CHAPTER EIGHT

Toward a Postnational Model of Membership

In the preceding chapters I discussed the membership status of guestworkers in Western nation-states, concluding that, even without formal citizenship status, they are incorporated into various legal and organizational structures of the host society. In this chapter, reflecting upon guestworker membership, I analyze the changing structure and meaning of citizenship in the contemporary world. I introduce a new model of membership, the main thrust of which is that individual rights, historically defined on the basis of nationality, are increasingly codified into a different scheme that emphasizes universal personhood. I formalize the model by comparing it with the national model of citizenship and specifying its distinctive elements. The articulation of this model sets the stage for the further elaboration of dualities in the rules of the postwar global system, which, while insisting on the nation-state and its sovereignty, at the same time, legitimate a new form of membership that transcends the boundaries of the nation-state.

Guestworkers and Citizenship: Old Concepts, New Formations

The postwar era is characterized by a reconfiguration of citizenship from a more particularistic one based on nationhood to a more universalistic one based on personhood. Historically, citizenship and its rights and privileges have expanded in waves, with changes in how the national public is defined in relation to class, gender, and age (Marshall 1964; Ramirez 1989; Turner 1986a, 1986b). Each wave has represented the entry of a new segment of population into the national polity; workers, women, and children were eventually included in the definition of citizenship.1 This universalizing movement has made exclusions based on any criteria of ascribed status incompatible with the institution of citizenship (Turner 1986a:92–100). The expansion, however, was limited from within: the rights of men, women, and children, as individuals, were defined with respect to their membership in a particular nation-state. In that sense, the expansion of rights protracted and reinforced particularities ordained by national attributes. In contrast, in the postwar era, an intensified discourse of personhood and human rights has rent the bounded universality of national citizenship, generating contiguitities beyond the limits of national citizenship. Accordingly, contemporary membership formations have superseded the dichotomy that opposes the national citizen and the alien, by including populations that were previously defined as outside the national polity. Rights that used to belong solely to nationals are now extended to foreign populations, thereby undermining the very basis of national citizenship. This transformation requires a new understanding of citizenship and its foundation.

Recent studies recognize the disparity between the national citizenship model and the membership of postwar migrants
in European host countries. Tomas Hammar (1986, 1990a), for instance, argues that foreigners who are long-term residents of European states, and who possess substantial rights and privileges, should be given a new classification, and suggests the term *denizen*. In the same vein, Brubaker (1989a, 1989c) maintains that the membership forms generated by postwar immigration deviate from the norms of classical nation-state membership, which he views as "egalitarian, sacred, national, democratic, unique, and socially consequential." In acknowledging these deviations, he offers a model of "dual membership" organized as concentric circles: an inner circle of citizenship, based on nationality, and an outer circle of denizenship, based on residency. Both Hammar and Brubaker contend that, in regard to rights of immigrants, the crucial determinant is residence, not citizenship. Similar versions of the denizen model have been discussed in Heisler and Heisler 1990, Layton-Henry 1990c, Fullinwider 1988, and d'Oliveira 1984.

Heisler and Heisler (1990) attribute the emergence of the denizenship status to the existence of a "mature" welfare state. They suggest that the elaborate redistribution machinery and the "ethos of equality" of the welfare state have led to the widening of the scope of citizenship in European societies. As I showed in chapters 4 and 5, states of Europe have indeed expanded their comprehensive welfare apparatuses to guestworkers and their families. However, there is nothing inherent about the logic of the welfare state that would dictