.* 372c.

simply sufficient and entirely economic city must fail so long as voracious appetites such as that displayed by Glaucon exist. It is here, in the desire for relishes – in which are included any goods not biologically necessary – that the origins of politics itself lie. Almost immediately, Socrates introduces war as an inevitable consequence of the ever-expanding desires at the heart of the feverish city,⁴⁸ and, with it, the necessity for a division of labour, including the introduction of the professional soldier, or guardian.⁴⁹

This stage of the dialogue accounts for the need for the transition from the “civil” to the “civic” aspects of citizenship we saw in the work of George Armstrong Kelly.⁵⁰ The civil and nomocratic nature of the city of pigs proves difficult to preserve in the feverish city. Because the feverish city accommodates vast asymmetries in appetite, there is a great risk of the city itself becoming an instrument for one of these appetites, i.e. a tyrannical telocracy. The prescription Socrates and his interlocutors create against tyranny contains three elements: first, the telocratic tyranny must be resisted through a telocracy of a different kind, namely a just one; second, the most essential trait for the guardians charged with defending the city is their spiritedness, or

⁴⁷ *Rep.* 373b.

⁴⁸ *Rep.* 373e.

⁴⁹ *Rep.* 374d.

⁵⁰ George Armstrong Kelly, “Who needs a theory of citizenship?” pp.21-36 in *Daedalus* 108 (4) (Fall 1979).

thumos; third, the spiritedness of the guardians must be engaged by ensuring they love the city and know what is just in it.⁵¹

Consequently, as soon as the spirited soldier is introduced to the city, he is made its servant. Socrates compares the best possible guardian here to a “noble puppy”⁵² which must somehow be both “gentle to [its] own and cruel to enemies.”⁵³ The result is a long discussion on the education of these soldiers, consisting of a carefully edited indoctrination in the myths of the city, the strict exclusion of certain kinds of music and of alcohol, and a rigorous physical education. It is only at the end of the discussion of the guardians’ education that the question of the city’s rulers arises.⁵⁴ At first, the rulers are selected from among the guardians on the basis of their inability to be convinced of anything other than that in which they have been educated,⁵⁵ and the professional soldiers are now renamed “auxiliaries”.⁵⁶ There are now three classes of people, we are told: guardians, auxiliaries, and money-makers, each corresponding to one of the soul’s three parts: the calculating, the spirited, and

⁵¹ A civic nomocracy is, of course, the perennial modern ideal (as seen, for example, in the concept of constitutional patriotism), and one Plato does not appear to consider here. It is not difficult, however, to answer to the question of *why* the civic nomocracy is so difficult to create. The city of pigs is not a city at all, but a marketplace; it does not require the love of citizens for it, or for each other, to persist, but only natural abundance. The feverish city is marked by scarcity (373d), however, and in this fundamental respect it is closer to the world with which we are familiar than the city of pigs. The nomocratic city, by definition, imposes no normative hierarchy on the array of human desires (Kelly (1979) 29). The combination of scarcity and indifference or tolerance for desires other than our own leads, at worst, to selfish interest-maximizing, and, at best, to utilitarian civility. Marketplaces can be loved as means to other ends, but the project of making them lovable as ends in themselves has, so far, eluded implementation.

⁵² *Rep.* 375a.

⁵³ *Rep.* 375c.

⁵⁴ *Rep.* 412b.

⁵⁵ *Rep.* 412e.

⁵⁶ *Rep.* 414b.

the desiring parts.⁵⁷ These three classes remain fundamental to the city through the “second wave” – the discussion of the commonality of property, women and children – and up to the third wave – the introduction of the philosopher-king.⁵⁸

The introduction of the philosopher-king into the best city does not seem to imply a fourth class, but the completion of the nature of the erstwhile guardians by the philosophers, with a corresponding shift in the nature of the guardians’ political duties. With the “calculating” guardians in command, the good city is governed by the justice of “minding one’s own business”; the money-makers with their arts or commerce, the auxiliaries with the execution of the rulers’ decisions, and the rulers with the good of the city.⁵⁹ And the business of the third class concerns the implementation of the city’s eternal constitution in laws.⁶⁰ The philosopher-kings, however, are to engage in a rigorous program of gymnastic, philosophical and political education until they have seen truth itself. Then and only then,

Once they see the good itself, they must be compelled, each in his turn, to use it as a pattern for ordering the city, private men, and themselves for the rest of their lives. For the most part, each one spends his time in philosophy, but when his turn comes, he drudges in politics and rules for the city’s sake, not as though he were doing a thing that is fine, but one that is necessary.⁶¹

Insofar as the best rule requires perfect knowledge, Socrates’ argument here seems indisputable. Moreover, the argument here illustrates the mutual benefit for citizens and philosophers of rule by philosopher-kings: the citizens benefit from the

⁵⁷ *Rep.* 441a; according to 581a-c, these parts of the soul are concerned with obtaining wisdom, honour and money, respectively.

⁵⁸ *Rep.* 473c-d.

⁵⁹ *Rep.* 433a.

⁶⁰ *Rep.* 430a-b.

⁶¹ *Rep.* 540a-b.

philosophers' wisdom for the best possible rule, while the city provides the philosophers with the means to philosophise.

Three objections arise here. First, since a philosopher by definition *seeks* truth (that is, if he possessed truth he would be a wise man and no longer need to philosophise), it is not clear that rule of the nature Socrates describes here is ever possible; it is far from certain that a philosopher possesses any wisdom at all.

Second, unless the philosophers all possess the same understanding of truth, in all likelihood the vision each holds of the good will be different from all of the others. There are, therefore, only two conditions under which rule is possible by a philosopher: either the truth must be equally clear and univocal to those who rule, or there can be only one philosopher.

Third, while it is true that the scenario Socrates describes would provide the philosophers with the necessary means to continue philosophizing, there seem to be more efficient ways for philosophers to pursue that end (such as the course Socrates himself takes). The preservation of the city is essential to the philosopher, for it provides him with both the political and the economic security to pursue his calling. It does not follow, however, that the philosopher need rule the city himself. Aside from the problem of why the philosopher would yield to the compulsion to rule, the virtues of philosophy are not those of the city; it is, in other words, certainly not obvious that the philosopher would make a good citizen, let alone a good ruler. In his discussion with Glaucon concerning the best philosopher's nature, Socrates describes him as "a rememberer, a good learner, magnificent, charming, and a friend and a kinsman of

truth, justice, courage and moderation".⁶² The last four are, of course, the classical political virtues, but almost immediately after making this statement, Socrates concedes to Adeimantus' objection that philosophers are useless to the city, if not completely hostile to it.⁶³ The philosopher is, perhaps, a friend and kinsman to these virtues insofar as he both admires and relies on them in his fellow-citizens, but practices them, foremost, to remain a philosopher. Above all, he cannot afford to be moderate in thought, although he must be so in his speech if he is to be prudent.⁶⁴

Over the course of the section of the dialogue briefly examined here, the nature of the guardians introduced in Book II becomes increasingly divided, so that by Book VIII, they have become two creatures which are not only fundamentally different, but which stand in tension with one another.⁶⁵ While both were concerned only with the city's well-being at the outset, by Book IX, Plato has made concessions in the direction of realism, giving the auxiliaries honour as a motivator to defend the interests of the city, while the rulers are driven by their quest for wisdom.⁶⁶

There are two particular implications of this division between the guardians and the auxiliaries which pertain to Kojève's discussion of the master. First, Plato presents the division such that the grounds for conflict between the auxiliaries and the rulers are not obvious. To understand the reason for this reserve we need look no farther than the characters of Glaucon and Adeimantus; the former is spirited and inclined to excess, the latter conservative and moderate. Each brother requires a

⁶² *Rep.* 487a.

⁶³ *Rep.* 487d.

⁶⁴ Strauss makes this point in "What is Political Philosophy?" in Strauss (1959) 32.

⁶⁵ *Rep.* 545d.

⁶⁶ *Rep.* 581b.

distinct philosophical education: Glaucon's erotic nature makes him both a potential philosopher but also a potential tyrant, and he must thus be guided away from the latter path; Adeimantus, on the other hand, is a conservative and a harsh critic of philosophy, and must be softened towards it.⁶⁷ Insofar as the *Republic* portrays an education, Socrates' purpose appears to be the preservation of the conditions necessary to permit philosophy to survive in the city; the portrayal of philosophers as the guardians of the city's well-being is the best possible way to convince his interlocutors of the need for these conditions.

Second, the introduction of honour and wisdom as the respective private ends of the auxiliaries and the rulers makes the division of these classes from the money-makers unstable. This is particularly true for the rulers; while the attainment of honour by the auxiliaries is directly tied to the city's well-being (as in the case of military honours, for example), there is no such connection between the city's interest and that of the rulers' search for wisdom. The desire for wisdom is, with respect to the well-being of the city, indistinguishable from the desire for other things; consequently, the philosopher will not act in the city's interest unless it somehow coincides with his private interest. It follows that while there may be three types of *soul* (money-, honour-, and wisdom-loving), there are really only two types of *citizen*: those for whom private and public interest coincide, and those for whom they do not. Even this division is subject to a number of conditions, particularly the citizen's consciousness of the extent to which her private interest rests on the well-being of the city on the one hand, and the type of regime in which she lives, on the other. More

⁶⁷ Bloom's interpretive essay (*Rep.* pp. 415-417) provides an account of the way the brothers'

accurate than this binary typology of citizenship, then, is an understanding of citizenship as being arrayed along an axis whereby one pole marks the total coincidence of public and private interest, and the other their complete divergence. In Plato's typology the first position is occupied by the honour-driven auxiliary, the second by the desiring classes.

Reflection and Rule II: Kojève's reading of the master-slave dialectic

Let us turn now to Kojève's development of the master in the master-slave dialectic. A careful reading of Kojève's presentation of the master-slave dialectic reveals a typology identical to that implicit in Plato's. As in the *Republic*, the initial presentation of the master is unitary, but his nature is subtly divided during the course of the *Introduction*, such that two opposing natures are revealed: on the one hand, an honour-loving warrior, and, on the other, a darker figure whose actions are, objectively speaking, indistinguishable from those of a criminal.

Kojève's initial presentation of the master is unambiguous. Having won the fight for pure prestige, the master lives as a telocrat; his life is, on the one hand, completely idle with respect to the need to labour for survival (for the slave labours for him), but, on the other, resides in technical world from which he is completely alienated because it has been created by the slave's labour.⁶⁸ As a result, the master in fact becomes enslaved to his own desires, which are now unconstrained by the need to work.⁶⁹ He is thus subject to an ironic fate: having created the purely historical, human world, he now lives in the service of Nature as expressed through his desires.

education is carried out.

⁶⁸ *ILH* 55.

⁶⁹ *ILH* 56.

Consequently, Kojève says, the master “can *die* as a man, but he can only *live* as an animal.”⁷⁰ The slave, on the other hand, really lives in this human world, for he spends his time transforming Nature (as in the arts, for example) in the service of the master’s desires.

This initial account of the struggle for recognition does not adequately explain the conditions necessary for the unfolding of history, however. Once the master-slave dialectic begins, each side develops new characteristics. For his part, the slave becomes immediately aware of his own lack of recognition, and spends his spare (i.e. non-labouring) time constructing various ultimately unsuccessful imaginary discourses, such as Stoicism, scepticism and Christianity, in which he obtains that recognition in an unseen realm.⁷¹ The master discovers new depths to his desire, and this enables him to crave new objects outside the realm of necessity. He has two possible paths: “The Master either stupefies himself in Pleasure or ‘works’ without working (art). But the World which results from it is illusory (a fictional ‘world’ of art and high literature).”⁷²

For Kojève, as for Plato, the transition from the realm of necessity into that of the unnecessary has both economic and political ramifications. In his 1937-38 lectures, under what Hegel calls “natural religions”, Kojève already finds a social structure which recalls that of the city of pigs – that is, a division of labour into castes rooted in nature:

⁷⁰ *ILH* 55.

⁷¹ *ILH* 54; Cf. G.W.F. Hegel, *Phenomenology of Spirit*, A.V. Miller, trans. (Oxford: Oxford University Press, 1977) (henceforth *PhG*) §§197-229.

⁷² *ILH* 243.

...for this division itself is natural, imposed on Man by Nature (if there are peasants, smiths, tanners, it is because earth, iron, leather are naturally different). In the beehive, there is also division of labour.⁷³

At the economic level, the transition from natural religion to art religion (*Kunstreligion*) entails the replacement of castes with that of classes; whereas natural religion required the full participation of all the labouring castes without the mediation of the master (as, for example, in the construction of the Egyptian pyramids)⁷⁴, the transition to art religions is brought about by the full division into classes of masters and slaves, the former idle and the latter labouring for the master. Once the struggle for recognition has occurred, the master is distinguished from the slave only by the fact that the latter labours, and it is precisely the master's idleness which makes him turn to aesthetic concerns and to glorify beautiful things.⁷⁵

At the political level, the slave is now excluded from all participation in public life, and becomes a separate *class* from the master.⁷⁶ Just as the transition to the feverish city in the *Republic* entails the creation of a new class devoted to the provision of unnecessary pleasures,⁷⁷ the divinisation of art requires a large class to look after the necessary and unnecessary desires which spring up in the master. It is no coincidence that Kojève locates this transition historically in the creation of the Greek *polis*, and finds the master in the citizen of the *polis*.⁷⁸

⁷³ ILH 242-243.

⁷⁴ ILH 240.

⁷⁵ ILH 242.

⁷⁶ ILH 243.

⁷⁷ "...all the hunters and imitators, many concerned with figures and colors, many with music; and poets and their helpers, rhapsodes, actors, choral dancers, contractors, and craftsmen of all sorts of equipment. . . teachers, wet nurses, governesses, beauticians, barbers, . . . relish makers and cooks..." (*Rep.* 373b-c)

⁷⁸ ILH 242.

Plato's division of the guardian (and the concept of action itself) into fighting and reflecting categories is echoed by Kojève's division of the master into artist and hedonist in art religions. The master in the *polis*, recall, either immerses himself in the pleasures provided by the slave, or "'works' without working" by producing art.⁷⁹

What is essential in this division is the birth of the artist in the sense of one who produces freely and spontaneously outside of the realm of natural necessity; the master's art is an essentially human activity marking the first concrete expression of purely human freedom. Kojève says nothing further here of the class of hedonist masters, but this is only because he has already addressed them in an earlier set of lectures. In the 1933-34 lectures, we find a less refined account of the master's nature:

The Master's consciousness is double: if it remains that of (immediate) *Begierde* [desire], it is also recognized by the (mediating) Slave. Why does it remain *Begierde*? Because the Struggle for life and death begins over a *natural* object: a piece of food, a woman, which the other must recognize as my exclusive property. Hence, the object is transformed into a *Besitz* [possession].⁸⁰

The question of whether the reflective guardian and the artistic master are identical will be addressed below, but let us first examine the problem of whether there is any analogue between the spirited, ascetic auxiliaries from the *Republic* on the one hand, and the bourgeois, consuming masters from the early *Introduction* on the other. At first glance, these characters seem to be worlds apart; note, however, that both retain the essential categories of the master: both risk their lives, and neither labours (in the sense of transforming nature, as the slave and the farmer do) for a living. At the same time, the bourgeois master fights for his right to property, while the auxiliary is prohibited from owning property at all. This distinction is but a slight one, however;

⁷⁹ *ILH* 243.

the auxiliaries defend the city as their own: "Rather, with one conviction about what's their own, straining toward the same thing, to the limit of the possible, they are affected alike by pain and pleasure."⁸¹ The auxiliaries and the bourgeois master, then, are united by the characteristic of fighting, even to the death, for what is their own. It might be argued that the auxiliaries are charged with fighting for the well-being of what they own, while the bourgeois master fights for the *right* to ownership, but here we find that the ulterior ends of each are identical. The auxiliary, as we have already seen, is motivated by the desire for honour, while the bourgeois master desires the *recognition* of his right to property, and not simply the consumption of the natural object in question itself.⁸² In either case, we are speaking of the desire for recognition of one's status in an established social order, apart from the fulfillment of biological desires. As we will see below, the real distinction between the bourgeois master and the auxiliary lies in the type of regime in which he lives.

Let us now turn to the more serious problem of the analogy between the philosopher-king and the artistic master. In this section I will argue that the dissolution of the philosopher-king (along with the rest of the just city) at the end of Book VII of the *Republic* marks the further division of the guardian into ruling and reflective parts, and that this division is mirrored in Kojève's exposition of the master. Moreover, I will argue that Kojève's argument concerning the connection between action and wisdom (as opposed to philosophy) in *On Tyranny* is ironic insofar as Kojève himself partakes in philosophy.

⁸⁰ *ILH* 54.

⁸¹ *Rep.* 464d.

The reflective guardians do not work in the realm of necessity; they spend their lives running the city, “ordering city, private men, and themselves for the rest of their lives” according to the good they have apprehended. Aside from the serious difficulty of whether the good can ever be seen clearly enough for this utopia to be realized, we are faced with the more immediate problem inherent in this division between the guardians’ reflection and their action: because Callipolis’s citizens are not equipped with an independent mechanism to verify whether the philosopher-kings’ action is truly founded on the good, any action (or “ordering”) by the philosopher will always appear, to the citizen, as something foreign imposed on the city from without. The best city is, therefore, a paradox: if it is founded perfectly, such that all of its citizens are perpetually imbued with a sense of duty towards the city’s well-being over their own interest, the philosopher’s “ordering” activity – and therefore the philosopher himself – is not required; on the other hand, if it is founded imperfectly, such that the philosopher’s corrective measures are required to re-order the city according to the good, the citizens will lose their fear of innovation and will thus become susceptible to self-serving impostors seeking to model the city according to their own visions – that is, to tyranny. The perfectly-founded version of the city is a timocracy⁸² which resembles Sparta and has neither need for nor the means to accommodate philosophers. The imperfectly-founded city is a democracy which resembles Athens and is somewhat tolerant of philosophy, but is subject to the risk of coups or other perversions of the constitution. The mythical (rather than

⁸² “The man struggles to affirm his (recognized, ‘legitimate’) possession of this object, and not necessarily to consume it.” *ILH* 54.

⁸³ Cf. *Rep.* 545b.

philosophical) character of the last two books of the *Republic*, as well as Plato's own failed attempt at advising a tyrant in Syracuse, indicate the grounds for scepticism concerning the practicability of rule by philosophers.

It comes as no surprise, then, that Strauss and other conservative students of Plato participate, if reluctantly, in the public defence of constitutional democracy as the best possible system for the sake of philosophy itself. The paradox of Callipolis severs the necessary linkage between reflection and rule, and the philosopher simply becomes a citizen with his own bundle of private interests, rights, and duties. As we find him in Plato's *Apology*, Socrates himself is the model of the philosopher-citizen, participating in both the defence and the rule of the city only where necessary.⁸⁴

The separation of philosophy from rule in the *Republic* results in the further division of the guardians, such that there are now three personalities in the democracy, where there was one in the early feverish city and two in the just city. The separation of fighting (in the sense of defence) and philosophical reflection from rule itself makes the last of these a separate political category in its own right, and one worthy of study, if only for the sake of the good of the city and its citizens; the typology of regimes in Books VIII and IX of the *Republic* indicates the dialogue's descent from philosophical to political questions. The most invisible of all the guardians in the *Republic* – those who actually found the just city (or indeed any city) – are necessarily the most powerful, and they are led in founding the just city in speech by Socrates himself. Moreover, as we have just seen, any subsequent attempts

⁸⁴ Cf. *OT* 77.

at rule require either the overthrow of the established order, or are simply reducible to the defence of the existing city.

Kojève's corresponding division of the artistic master into philosophy and rule requires a longer exposition by way of a detour, for two reasons: first, because Kojève is less explicit than Plato on both subjects; and second, because Kojève's own action speaks to the subject at least as much as his writings do. Much has been made of the footnote Kojève added to the second edition of the *Introduction*; it is, in fact, an addition to a footnote which appeared in both the first and second editions. The original footnote describes the effects of the disappearance of man's capacity for negativity, manifested as both error and Action. The political consequences look much like Marx's version of the end of history:

This means, practically, the disappearance of wars and of bloody revolutions. And also the disappearance of *Philosophy*: for Man, not changing essentially himself, has no reason to change the (true) principles which are at the basis of his knowledge of the World and of himself. But everything else can preserve itself indefinitely: art, love, play, etc., etc.; in short, everything which makes Man *happy*.⁸⁵

The second, longer note begins as a correction to the first, beginning by pointing out that the earlier footnote

...is ambiguous, not to say contradictory. If we admit to 'the *disappearance* of Man at the end of History,' if we affirm that 'Man lives *as an animal*,' it cannot be said that 'everything else can preserve itself indefinitely...' If Man re-becomes an animal, his arts, his loves and his games must themselves re-become purely 'natural'. It would have to be admitted that after the end of History, men would construct their buildings and their works of art like birds construct their nests and spiders spin their webs, would perform musical concerts like frogs and cicadas, would play like young animals play, and would indulge themselves in love as do adult animals. But it cannot be said that all this 'makes Man *happy*'. It would have to be said that the post-historic animals of the species *Homo sapiens* (who will live in abundance and in full security) will be *content* with respect to their artistic, erotic and playful behaviour, since, by definition, they will content themselves in it. But there is more. '*The definitive nihilation* of Man, *properly said*' also signifies the definitive disappearance of the human Discourse (*Logos*) in the strict sense. The animals of the species *Homo sapiens* will react with reflexes conditioned to sonic signals or mimics and their so-

⁸⁵ *ILH* 435.

called 'discourse' will thus be similar to the so-called 'language' of bees. What will thus disappear is not only Philosophy or the search for discursive Wisdom, but also this Wisdom itself. For there will no longer be, among these post-historical animals, discursive *knowledge* of the World and of oneself.⁸⁶

This image of re-animalized man seems to be the only possible result of the end of history and the return of the human world to Nature in a coherent account of the necessary course of history; no room for negativity in the form of action or reflection can exist, since both these human activities address an object which is necessarily foreign to the given, everyday world.

Kojève writes explicitly of the political conditions surrounding the end of history; in the second footnote's subsequent text, he writes in an atypically unguarded fashion of political developments in the USSR, Europe and China, including the two world wars, as a mere alignment of the provinces leading to the political end-state embodied by the USA: "One can even say that, from a certain point of view, the United States has already reached the final stage of Marxist 'communism', since, in practice, all the members of a 'classless society' can, from now on, appropriate for themselves everything which seems good to them, without having to work for it any more than their heart tells them to."⁸⁷ His comment that "Americans look like rich Sino-Soviets ... Russians and the Chinese are just Americans who are still poor, but rapidly becoming richer"⁸⁸ evokes Heidegger's assessment of a Europe caught between the pincers of the United States and the USSR.⁸⁹

⁸⁶ *ILH* 436.

⁸⁷ *ILH* 436.

⁸⁸ *ILH* 436-437.

⁸⁹ Martin Heidegger, *An Introduction to Metaphysics*, Ralph Manheim, trans. (New Haven and London: Yale University Press, 1959) 37.

The outrageous claims Kojève makes here – particularly the easy integration of the horrors of World War II into a general image of the alignment of the provinces – have occasionally led to the interpretation of Kojève as a glib liberal democrat who foresaw the crumbling of the Iron Curtain.⁹⁰ But this reading cannot be sustained if we read both the text surrounding the 1959 footnote and Kojève's other reflections after the war. What emerges from such a reading is not an espousal of liberal democracy, but an elaborate critique of the shrinking meaning of freedom in modernity, and the consequence of this shrinkage for the relation between reflection and action. Kojève writes ambiguously concerning the universal and homogeneous state, and this ambiguity is double; he is forthright neither on the question of whether history has really ended, nor of whether the universal and homogeneous state provides universal satisfaction.

That these are important questions is not in doubt, for they strike at the heart of modernity. If the answers to these questions are not immediately self-evident, it is clear that at least one of them must be answered in the negative, however. We can see this in the simple fact that philosophy appears to continue even in the face of history's demise, not least as conducted by Kojève himself. Stanley Rosen has noted that, by continuing to philosophise after 1948, the year the *Introduction* appeared, Kojève "said either too much or too little"⁹¹. That is, were philosophy truly impossible, then Kojève, as Sage, would have produced his Science in the form of the *Introduction* and

⁹⁰ The error of portraying Kojève as a (possibly frustrated) liberal democrat was most blatantly committed by Fukuyama (1992), but other critics have compounded the error. See, for example, Shadia Drury, *Alexandre Kojève: The Roots of Postmodern Politics* (New York: St. Martin's Press, 1994) 189.

⁹¹ Rosen (1987) 106.

then lapsed into silence after 1948;⁹² if, on the other hand, philosophy continues to be possible, then Kojève provides an inadequate account of his own claims to wisdom. Even this simple test demonstrates that the end of history is not self-evident, even for Kojève. But this is not enough, for we have shown only that there is a contradiction somewhere in Kojève's multiple claims concerning the end of history; it remains to be shown just where this contradiction lies.

Kojève on Time, Eternity and the Concept

To ask whether history has ended presupposes an understanding of what is meant by history – that is, time – itself. The second half of Kojève's lectures of the final year of the Seminar addressed his understanding of the relation between time and eternity, and it is only by following him there that we can begin to consider the question of how reflection and action are related.

The relation between Time and Eternity

The lectures devoted to time and eternity (to which Kojève added the title "A Note on Eternity, Time, and the Concept") arise at the point where the Seminar's attentions are on Chapter VIII ("Absolute Knowing") of the *Phenomenology*. According to Kojève, the text here already describes the point in history where the Sage (Hegel) has appeared and generated his Science; what follows in the *Phenomenology*, Kojève writes, is the account of this Science necessary to make it complete.⁹³ In truth, this section of the text is an exposition of the critical disjuncture between moderns and ancients on the problem of the relation between action, knowledge and the eternal; it is his grasp of modernity's essence which enables

⁹² See Kojève's description of the Sage's Science in *ILH* 326-328.

Kojève to declare the universal and homogeneous state, not as concrete political reality, but as the project of which he is the avowed architect.

On the question of the relation between Concept (that is, a science or scientific principle; Concept is simply a translation of Hegel's *Begriff*) and Time, Kojève writes that there are initially five philosophically positions worth considering. These are:

- 1) The Concept *is* Eternity; this is Parmenides' position. It leads nowhere, however, because such a science, having no relation to Time (and therefore to the temporal) could never come into existence in the temporal world; strictly speaking, there is no Concept here at all, since the Concept must, by definition, somehow connect the universal with the particular, the object with the subject.
- 2) The Concept is eternal; this possibility is further subdivided into three:
 - a. The Concept is eternal and relates to Eternity outside Time; this is Plato's position;
 - b. The Concept is eternal and relates to Eternity inside Time; this is Aristotle's position; and
 - c. The Concept is eternal and relates to Time; this is Kant's position.
- 3) The Concept is Time; this (Kojève argues) is Hegel's and Heidegger's position.⁹⁴

The possibility that the Concept is temporal is rejected out of hand, since this possibility is non-philosophical.

⁹³ *ILH* 335.

It must be said from the outset that, with this formulation, Kojève has stacked the cards in favour of his interpretation of Hegel by leaving unspoken his assumptions about the nature of Eternity and Time. The relation between Eternity and the eternal is not, as he suggests, precisely analogous to that between Time and the temporal.⁹⁵

Eternity, on the one hand, is an undifferentiated whole, neither accessible nor expressible in its pure form; it is ontologically prior to eternal things such as the Platonic forms, and imparts its essence to these eternal things. Time, on the other hand, must have a dual nature: by definition, even to consider the possibility that Concept = Time requires that Time be something other than merely temporal itself, or we are cast back onto the possibility rejected at the outset: that the Concept is temporal. Therefore, Time itself must be eternal (that is, must in some way participate in eternity) while, at the same time, its positive, phenomenal content is essentially temporal.

The Eternity-eternal and Time-temporal relations are asymmetrical because the essences of each principle are transmitted differently to the things partaking in those principles. Eternal things, as we have seen, are characterized by participating, in some way, in Eternity itself; that is, they do not change. Time, while itself eternal, draws its content from its temporality – that is, that the things partaking in it are themselves subject to change. In short, Time is *observed* through the lens of Existence (that is, of changeable or temporal phenomena) or *Dasein*, while Eternity, not being subject to direct observation, is *postulated* as Being (*Sein*). The difference between the two categories is not simply ontological, therefore, but also epistemological. It is

⁹⁴ *ILH* 337-338.

possible to speak both philosophically and non-philosophically of the phenomena which comprise existence, but even philosophical speech concerning existence must *begin* in the realm of opinion.

While the content of philosophical speech expressed in the Concept involves an upward argument from phenomena to truth, philosophical engagement is impossible without the postulation of Being. If the postulation of Being is anything more than an act of the imagination – that is, if it is followed by the public act of philosophy – then it is a genuinely free act, in Kojève’s sense of the term “free”; it is a gratuitous, spontaneous and political act which is irreducible to other particular interests, and, as Kojève says repeatedly, which cannot be deduced from existing conditions.⁹⁶ This notion of philosophy as grounded in a gratuitous act of positing is precisely the same as the one Strauss admits in the conclusion to his *Restatement in On Tyranny*:

Philosophy, in the strict, classical sense of the term, is the quest for the eternal order, or for the eternal cause or causes of all things. I assume, then, that there is an eternal and immutable order within which history takes place, and which remains entirely unaffected by history. In other words, I assume that any ‘realm of freedom’ is but a province that depends on the ‘realm of necessity’. . . This hypothesis is not self-evident...⁹⁷

This is a serious concession on Strauss’s part, because the “assumption” of the priority of the realm of necessity is itself a gratuitous, free act; that is, Strauss, like Kojève, sees the realm of freedom as prior to the realm of necessity.

⁹⁵ *IRH* 102.

⁹⁶ E.g. *ILH* 73.

⁹⁷ *OT* 212.

The origin of freedom

The nature of the asymmetry built into Kojève's reflections on Time, Eternity and the Concept is now clearer. As we have seen, from the perspective of the reflecting subject, Eternity, or Being, rests on an act of will, whereas Time is universally accessible in its temporal aspect through the realm of opinion. By building his argument around the equation of the Concept with Time, Kojève reifies Time and obviates the need to speak directly about the nature of the eternal, and leaves open the possibility of a purely everyday, or exoteric, interpretation of the meaning of Time, and, therefore, of freedom.

Let us see how Kojève accomplishes this. The sixth, seventh and eighth lectures of 1938-39 rest on an explanatory series of geometric sketches which supposedly illustrate the development of conceptions of the relation between Time and Eternity in the Concept.⁹⁸ The sixth lecture provides an account of the history of this relation up to and including Kantian criticism – the “eternal task” (*ewige Aufgabe*) which Hegel condemns as “bad infinity” and which is doomed to an eternity of optimistic scepticism. Into this sceptical or Kantian system Kojève introduces or postulates an “*eternal* Concept, i.e. discursive *truth*”, with the result that a “*theological* System is always obtained, even if the term God does not explicitly enter into it.”⁹⁹ The theological System described here rests – although Kojève never says so explicitly – on a posited God.

Three effects of the theological System are worth noting. First, because the theological System is related to Eternity outside of Time, it cannot explain temporal

phenomena; the Science of the theological System is therefore a geometrical physics which cannot provide an account of Time and, therefore, of man on earth.¹⁰⁰ But Kojève's own illustration of the relation between Time and Eternity takes place in this same inadequate geometry, and the fact that Kojève selects the circle as the shape that exemplifies this geometry is a signal of caution to the reader; Kojève's own account is "theological".

Second, in the theological Science, the existence of God can be proven¹⁰¹, while man's own existence cannot. The entire realm of the empirical human world, which is temporal, is relegated to the contingent; any human action is without significance except to himself, and even he can never be certain of its meaning.¹⁰² This is the stage of Hegel's unhappy consciousness, in which all truth is posited in a universal God who remains completely outside of human cognition, such that any notion of God is both intuited and wholly private.¹⁰³ The unhappy consciousness lacks self-consciousness, instead believing its own particularity to be completely meaningless, and the meaningful completely out of reach.¹⁰⁴ The purely theological

⁹⁸ *IRH* 105 and 119; *ILH* 340 and 353.

⁹⁹ *IRH* 109.

¹⁰⁰ *IRH* 110.

¹⁰¹ This is because Science is always founded on a myth, and this myth legitimises the Science's content. Cf. *IRH* 179.

¹⁰² *IRH* 110.

¹⁰³ *PhG* §§207-230.

¹⁰⁴ "Since it is, to begin with, only the *immediate unity* of the two and so takes them to be, not the same, but opposites, one of them, viz. the simple Unchangeable, it takes to be the *essential* Being; but the other, the protean Changeable, it takes to be the unessential. The two are, for the Unhappy Consciousness, alien to one another; and because it is itself the consciousness of this contradiction, it identifies itself with the changeable consciousness, and takes itself to be the unessential Being." (*PhG* §208)

system, Kojève warns, is inadequate for the slave because it does not contain the tools required for self-consciousness through an understanding of history.¹⁰⁵

Finally, and most importantly, the theological System has no room for an understanding of freedom, except for understandings of freedom as either pure contingency with no possible public meaning (e.g. chocolate or vanilla), or as outside of time itself. In any event, under both understandings freedom winds up having no significance in the theological System at all, and it is for this reason that Kojève simply says of freedom that “we do not need to define freedom here,” and raises the possibility that it has no meaning at all.¹⁰⁶ Yet it is here, in the very System where it has no place, that Kojève provides his most lucid account of human freedom in general:

The free act is situated, so to speak, *outside* of the line of temporal evolution. The *hic et nunc*, represented by a point on this line, is *determined, fixed, defined* by the past which, through it, determines the future as well. The *hic et nunc* of the free act, on the other hand, is *unexplainable*, on the basis of its past; it is not fixed or determined by it. . . . But the free act is related to the *hic et nunc*: it is effected in given determined conditions. That is to say: the *content* of the *hic et nunc* must be preserved, while being *detached* from the *hic et nunc*. Now, that which preserves the content of a perception while detaching it from the *hic et nunc* of sensation is precisely the Concept or the Word that has a meaning. . . . And that is why everyone agrees that only a *speaking* being can be free.¹⁰⁷

In the pagan theological System, the free act is relegated to the Platonic realm of metempsychosis, where the soul chooses the course of its life between phases of reincarnation; in the Christian version of the same System, freedom belongs only to angels, not humans. But the inapplicability of human freedom here is only a foil, for Kojève here also shows us why the free act which grounded the theological System in the first place must do more than posit Being: the truly free act must not only

¹⁰⁵ *IRH* 113.

transcend the given, but make that change meaningful through Discourse. The Concept without the Word is no concept at all, for it is meaningless. More concretely, insofar as any free act is political (and, by definition, it is) and insofar as it entails a transformation of the existing social order, it requires an accompanying political Discourse adequate to it.

The seventh lecture addresses Aristotle's System, but Kojève's critique of Aristotle is almost identical to that of Plato: the Aristotelian System provides no account of history as a function of free human acts. Here again, however, Kojève develops his argument concerning the nature of freedom nonetheless. The Aristotelian System places Eternity *in* Time, so that his science becomes fundamentally biological; all phenomena are reflections of their biological essences, so that all change is comprehensible as a reflection of the cycles inherent in the biological system. This analysis extends not only to man's animal characteristics, but also to his political regimes, which, Aristotle argues, take place in a predictable cyclical rotation.¹⁰⁸

In Aristotle's science the Concept is accessible – that is, it is knowable – unlike in the theological System, because it appears in Time, but human existence cannot be understood historically within it insofar as historical existence entails non-biological, spontaneous acts of freedom.¹⁰⁹ Kojève puts the case against Aristotle more starkly: “to the extent that Man changes, he does not know; and not *knowing*, he is not free (by definition); and to the extent that he *knows*, he does not change and

¹⁰⁶ IRH 114.

¹⁰⁷ IRH 111.

¹⁰⁸ IRH 115.

¹⁰⁹ IRH 115.

hence is not free either, in the usual sense of the word.”¹¹⁰ Kojève’s formulation here poses the problem of the relation between knowledge and freedom in such a way that it applies to *any* System which rests on a science of Nature; insofar as man understands himself as simply biological, that is, as a predictable bundle of impulses to be satisfied, he precludes historical self-consciousness, in which man is unpredictably given to spontaneous acts of pure creation undetermined by natural circumstance.

Kojève’s treatment of knowledge here is more puzzling, however, for it seems to contradict itself. On the one hand, knowing is portrayed “by definition” as a prerequisite for freedom; on the other hand, knowledge also (in the Aristotelian system, at least) *prevents* change, and, therefore, freedom. This apparent contradiction suggests that there are at least two different kinds of knowledge, or two kinds of freedom, or both, such that in one instance freedom is coterminous with knowledge, and in the other that freedom overcomes knowledge. The latter relation has already been observed in the “transcendent act” which takes place outside of Time and which founds the theological System of the sixth lecture. The former relation, however, suggests the possibility of a separate understanding of freedom within an existing System. And it is in this divergence of understandings of the relation between knowing and freedom that Kojève reveals the origins of what will become a civic, rather than an artistic, master – the master who is free, and knows that he is free within the boundaries of the System which surrounds him: the citizen. Kojève clarifies the difference between the civic and transcendent versions of the knowledge-

¹¹⁰ *IRH* 115.

freedom relation, as represented by Plato and Kant, respectively, in the closing section of the seventh lecture:

In Plato, it has to do with an *affirmation*, in Kant – with a *negation*; there it has to do with becoming in Time what one *is* eternally; here – with not being eternally what one has become in Time; there – *acceptance* of eternal Nature, here – *negation* of temporal Nature. Or, to restate it: there – freedom of the Angel who clings to or separates himself from God; here – freedom of fallen Man who repudiates his sin in a single extratemporal act.¹¹¹

The expression of the transcendent act of freedom as the repudiation of sin is an image which arises again in subsequent lectures. Meanwhile, the civic understanding of freedom (which has, admittedly, been revealed only in outline thus far) remains to be filled out.¹¹²

The eighth lecture is concerned with Hegel's formulation of the relation between the Concept, Time and Eternity, namely Concept = Time. Now, as we have already seen, Time is an unstable philosophical concept, because, on the one hand, it necessarily *implies* eternal elements without accounting for how Time is a function of eternity, while, on the other hand, its outward manifestation in phenomena is always subject to vulgar interpretation as *simply* temporal.¹¹³ But here Kojève abolishes self-identical Nature from Time altogether:

...there is no natural, cosmic Time; there is Time only to the extent that there is *History*, that is, *human* existence – that is, *speaking existence*. Man who, in the course of History, reveals Being by his Discourse, *is the* 'empirically existing Concept' (*der daseiende Begriff*) and Time is nothing other than this Concept.¹¹⁴

¹¹¹ IRH 129-130.

¹¹² The civic and transcendent conceptions of freedom are, respectively, analogous to the ancient and modern conceptions. The relation is analogous and not identical because the subordination of Nature to human will in the modern understanding of freedom is abortive, as is evidenced by the emergence of the master devoted exclusively to Desire (*Begierde*). In the 1933-34 lectures, Kojève suggests the following formulation to contrast the morality of pagans and Christians: "Pagan morality: become what you are (insofar as Idea=Ideal). Christian morality: become what you are *not* (yet)." (ILH 40) Conspicuously absent from this description is the (post)modern morality: become what you will (although cf. ILH 64, where Kojève presents Hegelian morality as "Be the *opposite* of what you are").

¹¹³ Cf. IRH 116.

¹¹⁴ IRH 133.

The discovery that natural or “cosmic” time is completely distinct from historical Time, if it exists at all, is what makes Hegel very radical, according to Kojève.¹¹⁵ But the reduction of the Concept to History – itself, by Kojève’s own definition, the product of human will – is nothing less than the reduction of Being to Will, so that Nature and Being are, in fact, ontologically radically separate.

Kojève’s ontological dualism

Kojève notes that his ontological dualism (the term is Kojève’s own) is not found throughout Hegel, but only in the *Phenomenology*. In the 1933-34 lectures, Kojève says that Hegel has made an error in some of his other works, where he suggests a fundamental unity between the human and natural worlds.¹¹⁶ Leaving aside the strictly academic question of Hegel’s own intentions, it is vital to note that Kojève here does not abandon the possibility of a philosophy of Nature; on the contrary, by outlining a dualistic ontology, he preserves that possibility. Within the confines of the *Introduction*, however, the philosophy of Nature remains only a possibility, for within this work Kojève limits himself to a consideration of the dialectical, i.e. the human world. Nonetheless, philosophy in the sense of the contemplation of the eternal remains a central concern for Kojève, as can be seen in a note from the 1933-34 lectures:

I see no objection to saying that the natural World eludes *conceptual* understanding. Indeed, this would only mean that the existence of Nature is revealed by mathematical algorithm, for example, and not by concepts – that is, by *words* having a meaning. . . Now, it does seem that algorithm, being *nontemporal*, does not reveal Life. But neither does dialectic. Therefore, it may be necessary to combine Plato’s

¹¹⁵ *IRH* 133.

¹¹⁶ *IRH* 212-213n; note that Hegel’s “error” is not the contemplation of Nature itself, but the projection of the dialectical nature of the human world onto Nature. Cf. *IRH* 217, where the dialectic of Nature is portrayed as a function of Hegel’s imagination.

conception (for the mathematical, or better, geometrical, substructure of the World) with Aristotle's (for its biological structure) and Kant's (for its physical or better, dynamic, structure), while reserving Hegelian dialectic for Man and History.¹¹⁷

Kojève's ontological dualism, then, allows him to speak of "Being" on a purely anthropological plane; when he speaks of the Concept as identical to *human* Time and subject to human creation, then, he is speaking of a thoroughly anthropological Concept.¹¹⁸ Kojève does not take the relativistic position, as some critics claim he does, that Being (in the absolute sense) is subject to human will.¹¹⁹ In fact, he goes so far as to claim that the entire *Phenomenology* is written from the perspective of this dual ontology:

Now the PhG is written such that *each* sentence (or nearly every sentence) relates simultaneously to the two aspects of which I have just spoken. One can thus read the seven first Chapters of the PhG from one end to the other by considering them as a description of self-consciousness, that is the different ways in which Man understands himself. Thus one obtains the *anthropological* interpretation, which is that of my course. But one can also read the same seven Chapters as a description of external-consciousness, which is to say of the different ways in which Man becomes conscious of the World and of Being in general. And thus one obtains the *metaphysical* interpretation, of which I have not spoken in my course and which Hegel takes up in Chapter VIII.¹²⁰

It is with great care, then, that we must return to Kojève's strictly anthropological reading of the *Phenomenology*, for his ontological dualism treats philosophy and politics as concerned with separate planes, but he continues to use terms such as Concept, Nature and Being without differentiating between their meanings on the anthropological and metaphysical planes. Because we now have every reason to believe that he is a philosopher first, there are intrinsic reasons to expect Kojève to

¹¹⁷ *IRH* 147n.

¹¹⁸ Consequently, the claim that history is over is illuminated by the implication that the world's political possibilities have been exhausted without any comparable claim being made for its philosophical possibilities.

¹¹⁹ Cf. Drury (1994) 204 ff.

¹²⁰ *ILH* 308-309.

speak prudently; and this, in turn, makes his claim in the famous footnote of the *Introduction* concerning the disappearance of philosophy at the end of history a dubious one.¹²¹ Moreover, by explicitly severing any ontological relation between reflection and rule, Kojève denies the existence of a *natural*, pre-political basis for rule by philosophers. As in the *Republic*, this conclusion does not eliminate the possibility of rule by philosophers, but it does mean that philosophers are dangerous loose cannons on the anthropological plane.

Action and Discourse as history

Of the philosopher himself, Kojève says nothing more. Of rule, however, he has much to say in the remaining lectures of 1938-39. We have seen that the expression Concept = Time means that the essentially human world is purely a function of will. Hence, Kojève says

Man ... *essentially* transforms the World by the negating Action of his Fights and his Work. Action which arises from *non*natural human Desire directed toward another Desire – that is, toward something that does not exist really in the natural World. Only Man creates and destroys *essentially*.¹²²

Now, this Action is clearly of different kinds, as is suggested by the division, throughout the *Introduction*, between fighting and work. The greatest of transformations of the World is effected in the “historic moment”, which, as we will see here, is outwardly manifested as nothing other than Discourse. While it begins with an act of sheer creative will, the historic moment is only a moment of madness if

¹²¹ The second-edition footnote takes on a new meaning when it becomes clear that the anthropological (that is, the political) plane is radically separate from – and in fact has no need of – the philosophical plane; indeed, insofar as the philosophical seeks to commit violence on the anthropological plane, the destruction of philosophy is a kind of victory at the anthropological level. As the footnote points out, the particular condition of the anthropological plane upon which philosophy depends is the human capacity for action. But we have reason to doubt Kojève when he says that philosophy is no longer possible, for reasons argued above.

it is without the corresponding Discourse to turn it into a Project. Kojève uses the example of the “historic moment” of Caesar’s walk by the Rubicon; it is not the walk itself which is important, nor even Caesar’s imagination willing the conquest of Rome. There is, Kojève says, “a ‘historic moment’ only when the *present* is ordered in terms of the *future*, on the condition that the future makes its way into the present not in an *immediate* manner (*unmittelbar*; the case of a utopia), but having been *mediated* (*vermittelt*) by the *past* – that is, by an *already accomplished* action.”¹²³ The “historic moment”, then, is a moment of founding which necessarily implies a creation, a destruction, and a Discourse; the Concept is a Project. It is also risky; madmen and criminals are distinguished from founders only by their failure.¹²⁴

Let us leave aside, for a moment, the political implications of the multifaceted nature of Action. There is more to be said concerning the relation between Nature and Action – that is, between the natural and the human worlds. As we have already seen, there is no necessary connection between the two worlds insofar as the purely human world of negation has nothing to do with the self-identical, static world of Nature. In principle, any man can live in a world purely of his own creation, or, should he fail, can still defeat Nature by choosing the time of his own death through suicide. In practice, however, the human world is thoroughly penetrated by Nature, which appears in that human world as the not-yet-negated. Nature as it appears in the human world is characterized by the fact that it is static, and not necessarily simply biological; in practice, the difference between “static” and “biological” does not exist

¹²² *IRH* 138-139.

¹²³ *IRH* 137.

¹²⁴ *IRH* 136n24.

at all.¹²⁵ It is for this reason that the “natural” sciences, while posing as arbiters of Truth, are in fact only articulated reflections of the project-Concept.¹²⁶ Hence, while Newton and Einstein can both provide accounts of the world which are perfectly true (in relation to the project-Concept), these accounts are also mutually contradictory.¹²⁷ On this view of the anthropological plane as dialectical, then, (non-philosophical) natural science is simply an aspect of Discourse, itself a function of will, and thus subject to radical changes.¹²⁸

The philosopher as actor

Philosophy, however, can never content itself simply with the anthropological (or phenomenological) dialectic, for it strives, by definition, to turn towards the sunlight of the metaphysical in order to comprehend both planes. The relation between the anthropological and metaphysical planes (or between Time and Space) is, like that between existence and Being on the strictly anthropological plane, dialectical. As we have seen, for Kojève man is negativity and Nature is Identity; now we see that the attempt to grasp them both in thought takes place on yet a third plane:

¹²⁵ This is evident in both ancient and modern thought, even though the place Nature occupies shifts radically in the transition to modern thought. We can see that this is so by contrasting the example of Aristotle’s doctrine of natural slavery with that of modern liberal measures to ensure equality of opportunity; in both cases, conventional (e.g. class) and biological (e.g. sex or ability) status are treated as of exactly the same significance, even though the Aristotelian view is that this “natural” status determines social reality, while the modern view is precisely the reverse.

¹²⁶ Thus, as Hegel argues, natural science invariably rests on a set of conventional postulates: “Subject and object, God, Nature, Understanding, sensibility, and so on, are uncritically taken for granted as familiar, established as valid, and made into fixed points for starting and stopping. While these remain unmoved, the knowing activity goes back and forth between them, thus moving only on their surface.” (*PhG* §31).

¹²⁷ The science of physics has, Kojève points out, recognized its own isolation from self-identical truth in Bohr’s principle of “complementary notions” exemplified in the particle and wave theories of light, each of which is demonstrably “true”.

the ontological.¹²⁹ What Kojève now calls the “ontological Dialectic” thus takes place completely outside the realm of the phenomenological and the metaphysical, and aims at an Absolute Knowledge. But while the phenomenological dialectic is expressed materially in Time, the ontological dialectic appears only in thought.¹³⁰

Kojève’s presentation of the ontological plane enables a further refinement of our understanding of the relation between reflection and action. The philosopher, as we have already seen, is capable of action, and, moreover, is potentially politically unreliable – if not downright dangerous – because his interests lie outside the realm of the everyday. We have also seen that, being human, he has no direct access to the realm of Nature (i.e. Eternity or Identity); he is trapped in the phenomenological world, where the project-Concept continually poses as pure Being itself. Only two types of human understand that the project-Concept is a function of will: the philosopher and the man of Action; but the man of Action understands only *this* project as a function of his own will, whereas the philosopher constantly seeks to expand his understanding (his “self-consciousness”), such that he aims ultimately able to provide a completely adequate discursive account of both planes.¹³¹ By “completely adequate” I mean an account which is not only convincing, but which can also provide an account of the philosopher himself.

¹²⁸ This tendency in the natural sciences, and, indeed, in public discourse generally has been noted by critics as far apart as Thomas Kuhn and Michel Foucault. Both were aware of the political implications of their thought, but reached different conclusions; for Kuhn, scientific discourse itself becomes the mainstay of the community, and thus socially indispensable. Foucault, on the other hand, expressed an ambivalence concerning the metaphysical plane, particularly in his later works.

¹²⁹ *IRH* 214-215.

¹³⁰ *IRH* 239.

¹³¹ *ILH* 400.

Moreover, the philosopher, because he is constantly attempting to isolate the true from the changeable, will never be satisfied with the account of Being provided by the individual project-Concept, both because he sees it for the illusion it is, but also because he has his own project, which has nothing to do with the project-Concept which determines his daily existence: the philosopher is characterized by his dissatisfaction, and who thus “always ends up asking a question that he can no longer answer.”¹³² The practice of asking the unanswerable question is a political one, precisely because the philosopher alone consciously seeks to extend his consciousness – that is, to transform himself (i.e. the way he understands himself) and, therefore, the project-Concept.¹³³ Thus the philosopher is compelled to act. Hegel’s argument rests on the unity of the dialectics of action (i.e. the anthropological dialectic) and of philosophy (the ontological dialectic) in order to produce an Absolute synthesis. But, Kojève argues,

...if the man who acts does not philosophise or if the philosopher does not act, the reasoning is no longer valid. Let us assume that the man who acted does not become self-conscious after the action. And by thus erring about himself, he will certainly not be able to see the inadequacy of his action, that is, will not become aware of the still-existing discrepancy between the idea-ideal and reality. Thus, he will cease to act and will stop before having arrived at the true end of History which *can* no longer be surpassed. And in this hypothesis there will never be Wisdom on earth. Inversely, if the philosopher does not act, he will not be able to transform the World; he will thus not change himself; History will thus stop, here, again, before its absolute end; and the philosopher will never become a Sage.¹³⁴

¹³² *IRH* 86.

¹³³ *ILH* 399.

¹³⁴ *ILH* 400.

In short, the philosopher must commit violence so long as he genuinely aims at wisdom.¹³⁵

Let us now turn to the question of whether such wisdom is possible. Kojève's ontological dualism leads directly and inevitably to the notion of the universal and homogeneous state. Because the phenomenological plane is characterized by negativity – that is, by unpredictable, spontaneous creation – and because a genuinely philosophical discourse must provide an account of what *is*, it follows that an adequate philosophical account of the human (i.e. action-oriented or political) World is possible only when negativity itself ceases to be an aspect of that human world. Consequently, the notion of an adequate political philosophy is, in fact, a paradox; if negativity vanishes, the human World passes back into Nature (that is, man becomes re-animalized) and both the anthropological dialectic and the ontological dialectic between the human and natural planes come to an end. Insofar as the latter dialectic is the mode of the philosopher, the end of negativity spells the end of philosophy itself. It is to this condition of the absorption of the anthropological plane (Negativity) into the natural plane (Identity) that Kojève gives the name of the universal and homogeneous state.

As we have already seen, if this absorption had already taken place, it is not clear why a completely adequate discourse would be required, or indeed that it would even be possible. Moreover, we know that every Discourse pertaining to a particular

¹³⁵ Kojève goes further here, interpreting Hegel's assertion that concrete history is really the history of philosophy to mean that all historical movements are, in fact, the result of philosophers' actions: "And in fact, there has always been a Philosopher at the root of every Revolution." (*ILH* 404); Hegel says nothing overtly about the philosopher as historical actor, but, like Kojève, stresses the violence inherent

project-Concept recasts the past in terms of the future (i.e. of the project), so that to the unselfconscious individual in history, every moment of the present is measured against the project-Concept itself. The Concept acquires the status of an end-state, already achieved *in principle* (insofar as it becomes an explicit political goal); the means to achieving it *in reality* involve fighting and work. In a letter to Strauss, Kojève writes of the universal and homogeneous state that any remnants of Negativity, in the form of humans who remain dissatisfied by amusements such as sports, art and eroticism, will be “locked up”.¹³⁶ In this sense, however, the universal and homogeneous state seems indistinguishable from any other project-Concept which is, for itself, an end-state.¹³⁷ The philosopher confronted with claims to the presence of an end-state can be satisfied only by a *discursive* – that is, a dialectical – exposition of the truth of that end state, such that it provides a complete account of itself. It is Hegel’s claim to provide precisely this exposition that attracts Kojève.

Before we turn to Kojève’s assessment of Hegel’s circular knowledge, let us now, finally, complete our picture of the manifold nature of the master as he appears in Kojève’s anthropology. At the political level, the master is a fighter¹³⁸ variously characterized as being either a founder (and ruler) of an order or a defender of that order. In both cases, the master is distinguished from the slave insofar as the former

in the expansion of self-consciousness and the inherent dissatisfaction which follows any attempt to retreat, in fear, from this violence (*PhG* §80).

¹³⁶ *OT* 255.

¹³⁷ Cf. *IRH* 231, where the end of history is marked by the Slave’s overcoming of the Master in a “nondialectical” way: “that is, by annulling him or putting him to death”. Insofar as these means to eliminating Negativity imply the incarceration of criminals and madmen and the execution of criminals, these measures of control in the universal and homogeneous state seem indistinguishable from the modes of social control in any society; what is unique to this presentation, however, is that the citizens are absolutely free insofar as they can select their mode of leisure; everything is permitted.

does not transform Nature through work, and the latter labours (in the broadest sense of the term) in order to satisfy both the master (that is, the master's project-Concept) and also his own desires. Rule does not occupy its own position, having been reduced (as it was in the *Republic*) either to an act of founding or the defence of the constitution. Philosophy occupies no fixed position in this schema: in the early lectures, Kojève describes the philosopher as a slave because it is only the slave who recognizes the inadequacy of the world insofar as it does not give him recognition,¹³⁹ but in the later lectures he links philosophers with the highest level of master – that is, with those who found revolutions.¹⁴⁰ This ambiguity about the political status of the philosopher is both prudence and a reflection of empirical reality; on the one hand, the philosopher is alone among human types in considering recognition secondary to the practice of his own business. On the other hand, precisely because he considers the practice of philosophy first, he does everything possible to minimize his participation in day-to-day rule.¹⁴¹

But we have already seen that, for Kojève, it is not day-to-day rule that interests the philosopher, but action that founds a Science; that no philosopher has yet successfully done so does not deter him.¹⁴² The philosopher who can unite his

¹³⁸ This “fighting” is not necessarily a physical act, as it is in the archetypal encounter which creates the first master, but it does, as in the case of Socrates, necessarily entail the risk of one's life.

¹³⁹ *ILH* 54.

¹⁴⁰ *ILH* 402.

¹⁴¹ See *TW* 162-165 for Kojève's account of the philosopher's reluctance for involvement in rule. The footnote on p. 162, which begins with the suggestion that the philosopher is, in fact, *more* vain than the man of action, turns out to be a red herring, for the “philosopher” in question appears to be “the intellectual who does nothing but talk and write” – that is, a critic. Cf. *ILH* 403, where Kojève describes the intellectual who imagines himself to be “above the *mêlée*” – and therefore avoids action – in disparaging terms.

¹⁴² *TW* 169. Kojève is almost certainly writing ironically here; contrast with *ILH* 404, where Kojève writes: “And in fact, there was always a Philosopher at the root of every Revolution.”

reflection and his action into a single founding Science which acts as both political discourse and metaphysical hermeneutic is Kojève's Sage. The political state in which this Science emerges is perfect in two senses: it is politically perfect in that all potential sources of internal conflict ("particular interests which exclude one another mutually") are overcome; and it is philosophically perfect in that it can provide a complete account of itself in ontological terms.¹⁴³ Whether or not either type of perfection is actually possible, the first can at least be formally described (as it is by Hegel in the *Philosophy of Right*, or by Plato in his description of the timocracy in the *Republic*), but the second can be described only by becoming realized; its truth is its articulation. It is this capacity of the Sage to account for himself which grounds his claim to Wisdom, and upon which rests the truth of the universal and homogeneous state. The question we must now address, then, is whether Hegel achieves this monumental task, as Kojève claims.

The Sage at the end of history

The ideal Sage unites reflection and action, and, as such, is satisfied (that is, he asks no unanswerable questions), self-conscious (he can account completely for himself), and attains moral perfection such that he is the example, *par excellence*, of morality in the community.¹⁴⁴ These three characteristics are, in fact, identical, since the Sage's absolute wisdom stems from his full articulation of (univocal) Being in the World, such that this articulation is identical with the concept of the Good which takes hold in the world. But here we encounter the same difficulty Plato encounters with the philosopher-king: while there have clearly been, in human history, founders

¹⁴³ *ILH* 300-301.

who have claimed (and appeared) to be completely satisfied, there is no way to distinguish the claims of these “unconscious Wise Men” (to use Kojève’s terminology) from those of the self-conscious Wise Men, unless one is a philosopher oneself.¹⁴⁵

The philosophical validation of Hegel’s Science rests on its circularity, and by circularity, Kojève means that this Science integrates and explains all other possible (that is, historically occurring) stages of consciousness.¹⁴⁶ This is possible only if human action or negativity can be understood as explicable in terms of Being; so long as pure negation remains an object external to Science itself, that Science cannot maintain the position of omniscience. This, in turn, is possible only if history ends with the definitive unification of Being and action – that is, with the action of the Sage who founds the universal and homogeneous state in accordance with his absolute knowledge.¹⁴⁷ But, Kojève says, Hegel fails this final test, for in his account it is Napoleon, and not Hegel himself, who brings about the universal and homogeneous state in principle.¹⁴⁸

Kojève’s rejection of Hegel’s claim to wisdom – and of Hegel’s account of that claim in the form of the *Phenomenology* – is a baffling leap, not least because it seems to cast the entire project of Kojève’s *Introduction* into question; that is, if Kojève himself is not convinced by Hegel’s account of himself, then *we* have no

¹⁴⁴ *IRH* 79-80.

¹⁴⁵ *IRH* 84-85.

¹⁴⁶ *ILH* 322.

¹⁴⁷ *ILH* 400.

¹⁴⁸ “Again, Hegel can appeal to the *fact* of the Sage which he himself is. But can he really *explain* it? I doubt it. And I therefore doubt that he is the Sage concluding History, for it is precisely the capacity to *explain* oneself which characterizes Wisdom.” (*ILH* 400)

reason to believe that Hegel's logic is actually circular in the way Kojève describes.¹⁴⁹ Even if, as Kojève suggests is possible, the *Phenomenology* itself (that is, Hegel's account of the anthropological plane) is circular, Hegel's "failure" seems to indicate that action and Nature remain on distinct planes, that the human has *not* fallen back into Nature. There are three possible interpretations which can be drawn from Kojève's leap here: first, that human history alone is over; on this view, the anthropological plane is "circular", i.e. comprehensible according to an extrinsic, unchanging standard, which can only be Nature itself. Second, it is possible that Nature itself has really been overcome by Negativity, such that eternity itself has been abolished, and we are left with only the human plane which is, on the one hand, wholly technological with respect to Nature, and, on the other, characterized by infinite radical subjectivity. Finally, it may simply be that the universal and homogeneous state, which is, after all, Kojève's creation and not Hegel's, is the beginning of Kojève's own project-Concept; on this view, the entire *Introduction* (as well as the seminar upon which it is based) serves as a vital piece of the discourse which supports Kojève's political project.

¹⁴⁹ The circularity of Hegel's logic was already cast into question in a footnote to an earlier lecture in 1938-39, where Kojève wrote: "...it is not sufficient that the *Phenomenology* be circular: the Logic (or the *Encyclopaedia*) must be so, too; and, what is much more important, the System in its *entirety*, that is to say, the entirety of the *Phenomenology* and the *Encyclopaedia*, must also be circular. Now, it is precisely there that that non-circularity of Hegel's system is perfectly obvious. But I can say so only in passing and without proof." (*IRH* 98n)

Neither of the first two interpretations is satisfactory. The first relies on Kojève's Hegel having had some insight into universal truth, such that all of human history is comprehensively understood without any insight into Nature itself. This "manifold" conception of truth, examined in the seventh lecture of 1938-39, proves to be something other than wisdom, because true wisdom precludes any diversity in knowledge; that is, only that knowledge which incorporates *all* knowledge is wisdom.¹⁵⁰ Hence, a knowledge of the anthropological plane alone could not be wisdom, and therefore the human world could not be reliably understood as circular. The second interpretation fails because it cannot account for the continuation (by Kojève, at the very least) of philosophy, which necessarily presupposes the existence of the transcendent plane.¹⁵¹ The third is an attractive alternative, because it accounts for both the continuation of philosophy on the one hand, and incorporates Kojève's principle that historical action *is* philosophy on the other. But this interpretation also relies on the problematic assumption that Kojève, from 1933-34 onwards, constructed a political project with a view to implementing it personally; and it is impossible (and ultimately only of biographical interest) to demonstrate this. We can say, however, with both Kojève and Strauss, that history is filled with examples of philosophers' political projects, some of which were ultimately taken up (with widely varying degrees of success) in practice; Kojève's own favourite example is of Aristotle-Alexander, but he also uses the example of Hegel-Napoleon. It is perhaps significant

¹⁵⁰ In Kojève's words, "...in order that there be knowledge, the diverse must be *identified*: every act of knowing is a *synthesis*... which introduces *unity* into the (given) manifold." (*IRH* 126)

¹⁵¹ This "sceptical" account is reducible to the expression "Concept is temporal," which was rejected for this reason at *IRH* 102.

that Hegel never directly influenced Napoleon at all – that is, ultimately never acted in the strong sense of the term. At the very end of his 1936-37 lectures, Kojève writes,

Hegel and Napoleon are two different men; Consciousness and Self-Consciousness are thus still separated. Now, Hegel does not like dualism. Can the final dyad be overcome? This could happen (and still [can]!) if Napoleon were to ‘recognize’ Hegel, just as Hegel ‘recognized’ Napoleon. Was Hegel waiting (1806) to be called by Napoleon to Paris, to become the Philosopher (the Sage) of the universal and homogeneous State, before explaining (justifying) – and perhaps directing – Napoleon’s activity?¹⁵²

Whether or not Hegel really awaited Napoleon’s call is less important here than the fact that Kojève himself appears to take his radical interpretation of the philosopher’s need to act politically to heart; that is, he understands the “Sage” to mean the philosopher with the ear of the political leader, if not to become the leader himself.

This last interpretation of Kojève’s view of Hegel as ultimately failing does not require that we abandon his *Introduction* as a work of philosophy simply because it proves also to have been (in his own words) a work of propaganda; as we saw at the outset, all philosophical works are simultaneously works of propaganda. It does suggest, however, that his thought and his action must both be taken into account in order to understand the meaning of his project. Apart from his administrative success during the postwar years, Kojève had, through his Hegel seminar, a tremendous influence on French intellectual thought, in its existentialist and surrealist strains, until the end of the 1960s.¹⁵³ In this regard, at least, his discourse has every appearance of having been successful.

¹⁵² *ILH* 153-54. Note that Hegel’s failure makes him equivalent to a criminal or a madman (*IRH* 136n24).

¹⁵³ Auffret (1990) 12-14; Pippin (1993) 146

Citizenship at the end of history

To see Kojève's political and philosophical projects as identical requires a re-formulation of the question of finding, in Kojève's work, an understanding of citizenship which can apply to the modern, post-national polity embodied in the European Union. If Kojève's project is a kind of revolutionary discourse intended to bring about a new project-Concept, and if the model for post-historical citizenship is the universal satisfaction of the desire for recognition, then it follows that there is more than one kind of recognition – at the very least, that of the acting, speaking Kojève himself, and that of the citizen. In this regard, the putative universal and homogeneous state is no different from any other state (that is, rulers and citizens obtain different benefits from their ruler-ruled relationship), but the relationship between ruler and ruled in the universal and homogeneous state is itself different from that in other polities. The post-historical tyrant, in a search for universal recognition, will attempt to escape the “impasse” which characterized the early master's “recognition” by the slave. In order that the recognition he receives be freely given, the tyrant who aspires to truly universal recognition (or power) will liberate and enfranchise all those who were previously enslaved or politically voiceless as quickly as external (i.e. economic and technological) circumstances permit; he will reduce the authority of the family over the individual by lowering the age of majority, and so on.¹⁵⁴ It is not difficult to imagine that every tyrant, throughout history, has desired the recognition of all others *in principle*, but only in recent modernity have the means necessary to obtain that recognition become concretely available. For us to

comprehend how a contemporary citizenship can provide this recognition, we must understand what these devices are. Now, the entire history of the development of the political tools necessary for the universal and homogeneous state is catalogued in Hegel's *Phenomenology*, which adequately describes the means by which universal recognition becomes possible, according to Kojève. While a complete account of the *Phenomenology* is required to explain the logic and history of each development of consciousness, we must make do here with a truncated account of three essential historical developments preserved in modern Western politics: Christianity or ideology, Kantian morality, and technology.

Kojève's account of Christianity does not deviate significantly from Hegel's; it is a slave morality, designed to meet the ends of self-preservation on the one hand, and peaceful recognition (in its initial formulation, in the afterworld) on the other. The transition from the pagan to the Christian world severs the timocratic bond between the polity's well-being and the recognition of the auxiliary-master; in the course of the development of Alexander's empire and the Roman empire, there is still the possibility of heroism, which necessarily involves the honourable (that is, recognition-oriented) risk of life for the sake of the whole.¹⁵⁵ But the *pax Romana* finds the masters already recognized "universally", and engages its non-citizens to fight for the empire; the master no longer fights, and thus ceases to be a master – or,

¹⁵⁴ *TW* 146.

¹⁵⁵ *ILH* 115.

indeed, a citizen in the pagan sense – at all.¹⁵⁶ The Roman citizen is bourgeois; his action no longer has essentially public significance, and he devotes himself to private interests; it is for this reason that property law becomes a permanent legacy of the Roman empire.¹⁵⁷

The emergence of the bourgeois citizen is essential to the development of Christianity; the isolation of the particular (the citizen) from the universal (the Empire) creates the dissatisfaction with the lack of recognition required not only for Christianity itself, but for all ideologies, insofar as all ideologies are also utopias:

This Discourse of the Christian is the Discourse of faith, of utopia, of the ‘ideal’ and of error; that is to say that this Discourse does not reveal what is, but creates (in the abstract) an ideal world opposed to the real world. . . . Man speaks of the Nature which kills him and makes him suffer; he speaks of the State which crushes him, and he does political economy because the social reality does not conform with his ideal, and does not “satisfy” him (for it does not attribute a *universally* valid value to his *particularity*).¹⁵⁸

Christianity and all other ideologies are, therefore, characterized by both dissatisfaction and pacifism; even if they form the basis for theological or intellectual *criticism*, they remain pure discourse until they are transformed into a project-Concept which becomes realized through action. Thus, while the religious or ideological life is miserable insofar as it precludes recognition, it is also “indefinitely viable” (as the eternal existence of intellectuals attests); for, as Kojève writes, “one can delight in

¹⁵⁶ While it might be argued here that the “non-citizens” (who are, in name, actually citizens) effectively become new masters through their life-risking defence of the empire, the recognition attached to Roman military success consists of “bourgeois” recognition rather than honour in the pagan sense. The Roman citizen is, therefore, a master only in the sense of Kojève’s master of *Begierde* (Desire), driven to risk his life only in defence of his right to property. As was noted above (p. 110), then, the real difference between the auxiliary and the master of *Begierde* is the type of regime in which they live, and not any intrinsic difference.

¹⁵⁷ *ILH* 116; Alexandre Kojève, *Esquisse d’une Phénoménologie du Droit* (Paris: Gallimard, 1981) (henceforth *EPD*) 126.

¹⁵⁸ *ILH* 117.

unhappiness. Hence the possibility of religion's unlimited duration".¹⁵⁹ Insofar as "religion" or ideology characterize the modern world, then, we cannot speak of satisfaction of the need for recognition. In short, the bourgeois citizen accepts security of person and property in exchange for any possibility of recognition of what he *does*. On the other hand, he is tolerant; he puts up with (and even engages in) criticism so long as his security is not affected.¹⁶⁰

Kantian morality manifests itself only in the society of the bourgeois citizen, but is distinct from the concrete law of the bourgeois state for two reasons. First, as we saw in our reading of cosmopolitanism in the previous chapter, it becomes a conscious, abstract ideal with a life apart from the concrete law itself which adds to the essentially private orientation of the bourgeois citizen the self-consciousness which ensures that his private interest does not extend to hypocrisy. Second, it cements the isolation of the human from the natural world and thus grounds the ontological dualism later taken up by Heidegger and Kojève;¹⁶¹ we will examine the political effects of this dualism in the discussion of technology below. The first of these aspects was already implied in Christian morality, which also conceives of justice as fundamentally concerned with private interest. The only difference between Christian and Kantian morality is that for the former the standard of justice stems from his relation with God; for the latter, it rests in his abstract moral ideal of perfection.¹⁶² The categorical imperative limits rather than prescribes, and even this limit rests on the existence of a posited "universal" actor who exists only in an ideal

¹⁵⁹ *ILH* 73.

¹⁶⁰ *ILH* 151.

¹⁶¹ *IRH* 215n.

form. Insofar as it is embodied in positive law and guides social morality, the categorical imperative explicitly precludes any conception of spontaneous, negating human action in the strong sense; Napoleon's action is, by Kantian standards, utterly amoral.¹⁶³

Technology follows from the Kantian division of the natural from the human. The ontological dualism Kojève points out, and embraces, in Kant's thought cuts off any vestiges of natural necessity; all human activity becomes simply a function of human will, and Nature becomes entirely subject to that same will. The slave in history has always been capable of the technical transformation of Nature, but so long as he had a master (and therefore a project-Concept) this development was always contingent on that project. Once the slave becomes a bourgeois citizen (that is, he no longer has a master, although he continues to work), he no longer has to fight, and his full attention can be devoted to the satisfaction of his own desires, which are already satisfied in principle.¹⁶⁴ Technology, then, has an economic dimension, whereby it simply frees some of the citizen's time for non-labour pursuits. It is technology's denigration or elimination of nature as a thing-in-itself, and its subjection to will, however, which incarnates action's demise; technology grants the citizen freedom to satisfy himself.

Insofar as any state is Christian, Kantian and technological (in the senses described), it is bourgeois. But it is only if this condition is genuinely universal – that is, if all possible sources of resistance or negation – have actually been eliminated that

¹⁶² *EPD* 209.

¹⁶³ *ILH* 153; for a full version of Kojève's critique of the legal implications of Kant's categorical imperative, see *EPD* 77ff.

we can speak of a universal and homogeneous state, as Kojève does.¹⁶⁵ But we have no reason to believe that the bourgeois state has become universal, not only because there remain internal resisters (criminals, madmen, and potential tyrants) who have not yet been killed or locked up,¹⁶⁶ but because there remains (waning) external resistance in the form of states which have not (yet fully) recognized the advent of the universal and homogeneous state. This commonplace observation cannot be dismissed with the argument that the universal and homogeneous state already exists *in principle*, or that all remaining conflict is only the “alignment of the provinces”,¹⁶⁷ for two reasons. First, we have seen that Kojève’s own analysis of project-Concepts in history demonstrates that all historical projects reconstruct the past in terms of the future; all historical projects portray themselves as the culmination of human accomplishment. For this reason, Kojève’s discourse concerning the political developments since 1806 as having no significance must be met with the same scepticism with which we would treat any other political propaganda. Second, his own actions after the war are more typical of one driving an empire, rather than of “a cog in the ‘machine’ fashioned by automata for automata” – Kojève’s own description of the administrator of the universal and homogeneous state.¹⁶⁸ The consideration of the meaning of these actions will be taken up in the next chapter.

The findings of this chapter leave us with four problems concerning the applicability of Kojève’s thought to the problem of a citizenship of the EU. First, the

¹⁶⁴ *ILH* 387.

¹⁶⁵ *TW* 146.

¹⁶⁶ *TW* 146; *OT* 255.

¹⁶⁷ Kojève (1968).

¹⁶⁸ Kojève’s letter to Strauss of 19.09.1950, in *OT* 255.

possibility of a philosophy of nature is preserved through his ontological dualism; this gives the lie to any contention that Kojève sees himself as possessing absolute wisdom, and leaves open the possibility of post-historical philosophy.

Second, it is not yet clear what the precise nature of the recognition accorded to the citizens of the bourgeois state is, although we can say two things about this recognition: first, that it is unconditional and therefore unaffected by the particular activity or accomplishments of those citizens; and, second, that the citizens' freedom which is recognized is itself contingent on the Kantian principle of universality.

This contingency directs our attention to a third unsolved problem, which is whether the bourgeois state's Kantian culture is stable; to the extent that it can be dislodged, the modern state is particularly susceptible to tyranny. Because modern thought puts the human will resolutely above nature, and because the technological means to satisfying that will universally already exist (in principle), the only bulwark between universal bourgeois freedom (nomocracy) on the one hand and the submission of the state to a single will (telocracy) on the other is the strength of the categorical imperative in popular political consciousness; without this bulwark, there is always the threat of overt tyranny. More insidious, however, is the threat implied in the universally private conception of freedom which characterizes the bourgeois state: as in the case of Rome, so long as the attention of the citizens is directed towards their private good, the state machinery is susceptible to the will of the tyrant who knows enough to satisfy the citizens' desire for recognition by maintaining bourgeois economic conditions.

Finally, if, as I have suggested, the universal and homogeneous state does not yet exist, then there remains at least the possibility that the state which exists in the twilight between the nation state and the universal homogeneous state can be more than simply bourgeois, its citizens concerned with more than their private well-being, and the risk of tyranny averted. As I have demonstrated in this chapter, there is ample evidence that Kojève himself maintained an ambivalent attitude towards the necessity of the universal and homogeneous state's advent, and lays the groundwork for an intermediate historical stage which is neither nation-state, nor universal and homogeneous state, but something more closely resembling an empire.

Chapter 3

Citizenship in theory: from Hobbes to Kojève

If one wants to have a friend one must also want to wage war for him: and to wage war, one must be *capable* of being an enemy.

- Nietzsche, *Thus Spoke Zarathustra*¹

The face of the modern, Western citizen conceals a split personality. On its surface it is liberal; liberalism, as Fukuyama told us, has nearly rendered nationhood an archaism, merely one value among a thousand others of equal significance. After the excesses of the last century's wars, many of the world's states made unprecedented advances in limiting the possibility of nationalist conflict. International organizations such as the GATT/WTO, NATO, the EU and the UN contributed to this attenuation of nationalism by increasing economic interdependence, political communication between governments, and occasionally intervening in the interests of peace. Were the Western conception of the United Nations actualized, the world citizen's constitution would begin with the Universal Declaration of Human Rights.

There is, as yet, no such citizen. Citizens of Western democracies, for the most part, enjoy the rights prescribed in the Declaration, but the citizen enjoying these rights subsists side-by-side with another, darker one: a dangerous human capable of a fight to the death for justice. Liberalism tells only half of the citizen's story.

The two poles of the modern citizen's split personality do not fit tidily together. In our time, popular accounts of the courage of soldiers on the winning side of these wars take the view that liberalism lies at the heart of that courage ("they fought for our freedom"). Such accounts can obviously not be reliable; liberalism's

discourse, built around universal freedoms and equality, conceals its anatomy. At the very moment that basic security (the first freedom) is given up and one's life risked, liberalism itself, as constructed in discourse, vanishes; the soldier's hidden and dangerous side is exposed, for his courage not only reveals his willingness to risk his own life, but to kill another in doing so. This apparent inhumanity does not preclude the soldier from full citizenship in otherwise liberal societies; indeed, even now we continue to honour these deviations from the liberal path as paragons of citizenship. But there is something uncomfortable in our honour, for the glory of liberalism's triumph is tarnished by the brutality required to bring it about.

The tension between the desire for security and the willingness to undertake risk is, however, not particular to our century. Plato, as we saw in Chapter 2, attempted to overcome the political problems caused by this tension by isolating the money-making class entirely from the fighting guardians; moreover, he advised the practice of ascetic communism among the latter to avoid any contamination by the bourgeois spirit of the former. For Plato, the division of the classes served to allow each to lead the life most conducive to his or her own happiness, but was also meant to create the best, the most just of cities. It was only with modernity that the idea of a state founded on the basis of security alone came about, first of all in the work of Thomas Hobbes.

From the outset, the project of the perfectly safe state encountered a basic problem: no matter how pacific its citizens, so long as it had even potential enemies the ideal of perfect pacifism would be unattainable. The circumstances, although not

¹ Friedrich Nietzsche, *Thus Spoke Zarathustra*, pp. 115-439 in Walter Kaufmann, translator and editor,

the ends, of the best possible modern state were therefore identical to those connected with the founding of the most just city for Plato: the existence of a peaceful and secure populace necessitated the existence of a class prepared to wage war.

The contemporary concept of a global government as the resolution to the perpetual threat of warfare dates back only to the nineteenth century. Even Kant's idea for a perpetual peace between states mediated by a League of Nations did not entail the eradication of the possibility of political conflict, but only the practical means to ensure such conflict found limited expression. Before the advent of our era – what Heidegger called the “Age of the World Picture”² – the contemporary notion of a universal “humanity” was inconceivable. The World Picture was possible only with the total absorption of the unknown, unmapped, and unowned territory into the grid of colonizing empires – first European, and then American.

The age of the World Picture, for the first time, permits the perfect identification of the human with the animal *homo sapiens*; the grid carving the globe into spheres of power gives us a total view not only of the earth's geography, but encourages us to speculate on the nature of humanity. The project of a universal and therefore secure state becomes conceivable, but only if our anthropology yields a picture of humanity as essentially good, i.e. peaceful. Liberalism thus conceived was easily absorbed into the political project (begun by Hobbes) of eliminating the non-essential human capacity for risk and violence, even though the means to this end required unprecedented bloodshed; it is a testament to the astonishing rhetorical

The Portable Nietzsche (New York: Viking Penguin, 1982) 168.

² Martin Heidegger, “The Age of the World Picture,” pp. 115-154 In *The Question Concerning Technology and other Essays* (New York: Garland, 1977).

power of liberalism's advocates that World War I was fought by millions who saw it as the war to end all wars.³

It is the legacy of this most recent of Western history that an understanding of citizenship which understands risk as a human trait is almost out of reach. It is because we are now so thoroughly Hobbesian that the project of a world free from risk and violence is attractive. To embrace liberalism's discourse unreflectively as a means of escaping the horrors of nationalism, however, would be an error. Insofar as we remain capable of recalling the questions behind all political philosophy, we cannot simply abandon the oracle's admonition to Socrates – *know thyself* – for what is attractive.

This chapter constitutes an attempt to reconcile the opposing parts of citizenship through a reading of Alexandre Kojève's later works, most prominently the 1943 *Esquisse d'une phénoménologie du Droit*.⁴ Crucial to such a reconciliation is the question of whether Kojève's contention that the master's risk-taking inclination, as an expression of the desire for recognition, can be eradicated through the kind of recognition that satisfies the slave. If this is possible, then the Universal Declaration of Human Rights may really become the constitution for the world's residents. In such a scenario, EU citizenship would be archaic in the same sense as national citizenship would; the EU would be a useful cog in the administration of the universal and

³ I leave aside a discussion of the connection between liberalism and nationalism here. The debate concerning the causal link between capitalism, liberalism and nationalism is thoroughly dealt with by Eric Hobsbawm, *Nations and Nationalism since 1780: Program, Myth, Reality* (New York: Cambridge University Press, 1990). It is notable, however, that liberalism and nationalism are not only contemporary phenomena, but that they are also closely allied beginning in the 1830s.

homogeneous state, but we could scarcely speak of an EU “citizenship.” On the other hand, if our time is an interregnum between the end of the nation-state and the incarnation of the universal and homogeneous state, then one can imagine a political function for the EU which would entail citizenship.

In this chapter, I will read Kojève’s later works as responses to the conceptions of citizenship of Thomas Hobbes, G.W.F. Hegel, and Carl Schmitt. In each of these conceptions, the tension between security and risk is resolved, with varying degrees of success, but without the difficulties we encountered in much of the citizenship literature in Chapter 1. Through this reading, we will read the modern history of citizenship as built on a fundamental schism between risk and security. As I argue, an awareness of this schism and the tensions it produces is vital to citizenship, so long as the universal and homogeneous state does not obtain.

This chapter is divided into four sections. In the first, I will introduce the neglected division between risk and security – or rights – within modern citizenship through a contrast between the work and legacy of T.H. Marshall and the rudiments of citizenship as outlined by Thomas Hobbes. Secondly, I will evaluate Hegel’s use of ethical life as a means of transcending that division. Third, I will consider Carl Schmitt’s influence on Kojève’s 1943 *Esquisse d’une phénoménologie du Droit*. Finally, I will draw on this work and two of Kojève’s later writings to outline a vision of European citizenship fitted to the EU’s nature.

⁴ Alexandre Kojève, *Esquisse d’une phénoménologie du Droit* (Paris: Gallimard, 1981) (henceforth *EPD*). My division of “early” from “late” Kojève here is only temporal; the *Introduction* is not divided from the *Esquisse* or any of the other works I discuss here in any fundamental way, although the influence of Hobbes and Schmitt on the later works is, as I argue here, more apparent.

T.H. Marshall and the language of rights

As I argued in Chapter 2, it is apparent that we have not yet entered the global condition Kojève called the universal and homogeneous state. In no form is recognition universally given by all residents of the globe to all the others; indeed, even within some Western states, such as Germany, citizenship remains out of reach for a considerable minority of permanent residents. However desirable the advent of a global peace entailing universal recognition of all by all, for the moment we confront a world comprised of political groups with differing ends – some compatible with others, some not. If citizenship requires, as sociologist T.H. Marshall said, “a direct sense of community membership based on loyalty to a civilisation which is a common possession,”⁵ then both this civilisation and the loyalty which supports it must have a *civic* character (in George Kelly’s sense of the word) not found in other types of membership. Memberships in *civil* associations such as churches, political parties or social clubs are neither inherently incompatible with citizenship nor with each other; they can overlap with each other without ill effect. Citizenship, on the other hand,

⁵ T.H. Marshall, “Citizenship and Social Class,” pp. 71-134 in *Citizenship and Social Class and other essays* (Cambridge: Cambridge University Press, 1950) 40-41.

must be a civic bond between individual and polity with the ability, in principle, to transcend all other bonds.⁶

As we saw in Chapter 1, Marshall has influenced the scholarship on citizenship over the last fifty years more heavily than any other single figure. Marshall's 1950 essay "Citizenship and Social Class"⁷ marked the beginning of the modern preoccupation with the question of citizenship with his apparently modest attempt to understand the effects of the extension of citizenship rights on inequality, as well as the way that extension proceeded in Britain from the eighteenth to the twentieth century.

The preoccupation with rights derives a simplified version of Marshall's presentation⁸: that is, the citizenship first observable in the eighteenth century and characterized by two types of expansion: towards the extension of citizenship to all

⁶ Dual or multiple citizenships would seem to complicate the issue here, but only because of the distortion of citizenship's political meaning inherent in confusing passports and concomitant rights with the loyalty to the public good which comprises the heart of citizenship itself. In rare moments of political crisis, however – if, for example, a war occurs between two states of which one is a citizen – these loyalties become paramount. Consider, for example, the forced relocation and internment of Japanese Canadians – even those who were Canadian citizens, some of whom were born in Canada – during the second world war. The policy towards Japanese-Canadians, it is true, rested largely on racist prejudices; in contrast, only a small proportion of Canadians of German and Italian extraction were interned, and these on the basis of the RCMP's suspicion (however inaccurate) of subversive activity. In the case of Japanese Canadians, then, race alone became an indicator of disloyalty, which in turn accounted for the deprivation of citizenship rights they held before 1942. That this was a crude and unfair method of exclusion is beyond dispute, but this does not detract from the point that multiple loyalties (even if only imagined loyalties) become crucial in times of crisis. See Patricia Roy et al., *Mutual Hostages: Canadians and Japanese during the Second World War* (Toronto: University of Toronto Press, 1990), esp. pp. 41-42 and 139-155; and Robert H. Keyserlingk, "'Agents within the gates': The search for Nazi subversives in Canada during World War II," *Canadian Historical Review* 66.2 (1985): 211-239.

⁷ Marshall (1950).

⁸ I say "simplified" because Marshall himself was aware of other critical aspects of citizenship, including the overriding need for a shared view of the public good (see note 5 above). As A.M. Rees argues, in both the 1950 essay and in later works, Marshall expresses a number of views which challenge the simplified version of citizenship: he entertains the possibility that rights form a hierarchy, rather than all being absolute, and that the exhaustive exercise of social rights is potentially damaging to community interest (A.M. Rees, "The Other T.H. Marshall," *Journal of Social Policy* 24.3 (1995): 341-362).

adult nationals, and towards the full development of civil, political and social rights, of which, Marshall said, "...it is only in the present century, in fact I might say only with the last few months, that the three runners have come abreast of one another."⁹

There is no doubt that the responses to Marshall's work address questions surrounding rights in the modern world, but the emphasis on the trio of rights as the substance of citizenship reflects the development of citizenship of only the very recent past. In contrast, I will argue here that rights are a necessary expression of citizenship, but that they are wholly dependent on, and therefore subordinate to, the existence of a shared understanding of the good. But as I will argue, beginning with the discussion of Hobbes, because this shared understanding can foster other political ends, rights stand in permanent and uneasy tension with them.

Hobbes and citizenship's dangerous schism

Hobbes presents this tension in its starkest form. His view of man as dangerous and endangered in the state of nature leads him to overcome this danger in the sovereign state. In exchange for his sacrifice of the right to commit violence, the citizen acquires the right to absolute security from all others except the sovereign. This view's most famous presentation appears in the *Leviathan* as the "warre ... of every man, against every man."¹⁰ The Hobbesian state of nature is characterized by the existence of wills whose ends are mutually exclusive; correspondingly, the social contract which ends this state of nature circumscribes the pursuit of these ends, first with the compulsion "to seek Peace, and follow it", and, secondly – in a formula more

⁹ Marshall (1950) 13.

¹⁰ Thomas Hobbes, *Leviathan*. Edited by C.B. Macpherson (London: Penguin Books, 1985)[1651] (henceforth *Lev.*) 185.

commonly associated with Kant's categorical imperative – “be contented with so much liberty against other men, as he would allow other men against himself. . . This is the law of the Gospell; Whatsoever you require that others should do to you, that do ye to them.”¹¹ Upon these principles Hobbes grounds the remaining laws of nature in chapters 14 and 15 of the *Leviathan*. These laws are familiar to Western civilisation; they include such elements as the need for enforceable contracts, equality of rights, the abolition of private vendettas in favour of state correction, and the universal rule of law.

While Hobbes provides a compelling defence of the institutions necessary to preserve civil society, the anthropological picture he paints is incomplete. In this presentation of the principles underpinning the commonwealth, self-preservation is the overriding concern of every man, and the compatibility of all other ends is subordinate to that of survival. While this account seems to explain the existence of the social contract, it cannot explain why there are multiple simultaneous social contracts or states, each in a permanent condition of war with all the others, rather than a single, universal social contract binding all humans on earth, i.e. the universal and homogeneous state. The existing state of international relations suggests the existence of another, third, set of ends, higher than that of survival. That this is so can be seen in instances of voluntary risk for the sake of recognition (honour), undertaken during wartime or not. To account for the difficult and apparently self-contradictory relation between the fear of violent death on the one hand, and need for honour on the

¹¹ *Lev.* 190.

other, a closer reading of Hobbes' treatment of the founding of the commonwealth and in his discussion of honour is helpful.

Hobbes appears to be more interested in the anatomy of the commonwealth than in its origin; the commonwealth, we are told, "is Instituted, when a Multitude of men do Agree, and Covenant ... that to whatsoever Man or Assembly of Men, shall be given by the major part, the Right to Present the Person of them all (that is to say, to be their Representative)..."¹² The passive language of this passage suggests Hobbes takes the foundation of the political system for granted, but in fact Hobbes understood the rational mechanics of the established state to be both easier and safer to describe than the violent and irrational process of founding that state. The Introduction to the *Leviathan* already suggests a radical division between the two: on the one hand, Hobbes describes man as created by God and compares man's internal workings to those of a clock; on the other hand, the state or commonwealth is created by man, and is driven by its own mechanisms.¹³

The parallel between man and state is imperfect. On the one hand, as a kind of machine and the subject of God's creation, man is the sum total of a finite number of impulses and mechanisms with a finite number of ends, which can be identified and

¹² Lev. 228.

catalogued, as they are in Part I of the *Leviathan*. On the other hand, as the creator, in turn, of the commonwealth, the human machine contains a godlike aspect which gives him the capacity for creation *ex nihilo* for any number of ends. Of this latter capacity to found states, Hobbes makes no attempt to reconcile it with his claim that, for all men, self-preservation is the most important end.¹⁴ Moreover, historical experience demonstrates – particularly in Hobbes’ own lifetime – that the sovereign becomes and remains so at considerable risk to himself. Clearly, then, the fear of violent death can be, and sometimes is, overcome by another more powerful impulse to gain the honour of subjects who relinquish their right to violence to the sovereign.

It is perhaps possible to create, from the account I have just presented, a Hobbesian view of citizenship which separates those few inclined to seizing sovereign power, whatever the risk, from the rest of humankind, who follow the first law of nature (“seek Peace, and follow it”)¹⁵. But this position proves untenable, for two reasons. First, Hobbes does not portray rule of the commonwealth as itself a

¹³ “For what is the *Heart*, but a *Spring*; and the *Nerves*, but so many *Strings*; and the *Joynts*, but so many *Wheeles*, giving motion to the whole Body, such as was intended by the Artificer? . . . For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE . . . which is but an Artificiall Man. . . and in which, the *Soveraignty* is an Artificiall *Soul*, as giving life and motion to the whole body; The *Magistrates*, and other *Officers* of Juicature and Execution, artificiall *Joynts*; *Reward* and *Punishment* (by which fastned to the seate of the Soveraignty, every joynt and member is moved to performe his duty) are the *Nerves*, that do the same in the Body Naturall; The *wealth* and *Riches* of all the particular members are the *Strength*; *Salus Populi* (the *peoples safety*) its *Businesse*; *Cousellors*, by whom all things needfull for it to know, are suggested unto it, are the *Memory*; *Equity* and *Lawes*, an artificiall *Reason* and *Will*; *Concord*, *Health*; *Sedition*, *Sicknesse*; and *Civill war*, *Death*. Lastly, the *Pacts* and *Covenants*, by which the parts of this Body Politique were at first made, set together, and united, resemble that *Fiat*, or the *Let us make man*, pronounced by God in the Creation.” (*Lev.* 81-82)

¹⁴ For example, in ch. 31, Hobbes compares the founding sovereign to God, but couches his account in hypothetical terms: “...if there had been any man of Power Irresistible; there had been no reason, why he should not by that Power have ruled, and defended both himselfe, and [other men], according to his own discretion” (*Lev.* 397); in ch. 13, describing the man seeking to protect himself “by force, or wiles, to master the persons of all men he can, so long till he see no other power great enough to endanger him”, Hobbes does not explain how the exercise of force – one of the two ways to master other men – transpires without risk of the agent’s life.

¹⁵ *Lev.* 190.

source of honour or as an office sought by honour-lovers; indeed, he says surprisingly little about the personality of the sovereign. Second, Hobbes shows the need for honour to affect a much wider range of people than those few who rule, even as these citizens of the commonwealth also possess, by virtue of their membership in the social contract the apparently contrary desire for self-preservation. Indeed, man's desire for recognition seems to be infinite, and overcomes his instinct for self-preservation:

For every man looketh that his companion should value him, at the same rate he sets upon himself: And upon all signes of contempt, or undervaluing, naturally endeavours, as far as he dares (which amongst them that have no common power, to keep them in quiet, is far enough to make them destroy each other,) to extort a greater value from his contemners, by damage; and from others, by the example.¹⁶

and:

...Man is then most troublesome, when he is most at ease: for then it is that he loves to shew his Wisdome, and countroule the Actions of them that governe the Commonwealth.¹⁷

It is these excesses of his natural pride – his vainglory¹⁸ – then, and not simply the desire to kill others for its own sake which compel man to submit to the sovereign. The founding of the state does not eliminate pride, but only tempers its excesses so that it falls within the boundaries of mutual compatibility with that of other citizens. That is, in the war of all against all, some will struggle, through word and deed, to acquire the esteem of his peers, even if that struggle entails killing those who will not submit.¹⁹ It is only when he is confronted with his own fear of violent death that he

¹⁶ *Lev.* 185.

¹⁷ *Lev.* 226.

¹⁸ See Thomas Hobbes, *De Cive* (henceforth *De Cive*). Translated and edited by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998) 26.

¹⁹ *De Cive* 26.

submits to the power of another, who, if he is successful, becomes the sovereign.²⁰

The resulting commonwealth is successful so long as the sovereign remains adequately strong²¹. When he ceases to be strong enough to suppress the pride of others, the struggle begins anew; consequently, the honour-seeking Hobbesian citizen is always evaluating his position within the polity on the basis of the conflicting aims of self-preservation and the need for recognition.

Hobbes' view of citizenship is minimalist: the good citizen is one who refrains from infractions on the health or property of his fellows. These needs having been met, nothing distinguishes the good from the bad citizen; the state does accord deserving citizens some honours, but even in saying this, Hobbes appears to be more concerned with the distribution of honours as a necessary monopoly of the sovereign than as a means to encouraging better citizenship practice. Similarly, the soldier commanded to fight in war may "in many cases refuse, without Injustice", but the sovereign may, with equal justice, execute him for his refusal.²² The Hobbesian citizen is characterized by a concern for his own well-being, he is therefore obedient, and his love of honour is thereby temporarily suppressed. The ephemerality of this suppression makes Hobbesian citizenship uneasy, for the regime remains at constant risk of being overcome by dissatisfied citizens. The Hobbesian model of citizenship entails a tension between the two mutually exclusive goods of security and

²⁰ Note that on this analysis, Hobbes' distinction between the "commonwealth by institution" and the "commonwealth by acquisition" becomes superfluous; whereas the former comes into being through the consent of the governed to take a sovereign (*Lev.* 228), the latter appears "when men singly, or many together by plurality of voyces, for fear of death, or bonds, do authorise all the actions of that Man, or Assembly, that hath their lives and liberty in his Power." (*Lev.* 251-252).

²¹ *Lev.* 272.

²² *Lev.* 269.

recognition; that Hobbes himself was fully aware of this tension is evident in his contrast of justice and honour. To justice, according to Hobbes, belong those things – and only those things – pertaining to the rights inherent in the social contract:

For where no Covenant hath preceded, there hath no Right been transferred, and every man has right to every thing; and consequently, no action can be Unjust. But when a Covenant is made, then to break it is *Unjust*: And the definition of INJUSTICE, is no other than *the not Performance of Covenant*. And whatsoever is not Unjust, is *Just*.²³

Hobbes' conception of justice, then, is purely negative; to execute one's contractual obligations is to behave justly, and to receive one's contractual due is equally just. Subjects and sovereign alike hold their positions only by virtue of performing their contractual rights.

In contrast, what is honourable pertains exclusively to the sovereign. "To obey, is to Honour. . . *Honourable* is whatever possession, action, or quality, is an argument and signe of Power,"²⁴ Hobbes writes. Since obedience cannot be a characteristic of the sovereign, and since any power is given to particular subjects over other subjects only at the sovereign's discretion, it follows that, within the social contract a) the sovereign's power is the sole font of all honours; and b) the honour of subjects is therefore posterior to the social contract which recognizes the sovereign's power at the outset. Unlike justice, then, honour is not distributed through the social contract itself; it is dispensed at the sovereign's whim in the form of titles, coats of arms, offices, etc. The contingency of this distribution ensures that distributed honours stand primarily as emblems of the sovereign's own power, rather than the freely granted recognition of the honoured by their fellow citizens.

²³ *Lev.* 202.

Hobbes' presentation of the state, then, contains three problems for the modern student of citizenship. First, in the interest of maximizing domestic peace, Hobbes constructs a state open to telocratic rule; consequently, the legitimacy of the social contract, which relies on the observation of the right to security, can be submitted to the sovereign's authority. Second, it contains no provision for the free and mutual recognition by citizens for one another. Finally, and as a result of these two problems, it does not contain the moment of freedom necessary to allow the citizen to choose the good and thus distinguish herself from the subject; that is, the Hobbesian state is a civil, rather than a civic association.

Hegel's response: Ethical life

The Hobbesian state rests on the existence of subjects, for whom the conditions for justice and honour are diametrically opposed in peace and war. Hegel, recognizing the intrinsic instability of the Hobbesian view of politics, constructed a model of citizenship that synthesizes these two ends by making them not only compatible, but mutually necessary. The citizenship model outlined in Hegel's *Philosophy of Right* provides citizens with both security and mutual and free recognition. In this section, I will argue that the vital civil society and independent bureaucracy Hegel defends provide bulwarks from arbitrary sovereign authority (that is, from telocracy), and thus provide the deliberative space which distinguishes the citizen from the subject. Nonetheless, I will argue, Hegel's project ultimately fails, because his presentation of ethical life as the glue which binds the citizen's private

²⁴ Lev. 152, 155.

ends to those of the state in a civic democracy fails to overcome the conflict between rights and recognition which undermined the Hobbesian state.

The term “civil society” in contemporary scholarship is generally used to denote the sphere containing the family, the marketplace, and voluntary associations; the civil society rubric is therefore used as a way of separating these institutions and their ends from that of the state, whose ends are generally seen as distinct from those of civil society. This view of civil society has particularly been dominant in analyses of post-communist states, where the state is viewed as jealously guarding its power over and against the interests of society. In a typical recent example, Marcia Weigle views civil society as

the self-organization of society in a public realm, bounded by a shared set of norms, whereby individuals and groups pursue personal or collective interests in freely constituted organizations in the context of a rule of law that regulates interactions and mediates among interests. . . Actors in civil society demand autonomy from state power but accept institutional and legal restraints that underlie state domination.²⁵

This view of civil society has been adopted – with only minor modifications – almost universally among its students, with the notable exception of some Marxists; members of this last group reject the civil society-state division as an illusory distraction from the essential category of economic relations.²⁶

Hegel’s account of civil society shares some features – notably the pluralism of social relations – with the modern conception, but rather than dividing the existing world into two components²⁷, Hegel treats civil society as a complete historical and political moment. As with his other accounts of historical moments or stages, Hegel

²⁵ Marcia A. Weigle, *Russia's Liberal Project* (University Park, PA: Pennsylvania State University Press, 2000) 28-29.

²⁶ See, for example, Ellen M. Wood, “The uses and abuses of ‘civil society’,” *Socialist Register* (1990): 60-84.

shows not only why civil society (like family, for example) is, by itself, irrational (and therefore inadequate), but also how its essential elements are preserved even as it is sublated (*aufgehoben*) and incorporated into a more rational structure.

Hegel includes civil society, along with the family and the state, under the more general rubric of *Sittlichkeit*, or ethical life. It is only within ethical life that the disparate moments of consciousness incorporated in the particular will (or “conscience” in Hegel’s terms) on the one hand and the universal (“the good”), on the other, become fully aware of each other, thus giving rise to the state of self-consciousness. “Ethical life,” Hegel writes, “is a subjective disposition, but one imbued with what is inherently right.”²⁸ In this respect, ethical life differs from the preceding stages of consciousness, such as abstract right and morality, each of which is an internally logical moment which butts up, without resolution, against subjective inclination. In ethical life these moments are integrated, the conflicts between them resolved. Ethical life therefore offers an attractive possibility for the student of modern citizenship: that the citizen’s subjective inclination and the objective good can somehow be not simply compatible, but identical, and, moreover, not as a result of desperation, oppression or imposed ignorance. As Hegel writes,

On the contrary, his spirit bears witness to them as its own essence, the essence in which he has a feeling of his selfhood, and in which he lives as in his own element which is not distinguished from himself. The subject is thus directly linked to the ethical order by a relation which is more like an identity than even the relation of faith or trust.²⁹

²⁷ Contrast Wood 62.

²⁸ G.W.F Hegel, *Philosophy of Right*, trans. T.M. Knox (Oxford: Clarendon, 1967) (henceforth *PR*) §141R.

²⁹ *PR* §147.

At the very least, then, it is worth investigating Hegel's account of the relation between particularity and the good in ethical life for the sake of a model of citizenship robust enough to avoid the pitfalls of both dictatorship and anarchy: a civic nomocracy.

Hegel's conception of ethical life comprises three moments, embodied in the institutions of family, civil society and state. The family's ethical aspect – that is, the essential part of it which is carried into ethical life – is its capacity to transform the individual's self-interest “into something ethical, into labour and care for a common possession.” In the family – more exactly, in the existence of love – we find the first instance of consciousness raised to the level of recognition of another as an end in him- or herself, regardless of that individual's actions. Marriage's origin

lies in the free consent of the persons, especially in their consent to make themselves one person, to renounce their natural and individual personality to this unity of one with the other. From this point of view, their union is a self-restriction, but in fact it is their liberation, because in it they attain their substantive self-consciousness.³⁰

This self-consciousness marks a vital transition from the stages which precede ethical life, such as abstract right, for example; in abstract right, the only restrictions on the exercise of self-interest are the laws guaranteeing basic civil rights: property, contract, and protection from physical harm.

The family alone is an inadequate basis for genuinely political life, and therefore for citizenship, because it consists in pure individuality³¹; the particular family's existence is subject to dissolution through irreconcilable differences, the

³⁰ *PR* §162.

³¹ Hegel makes a critical distinction between individuality and particularity. To the first belong those attributes which belong to the individual person, but universally – as, in our time, the right to vote or to own property. Particularity, on the other hand, refers to the purely subjective set of ends which determine one person's actions and set him apart from others. See § *PR* 185.

children's coming of age, or the death of parents.³² The family alone provides no substantial basis for relations between particulars, whether these be families (each of which has the unified character of a "self-subsistent concrete person"³³) or actual individuals. While love provides the foundation for the recognition which will ultimately characterize relations between citizens under ethical life, it is only the model for this recognition. Hegel uses the example of Antigone to demonstrate why love cannot sustain relations beyond the family. The law of the family is "the law of a substantiality at once subjective and on the plane of feeling ... the law of the ancient gods, 'the gods of the underworld' ... 'an everlasting law, and no man knows at what time it was first put forth'."³⁴ There is no way to resolve a conflict between the law of the family and public law, because the former rests on unconditional love, whereas the latter is concerned with individuals only insofar as their actions have a public meaning. The family's conflict with public law occurs particularly – as with Antigone – in the case of crime; love is unconditional, but recognition of the citizen is cancelled (through the suspension of certain civil rights, the right to vote, etc.) when he commits a crime. The family's ethical strength is also its weakness, for love provides recognition without distinguishing between good and bad action.

The problem of creating a world which provides recognition while distinguishing good from bad action is a particularly modern one. In the ancient Greek world, Hegel says, the distinction between good and bad action was clear; ancient

³² *PR* §§176, 177 and 178, respectively.

³³ *PR* §181.

³⁴ *PR* §166R.

ethical life subsisted in a “primitive unsophisticated intuition”³⁵ which provided no recognition for the particular and subjective ends of its citizens. It was this inability to cope with subjectivity, witnessed by Plato, that led to the collapse of the ancient Greek world.³⁶ The treachery of Socrates illustrated in the *Apology* demonstrates this amply; the subjective distance which permits philosophical dialectic also undermines the city’s integrity.³⁷ Unlike Plato’s course in the *Republic*, then, Hegel does not attempt to exclude particularity, but to make it an essential part of ethical life.

The institution of civil society provides the necessary middle term between subjective inclination and the public good by presenting good action in a plurality of particular ends. Private ends are not abolished or set against the public good; rather, Hegel says,

In the course of the actual attainment of selfish ends ... there is formed a system of complete interdependence, wherein the livelihood, happiness, and legal status of one man is interwoven with the livelihood, happiness, and rights of all. On this system, individual happiness, etc., depend, and only in this connected system are they actualized and secured.³⁸

It is a mistake, however, to see the satisfaction of any given individual ends as the highest purpose of ethical life. The bourgeois view of the state as merely the vehicle for the satisfaction of subjective ends, as we will see, is inadequate to a rational understanding of the state.

Just as the city of pigs was supplanted by the feverish city in the *Republic*, the system of needs becomes absorbed into ethical life. According to Hegel, the inadequacy of the bourgeois view of the state is visible in the administration of justice

³⁵ *PR* §185R.

³⁶ *PR* §§185R, 124R.

³⁷ Compare *Rep.* 537e and *Apology* 21c-23a.

³⁸ *PR* §183.

to the extent that the ends of public law extend beyond those of simple regulation of the system of needs; monuments, statues and other such useless things are built, wars are fought, scholarly research and artistic pursuits are supported, and honours are given to citizens of exceptional virtue. Whatever the nature of a particular state's law, it always has these characteristics: it is the expression of a particular and known conception of right [*Recht*], is adequately compelling to be understood as "universally valid"³⁹, and is posited as law.⁴⁰ This act of positing contains an irrational element – "the contingency of self-will"⁴¹ – for it occurs in what Hegel elsewhere⁴² calls the time of heroes, a time in which there is no prior constraint of law on political action. This moment of irrationality should be spared scrutiny after the founding, according to Hegel, and this is particularly true of the constitution: "It must be treated rather as something existent in and by itself, as divine therefore, and constant, and so as exalted above the sphere of things that are made."⁴³

This irrational or divine element inhabits all law, even if it is largely hidden from view by juridical science, which necessarily ignores it as much as possible. Authority, rather than reason, is the "guiding principle" of juridical science, which must therefore concern itself with classifying the many determinations of law rather than its origins. Should it turn to the political nature of law and raise "the further question about the rationality of a specific law... the question may seem perverse to

³⁹ PR §210.

⁴⁰ PR §211.

⁴¹ PR §212.

⁴² PR §93A; the passage reads, "The heroes who founded states, introduced marriage and agriculture, did not do this as their recognized right, and their conduct still has the appearance of being their particular will. But as the higher right of the Idea against nature, this heroic coercion is a rightful coercion. Mere goodness can achieve little against the power of nature."

⁴³ PR §273R.

those who are busied with these pursuits, but their astonishment at it should at least stop short of dismay.”⁴⁴ Hegel’s point should not be interpreted as a kind of Thrasymachan justification of brute force or of tyranny. In the Introduction to the *Philosophy of Right*, he writes, “That force and tyranny may be an element in law is accidental to law and has nothing to do with its nature.”⁴⁵ It is more correct to understand Hegel’s account of law as divided into two parts: the first is fitting to the system of needs and appears under the rubric of civil society, while the second belongs to the state, as a separate moment of ethical life.

The operative law within civil society, then, governs the system of needs in its multiple facets. Hegel’s account of civil society includes the development of all necessary legal institutions for the provision of all aspects of the security inherent in Hobbes’ category of self-preservation. These include not only bare protection from violent death, but also the provision of all things required to make it possible both to become and remain a recognized member of society. Here we find provision for the prevention of crimes against the person⁴⁶, the universal right of all citizens to engage in contracts and property transfers⁴⁷, regulation of industry⁴⁸, public education⁴⁹, welfare⁵⁰, and, via the Corporations, the regulation of professions.⁵¹ Just as in the contemporary conception of civil society, membership in the groups of civil society is

⁴⁴ *PR* §212R.

⁴⁵ *PR* §3R.

⁴⁶ *PR* §232.

⁴⁷ *PR* §217.

⁴⁸ *PR* §236.

⁴⁹ *PR* §241.

⁵⁰ *PR* §§242-245.

⁵¹ *PR* §§250-256.

fluid and subject to the caprice of the individual citizen.⁵² The laws governing civil society tend to dissolve those of the family by liberating the individual from the contingencies of familial affections and property. As a result, Hegel writes, "...the individual becomes a son of civil society which has as many claims upon him as he has rights against it."⁵³ That is, the laws of civil society have a symmetrical character: my rights as a worker are precisely proportionate to your obligations as an employer; my obligations as a taxpayer amount precisely balance my rights as a consumer of government services. The relations of civil society operate irrespective of which individual holds which position, such that civil society's members are not treated *identically*, although, to anticipate Kojève, they are treated *equivalently*.

The institutions of civil society, for Hegel, also have a vital function in the development of citizenship. Through public education and welfare⁵⁴, in particular, and through civil society's tolerance of social mobility, individuals are endowed with the capacity for reflection and the recognition of their autonomy; it is through these functions of civil society that the individual is raised from the level of producer, consumer and taxpayer to the level of free citizen. In short, civil society is necessary for modern citizenship. On the other hand, because the members of civil society recognize others only as economic means to their own particular ends (albeit within the necessary constraints governing social and economic relations), civil society alone cannot provide the condition of recognition by all its members for all the others.

⁵² PR §237.

⁵³ PR §238.

⁵⁴ PR §§238-239.

The Hegelian state shares none of these characteristics with civil society: membership in the state does not secure self-preservation, does not entail a symmetrical relation with other members, and permits citizens to recognize one another as ends in themselves. It is vital to the Hegelian understanding of ethical life not to conflate the particular ends of civil society and the state, a common error which usually takes the form of subsuming the state to the ends of civil society. On this error, Hegel writes:

If the state is confused with civil society, and if its specific end is laid down as the security and protection of property and personal freedom, then the interest of the individuals as such becomes the ultimate end of their association, and it follows that membership of the state is something optional. But the state's relation to the individual is quite different from this. Since the state is spirit objectified, it is only as one of its members that the individual himself has objectivity, genuine individuality, and an ethical life. Unification pure and simple is the true content and aim of the individual, and the individual's destiny is the living of a universal life. His further particular satisfaction, activity, and mode of conduct have this substantive and universally valid life as their starting point and their result.⁵⁵

The distinction between the personal freedom necessary for membership in civil society and the objective freedom of the citizen is crucial to ethical life and the resolution of the tension between private inclination and public duty. Objective freedom relies on the rational, and for Hegel – as for philosophers from Plato to Kant – reason liberates man from the appetites and inclinations which otherwise enslave him.

Objective freedom, and therefore ethical life, requires substantial rationality. That is, the institutions and laws which frame individual freedom must be fleshed out with customs (*Sitten*) which give them meaning, or they remain desiccated ideals without concrete recognition. The Terror which followed the French Revolution,

⁵⁵ *PR* §258R.

Hegel argues, was precisely this kind of abstract framework, in which the atomistic interests of the individual see in the will of the sovereign nothing but another particular will. The coincidence or opposition of these particular wills is a matter of both luck and appearance: luck because the government represents only the most powerful of factions, and appearance since the absence of customs through which to demonstrate one's loyalty or citizenship reduced the index of criminal guilt to intent rather than action. The resulting executions are completely devoid of any human dignity or virtue; neither courage nor justice have an avenue for expression where the highest expression of freedom is the negation by one particular will over another. "It is," Hegel wrote, "the coldest and meanest of all deaths, with no more significance than cutting off a head of cabbage or swallowing a mouthful of water."⁵⁶

The mutual dependence of reason, freedom and custom we find in Hegel's account of citizenship provides a middle term between subjective inclination and sovereign fiat. This middle term gives subjects the necessary freedom to become citizens with a shared view of the good. Against any appearance that ethical life might become a despotic institution in which reason, freedom and custom are reduced to moments of a dictator's will, Hegel is especially attentive to subjective freedom as an essential element of citizenship. Hegel's state does contain a monarch, but her role is constrained by the other institutions of state, such that the moment of decision is insulated from the substance of the decision. The identification of the monarch's will with that of the state dignifies policy by showing the will of the state to be a single human will acting for all, and not simply a compromise cranked out by the

⁵⁶ G.W.F. Hegel, *Phenomenology of Spirit*, A.V. Miller, trans. (Toronto: Oxford University Press,

mechanism of competing factions inside the black box of state.⁵⁷ Freedom of speech and press are necessary aspects of the state, for Hegel, precisely because the heterogeneous opinions within civil society are thus provided with a safety valve, while the rational construction of the state creates boundaries which render free speech harmless to it.⁵⁸ Similarly, Hegel advocates a bicameral system of elected representatives drawn from civil society.⁵⁹

In ethical life, the state is divided functionally from civil society, but ethically bonded to it. Similarly, the citizen of this state is a synthesis of private inclinations on the one hand and the rights and duties connected with the sovereign on the other, but these two aspects are linked through what is substantive and rational. We saw in our account of the Hobbesian state that these two spheres existed in a state of tension which escalates to direct contradiction during periods of political crisis; the Hobbesian citizen must choose between risking his life in battle or testing the sovereign's willingness to execute him; sheer biological existence remains his primary concern.

The test of whether Hegel has successfully incorporated the subjective and objective spheres into a single account is whether the state under ethical life falls into its constituent parts or remains united when it is threatened. Of the citizen's willingness to risk his or her life, Hegel writes: "Sacrifice on behalf of the individual of the state is the substantial tie between the state and all its members and so is a universal duty. . . those who are in [this tie] form a class of their own with the

1977) (henceforth *PhG*) §590. See also *PR* §258R.

⁵⁷ *PR* §281R.

⁵⁸ *PR* §319.

characteristic of courage.”⁶⁰ In ethical life, unlike in morality, duty does not contradict private inclinations; on the contrary, the ethical bond makes the performance of duty the ultimate act of freedom:

[F]irst, liberation from dependence on mere natural impulse and from the depression which as a particular subject he cannot escape in his moral reflections on what ought to be and what might be; secondly, liberation from the indeterminate subjectivity which, never reaching reality or the objective determinacy of action, remains self-enclosed and devoid of actuality. In duty the individual acquires his substantive freedom.⁶¹

There is no separation of the will of the citizen from that of the sovereign under ethical life. Unlike in abstract right, in which one’s own right is dependent on the duty of another, in ethical life, “right and duty coalesce, and by being in the ethical order a man has rights in so far as he has duties, and duties in so far as he has rights.”⁶²

In light of the problems we observed with the citizen in the Hobbesian state, we have now seen that Hegel’s treatment of citizenship is noteworthy for three reasons. First, he links the willingness to risk life to the autonomy of the rational individual, rather than the fear of violent death. Second, in Hegel’s ethical life, the individual achieves the rational autonomy necessary for citizenship through the institutions of civil society. Finally, recognition is accorded to all citizens on the basis of their capacity to pursue their own ends at the level of civil society. In principle, then, Hegel’s model of ethical life appears to alleviate the problems found in Hobbes’ account of the state based on fear. We saw that Hobbes suppresses citizens’ willingness to take risks for the sake of honour in order to guarantee the preservation of the state and its subjects. Hegel, in contrast, attenuates the risk-taking, honour-

⁵⁹ *PR* §311.

⁶⁰ *PR* §325.

⁶¹ *PR* §149.

loving impulse by embodying the recognition of all citizens in the Corporations and the estates.

Nonetheless, Hegel's state is, like that of Hobbes, not fully able to contend with the excesses of the human impulse for risk. Whereas as we saw above, the appetitive impulses are brought under control through the pragmatic reason governing civil society, Hegel's discussion of risk (§§327-328) demonstrates that it is both necessary for the preservation of the state, but also the greatest source of danger to the state. For this reason, he includes both soldiers and murderers in his examination of courage, the former being distinguished from the latter only by "the end and content"⁶³ of the life-risking action in question; only risk-taking which aims at "the genuine, absolute, final end, the sovereignty of the state"⁶⁴ is *good* courage. If bad and good courage are distinguished by their ends, we might expect Hegel to follow Plato in prescribing an enthymeme for courageous citizens to make the ends of their courage those of the state, just as the individual in civil society is educated to link the particular ends of his economic activity with those of the system of needs in general.⁶⁵

In fact, Hegel evinces surprisingly little concern about the education of citizens' courage. Of the courageous man's ends, Hegel says his "inner motive need only be some particular reason or other, and even the actual result of what he does need be present solely to the minds of others and not to his own."⁶⁶ It follows that good courage, unlike good conduct in civil society, requires no intrinsic link between

⁶² PR §155.

⁶³ PR§328R.

⁶⁴ PR §328.

⁶⁵ PR §187R.

⁶⁶ PR §327.

particular and public ends, and indeed, this link (which was the purpose of education in civil society) is severed altogether in the courageous citizen, who requires only the “absolute obedience”⁶⁷ and willingness for self-sacrifice traditionally associated with soldiery.

The ends of courage, however, are necessarily multiple, as are those of the appetites. Whereas the latter can be constrained through education and the justice system, the former have no constraints.⁶⁸ It is no accident that courage appears at the point in the *Philosophy of Right* where Hegel ends his discussion of the rational internal mechanics of the state and moves to the chaotic realm of international relations; while reason may underpin the state’s structure, it can neither create nor control courage. For this reason, the unity of will between sovereign and citizen which characterizes Hegel’s ethical life is imperfect and unpredictable. Ethical life is an ideal-type rather than a prescription for a healthy state, and is manifested only where a balance exists between reason and courage. If history is any guide (and Hegel himself takes it as his guide), the courageous appear not to be entirely educable – that is, they are not always receptive to the rational – and it is for this reason that the education of the courageous remains a central problem of political philosophy.

Carl Schmitt and *The Concept of the Political*

⁶⁷ PR §328.

⁶⁸ Courage, Hegel writes, is “a display of freedom by radical abstraction from all particular ends, possessions, pleasure, and life” (§327). This presentation of courage partly echoes Plato’s account of the courageous, or “spirited”, citizens. On the one hand, Plato writes that spirit (*thymos*) is “irresistible and unbeatable ... so that its presence makes every soul fearless and invincible in the face of everything” (*Rep.* 375b). On the other hand, and unlike Hegel, for Plato the spirited must somehow be educated to prevent exercising their courage against their fellow citizens; the model for these guardians is a dog, disposed “to be as gentle as can be with their familiars and people they know and the opposite with those they don’t know.” (*Rep.* 375e).

Carl Schmitt's *The Concept of the Political* is a concise expression of the postmodern counterpoint to Hegel's understanding of politics. A student of Max Weber, Schmitt employs many of Hegel's categories, but he abandons the principle – fundamental to Hegel's philosophy – of a universal and knowable reason guiding the development of the perfect state. Where Hegel subordinates risk by making reason the grounding principle of ethical life, Schmitt locates the political in the human capacity to distinguish friend from enemy. For Hegel, this capacity is one among many tools of reason for the preservation of the state; he views war as a kind of ethical housecleaning periodically necessary for the health of the state.⁶⁹ For Schmitt, on the other hand, the possibility of war against an enemy is the origin of the political.

For Schmitt, the political has become obscured because of the very interpenetration of state and civil society Hegel observed and overcame in the rigorous separation of these two elements in ethical life. Schmitt argues that the greatest danger to the political is that the state become the tool of arbitrary and private wants of one or another segment of civil society – that is, that it become telocratic. Like Hegel, Schmitt sees these private ends as both unavoidable and functionally neutral with respect to the state, and dangerous only if one or another controls the state.⁷⁰ Schmitt locates the historical origin of this mixing of state and civil society in the democratization of European states after 1848; according to Schmitt, only for a brief period, between 1806 and 1848, was the political synonymous with the state.

⁶⁹ See *PR* §324.

⁷⁰ Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago and London: University of Chicago Press, 1996) (henceforth *CP*) 23n.

The identification of the state with civil society obscures the Hegelian ideal of the “universal state”, Schmitt argues, and replaces it with the “total state”.⁷¹

Although the friend-enemy distinction is most easily associated in the modern world with different nationalities, Schmitt is careful to note that friendship and enmity can be constructed around any number of principles. The enemy need not be, for example, an economic competitor or morally reprehensible. It is enough, Schmitt writes,

that he is, in a specially intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible. These can neither be decided by a previously determined general norm nor by the judgment of a disinterested and therefore neutral third party.⁷²

That is, any conflict with the enemy, in the narrow sense in which Schmitt employs the term, takes place in the chaotic arena which exists only outside the state’s power – that is, either in the inter-state sphere, or in cases where state sovereignty dissolves, i.e. where civil war is possible. The impossibility of a neutral, third-party judgement to adjudicate between enemies is a crucial identifier of the political, particularly because the contemporary tendency of national economies to integrate with the international economic system creates a highly visible but non-political set of relations in the international sphere. Agreements such as GATT, NAFTA, and the economic parts of the EU are overseen by third-party authorities; so long as member states are willing to submit to these agreements, the competition between them falls into that area Schmitt calls “neutral” – that is, they are simply part of civil society.

⁷¹ CP 24.

⁷² CP 27.

Political friendship and enmity are specifically group phenomena; individual friendships and private adversaries are not political. Here, too, Schmitt echoes Hegel's position on the importance of the state's power to attenuate the importance of private attachments and animosities.⁷³ Schmitt's conception of friendship, like Hegel's conception of ethical life, is unfashionably constructed around a shared view of the good which transcends all other attachments; above all, it hinges on a clear view of the enemy which has meaning only through "the real possibility of physical killing."⁷⁴ Nonetheless, war is not a necessary condition for the political, and – in contrast to Hegel's view⁷⁵ – the political is not eroded by extended periods of peace. Thus, Schmitt writes, "The definition of the political suggested here neither favors war nor militarism, neither imperialism nor pacifism. Nor is it an attempt to idealize the victorious war or the successful revolution as a 'social ideal' ..."⁷⁶ Political enmity does not preclude private friendships or alliances, nor does it necessarily entail economic or any other kind of competition between enemies. Alliance and neutrality are both possible – indeed, are practically necessary – conditions between enemies, for Schmitt.⁷⁷

Schmitt's concept of friendship offers a model of citizenship which differs from Hegel's in two respects. First, Schmitt unhitches the "neutral" sphere of civil society from the state in recognition of the genuinely international civil society he saw

⁷³ Cf. *PR* §103. Schmitt notes that the original Greek for the Christian maxim, "love your enemies" uses the term "egyros" (private enemy) rather than "polemios" (political enemy). He adds, "Never in the thousand-year struggle between Christians and Moslems did it occur to a Christian to surrender rather than defend Europe out of love toward the Saracens or Turks." (*CP* 29).

⁷⁴ *CP* 33.

⁷⁵ *PR* §324.

⁷⁶ *CP* 33.

⁷⁷ *CP* 35.

emerging in 1932. Second, by abandoning universal rationality (and a corresponding set of political institutions) as the standard against which the political is measured, he avoids the pitfall Hegel encountered in setting good (i.e. rational) against bad (irrational) courage; wherever a common political enemy exists, there we necessarily find political friendship, too. Courage, or the willingness to risk one's life implicit in Schmitt's account of the perception of the enemy, is – without qualification – the *sine qua non* of the political. Schmitt's description of a world expunged of risk-taking, strikingly similar to the universal and homogeneous state, views that world as hypothetical, at least for the moment:

If the different states, religions, classes and other human groupings on earth should be so unified that a conflict among them is impossible and even inconceivable and if civil war should forever be foreclosed in a realm which embraces the globe, then the distinction of friend and enemy would also cease. What remains is neither politics nor state, but culture, civilization, economics, morality, law, entertainment, etc. If and when this condition will appear, I do not know. At the moment, this is not the case.⁷⁸

It is true, on the other hand, that a Schmittian model of citizenship seems to imply an irreducibility of political identity some, such as Marcuse, call “existential”.⁷⁹ But Schmitt's portrait of political plurality is not so much prescriptive as cautionary. Neutrality in all things – that is, abstention from the political – is always possible,⁸⁰ but genuine neutrality (barring a global political union) entails an absolute pacifism that conceals the enemy and thus endangers oneself.⁸¹

⁷⁸ CP 53-54.

⁷⁹ Herbert Marcuse, “The struggle against liberalism in the totalitarian view of the state,” pp. 3-42 in *Negations: Essays in Critical Theory*, Jeremy J. Shapiro, trans. (Boston: Beacon Press, 1968) 30.

⁸⁰ CP 35-36.

⁸¹ The primary danger is occupation rather than immediate death. Schmitt writes, “If a people is afraid of the trials and risks implied by existing in the sphere of politics, then another people will appear which will assume these risks by protecting it against foreign enemies and thereby taking over political rule.” (CP 52).

It would be a profound error to reduce Schmitt's argument to cultural essentialism, and, correspondingly, a Schmittian concept of citizenship to an ethnic one.⁸² Schmitt never uses the term "identity" in the *Concept of the Political*, but almost exclusively employs the language of friend and enemy. For Schmitt, the essential moment in the articulation of the friend-enemy distinction is the expression of sovereignty, not of identity. An understanding of citizenship grounded on Schmitt's concept of friendship, then, requires a brief excursus into his view of the origin of the political.

Like Hobbes and Hegel, and against exponents of constitutional liberalism, Schmitt locates sovereignty in personality rather than in law. As we saw in our examination of Hegel, the moment of political decision rests in the single act of volition, the "I will" of the sovereign, no matter what rational democratic or bureaucratic contests and considerations precede it. For Schmitt, of course, the importance of this moment grounds his famous doctrine of decisionism. In his 1922 work (only slightly modified for the 1934 edition) *Political Theology*, Schmitt identifies the exercise of sovereignty, the moment of the decision, as the decision concerning the exception.⁸³ Schmitt saw the weakness of constitutional liberalism in its certainty that situations threatening the public order can be anticipated and accounted for before the fact; that is, its inability to acknowledge the very possibility

⁸² It would be cowardly, nonetheless, to avoid mention of Schmitt's anti-Semitism and, his membership, from 1933 to 1936, in the Nazi party. Neither of these are necessary consequences of what is essential in Schmitt's thought, but, as Tracy Strong has pointed out, we must remain attentive to the possibility that some will see the pursuit of such courses as necessary (see Tracy Strong, "Foreword" in *CP*, xxv).

⁸³ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, *Studies in Contemporary German Social Thought*, ed. Thomas McCarthy (Cambridge, MA: MIT Press, 1985) (henceforth *PT*) 5.

of the exception.⁸⁴ The exception cannot, by definition, be precisely defined; all that can be said of it is that it is an “extreme peril, a danger to the existence of the state, or the like.”⁸⁵

The moment of decision is the liminal political moment *par excellence*; like the sovereign in both Hobbes and in Hegel. Schmitt’s sovereign acts from the edge of a sphere of pure chaos, without prescribed norms and outside of any measure of justice. Sovereign decision is required, for example, to determine whether an assassination is merely a single murder, or the outermost edge of a dangerous political movement which threatens the whole.⁸⁶ The decision is never as simple as a declaration of war; it rather frames a given situation and determines what falls within the confines of normal, orderly life, and what falls into the realm Hobbes called the war of all against all.⁸⁷ In the determination of the exception, then, all prior norms, including laws, vanish. In practice, this possibility is entrenched in the possibility found in the constitutions of most Western states, to declare states of emergency in which normal laws are suspended. This provision has the appearance of being paradoxical, for it is a clear example of the insuperable tension between security and risk we found in both Hobbes’ and Hegel’s accounts of the state. For Schmitt, as for these other two thinkers, the provision for a state of emergency is problematic only from a purely juridical perspective, i.e. from the point of view that law is the origin of order and, therefore, of sovereignty. Yet this power exists, and that the legal order

⁸⁴ PT 6.

⁸⁵ PT 6.

⁸⁶ The “war on terrorism” following the events of September 11, 2001 clearly frames that day’s actions as a danger of the latter type.

⁸⁷ PT 9.

outlines the conditions for its own suspension implies that the law exists only by virtue of the higher power of the sovereign.⁸⁸

Schmitt thus shows himself to be concerned with risk or courage, but in this respect he is allied with Hobbes and his view of the state as social contract against Hegel and his rational state. For Schmitt, the political is derived from a lethal threat to the normal, and such a threat originates in a life-risking enterprise by some human agent.⁸⁹ In Schmitt's account, at the moment the collective is threatened it is cast back into the war of all against all; the sovereign decision is the creation of a new social contract. The rarity of the sovereign decision does not detract from its importance; generations can pass without the exceptional case provoking the need for it. What is critical, for Schmitt, is that the *possibility* of the exception – and therefore of the articulation of friend and enemy – be always recognized; it is enough that the sovereign decision recede to a mere possibility under normal conditions, when legal norms prevail: "Unlike the normal situation, when the autonomous moment of the decision recedes to a minimum, the norm is destroyed in the exception."⁹⁰ That the norm can be destroyed in the exception indicates the relation of the normal – including domains such as religion, culture, economy, law and science – to the

⁸⁸ PT 14.

⁸⁹ The case of states of emergency caused by natural disasters falls outside this category, but does not detract from the argument that the legal order is dependent on the political and that the sovereign decision retains the capacity to abolish the normal. This is apparent in the fact that, even where the "enemy" is a natural phenomenon such as an earthquake, citizens remain willing to submit to suspensions of certain rights for the sake of the well-being of the whole.

⁹⁰ PT 12.

moment of sovereign decision; these are not simply subordinate to the political, but wholly dependent on it.⁹¹

Let us consolidate our findings concerning the nature of the citizen in the thought of the three thinkers examined so far with respect to reason and courage. Schmitt's rigid delineation of the political from all other spheres of human relations approximates the distinction, already found in Hegel, between civil society and the state. What divides Schmitt from Hegel in this respect is focus; whereas Hegel placed reason at the centre, and courage at the periphery, of his analysis of the state, Schmitt reverses these positions. The rationality at the centre of Hegel's political science resolved the paradox of the subject-soldier we found in Hobbes: if the justice in the social contract is its ability to protect citizens from a violent death, then the moment at which that social contract requires the risk of life to defend its existence is the moment it dissolves. Yet Schmitt's position, which rejects the centrality of universal reason in its account of the political, does not return to the Hobbesian paradox. The reason for this is that while Hobbes sees the state as, above all, a function of the fear of violent death, for Schmitt it is a function of authority.

Schmitt's view of the political depends on the sovereign's ability to invoke the courage of citizens when necessary, and to conceal it when it is unnecessary. Like Hegel, then, Schmitt appeals to a regulative principle to govern the tension between appetites and courage. Whereas Hegel saw that principle as reason – which has, as

⁹¹ Heinrich Meier's comparison of the 1927, 1932 and 1933 editions of *The Concept of the Political* demonstrates Schmitt's reaction, in the two later editions to Leo Strauss's critical essay; the later editions are much sharper in their emphasis on the political as not simply one sphere among other "relatively independent" domains such as aesthetics or economics, but utterly authoritative

Hegel admits, limited utility in the face of courage – Schmitt replaces reason with authority. The right of the sovereign to demand citizens' self-sacrifice derives from the internal logic of that sovereign's particular authority; universal reason and the desire for self-preservation do not exhaust that list. A citizenship founded on Schmitt's concept of the political places the burden of managing the tension between the desire for survival and the desire for risk with the sovereign. The consuming citizen and the fighting citizen are not explicitly present at the same moment in the same individual, but must be created with each new foundation of the social contract – a creation which occurs only in the moment of the political exception. The overt bond between the state and the citizen varies with the political situation: under normal conditions, law governs, while under exceptional circumstances law gives way to authority. But it is in the latter condition that the political shows itself fully, and shows itself to be the origin and guarantor of the legal security the consuming citizen enjoys and can take for granted.⁹²

A brief note here addressing the contemporaneous question of the German constitution Schmitt addressed serves as both a biographical and intellectual background to his concept of the political, but also as an example of the concrete difficulty inherent in a constitution which denies the possibility of the exception. Schmitt was concerned during the Weimar period with the political crisis he saw

(*Maßgebend*) (CP 26-27). See Heinrich Meier, *The Lesson of Carl Schmitt*, trans. Marcus Brainard (Chicago and London: University of Chicago Press, 1998) 34-35.

⁹² Schmitt's economical articulation of the relation between law and authority is *autoritas, non veritas facit legem*, which maxim he extracts from *Leviathan* ch. 26 (PT 33); Hobbes' version reads: "...Law in generall, is not Counsell, but Command" (*Lev.* 312) and "...the doubt is, of whose Reason it is, that shall be received for Law. It is not meant of any private Reason. . . but the Reason of this our Artificiall Man the Common-wealth, and his Command, that maketh Law." (*Lev.* 317).

threatening Germany in the rise of anti-constitutional political parties of both the right and left. As a result, the liberal constitution (and Germany itself) was threatened in the application of its own provision for the free participation of all political parties.⁹³ The emergency clause of the Weimar constitution – Article 48 – contained what he saw as a flaw: an ambiguity in its wording led most legal experts to interpret the clause as circumscribing the president's power, rather than giving the office the unlimited power Schmitt argued should be ascribed to the sovereign in the case of the exception. For Schmitt, no constitution – liberal or otherwise – can fully anticipate every possible eventuality, but it can ascribe emergency powers to a sovereign to prevent the polity from sliding into disarray for want of a decision. Unlimited power – bluntly put, dictatorship – is a frightening prospect, particularly to the democratically-minded, and Schmitt therefore distinguished between two types of dictatorship. Sovereign dictatorship, on the one hand, dissolves the current constitution and implements the conditions necessary to create a “true constitution” in which order is possible. Commissarial dictatorship, on the other hand, intervenes for the sake of preserving the existing constitution.⁹⁴ Schmitt's interpretation of Article 48 views it as supportive of commissarial dictatorship under exceptional circumstances; indeed, he points out that no constitution can aim at its own self-destruction⁹⁵, and it follows from this that sovereign dictatorship neither can nor should be constitutionally anticipated.

⁹³ See Carl Schmitt, *Legalität und Legitimität* (Berlin: Duncker & Humblot, 1980) 50ff.

⁹⁴ From Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*, 4th ed. (Berlin: n.p., 1978) 136-137.

⁹⁵ Schmitt (1980) 23.

Schmitt's distinction between the legal, normal state and the legitimate, constitutional ground of that state's authority not only presaged the German state's risk to subordination by ideological extremists, but also illuminates the need for a theory of citizenship which provides for this same distinction. Legality can be equated with legitimacy only where a *Verwaltungsstaat* – an administrative state – has taken hold. The *Verwaltungsstaat*, which is identical to Kojève's universal and homogeneous state, exists only where the friend-enemy distinction has been overcome. Political enemies are replaced with debating or economic competitors⁹⁶ or mere social problems to be "corrected" through the justice system.⁹⁷ Schmitt's concern with the *Verwaltungsstaat* was primarily with what he saw as the error of faith in its existence. I use the term "faith" here because all theories of the state, for Schmitt, take the form of the theological.⁹⁸ Faith in the *Verwaltungsstaat* removes the capacity to recognize the enemy, and therefore also to recognize the possibility of the exception and the need for a sovereign transcending the legal.⁹⁹

The political situation for modern Europe and its citizens certainly looks different from that of a desperate Germany in 1932-33. There are no visible, serious

⁹⁶ CP 28.

⁹⁷ Schmitt (1980) 11.

⁹⁸ It did not escape Schmitt's notice that his own concept of the state is therefore also theological; his primary concern in *Political Theology* is the need for *any* concept of the state to stand open to the possibility of "miracles" (that is, political exceptions which cannot be subsumed under the legal or normal). Schmitt's struggle with the tension between scepticism and faith, both necessarily present in the political philosopher, is examined in some detail in Meier (1998). Emblematic of Schmitt's view of this tension is his use of the line "The enemy is our own question in form" from poet Theodor Däubler's *Nordlicht* in a book written during the two years he was detained and interrogated at Nuremberg (Carl Schmitt, *Ex captivitate salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950) 89-90). As we saw in the previous chapter, Kojève observes that the philosopher's questioning invariably exhausts the limits of the political project (or theology) and is then forced to turn outwards to face the enemy (IRH 86). From this same position, Meier argues that for Schmitt, "[t]he enemy proves to be our friend on the way to self-knowledge, and our self-knowledge is transformed suddenly into a source of enmity when it assumes a visible figure." (Meier (1998) 44).

threats to the liberal democratic constitutions of the states comprising the EU, economic and social stability are the norm, and the *acquis communautaire* of the EU includes an expanding bundle of rights enforced by the European Court of Justice. Nonetheless, Schmitt's concept of the political, if taken seriously, has critical implications for contemporary European citizenship. Objections to incorporating a Schmittian understanding of the political into a theory of citizenship are likely for both ideological and historical reasons: that is, it might be argued that Schmitt's political philosophy led directly to his Nazism; and, moreover, his position was applicable to the impending political and economic upheaval of the Weimar republic, but not to a relatively stable European Union. It is, in part, with a view to addressing these two objections that an examination of the relevant arguments of Alexandre Kojève is helpful. Moreover, because Kojève was both a student of political philosophy and also played an important role in the EU's early development, his postwar work (in both the scholarly and administrative fields) provides some indication of what might be required to transform the EU from an economic association into a polity, and consequently its residents from consumers into citizens.

Schmitt and Kojève

The importance of Schmitt's political thought during the Weimar period should not be underestimated, although, due to his Nazism, he went largely unread for

⁹⁹ PT 36.

fifty years thereafter.¹⁰⁰ It should come as no surprise that Kojève was already familiar with Schmitt's work before World War II, then, but the two men were also friends from 1955 until Kojève's death in 1968.¹⁰¹ Their correspondence indicates that they read each other's work regularly and carefully, and there is no evidence that the diverging ideological paths they chose – Schmitt as ex-Nazi and anti-Semite, Kojève as erstwhile Resistance leader and Stalinist – played a role in it. Both were concerned with the problem of what Schmitt called the *Verwaltungsstaat* and Kojève called the universal and homogeneous state.

The previous chapter provided an introduction to Kojève's political philosophy as manifested in his interpretation of Hegel's *Phenomenology*; included in its conclusions was the view that Kojève's view of the political present was as an interregnum between nation-state and universal and homogeneous state. In this section, I will provide a more immediately political interpretation of Kojève's thought with a view to the construction of a European citizenship which transcends the schism between risk and security during this interregnum. The argument is composed of two parts. In the first, I will argue that Kojève's 1943 *Esquisse d'une phénoménologie du*

¹⁰⁰ In a striking instance of how Schmitt's importance has been obscured, Ellen Kennedy argues that Schmitt had a profound, but deliberately concealed, influence on Frankfurt School scholars Jürgen Habermas, Otto Kirchheimer and Walter Benjamin (Ellen Kennedy, "Schmitt and the Frankfurt School", in *Telos* 71 (Spring 1987) 37-66 (see also replies in the same issue by Martin Jay, Alfons Söllner and Ulrich Preuss for illustrations of some of the difficulties with Kennedy's argument). Cf. Paul Noack, *Carl Schmitt: Eine Biographie* (Berlin, Frankfurt am Main: Verlag Ullstein/Propyläen Verlag, 1993) 111.

droit is a response to Schmitt's Weimar writings and presents a compelling model of citizenship which bridges the schism between the conflicting needs for security and risk.¹⁰² Second, by examining the evidence from Kojève's postwar career as an important French agent in the creation of the EU, I will present his vision of the sovereign union as a necessary aspect of that citizenship.

At the outset, Kojève's project in the *Esquisse* seems incompatible with Schmitt's purpose in his *Concept of the Political*. Kojève's guiding question, presented at the beginning of the book, concerns the nature of right (*Droit*)¹⁰³ in its juridical sense; politics, rather than occupying a status above other spheres of humanity, is brusquely lumped together with the religious, moral, and artistic spheres

¹⁰¹ An account of this friendship appears through the correspondence between Kojève and Schmitt, as well as a number of informative third-party reports in Piet Tommissen, *Schmittiana: Beiträge zu Leben und Werk Carl Schmitts*, vol. VI (Berlin: Duncker & Humblot, 1998) 27-74. The correspondence appears in English translation as Alexandre Kojève and Carl Schmitt, "Correspondence," translated and edited by Erik de Vries, pp. 94-115 in *Interpretation* 29 (1) (Fall 2001). Jacob Taubes reports a 1967 encounter with Kojève in Berlin; after Kojève had delivered an address, he informed Taubes that he was departing for Schmitt's home town of Plettenberg. Asked why, Kojève replied: "For where must one travel to in Germany? Carl Schmitt is surely the only one worth talking to." (Jacob Taubes, *Ad Carl Schmitt: Gegenstrebige Fügung* (Berlin: Merve Verlag, 1987) 24).

¹⁰² The absence of any mention of the *Philosophy of Right* in the *Esquisse* is a striking omission, given the apparent overlap in the subject matter of the two books and Kojève's interest in Hegel's works. The omission was not an oversight on Kojève's part, however; in a footnote to a 1946 book review, he wrote: "I do not dwell on the very significant modifications that Hegel had to make in his conception as a consequence of Napoleon's fall. That he thought at a given moment that he could substitute the Archduke of Austria for his 'Napoleon,' or that he ended by pretending to believe that the perfect and definitive State begun by Napoleon was realized by the kingdom of Prussia, which, however, was not 'universal' and did not aspire to universality, matters little. What matters is that, according to him, Napoleon disappeared because he had (virtually) ended his work and that this work definitively completed history is therefore man plain and simple, and not the Man-god, who realizes perfection." (Alexandre Kojève, "Hegel, Marx and Christianity," translated by Hilail Gildin, pp. 21-42 in *Interpretation* 1 (1970) (henceforth *HMC*) 40.

¹⁰³ Like the German term *Recht*, the French *Droit* (Kojève capitalizes the term) cannot be translated precisely without some loss of meaning; it is neither identical with the law (*la loi*) or with rights (*les droits*). Kojève uses the term as an ideal-type (*EPD* 10) against which law can be contrasted; it is possible for the law to be applied in a way which violates *Droit* (*EPD* 84). Similarly, he views rights as the specific powers borne by legal subjects under conditions of *Droit*. For this reason, I follow the lead of the *EPD*'s translators in leaving the term untranslated.

as a “non-juridical” phenomenon in which Kojève appears to have little interest.¹⁰⁴

This is little more than a blind, however, or perhaps a guard against potential confusion between party politics and the political in Schmitt’s sense. The second chapter of the *Esquisse* cites Schmitt’s friend-enemy distinction. Kojève’s brief account of this distinction closely echoes Schmitt’s: “In the final analysis, the ‘friend’ is the ‘brother in arms’, and the ‘enemy’, the military enemy, which must yield or die; and if it does not yield and is not killed, one must die oneself.”¹⁰⁵ Kojève also shares Schmitt’s views concerning the relation of the legal to the political, namely that the legal order is subordinate to the political, and that no higher point of reference (e.g. a non-political moral or religious authority) provides an alternative or competing source of authority for the political. Before we explore the effects of Kojève’s adoption of Schmitt’s arguments, a short summary of his understanding of *Droit* is in order.

It is not necessary to restate the various forms Kojève’s definition of *Droit* takes in his analysis. Suffice it to repeat that *Droit* appears where we find “the interaction between two human beings A and B. which necessarily provokes the intervention of a third, disinterested and impartial C. this intervention of C annulling B’s reaction, itself opposed to A’s action.”¹⁰⁶ *Droit* characterizes the regulative principle governing relations between members of any society or association (which must therefore have at least three members). *Droit* is found in many kinds of human associations including, for example, churches, certain clubs, universities, sports leagues, and, most importantly, the state. In all these cases, the presence of C, the

¹⁰⁴ EPD 10.

¹⁰⁵ EPD 144. Curiously, Schmitt is cited as “Karl Schmidt”.

¹⁰⁶ EPD 28.

disinterested and impartial adjudicator between the two parties concerned, is essential. In a state, the most common and familiar association characterized by *Droit*, the position of C is variously filled by police, judges, and legislators.¹⁰⁷ In other associations it may be filled by tribunals, referees, mediators, etc. Whatever the society, C is necessarily disinterested or impartial from an internal perspective; that is, all three parties are members of the same society only to the extent that they share the same understanding of justice of which a particular form of *Droit* is the embodiment. C can thus, in principle, be any competent member of a given society who is not party to the conflict at hand, as in the case of juries.

The impartiality of the “third” towards other members of the same society in Kojève’s conception of *Droit* is identical to what Schmitt calls “neutrality”. Kojève links *Droit* to a shared understanding of Justice specific to a given society, including the state itself.¹⁰⁸ Schmitt identifies neutrality in, for example, the spheres of religion, culture, education and the economy.¹⁰⁹ In such spheres, Schmitt writes, the possibility exists of mediation on the basis of “a previously determined general norm” and “by the judgment of a disinterested and therefore neutral third party.”¹¹⁰ This neutrality or impartiality, for both Kojève and Schmitt, is possible only among those with common membership in a society.

¹⁰⁷ EPD 83-84. Kojève notably denies any utility in the separation of legislative from judicial powers; both branches, he argues, have the same relation to the concept of Justice they serve. The legislator’s distinction from judges or police is only that he is the first to “intervene” in a conflict between A and B by creating the rules governing the mediation of that conflict. Cf. also EPD 184n.

¹⁰⁸ EPD 165. Kojève capitalizes Justice when using it in this specific social sense; I maintain his usage throughout this section.

¹⁰⁹ CP 22.

¹¹⁰ CP 27.

In contrast, *Droit* – and therefore the requisite impartiality which comes with a shared Justice – is impossible with respect to those *outside* the society in question. If, in our original juridical scenario, A acts as a member of a society other than that of B and C, C's decision can no longer be impartial for A. Because A and C do not share a single concept of Justice, and therefore of *Droit*, C's "neutral" intervention does not appear as an application of Justice, but as either an offensive and partisan act or as simply irrelevant. The former is exemplified in recent history in cases such as language laws in Quebec requiring the primacy of the French language over others, and, in the United States, the forced bussing of students in the name of racial integration. In the former case, the legislation of Bill 176 regulated linguistic relations between businesses and their clients in the interests of the preservation of the French language. No matter how fairly the law is applied, it (explicitly) violates the bilingual foundation of Canada recognized in the 1982 Constitution Act, and is therefore seen as an offence by those who recognize the latter as authoritative. The case of forced bussing is similar. Intervention which appears as irrelevant can be observed in the Catholic Church's Index of banned books; here, the offending author (A) is prevented from corrupting the Church's own members (B). Because there is no means of ensuring this end, however (indeed, a listing on the Index generally increases book sales), the effect of the intervention is nil with respect to the Justice of the Catholic Church.

While neutrality or impartiality are necessary within a society founded on a particular Justice, there can be no impartiality which mediates *between* manifestations of Justice without reference to another Justice. It does not follow that conflict between

members of different societies pursuing diverging Justices is inevitable, for an action in the name of one Justice is not necessarily an offence against another. Justices are frequently compatible; for example, marriage is sanctioned by multiple religious and secular societies. In other cases, an action recognizable in one sphere of Justice is not recognized in another; liberal secular societies see no offence in the practice of casting spells, for example. But even where an act favourable to one Justice contravenes another, conflict is not necessary; in fact, because most individuals are part of multiple societies with different Justices¹¹¹, transgressions against one or another are necessarily routinely tolerated. Bourgeois society, whose Justice relies on a free economy for trade, tolerates incursions on this freedom for the sake of public order. Federalists living in Quebec tolerate government by a separatist party. In cases of abject poverty, otherwise law-abiding citizens resort to theft to feed their families. In these cases, the conflict between Justices is only implicit, and is resolved without raising an instance of *Droit*.

Actual conflicts between different Justices can be resolved through *Droit*, but only where both parties are also members of a single society whose Justice – and therefore its *Droit* – is authoritative. Female circumcision is forbidden, as are most other forms of physical cruelty, in liberal Western countries, no matter how multicultural they are in other respects. Where there is a conflict between two Justices but neither an authoritative and common *Droit*, nor a willingness by one or another party to submit to the Justice of another, we see the emergence of the political and the articulation of the friend-enemy distinction.

¹¹¹ EPD 141.

An unmediated and therefore political conflict between Justices is an abnormal event, both in the sense that it is unusual and that norms, or laws, sink into insignificance when it arises. In principle any Justice can form the basis for such conflict, but, as we have just seen, in practice there is a distinction between “potential” and “actual” *Droits* – that is, between those where an offending act is only overcome in principle and those where it is necessarily overcome.¹¹² Where the offending agent can escape the effects of one *Droit* by taking refuge in another society (as does the author whose works appear on the Catholic Index), we have only potential *Droit*; where an agent’s action can be construed as “criminal” and necessarily subject to correction, we have “actual” *Droit*.¹¹³

There is thus an important distinction between the relation of the individual to a society whose *Droit* is actual and one whose *Droit* is potential. The latter is always subject to a higher *Droit*, and is therefore itself a possible party in a juridical relation. In Kojève’s legalist language, a society with juridical status is also a “moral collective person” subject to the judgement of an authoritative *Droit*; for this reason, it is possible, for example, to pursue a lawsuit against societies such as churches themselves. In contrast, actual *Droit* is by definition not subject to another *Droit* more

¹¹² EPD 129.

¹¹³ The problem of practical limits and errors in actual *Droit*, as in cases of criminals escaping and not subject to extradition, or of false arrests, does not weaken the division between actual and potential *Droits*. The former publicly aspires to and maintains the means to enforce its Justice; that it sometimes fails to do so adequately no more detracts from its status as actual *Droit* than does a defeat render an athlete or a sports team non-existent.

authoritative than itself¹¹⁴; were such an act of submission take place, it would cease to be actual *Droit* and would become potential. The relation between a society whose *Droit* is actual and its members is therefore never itself a relation of *Droit*, for there are only two parties at hand: the member and the society itself. Membership in a society with actual *Droit* therefore entails two distinct but necessary relations: a juridical relation with fellow members (“friends”) which does not exist with members outside the society in question (“enemies”), and a non-juridical relation which functionally separates those who stand for the society itself (“governors”) from its members (“the governed”)¹¹⁵.

The latter relation makes explicit the concrete form in which we normally see the society of actual *Droit*: it is the state, and the members of the society embodied in the state are its citizens. While Kojève adopts Schmitt’s friend-enemy distinction as essential to the political, his account of *Droit* fleshes out the stark citizenship framework we saw in Schmitt’s *Concept of the Political*. Schmitt avoided an account of rights characteristic of discussions of citizenship in our time, but Kojève retains rights as vital to citizenship through *Droit* (a juridical relation) while also preserving the authoritative bond between citizens and the state (a political relation).

¹¹⁴ The society of actual *Droit* itself can therefore never be subject to criminal or civil suits. Where this appears to occur, Kojève argues, the corrected action is that of the society’s agent(s) acting, improperly, in their capacities as private persons rather than as functionaries of the society. This instance is most clearly illustrated in cases where the state is subject to civil suits; even if the state concedes a juridical decision and agrees to compensate an injured party, the injury is subject to *Droit* only insofar as the agent of the injury is identified as acting contrary to his own nature as a functionary. Moreover, the injured party has a real right to the compensation only when the state pays it (*EPD* 117; 356-357).

¹¹⁵ *EPD* 143; note that, as mentioned in note 114, the agents of the state themselves are capable of acting either as private individuals or as functionaries at any given moment. The categories of “governor” and “governed” thus divide certain kinds of action rather than kinds of people.

The schism laid out early in this chapter between security and risk seems to be reflected in the distinction between the juridical and the political; *Droit* ensures security by subordinating all to a common Justice, while the political monopolizes legitimate avenues for risk by articulating the friend-enemy distinction. That the two types of relations have historically largely coincided under the authority of the state is not, however, adequate to an account of their necessity in a theory of citizenship. To say that citizenship is both a juridical and a political relation begs the question of the autonomy of these two spheres. Hobbes and Hegel avoided this problem, the former by subordinating the juridical completely to the political, Hegel by subordinating both to universal reason. On the one hand, because Kojève explicitly views *Droit* as a necessary aspect of citizenship, he cannot adopt Hobbes' position; I will expand on this point in detail immediately below. On the other hand, Kojève's rejection of Hegelian monism (which we explored in the previous chapter) necessarily implies one of two positions: either the juridical and the political are genuinely autonomous spheres whose relation is dialectical, or they are both a function of some higher (but human rather than natural or divine) and autonomous sphere.

Kojève's account of citizenship in the *Esquisse* explicitly subscribes to the first position,¹¹⁶ but his argument in fact suggests that the juridical and the political, while autonomous, both originate from the desire for recognition. As we saw in the previous chapter, the desire for recognition itself causes the battle for pure prestige – a battle which can be taken up at any time by any two people willing to take the requisite risk for the sake of recognition. As I will argue here, the master and the slave

necessarily and exclusively take up Justices fitted for the political and the juridical, respectively. The history driven by the master-slave dialectic in Kojève's reading of Hegel is thus, as I will show, executed institutionally in a dialectic between the political and the juridical. Most importantly, I will argue that the abolition of actual master and slave classes in the modern West has driven the tension between the political and the juridical into the institution of citizenship itself.

We have already seen how the battle for recognition is the anthropogenetic act which produces ideologies for the slave (e.g. Stoicism, scepticism and the Unhappy Consciousness) which preserve slavery as an institution in the ancient and medieval worlds. Both Hegel (in the *Phenomenology*) and Kojève (in the *Introduction*) say nothing explicit about modern slave ideology. That masters and slaves are gradually replaced in the modern world by citizens does not, however, mean that slave ideologies cease to exist. These ideologies survive because the conditions for the end of slavery, i.e. universal recognition, do not yet exist. If slavery remains, so, it would seem, must mastery. In fact, Kojève argues, modern citizenship contains both principles, which are dialectically related; that is, each presupposes the necessity and existence of the other, but also conditions the other. To outline an account of citizenship on the basis of Kojève's political theory therefore depends on an understanding of the nature of the master-slave dialectic as manifested politically.

As we saw in the previous chapter, the master's world is conditioned by the risk of life and the freedom from the need to work. The master divides the world into slaves and equals, the latter category comprising all those with whom he has not yet

¹¹⁶ EPD 206.

entered into the struggle for recognition. These others are equal not because they have won the battle for recognition, but due to their capacity to risk life for the sake of recognition.¹¹⁷ The battle for recognition is only possible if both parties understand that its purpose is recognition of the particularity of one or the other; the Justice of the master therefore requires the free consent of both parties to engage in the battle.¹¹⁸ Even before the battle, then, each combatant accords his opposite a recognition (of “primordial equality”, as Kojève calls it) he does not give to the slave.¹¹⁹ No Droit is possible in the master’s Justice, because the possibility of a third party mediating the struggle for recognition itself implies submission to the Justice of that third party.¹²⁰

In contrast, the Justice of the slave’s world – which proves to be the bourgeois world – is created out of the *result* of the battle for recognition. The slave’s world is framed by the master’s particularity, which becomes the slave’s “universality”; the slave may become Protestant or Catholic, speak English or French, and live in a monarchy or a republic. Like the master, the slave constructs his Justice on the basis of the consent of the combatants in the anthropogenetic struggle, but he views his consent to the ensuing master-slave relationship as *equivalent* – but obviously not equal – to that of the master.¹²¹ The polity is a social contract only from the perspective of slave Justice, which supposes the existence of a third party to enforce it.¹²² Equivalence becomes vital to the particular kind of recognition possible only in

¹¹⁷ EPD 253.

¹¹⁸ EPD 250. It is impossible for either party to risk his or her life unwillingly, of course, since the choice between submission and risk is always present.

¹¹⁹ EPD 254.

¹²⁰ EPD 261.

¹²¹ EPD 255.

¹²² EPD 303.

slave Justice; through the mechanisms this Justice produces – the economy, technology, democracy, art, Droit, etc. – particularity which does not infringe on the universal can be both expressed and recognized freely by other slaves in a wholly non-political way. In principle, equivalence permits the recognition by these mechanisms of any reasonable appetite, ideological affinity, or aesthetic identity. “Reasonable” here implies only a single restriction: no attack can be made on the principle of equivalence – in other words, the struggle for recognition cannot be reopened from within slave Justice. So long as this condition is met, slave or bourgeois Justice can, in principle, endure indefinitely.

The master’s world, on the other hand, is constantly unstable, for two reasons, one practical. and the other to do with satisfaction. The practical problem stems from the threat of risk-takers aiming to transform him into a slave. The master therefore eventually transforms his relationship with both fellow masters and with his slaves. He allies himself with other masters against common enemies in order to preserve his political order and thus acquires friends,¹²³ and he transforms his relationship with the slave from a coercive to a legitimate one. It must be noted that it is not necessary for the particular master to enter into either the aristocratic or bourgeois worlds, but that only those who do ultimately survive as masters. Kojève presents the master’s entry into an alliance as a practical measure, but does not mention in the *Esquisse* that this alliance is itself already a sacrifice of the master’s autonomy and marks the insinuation of slave Justice, since it entails a promise, and therefore an obligation, to his fellow masters. Nonetheless, it is also clear that the master who refuses to make

such a compromise will be inevitably killed off or made subservient to those who have made such compromises and are consequently organized into larger, more efficient political units.¹²⁴ A similar argument can be made for the master's entry into civil society. Only by ensuring the loyalty of the slaves through legitimation – that is, by convincing them that their own particular ends are present in the master's particularity, i.e. the universal – can the master sustain control over an adequately large – and increasing – number of slaves to maintain power over and against the domains of other masters. The ensuing dialectic is therefore simply the rationalization of legitimation which, in the West, leads to democracy.¹²⁵

The slave is therefore perfectly satisfied by citizenship; through it he acquires recognition without life-risking struggle. The master's life, however, is doubly unsatisfying: the recognition he can receive in the society of masters (the aristocracy) depends entirely on his willingness to risk life (rather than his particularity), and the only recognition he receives of his particularity comes from slaves, who grant it

¹²³ EPD 261.

¹²⁴ Kojève lays this argument out in some detail in his “Esquisse d’une doctrine de la politique française” (unpublished manuscript, 1945) (henceforth *EPF*) 3. Another example he enjoyed using is relayed by Iring Fetscher, German translator of the *Introduction*, which the latter calls the “Joan of Arc argument”. In Kojève’s presentation of this argument, the end of feudalism in France presented its nobles with just two political choices: either they could pool their resources in order to buy the cannons necessary to maintain their power against enemies, particularly England, or they would have to unite behind (and therefore submit to) the king, under whose governance the cannons were attainable. The nobles were unable to cooperate, and the king’s power therefore increased. Joan of Arc, the monarchy’s vanguard, thus became a French national hero. If, on the other hand, the nobles had successfully organized and ousted the king, Joan of Arc would have been forgotten altogether. (Iring Fetscher, “Alexandre Kojève - Stalins Hegel?” pp. 33-45 in *Schmittiana*, ed. Piet Tommissen, vol. VI (Berlin: Duncker & Humblot, 1998) 34-35).

unwillingly. Thus, to the extent – and only to the extent – that the master engages in the world of the slave, the master and the slave cease to be distinguished, and both become citizens.¹²⁶ But because the master's satisfaction is never complete, the master, like the Hobbesian citizen we saw above, retains but does not always exercise his capacity and desire to risk life in the search for recognition. The master's life is thus marked by a permanent conflict between the practical limits of mastery and the drive for autonomous recognition, which leads Kojève to call his situation "tragic" from the outset.¹²⁷ Nonetheless, as a figure who appears consistently in all human history – whether as hero or villain – the master preserves a degree of autonomy from the juridical world. In his mastery, he is necessarily either fighting or solitary, since any other interaction with his fellow masters presupposes a juridical (and therefore bourgeois) relation.¹²⁸ The master is capable only of non-juridical relations: friendship, enmity, and dominion (over slaves).

The importance of propaganda to the state's capacity to expand itself is a vital but elusive part of a reading of Kojève. He mentions it just once in the *Introduction*, and not at all in the *Esquisse*; we find his clearest statements on it in his private

¹²⁵ *ILH* 254. Charles Tilly (Charles Tilly, *Coercion, Capital and European States, AD 990-1992* (Oxford: Blackwell, 1992)) provides numerous examples demonstrating both these patterns in practice. Equally relevant is Max Weber's analysis of the history of discipline as a necessary political instrument of increasing importance culminating in the nineteenth and early twentieth centuries, manifested in both the large armies required during this period, as well as the similar discipline needed to manage large states through their complex bureaucracies (Max Weber, "The Meaning of Discipline," *From Max Weber: Essays in Sociology*, ed. H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946) 253-264).

¹²⁶ *EPD* 235, 243, 271.

¹²⁷ *ILH* 252-253.

¹²⁸ *EPD* 283.

correspondence and in book reviews.¹²⁹ Yet propaganda is essential to the state, for it alone creates political friendship. As we have just seen, the master is incapable of engaging in substantive non-violent relations with equals, but the slaves who labour for him are not thus constrained. This permits them to engage with outsiders non-violently – that is, in Schmitt’s words, to perceive outsiders not as enemies, but as competitors or debating partners.¹³⁰ The transformation of the pure master into citizen, in my view, can be effected by the slave’s propaganda alone. That this is true does not imply the elimination of the master altogether – for the master is distinguished by the willingness to risk life, not by commitment to this or that Justice – but rather accounts for the transformation of the isolated master into a member of an aristocratic society, a community of equal masters under a single Justice. Only in this way can Christianity, for example, be transformed from a pure slave ideology¹³¹ into the Justice of the Crusades. Propaganda is a demonstrably dangerous force, principally because it is capable even of temporarily overcoming what is historically necessary. In a 1946 book review, for example, Kojève described the book in question as “a work of propaganda, in the sense that the assumed effect of the argument on the reader is more important than the adequation of the argument with reality.”¹³² The assumed effect can thus create irrational (in the Hegelian sense) political

¹²⁹ In *HMC*, for example, Kojève writes that “every interpretation of Hegel, if it is more than idle talk, is nothing but a program of struggle (*lutte*) and one of work (and one of these ‘programs’ is called *Marxism*). And this means that the work of an interpreter of Hegel takes on the meaning of a work of political propaganda.” (41-42); similarly, in a letter to Tran-Duc-Thao, he wrote, “my course was essentially a work of propaganda intended to *frapper les esprits*” (in Gwendoline Jarczyk and Pierre-Jean Labarrière, *De Kojève à Hegel: 150 ans de pensée hégélienne en France* (Paris: Editions Albin Michel, 1996) 64).

¹³⁰ *CP* 28.

¹³¹ *ILH* 56; 66-67.

circumstances, as, for example, in the case of the rise of extreme nationalism in Germany at the end of the age of nation-states.¹³³ Propaganda alone is thus capable of converting risk-taking masters from guardians of the good (i.e. the necessary) into (possibly unwitting) agents of evil.¹³⁴ Conversely, the only method of preventing or reversing this conversion is an act of propaganda itself.

By grounding his theory of citizenship on the dialectic between the autonomous Justices of mastery and slavery, Kojève provides a coherent account of the schism between risk and security. The confrontation between these two Justices (i.e. equality and equivalence) survives (at least temporarily) this synthesis in citizenship in a dialectical form. This confrontation is a central preoccupation in the *Esquisse*, for it frames the questions of concern to lawyers, politicians and administrators in our time. In the master-slave dialectic, the master's compromise entails the expansion of the concept of equality to domains other than the risk of life, but which remain somehow connected with the master's particularity. For example, the aristocratic conception of property rests on its connection to the master in stasis,

¹³² Alexandre Kojève, "Christianisme et communisme," "Kojève-Fessard Documents" (henceforth *KFD*), trans. Hugh Gillis (1946), vol. 19 (2) of *Interpretation*, 192-195 194.

¹³³ On this point, Kojève and Schmitt were agreed. In Carl Schmitt, "Die Geschichtliche Struktur des Heutigen Welt-Gegensatzes von Ost und West: Bemerkungen zu Ernst Jüngers Schrift: 'Der Gordische Knoten'," pp. 135-267 in *Freundschaftliche Begegnungen: Festschrift für Ernst Jünger zum 60. Geburtstag*, ed. Armin Mohler (Frankfurt am Main: Vittorio Klostermann, 1955), Schmitt had written: "While people believe themselves to be historical and stay with what was once true, they forget that a historical truth is only true once." (166); in a letter, Kojève responded: "...in the end, Hitler was only a 'new enlarged and improved edition' of Napoleon ['La République une et indivisible' = 'Ein Land, ein Volk, ein Führer']. Hitler committed the errors which you characterize so well on p. 166..." Tommissen (1998) 102.

i.e. irrespective of his activities; in contrast, the bourgeois conception of property links it to the citizen's activity in the form of labour.¹³⁵ But the confrontation between the aristocratic and bourgeois Justices is apparent everywhere: it arises in the debates concerning flat (equal) vs. progressive (equivalent) taxation; in battles about funding for public (equal) or religious (equivalent) schools; in the question of the official recognition of one (equal) or more (equivalent) languages; and in tensions between group (equivalent) and individual (equal) rights.¹³⁶

The synthesis between equivalence and equality, which Kojève calls "equity," is both analogous to and contemporaneous with the universal and homogeneous state. During the period I have described as an interregnum, the Justices of equivalence and equality remain in a dialectical tension characterized by periodic compromise rather than synthesis.¹³⁷ But with the advent of the universal and homogeneous state, the dialectic is sublated altogether through the principle of equity; then, and only then, Kojève writes:

...the evolution of *Droit* stops. And one can say that, in its final form, the *Droit* (of the citizen) is an *absolute* *Droit*. Being the only one, and no longer changing, it is universally and definitively valid: it is 'perfect,' for it can no longer be improved, can no longer be changed.¹³⁸

¹³⁴ This is what Schmitt saw occurring in Weimar's last days; in this case, he argued, the dangerous propaganda in question was concealing the political by transforming it into the economic. The danger, according to Schmitt lay in the immunity with which liberal ideology provides the economic sphere. Once the economic thoroughly penetrates the political, he argued, "a politically united people becomes, on the one hand, a culturally interested public, and, on the other, partially an industrial concern and its employers, partially a mass of consumers. At the intellectual pole, government and power turns into propaganda and mass manipulation, and at the economic pole, control." (CP 72)

¹³⁵ EPD 285, 302.

¹³⁶ Cf. EPD 320.

¹³⁷ EPD 257.

¹³⁸ EPD 313.

Until the political ceases to exist universally, then, even a transnational regime such as the EU will endure the debates stemming from the tension between equivalence and equality; equity remains an ideal-type.

Kojève's dialectical account of citizenship is an extension of, rather than an argument against, Schmitt's view of the friend and enemy as the primary political division. Where Schmitt was politically motivated to concern himself principally with the exception, the sovereign decision, and the state's capacity to preserve the possibility of the friend-enemy distinction, Kojève is also occupied with an attempt to show the dialectical connection between *Droit* and political friendship. The nature of this connection, as we have seen, is the progressive reduction, through compromise, of the aristocratic element in favour of the bourgeois element in *Droit*. This progression is reflected in the legal philosophy of such liberal constitutionalists as Hans Kelsen, who posit a *Rechtsstaat* the sovereignty of which rests at the level of the constitution (and therefore within the domain of *Droit*) rather than with some higher sovereign. Schmitt and Kojève are clearly allied in opposing the sovereign *Rechtsstaat* because it presupposes that only relations subsumable under *Droit* exist¹³⁹; while their language and foci differ, Schmitt and Kojève share the fundamental position that man remains "a dangerous and dynamic being"¹⁴⁰ because he is willing to risk his life. Both agree that a universal end-state in which bourgeois Justice, or neutrality, is all-encompassing would obviate any reason to consider man as dangerous; "*Droit*," Kojève writes, "can flourish where there are no, or there are no longer, (external)

¹³⁹ For each thinker's perspective on Kelsen, see *PT* 18-22, 41-42; *EPD* 135, 139.

¹⁴⁰ *CP* 61.

enemies at all.”¹⁴¹ Both, however, are likewise in agreement that this end state does not yet exist.¹⁴² Kojève therefore follows Schmitt in adopting the friend-enemy distinction as primary, and his argument leads unavoidably to the position that, so long as man remains dangerous, the citizenship rights associated with *Droit* appear only where there is still mastery – that is, where friends can be distinguished from enemies.¹⁴³ Schmitt’s identification of the political need for a reserve power with the capacity to make the decision concerning friends and enemies is identical with Kojève’s defence of the preservation of the non-juridical relations of master-slave and friend-enemy within modern citizenship. At the same time, Kojève’s account of *Droit* as an essential aspect of that same citizenship lays the groundwork for a citizenship theory which is both Schmittian in origin, but friendly to the liberal institutions we have come to expect to form an essential part of citizenship in the contemporary West. The political requires the juridical to function; the juridical requires the political to survive.

Kojève’s European Empire

In the last part of this section, I briefly examine the influence of Kojève’s thought before 1945 on his understanding of the European Community as it developed after the war. I take it as now given, based on the arguments presented in the previous chapter and from my analysis above of the *Esquisse*, that Kojève did not, as is sometimes argued, view the EC as the universal and homogeneous state, nor see

¹⁴¹ EPD 204.

¹⁴² EPD 314; CP 53-54.

¹⁴³ EPD 156.

himself as simply an administrator in the *Verwaltungsstaat*. My argument, instead, is that he saw, beginning in 1945, that the nation-state had become relatively inefficient and therefore outdated, that nation-states would necessarily be supplanted by new political formations, and that a union of European states was the framework for that empire in Europe. My argument is therefore clearly directed to a view of the EC (and, still more so, the EU) as necessarily a political organization, in Schmitt's sense of the term. My argument concludes with a model of European citizenship which recognizes as necessary the preservation of the juridical and the political.

The *Esquisse* contains a remarkably prescient account of a possible "juridical Federation," which entails the development of a common juridical Society containing States "only in the sense that there will be, within them, relations of governors to the governed."¹⁴⁴ In a juridical Federation, *Droit* remains potential, however, and subject to the political will of the governors of member states. If, however, member state governors give up their political status altogether to the Federation, it becomes a constitutional Federation and its *Droit* actual. Anticipating the principles EU policy creation, Kojève writes of the constitutional Federation's *Droit* that member states will "apply it themselves as governors to their own governed."¹⁴⁵ The sovereignty of these states, therefore, is limited to that reflected in the principle of subsidiarity in the EU. The shared Justice that characterizes the Federation requires a common foreign policy, however; in this respect, Kojève argues, "it will have to defend itself against the possible external enemy, that is to say will have to organize itself into a State."¹⁴⁶

¹⁴⁴ EPD 388.

¹⁴⁵ EPD 389.

¹⁴⁶ EPD 388.

Looking ahead to the next chapter, therefore, an EU on Kojève's model of a constitutional Federation requires a common foreign and security policy; correspondingly, a citizenship of such a Federation entails a thumotic component.

A brief account of Kojève's view of Europe's political situation after World War II should be helpful to the project of European citizenship in two ways. First, as is suggested by the theoretical analysis, above, it should demonstrate empirically that Kojève's perception of the universal and homogeneous state does not, in contrast to Fukuyama's view, support a purely liberal, nor a liberal democratic conception of citizenship. Second, his direct involvement in the negotiation and creation of international agreements including the EEC, GATT, and the Organization for European Economic Cooperation (OEEC), not to mention his reputed espionage for the USSR¹⁴⁷ confirms the view that the obsolescence of the nation-state (and, therefore, its institutions) necessitates the articulation of a new Justice fitting to the empire analogous to the way nationalism constituted a Justice adequate to the nation-state.¹⁴⁸

Kojève's bureaucratic position obliged him to mute his political views.¹⁴⁹ At the same time, his interest in the concrete political question of postwar Europe – particularly of how its states, particularly France, could adjust to the nation's obsolescence – persisted throughout his administrative career. Kojève rarely spoke publicly, and then often ironically. In two documents, however, we can see some

¹⁴⁷ "La DST avait identifié plusieurs agents du KGB parmi lesquels le philosophe Alexandre Kojève", *Le Monde*, Sept. 16, 1999, 14.

¹⁴⁸ On Kojève's view of the nation-state as obsolete, see *KFD* 194, as well as the discussion of his idea for a "Latin Empire" below.

¹⁴⁹ See Kojève's letter to Carl Schmitt in Tommissen (1998) 22.

evidence of the private thought behind his actions as administrator. In an essay written at the war's end, as we shall see here, Kojève envisaged a Latin Empire, led by France, which would act as a balancing third power between the Soviet and Anglo-American titans, and which would, above all, restrict Germany's ability to wage war again. Twelve years later, with Germany divided and the EEC well established, Kojève spoke in Düsseldorf on the preservation and expansion of the European empire in the Mediterranean arena.

In 1945, Kojève wrote an unpublished essay entitled "*Esquisse d'une doctrine de la politique française*". Nation-states, he writes,

still omnipotent in the 19th century, are ceasing to be *political* realities, States in the strong sense of the term, just as the medieval baronies, cities and archdioceses ceased to be States. The modern State, the current political reality, requires larger bases than those represented by Nations properly so-called. To be *politically* viable, the modern state must rest on a vast "imperial" union of related nations. The modern State is only truly a State if it is an Empire.¹⁵⁰

Kojève, writing before the Marshall Plan, envisages the West as about to be divided into three parts: the Soviet Union, an Anglo-American Empire, and a "Latin Empire" made up of the Spain, Portugal and Italy, and led by France; Germany he identifies as a loose cannon, in principle available for alliance with any Empire.

Kojève in 1945 views the universal and homogeneous state as still distant: "The era where all of *humanity* together will be a political reality still remains in the distant future. The period of *national* political realities is over. This is the epoch of *Empires*, which is to say of *trans*-national political unities, but formed by *related*

¹⁵⁰ Alexandre Kojève, "Esquisse d'une doctrine de la politique française." Unpublished manuscript (1945). (henceforth *EPF*) 2; Kojève echoed this view publicly in *KFD*, where he wrote, "...in our age of Empires a 'national' or nationalist politics is no longer possible, since nations themselves have ceased to exist politically (i.e., militarily) as isolated entities." (194)

nations.”¹⁵¹ The Latin states are related, he argues, not ethnically, but by common roots in the Romance languages, secularized Catholicism, and climate, but above all, by the “Latin ‘mentality’”: a “*douceur de vivre*” which permits the enjoyment of leisure in a way excluded by the harsher Protestant ethos of the Anglo-American bourgeoisie.¹⁵² Above all, the post-national empire must be an autonomous political union rather than an agreement or alliance, and, Kojève argues, this is possible only if the empire is also an economic union and has a military capacity.¹⁵³

It is a matter of at least historical curiosity to note that a number of Kojève’s tactical suggestions were at least partially carried out in the Allies’ negotiations with Germany after the war. Kojève enumerated just three goals in France’s negotiations: first, he maintained, as American Treasury Secretary Henry Morgenthau had in 1944, that Germany’s military capacity be limited by eliminating its steel mills and blast furnaces; second, France should remedy its own lack of coal (and that of the Latin Empire in general) by claiming the Saar’s coal resources as war reparations; and it should insist on a ban on the German manufacture of militarily-vital sulphuric acid. During 1945 and 1946, France and the Soviet Union pressed for reparations directly beneficial to their own economies: France successfully controlled the Saar until 1957, and the Soviets dismantled entire factories from all over Germany for transport to the USSR. Steel mills in the Ruhr were dismantled during the period 1947-1949 at the insistence of the British, supported by the French. Moreover, the remaining Ruhr coal and steel industries were placed under the supervision of the Western allies, although

¹⁵¹ EPF 19.

¹⁵² EPF 20-21.

¹⁵³ EPF 24, 29.

they were returned to German private industry in 1952. There was, however, no coherent Allied policy pertaining to postwar German coal and steel production; conflicting and shifting aims between even the three Western powers, created a patchwork of un- or half-fulfilled goals. The restoration of Ruhr industries dominated Allied policy from 1945-1947 as a means of bearing some of the burden of feeding the impoverished German population; from 1947 to 1949, however, the British, supported by the French, pressed a policy of dismantling Ruhr steel mills owing to the threat posed by German exports to the British economy.¹⁵⁴ Finally, the manufacture of sulphuric acid was banned along with other chemicals under the 1945 Potsdam protocols and the subsequent Prohibited and Restricted Industries agreement.

It is doubtful that Kojève's essay itself had any direct influence on French foreign policy. The notion of the "Latin union" itself was already known among French foreign policy staff before Kojève wrote the 1945 essay, but never took off, both for ideological and practical reasons.¹⁵⁵ Ideologically, fascism was intolerable in a Latin union, and, as Kojève wrote, Spanish inclusion in the Latin union would therefore require Franco's ouster.¹⁵⁶ Practically, virtually all attempts at an independent foreign policy were stymied by France's weakness over against the two empires. With the UK more or less in the camp of the United States, France could not risk alienating its Western Allies, on whose support it was economically dependent

¹⁵⁴ John Gillingham, *Coal, Steel and the Rebirth of Europe, 1945-1955* (Cambridge: Cambridge University Press, 1991) 208.

¹⁵⁵ John W. Young, *France, the Cold War and the Western Alliance, 1944-49: French foreign policy and post-war Europe* (Leicester: Leicester University Press, 1990) 78-79.

¹⁵⁶ EPF 38.

for the maintenance of reparations agreements.¹⁵⁷ For example, under De Gaulle's guidance, France severed all relations (including postal and telephone communication) with Spain in March, 1946. By mid-1948, however, it had become apparent that no other state was willing to support the French isolation of Spain, and France was forced to normalize relations.¹⁵⁸

France's foreign-policy aspirations became largely moot with the Marshall Plan; through it, the United States demonstrated both its strength as a post-national empire and its intentions to secure Western Europe as an ally. In contrast to the USSR, which extended its influence through military expansion into adjacent states, George Marshall argued that "it is not our purpose to impose upon the peoples of Europe any particular form of political or economic association. The future organisation of Europe must be determined by the peoples of Europe."¹⁵⁹ By apparently granting the sixteen European beneficiaries of the Plan autonomy, the United States virtually guaranteed political compliance with its goals without the prospect of serious resistance.

Kojève saw the Marshall Plan as a demonstration of the new *modus operandi* in the world of empires. In January, 1957, responding to an invitation by Carl Schmitt, Kojève spoke at the Rhein-Ruhr Club in Düsseldorf on the subject of "Colonialism from a European perspective". In his presentation, which was heavily ironic (in it, he jokes, for example, that Ford was the only authentic Marxist of the

¹⁵⁷ Herbert Tint, *French Foreign Policy since the Second World War* (London: Weidenfeld and Nicolson Ltd., 1972) 120.

¹⁵⁸ Anne Dulphy, "La politique de la France à l'égard de l'Espagne Franquiste, 1945-1949," *Revue d'Histoire Moderne et Contemporaine* 35.Jan.-Mar. (1988): 123-140.

¹⁵⁹ Quoted in Tint (1972) 18.

twentieth century), Kojève addresses a question Schmitt had posed in several of his earlier works: what is the *nomos* of the new empires? By *nomos* Schmitt specifically meant the mode in which a given political order addressed the questions of how to seize, distribute, and exploit.¹⁶⁰ A political entity's *nomos*, for Schmitt, is its founding principle, its *Maß-Nahme*, literally that from which it takes its measures.

Kojève's response is of a type now familiar in dependency literature: he advocates what he calls "giving colonialism" – a policy of transferring capital from the core first-world states to the peripheral states on which the core states depend for both labour and consumption. Here, as in his discussion of the obsolescence of nation-states, Kojève's argument relies on historical materialism rather than either a moral (Kantian) or ethical (late Hegelian) basis. Modern European governments, he argues, finds themselves in a situation analogous to that of firms in the early twentieth century; as Marx had pointed out, capitalism produces a large, poor, and potentially dangerous working class. Rather than incurring the revolution Marx saw as an inevitable outcome of this dynamic of capitalism, industrialists responded with Fordism. The class dynamic which arose within states early in the century is now reproduced internationally: "the system is constructed such that the one, smaller part becomes richer every year through it, while the other, larger one absolutely never raises itself above the absolute minimum for subsistence".¹⁶¹ There is no longer such a thing as capitalism in the old, national sense; to its newer, international version

¹⁶⁰ See Carl Schmitt, *Land and Sea*, trans. Simona Draghici (Washington, D.C.: Plutarch Press, 1997) 37; Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europeum*, 2nd ed. (Berlin: Duncker & Humblot, 1974) 36-48.

¹⁶¹ KES 127.

Kojève attaches the name “colonialism” – although he clearly distinguishes this from imperial colonialism.

The argument for relief by first world states of the disparities caused by colonialism are prudential: “poor clients are bad clients and if the majority of a business’s clients are poor, i.e. bad, then the business itself is a bad business – in any case, not a sound one, but particularly not when the business, in order to avoid going bankrupt, must expand every year.”¹⁶² For Europe specifically, Kojève suggests the need for a “giving colonialism” directed particularly towards North Africa; otherwise, he says, “the southern and eastern Mediterranean clients will remain, as before, poor clients; and that also means: bad, or even ‘dangerous’ clients.”¹⁶³ Now, it is clear that Kojève’s Düsseldorf speech was a piece of propaganda directed at strengthening Western Europe at the expense of the superpowers. The introduction of giving colonialism (a move strongly resisted by the “principled colonialism” of the United States) as the *nomos* of the world of empires would greatly favour Europe. Because the spheres of influence of the superpowers comprise so many more poor, potentially dangerous “clients”, a program of giving colonialism encompassing the Mediterranean basin would entail a much lighter burden for continental Europe than for the USSR (whose sphere of influence included China) or the USA (the Americas). For the UK, which Kojève excluded from Europe (and whose entry in the EEC he opposed), the burden of maintaining its former colonies would be such that it would

¹⁶² KES 132.

¹⁶³ KES 139.

be forced into an Anglo-American union, which would increase the American burden still more.¹⁶⁴

The Düsseldorf speech turns out to have been an exemplary exposition of Kojève's political ends; his claim, at the speech's outset, that it entailed a "radically depoliticized" discussion is obviously ironic. An unpublished document compiling Kojève's contributions to the Ministère de Commerce Extérieur reflects the centrality of the European relationship with its Mediterranean neighbours to have been his greatest concern during the latter half of his administrative career.¹⁶⁵ He favoured the abolition of first-world agricultural subsidies (which he saw as a serious barrier to the alleviation of third-world poverty), and advocated both USAID's Food for Peace program (which was friendly to giving colonialism and, equally importantly, a made-in-America counterpoint to "principled colonialism") and the Mansholt Plan.¹⁶⁶

Kojève's account of the empire's *nomos* is, it is true, only indirectly connected with the question of a European citizenship, yet I argue that this connection is

¹⁶⁴ KES 138.

¹⁶⁵ "Analyse de travaux économiques effectués par M. Kojève." Ministère du Commerce Extérieur, 1977 5-6; I am indebted to Michael Roth for providing me with a copy of this document.

¹⁶⁶ USAID's Food for Peace program continues to operate today, donating food for distribution by voluntary and international organizations. In keeping with the principle of giving colonialism, one of the program's principal purposes is the expansion of export markets for U.S. agricultural products. The Mansholt Plan, named for and advocated by Sicco Mansholt, one-time vice-president of the European Commission, was designed to rationalize the European agricultural market and reduce or eliminate agricultural subsidies by increasing the size of farms, reducing the number of farm workers in the EEC by up to five million, and reduce the EEC's total farmland (see European Commission, *Le plan Mansholt, le rapport Vedel* (Paris: Société d'Édition des Cooperatives La Fayette, 1969)). There was much resistance from member states; the Mansholt Plan was ultimately rejected and the Common Agricultural Policy (CAP) was instead implemented. The CAP, which alone accounts for about half of the EU's total budget, heavily subsidises agriculture across the EU. Coupled with the EU's development policy, the CAP constitutes "principled" rather than "giving" colonialism: agricultural subsidies result in domestic surpluses and depressed world prices; the EU's development program then exports this surplus as food aid to third world countries, debilitating their capacity for domestic production. See Stephan von Cramon-Taubadel et al., *Assessing Coherence between the Common Agricultural Policy and the EU's development Policy: The Case of Cereals in African ACP Countries*, Forum, vol. 23 (Kiel: Wissenschaftsverlag Vauk Kiel KG, 1996).

nonetheless vital, particularly when his concrete political view of Western Europe as empire is read through the lens of the *Esquisse*. If we accept the grounding premise, shared by Kojève with both Schmitt and Strauss, that humans remain capable of evil – that is, capable of risking their lives in the service of an ideal and in violation of the existing social order – then we have already deferred the possibility of a citizenship constructed on the twin pillars of individual freedom and legality. We have seen how only man’s political aspect, preserved in that part of the citizen Kojève labels “master” can address the exception which cannot be subsumed under the categories of the juridical; more concretely, only an awareness of, and autonomous submission to, the Justice uniting a social order can protect that order against the political exception.

In our day, this kind of language appears to be the height of danger, and this appearance is heightened by the example of Carl Schmitt; his warnings during the last days of the Weimar Republic contained the argument I have repeated here, and Schmitt, of course, soon after became a member of the Nazi party. Against the view that the “master” represents only the worst of humanity, I offer three defences of its preservation in modern citizenship, including that of the European Union. First, corollary to the examination of Hegel’s discussion of love and the family above (p. 166), the disappearance of the master entails the disappearance of the human ability to love, and the consequent envelopment of all human relations within the juridical. Second, to the extent that both Kojève (a member of the French Resistance) and Strauss (a Jewish German exile) share Schmitt’s view that the political cannot be grounded on liberal premises, this view is not reducible to a position of ethnic (or indeed any kind of) nationalism. Finally, the simple existence of people all over the

world willing to risk their lives in any number of (mainly nationalist or religious) causes should be enough to convince any reasonable person that the prospect of violent death has not been done away with in our time.

None of this is an argument against liberalism itself; my argument is only that liberalism is unequipped to ground a theory of citizenship – that is, a genuinely political liberalism is impossible. All four thinkers examined here are united on this point, irrespective of their divergent language on the question. On the other hand, liberalism has unquestionably provided a highly rational and effective means of mediating economic and social relations between citizens, and there is no reason to anticipate or pursue its demise. Modern Western citizenship seems unlikely, for the foreseeable future, to exclude a liberal civil society under normal conditions.

All of what has just been said leads to the unavoidable position that a citizenship of the EU must be connected with a single, shared view of Justice. On the arguments I have presented here, such a Justice would necessarily entail both juridical and political components. Juridically, it entails provisions for universal juridical relations, embodied in a Community law which has the authority to recognize potential *Droits* of significant groups (such as nations, linguistic groups, or economic interest groups), but also to withdraw that recognition when necessary; this tendency is already apparent in both the principle of subsidiarity, which recognizes the need to implement policy at the lowest possible level, and in the efforts of the Committee of the Regions to recognize groups crossing state borders. Politically, it entails the prospect, troubling for some member states, of the universal recognition of an *acquis* from which consent cannot be withdrawn from within the juridical sphere. Still more

distressing to some member states is the need for that *acquis* to encompass a common foreign policy. In the next chapter, we will examine both the existing status of European citizenship and the potential for its expansion on the basis presented here in further detail. Under no circumstances, however, should my argument to this point be interpreted to imply the necessity or existence of a European *ethnos*, an argument against European expansion, or, indeed, support for the notion of any type of essentialism whatever. By their very nature, empires are necessarily multinational, multilingual entities with aspirations to expansion; moreover, the Kojèvean anthropology as the basis for the model of citizenship I have adopted here rests on the master's capacity for radical autonomy. In the next chapter, I will attempt to show how these ends are compatible with, and indeed require, a much more robust citizenship for the European Union than is now the case.

Chapter 4

Citizenship in practice: the European Union

“The European nations form a family in accordance with the universal principle underlying their legal code, their customs, and their culture. This principle has modified their international conduct accordingly in a state of affairs otherwise dominated by the mutual infliction of evil.”

- G.W.F. Hegel, *Philosophy of Right*¹

This chapter examines the political and legal structures of the EU relevant to citizenship against the model of citizenship developed in the previous chapter. That model rests on the dialectical relation of the political and the juridical in any instance of modern citizenship. The previous chapter detailed both the shared origin of the political and the juridical as well as the dialectical relation between them. Here, however, our focus will be their institutional manifestations.

As we saw in the last chapter, the political is the operational Justice which arises specifically in the relation between the governor and the governed on the one hand, and between friends and enemies on the other. It has four predominant characteristics. First, each political relation is bilateral: it invariably involves only two parties (whether governor/governed or friend/enemy) and cannot be mediated by a third party, for the presence of a mediating third would make the relation a juridical one. Second, the political relation is exclusive; that is, nobody can be simultaneously engaged in more than one political relation². Third, only the political dimension has the capacity to appeal directly to man's life-risking capacity. Fourth, the political is

¹ PR §339A.

manifest only where we have equality among friends. Institutionally, we will expect to find the political most clearly visible in three types of institutions: in foreign policy (including collective defence), in citizens' rights where the principle of equality is paramount, and in the duties owed by the governed to the governor. The relation between the latter two is asymmetrical; that is, the balance between rights and duties is not constant, but is particular to each Justice.

By contrast, the juridical has the following four characteristics. First, the juridical relation always invokes (at least implicitly) a third, neutral party capable of mediating a relation between two legal persons in the service of a shared Justice. Second, juridical relations are manifold; individuals might be involved in any number of juridical relations simultaneously without any necessity of conflict between them. Third, the juridical rests on the principle of equivalence, manifested in contractual exchanges. Finally, the subspecies of the juridical I have called (following Kojève) actual *Droit* – that is, where the juridical relation is, in principle, necessarily invoked and applied to correct imbalanced relations – exists only where we find the political, which provides the implicit or explicit force necessary to sustain that *Droit*. We will thus find the juridically most prominently manifested in contract law, policies relying on the principle of equivalence, and in the symmetrical rights and duties which accompany contractual relations.³

² The existence of multiple enemies at any one time does not create multiple political relations because the political dimension does not permit the differentiation between different kinds of enemies, all of which exist solely because of their capacity (if only in principle) to engage in a fight to the death for one or another Justice.

³ On the distinction between symmetrical and asymmetrical duties see G.W.F. Hegel, *Philosophy of Right*. Trans. T.M. Knox (Oxford: Oxford University Press, 1967) (henceforth *PR*) §261.

Because of their manifold nature, instances of actual *Droit* have clearly and frequently become integrated, particularly, but not exclusively, in the domain of international trade. Where they share a conception of equivalence, different political Justices commonly sustain juridical relations transcending political divisions. The result of these agreements is the emergence of what appear to be uninterrupted and integrated exchange systems with intrinsic authority⁴, including international organizations with juridical functions, such as the World Trade Organization, the North American Free Trade Agreement (NAFTA), the European Court of Human Rights (ECHR) (an organ of the Council of Europe) and the proposed International Criminal Court of the United Nations. The theory of citizenship developed in the last two chapters cannot entertain the cosmopolitan view of these as single political organizations with citizens, so much as jigsaw puzzles comprised of individual parts whose contribution to the well-being of the whole is politically contingent on their members.⁵

At the same time, through the effectiveness of these organizations, as well as the EU itself, an actual *Droit* in the trade and human rights sphere has emerged, if only in outline. Insofar as these organizations possess juridical bodies whose

⁴ This appearance of authority is interpreted by some scholars as a source of hope in an attempt to develop a transnational or cosmopolitan ethical system. Soysal, for example, sees the emergence of a new Justice in which "... rights are legitimated by the global ideologies of human rights. Thus, universal personhood replaces nationhood; and universal human rights replace national rights. . . The rights and claims of individuals are legitimated by ideologies grounded in a transnational community, through international codes, conventions and laws on human rights, independent of their citizenship in a nation state. Hence, the individual transcends the citizen." (Yasemin Soysal, "Changing Citizenship in Europe: Remarks on postnational membership and the national state" in David Cesarini and Mary Fulbrook, eds. *Citizenship, Nationality and Migration in Europe* (New York: Routledge, 1996) 23.

decisions carry the force of law, they embody a shared Justice manifested in actual *Droit*. To the extent that actual *Droit* is present, these organizations and the governments that enforce their judgements constitute the governors over against which other legal entities (individuals, corporations and states, for example) constitute the governed.

It is helpful to recall, at this stage, that Kojève anticipated a division between the governor-governed relation and the friend-enemy relation in the interregnum between the age of the nation-state and that of the universal and homogeneous state. We saw, in the last chapter, that Kojève foresaw the possibility that a juridical Federation could become a constitutional Federation, the member states of which retained a governor-governed relation with their citizens, but which could no longer be described as “sovereign,” for two reasons. First, insofar as the various member states implement a single standard of Justice, they possess only restricted autonomy with respect to it. Second, the constitutional Federation cannot be divided internally by friend-enemy divisions, but in this respect must assume the form of a state.⁶ In our investigation of EU citizenship, the central question is whether the EU falls into the same category as these intergovernmental organizations (of which citizenship is not possible), or whether it embodies the constitutional federation which accommodates citizens. If the former is true, then the positing of EU citizenship in Article 17 of the

⁵ The European Court of Human Rights, for example, consistently encounters resistance from some of its own member states in the legislative implementation of the Court’s decisions (although compensation, or “just satisfaction” is usually awarded to plaintiffs in accordance with the Court’s determination). See Erik Jurgens, *Execution of Judgements of the European Court of Human Rights* (Council of Europe Doc. # 8088, 2000), esp. ¶33-66.

⁶ Alexandre Kojève, *Esquisse d’une Phénoménologie du Droit* (Paris: Gallimard, 1981) (henceforth *EPD*) 388.

EC Treaty has no more substance than would a claim to world citizenship based on the existence of the WTO or the United Nations. On the other hand, should there be evidence of an EU political dimension – particularly in those policy fields identified above as most consistent with the political aspects of citizenship – then the claims to EU citizenship are credible.

While the citizenship theory developed here relies on the principle that the political relation is unique, this principle does not preclude the existence of multiple sources of political support for particular legal codes. The shared, actual *Droit* exhibited by the international organizations mentioned above crosses friend-enemy lines without contradiction. This is particularly noteworthy in the case of the European Court of Justice (ECJ), whose case-law is incorporated into that of the legal systems of the member states, is implemented correspondingly by state courts, and enjoys a very high rate of compliance with its rulings. As we will see in our examination of a number of cases below, the ECJ often makes rulings which run directly counter to the express “national interests” of member states, but it does not follow that the political dimension has been suppressed or dissolved at the member state level, any more than when domestic courts rule against “national interest”.⁷ The political, however, is not reliably indicated by national interest, which can in reality stand for the private interest of particular political parties or governments, interest

⁷ For an account of the ECJ’s development from a comparatively impotent international court to an autonomous and successful legal arbiter, see Karen J. Alter, “Who are the ‘masters of the Treaty’?: European governments and the European Court of Justice” in *International Organization* 52 (Winter 1998) 121-139.

groups, classes or even individuals; a juridical correction of an unjust action by any of these parties demonstrates the strength of the political rather than undermining it.⁸

A preliminary excursus on realism and cosmopolitanism

Insofar as a constitutional Federation is state-like with respect to foreign and defence policy, the Kojèvean account of interregnum politics is consistent with the international relations school of realism. On the other hand, because such a federation permits – indeed, pursues – the universalization of its Justice, this account contains elements familiar from our reading of the cosmopolitan literature in Chapter 1. This short excursus is serves to identify the characteristics distinguishing the Kojèvean theory of citizenship from both of them.

Realism

The Kojèvean theory of citizenship under examination in this chapter bears some resemblance to the international relations theory of realism. While it is true that the two theories share certain traits, particularly certain Hobbesian influences, they are distinct in at least three important respects: first, realists, unlike Kojève, offer no substantive account of human nature; second, realists view history as simply determined by human nature, whereas Kojève's Hegelian analysis entails a dialectical view of history; and, finally, as a result of the preceding two differences, Kojève views as historically contingent what realism takes for granted, such as the existence of states, the anarchy of the international sphere, and the concept of the balance of power.

⁸ One needs only to think of cases such as *Brown vs. Board of Education* to see that the unjust actions of state authorities can be corrected juridically without any threat to politically operative Justice.

First, let us briefly examine the common ground shared by realists with Kojève. Among so-called classical realists such as Reinhold Niebuhr and Hans Morgenthau, the anarchic sphere of international relations and the existence of states derives from the evil, or dangerous, aspects of human nature, which we saw as Hobbes' principal contribution to Kojève's thought.⁹ Morgenthau, like Kojève, acknowledges his debt to Carl Schmitt¹⁰, and his later work reflects the substance of that debt; Morgenthau's insistence on "the autonomy of the political sphere against its subversion by other modes of thought"¹¹ echoes Schmitt's quest for an understanding of the political, over against morality, aesthetics and economics, which "is surely independent of them and as such can speak clearly for itself."¹² But Niebuhr and Morgenthau do not clearly lay out what is essentially evil about human nature; Niebuhr variously grounds his version of realism on "the ignorance and selfishness of men"¹³, "lust for power and self-idolatry"¹⁴, and "the will-to-power of the ego."¹⁵ Morgenthau writes of "power politics, rooted in the lust for power which is common

⁹ Hans Morgenthau, *Politics Among Nations* (New York: Alfred A. Knopf, 1986) 4; Reinhold Niebuhr, *Moral Man and Immoral Society: A Study in Ethics and Politics* (New York: Scribner 1960) 2.

¹⁰ See Hans Morgenthau, "Fragment of an intellectual autobiography: 1904-1932", pp. 1-17 in Kenneth Thompson and Robert J. Myers, eds. *Truth and Tragedy: A Tribute to Hans J. Morgenthau* (Washington, D.C.: New Republic Book Co., 1984) 15. Here, Morgenthau writes that his doctoral dissertation, completed in 1929, was partly a reply to Schmitt's *Concept of the Political*. According to Morgenthau, Schmitt's 1932 edition of that work was revised in response to Morgenthau's propositions (16). See also Christoph Frei, *Hans J. Morgenthau: Eine intellektuelle Biographie*, 2nd ed. (Bern, Stuttgart and Vienna: Verlag Paul Haupt 1994) 44-45; 112; 124-125; 169-172; and Alfons Söllner, "German Conservatism in America: Morgenthau's Political Realism" in *Telos* 72 (Summer 1987) 161-172.

¹¹ Morgenthau (1986) 16.

¹² Carl Schmitt, *The Concept of the Political*. Trans. George Schwab. (Chicago and London: Methuen, 1996) (henceforth *CP*) 26.

¹³ Niebuhr (1960) 23.

¹⁴ R. Niebuhr, "Mystery and Meaning" pp. 237-249 in Robert McAfee Brown, ed. *The Essential Reinhold Niebuhr: Selected Essays and Addresses* (New Haven: Yale University Press, 1986) 245.

¹⁵ R. Niebuhr, "Man's Nature and his Communities" pp. 30-83 in *Man's Nature and His Communities: Essays on the Dynamics and Enigmas of Man's Personal and Social Existence* (New York: Scribner, 1965) 48.

to all men”¹⁶ In contrast, Kojève does so at length in his account of the master-slave dialectic which underpins his analysis of both Hegel’s *Phenomenology* and of *Droit*.¹⁷

More important than this, however, is the role history plays in Kojève’s political thought. Realism is grounded on the view that humans are evil in the same way as oak trees bear acorns; for Morgenthau, the history of foreign policy should yield, to the patient observer of rational statesmanship through the ages, a rational theory of politics and a corresponding set of objective laws.¹⁸ On the realist view, there is no substantive difference between the Athenian *polis*, Alexander’s Empire, the Roman Empire, or the modern nation-state. Kojève, however, adopts a historicist, more or less Hegelian view of different political institutions, beginning with the *polis* and ending with the universal and homogeneous state. For Kojève, the willingness to engage in the dangerous battle for pure prestige (the realists’ “lust for power”) is a purely historical, rather than natural, quality of man, deriving from the natural need for recognition. This battle initiates a historical dialectic which ultimately brings about the bloodless victory of slave over master, the de-politicization of the willingness to risk life, and universal recognition without violence. As we saw in chapter 2, Kojève insists that Hegel’s philosophy of history is inapplicable to nature; on precisely these grounds, a theory of citizenship based on Kojève’s arguments necessarily excludes any notion of a transhistorical (even “biological”) human nature.

¹⁶ Hans Morgenthau, *Scientific Man vs. Power Politics* (Chicago: University of Chicago Press, 1946) 9.

¹⁷ Hans-Karl Pilcher argues that Morgenthau’s vagueness on the question of human nature is the result of his having been heavily exposed to the debates being waged by Schmitt and others on this score in Weimar Germany, thus seeing these matters as having been already adequately addressed (See Hans-Karl Pilcher, “The godfathers of ‘truth’: Max Weber and Carl Schmitt in Morgenthau’s theory of power politics” in *Review of International Studies* v. 24 (1998) 185-200). The virulent opposition Morgenthau retains, in his postwar writings, to liberal theories of international relations suggests he saw the question of human nature as anything but settled.

Finally, because Kojève is a student of Hegel, political bodies such as states comprise only the “objective” part of the dialectic for him, whereas realists treat international relations as “absolute”. Morgenthau saw, in the post-war tension between the superpowers, simply one more instance of the universal law of the balance of powers; Kojève saw in it the penultimate stage of history in which the final political dichotomy – between “right” and “left” Hegelianism – made its appearance.¹⁹

Cosmopolitanism

The position that citizenship – including that of the EU – must be a genuinely political relation stands in stark contrast to the cosmopolitanism position reviewed in Chapter 1. Variants of the cosmopolitan position commonly view the EU as the locus of a new kind relation independent of political community in the strict sense.²⁰ Cosmopolitan scholars, as we have seen, take the view that the less desirable, or non-liberal, aspects of citizenship as manifested in national states are products of that particular political form, rather than of citizenship itself. Thus, Preuss argues that the political aspect of citizenship, embodied in “a relationship of belonging and trust”²¹, belongs specifically to the nation-state and its *demos*; in the absence of this

¹⁸ Morgenthau (1986) 4-5.

¹⁹ Alexandre Kojève, “Hegel, Marx and Christianity,” Hilail Gildin, trans., pp. 21-42. in *Interpretation* 1 (1970) (henceforth *HMC*) 41.

²⁰ See, for example, Ulrich K. Preuss, “The Relevance of the Concept of Citizenship for the Political and Constitutional Development of the EU” pp. 11-27 in U. Preuss and Ferran Requejo, eds. *European Citizenship, Multiculturalism, and the State* (Baden-Baden: Nomos Verlagsgesellschaft, 1998); Derek Heater. *Citizenship: The Civic Ideal in World History, Politics and Education* (London and New York: Longman, 1990); Elizabeth Meehan. *Citizenship and the European Community* (London: SAGE Publications, 1993); Carlos Closa, pp. 415-433 “Supranational citizenship and democracy: Normative and empirical dimensions” in Massimo La Torre, ed. *European Citizenship: An Institutional Challenge* (The Hague: Kluwer Law International, 1998); Norbert Reich, “A European constitution for citizens: Reflections on the rethinking of Union and Community law” in *European Law Journal* 3 (2) (June 1997) 131-164, at 138.

characteristic at the EU level, according to Preuss, we are left only with citizenship as legal status.²² Heater extracts from the “cluster of meanings” associated with citizenship (defined legal or social status, means of political identity, focus of loyalty, requirement of duties, expectation of rights, and a yardstick of good social behaviour)²³ the rights and duties necessary to construct a global liberalism by subordinating the political to the juridical.²⁴ Meehan argues that nation-states, historically the centre of political citizenship, are gradually being supplanted by the international civil society created by global commerce, as the latter provides empowering communications networks for new international citizens across national borders.²⁵ Carlos Closa argues that an EU citizenship requires that the notion of a European *demos* be jettisoned in favour of a citizenship of “critical reflexivity” which “allows one to refer to universal elements embedded into national political constitutions as well as international judicial space.”²⁶ These “universal elements” turn out to be those common found in the juridical portions of liberal states’ legal orders; the transnational citizenship Closa advocates “resembles a libertarian ideal of democracy whose essential characteristic is the assumption of private law as the constitution and the lack of provision for political self-determination.”²⁷

A Kojèvean theory of citizenship does not, as we have already seen, preclude the *possibility* of the cosmopolitan, apolitical and essentially Marxist end-state shared

²¹ Preuss (1998) 23.

²² Preuss (1998) 14.

²³ Heater (1990) 161, 167.

²⁴ Heater (1990) 320.

²⁵ Meehan (1993) 8-9.

²⁶ Closa (1998) 428.

²⁷ Closa (1998) 428.

as a political ideal among these, and many other, scholars of contemporary citizenship. Nonetheless, two fundamentally Hobbesian axioms divide the Kojèvean argument from those of these scholars. First, liberal cosmopolitanism cannot be implemented on any scale short of a global one. It is true, as Heater argues, that some aspects of liberal cosmopolitanism, in such forms as tolerance and individual freedom, are seen in virtually all nations and religions²⁸, but this fact is evidence only of the presence of their juridical aspects, not of the absence of their political ones; as Schmitt points out, the Christian imperative, “love your enemies” (found in Matthew 5:44 and Luke 6:27) did not prevent the Crusades.²⁹ Second, inasmuch as I argue that the relation between the political and the juridical is fundamental to a general theory of citizenship, I also maintain that the particular forms these principles take on in different types of polity are not definitive or exhaustive. To conclude, as Heater and Meehan do, that the putative decline of national identity clears the way for a cosmopolitan citizenship is to mistake national identity for the political generally. The history of citizenship considerably predates that of the national state and of nationalism.

Methodological problems connected with understanding EU citizenship

Because citizenship exists in the dialectical tension between the juridical and the political, it is virtually impossible to identify the fixed features of a specific citizenship precisely. In the last chapter, we saw through numerous examples how the juridical and political aspects of citizenship are in a permanent dialectical relation with each other. The dialogic character of this relation ensures that both the discourse

²⁸ Heater (1993) 188.

and the boundaries of citizenship are always in flux. Even single policy areas are commonly subject to both juridical and political analyses in public debate, and there is no reason to expect that these analyses always contradict one another.³⁰ For example, both juridical and political arguments have been invoked in the defence of the policy of official bilingualism in Canada. The juridical position, on the one hand, maintains the equivalence of English and French, thus justifying the provision of public services in both languages. The political position, on the other hand, cannot argue from the position that English and French are *equal* – for “equality” here would be reducible to equivalence – but instead posits bilingualism as a fundamental aspect of Canadian citizenship. In the political defence of official bilingualism we find the justification for the universal availability of bilingual education, irrespective of mother tongue.³¹ This tension between the juridical and political views of bilingualism was apparent in the debate between exponents of the so-called territoriality and the personality principles of bilingualism during the 1960s. The territoriality principle, which would have established the province of Quebec as a French-speaking homeland within Canada, aimed to make language part of a Justice subordinate to the Justice binding Canadian citizens in general. As such, the success of the territoriality principle would have entailed the possibility that a Justice grounded on common language might attempt to become political, i.e. revolutionary. The personality principle, favoured by Pierre Trudeau and the dominant basis for subsequent bilingualism legislation, posited bilingualism as an essential aspect of the

²⁹ CP 29. See Chapter 3, note 73.

³⁰ EPD 272.

³¹ This guarantee is subject to practical limits under the 1982 Constitution Act (§ 23).

Canadian character irrespective of geography. In this example, the juridical and political positions do not contradict each other outwardly, although the dialectical relation between them appears in both the different aspects of legislation they engendered (bilingual provision of services vs. universal bilingual education) and in the nature of the debate surrounding the policy of official bilingualism in Canada, both historically and now.

As this example demonstrates, a theory of citizenship sensitive to the division between the political and juridical perspectives must be open to the possibility that policies incorporate both positions in an approximation of the synthesis Kojève calls “equity”.³² It is nonetheless necessary to retain the analytical division between these positions, because, as I argued in the previous chapter, both the juridical and the political must be present in instances of actual *Droit* unless we have already entered the universal and homogeneous state. Until that point, just as man is only a Citizen “to a certain extent,” *Droit* is only a partial synthesis or a compromise between equality and equivalence.³³ To wit, to the political sphere belong both the Justice underpinning the impartial third party mediating between two parties and the force necessary to implement the outcome of his judgement. The juridical principle obviates the need for constant battles to the death for pure prestige by providing citizens with bloodless recognition of their particularity through the mechanism of equivalence. Even in policy areas which seem to entail a purely political situation, such as those affecting the state’s security, juridical issues arise. For instance, in most Western states, conscription law recognizes the existence of conscientious objectors

who might be assigned equivalent, non-combat roles.³⁴ Tax law, while applying universally to citizens, applies the principle of equivalence through progressive taxation.³⁵

A comparative approach to citizenship grounded on Kojève's theory is necessarily highly descriptive. The distinctions between particular citizenships rest on two variables: on "politicization" – that is, on what aspects of civil society have been raised to the level of the political; and on "interaction" (which Kojève calls "juridical evolution"³⁶), i.e. the particular modes of interaction, and the resulting compromises, between the juridical and the political in these politicized areas. There is no reason to believe that politicization is determined by cultural features or customs sometimes called "pre-political". Although the existence of such features may lend authority to acts of politicization, shared social traits are neither a necessary nor a sufficient condition of politicization.³⁷ A comparison of the role of language in Canadian citizenship with that of other states shows range of political options stemming from the fact of two citizen language groups; while language is very often (officially or not) an important component of citizenship, bilingualism sets Canadian citizenship apart from that of most other states. Even among the states with which Canada shares this feature, however, "bilingualism" has considerably divergent meanings. In Belgium,

³² EPD 257.

³³ EPD 257.

³⁴ Contrast Thomas Hobbes, *Leviathan*. C.B. Macpherson, ed. (London: Penguin Books, 1985) (henceforth *Lev.*) 269.

³⁵ EPD 297.

³⁶ EPD 174.

³⁷ EPD 170. Kojève points out, moreover, that laws may defy existing custom without falling into despotism.

for example, the territoriality principle prevails³⁸, whereas Finland inclines to an ethnic model which links education rights to parental mother tongue.³⁹

Because of the high level of detail demanded by a study of citizenship using the model I am proposing here, a *general* account of a particular citizenship such as is required for this project demands strict parsimony. In practice, such parsimony favours formal-legal indicators over others, and consequently the general account of citizenship suffers from the weaknesses of all studies relying primarily on formal-legal indicators. That said, this project should be seen as a preliminary case study of EU citizenship based on the Kojèvean model of citizenship, and not as an attempt to provide a comprehensive and exhaustive description of citizenship. The emphasis on formal-legal indicators of citizenship necessary in this general study of EU citizenship does not preclude more refined studies in particular policy areas which incorporate a wider range of data sources yielding more refined results.

According to Kojève, the best indicator of what I have called politicization is the constitution. Study of the constitution, he writes,

is useful to know exactly what a given State is, although this knowledge has nothing to do with Droit, being a purely political knowledge. On the other hand the Constitution allows the distinction between the actions of the State and the private acts accomplished falsely in the name of the State: in which case the State can intervene in its quality as Judge in order to cancel these actions insofar as they engender conflicts with the 'administered.'⁴⁰

³⁸ Constitution of Belgium, Art. 4.

³⁹ Finnish law prescribes the availability of minority-language education in administrative regions where a minimum of eight per cent of the population is identified, through census data, as having that language as mother tongue. This principle differs from the Canadian provision of minority-language education "where numbers warrant" insofar as Canadian law is constructed to respond to local *demand* for minority-language education irrespective of parental mother tongue.

⁴⁰ EPD 169.

Constitutions thus do not contain an authoritative index of the way the tension between the political and the juridical is resolved or appears in practice. The constitution is only an *index* of the political; what is authoritative in a polity stands *above* the constitution, not in the constitution. As the legal theorist Gerhard Anschütz argued, “There is not only a gap in the law, that is, in the text of the constitution, but moreover in law as a whole, which can in no way be filled by juristic conceptual operations. Here is where public law stops.”⁴¹ At best, Carl Schmitt argues, the constitution can recognize this gap between the origin of the constitution’s authority and the constitution itself in the anticipation of the exception.⁴²

Constitutions do, however, delineate the public space in which simply juridical relations can take place. For example, the freedom of religion guaranteed in many constitutions is clearly a juridical case insofar as it rests on the equivalence of different religions. That the freedom to practice diverse religions is juridical is indicated where such freedoms are explicitly superseded by politically-grounded civic duties; in Western states, the right to freedom of religion does not, for example, override the universal right of security. In instances such as that of freedom of religion, there is no question of religion entering into the realm of the political. What we can observe in such cases is the *circumscription* of the political. This circumscription is a critical function of the political because it explicitly relegates particular social factors to the level of civil society and excludes them from acquiring political significance. Most Western constitutions thus contain a constitutional level

⁴¹ Cited in PT 15; from Georg Meyer, *Lehrbuch des Deutschen Staatsrechts*, 7th ed., vol. 3 (Munich and Leipzig: Duncker & Humblot, 1919) 906.

of immunity against the political dominance of one or another single religious party to the extent that competing religions are excluded. Circumscription, while frequently contained within constitutions themselves, is in fact a result of interaction, in which the force contained in the political is exchanged for the peaceful agnosticism afforded by the principle of equivalence.

The index of what I have called interaction is found at the level of civil society, which includes not only the informal and voluntary types of association conventionally associated with civil society, but also the judicial system.⁴³ Insofar as the judicial system pertains to what Hegel calls the “system of needs”⁴⁴ it mediates between citizens and other legal personalities whose rights and duties are symmetrical with one another, but there is nothing political about this mediation.⁴⁵ For Hegel, the system of needs comprises work and property connected with the particular wills of citizens⁴⁶, but as we saw in the previous chapter, the number of needs with legal status has proliferated⁴⁷ to include, for example, the practice of religion, public speech and association, basic welfare and education. In the application of the law in these areas, the political appears in two ways: first, in the authority inherent in the administration of the system of needs through the judicial system; and, second, in the limits to which all of these needs are subjected at the point where they cross into the terrain occupied by the political: property rights, for example, are constrained by

⁴² *PT* 14; a more extensive discussion of Schmitt’s view of the exception appears in the previous chapter, pp. 182ff.

⁴³ Excluding only direct offences against the sovereign, such as treason. The symmetry which characterizes rights and duties in civil society and its law is absent in the rights and duties binding the sovereign to citizens. Cf. *PR* §261.

⁴⁴ *PR* §§188-208.

⁴⁵ *EPD* 159.

⁴⁶ *PR* §189.

sovereign power to tax; public speech is subjected to limits associated with public security. The aspect of citizenship connected with the administration of the system of needs is best observed in the application of the law rather than the law as written, for the simple reason that it is only in the administration of justice that the authority which distinguishes actual from potential *Droit* is apparent. Laws which are inoperative because of obsolescence or unenforceability fall under the rubric of potential *Droit* and are thus of no interest in our study of citizenship.

National sovereignty vs. EU autonomy

The EU has no formal constitution, but the European Court of Justice (ECJ) has taken the view that the EEC Treaty and the TEU together with their interpretations in judgements by the ECJ, play the role of an EU constitution.⁴⁸ One result of these judgements has been the transformation of the Treaties from mere agreements between states to supreme laws with precedence over national laws in spheres of Community jurisdiction. Since the seminal *van Gend en Loos* (1963) and *Costa v. ENEL* (1964) cases, citizens have been able to use Treaty law against national legislation in certain policy areas. Insofar as the ECJ's determinations – and, by extension, the right of citizens to appeal to Community law to overrule national

⁴⁷ Cf. *PR* §191.

⁴⁸ In case 294/83, *Parti Ecologiste, "Les Verts" v. European Parliament* [1986], for example, the European Court spoke of the EC Treaty as "the basic constitutional charter" of the Community. The substantial arguments favouring a constitutional interpretation of the Treaties predate *Les Verts* considerably, however; most notably, the *van Gend en Loos* (1963), *Costa vs. ENEL* (1964) and *Simmenthal* (1978) cases established the primacy of Community over national law.

law⁴⁹ – are applied in practice, there is clearly evidence of the political at the EU level. It is less clear, however, whether in these instances the operative political dynamic is a function of the “autonomy” which, the ECJ has argued, characterizes Community law⁵⁰, or of the states implementing the ECJ’s judgements. Although the former interpretation is consistent with the emergence of a constitutional Federation on Kojève’s model, the latter remains the interpretation of some scholars, who see the EU as, at most, a “juridical Federation,”⁵¹ a convergence of intergovernmental interests embodied in a Society of potential *Droit* rather than the embodiment of shared and actual Justice.

The analytical separation between the processes of politicization and interaction, however, provides us with some explanatory power concerning the tension between the member states’ claims to national autonomy on the one hand and the ECJ’s declaration concerning the autonomy of Community law on the other. This separation yields two possible explanations.

First, we must consider the possibility that EU citizenship exists only in name, and that the EU is nothing more than a juridical Federation. Because the process of interaction takes place purely in the system of needs, circumscribed through politicization, judicial decisions in the EU’s sphere of competence are without

⁴⁹ While the ECJ does not have the power of judicial review (i.e. it cannot judicially overturn existing national state legislation), it can require compensation from member states violating EU law. Where member states violate Regulations (which have the force of law), the ECJ can award penalties to be paid by those states to the Commission. Where member states violate Directives (which must be transposed into national law by member states) by not transposing them correctly, within the allowable time, or at all, the same penalties can be awarded. Moreover, since the *Francovich* case (joined cases C-6/90 and C-9/90), member states have been subject to “vertical direct effect”, whereby member states can be sued for compensation by citizens adversely affected by the failure to transpose Directives.

⁵⁰ Case 26/62 (*van Gend en Loos*).

political implication or effect; that is, they take place purely at the level of civil society while enjoying the force deriving from the political for their implementation. This relation is apparent within the EU; without an autonomous police or military force, the ECJ relies on the member states' monopoly of force for the authority to implement its judgements. Nonetheless, the existence of such a relation in the EU relies furthermore on what jurists in this field sometimes call "horizontal direct effect"⁵²: the existence of a genuinely international or transnational civil society whose internal relations are governed, on the one hand, by juridical codes of equivalence, while being supported, on the other hand, by the force inherent in the political relations of all of the EU's member states. Should this be the case, it would follow that we have the appearance of actual *Droit* without citizenship, in much the same way as, for example, actual *Droit* exists between contracting individuals who are citizens of different states.⁵³ Under these conditions, there is no constitutional Federation, but only an international Society or juridical Federation, constructed on potential *Droit*, in which states take part contingent on political factors.⁵⁴

A second possible explanation for the tension between conflicting claims to national and EU autonomy is the argument that the EU is in a position of embryonic constitutional Federation. On this view, the member states' implementation of the ECJ's determinations is an indicator of what Jean Monnet called the "abnegation of

⁵¹ EPD 389.

⁵² See, for example, Peter Oliver, *Free Movement of Goods in the European Community* (London: Sweet & Maxwell, 1996) 56-57.

⁵³ Kojève argues that such a situation is possible only so long as peace prevails. "In times of war," he continues, "enemy citizens return to being political 'enemies' and thus cease to be subjects of law. They are once again 'outside the law.'" (EPD 149)

⁵⁴ Kojève describes this scenario in EPD 386-387.

sovereignty in a limited but decisive field”.⁵⁵ A single European citizenship of the Kojèvean constitutional Federation, however, requires more than the abnegation of sovereignty in the “limited but decisive field” of economic relations; as we saw above, constitutional circumscription is not a genuinely political act, and the freedom of purely economic relations falls strictly under the juridical. Particularly in the sphere of international economic relations, states may circumscribe political action – that is, voluntarily submit to the rules demanded by that sphere – without ceding political authority to another body.⁵⁶ If there is, or is to be, a citizenship of a European Federation, that body must possess some political function – that is, one not dependent on a juridical system for its implementation.

Outline of the empirical study

A substantive account of a particular citizenship contains elements of the political and the juridical, related in the following permutations. On the one hand, the political contains the dimensions of governor/governed and friend/enemy, neither of which, in isolation, permits an actual juridical relation. In particular, the political relation, being founded with the Hobbesian social contract, anchors both the security of the individual and that of the state. The friend-enemy relation is therefore most explicit in provisions concerning individual security and maintenance and defence of the state, and binds all citizens equally. The governors of a constitutional Federation, on the other hand, are in principle interchangeable with one another with respect to

⁵⁵ Jean Monnet, *Memoirs* (London: Collins, 1978) 316.

⁵⁶ There is abundant historical evidence, *contra* Kojève’s argument (see note 53), that even in periods of war a transnational civil society fosters international trade between citizens of warring states. See Katherine Barbieri and Jack S. Levy, “Sleeping with the enemy: the impact of war on trade” in *Journal of Peace Research* 36 (4) (July, 1999) 463-479.

the Justice they administer and with respect to the governed; any essentially private characteristics (sex, nationality, etc.) or interests play no part in their capacity to govern. As we will see in our examination of both the policy-making and juridical parts of the EU, this interchangeability appears in various forms: in the Commission's executive status (including the outward appearance of unity among its members with respect to Commission decisions), in policy areas where the Council can take decisions on the basis of qualified majorities (i.e. without the consent of all governors), and, most prominently, among the union of courts at the national and EU level, all of which administer EU law equally. In this survey of pertinent EU policy areas, then, these instances of a governor-governed relation are of particular interest in evaluating the degree to which a European Federation is already present.

The analysis below is divided into four sections. In the first, I examine EU citizenship policy itself. In the second, we explore three citizenship-related policy areas incorporating the common market and spillover policies. The third section addresses the "third pillar," namely justice and home affairs. The final section explores the policy area most pertinent to the friend-enemy element of the citizenship model I am defending, namely the EU's foreign policy. In the first three sections, the policies in question will be considered, where relevant, at three levels: the Treaty level, the legislative level, and the juridical level. Treaty provisions for citizenship-related questions are found exclusively in the Treaty Establishing the European Communities (the EC Treaty) and the Treaty on European Union (TEU, or Maastricht), as amended, most recently, by the Amsterdam Treaty of 1997. The final

section contains both a policy-oriented analysis of foreign policy and an agent-centred review of recent developments in the EU policy and defence fields.

I have selected these policy areas for analysis in an attempt to identify those most likely to sustain an EU citizenship along both the juridical and political dimensions. The juridical sphere alone creates laws of symmetrical rights and duties between political friends, for whom the principle of equivalence is paramount in the prospect of obtaining recognition from fellow citizens through non-violent means. The political gives shape to the juridical through the processes of circumscription – whereby social features are specifically excluded from the political sphere – and interaction – in which the authority of the judge's determination derives from the monopoly of force residing in the political. In contrast to the political, the juridical sphere can treat friends and enemies equivalently; the existence of a common juridical sphere is thus a necessary but not sufficient condition of modern citizenship.

The European Union divides its laws into 28 policy areas.⁵⁷ While most of these could, in principle, be analysed with a view to isolating their political and juridical aspects, it is simply impracticable to do so with any precision here. A good deal of European Union policy consists of provisions clearly aimed at developing a trans-Union civil society which have nothing to do with either the political or the juridical spheres: these include most or all of the policies concerning audiovisual policy, culture, education, “Trans-European networks”, information society and economic and social cohesion. Another five concern specific economic sectors (agriculture, fisheries, research and development, energy and transport) and include

two kinds of provisions: programs which promote the integration and development of these sectors within Europe, and sectorally-specific regulations contributing to the development of the single market. The former parts are too specific to be of interest to a study of citizenship, while the latter will be addressed under the more general analysis of the common market. Of the seventeen policy areas that remain, four are irrelevant to the question of citizenship on the Kojèvean model or lack adequate substance for citizenship-related policy analysis: consumer policy and health protection, enterprise policy, environmental policy and monetary policy.

I address the thirteen remaining policies as follows. Under the heading “common market, I have grouped competition and internal market. Under “social policy” I address employment and social policy, equal opportunities, and public health. Finance appears alone, followed by the EU’s “third pillar,” Justice and Home Affairs (JHA). Finally, “foreign policy” incorporates the common foreign and security policy (CFSP), development, enlargement, external relations, humanitarian aid and commercial policy.

I. EU citizenship policy

1. EU citizenship in the Treaties

The concept of a citizenship specific to the EU was introduced in the Treaty on European Union (TEU) signed at Maastricht in 1992. Its introduction was a matter of nomenclature rather than of a substantive political shift by the EU’s member states at Maastricht. Citizens of member state had already possessed certain transnational rights prior to 1992, most importantly, since 1968, the right of workers to reside in

⁵⁷ European Union, “Activities of the European Union,” <http://europa.eu.int/pol/index-en.htm>.

any member state of the Community.⁵⁸ Maastricht revised the EC Treaty to ascribe four principal rights to EU citizenship: the right to mobility of all citizens (not simply workers) of all citizens of member states in all other member states (EC Treaty Art. 18); the right of EU citizens to vote in and stand for municipal or European Parliamentary elections in any member state in which they reside (Art. 19); the right to consular representation by any other member state while abroad (Art. 20); and the right to petition the European Parliament (EP) and to apply to the EU Ombudsman in areas of EU competence (Art. 21).⁵⁹

Under the Treaty Establishing the European Community (henceforth EC Treaty), citizenship of the EU can derive only from citizenship of a member state, and is even then contingent. There is no EU citizenship which exists independently of national citizenship, and, under a Declaration added to the Maastricht treaty, member states reserve the power, via a declaration to the Commission, to determine which of their own citizens qualify for EU citizenship.⁶⁰ These two conditions have created anomalous cases for citizens of EU states living outside the EU itself, and even, in some instances, of EU citizens living outside their home country but within the EU.⁶¹ For example, citizens of Denmark from Greenland, being Danish, cannot become

⁵⁸ Council Regulation 1612/68 and Council Directive 68/360/EEC of 15 October 1968.

⁵⁹ All numerical references to the EC Treaty refer to the consolidated version as amended by the Amsterdam Treaty in 1997.

⁶⁰ The Declaration reads as follows:

“naturalized” through residence in European Denmark, and are therefore permanently excluded from EU citizenship in a way that citizens of non-EU states are not.⁶² Under Dutch law, continuous residence outside the Netherlands for ten years results in the loss of Dutch citizenship for those with dual citizenship, no matter what the state of residence.⁶³

Central to the legal difficulties associated with the implementation of European citizenship and rooted in the Treaties themselves is the separation of the power to determine membership (which lies in the hands of the member states) from the source of the rights – no matter how thin these may be – associated solely with EU membership (clearly the EU itself). The legal issues connected with anomalous cases such as those mentioned above – already a serious matter for scholars of EU law – reflect the underlying tensions anticipated in the theoretical framework adopted in the previous chapter. At issue is whether the power of EU member states to determine who is entitled to EU citizenship can be constrained by an instance of actual *Droit* – that is, a member state can be forced into the position of acquiring a legal personality

“The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality 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 nationals for Community purposes by way of a Declaration lodged with the Presidency and may amend any such Declaration when necessary.” (cited in Gerard-René de Groot, “The Relationship between the Nationality Legislation of the Member States of the European Union and European Citizenship”, pp. 115-147 in Massimo La Torre, ed. *European Citizenship: An Institutional Challenge* (The Hague: Kluwer Law International, 1998) 120.

⁶¹ These cases are discussed in detail in de Groot (1998).

⁶² de Groot (1998) 128.

⁶³ de Groot (1998); the Dutch are now reforming citizenship law to eliminate these anomalies.

in a juridical conflict with an EU citizen.⁶⁴ If the member states cannot be so constrained, then there is evidence that the relation of EU member states to their citizens is that of governor-governed, which is a strictly political relation. It should be stressed that this question cannot be settled in a purely legal context, since an abstract legal determination, one way or another, remains potential *Droit*; the answer ultimately appears in the resulting behaviour of those member states.

Of the EU citizenship rights, only the right to freedom of movement provides substantive evidence of a political relation between the EU and its citizens.⁶⁵ Insofar as the member states have relinquished the right to restrict access to their territories, we have an instance of circumscription. But insofar as the EU itself retains the authority from which the outer borders of the Union acquire their significance in dividing political friends from enemies, we have an instance of politicization at the EU level. We will revisit the question of the EU's outer borders in the discussion of the common foreign and security policy below.

2. EU citizenship in legislation

While EU citizenship in the Treaties dates only to 1993, freedom of movement has been part of the EC agreements since the Treaty of Rome (1957),

⁶⁴ Such a case would be distinct from instances where a government is subject to a suit by one of its own citizens; in the latter kind of case, acts by government agents which are counter to the state's true nature or Justice (as determined by impartial judges) have the status of private acts (*EPD* 161). In contrast, the determination of citizenship cannot be reduced to a juridical problem, because it is inseparable from the social contract itself. For this reason, no court could hear a case against the principles of *jus soli* or of *jus sanguinis* in states where these are the operative bases of citizenship; one could only expect juridical situations to arise where citizenship policy had been incorrectly applied. Because the determination of citizenship is a purely political question, an EU member state's acquisition of a legal personality would indicate a loss of that state's political status.

under which the right of intra-Community movement was guaranteed to workers. The right to freedom of movement and residence has gradually been expanded since then, through the use of Regulations and Directives⁶⁶, to include workers' families (1968), foreign EC workers once their employment ended (1970), the self-employed (1973) and students (1993)⁶⁷.

The freedom of mobility for all citizens (rather than just workers and students) is an essential component of EU citizenship. The freedom of movement for workers alone, long extended to metics, is located strictly in the economic (and therefore juridical) sphere. Freedom of mobility for the sake of economic exchange alone is possible without any transformation in the particular nature of the friend-enemy relation, for it is contingent on the juridical principle of equivalence. For an example of freedom of mobility outside the EU context, we need only think of the right of entry granted by members of the medieval Hanseatic league to the citizens of the others.⁶⁸ A freedom of mobility linked to work thus participates in the political only through the interaction process. A universal right of residence not contingent on nationality, in contrast, reflects an underlying condition of political friendship – that is, of equality – among all EU citizens.

⁶⁵ The rights of diplomatic representation abroad, to petition the EP, and to apply to the Ombudsman do not represent clear instances of a political relation. The portability of democratic rights is a more complex case, but the exclusion of foreign EU citizens from participation in national elections in all EU member states preserves the basic division between *demoi* necessary for the determination of the division between friends and enemies at the state level.

⁶⁶ The EC Treaty provides for different legislative mechanisms depending on the policy area in question. In all cases, the Commission retains the executive right to initiate legislation while the Council plays a legislative role. Increasingly, under the "co-decision" process based in EC Treaty Article 251, Parliament and Council must both approve legislation. Binding legislation in the EU takes the form of Regulations (universal binding law overriding any national law), Directives (binding only on policy outcomes, but requiring national legislation) and decisions (administrative instruments used by many EC institutions and binding on specific legal personalities).

The EC Treaty (Art. 18) stipulation of citizens' "right to move and reside freely within the territory of the Member States," is reflected in a 1968 Regulation⁶⁹ and a 1990 Directive⁷⁰ which require member states to provide foreign EU citizens with residence permits⁷¹; the newer Directive contains no reference to employment as a valid condition of residence. Nonetheless, member states retain the right to deny residence permits to EU citizens if they do not enter with medical insurance and the means to ensure they make no demands on the domestic social security system of the host country. By linking mobility to the citizen's possession of private means equivalent to those provided to citizens designated as needy in the domestic social security provisions of the host state, the interpretation of Article 18 in the EU Directive seriously circumscribes its own powers in an area which is otherwise politicized by all member states and undermines the equality necessary to speak of an EU citizenship.

While there has been almost no legislation of note on the other three areas of EU citizenship, there is one exception. A remnant of nationalist politicization limits the portability of the right for EU citizens to vote in municipal elections outside their home states. Article 19 (1) of the EC Treaty gives the Council the power to stipulate "derogations" to this right to address problems "specific to a Member State". A 1994

⁶⁷ Reg. 1612/68, Reg. 1251/70, Directive 73/148/EEC, and Directive 93/96/EEC, respectively.

⁶⁸ Rolf Hammel-Kiesow, *Die Hanse* (Munich: Beck, 2000), esp. pp. 89-97.

⁶⁹ Reg. 1612/68.

⁷⁰ Directive 90/364/EEC.

⁷¹ The Commission and the ECJ view residence permits as "a declaratory act in a respect of a right deriving from the EC Treaty" rather than a restriction on would-be migrants within the EU. See the Commission's response to question E-0189/98 from MEP Cristiana Muscardini (Official Journal No. C 386, 1998, Item 5).

Council Directive⁷² permits member states to increase the required residence period for EU citizens voting in or standing for local elections where the proportion of “foreign” EU citizens exceeds twenty per cent of the voting population.

3. EU citizenship in the ECJ

Because European citizenship is both a new concept in EU treaty law, and because its explicit content is comparatively thin, there has been little activity connected with it in the ECJ. Of the four rights associated with EU citizenship, those of portable democratic rights and freedom of movement have resulted in significant legal action to the ECJ.

Portable democratic rights

In *Commission v. Belgium* in 1998,⁷³ the Court determined that the Belgian government had violated the 1994 Council Directive, itself grounded in the Maastricht Treaty, guaranteeing EU citizens the rights to vote and to stand for municipal elections outside their home state.⁷⁴ In adopting the Directive in early 1999⁷⁵, Belgium became the last member state to provide EU citizens with local voting rights.

As late as 1999, the Commission warned of problems with German and Greek legislation in the area of local voting rights, both of which it held to be discriminatory against foreign residents.

⁷² Directive 94/80/EC, Art. 12.

⁷³ ECJ case C-323/97.

⁷⁴ Council Directive 94/80/EC.

⁷⁵ “Loi du 27 janvier 1999 modifiant la loi du 19 octobre 1921 organique des élections provinciales, la nouvelle loi communale et la loi électorale communale, et portant exécution de la directive du Conseil de l’Union européenne n° 94/80/CE du 19 décembre 1994,” p. 2786 in *Moniteur Belge*, Jan. 30, 1999.

Freedom of movement

The freedom of movement has had the roughest legal ride of the four basic rights of EU citizenship. In large part, this is the result of the ECJ's vigilance in preventing direct or indirect discrimination against foreign EU migrants once settled. In spite of the provisions in Directive 90/364 which permit member states to withhold residence permits where they anticipate a drain on social security, member states are by and large prevented from refusing social security benefits once they have granted residence permits. We will review specific relevant cases in the discussion of social security below.

Apart from its defence of legislated provisions permitting the exclusion of EU citizens without demonstrated adequate means⁷⁶, the Court has opposed obstacles to freedom of movement except where national security was at stake. In the *Calfa* case⁷⁷, for example, the ECJ overrode a Greek law which required the permanent expulsion of an Italian national convicted in Greece on a drug charge. Its judgement, however, rested not on the citizenship provisions of the EC Treaty, but on the older parts of the Treaty (now under Title III), which are concerned with the free movement of workers, services and capital.⁷⁸ Unlike the citizenship provisions in Part 2 of the Treaty, Art. 39 under Title III both contains the guarantee of mobility and the circumstances under which that guarantee might be overridden by the member states: "on grounds of public policy, public security, or public health."⁷⁹ By setting the *Calfa* case only in the

⁷⁶ See, for example, *Commission v. Italy* (Case 424/98)

⁷⁷ Case C-348/96.

⁷⁸ The specific parts of the EC Treaty in question are Articles 39, 43, 46 and 49; the ECJ's case report uses the pre-Amsterdam article numbers (48, 52, 56 and 59, respectively).

⁷⁹ Art. 39 (3).

context of Title III (indeed, consciously avoiding consideration of Art. 19⁸⁰) and finding that the application of the Greek law did not meet any of these tests⁸¹, the Court avoided a precedent-setting answer to the question of whether the Treaty's citizenship provisions could override national laws unconditionally. By privileging state security over the mobility stipulations in Title III, the ECJ's *Calfa* decision only compelled member states to treat all EU citizens under a common *juridical* system – a condition which predates the conception of European citizenship. On the other hand, the ECJ preserved member states' *political* power to distinguish friend from enemy by treating national public security as its touchstone in the judgement.

The pattern of circumscription concerning nationality in all cases concerning freedom of movement where state security is not an issue is constant in ECJ rulings. In the *Walrave* and *Donà* cases of 1974 and 1976⁸², long before Maastricht, the ECJ maintained the view that nationality could not be an obstacle to employment within the Common Market as a result of any private rules. This principle was reiterated more recently, on exactly the same grounds, in the notorious 1995 *Bosman* case⁸³. In *Bosman*, the Court ruled that regulations restricting the number of foreign soccer players within the Fédération Internationale de Football Association (FIFA) violated Art. 39 of the EC Treaty. The circumscription of nationality evident from this history supports the position that EU citizenship law is constructed on the principle of a

⁸⁰ *Calfa* (Case C-323/97) paragraph 30.

⁸¹ The “public policy” criterion has effectively been interpreted by the Court as a subset of public security. According to the *Calfa* judgement, ECJ case law treats public policy as a legitimate barrier to freedom of movement only where “a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society” exists. (C-323/97, paragraph 21). See also *Bouchereau* (Case 30/77) paragraph 35.

⁸² Cases 36/74 and 13/76, respectively.

⁸³ C-415/93.

juridical Federation; it sustains an international Society on the one hand, while leaving unaffected the political relation between the governors of member states and their citizens.

First pillar policies

Policies falling under the first pillar have a “Community dimension” which permits the Commission, the Council and the EP (depending on the legislative process called for by the EC Treaty in each case) to create binding legislation without the unanimous consent of member states, except for decisions on taxes, the free movement of citizens, and employee rights and obligations, all of which require unanimity on Council. In all other areas of legislation, Council decisions are made with a qualified majority of votes⁸⁴. Although there are frequent intergovernmental negotiations between member states in order to achieve qualified majorities, the governor-governed relation in these fields is manifested in the connection between the EU legislative organs and its citizens or legal personalities. In this regard, and exclusively in the relevant first pillar policy areas, the function of member states is similar to that of *Länder* in the German federation. As I argue below, however, the limited scope of policy available under the first pillar, rather than the policy process that implements it, precludes the conclusion that the governor-governed relation thus evinced sustains an EU citizenship.

⁸⁴ In the 15-member Union, a qualified majority of Council comprises 62 of 87 votes; in areas where legislation does not require a Commission proposal for initiation, the qualified majority must also represent at least 10 member states (EC Treaty Art. 205).

II. The Common Market

1. The common market in the Treaties

The common market bears only indirectly on EU citizenship insofar as it embodies the sphere of free exchange in which the principle of equivalence dominates. As we saw above, a common market is a helpful, but neither necessary⁸⁵ nor sufficient condition for the presence of genuine citizenship, and it can exist in perfectly non-political circumstances. To the extent that the conditions of exchange have been circumscribed by the Treaties, however, it is also true that these same conditions have been circumscribed by the member states themselves. Here, as elsewhere, circumscription does not prevent the occurrence of interaction in juridical circumstances. In practice, as we will see here, the dissolution of internal barriers to economic flows has broadened the range of authorities who might act as the impartial third in juridical disputes. Most of these disputes are not matters of Community concern, so that the enforcement of contracts remains in the purview of national legal systems. Where transactions have a Community dimension – that is, where any of the “four freedoms” of movement (goods, persons, services and capital) are affected – Community law prevails, even in the courts of the member states. By contrast, the competition policy – an arguably necessary spillover of the internal market⁸⁶ – shows evidence of politicization at the Community level, specifically in the autonomous power this policy vests in the Commission.

⁸⁵ The presence of trade barriers within federated states such as Canada and the United States attests to the non-necessity of a free internal market for common citizenship.

⁸⁶ For a concise account of this spillover, see Lee McGowan and Michelle Cini, “Discretion and Politicization in EU Competition Policy: The Case of Merger Control” in *Governance* 12 (2) (April 1999) pp. 175-200.

At the Treaty level , the common market rests on four principal freedoms: the free flow of goods (Title I, EC Treaty), and persons, services and capital (Title III).

We have already reviewed the relevant sections of the Treaty on the free movement of persons, and both the Treaty and its subsequent interpretation have effected almost perfect freedom in all these categories.

Competition policy

With respect to the question of citizenship, competition policy in fact stands apart from the principles of free trade underpinning the internal market, insofar as the latter is compatible with a depoliticized international civil society, while the former is not. Unlike international free commerce as manifested in international agreements such as those of the WTO, the EU's competition policy – which has been demonstrably forceful in its application – is a clear instance of interaction. The articulation of competition rules within the EU moves beyond the internal market's purely economic space by politicizing competition itself.

EU competition policy is rooted in Articles 81 through 89 of the EC Treaty. Art. 81 prohibits “the prevention, restriction or distortion of competition within the common market”. While most of these measures affect only the private sector by ensuring such ends as the free flow of goods, the prevention of price-fixing and a ban on cartels, EU competition policy has some significance for citizenship insofar as it circumscribes the power of member states to create exclusive and favourable economic conditions for their own citizens, particularly through subsidies, with the exception of aid to individuals, to remedy natural disasters, subsidies instrumental in

the reunification of Germany, improvement of underdeveloped areas, and cultural preservation.(Art. 87).

The subordination of the member states to the Commission under EU competition policy exceeds that of other policy areas; under Art. 85 of the EC Treaty, violations of competition regulations can be investigated by the Commission with or without the initiative of member states, which are, however, required to cooperate with the Commission. It is significant that Art. 85 gives the Commission the power to “authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.” The politicization of competition gives the Commission a scope for action which is consistent with that of governor in the political (governor-governed) relation, rather than that of the judge in a juridical relation.

The internal market

By contrast, the provisions for the single internal market of the EU, contained in Titles I and III (Articles 23 to 31 and 39 to 60) constitute an act of circumscription. By ensuring the free flow of goods, persons, services and capital between member states, both the EU and the member states have restricted themselves to interaction only in the enforcement of implied and explicit contracts. In this area, governors at the national and EU levels apply *Droit* equally and necessarily; at the very least, then, we have evidence of a juridical Federation in the internal market.

2. The common market in legislation

Competition policy

The large number of regulations governing different parts of the EU's competition policy makes a comprehensive review here impracticable. It is enough, however, to observe that the legislation stemming from Articles 85 and 86 of the EC Treaty gives the Commission autonomy over both the investigation of and ruling over anti-competitive practices. Most notably under the 1989 Merger Control Regulation⁸⁷, for example, the Commission and its agents retain the right to "undertake all necessary investigations into undertakings and associations of undertakings"⁸⁸, including rights of unannounced entry, search and seizure, and the imposition of fines for violations.⁸⁹ Under Reg. 17⁹⁰, the Commission, upon finding any violation of Article 85 or 86 of the EC Treaty, "may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end."⁹¹ These rights represent a clear instance of a governor-governed relation between the Commission and the EU's citizens; the Commission here acts itself as a third party (between offending corporations and the EU's citizens), and its decisions cannot be appealed to higher third party (although they can be reviewed by the ECJ). On the one hand, while the range of powers the Commission wields here is narrow, it exercises them absolutely, in the same way as that exercised between governors and citizens more generally. On the other hand, nationality is circumscribed in this relation; the

⁸⁷ Reg. 4064/89.

⁸⁸ Art. 13 (1).

⁸⁹ The Commission wields these powers only over firms concentrated "with a Community dimension" – that is, large firms with major concerns in more than one member state; see Art. 1(2).

⁹⁰ Council Reg. 17/62.

Commission has, by definition, no nationality, while its agents (whose nationality is not specified in the Regulation) bear powers which transcend national laws which would prevent arbitrary entry and seizure by private or public actors. In short, there is no question of a friend-enemy relation arising in the application of competition policy; the actions of the Commission and its agents cannot be construed by member states or their citizens as acts of enmity.

In an instance of circumscription at the member-state level, sectors traditionally governed by national monopolies such as telecommunications and energy are gradually becoming liberalised. Under proposed legislation⁹² initiated in July, 2000, the disparate pieces of existing legislation governing the liberalisation of different telecommunications industries (e.g. cellular networks, land networks, cable and internet service provision) have been unified into a single directive abolishing monopolies or privileged positions to any company within the member states, and permitting competition across national borders. Corresponding Commission proposals⁹³ aim to liberalise the natural gas and energy markets across member state borders by 2005 while harmonizing regulation. The liberalisation of hitherto national postal services, more stubbornly defended by the member states, has also recently become a matter of Commission interest.⁹⁴

⁹¹ Art. 3.

⁹² COM (1999) 539.

⁹³ COM (2001) 125.

⁹⁴ See "Face value: the bruiser from Brussels" in *Economist* 355 (Issue 8167) (April 22, 2000) 64.

The internal market

The free movement of goods is entrenched in a wide number of legislative instruments, and encounters minor but frequent obstacles⁹⁵. There is no legislation at all refining the free movement of capital guaranteed in Article 56 of the EC Treaty. Because this Article also prohibits restrictions on capital flow between the EU and other states, however, some legislation has been necessary to institute abrogations, most prominently in measures to prevent money laundering⁹⁶, and in cases of trade embargoes, as in the recent instance of the EU's boycott of Yugoslavia.⁹⁷ The free movement of services is included in legislation guaranteeing the mobility of workers⁹⁸ and in that requiring the mutual recognition of professional qualifications across all member states.⁹⁹

3. The common market in the ECJ and in Commission decisions

Because of the Commission's unusual level of power in arbitrating in both the competition and internal market arenas, I have included these arbitrations at the legal level of analysis here.

⁹⁵ These obstacles consist of such things as the legal ambiguity concerning manufacturers' liability for defective products when these products move across national borders (COM (1999) 396. In 1998, the Commission nullified a Danish prohibition on trailers towed by motorcycles.

⁹⁶ Directive 91/308/EEC.

⁹⁷ Council Regulations 1294/99, 1295/98, 1607/98 and 926/1998 restricted economic relations with Yugoslavia. After the elections of September, 2000, the Commission proposed amendments to resume the free flow of funds with Yugoslavia, except for the holdings of the Milosevic family and some companies (COM (2000) 676).

⁹⁸ For example, Directive 73/148/EEC, which guarantees the right to free movement within the Community both for purposes of providing and receiving services, cites both Art. 58 (guaranteeing free movement of services) and the free movement of persons guaranteed in the EC Treaty as its legal basis.

⁹⁹ Council Directive 92/51/EEC.

Competition policy in the Commission and the ECJ

The Commission frequently exercises its right, guaranteed under Regulation 17, to issue decisions on anti-competitive situations, as well as intervening informally in such instances to avert the need to issue decisions. On anti-trust questions alone during 2000, the Commission issued thirteen directions under the provisions of Art. 86, EC Treaty, and eleven directions under Regulation 17.¹⁰⁰ In the same year, it considered 345 merger cases, prohibiting nineteen,¹⁰¹ and reviewed and rendered decisions on 856 instances of state aid for compatibility with Articles 87 and 88 of the EC Treaty and related pieces of legislation.¹⁰²

The recent interest shown by the Competition DG of the Commission in liberalizing postal services was highlighted in the landmark *Deutsche Post* antitrust decision of March, 2001. The Commission determined that the German postal service had engaged in predatory pricing by subsidizing its business-parcel service with revenues from the domestic postal monopoly, as well as giving illegal loyalty discounts to mail-order business customers.¹⁰³ The Commission fined Deutsche Post 24 million euros and ordered the segregation of its regular post and business parcel operations. In numerous instances, cases of both state aid and of potentially anticompetitive mergers are withdrawn or altered once the Commission announces an investigation; only rarely does the Commission nullify either mergers or state aid with

¹⁰⁰ European Commission, Competition Bureau, "Antitrust cases and published notices – 2000." <http://europa.eu.int/comm/competition/antitrust/cases/2000/>.

¹⁰¹ Under Reg. 4069/89; <http://europa.eu.int/comm/competition/mergers/cases/stats.html>.

¹⁰² The related pieces of legislation are Articles 8 and 10(3) of Regulation 659/1999/EEC (which lays out the procedure by which the Commission intervenes and investigates violations of the state aid provisions as laid out in Art. 93, EC Treaty), and Art. 6 (5) of Declaration 96/2496/ECSC (which addresses aid cases specific to the coal and steel sectors).

¹⁰³ Commission press release IP/01/419.

a directive.¹⁰⁴ Commission directives in the field of competition (including state aid) can be appealed to the ECJ.

The enforcement of competition principles, such as those found in the EC Treaty evinces a political relation between the EU and its citizens. The circumscription of competition policy by member states entails a transfer of a significant political power from the state to the EU level. As we saw in the previous chapter, that the Commission's decisions can be appealed to the ECJ does not detract from the evidence of this political relation: as Kojève points out, an incorrect decision on the part of the state (or, in this case, the Commission) demonstrates only the error of the state's representative, and not the state itself.¹⁰⁵ We will examine the question of whether the politicization of competition at the EU level is significant to citizenship at the end of this section.

Internal market in the Commission and the ECJ

The Commission's powers in matters relating to the internal market are considerably less than in the case of anti-competitive practice. Instead of issuing directives in cases where member states are impeding the free flow of goods, capital, workers or services, the Commission can only issue a "reasoned opinion" requesting corrective measures from the relevant member state(s). If the member state takes no action within two months, the Commission has the option of referring the matter to the ECJ.

¹⁰⁴ See, for example, case M.1940 – a proposed merger of the nuclear operations of Siemens of Germany and Framatome of France; after notification of a Commission investigation into the merger on August 11, 2000, the details of the merger were altered, and approved by the Commission on Dec. 6. For a similar example in the case of state aid, see the Commission's notice (C79/1999) concerning the UK government's proposed subsidy of the Longbridge Rover Plant.

The internal market is the subject of a good deal of litigation in the ECJ. Most such cases occur where there is an overlap between the principles of the internal market on the one hand and policy areas which remain with member states on the other. This type of conflict is anticipated by the principle of subsidiarity in Art. 5, EC Treaty, which accords the Community authority “only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.” To this end, the EC Treaty (Art. 94) provides for the creation of directives which act as binding guidelines for member state law (“direct vertical effect”), rather than as law directly applicable to citizens. In practice, the principle of subsidiarity is, in some areas, undermined by the spillover effected in cases where there is an internal market dimension intersecting with state policies concerned with the security of their citizens. This is apparent in the Court’s history of denying member states the right to stricter health and safety (but not environmental¹⁰⁶) standards than those laid out in Community legislation.¹⁰⁷ By overturning member states’ domestic health and safety standards, even in the name of the internal market, the ECJ relegates these parts of domestic law to the status of potential *Droit* and demonstrates the existence of a political relation between the EU and its citizens.

¹⁰⁵ EPD 117; 356-357.

¹⁰⁶ While the Community retains the power to issue harmonizing Directives on environmental policy, the Treaty (Art. 176) permits member states to adopt more stringent measures.

¹⁰⁷ For example, in *Commission v. Italy* (Case C-100/00), the Court determined that Italy had no right to set higher safety standards for hot water heaters than those laid out in Community legislation (viz. Directive 73/23/EEC); see also *Commission v. Italy* (C-112/97). Commission lawsuits against member states more commonly address lacking or inadequate laws approximating the requirements of safety Directives, as in *Commission v. Greece* (C-391/98) (on food safety) and *Commission v. France* (C-178/98) (on safety standards for batteries and accumulators).

Reflections on the common market and citizenship

We have seen that the spillover resulting from both legislation and judicial decisions has resulted in some transfer of authority from the member states to the EU, particularly in the fields of competition and consumer protection. The pertinence of the former, however, has very little bearing on EU citizenship, because competition law has outstripped the EU agreements to include multilateral competition agreements with nearly all other European states, as well as the United States and Canada, among others¹⁰⁸. Competition has not yet become part of the World Trade Organization (WTO) agreements, although the WTO has been investigating the possibility since 1996. While it is still too early to speak of a global competition policy, such a creature is both conceivable and foreseeable, not least because of the strong interest of first world states of ensuring it is implemented; and, once created, such a universal competition policy would vanish from the political sphere and become part of what Kojève called the universal and homogeneous state, and Schmitt called the administrative state. In contrast, the consumer-protection provisions of EU law which also resulted from spillover from the internal market represent a point of minor political importance. It is conceivably political because it might be argued that consumer protection constitutes a part of the political function of maintaining public security. It is minor because consumer protection is a purely juridical function which mediates within the system of needs; there is no space here for the friend-enemy relation.

III. Social Policy

Social policy is an important index of the political relation in citizenship because it contains all the non-juridical protective measures taken by the governor on behalf of the governed. In practice, however, social policy is frequently manifested as a mixture of political and juridical measures: it is political insofar as it precludes a mediated relation by a neutral third party and relies on a conception of the strict equality of citizens, but it is juridical insofar as it treats the particular ends of citizens as equivalent. Social policy of a political nature includes universal programs such as public health care and education, while juridical social policies include unemployment insurance and affirmative action programs. Political social policy is accorded to all citizens on the grounds of their citizenship alone, while juridical social policy relies on particular and non-political characteristics. It is the source of the binding regulations governing the distribution of social benefits, rather than the source of the benefits themselves, which indicates the origin of political authority for this aspect of citizenship.¹⁰⁹

EU social policy falls under three headings: employment and social policy, equal opportunities, and public health.

¹⁰⁸ The EU has agreements – apart from any implied or explicit agreements with these countries through other agreements such as the OECD and UNCTAD – on cooperation in competition law with all EU applicant states, all non-EU members of the European Economic Area (EEA) (i.e. the former EFTA countries), Canada, the USA, Israel and Russia.

¹⁰⁹ Consequently, the similarity of social policies of EU member states observed by Greve (Bent Greve, “Indications of social policy convergence in Europe,” pp. 348-367 in *Social Policy and Administration* 30 (4) (Dec. 1996)) is not in itself an indication of *political* convergence as long as the creation of those policies is strictly a matter for member states to determine.

1. Social policy in the EC Treaty

Employment and social policy

The EC Treaty contains two sections devoted to employment and social policy. Title VIII, given over entirely to employment policy, authorises the Community to create programs with the goal of increasing employment and encouraging coordination of employment policies among member states, but beyond this requires only the establishment of an Employment Committee with advisory and monitoring functions.

Articles 136-148 (Title XI) contain the “Social Charter”, an opt-in agreement added as an Annex to Maastricht¹¹⁰, but incorporated into the EC Treaty by the 1999 Treaty of Amsterdam. This section of the EC Treaty gives the Council and Parliament, under the co-decision procedure, the power to pass directives establishing minimum requirements in the fields of workers’ health and safety, working conditions, the information and consultation of workers, affirmative action, and the equality of the sexes in the workplace. Article 141 guarantees the principle of equal work for equal pay for men and women. The section also permits the Council to pass, unanimously, legislation on social security, the protection of terminated workers, “representation and collective defence of workers and employers”, work conditions for legally resident non-EU nationals, and financial contributions for the purpose of job creation. Articles 146 to 148 establish the European Social Fund (one of the EU’s

¹¹⁰ All member states at the time except for the UK signed on to the Social Charter in 1992.

four “structural funds”), whose purposes in the Treaty consist of a vaguely-worded range of ends related to employment.¹¹¹

Equality of men and women

In addition to the guarantee of equal pay for equal work in Art. 141, the equality of the sexes is established without qualification in Art. 2 of the EC Treaty.

Public health

Art. 152 of the EC Treaty directs the Community to “complement national policies” improving public health, to monitor and coordinate public health with member states and other states, but explicitly leaves the delivery of health care to the member states.

2. Social policy in legislation

Employment and social policy

The EU has legislated extensively in these areas, setting standards for member states in the areas of working safety conditions, the regulation of wage payments, equal work for equal pay, industrial relations, the protection of workers in cases of large-scale redundancies and employer bankruptcy, the equal treatment of men and women in social security, and the extension of social security schemes to workers living outside their home state.

By far the most administratively significant legislation in the social policy arena is the influential Reg. 1408/71, which governs the extension of social security benefits to EU citizens working in other EU states. This Regulation sets coordination

¹¹¹ “[The Fund] shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Community, and to facilitate their adaptation to industrial changes

rules for sickness, maternity, invalidity, old age, survivors', unemployment, and family benefits, workers' compensation and death grants. The Regulation does not set minimum standards for programs in these areas, but regulates their application for migrant EU citizens such that they are neither doubly covered nor without coverage.

The EU has set minimum standards in areas of workers' safety¹¹², legislated in the area of sexual equality relating to employment¹¹³, and created legislation protecting workers in the event of employer bankruptcy¹¹⁴, mass layoffs¹¹⁵, and the sale of their employer's business.¹¹⁶

The European Social Fund (ESF), with an annual budget of around 8.6 billion euros, shares with the other structural funds three objectives: the development of regions with GDPs of below 75% of the EU average; assistance to regions experiencing problems related to economic change (such as rural and urban areas in decline); and developing employment training. The ESF, like the other structural funds, most benefits the poorest EU states (Greece, Portugal and Spain). While it has little direct significance for citizenship, the structural funds generally provide the poorer member states with an incentive to resist EU enlargement.

and to changes in production systems, in particular through vocational training and retraining." (Art. 146, EC Treaty).

¹¹² E.g. Directives 89/654/EEC; 89/655/EEC; 90/269/EEC; 90/270/EEC; 90/394/EEC; 94/33/EEC; 96/82/EC; 93/104/EC.

¹¹³ Directive 97/80/EC.

¹¹⁴ Directive 80/987/EEC.

¹¹⁵ Directive 98/59/EC.

¹¹⁶ Directive 2001/23/EC.

Equal opportunities in legislation

Apart from the equal treatment Directives noted above, the EU has legislated on the equal treatment of the sexes in social security.¹¹⁷

Public Health in legislation

Because Art. 152 of the EC Treaty gives the EU only a complementary role in public health, and excludes it altogether from legislating in the area of health care, its legislation has focused on ancillary aspects of health such as mandating blood testing for lead exposure¹¹⁸, setting safety limits on food exposed to nuclear contamination¹¹⁹, and setting safety standards for medical devices¹²⁰.

Moreover, the EU conducts and funds health monitoring projects and has established programs attacking health problems afflicting the general population of the EU, such as AIDS, cancer and pollution-related disease.

3. Social policy in the ECJ

Employment and social policy in the ECJ

Because Art. 137 of the EC Treaty restricts EU legislation to Directives which require transposition to member state legislation for implementation, cases of immediate violations of this corresponding national legislation do not appear at the ECJ, but in national courts. The ECJ has, however, provided judicial opinions and preliminary rulings for national courts on the interpretations of some Directives, as well as hearing cases involving member states charged with failing to create adequate legislation transposing Directives.

¹¹⁷ Directive 86/378/EEC.

¹¹⁸ Directive 77/312/EEC.

¹¹⁹ Reg. 770/90/Euratom.

In either case, the Directives are demonstrably authoritative and clearly take precedence over national law. Cases in the former category are normally referred to the ECJ by national courts seeking interpretations of Directives in order to determine whether certain principles should be read from those Directives into the transposed national law.¹²¹ Cases in the latter category are taken up by the Commission against member states failing to make those transpositions adequately.¹²² Cases of both kinds arise frequently in the ECJ.

Equality of men and women in the ECJ

Cases in the ECJ in this field have been almost entirely given over to questions of interpretation of Directives for cases pursued in member state courts, although the principle of sexual equality grounded in Articles 2 and 3 has encountered some resistance from the Greek government on the question of equality in social security programs.¹²³

Reflections on social policy and citizenship

It is questionable whether the EU shows any evidence of constitutional Federation in the area of social policy, although it strongly resembles a juridical Federation. Although the EU does not legislate in – and thus circumscribes – the most obviously political social policy areas such as welfare, health care and education altogether, its enforcement of the principle of citizen equivalence with respect to national social security policies suggests the existence of actual *Droit*. It is certainly true to say that the absence of EU-wide social security standards reflects a purely

¹²⁰ Directives 93/42/EEC; 98/79/EC.

¹²¹ E.g. cases C-438/99; C-206/00 and 109/00.

¹²² E.g. cases C-473/99; C-49/00 and C-362/98.

equivalent relation between citizens on this question, rather than the synthesis of equality and equivalence which occurs in instances of perfect equity. On the other hand, this trait is characteristic of other federations (including Canada).

IV. Finance

Taxation, as we saw in the last chapter, constitutes the principal modern instrument of recognition by the governed for the governor in the domestic part of the political relation, especially with the decline of required military service in Western states (which is rarely a universal requirement of citizens in any case). Taxation, as virtually the only asymmetrical duty of the modern citizen, is thus an index of what Hegel calls “the inner strength of states.”¹²⁴ The rules governing spending are thus of little interest here.

1. Finance in the Treaties

Articles 168 to 180 of the EC Treaty lay down the rules governing the creation of the Community budget¹²⁵ in detail. The budget is to be created on a Commission proposal, approved by a qualified Council majority, and approved by Parliament; the Treaty also includes provisions for the passing of budget amendments by Council and Parliament, for rules governing money transfers, audits and financial reports. On the other hand, the “own resources” specified in the Treaty (Art. 269) as the source of funding are both developed and implemented intergovernmentally, requiring both the unanimity of Council and the voluntary compliance of member states.

¹²³ See cases C-457/98 and C-187/98.

¹²⁴ *PR* §261R.

¹²⁵ I am ignoring the still-separate ECSC budget, which is the sole remnant of the pre-1970 finance system which accorded the various parts of the EC their own budgets; the ECSC and its budget expire in 2002.

2. Finance in legislation

“Own resources” is the EU’s term for any source of finance not reliant on the contributions of member states. While this term already appeared in the Treaty of Rome (the 1957 version of the EC Treaty), attempts to give the Community access to fundraising instruments beginning in 1965 failed until the signing of the Treaty of Luxembourg in 1970. The Treaty provided for the creation of Community own resources in the form of customs duties, agricultural duties and sugar levies, and a portion of domestic value-added taxes (VAT).¹²⁶ In 1988, the so-called “fourth resource” – drawn as a proportion of the GNPs of member states – was introduced legislatively.

Customs duties created and collected under the common commercial policy are EU funds.¹²⁷

Agricultural duties, which form part of the EU’s common agricultural policy, are collected on agricultural imports to the EU.¹²⁸ *Sugar levies*, raised on sugar produced or stored inside the EU, form part of the EU’s common market organization for sugar, which guarantees both domestic sugar supply and producer prices through subsidies.¹²⁹

VAT own resources are drawn from member states as a proportion of the economic base on which VAT (i.e. consumption tax) is charged.¹³⁰ Both the complexity of ensuring the resulting burdens are equitably borne by member states

¹²⁶ European Communities, *The Community Budget: The Facts in Figures* (Luxembourg: Office for Official Publications of the European Communities, 2000) 17.

¹²⁷ Council Decisions 88/376/EEC; 94/728/EC; 2000/597/EC.

¹²⁸ Council Decision 94/728/EC.

¹²⁹ Council Decision 94/728/EC; Council Regulation 1150/2000.

and the regressive effect of taxation of consumption (i.e. that poor member states with high consumption to GNP ratios contribute disproportionately large amounts) have led to the reduction of the VAT tax base as a source of EU income. Since 1999, therefore, member state contributions consist of 1% of the VAT tax base and will decline to 0.5% by 2004. The EU-taxable VAT base itself is capped at 50% of GNP to limit the regressive effect on poorer member states.¹³¹

The *fourth resource* is drawn annually to cover unmet costs for each budget after the other three funding methods have been exhausted. It is calculated as a proportion of the GNPs of all member states combined and applied uniformly, although member states' contributions from all sources are capped, currently at 1.27% of GNP.¹³² The fourth resource has been increased since 1988 to compensate for the decline of VAT own resources.¹³³

A motion to introduce harmonized tax rates across the EU at the Nice European Council in December, 2000, was vetoed by the UK, Sweden, Luxembourg and Ireland. The French and German governments, meanwhile, are advocating the creation of a direct European tax to replace the latter two mechanisms, although the UK is resistant to the proposal.¹³⁴

¹³⁰ Council Decisions 94/728/EC, 77/388/EEC.

¹³¹ *Special Report No. 6/98 concerning the Court's assessment of the system of resources based on VAT and GNP together with the Commission's replies* (Official Journal 31/07/1998, pp. 58-80).

¹³² Council Regulation 1150/2000.

¹³³ European Communities (2000) 17.

¹³⁴ "Britain vows to veto plans for Euro tax," *Observer*, June 17, 2001, p.2; "Brown rebuffs EC tax move," *Manchester Guardian*, June 4, 2001, p. 4.

3. Finance in the ECJ

Not surprisingly, the difficulties associated with harmonizing the member states' VAT tax bases subject to EU levies have caused much legal activity, both in cases where member states are charged by the Commission¹³⁵ and in those where an interpretation of collection rules is required by member state courts in domestic cases. These cases hinge principally on the application of the so-called "Sixth VAT Directive"¹³⁶ prescribing goods and services subject to EU levies.

Reflections on EU finance and citizenship

The UK's resistance to a direct European tax notwithstanding, the EU's method of financing represents a direct political relation. While member states do play a crucial role in collecting the relevant tax revenues, they receive a proportion of revenues thus collected as a fee. The "own resources" approach, which has governed EU financing since 1970, is effectively a direct tax on the EU's citizens insofar as it does not require a legislative act of consent from member states.

The absence of harmonization for the domestic tax systems of all member states, conversely, does not detract from this political relation. Such harmonization might be a desirable spillover resulting from the free internal market, but is not the necessary result of a political relation.

V. Justice and Home Affairs

Justice and home affairs (JHA), often called the "third pillar" of the EU, provides for cooperation between the domestic justice systems of the member state in

¹³⁵ See, for example, cases against France (C-345/99, C-40/00, C-481/98), Portugal (C-276/98), Spain (C-83/99), Greece (C-260/98), Ireland (C-358/97), the UK (C-359/97), the Netherlands (C-408/97) and Italy (C-45/95).

order to contend with criminal exploitation of the free movement of persons and capital within the EU. Like the second pillar, the Common Foreign and Security Policy (CFSP), JHA is intergovernmental and cooperative, rather than centrally directed and binding on member states. Under the Treaty of Amsterdam, the term “Justice and Home Affairs” was replaced by the broader heading “Area of Freedom, Security and Justice” in both founding Treaties, while both the Commission Directorate-General overseeing this field and the Council use the older title.

1. Justice and Home Affairs in the Treaties

JHA in the EC Treaty

The EC Treaty provides for two measures under JHA: First, under reforms introduced in the Treaty of Amsterdam, the Schengen agreement on external borders (which previously included only a subset of EU members) was extended to include all member states (Articles 61-64). The Council is thus charged with establishing uniform rules for procedures at the EU’s external borders, visa regulations, refugee criteria and rules for the treatment of applicants for refugee status. Second, Article 65 provides for the integration of the structures surrounding the application of civil law (such as the movement of documents, standards for taking evidence, recognition and enforcement of decisions, and the rules governing the civil procedure itself) as a necessary support for the internal market.

JHA in the TEU

Title VI of the Maastricht Treaty addresses the need for cooperative measures on criminal law. The promotion of police cooperation (Art. 30) operates on an

¹³⁶ Council Directive 77/388/EEC.

intergovernmental basis, but the Council has authority unanimously to create binding “framework decisions” and “decisions”; the former are analogous to Council Directives under the first pillar, while the latter apply wherever member state legislation is not required. In both cases, direct effect (that is, the effect on the relation between subjects or between subjects and states) is explicitly precluded in the Treaty¹³⁷. This last condition is noteworthy, for it is the only case in either Treaty of the explicit preclusion of direct effect in the case of binding legislation, and probably a reaction by member states to the gradual expansion of direct effect in other areas of Union law.¹³⁸ This Title gives the Council the authority to create legislation to promote cooperation between ministries and courts, to facilitate extradition, to ensure legal compatibility between member states, and to set rules “relating to the constituent elements of criminal acts” (Art. 31).

In both Treaties, the ECJ’s powers are circumscribed on questions relating to the JHA. The EC Treaty precludes the ECJ from ruling on questions related to border control, immigration or cooperation in civil law where member states act for “the maintenance of law and order and the safeguarding of internal security” (Art. 68(2)). The TEU, besides eliminating direct effect, contains the same protection of internal-security measures (Art. 35(5)) as those contained in the EC Treaty; moreover, the TEU gives the ECJ the power to interpret decisions and framework decisions only where member states have explicitly declared acceptance of the ECJ’s jurisdiction

¹³⁷ TEU Art. 34 (2b and c).

¹³⁸ For an account of this development within the ECJ, see T. Bates, “United Kingdom implementation of EU directives” in *Statute Law Review* 17 (1) (1996) pp. 27-49; David Stoelting, “The jurisdictional framework of the European Court of Justice” in *Columbia Journal of Transnational Law* 29 (1) (1991) 193-214.

(Art. 35 (2))¹³⁹, and then only to give preliminary rulings for cases undertaken in national courts.

2. Justice and Home Affairs in legislation

The Council has legislated widely on JHA matters where the Treaties give it authority, including on border issues such as regulations surrounding right of entry and border controls¹⁴⁰, the establishment of a trans-EU method of fingerprint comparison¹⁴¹, and immigration regulations¹⁴². The Council has also followed the EC's Treaty mandate to integrate the application of civil law through such measures as regulating insolvency proceedings¹⁴³, the service of documents in civil cases¹⁴⁴, and the jurisdiction of lawsuits with international aspects.¹⁴⁵

On police cooperation and criminal law, most Council legislation focuses on Europol's mandate. Established to combat international crime, Europol is principally a coordination and information office for the national police forces of member states.¹⁴⁶ As such, it has been charged with tasks such as establishing an international information system¹⁴⁷, and combating terrorism¹⁴⁸, drug trafficking¹⁴⁹ and counterfeit money¹⁵⁰.

¹³⁹ At the signing of the Treaty of Amsterdam, declarations to this effect were made by Italy, Belgium, Germany, Greece, Luxembourg, Austria and the Netherlands. (<http://europa.eu.int/eur-lex/en/treaties/livre556.html>)

¹⁴⁰ For example, Council Regulations 539/2001, 789/2001, 1683/95 and 790/2001.

¹⁴¹ Council Reg. 2725/2000.

¹⁴² Decision 97/340/JHA.

¹⁴³ Reg. 1346/2000.

¹⁴⁴ Reg. 1348/2000.

¹⁴⁵ Reg. 44/2001.

¹⁴⁶ Convention Based on Article K.3 [now Art. 31] of the Treaty on European Union, on the Establishment of a European Police Office (Europol) (*Official Journal* C 316, 27/11/1995 pp. 2-32).

¹⁴⁷ *Ibid.*

¹⁴⁸ Council Decision of Dec. 3, 1998 (*Official Journal* C 026, 30/01/1999 p 22).

¹⁴⁹ Council Regulation 3677/90.

¹⁵⁰ Council Decision of 29 April, 1999 (*Official Journal* C 149, 28/05/1999 pp. 16-17).

Legislation on judicial cooperation includes measures guaranteeing the involvement of victims in criminal cases¹⁵¹, harmonizing member state laws on money laundering and the handling of the proceeds of crime¹⁵², combating international criminal organisations¹⁵³, and setting minimum penalties for counterfeiting with the introduction of the euro¹⁵⁴.

3. Justice and Home Affairs in the ECJ

Because of the near-total exclusion of the ECJ from jurisdiction over JHA law (apart from member states' option to appeal to the ECJ for preliminary rulings), judicial action relating to JHA law is only undertaken in the courts of member states.

Reflections on EU Justice and Home Affairs and citizenship

There is a political dimension implicit in the Council's power to legislate in the field of JHA insofar as such legislation engages the mechanisms – such as member state police forces and judicial systems – required to make the shared juridical code an instance of actual *Droit* applicable across national borders. This political dimension remains only implicit, however, because the reservation of powers for member states in the Treaties preserves the intergovernmental character of the third pillar. The preclusion of direct effect and ECJ jurisdiction, which since *van Gend en Loos* have together been the basis for ECJ autonomy with respect to member state law, preserves the power of member states to determine and to alter the Justice underpinning actual *Droit* in criminal matters without reference to EU law. While

¹⁵¹ Framework Decision 2001/220/JHA.

¹⁵² Joint Action 98/699/JHA; the entry into force of the Treaty of Amsterdam replaced JHA Joint Actions with Decisions and Framework Decisions, but the former measures retain their legal status.

¹⁵³ Joint Action 98/733/JHA.

¹⁵⁴ Framework Decision 2000/383/JHA.

cooperation remains the aim and the effect of EU JHA law, it does not meet the criteria of actual *Droit* (that the law's application be automatic and necessary), in spite of the TEU's stipulation that Council Decisions and Framework Decisions are binding. As such, the third pillar does not constitute an effective component of EU citizenship.

VI. Foreign policy

To this point, the account of citizenship-related policy areas of the EU is consistent with the existence of a juridical Federation. A constitutional Federation, however, requires the capacity to determine the friend-enemy relation, and it is on this question of foreign policy that the EU reveals itself to be juridical rather than constitutional.

For the purpose of the citizenship model I am defending, foreign policy is the clearest expression of the friend-enemy relation, itself, as I have argued, the keystone of the structure of contractarian citizenship. For this precise reason, however, foreign policy integration implies the dissolution of national social contracts, unlike the fundamentally economic policy areas examined in the first to sections above, which are compatible with confederated but sovereign states. The willingness of member state leaders to embark on the course to such dissolution is at least as critical a measure of the future of EU foreign policy (and therefore of citizenship) as are its current institutional constraints. In addition to an institutionalist analysis here, then, I also gauge the likelihood of advances in foreign policy integration on the basis of recent developments at the EU level and between member states.

A. Institutional aspects of foreign policy

1. Foreign policy in the Treaties

EU foreign policy consists not only of the much-discussed Common Foreign and Security Policy (CFSP), introduced under the Maastricht Treaty, but also other policy fields involving relations with non-member states, including enlargement policy, humanitarian aid, development policy and commercial policy. The highly intergovernmental decision-making structure characterizing these policy areas (except commercial policy) signifies the absence of political Federation at the EU level.

The Commission refers to its limited function in the CFSP, international agreements and other operations with an extra-EU dimension as “external relations”, but this term does not signify a separate or coherent policy area in the Treaties. Five component parts of foreign policy are fundamentally divided in the Treaties, and are subject to completely different processes. On the one hand, the common commercial policy, being a direct extension of the common market, has a Community dimension and therefore falls under Title IX (Articles 131-134) of the EC Treaty. On the other hand, CFSP, enlargement, humanitarian aid and development policy fall under the principle of political cooperation laid out in the Maastricht Treaty.

Common commercial policy

The EU’s commercial policy, which gives the Community personality in international trade negotiations, grew out of the need to safeguard the internal market by presenting a uniform external trade policy for all member states. Since 1970, therefore, the Council (acting on Commission initiative) has been empowered to make

policy on external trade with a qualified majority¹⁵⁵. In this respect, the Council enjoys a power in the negotiation of foreign trade relations unequalled in any other of the EU's foreign policy areas, all of which are subject to direct control by member states. Moreover, the 1997 Treaty of Amsterdam included an important change to Art. 133 by transferring authority over the potential extension of the commercial policy from goods alone to services and intellectual property from the Treaty process (which would require an intergovernmental conference) to the Council. Although Amsterdam required unanimity on this point, the Treaty of Nice (not yet adopted as of this writing) amends Art. 133 again to require only a qualified majority on Council in trade agreements on services and intellectual property.¹⁵⁶

In this area of foreign policy alone, the Commission can receive authority from the Council to negotiate international trade agreements on behalf of the EU.

Humanitarian aid and development policy

Although the Commission treats these two areas as distinct, each with its own Directorate-General, the EC Treaty addresses them together in Title XX (Articles 177-181). Moreover, humanitarian aid (but not development) is included with the intergovernmental provisions of the CFSP of Article 17 (2) of the Maastricht Treaty. The EC Treaty provisions, particularly Art. 181, ensure that humanitarian and development aid are characterized by cooperation, coordination and voluntary participation; it contains no measures for any Community organ to determine binding development or humanitarian policy for member states.

¹⁵⁵ As laid out in Art. 205, EC Treaty.

¹⁵⁶ Treaty of Nice, Art. 2 (8) (*Official Journal* C 80 (March 10, 2001) p. 15).

Enlargement

The expansion of the EU to new European members is provided for in Article 49 of the Maastricht Treaty, which requires Council unanimity, EP majority, and agreement by all existing member states.

Common foreign and security policy (CFSP) and external relations

The CFSP's distinct position is recognized by its status as the second of the three "pillars" underpinning the EU (the other two being the EC, ECSC and Euratom agreements on the one hand and justice and home affairs on the other). Title V (Articles 11-28) of the Maastricht Treaty form the legal basis of the CFSP. Art. 12 lays out the CFSP's five aims: the preservation of the EU's values and independence; the strengthening of EU security; the preservation of international peace and security; to promote international cooperation; and the development of rule of law, democracy and human rights.

These aims are only guidelines, however; the CFSP is an intergovernmental clearinghouse for foreign policy coordination rather than an organ creating foreign policy binding its member states. Where the Commission retains executive functions in the first pillar, under the second pillar the Council receives direction from the European Council, made up of the member states' heads of government and the President of the Commission. Where the European Council does not "define the principles of and general guidelines for"¹⁵⁷ a common policy, therefore, there simply is no common foreign policy. The Council of the European Union retains legislative

¹⁵⁷ Treaty on European Union Art. 13 (1).

power to “define and implement” the CFSP on the basis of the general principles provided by the European Council.

The TEU provides for three instruments for the CFSP: common strategies (Art. 13) (added to the TEU under the Treaty of Amsterdam), joint actions (Art. 14) and common positions (Art. 15). The common strategy is administratively prior to the other two; adopted by the European Council, the common strategy is meant to express a common foreign policy interest by all member states (Art. 13 (2)). The Council is empowered to adopt joint actions (where “operational action” is required by the Union) and common positions (agreements between member states on matters of geographic or thematic nature). The latter two policy instruments can be adopted either as a function of a common strategy or outside of it.

Member states retain a veto over any of these measures, although joint actions and common positions resulting from a common strategy can be passed by a qualified majority in Council; if a member state declares its opposition “for important and stated reasons of national policy”¹⁵⁸, however, the policy is vetoed. The Council has the option of voting (by qualified majority) to request that the measure be passed unanimously by the European Council.

The weakness in EU foreign policy deriving from its intergovernmental character is exacerbated in the area of defence policy by the existence of defence organizations – particularly NATO (and, until June 1999, the Western European Union (WEU)) – which predate the treaty status of a common foreign policy¹⁵⁹, and

¹⁵⁸ TEU Art. 23 (2).

¹⁵⁹ The CFSP was preceded by the European Political Cooperation provisions of the Single European Act (SEA) of 1986.

whose membership overlaps imperfectly with that of the EU. A common EU defence policy is thus subordinated to the prior alliances and agreements built into these other organizations.

The TEU explicitly recognizes member states' obligations to NATO¹⁶⁰, of which Ireland, Finland, Austria and Sweden are not members, but which includes EU applicant states Turkey, Poland, the Czech Republic and Hungary. The TEU's recognition of prior NATO obligations to its members' commitment to mutual defence is a serious impediment to the development of a common – let alone a single – EU defence policy.

Although the Maastricht Treaty recognizes the WEU, charging it with providing the EU with an “operational capability,”¹⁶¹ this capacity is currently stranded between member state militaries and the Rapid Reaction Force to be instituted in 2003. Until the late 1990s, the immobilization in security policy resulting from the imperfect overlap between the WEU and the EU's memberships only thinly veiled a more fundamental division between France, Germany and the UK. The resolution of this division at St. Malo and at Cologne (discussed in some detail below) led to a moderately cooperative spirit on security policy and the near-dissolution of the WEU. This occurred first in principle at the Cologne Council in June, 1999, and then in practice at the WEU's meeting at Marseille in November, 2000. At the latter meeting, the WEU turned its policy coordination functions over to the EU and suspended the previously routine consultation between the WEU and the EU and NATO. The position of Secretary-General and High Representative for CFSP,

created in the Treaty of Amsterdam¹⁶² as a new post on the Council of the European Union, was filled by Javier Solana, who shortly afterward became the WEU's Secretary-General.

While these developments superficially consolidate fragmented policy-making organs within the EU,¹⁶³ the process remains highly intergovernmental. On the subject of a common defence policy, Article 17 of the TEU provides only for the “progressive framing” of a defence policy, but leaves the creation of such a policy to the discretion of the European Council. The role formerly attached to the WEU, and to be transferred to the Rapid Reaction Force (RRF), is therefore narrowed to include only the “Petersberg tasks” introduced into the TEU in the Treaty of Amsterdam. These tasks, developed after the EU's demonstrated inability to coordinate a response to successive security crises in the former Yugoslavia, form the core of a cooperative security policy, but certainly neither a common defence policy nor even a defensive alliance on the level of NATO; Petersberg operations are limited to “humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacemaking”.¹⁶⁴

¹⁶⁰ TEU Art. 17 (1).

¹⁶¹ TEU Art. 17 (1).

¹⁶² The resulting amendment now appears as TEU Art. 26.

¹⁶³ The operational and political wings of the WEU have been (or will soon be) attached to the RRF and the EU, respectively, but the WEU's assembly remains operative. It is likely to be folded into the EP in the near future (see Howorth (2001) 779).

¹⁶⁴ TEU Art. 17 (2).

2. Foreign policy in legislation

Common commercial policy

In practice, the Commission has taken advantage of its most powerful lever in foreign policy by promoting the EU's commercial policy in international trade organizations outside the EU. At the WTO, for example, the Commission represents all member states and has defended EU-based exporters in pressing cases against other WTO members.¹⁶⁵ In cases where a member state is the subject of a suit under the WTO, the Commission represents that member state.¹⁶⁶ The Commission's capacity to implement a WTO ruling against an EU member state has not yet been tested, although its refusal to comply with the 1998 ruling overturning the EU ban on bovine growth hormones resulted in the authorization of tariffs totalling US\$128 million against the EU by the Canadian and US governments. Because the nature and origin of the goods subject to tariff retaliation rests with the winners of WTO disputes¹⁶⁷, the US was able to target goods from all EU countries except the UK, driving a wedge into even the commercial aspect of EU foreign policy.¹⁶⁸ France was particularly hit by the resulting tariffs, and has requested compensation from the Commission.¹⁶⁹

Besides its participation in the WTO, the EU has negotiated many bilateral trade agreements, including the so-called Europe agreements (with members of the

¹⁶⁵ European Commission, *Report to the European Parliament on European Community Activities in the WTO 1999*, p. 8.

¹⁶⁶ As in WTO case DS135, in which France was the subject of a dispute lodged by Canada on its ban on asbestos.

¹⁶⁷ Within certain limits; see Art. 22, Annex 2 of the WTO Agreement.

¹⁶⁸ "Britain only EU state to avoid US sanctions", *The Independent*, July 20, 1999, p. 13.

¹⁶⁹ "U.S. imposes duties on fine European foods", July 29, 1999 on <http://www.cnn.com/WORLD/europe/9907/29/eu.food>.

EEA and with EU applicant states), agreements with Mediterranean states, and the ACP agreements replacing the Lomé Convention, which expired in February, 2000. Moreover, standard trade measures such as the imposition of anti-dumping regulations and countervailing duties are routinely adopted on the Commission's initiative.

Because of the tight constraints surrounding the formulation and negotiation of the commercial policy with external parties, there is no evidence of spillover into other foreign policy areas. Owing to Art. 301 EC Treaty, trade sanctions imposed under a joint action or common position of the CFSP are to be adopted by a qualified majority of Council under the first pillar arrangements. Clearly here, as elsewhere in the CFSP proper, executive authority rests with the member states.

The very existence of organizations such as the WTO and the willing participation of the EU and other states in it, suggests the budding existence of a juridical Federation still larger than the EU itself. At present, there is little evidence that the limited sphere of commercial policy is adequate to a global Federation (which would be identical to the universal and homogeneous state), not least because the enforcement of juridical decisions relies on plaintiff states undertaking retaliatory trade sanctions, rather than the necessary compliance characteristic of actual *Droit*. Nonetheless, insofar as the WTO represents a broader Society than that of EU member states, it is perhaps in this field that we are seeing the first outlines of the Justice of the universal and homogeneous state.

Humanitarian aid and development policy

Although the EC Treaty treats these as a single policy area, in practice humanitarian aid and development policy are implemented separately. Under the direction of the European Commission Humanitarian Aid Office (ECHO), the EU's humanitarian aid policy is controlled by the Commission (although its annual budget must be approved by Council), rather than through Council legislation¹⁷⁰. ECHO's mandate directs it to the provision of emergency aid in response to natural or man-made disasters outside the EU.¹⁷¹ Development policy, in contrast, remains under the Council's authority; for example, decisions concerning the new Lomé convention between the EC and the ACP states remain under the co-decision procedure laid out in Art. 251 of the EC Treaty.¹⁷² The weakness of the development policy's intergovernmentalism is illustrated by the 1997 case of Greece's blockage of a US\$375 million aid package from the EU.¹⁷³

Enlargement

In addition to the formal political procedures connected with the admission of applicant states to the EU, six pre-accession and accession programs assist applicant states with the adjustments required for admission. The "Copenhagen criteria" for accession agreed at the European Council meeting in that city in 1993 set rigorous political, economic and legal standards for accession. Some of these enlargement-

¹⁷⁰ For aid projects of up to 10 million euros, the Commission is free to begin aid; any project over 2 million euros requires that the member states be notified of the decision within 48 hours.

¹⁷¹ Council Reg. 1259/96.

¹⁷² Internal agreement 00/771/EC.

¹⁷³ "Greece blocks EU Aid" in *Middle East International*, May 8, 1998, p. 11.

related programs give the Commission access to some foreign-policy levers not immediately within the reach of Council or the member states.

The *Europe Agreements* are separate agreements between ten applicant states with the EU and its member states, and cover trade liberalisation, political dialogue, the legal approximation of EU standards and some other areas of cooperation; the *Association Agreements* with Turkey, Cyprus and Malta are older and include all these policy areas except political dialogue. The administration of both sets of Agreements is handled in large part by the Association Councils comprised of national ministers and thus remains largely intergovernmental.

The *Accession Partnerships* with the applicant states are a separate program under which each applicant state agrees to meet given targets connected with the Copenhagen criteria. Each Accession Partnership comprises domestic targets, EU support mechanisms and levels through the *Phare* program, and is accompanied by a *National Programme for the Adoption of the Acquis* (NPAA). The Phare program operates separately from other EU aid policy. Phare, like ECHO, operates as an arm of the Commission. With an annual budget of close to 7 billion euros, Phare funds a large variety of projects to bring the economic and political institutions of the CEECs (as well as Turkey, Cyprus and Malta) to the required standards for integration with the EU.

Two additional but separate funds – *ISPA* (for infrastructure) and *SAPARD* (for agriculture and rural development) – are also geared to the assisting applicant states reach the levels of development required for EU accession. Both are under the control of the Commission.

There are many other *community programs* with a regional focus on development – such as the *MEDA Cooperation Agreements* (directed at Mediterranean states) and *TACIS* (former Soviet states) – also operate under the Commission's direction. These programs overlap with, and operate on similar principles as, enlargement-related policies, but include some states not being considered for EU membership.

In general, EU enlargement-related policies fall under the same model of policy development and implementation as the CFSP: the member states combined enjoy the right of initiation and policy development, while the Commission executes the various agreements. The intergovernmental nature of these policies has resulted in an incoherent series of policies clearly resulting from negotiated compromises and diverse domestic policy ends. Consequently, the position of applicant states remains ambiguous. For example, while Gerhard Schröder's Social Democrats in Germany reversed the position the Kohl government's opposition to Turkey's candidacy for EU membership, with the result that Turkey has now been officially recognized as a candidate for membership, Germany's advocacy of Turkish accession remains lukewarm.¹⁷⁴ Indeed, in general, among EU member states resistance to accession and its economic consequences is widespread. Germany and Austria have demanded – and the Commission has, correspondingly, proposed – a seven-year moratorium on the free movement of workers from new member states¹⁷⁵, while Spain has threatened to suspend its support for enlargement unless existing “structural funds” payments to the

¹⁷⁴ See “Survey: Reasons of State” in *Economist* (May 19, 2001) p.5.

¹⁷⁵ Such a phase-in period finds a precedent in the accessions of Portugal, Greece and Spain, which entered under a similar seven-year moratorium on worker movement.

EU's poorer members (particularly Greece, Spain and Portugal) are retained.¹⁷⁶

Moreover, the Irish rejection of the Treaty of Nice (a necessary stage for enlargement) by referendum in June, 2001 has not yet been legally addressed.

The institutional separation of enlargement policy from the CFSP has made the creation of uniform foreign-policy compromises between EU and applicant states (not to mention with the United States and NATO) difficult. The inclusion of Cyprus among the six fast-track candidates for EU membership reflects Greece's insistence on the rapid entry of Cyprus (ahead of Turkey, and with or without a solution to the island's division) as a condition of its consent to the accession of other states.¹⁷⁷ The economic and security interests of the relevant stakeholders cannot be balanced in a negotiated compromise so long as individual member states retain the ability to develop foreign policy which might undermine any achievements made by EU foreign policy mechanisms. In the case of the accession of Cyprus ahead of Turkey, for example, there is every reason to anticipate that Greece will subsequently adopt the position of favouring Turkish accession only on condition of its withdrawal from Cyprus. On the other hand, other member states – particularly Germany – have strong economic and security interests in the accession of CEECs, over which Greece holds a veto.¹⁷⁸ An EU foreign policy which has even the appearance of being the product

¹⁷⁶ "Germany's politics of asparagus picking EU ministers on Monday debated demands to limit labor migration from new members." in *Christian Science Monitor*, May 17, 2001, p. 7. Spain is by far the largest recipient of money from the four structural funds, scheduled to receive 43 billion of the 183 billion euros to be dispensed between 2000 and 2006, although Greece and Portugal are the larger beneficiaries if we measure structural fund contributions as a proportion of GDP or population. (Structural fund figures from http://www.inforegio.cec.eu.int/wbpro/prord/guide/gui34_en.htm)

¹⁷⁷ "Republic of Cyprus: Papandreu: Cyprus' EU accession course appears optimistic", *M2 Presswire* (March 13, 2001).

¹⁷⁸ See "Survey: End-game" in *Economist* (May 19, 2001) p. 12.

of logrolling and veto trading between member states defending national interests is inadequate to political friendship.

The creation of common foreign and defence policy

As should now be clear, the creation of EU foreign policy follows a process distinct from that of policy within the “Community dimension”. Its mainly intergovernmental character places the Council and the member states at the centre of the CFSP, with the EP and the Commission at the periphery. The existence of the position of High Representative for CFSP on the Council and the cross-appointment of Javier Solana to the post of WEU Secretary-General makes any encroachment by the Commission on executive functions in foreign policy extremely difficult.

Because of the lack of operational CFSP capacity so far, the joint actions which form the Council’s principal tool in the creation and execution of the CFSP are mainly directed to EU support of peaceful or democratic projects. During 2000, for example, the Council adopted eleven joint actions:

- 1) Feb. 28: extension of existing joint action 1999/522, which formalized the EU’s contribution to the UNMIK (UN Interim Administration Mission) to Kosovo.
- 2) April 13: financial support to the Palestinian Authority’s counter-terrorism program.
- 3) June 16: financial and WEU support to establish an Albanian police force.
- 4) June 22: restrictions on technical assistance from within the EU on products deemed “dual use” (i.e. having both destructive military and peaceful uses).

- 5) July 20: assistance in the form of equipment aid to the government of Georgia in its protection of the OSCE mission observing the Chechen Republic on the border.
- 6) November 16: funding granted for a meeting of EU member states and Balkan states.
- 7) December 14: extension of existing appointment of a Special Representative of the EU to monitor and support peacemaking efforts in the African Great Lakes region.
- 8) December 14: extension of existing appointment of a Special Representative of the EU to monitor and support the Stability Pact in south-eastern Europe.
- 9) December 14: extension of existing appointment of a Special Representative of the EU to monitor and support peacemaking efforts in the Middle East.
- 10) December 14: extension of existing arrangement supporting the creation of a police force in Albania via the WEU.
- 11) December 22: establishment of the European Union Monitoring Mission (EUMM) to provide information and analysis contributing to EU policy on the Balkans.

Although these joint actions undoubtedly make the monitoring efforts of EU member states necessary for the development of foreign policy more efficient, charges that CFSP outputs represent the lowest common denominator created from the foreign policy ends of all member states are well-founded.

The anticipated creation of the Rapid Reaction Force¹⁷⁹ (RRF) by 2003 has not addressed the question of a common EU defence policy autonomous from NATO. At the Helsinki European Council of December, 1999, member states agreed, in principle, to the “Headline Goal”: the creation, by 2003, of a joint military force of between 50,000 and 60,000 troops to execute the Petersberg tasks. The Headline Goal was confirmed in the French Council Presidency’s report, which stated that the advances in CFSP contained in the Treaty of Nice constitute “the basis of a Defence Europe”, but also emphasized the oft-repeated point that the RRF is not a European army. These non-RRF advances consist of the creation of two new committees – the Political and Security Committee (PSC) and the EU Military Committee (EUMC) – and a permanent EU military staff (EUMS). The PSC is a slightly altered version of the Political Committee established in the TEU¹⁸⁰, charged with monitoring the implementation of coordinated foreign policies and reporting to the Council. The EUMC, comprised of member states’ chiefs of defence or their representatives, is to perform the same function in strictly military affairs. The EUMS performs military bureaucratic functions for the EUMC. These advances will provide some structural support for single foreign and defence policies, but do not signify any progress beyond those contained in the Maastricht Treaty in committing member states to the creation of such policies.

¹⁷⁹ The RRF is distinct from the “Rapid Reaction Facility” (recently also called the “Rapid Reaction Mechanism” in Council Reg. 381/2001), a fund for non-military humanitarian operations initially proposed in the Helsinki Council Report conclusions.

¹⁸⁰ TEU Art. 25.

3. Foreign policy in the ECJ

Common commercial policy

The common commercial policy of the EU is subject to the same juridical relations as other policy areas in the EC Treaty. Because the common commercial policy provides protectionist support for some EU industrial sectors, most of the ECJ's involvement in the common commercial policy concerns efforts by members of these sectors (both inside and outside the EU) to secure Council Regulations in their favour, as well as by importers located inside the EU whose trade is adversely affected by trading restrictions. Member states are only rarely directly involved in such cases, although they do occasionally provide some legal support where an economic sector important to their own economies is at stake.¹⁸¹

The strictly juridical, rather than political, nature of the common commercial policy is evinced by the possibility of legal action in the ECJ by companies operating outside the EU against EU protectionist measures.¹⁸² This possibility, as was discussed above, reflects the emergence of a juridical commercial Justice beyond the geographical and political scope of the EU itself.

Humanitarian aid and development policy

Humanitarian aid and development policy are not the direct subjects of legal actions in the ECJ.

¹⁸¹ In *Eurocoton v. Council* (T-213/97), the UK supported the Council, which had declined to approve anti-dumping measures against cotton producers from China, Egypt and other states. In *UK v. Council* (C-150/94), the UK, supported by the German government sued the Council, supported by the Spanish government, for the annulment of anti-dumping restrictions on toys imported from China.

¹⁸² See, for example, *Shanghai Bicycle v. Council* (T-170/94).

Enlargement

There has been some legal activity in the ECJ connected with the Europe and Accession Agreements launched by citizens of non-EU partners to those agreements seeking residence or social security rights in EU states. The Court has not treated the Agreements as having altogether the same force as the founding treaties; it has rejected suits resting on statements of principle within those agreements which required further legislative action to be implemented,¹⁸³ but accepted arguments based on parts of those Agreements which require no legislation to become effective. Critical among the latter cases was *Sürül v. Bundesanstalt für Arbeit* (C-262/96). A Declaration of the Turkey-EC Association Council guaranteeing freedom from discrimination on the basis of nationality in the application of national social security law was upheld by the Court as valid, with the resulting direct effect requiring the reform of German national law. Although this case resembles that of commercial policy insofar as it reflects the extension of operative Justice beyond the territorial boundaries of the EU, its reliance on the ECJ for implementation suggests the existence of “fuzzy borders” at the EU’s edges rather than the incipient existence of a global Justice.

The Court’s interpretation of Cooperation Agreements (not strictly part of the enlargement process, but of a similar nature) has been similar to that of the Europe and Association Agreements, although there is some evidence that the ECJ accords the latter particular legal significance due to their connection with EU enlargement. In

¹⁸³ *Demirel* (12/86 ECR); *Kziber* (18/90 ECR); *Racke* (C-162/96); *Savas* (C-37/98).

*Eddline El-Yassini*¹⁸⁴ a case similar to *Sürül*, the plaintiff appealed to the EU's Cooperation Agreement with Morocco, which contains a paragraph prohibiting discrimination on the basis of nationality with respect to working conditions or pay. The Court rejected the plaintiff's claim that the Cooperation Agreement is analogous to the EU's Association Agreement with Turkey, in part on the grounds that only the latter is geared to future enlargement¹⁸⁵ and "intended progressively to secure the freedom of movement of workers"¹⁸⁶. The comparative weight accorded to the Europe and Association Agreements should not be overstated, however; the Court has repeatedly interpreted other areas of Cooperation Agreements in the same way and on the same grounds as it did in *Sürül*.¹⁸⁷

It is clear from *Sürül* that the Court views the Europe and Association Agreements, and the legislation they produce, as contracts between the EU and candidate states. In such cases, the ECJ has acted in a political capacity, subordinating member states to its governorship. It is noteworthy that in cases such as *Sürül*, the ECJ intervenes as a third between member states on the one hand and non-EU citizens on the other. This "fuzzy borders" effect does not go so far as to constitute a juridical Federation with candidate states, however, since the ECJ's authority does not extend to those states.

The CFSP

¹⁸⁴ Case C-416/96.

¹⁸⁵ At ¶57.

¹⁸⁶ At ¶58.

¹⁸⁷ *Krid v CNAVTS* (C-103/94); *ONEM v Kziber* (C-18/90); *Babahenini* (C-97/95).

The CFSP has been the subject of virtually no legal action, with the exception of a single case involving a Franco-German company violating the suspension of trade with Yugoslavia in 1999.¹⁸⁸

B. Recent developments in EU foreign policy

The last four years have seen two promising developments in the area of common foreign and security policy which suggest that powerful member states are willing to relax their opposition to the EU's assumption of a foreign policy role: the St. Malo agreement between Great Britain and France, and the German proposal to transform the EU into a constitutional federation.

The St. Malo Declaration

Until 1998, the European Security and Defence Identity (ESDI), a 1994 creature of NATO, was the most concrete expression of a common EU defence policy. The ESDI, like the Headline Goal, was aimed at enabling exclusively European forces to undertake crisis management and peacekeeping in the European region, but unlike the RRF was a mechanism to facilitate cooperation rather than an actual joint military force. The role of senior UK politicians in resisting the development of an EU defence capability until late 1998 has been widely documented,¹⁸⁹ although there is evidence of a shift towards operational cooperation with the French as early as 1996.¹⁹⁰ The 1997 election of Tony Blair did not, at the

¹⁸⁸ *Invest v. Commission* (C-317/00 and T-189/00).

¹⁸⁹ See, for example, Charles G. Cogan, *The Third Option: The Emancipation of European Defense, 1989-2000* (Westport, Connecticut and London: Praeger, 2001), esp. pp. 97-116; Stanley Hoffman, "Towards a Common European Foreign and Security Policy?" pp. 189-198 in *Journal of Common Market Studies* 38 (2) (June 2000) 193 ff.

¹⁹⁰ In 1996 and 1997, the British and French foreign ministers signed letters of intent on operational cooperation between their navies and armies, respectively.

outset, promise a change to the long-standing resistance to European defence integration maintained by Margaret Thatcher; at the Amsterdam European Council in June, 1997, Blair had vetoed a proposal to merge the EU with the WEU. Unlike other areas of proposed or actual policy integration, further integration of the CFSP – particularly its security and defence areas – was hampered by the tension between the Anglo-American alliance on the one hand, and the Franco-German on the other. The former built its vision of Defence Europe around NATO and the ESDI, initially manifested in the May, 1991 NATO proposal for a 70,000-strong Allied Rapid Reaction Corps, to be headquartered in Britain and staffed by troops from Germany, the Netherlands, Belgium, the UK, Italy, Turkey and Greece. The latter had created, in 1987, the Eurocorps, a military body headquartered in Strasbourg, subsequently joined by Belgium, Spain and Luxembourg, and projected to comprise some 35,000 troops.¹⁹¹ Only at Germany's insistence, in 1993, did France agree to place the Eurocorps under NATO command in the case of a military crisis in Europe.

The St. Malo joint declaration between Britain and France in December, 1998, was void of any concrete commitments, but signalled the end of Britain's exclusively Atlanticist security policy, as indicated in its second paragraph on the means to implementing the CFSP: "To this end, the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises."¹⁹² But changes in Germany's foreign policy orientation since reunification have also played a role in destabilizing the old polarity. During the Gulf War of 1990-91, Germany found

¹⁹¹ Cogan (2001) 54.

itself caught in a contradiction between a commitment to support its allies on the one hand and its historically and constitutionally supported resistance to military activity (even, as was eventually the case in the Persian Gulf, under the auspices of the UN) outside NATO's borders on the other.¹⁹³ After the Gulf War, Germany expanded its military operations to humanitarian and peacekeeping missions under UN command, demonstrating a willingness for participation in security projects beyond its NATO commitments.

The EU's ineffectiveness during the wars in Yugoslavia during the early 1990s, as well as its failure to intervene adequately in the Kosovo crisis in 1998, seriously altered the perspectives of Germany and the UK, and, to a lesser extent, of France, on the EU's capacity for autonomous military action. Between the outset of the Bosnian war in 1991 and the summer of 1992, European intervention was limited to participation in the United Nations Protection Force (UNPROFOR), then dedicated only to protecting humanitarian convoys.¹⁹⁴ By the time real UN-governed intervention was effected during the summer of 1992, Bosnian Serbs, supported by Serbia, had taken over two-thirds of Bosnia.¹⁹⁵ Only after the July, 1995 massacre of Muslims at Srebrenica – which had been designated by the UN as a safe haven – did NATO and the major EU powers (including France) fall into line to form the

¹⁹² From the text of the St. Malo Declaration, <http://www.fco.gov.uk/news/newstext.asp?1795>.

¹⁹³ Adrian Hyde-Price and Charlie Jeffery, "Germany in the European Union: Constructing Normality," pp. 689-717 in *Journal of Common Market Studies* 39 (4) (November 2001) 703.

¹⁹⁴ In the fall of 1991, an initiative sponsored by the German and French governments to deploy peacekeeping troops through the WEU was vetoed by the British ("More EC Observers Heading to Hotspots in Yugoslavia," p. 2 in *Wall Street Journal Europe*, Oct. 1, 1991).

¹⁹⁵ Cogan (2001) 68.

Implementation Force (IFOR) which oversaw the implementation of the Dayton accord in November, 1995.

The enhanced spirit of cooperation among the European powers which emerged from their experience in Bosnia was not, however, enough to prevent the ethnic slaughter in Kosovo, and, as in the Bosnian case, European efforts to end the war diplomatically failed, ending at the disastrous meeting at Rambouillet in February, 1998.¹⁹⁶ After the subsequent NATO-sponsored bombing campaign cowed Slobodan Milosevic into accepting terms brokered by the EU and Russia, the resulting agreement was implemented by the Kosovo Force (KFOR), operating under NATO supervision and staffed mainly by troops from the UK, France, the USA, Germany and Italy.

The St. Malo declaration must, therefore, be understood in light of the Bosnian and Kosovo disasters, both of which had amply demonstrated the weakness of the WEU and the high degree of dependence by all NATO members on US leadership and operational support. For the UK, the declaration marked a radical shift from its long-held opposition to any connection between foreign policy, in any form, and the EU.¹⁹⁷ France's rapprochement with NATO in 1995 after the election of Jacques Chirac and embodied in the French participation in IFOR, meanwhile, probably made

¹⁹⁶ According to Barry Posen, the failure of the Rambouillet talks was at least in part a function of poor diplomacy. See Barry R. Posen, "The War for Kosovo: Serbia's Political-Military Strategy," pp. 39-84 in *International Security* 24 (4) (Spring 2000).

¹⁹⁷ Jolyon Howorth, "European Defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately?" pp. 765-789 in *Journal of Common Market Studies* 39 (4) (November 2001) 769.

the St. Malo declaration palatable to the British, for whom a close relationship with the US remained paramount.¹⁹⁸

Joschka Fischer's Humboldt Speech

With the election of the SPD-Green coalition to the German Bundestag in 1998, an intra-governmental tension developed in Germany's perspective on EU integration. On the one hand, on matters of economic integration, Chancellor Gerhard Schröder moved away from the highly integrationist approach maintained by the preceding Kohl governments, explicitly hitching Germany's national interest to any further integration.¹⁹⁹ On the other hand, current German policy on political integration is much more extreme than Kohl's ever was. The apparently radical position Green foreign minister Joschka Fischer took at his now-famous speech at Berlin's Humboldt University in May, 2000 has since been surpassed by Schröder himself.

In the Humboldt speech, Fischer laid out a plan for federated EU with striking resemblance to Kojève's constitutional Federation: he proposed a "thin" EU federation founded on a constitution and the subsidiarity principle, with executive powers divided between a reformed Commission and Council, but with a single

¹⁹⁸ Cogan attributes Secretary of State Madeleine Albright's muted reaction to St. Malo to the US's dependence, in December 1998, on British support in the impending Operation Desert Fox against Iraq. (Cogan (2001) 100-101).

¹⁹⁹ Schröder has, for example, pressed for reductions in Germany's financial support of the EU through CAP reform, as well as for an increased voting weight on the Council. See Werner Schafer, "The German Question Resolved: Making Sense of Schröder's Foreign Policy," pp. 38-41 in *Harvard International Review* 23 (2) (Summer 2001); Hyde-Price and Jeffery (2001); "Schroeder, Sensing Opportunity, Initiates EU Debate — France and Britain Fear Proposals by Germany May Curb Sovereignty" p. A23 in *Wall Street Journal*, May 15, 2001.

foreign and defence policy.²⁰⁰ Although Fischer claimed to be speaking without his “foreign minister’s hat,” his remarks were, predictably, widely interpreted as a radicalization of German policy rather than as a private citizen’s commentary.

A year later, Schröder adopted still a stronger position on a federated Europe. Like Fischer, Schröder did not present his proposals as German policy, but instead in the form of a draft resolution for consideration at the SPD’s congress in November 2001. Schröder’s idea was also for an EU federation, but constructed on the German federal model rather than the highly decentralized version Fischer had proposed.²⁰¹

Although neither Fischer’s nor Schröder’s proposals were original, having long been discussed in the academic literature, they provoked a discussion of the future of EU political integration unprecedented outside of academic circles. Reactions by other EU leaders to the German proposals illustrate the tremendous resistance to the genuine unification of foreign policy in other EU states, particularly the UK, Spain and Denmark, and even France, to which Fischer’s comments were largely addressed; Polish officials, meanwhile, insisted that a federation was not the EU they had applied to join.²⁰² While the German federalist proposals have not been particularly damaging to either the Franco-German relationship (which is built largely around a shared vision of economic integration on the Kantian model) or the more recent Franco-British partnership forged at St. Malo (which seeks more EU military

²⁰⁰ An English translation of Fischer’s speech appears on pp. 19 – 30 of Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer* (Badia Fiesolana, Italy: European University Institute, 2000).

²⁰¹ Fischer, in fact, distanced himself from Schröder’s vision of EU federalism, citing it as impracticable and hostile to British and French aspirations (“Fischer cool on Schroder federal Europe plan” p. 1.13 in *The Guardian*, May 18, 2001).

²⁰² “Anger over German plan to unite Europe,” p. 30 in *The Sunday Telegraph*, May 28, 2000.

autonomy without diminishing NATO), this fact only highlights the degree to which economic integration is institutionally and culturally insulated from political integration, or, to use Kojève's terms, the degree to which equality remains autonomous from equivalence.

Even among academic students of integration, however, Fischer's proposal provoked a cautious, if not hostile, literature. While some of these scholars simply pointed out the inadequacy of Fischer's attempt to avoid advocating federalism outright in favour of a "federation of nation-states,"²⁰³ others had more serious objections. Klaus von Beyme argued that Fischer's position is dangerous, in part because of the suggestion of German expansionism it implies, and in part because any hint of EU federalism threatens to stir up nationalist movements against further integration or, indeed, enlargement.²⁰⁴ Jan Zielonka argues that the two-speed model of political integration in Fischer's proposal would create a destructive core-periphery relation between EU-15 and newer members²⁰⁵

Reflections on foreign policy and citizenship

EU foreign policy is characterized by a high degree of intergovernmentalism; cooperation on security policy is dominated by bilateral agreements at the operational level, such as the Eurocorps and the commitments built around the St. Malo Declaration. These agreements are themselves compromises between domestic

²⁰³ For example, Charles Leben, "A Federation of Nation States or a Federal State?" pp. 99-111 in Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer* (Badia Fiesolana, Italy: European University Institute, 2000).

²⁰⁴ Klaus von Beyme, "Fischer's Move Towards a European Constitution," pp. 73-84 in Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer* (Badia Fiesolana, Italy: European University Institute, 2000).

policies. Consequently, Germany has abandoned its historical hesitation to commit to military operations outside its borders in exchange for stronger political cooperation with its powerful neighbours and to demonstrate its commitment to NATO (and specifically the USA). For France, whose nuclear capability is limited to short-range targets in Eastern Europe, the end of the Cold War shifted the focus of military autonomy from nuclear deterrence to a conventional intervention capability. Moreover, after its operational inadequacies became embarrassingly apparent in Kosovo, it became clear that increased cooperation with EU partners would be necessary. Consequently, France rejoined NATO's Military Committee (although not its command structure) and agreed to construct the RRF using Eurocorps as its foundation. The British view of St. Malo as a response to a need for NATO reform in the shape of greater European participation is closer to the spirit of the ESDI than to that of political union embodied in Schröder's and Fischer's teleology.

At present, then, the nature of the relation between member states, the EU and NATO varies between the discourses of the EU's most powerful members, all of which are compatible with each other only so long as EU-NATO arrangements remain at the current level of indeterminacy. It is not clear under what conditions the EU might be permitted to use "NATO assets" not belonging to member states – that is, primarily U.S.-owned hardware, as well as central coordinating capabilities belonging to NATO. Two recent developments suggest NATO's importance may be declining: first, the Bush government's isolationism, manifested in its renewed

²⁰⁵ Jan Zielonka, "Enlargement and the Finality of European Integration," pp. 151-162 in Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer* (Badia Fiesolana, Italy: European University Institute, 2000).

commitment to a missile defence shield and its unilateral approach to the war in Afghanistan; second, the EU's member states have embarked on a program to build its RRF capability by 2003.

Even the most extreme projection built on these factors, however, leads only to speculation about NATO's displacement by the security component of the CFSP. Even this scenario does not feature a decline in the CFSP's intergovernmental character, particularly in the areas of defence policy and of non-security related foreign policy. The spirit of cooperation evident in the Franco-British commitment to the RRF is absent in other foreign policy areas. For example, at the Council summit in Laeken in December, 2001, EU members evinced unity in a joint statement on the Middle East. The very next morning, however, Britain and France clashed in a UN Security Council meeting on the question of whether to place monitors in Gaza and the West Bank to stop violence between Palestinians and Israelis.²⁰⁶

The autonomy of the state to create foreign policy is a basic function of the friend-enemy relation framing citizenship. There are traces of such autonomy in the instruments available to the Commission through the common commercial policy, development policy, and humanitarian aid programs. As we saw in our legal analysis of the EU Agreements with its neighbours, those agreements have had direct effect on the relation of EU member states with some of their non-citizen residents.

Two notable features of this patchwork foreign-policy creation pertain to the question of citizenship. First, the friend-enemy distinction, normally most apparent in

foreign policy, is not clearly visible in the EU's common foreign policy. Since member states retain the monopoly on violence, and, therefore, on defence policy, the EU itself seems to comprise a foreign-policy alliance²⁰⁷ rather than a union of political friends. The absence of political will among member states to submit to a substantive common foreign and defence policy outside the enlargement framework indicates the absence of the political dimension in EU citizenship. In those areas where such submission has occurred – particularly in the commercial and enlargement policies – we have instances of interaction, as indicated, for example, by the juridical treatment of non-EU citizens as *equivalent* to its citizens in certain respects. A shared economy is by no means excluded in principle from politicization; as Schmitt wrote in 1932, however:

Should the [economic] counterforces be strong enough to hinder a war desired by the state that was contrary to their interests or principles but not sufficiently capable themselves of deciding about war, then a unified political entity would no longer exist.²⁰⁸

The political dimension of citizenship, as exhibited in the EU's foreign policy, remains securely at the level of the member states.

The second noteworthy effect is the apparent emergence of some citizenship-related rights beyond the EU's borders. While such rights for non-citizens are not particular to the EU, the member states' acceptance of the ECJ's authority in granting these rights is unusual. Nonetheless, given the absence of any political relation

²⁰⁶ After registering its disagreement with the proposal, Britain abstained from the vote, while France voted in favour. The US ultimately vetoed the proposal. See "On Both War and Peace, The EU Stands Divided The Problem: Getting 15 to Speak as One" in *International Herald Tribune*, Dec. 17, 2001, p. 1.

²⁰⁷ Because the friend-enemy relation is purely political, a juridical Federation in the sphere of foreign policy is inconceivable. Thus, anything less than pure unity on foreign policy constitutes, at most, an alliance.

parallel to the juridical relation apparent in these juristic advances, a Kojèvean theory of citizenship will not extend to the view that the extension of certain rights to non-nationals supplants national citizenship.²⁰⁹

Analysis

These findings, set against the Kojèvean theory of citizenship developed in this dissertation, support the view that EU citizenship is, at most (and in the most teleological interpretation possible), an unfinished project. In the first two of the three policy areas critical to the political relation – citizen duties, social rights, and foreign and defence policy – the Treaties retain predominantly intergovernmental decision-making structures; legislation on social rights treats citizens primarily as economic agents (i.e. workers), and correspondingly employs the language of equivalence rather than of equality.

At the same time, the EU shares a very large body of specifically juridical law with the outward appearance of being integrated in a single actual *Droit*. This appearance is buttressed by the considerable autonomy demonstrated by the ECJ, which has, at times, successfully imposed Community law over the wishes of member state governments. Moreover, the ECJ has supported the creation of transnational juridical relations between EU subjects by creating horizontal and vertical direct effect in its interpretations of the Treaties and Council legislation. The EU is clearly the locus of a body of actual *Droit* consistent with the existence of a juridical federation in which the ECJ and member states act as mutually interchangeable thirds between parties.

²⁰⁸ CP 39.

The autonomy of EU *Droit*, however, is not itself adequate evidence of the politicization of the EU's relations. Because all polities are capable of acts of circumscription, i.e. of explicitly excluding certain social relations from the political, they can preserve their political autonomy while their citizens participate in these social relations. Moreover, if the juridical system governing these relations enjoys political support in the form of a juridical Federation, we will have an instance of actual *Droit* without a political relation.

For the same reason, the Council's capacity (with or without the co-decision procedure) to legislate in some policy areas on the basis of qualified majorities, rather than unanimously, does not necessarily represent the advent of a constitutional federation. So long as legislation occurs only in the areas circumscribed by member states – “first pillar” areas such as commercial law, the internal market, and the market-related aspects of social policy – their cession of political autonomy in these areas, even to the point of submitting to coalitions of other states in the Council, does not affect their political nature, since withdrawal on a “political” basis remains constitutionally possible.

A true common foreign and security policy is essential to a future citizenship of the EU. As we saw in the examination of the EU's foreign policy above, the obstacles to the full development of the CFSP are huge and many: member states have shown little desire for a single foreign policy, cooperative advances have occurred mainly among smaller subsets of EU members rather than in CFSP

²⁰⁹ For an example of this argument, see Soysal (1996) esp. pp. 22-23.

institutions, and such cooperation as exists is restricted to the Petersberg tasks, but excludes both defence and non-security foreign policy.

None of what has just been said is to deny that the EU represents an unprecedented degree of *social* association; it represents a transnational juridical Federation on a scale not achieved elsewhere. The increasingly complex web of civil-society networks, embodied in and sometimes caused by EU legislation or the resulting organs, indicates the possibility of prolonged and extensive transnational intercourse. But a high level of social association neither anticipates nor indicates the existence of a political relation, a constitutional Federation, or a genuine citizenship of the EU.

Conclusion

Rather than simply recapitulating the conclusions emerging from the discussion of citizenship preceding, I will draw some attention here to some problems I have been unable to solve there. This project is, in part, an inadvertent, if partial, intellectual biography of Alexandre Kojève. Although I have attempted to shed a different light on Kojève's thought than that cast by the scholarship of the English-speaking world, this effort has created more puzzles than it has solved. My main purpose, however, was to identify critical features of citizenship which would have to be carried over to a citizenship of a present or future European Union. Although I surveyed a range of EU citizenship-related policy areas, I made no mention of the necessary steps to EU citizenship, apart from the very broad ones of a European federation and a genuine Common and Foreign Security Policy (CFSP). It is to these two areas that I would like to turn now.

The problem of recognition

For attentive readers of Kojève, his commitment to the universal and homogeneous state is troubling. Kojève's view of the historical path leading to the universal and homogeneous state rests on Hegelian and Marxist grounds: from Hegel he adopts the doctrine binding logic to determined historical outcomes; from Marx he borrows the essential atheism which precludes a natural philosophy of politics. If we interpret Kojève's argument as an elaborate defence of the slogan "you can't stop progress," then there is much to credit in it. But Kojève goes further than this: affixing desire to the logic of history, he concludes that with history's end will come

universal human *satisfaction*. It is not altogether clear, however, that even Kojève himself saw the universal and homogeneous state as universally satisfying.

For the spirited, the universal and homogeneous state offers little satisfaction. The historical dialectic, in Kojève's presentation of it, transforms the thumotic desire for recognition into a peaceful one. It does this by gradually eliminating the flashpoints for thumotic exercise – political conflicts resulting from formerly “natural” differences such as language, religion, nationality, etc. – transforming them into equivalent members of an ideological “federation,” within which no wars are possible. In his letter to Carl Schmitt on the Hegelian future, Kojève prognosticated concisely: *Abrüstung ohne Endrüstung*¹ (disarmament without indignation). For those whose spiritedness cannot be overcome “historically,” Kojève prescribes a “juridical” solution instead: they are locked up or executed.

Because Kojève views the need for recognition, rather than the spirited impulse itself, as the origin of violent conflict in history, spiritedness itself takes on the appearance of pathology in the universal and homogeneous state. We saw in Chapter 2 that Kojève's philosophical division from Leo Strauss rested principally on the relation between nature and politics. For Kojève, the two spheres were radically separate, so that political acts and attitudes could be understood only in their own terms and not evaluated according to transcendent truths apart from the universal desire for recognition. If Kojève is correct, then there is nothing regrettable about the subordination of the thumotic; the twinge of nostalgia some may feel with its passing can be abated through the historic re-enactment of wars, medieval jousting matches,

and professional sports. If, on the other hand, the ancient view of the human faculties as embedded in nature is correct, then Kojève's universal and homogeneous state takes the form of a universal and tyrannical dystopia whose citizens have the option of pointless and short-lived dissent (indignation) and "satisfaction" (disarmament).

Kojève's acknowledgement of the need for "juridical" correction of those whose *thumos* has not been successfully sublated by historical necessity points to the possible inadequacy of the universal and homogeneous state in satisfying the need for recognition. In spite of his portrayal of the Citizen of the final state as an amalgam of the Master and Slave archetypes, there is little of the former in the final Citizen. On the one hand, the Master's chief distinguishing characteristic – risk-taking – is lacking for the final Citizen; on the other hand, the Slave's primary characteristic, life-loving, remains, while his secondary trait of working, is reduced rather than eliminated in the final Citizen. Insofar as actual citizens fail to meet the athumotic standard of the final Citizen, they are at risk of being "juridically" overcome in the name of historical necessity.

If war is, as Kojève argues, impossible in the universal and homogeneous state, it may nevertheless not be peaceful. The scale on which juridical correction of the thumotic can take place is such that some such "correction" would be, to an outside observer (although, of course, no outside observation is strictly possible), indistinguishable from warfare. We have already seen that Kojève characterized the global wars of the nineteenth and twentieth centuries as mere "alignment of the provinces." In 1945, he described the Nazi slogan (*Ein Reich, Ein Volk, Ein Führer*)

¹ Kojève's letter of May 15, 1955 in Piet Tommissen, ed. *Schmittiana VI* (Berlin: Duncker & Humblot,

as “but a -- poor -- translation into German of the watchword of the French Revolution: ‘*La République, une et indivisible.*’”² In a 1955 letter to Carl Schmitt, he alluded to the Korean war, writing “The Americans have never known what war, politics and state mean (the ‘boys’ do not die as soldiers, but are killed as police agents. . . [D]) And Europe is about to forget this.”³ In the post-Cold War but still-nuclear age, there is no guarantee that the outbursts of those inadequately satisfied by the bourgeois rewards of the universal and homogeneous state will be on the pedestrian level we associate with conventional juridical correction. Because we find ourselves, according to Kojève, in an age of empires, even such peace as might be afforded by the universal and homogeneous state is not yet in sight. That the universal and homogeneous state exists already “in principle” is of little comfort to those looking forward to it, since it has done since 1806.

Problems of citizenship discourse

The model of citizenship defended in this dissertation is contractarian. Its purpose, as I argued in the opening chapter, is to avoid the pitfalls of partial accounts of citizenship which emphasize certain elements while neglecting others. Drawing on Kojève’s account of Hegel, I argued that citizenship is the principal avenue, for moderns, for acquiring recognition. I followed Kojève in identifying the dialectic between Master and Slave as the origin of the different historical forms and discourses of citizenship, and showed how this dialectic is preserved in the modern period through different legal codes which combine, in varying degrees, the principles

1998) 105.

² Alexandre Kojève, “Esquisse d’une doctrine de la politique française” (unpublished manuscript) (1945) 4.

of equality and equivalence. Finally, I evaluated a number of EU policy areas and identified areas requiring further integration if a genuine EU citizenship comes into being.

The model I have constructed for the interregnum between the nation-state and the universal and homogeneous state, however, is but a city in speech. A discourse adequate to a transnational citizenship of the EU is still absent; the close association between citizenship and nationality in our time continues to make a discussion of EU citizenship in concrete terms difficult. Let us consider an example of this difficulty in the form of citizenship acquisition.

From the arguments presented in the Chapters 2 and 3, it is clear that the depoliticization (or circumscription) of nationality is a necessary stage in the formation of EU citizenship. The *jus sanguinis* principle of citizenship acquisition, which rests on the notion of political identity (i.e. friendship) genetically transmitted, is essentially theological (in the sense both Kojève and Schmitt use the term) and therefore highly stable in nation-states. But it is clearly incompatible with a multinational citizenship on the European scale.

Nonetheless, the only conceivable alternative to *jus sanguinis*, namely *jus soli*, does not contain the same theological element; the myth of political identity genetically transmitted has no territorial analogy. In practice, *jus soli* is simply a pragmatic solution to the problem of determining just who is entitled to membership in the political community, particularly in states with high numbers of immigrants. States applying the *jus soli* principle do so in combination with, not instead of, the *jus*

³ Kojève's letter to Schmitt of May 16, 1955 in Tommissen (1998) 104.

sanguinis principle. Germany, for example, radically revised its citizenship acquisition laws in 2000, adopting the *jus soli* basis for citizenship, abandoning, in principle, *jus sanguinis*. In practice, the latter remains operative; children born of German citizens abroad remain entitled to German citizenship. The same pattern holds true for Canada, the United States and France, all states usually associated with *jus soli*. The discourse of these states, then, seems to rely, at least in part, implicitly on the discourse of genetically-transmitted identity for citizenship.

All states that combine the two principles of citizenship entertain *three* modes of citizenship acquisition by birth: minorities acquiring citizenship exclusively by *jus soli* (the children of immigrants) or *jus sanguinis* (the children of natives abroad), and a majority for whom the distinction need not be made. For this majority, citizenship is infused with both theological and rational-legal meanings. This model, relatively stable in nation-states, is incompatible with EU citizenship by birth. From the perspective of any given nation in the Union, the vast majority of “fellow” EU citizens are ethnically foreign, and fellow citizens only by virtue of *jus soli*. The extent to which member states are taking this national perspective can be gauged from their resistance to relinquishing the power to determine citizenship, as in the Declaration appended to Maastricht.⁴ The absence of a suitable theological discourse sustaining EU citizenship is apparent in the widely documented weakness of Union-

⁴ See Chapter 4, note 60.

wide civil society relations.⁵ The promotion of EU denizens to full-fledged citizens seems, for the present, a distant possibility.

By contrast, advances may be possible on the integration of naturalization policy across the EU, for two reasons. First, no ambiguous interpretation of naturalization is possible. Naturalization is the only occasion where the social contract is joined as an act of will. The naturalized citizen's theological "faith" can scarcely be questioned, in distinction to that of the citizen accidentally born on this or that soil. Moreover, EU residents originating outside the EU are only a small minority of any state's own citizens. In contrast to the regulations governing citizenship by birth, therefore, the harmonization of naturalization regulations in EU states represents a relatively small sacrifice of state autonomy. Such a harmonization is therefore, in principle, more easily attainable than the wholesale reform of EU-wide citizenship policy.

Even a minor advance such as a common naturalization law depends on the de-politicization of nationality, however. This is a major obstacle in states with relatively homogeneous ethnic populations and a history of subordination of immigrants designated as "guest workers" rather than future citizens. The growing

⁵ Recent efforts to address this weakness include Alex Warleigh, "Europeanizing civil society: NGOs as agents of political socialization," pp. 619-639 in *Journal of Common Market Studies* 39 (4) (Nov. 2001); F. Laursen, "Civil society and European integration," pp. 66-78 in *Annals of the American Academy of Political and Social Science* 565 (Sept. 1999); R. Hyman, "European integration and industrial relations: A case of variable geometry?" pp. 468-483 in *Antipode* 33 (3) (July 2001); W. Thaa, "'Lean citizenship': The fading away of the political in transnational democracy," pp. 503-523 in *European Journal of International Relations* 7 (4) (Dec. 2001).

economic and demographic pressure to increase immigration to EU states has, so far, encountered considerable resistance from “Haiderised” parties running “zero immigration” campaigns – particularly in the states most in need of skilled immigrants, Italy and Germany, but also visible in the increasing popularity of anti-immigrant parties in Belgium and Denmark. If economic pressure succeeds in winning over elites and voters, the transnational discourse necessary for EU citizenship may arrive with these new Europeans.

Closing remarks

The modern nation-state set, in two senses, a very high standard for citizenship: it managed, for a time, to combine a fairly high degree of social solidarity with increasing tolerance for the pursuit of private ends. In its ideal form, the nation-state is what George Armstrong Kelly called a civic nomocracy. The EU has already attained a high degree of nomocracy, in part because its member states are individually institutionally nomocratic, and in part because the citizens of these states enjoy the means to achieve the high standard Hobbes called “commodious living”. There is almost no evidence, however, that the EU is a civic association; to be sure, it is “civil”: it tolerates private associations such as are commonly anticipated in civil society. As a civil association, the EU is nothing more than a *modus vivendi*; its citizens need not treat each other as more than fellow economic agents.

Particularly if the EU takes the form of a federation, a civic element in its citizenship will be necessary to prevent races to the bottom in areas of national competence, to ensure the poorest regions do not fall too far behind the wealthiest, to overcome historically-rooted nationalisms impeding integration, and to combat shared

threats such as environmental degradation, natural disasters and direct attacks. The citizens of a civic association treat each other as ends in themselves of necessity, not of charity. Only as members of a civic association can citizens authentically enact their roles as equals in political friendship.

Bibliography

Texts cited

- Abromeit, Heidrun. "How to democratise a multi-level, multi-dimensional polity." In Albert Weale and Michael Nentwich, eds. *Political Theory and the European Union: Legitimacy, constitutional choice and citizenship*. London and New York: Routledge, 1998. 112-124.
- Acton, John. "Nationality." In Gertrude Himmelfarb, ed. *Essays on Freedom and Power*. Glencoe, Ill.: The Free Press, 1948. 166-195.
- Almond, Gabriel and Sidney Verba. *The Civic Culture*. Princeton: Princeton University Press, 1963.
- Alter, Karen J. "Who are the 'masters of the Treaty'? European governments and the European Court of Justice." *International Organization* 52 (Winter 1998): 121-139.
- "Analyse de travaux économiques effectués par M. Kojève." Unpublished document. Ministère du Commerce Extérieur, 1977.
- Anderson, James. "New Medieval and Postmodern Territorialities?" *Environment and Planning D: Society and Space* 14 (1996): 133-153.
- Anderson, Perry. *Lineages of the Absolutist State*. London: Verso, 1974.
- . "Nation-States and National Identity." *London Review of Books* 13, 9 (May 9, 1991): 7-8.
- "Anger over German plan to unite Europe." *The Sunday Telegraph*, May 28, 2000, p. 30.
- Archibugi, Daniele. "From the UN to cosmopolitan democracy." In Archibugi and David Held, eds. *Cosmopolitan Democracy: An Agenda for a New World Order*. Cambridge: Polity Press, 1995. 121-162.
- Arendt, Hannah. *The Human Condition*. Garden City, NY: Doubleday Anchor, 1959.
- . *The Origins of Totalitarianism*, 3rd ed. New York: Harcourt, Brace & World, 1966.
- . "Karl Jaspers: Citizen of the World?" in *Men in Dark Times*. New York: Harcourt, Brace & World, Inc., 1968. 81-94.
- Aron, Raymond. *Mémoires*. Paris: Juillard, 1983.
- Auffret, Dominique. *Alexandre Kojève: La philosophie, l'Etat, la fin de l'Histoire*. Paris: Bernard Grasset, 1990.
- Barbieri, Katherine and Jack S. Levy. "Sleeping with the enemy: the impact of war on trade." *Journal of Peace Research* 36, 4 (July, 1999): 463-479.
- Barry, Brian. *Theories of Justice: A Treatise on Social Justice, I*. Berkeley: University of California Press, 1989.
- Bates, T. "United Kingdom implementation of EU directives." *Statute Law Review* 17, 1 (1996): 27-49.
- Bauböck, Rainer. *Transnational Membership*. Aldershot: Edward Elgar, 1994.
- . "Social and Cultural Integration in Civil Society." In Catriona McKinnon and Iain Hampsher-Monk, eds. *The Demands of Citizenship*. London and New York: Continuum, 2000. 91-119.

- Beiner, Ronald. "Why Citizenship Constitutes a Theoretical Problem in the Last Decade of the Twentieth Century" In Beiner, ed. *Theorizing Citizenship*. Albany: SUNY Press, 1995. 1-28.
- Beitz, Charles. *Political Theory and International Relations*. Princeton, NJ: Princeton University Press, 1979.
- Bellamy, Richard. "The 'Right to have Rights': Citizenship Practice and the Political Constitution of the EU." In Richard Bellamy and Alex Warleigh, *Citizenship and Governance in the European Union*. London and New York: Continuum, 2001. 41-70.
- Bisson, Thomas N. "Medieval Lordship." *Speculum* 70, 4 (October 1995): 743-759.
- Bloch, Marc. *Feudal Society v. 1: The Growth of Ties of Dependence*. Trans. L.A. Manyon. Chicago: University of Chicago Press, 1961.
- Bobbio, Norberto. "Democracy and the International System." In Daniele Archibugi and David Held, eds. *Cosmopolitan Democracy: An Agenda for a New World Order*. Cambridge: Polity Press, 1995. 17-41.
- Bohman, James. "The public spheres of the world citizen." In J. Bohman and Matthias Lutz-Bachmann, eds. *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*. Cambridge, MA: MIT Press, 1997. 179-200.
- "Britain only EU state to avoid US sanctions." *The Independent*, July 20, 1999, p. 13.
- "Britain vows to veto plans for Euro tax." *Observer*, June 17, 2001: 2.
- "Brown rebuffs EC tax move." *Manchester Guardian*, June 4, 2001, p. 4.
- Brubaker, Rogers. "Citizenship and Naturalization: Policies and Politics." In Brubaker, ed. *Immigration and the Politics of Citizenship*. Lanham, MD: German Marshall Fund and University Press, of America, 1989. 99-127.
- , *Citizenship and Nationhood in France and Germany*. Cambridge, MA and London: Harvard University Press, 1992.
- Bull, Hedley. "The state's positive role in world affairs." *Daedalus* 108, 4 (Fall 1979): 111-123.
- Bull, Hedley. *The Anarchical Society*. London and Basingstoke: Macmillan, 1977.
- Burbidge, John. "Man, God and Death in Hegel's *Phenomenology*" *Philosophy and Phenomenological Research* 42, 2 (Dec. 1981): 183-196.
- Canovan, Margaret. "Patriotism is Not Enough." In Catriona McKinnon and Iain Hampshire-Monk, eds. *The Demands of Citizenship*. London and New York: Continuum, 2000. 276-297.
- Carens, Joseph. "Aliens and citizens: the case for open borders." In Ronald Beiner, ed. *Theorizing Citizenship*. Albany, NY: SUNY Press, 1995. 229-253.
- Carter, April. "Liberalism and the Obligation to Military Service." *Political Studies* 46, 1 (March, 1998): 66-81.
- Charvet, John. "The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights." *Millennium* 27, 3 (1998): 523-541.
- Clifford, James. *The Predicament of Culture*. Cambridge, MA: Harvard University Press, 1988.
- Closa, Carlos. "Supranational citizenship and democracy: Normative and empirical dimensions." In Massimo La Torre, ed. *European Citizenship: An Institutional Challenge*. The Hague: Kluwer Law International, 1998. 415-433.

- , "Between EU Constitution and Individuals' Self: European Citizenship." *Law and Philosophy* 20 (2001): 345-371.
- Cogan, Charles G. *The Third Option: The Emancipation of European Defense, 1989-2000*. Westport, Connecticut and London: Praeger, 2001.
- Constitution of Belgium*. http://www.fed-parl.be/constitution_uk.html.
- Covell, Charles. *Kant, Liberalism and the Pursuit of Justice in the International Order*. Münster and Hamburg: Lit, 1994.
- Crowley, John. "War, Politics, and Sovereign Violence." In Fred Dallmayr and José M. Rosales, eds. *Beyond Nationalism? Sovereignty and Citizenship*. Lanham, MD: Lexington Books, 2001. 75-97.
- Dahbour, Omar. "Self-Determination without Nationalism." In Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship*. Lanham, MD: Lexington Books, 2001. 57-71.
- de Groot, Gerard-René. "The Relationship between the Nationality Legislation of the Member States of the European Union and European Citizenship." In Massimo La Torre, ed. *European Citizenship: An Institutional Challenge*. The Hague: Kluwer Law International, 1998. 115-147.
- Delgado-Moreira, Juan M. *Multicultural Citizenship of the European Union*. Aldershot: Ashgate, 2000.
- Dietz, Mary. "Feminism and Theoris of Citizenship." *Daedalus* 116, 4 (Fall 1987): 1-24.
- , "Merely Combating the Phrases of This World: Recent Democratic Theory," pp. 112-139 in *Political Theory* 26 (1) (Feb. 1998),
- Dijkstra, Steven, Karin Geuijen and Arie De Ruijter. "Multiculturalism and Social Integration in Europe." *International Political Science Review* 22, 1 (2001): 55-84.
- Drury, Shadia. *Alexandre Kojève: The Roots of Postmodern Politics*. New York: St. Martin's Press, 1994.
- Duby, Georges. *The Chivalrous Society*. Trans. C. Postan. London: Edward Arnold, 1977.
- Dulphy, Anne. "La politique de la France à l'égard de l'Espagne Franquiste, 1945-1949." *Revue d'Histoire Moderne et Contemporaine* 35 (Jan.-Mar. 1988): 123-140.
- Dyzenhaus, David. "Liberalism after the Fall: Schmitt, Rawls and the Problem of Justification." *Philosophy and Social Criticism* 22, 3 (1996): 9-37.
- Eder, Klaus and Bernhard Giesen. "Introduction: European citizenship: An Avenue for the Social Integration of Europe." In Eder and Giesen, eds. *European Citizenship between National Legacies and Postnational Projects*. Oxford and New York: Oxford University Press, 2001. 1-17.
- European Commission, Competition Bureau. "Antitrust cases and published notices – 2000." <http://europa.eu.int/comm/competition/antitrust/cases/2000/>.
- , "European Merger Control - Council Regulation 4064/89 – Statistics." <http://europa.eu.int/comm/competition/mergers/cases/stats.html>.
- European Commission. *Le plan Mansholt, le rapport Vedel*. Paris: Société d'Édition des Cooperatives La Fayette, 1969.

- . *Report to the European Parliament on European Community Activities in the WTO*. N.p.: 1999.
- . "Commission notice pursuant to Article 88(2) of the EC Treaty, addressed to the other Member States and interested parties, concerning aid C 79/1999 – Rover Longbridge, UK." *Official Journal of the European Communities* C19/2 (20.1.2001): 1-2.
- . Press release IP/01/419.
- European Communities. *The Community Budget: The Facts in Figures*. Luxembourg: Office for Official Publications of the European Communities, 2000.
- European Regional Development Fund and Cohesion Fund. "2000-2006: Indicative allocation per Member State." http://www.inforegio.cec.eu.int/wbpro/prord/guide/gui34_en.htm
- European Union. "Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol)." *Official Journal* C 316, 27/11/1995: 2-32.
- . "Declarations on Article 35 (ex Article K.7) of the Treaty on European Union as amended by the Treaty of Amsterdam." <http://europa.eu.int/eur-lex/en/treaties/livre556.html>.
- . *Special Report No. 6/98 concerning the Court's assessment of the system of resources based on VAT and GNP together with the Commission's replies* (Official Journal 31/07/1998). 58-80.
- . "Activities of the European Union." <http://europa.eu.int/pol/index-en.htm>.
- "Face value: the bruiser from Brussels." *Economist* 355 (Issue 8167) (April 22, 2000): 64.
- Faist, Thomas. "Social citizenship in the European Union: Nested membership." *Journal of Common Market Studies* 39, 1 (March, 2001): 37-58.
- Falk, Richard. "The making of global citizenship." In Jeremy Brecher, John Brown Childs and Jill Cutler, eds. *Global Visions: Beyond the New World Order*. Montreal and New York: Black Rose Books, 1993. 39-50.
- Ferguson, Kennan. "Nationalism, Sovereignty, and Pluralism: The Case of William James." In Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship*. Lanham, MD: Lexington Books, 2001. 115-129.
- Ferguson, Yale and Richard Mansbach, *Politics: Authority, Identities, and Change*. Columbia: University of South Carolina Press, 1996.
- Ferrari, Vincenzo. "Citizenship: Problems, Concepts and Policies." In Massimo La Torre, ed. *Citizenship: An Institutional Challenge*. The Hague: Kluwer Law International, 1998. 51-64.
- Fetscher, Iring. "Alexandre Kojève - Stalins Hegel?" In Piet Tommissen, ed. *Schmittiana*. Vol. VI. Berlin: Duncker & Humblot, 1998: 33-45.
- "Fischer cool on Schroder federal Europe plan." *The Guardian*, May 18, 2001, p. 1.13.
- Fischer, Joschka. "From Confederacy to Federation: Thoughts on the Finality of European Integration." In Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*. Badia Fiesolana, Italy: European University Institute, 2000. 19 – 30.

- Fischer, Markus. "Feudal Europe, 800-1300: Communal Discourse and Conflictual Practices," *International Organization* 46, 2 (Spring 1992): 427-466.
- Føllesdal, Andreas. "The Future Soul of Europe: Nationalism or Just Patriotism? A Critique of David Miller's Defence of Nationality." *Journal of Peace Research* 37, 4 (2000): 503-518.
- . "Union Citizenship: Unpacking the Beast of Burden." *Law and Philosophy* 20 (2001): 313-343.
- Foreign and Commonwealth Office of the United Kingdom. "Joint declaration issued at the British-French Summit." <http://www.fco.gov.uk/news/newstext.asp?1795>.
- Franke, Mark. "Immanuel Kant and the (Im)Possibility of International Relations Theory." *Alternatives* 20 (1995): 279-322.
- Freeman, Michael. "Nation-State and Cosmopolis: A Response to David Miller." *Journal of Applied Philosophy* 11, 1 (1994): 79-87.
- Frei, Christoph. *Hans J. Morgenthau: Eine intellektuelle Biographie*, 2nd ed. Bern, Stuttgart and Vienna: Verlag Paul Haupt, 1994.
- Frost, Mervyn. "Ethics in IR at the millennium." *Review of International Studies* 24 (Special Issue: The Eighty Years Crisis 1919-1999) (December 1998): 119-132.
- Fukuyama, Francis. *The End of History and the Last Man*. New York: Avon Books, 1992.
- Gellner, Ernst. *Nations and Nationalism*. Oxford: Blackwell, 1983.
- "Germany's politics of asparagus picking EU ministers on Monday debated demands to limit labor migration from new members." *Christian Science Monitor*, May 17, 2001, p. 7.
- Gewirth, Alan. "The epistemology of human rights." *Social Philosophy and Policy* 1, 2 (Spring 1984): 1-24.
- Gianni, Matteo. "Taking multiculturalism seriously: Political claims for a differentiated citizenship." In Karen Slawner and Mark E. Denham, eds. *Citizenship after Liberalism*. New York: Peter Lang, 1998. 33-56.
- Giddens, Anthony. *Profiles and Critiques in Social Theory*. London: Macmillan, 1982. 171-173
- Giesen, Bernhard. "National Identity and Citizenship: The cases of Germany and France." In Klaus Eder and Giesen, eds. *European citizenship between National Legacies and Postnational Projects*. Oxford: Oxford University Press, 2001. 36-58.
- Gillingham, John. *Coal, Steel and the Rebirth of Europe, 1945-1955*. Cambridge: Cambridge University Press, 1991.
- Goldford, Dennis. "Kojève's Reading of Hegel." *International Philosophical Quarterly* 22 (1982): 275-294.
- Goodin, Robert and Philip Pettit. *A Companion to Contemporary Political Philosophy*. Oxford: Blackwell, 1993.
- Gray, John. "Where Pluralists and Liberals Part Company." In Maria Baghramian and Attracta Ingram, eds. *Pluralism: The Philosophy and Politics of Diversity*. London and New York: Routledge, 2000. 85-102.
- "Greece blocks EU Aid." *Middle East International*, May 8, 1998, p. 11.

- Greve, Bent. "Indications of social policy convergence in Europe." *Social Policy and Administration* 30, 4 (Dec. 1996): 348-367.
- Habermas, Jürgen. *The Theory of Communicative Action vol. 1: Reason and the Rationalization of Society*, Trans. Thomas McCarthy. Boston: Beacon Press, 1981.
- *The Theory of Communicative Action v. 2: Lifeworld and System: A Critique of Functionalist Reason*. Trans. Thomas McCarthy. Boston: Beacon Press, 1987.
- *Moral Consciousness and Communicative Action*. Cambridge: Polity, 1990.
- "Citizenship and National Identity: Some Reflections on the Future of Europe." *Praxis International* 12, 1 (April 1992): 1-19.
- *The Past as Future*. Trans. Max Pensky. Lincoln and London: University of Nebraska Press, 1994.
- *The Inclusion of the Other*. Ciaran Cronin and Pablo De Greiff, eds. Cambridge, MA: MIT Press, 1998.
- Hammel-Kiesow, Rolf. *Die Hanse*. Munich: Beck, 2000.
- Heater, Derek. *Citizenship: The Civic Ideal in World History, Politics and Education*. London and New York: Longman, 1990.
- Hegel, G.W.F. *Philosophy of Right*. Trans. T.M. Knox. Oxford: Oxford University Press, 1967.
- *Phenomenology of Spirit*. Trans. A.V. Miller. Oxford: Oxford University Press, 1977.
- Heidegger, Martin. *An Introduction to Metaphysics*. Trans. Ralph Manheim. New Haven and London: Yale University Press, 1959.
- "The Age of the World Picture." In *The Question Concerning Technology and other Essays*. New York: Garland, 1977. 115-154.
- Held, David. "Cosmopolitan Democracy and the Global Order." In James Bohman and Matthias Lutz-Bachmann, eds. *Perpetual Peace: Essay's on Kant's Cosmopolitan Ideal*. Cambridge, MA: MIT Press, 1997. 235-251.
- Hell, Judit and Ferenc L. Lendvai. "Multiculturalism and Constitutional Patriotism in Eastern Europe." In Fred Dallmayr and José Rosales, eds. *Beyond Nationalism? Sovereignty and Citizenship*. Lanham, MD: Lexington Books, 2001. 241-252.
- Hill, Greg. "Citizenship and Ontology in the Liberal State." *Review of Politics* 55 (1993): 67-84.
- Hinsch, Wilfried. "Global distributive justice." *Metaphysics* 32, 1/2 (January 2001): 58-78.
- Hobbes, Thomas. *Leviathan*. C.B. Macpherson, ed. London: Penguin Books, 1985 [1651].
- *De Cive*. Trans. and ed. Richard Tuck and Michael Silverthorne. Cambridge: Cambridge University Press, 1998.
- Hobsbawm, Eric. *Nations and Nationalism since 1780*, 2nd ed. Cambridge: Cambridge University Press, 1992.
- Hoffman, Stanley. "Towards a Common European Foreign and Security Policy?" *Journal of Common Market Studies* 38, 2 (June 2000): 189-198.
- Hollinger, David. *Postethnic America: Beyond Multiculturalism*. New York: Basic Books, 1995.

- Howorth, Jolyon. "European Defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately?" *Journal of Common Market Studies* 39, 4 (November 2001): 765-789.
- Howse, Robert and Bryan-Paul Frost. "Introductory Essay: The Plausibility of the Universal and Homogenous State." In Alexandre Kojève, *Outline of a Phenomenology of Right*. Trans. Bryan-Paul Frost and Robert Howse. Lanham, MD: Rowan & Littlefield, 2000. 1-27.
- Hutchings, Kimberly. "Political theory and cosmopolitan citizenship." In Hutchings and Roland Dannreuther, eds. *Cosmopolitan Citizenship*. New York: St. Martin's Press, 1999. 1-32.
- Hyde-Price, Adrian and Charlie Jeffery. "Germany in the European Union: Constructing Normality." *Journal of Common Market Studies* 39, 4 (November 2001): 689-717.
- Hyman, Richard. "European integration and industrial relations: A case of variable geometry?" in *Antipode* 33, 3 (July 2001): 468-483
- Ignatieff, Michael. *Blood and Belonging: Journeys into the New Nationalism*. Toronto: Viking, 1993.
- Ingram, Attracta. "Constitutional Patriotism." *Philosophy and Social Criticism* 22, 6 (Nov. 1996): 1-18.
- Jacobson, David. *Rights across Borders: Immigration and the Decline of Citizenship*. Baltimore and London: Johns Hopkins University Press, 1997.
- Jarczyk, Gwendoline and Pierre-Jean Labarrière. *De Kojève à Hegel: 150 ans de pensée hégélienne en France*. Paris: Editions Albin Michel, 1996.
- Jones, Charles. "Revenge of the Philosophical Mole: Another Response to David Miller on Nationality." *Journal of Applied Philosophy* 13, 1 (1996): 73-86.
- Jurgens, Erik. *Execution of Judgements of the European Court of Human Rights*. Council of Europe Doc. # 8088, 2000.
- Kant, Immanuel. "Idea for a Universal History with a Cosmopolitan Intent." In Hans Reiss, ed., H.B. Nisbet, trans. *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. 41-53
- , "An Answer to the Question: What is Enlightenment?" In Hans Reiss, ed., H.B. Nisbet, trans. *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. 54-60.
- , "To Perpetual Peace: A Philosophical Sketch." In Hans Reiss, ed., H.B. Nisbet, trans. *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. 93-130.
- Kaplan, Gisela. "Pluralism and Citizenship: The Case of Gender in European Politics." In Leslie Holmes and Philomena Murray, eds. *Citizenship and Identity in Europe*. Aldershot, UK: Ashgate, 1999. 73-95.
- Kelly, George Armstrong. "Who needs a theory of citizenship?" *Daedalus* 108, 4 (Fall 1979): 21-36.
- Kennedy, Ellen. "Schmitt and the Frankfurt School." *Telos* 71 (Spring 1987): 37-66.
- Keyserlingk, Robert H. "Agents within the gates: The search for Nazi subversives in Canada during World War II." *Canadian Historical Review* 66, 2 (1985): 211-239.

- King, D. S. and Jeremy Waldron. "Citizenship, Social Citizenship and the defence of welfare provision" *British Journal of Political Science* 18 (October 1988): 415-443.
- Kojève, Alexandre and Carl Schmitt. "Correspondence." Trans. and ed. Erik de Vries. *Interpretation* 29, 1 (Fall 2001): 94-115.
- Kojève, Alexandre. "Esquisse d'une doctrine de la politique française." Unpublished manuscript. 1945.
- . "The Emperor Julian and His Art of Writing." Trans. James H. Nichols, Jr. In Joseph Cropsey, Jr., ed. *Ancients and Moderns: Essays in the Tradition of Political Philosophy in Honor of Leo Strauss*. New York: Basic Books, 1964. 95-113.
- . *Introduction à la lecture de Hegel*, 2nd ed. Paris: Gallimard, 1968.
- . "Kojève : les philosophes ne m'intéressent pas, je cherche des sages," (Interview with Gilles Lapouge). *La Quinzaine Littéraire* 53 (July 1, 1968).
- . "Hegel, Marx and Christianity." Trans. Hilail Gildin. *Interpretation* 1 (1970): 21-42.
- . *Introduction to the Reading of Hegel*. Trans. James H. Nicols, Jr., trans. Ithaca and London: Cornell University Press, 1980.
- . *Esquisse d'une Phénoménologie du Droit*. Paris: Gallimard, 1981.
- . "Tyranny and Wisdom." In Leo Strauss, *On Tyranny*, Victor Gourevitch and Michael Roth, eds. New York: The Free Press, 1991.
- . "Christianity and Communism." Trans. Hugh Gillis. In "Kojève-Fessard Documents." *Interpretation* 19, 2 (Winter 1991-92): 185-200.
- . "Kolonialismus in europäischer Sicht." In Piet Tommissen, *Schmittiana: Beiträge zu Leben und Werk Carl Schmitts*, vol. VI. Berlin: Duncker & Humblot, 1998. 126-140.
- Kostakopoulou, Theodora. "European Union citizenship as a model of citizenship beyond the nation state: Possibility and limits." In Albert Weale and Michael Nentwich, eds. *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship*. London and New York: Routledge, 1998. 158-171.
- Krasner, Stephen D. "Westphalia and all that." In Judith Goldstein and Robert O. Keohane, eds. *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Cornell and London: Cornell University Press, 1993. 235-264.
- Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, 1995.
- . "The Good, the Bad, and the Intolerable." *Dissent* 43, 3 (Summer 1996): 22-30.
- Lacan, Jacques. "Le Séminaire." In *Encore XX*, 1972-73. Paris: Seuil, 1975.
- Laclau, Ernesto. "Universalism, Particularism and the Question of Identity." In John Rajchman, ed. *The Identity in Question*. New York: Routledge, 1995. 93-108.
- "La DST avait identifié plusieurs agents du KGB parmi lesquels le philosophe Alexandre Kojève." *Le Monde*, Sept. 16, 1999, p. 14.
- Laursen, Finn. "Civil society and European integration." *Annals of the American Academy of Political and Social Science* 565 (Sept. 1999): 66-78.

- Leben, Charles. "A Federation of Nation States or a Federal State?" in Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*. Badia Fiesolana, Italy: European University Institute, 2000. 99-111.
- Lehning, Percy. "Pluralism, contractarianism and European Union." In Percy Lehning and Albert Weale, eds. *Citizenship, Democracy and Justice in the New Europe*. London and New York: Routledge, 1997. 107-124.
- , "European Citizenship: Towards a European Identity?" *Law and Philosophy* 20 (2001): 239-282.
- Lehning, Percy and Albert Weale, "Citizenship, democracy and justice in the new Europe." In Lehning and Weale, eds. *Citizenship, Democracy and Justice in the New Europe*. London and New York: Routledge, 1997. 1-14.
- Lindsay, Thomas K. "Aristotle's Defense of Spiritedness" *American Journal of Political Science* 44, 3 (July 2000): 433-448.
- Linklater, Andrew. *The Transformation of Political Community*. Cambridge, UK: Polity Press, 1998.
- Soysal, Yasemin. "Changing Boundaries of Participation in European Public Spheres." In Klaus Eder and Bernhard Giesen, *European Citizenship between National Legacies and Postnational Projects*. Oxford: Oxford University Press, 2001. 159-179.
- Locke, John. *Second Treatise on Government*. In David Wootton, ed. *Political Writings*. London: Penguin Books, 1993. 261-387.
- "Loi du 27 janvier 1999 modifiant la loi du 19 octobre 1921 organique des élections provinciales, la nouvelle loi communale et la loi électorale communale, et portant exécution de la directive du Conseil de l'Union européenne n° 94/80/CE du 19 décembre 1994." *Moniteur Belge*, Jan. 30, 1999, p. 2786.
- Lucas, P. "After citizenship, multi-citizenships." *Cahiers internationaux de Sociologie* 79 (July, 1985): 239-252.
- Lynch, Richard A. "Mutual Recognition and the Dialectic of Master and Slave: Reading Hegel Against Kojève." *International Philosophical Quarterly* XLI, 1 (March 2001): 33-48.
- MacCormick, Neil. *Legal Right and Social Democracy: Essays in Legal and Political Philosophy*. Oxford: Clarendon Press, 1982.
- Macedo, Stephen. "Capitalism, Citizenship and Community." *Social Philosophy & Policy* 6, 1 (Autumn 1988): 113-139.
- MacIntyre, Alasdair. *After Virtue*. Notre Dame, Indiana: University of Notre Dame Press, 1981.
- Mann, Michael. *The Sources of Social Power*, vol. 1: *A history of power from the beginning to A.D. 1760*. Cambridge: Cambridge University Press, 1986.
- "Ruling Class Strategies and Citizenship," *Sociology* 21, 3 (August, 1987): 339-354.
- Marcuse, Herbert. "The struggle against liberalism in the totalitarian view of the state." In Jeremy J. Shapiro, trans. *Negations: Essays in Critical Theory*. Boston: Beacon Press, 1968. 3-42.
- Markell, Patchen. "Making Affect Safe for Democracy? On 'Constitutional Patriotism'." *Political Theory* 28, 1 (Feb. 2000): 38-63.

- Marshall, T. H. "Citizenship and Social Class." *Citizenship and Social Class and other essays*. Cambridge: Cambridge University Press, 1950. 71-134.
- McGowan, Lee and Michelle Cini. "Discretion and Politicization in EU Competition Policy: The Case of Merger Control." *Governance* 12, 2 (April 1999): 175-200.
- Meehan, Elizabeth. *Citizenship and the European Community*. London: Sage, 1993.
- "European integration and citizens' rights: A comparative perspective." *Publius* 26, 4 (Fall, 1996): 99-121.
- Meier, Heinrich. *The Lesson of Carl Schmitt*. Trans. Marcus Brainard. Chicago and London: University of Chicago Press, 1998.
- Meyer, Georg. *Lehrbuch des Deutschen Staatsrechts*, 7th ed., vol. 3. Munich and Leipzig: Duncker & Humblot, 1919.
- Mill, John Stewart. "Representative Government." In *Utilitarianism, Liberty and Representative Government*. London: J.M. Dent, 1914. 175-393.
- Miller, David. "The Ethical Significance of Nationality." *Ethics* 98 (July 1988): 647-662.
- "In Defence of Nationality." *Journal of Applied Philosophy* 10,1 (1993): 3-16.
- "The Left, the Nation-State, and European Citizenship," *Dissent* 45 (Summer 1998): 47-51.
- Monnet, Jean. *Memoirs*. London: Collins, 1978.
- "More EC Observers Heading to Hotspots in Yugoslavia." *Wall Street Journal Europe*, Oct. 1, 1991, p. 2.
- Morgenthau, Hans. *Scientific Man vs. Power Politics*. Chicago: University of Chicago Press, 1946.
- "Fragment of an intellectual autobiography: 1904-1932." In Kenneth Thompson and Robert J. Myers, eds. *Truth and Tragedy: A Tribute to Hans J. Morgenthau*. Washington, D.C.: New Republic Book Co., 1984. 1-17.
- *Politics Among Nations*. New York: Alfred A. Knopf, 1986.
- Niebuhr, Reinhold. *Moral Man and Immoral Society: A Study in Ethics and Politics*. New York: Scribner, 1960.
- "Man's Nature and his Communities." In *Man's Nature and His Communities: Essays on the Dynamics and Enigmas of Man's Personal and Social Existence*. New York: Scribner, 1965. 30-83.
- "Mystery and Meaning." In Robert McAfee Brown, ed. *The Essential Reinhold Niebuhr: Selected Essays and Addresses*. New Haven: Yale University Press, 1986. 237-249.
- Nietzsche, Friedrich. *Thus Spoke Zarathustra*. In Walter Kaufmann, trans. and ed. *The Portable Nietzsche*. New York: Viking Penguin, 1982. 115-439.
- Noack, Paul. *Carl Schmitt: Eine Biographie*. Berlin, Frankfurt am Main: Verlag Ullstein/Propyläen Verlag, 1993.
- Nussbaum, Martha. "Kant and Stoic Cosmopolitanism." *Journal of Political Philosophy* 5, 1 (1997): 1-25.
- Oldfield, Adrian. "Citizenship: An Unnatural Practice?" *The Political Quarterly* 61, 2 (April-June 1990): 177-187.
- Oliver, Peter. *Free Movement of Goods in the European Community*. London: Sweet & Maxwell, 1996.

- "On Both War and Peace, The EU Stands Divided The Problem: Getting 15 to Speak as One." *International Herald Tribune*, Dec. 17, 2001, p. 1.
- Osiander, Andreas. "Sovereignty, International Relations, and the Westphalian Myth." *International Organization* 55, 2 (Spring 2001): 251-287.
- Paul, Darel E. "Sovereignty, Survival and the Westphalian Blind Alley." *Review of International Studies* 25, 2 (April 1999): 217-231.
- Pilcher, Hans-Karl. "The godfathers of 'truth': Max Weber and Carl Schmitt in Morgenthau's theory of power politics." *Review of International Studies* 24 (1998): 185-200.
- Pippin, Robert B. "Being, Time and Politics: The Strauss-Kojève Debate." *History and Theory: Studies in the Philosophy of History* 32, 2 (1993): 138-161.
- Plato. *Apology*. In Thomas G. West and Grace Starry West, trans. *Four Texts on Socrates*. Ithaca, NY: Cornell University Press, 1984. 63-97.
- , *The Republic of Plato*, 2nd ed. Trans. Allan Bloom. Chicago: Basic Books, 1991.
- Pogge, Thomas. "Cosmopolitanism and sovereignty." *Ethics* 103 (1992): 48-75.
- Poole, Ross. *Nation and Identity*. London and New York: Routledge, 1999.
- Portis, Edward B. "Citizenship and Personal Identity." *Polity* 18, 3 (Spring 1986): 457-472.
- Posen, Barry R. "The War for Kosovo: Serbia's Political-Military Strategy." *International Security* 24, 4 (Spring 2000): 39-84.
- Preuss, Ulrich K. "The Relevance of the Concept of Citizenship for the Political and Constitutional Development of the EU." In Ulrich Preuss and Ferran Requejo, eds. *European Citizenship, Multiculturalism, and the State*. Baden-Baden: Nomos Verlagsgesellschaft, 1998. 11-27.
- Pulkkinen, Tuija. "Nations within Nations – Nationalism and Identity Politics." In Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship*. Lanham, MD: Lexington Books, 2001. 43-56.
- Rawls, John. "Justice as Fairness: Political not Metaphysical." *Philosophy and Public Affairs* 14, 3 (Summer 1985): 223-251.
- , "Kantian Constructivism in Moral Theory." *Journal of Philosophy* 77, 9 (Sept. 1980): 515-572.
- , *A Theory of Justice*. Oxford: Oxford University Press, 1972.
- , *Political Liberalism*. New York: Columbia University Press, 1993.
- Raz, Joseph. "Multiculturalism: A Liberal Perspective." In Raz, *Ethics in the Public Domain*. Oxford: Oxford University Press, 1994. 155-176.
- Rees, A. M. "The Other T.H. Marshall." *Journal of Social Policy* 24, 3 (1995): 341-362.
- Reich, Norbert. "A European constitution for citizens: Reflections on the rethinking of Union and Community law." *European Law Journal* 3, 2 (June 1997): 131-164.
- Reisman, Michael. "Private Armies in a Global War System." In John Norton Moore, ed. *Law and Civil War in the Modern World*. Baltimore: Johns Hopkins University Press, 1974. 252-303.
- "Republic of Cyprus: Papandreou: Cyprus' EU accession course appears optimistic." *M2 Presswire*, March 13, 2001.

- Riley, Patrick. "Introduction to the reading of Alexandre Kojève." *Political Theory* 9, 1 (Feb. 1981): 5-48.
- Roche, Maurice. "Citizenship, social theory and social change." *Theory and Society* 16, 3 (May, 1987): 363-399.
- Rosaldo, Renato. "Social justice and the crisis of national communities." In Francis Barker, Peter Hulme and Margaret Iversen, *Colonial Discourse/Postcolonial Theory*. Manchester and New York: Manchester University Press, 1994. 239-252.
- Rosen, Stanley. *Hermeneutics as Politics*. New York and Oxford: Oxford University Press, 1987.
- Roth, Michael S. *Knowing and History: Appropriations of Hegel in Twentieth-Century France*. Ithaca and London: Cornell University Press, 1988.
- Roy, Patricia et al. *Mutual Hostages: Canadians and Japanese during the Second World War*. Toronto: University of Toronto Press, 1990.
- Ruggie, John Gerard. "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis." *World Politics* 35 (Jan. 1983): 261-285.
- "Territoriality and Beyond: Problematizing Modernity in International Relations." *International Organization* 47, 1 (Winter 1993): 139-174.
- Sandel, Michael. *Democracy's Discontent: America in Search of a Public Philosophy*. Cambridge, MA: Belknap Press of Harvard University Press, 1996.
- *Liberalism and the Limits of Justice*, 2nd ed. Cambridge: Cambridge University Press, 1998.
- Schafer, Werner. "The German Question Resolved: Making Sense of Schröder's Foreign Policy." *Harvard International Review* 23, 2 (Summer 2001): 38-41
- Schmitt, Carl. *Ex captivitate salus: Erfahrungen der Zeit 1945/47*. Cologne: Greven Verlag, 1950.
- "Die Geschichtliche Struktur des Heutigen Welt-Gegensatzes von Ost und West: Bemerkungen zu Ernst Jüngers Schrift: 'Der Gordische Knoten'." In Armin Mohler, ed. *Freundschaftliche Begegnungen: Festschrift für Ernst Jünger zum 60. Geburtstag*. Frankfurt am Main: Vittorio Klostermann, 1955. 135-167.
- *Der Nomos der Erde im Völkerrecht des Jus Publicum Europeum*, 2nd ed. Berlin: Duncker & Humblot, 1974.
- *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*, 4th ed. Berlin: n.p., 1978.
- *Legalität und Legitimität*. Berlin: Duncker & Humblot, 1980. .
- *Political Theology: Four Chapters on the Concept of Sovereignty*. Trans. George Schwab. In Thomas McCarthy, ed. *Studies in Contemporary German Social Thought*. Cambridge, MA: MIT Press, 1985.
- *The Concept of the Political*. Trans. George Schwab. Chicago and London: Methuen, 1996.
- *Land and Sea*. Trans. Simona Draghici. Washington, D.C.: Plutarch Press, 1997.
- Schmitter, Philippe. "The Scope of Citizenship in a Democratized European Union." In Eder, Klaus and Bernhard Giesen, eds. *European Citizenship between National Legacies and Postnational Projects*. Oxford and New York: Oxford University Press, 2001. 86-121.

- "Schroeder, Sensing Opportunity, Initiates EU Debate – France and Britain Fear Proposals by Germany May Curb Sovereignty." *Wall Street Journal*, May 15, 2001, p. A23.
- Shue, Henry. "Mediating Duties." *Ethics* 98 (July, 1988): 687-704.
- . *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. Princeton, NJ: Princeton University Press, 1996.
- Söllner, Alfons. "German Conservatism in America: Morgenthau's Political Realism." *Telos* 72 (Summer 1987): 161-172.
- Solomos, John. "Race, Multi-Culturalism and Difference." In Nick Stevenson, ed. *Culture & Citizenship*. London: SAGE, 2001. 198-211.
- Soysal, Yasemin. "Changing Citizenship in Europe: Remarks on postnational membership and the national state." In David Cesarini and Mary Fulbrook, eds. *Citizenship, Nationality and Migration in Europe*. New York: Routledge, 1996.
- . "Changing Boundaries of Participation in European Public Spheres." In Klaus Eder and Bernhard Giesen, eds. *European Citizenship between National Legacies and Postnational Projects*. Oxford: Oxford University Press, 2001. 159-179.
- Stoelting, David. "The jurisdictional framework of the European Court of Justice." *Columbia Journal of Transnational Law* 29, 1 (1991): 193-214.
- Strauss, Leo. *What is Political Philosophy? and Other Studies*. Glencoe, Ill.: Free Press, 1959..
- . *On Tyranny*. Victor Gourevitch and Michael Roth, eds. and trans. New York: The Free Press, 1991.
- Strayer, Joseph R. and Dana C. Munro. *The Middle Ages: 395-1500*, 4th ed. New York: Appleton-Century-Crofts, 1959.
- Strong, Tracy. "Forward." In Carl Schmitt. *The Concept of the Political*. Translated by George Schwab. Chicago and London: Methuen, 1996. ix-xxvii.
- "Survey: End-game." *Economist*, May 19, 2001, p. 12.
- "Survey: Reasons of State." *Economist*, May 19, 2001, p. 5.
- Tamir, Yael. *Liberal Nationalism*. New Jersey: Princeton University Press, 1993.
- Taubes, Jacob. *Ad Carl Schmitt: Gegenstrebige Fügung*. Berlin: Merve Verlag, 1987.
- Taylor, Charles. "The politics of recognition." In Amy Gutmann, ed. *Multiculturalism and 'The Politics of Recognition'*. Princeton, NJ: Princeton University Press, 1992. 25-73.
- Thaa, Winfried. "'Lean citizenship': The fading away of the political in transnational democracy." *European Journal of International Relations* 7, 4 (Dec. 2001): 503-523.
- Thomas, Paul. "Modalities of Consent, Compliance, and Non-Compliance: *Exit, Voice, and Loyalty* Reconsidered." In Fred Dallmayr and José Rosales, *Beyond Nationalism? Sovereignty and Citizenship*. Lanham, MD: Lexington Books, 2001. 3-18.
- Tilly, Charles. *Coercion, Capital and European States, AD 990-1992*. Oxford: Blackwell, 1992.
- Tint, Herbert. *French Foreign Policy since the Second World War*. London: Weidenfeld and Nicolson Ltd., 1972.

- Tommissen, Piet. *Schmittiana: Beiträge zu Leben und Werk Carl Schmitts*, vol. VI. Berlin: Duncker & Humblot, 1998.
- Turner, Bryan S. *Status*. Minneapolis: University of Minnesota Press, 1988.
- "Outline of a theory of citizenship." *Sociology* 24, 2 (May, 1990): 189-217.
- Ullmann, Walter. *Principles of Government and Politics in the Middle Ages*, 4th ed. London: Methuen & Co., 1978.
- "U.S. imposes duties on fine European foods", CNN, July 29, 1999.
<http://www.cnn.com/WORLD/europe/9907/29/eu.food>.
- van Gunsteren, Herman. *A Theory of Citizenship: Organizing Plurality in Contemporary Democracies*. Boulder, CO: Westview Press, 1998.
- Vincent, Andrew "Liberal Nationalism: an Irresponsible Compound?" *Political Studies* 45 (1997): 275-295.
- Virgil, *The Aeneid*. Trans. W.F. Jackson Knight. Baltimore, MD: Penguin, 1958.
- von Beyme, Klaus. "Fischer's Move Towards a European Constitution." In Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*. Badia Fiesolana, Italy: European University Institute, 2000. 73-84.
- von Cramon-Taubadel, Stephan, et al. *Assessing Coherence between the Common Agricultural Policy and the EU's development Policy: The Case of Cereals in African ACP Countries*, Forum, vol. 23. Kiel: Wissenschaftsverlag Vauk Kiel KG, 1996.
- Wahl, Jean. *Tableau de la philosophie française*. Paris: Gallimard, 1962.
- Walzer, Michael. "The Problem of Citizenship." In Walzer. *Obligations: Essays on Disobedience, War, and Citizenship*. Cambridge, MA: Harvard University Press, 1970. 203-228.
- Warleigh, Alex. "Europeanizing civil society: NGOs as agents of political socialization." *Journal of Common Market Studies* 39, 4 (Nov. 2001): 619-639.
- Weber, Max. "The Meaning of Discipline." In H.H. Gerth and C. Wright Mills . eds. *From Max Weber: Essays in Sociology*. New York: Oxford University Press, 1946. 253-264.
- Weigle, Marcia A. *Russia's Liberal Project*. University Park, PA: Pennsylvania State University Press, 2000.
- Weiler, Joseph. "Introduction: European Citizenship – Identity and Differentity." In Massimo La Torre, ed. *European Citizenship: An Institutional Challenge*. The Hague: Kluwer Law International, 1998. 1-24.
- Wood, Ellen M. "The uses and abuses of 'civil society'." *Socialist Register* (1990): 60-84.
- Xenophon. *Memorabilia*. Trans. E.C. Marchant. Cambridge, MA: Harvard University Press, 1923.
- , *Hellenica*. Trans. Carleton J. Brownson. Cambridge, MA: Harvard University Press, 1985.
- Young, Iris Marion. "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship." *Ethics* 99, 2 (1989): 250-274.
- Young, John W. *France, the Cold War and the Western Alliance, 1944-49: French foreign policy and post-war Europe*. Leicester: Leicester University Press, 1990.

- Zacher, Mark. "The Territorial Integrity Norm: International Boundaries and the Use of Force." *International Organization* 55, 2 (Spring, 2001): 215-250.
- Zielonka, Jan. "Enlargement and the Finality of European Integration." In Christian Joerges, Yves Mény and J.H.H. Weiler, eds. *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*. Badia Fiesolana, Italy: European University Institute, 2000. 151-162.
- , "How New Enlarged Borders Will Reshape the European Union." *Journal of Common Market Studies* 39, 3 (Sept. 2001): 507-536.

Legislation cited

European Commission proposals

- COM (1999) 539 (*Towards a new framework for Electronic Communications infrastructure and associated services - The 1999 Communications Review*)
- COM (2000) 676 (Proposal for a Council Regulation amending for the second time Council Regulation (EC) No 1294/1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia)
- COM (2001) 125 (*Energy: completing the internal market in electricity, cross-border exchanges, access to network*)

Council Regulations

- 17/62 (implementing Articles 85 and 86 of the Treaty)
- 1612/68 (on freedom of movement for workers within the Community)
- 1251/70 (on the right of workers to remain in the territory of a Member State after having been employed in that State)
- 4064/89 (on the control of concentrations between undertakings)
- 1683/95 (laying down a uniform format for visas)
- 770/90/Euratom (laying down maximum permitted levels of radioactive contamination of feedingstuffs following a nuclear accident or any other case of radiological emergency)
- 3677/90 (laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances)
- 1259/96 (amending Regulation (EEC) No 1883/78 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section)
- 1295/98 (concerning the reduction of certain economic relations with the Federal Republic of Yugoslavia)
- 1607/98 (concerning the reduction of certain economic relations with the Federal Republic of Yugoslavia)
- 926/98 (concerning the reduction of certain economic relations with the Federal Republic of Yugoslavia)
- 1294/99 (concerning the reduction of certain economic relations with the Federal Republic of Yugoslavia)

- 659/1999 (laying down detailed rules for the application of Article 93 of the EC Treaty)
- 1150/2000 (implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources)
- 1346/2000 (on insolvency proceedings)
- 1348/2000 (on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters)
- 2725/2000 (concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention)
- 44/2001 (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters)
- 539/2001 (listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement)
- 789/2001 (reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications)
- 790/2001 (reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance)
- 381/2001 (amending Regulation (EEC) No 1883/78 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section)

Council Directives

- 68/360/EEC (on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families)
- 73/148/EEC (on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services)
- 73/23/EEC (on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits)
- 77/312/EEC (on biological screening of the population for lead)
- 77/388/EEC (on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment)
- 80/987/EEC (on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer)
- 86/378/EEC (on the implementation of the principle of equal treatment for men and women in occupational social security schemes)
- 89/654/EEC (concerning the minimum safety and health requirements for the workplace)
- 89/655/EEC (concerning the minimum safety and health requirements for the workplace)
- 90/269/EEC (on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers)

- 90/270/EEC (on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers)
- 90/364/EEC (on the right of residence)
- 90/394/EEC (on the protection of workers from the risks related to exposure to carcinogens at work)
- 91/308/EEC (on prevention of the use of the financial system for the purpose of money laundering)
- 92/51/EEC (on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC)
- 93/104/EC (concerning certain aspects of the organization of working time)
- 93/42/EEC (concerning medical devices)
- 93/96/EEC (on the right of residence for students)
- 94/33/EEC (on the protection of young people at work)
- 94/80/EC (laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals)
- 96/82/EC (on the control of major-accident hazards involving dangerous substances)
- 97/80/EC (on the burden of proof in cases of discrimination based on sex)
- 98/59/EC (on the approximation of the laws of the Member States relating to collective redundancies)
- 98/79/EC (on in vitro diagnostic medical devices)
- 2001/23/EC (on the limitation of emissions of certain pollutants into the air from large combustion plants)

Council Decisions

- 77/388/EEC (on the harmonization of the laws of the Member States relating to turnover taxes)
- 88/376/EEC (on the system of the Communities' own resources)
- 94/728/EC (on the system of the Communities' own resources)
- 97/340/JHA (on the exchange of information concerning assistance for the voluntary repatriation of third-country nationals)
- 2000/597/EC (on the system of the European Communities' own resources)

Council Framework Decisions

- 2000/383/JHA (on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro)
- 2001/220/JHA (on the standing of victims in criminal proceedings)

Joint Actions

- 98/699/JHA (on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime)

98/733/JHA (on making it a criminal offence to participate in a criminal organisation)

European Court of Justice cases cited

26/62 (*van Gend end Loos v. Administratie der Belastingen*)
 36/74 (*Walrave and Koch v. Association Union Cycliste Internationale and others*)
 13/76 (*Dona v. Mantero*)
 30/77 (*Regina v. Bouchereau*)
 294/83 (*Parti Ecologiste, "Les Verts" v. European Parliament*)
 C-12/86 (*Demirel v. Stadt Schwäbisch Gmünd*)
 C-6/90 (*Francovich and Bonifaci v. Italy*)
 C-9/90 (*Bonifaci*)
 C-18/90 (*Office national de l'emploi v. Kziber*)
 C-415/93 (*O'Hara v. Council and Commission*)
 C-103/94 (*Krid / Caisse nationale d'assurance vieillesse des travailleurs salariés*)
 C-150/94 (*UK v. Council*)
 C-45/95 (*Commission v. Italy*)
 C-97/95 (*Pascoal & Filhos v. Fazenda Pública*)
 C-162/96 (*Racke v. Hauptzollamt Mainz*)
 C-348/96 (*Calfa*)
 C-416/96 (*Eddline El-Yassini*)
 C-112/97 (*Commission v. Italy*)
 C-323/97 (*Commission v. Belgium*)
 C-358/97 (*Commission v. Ireland*)
 C-359/97 (*Commission v. United Kingdom*)
 C-408/97 (*Commission v. Netherlands*)
 C-37/98 (*Savas*)
 C-178/98 (*Commission v. France*)
 C-187/98 (*Commission v. Greece*)
 C-260/98 (*Commission v. Greece*)
 C-276/98 (*Commission v. Portugal*)
 C-362/98 (*Commission v. Italy*)
 C-391/98 (*Commission v. Greece*)
 C-424/98 (*Commission v. Italy*)
 C-457/98 (*Commission v. Greece*)
 C-481/98 (*Commission v. France*)
 C-83/99 (*Commission v. Spain*)
 C-345/99 (*Commission v. France*)
 C-438/99 (*Jiménez Melgar*)
 C-473/99 (*Commission v. Autriche*)
 C-40/00 (*Commission v. France*)
 C-49/00 (*Commission v. Italy*)
 C-100/00 (*Commission v. Italy*)
 C-109/00 (*Tele Danmark*)
 C-206/00 (*Miflin*)

C-317/00 (*Invest v. Commission*)

Court of First Instance cases cited

T-170/94 (*Shanghai Bicycle v. Council*)

T-213/97 (*Eurocoton and others v. Council*)

T-189/00 ("*Invest*" Import und Export and Invest Commerce v. Commission)

Commission Decisions cited

2496/96/ECSC (establishing Community rules for State aid to the steel industry)

M.1940 (Merger decision on Framatome/Siemens/Cogema)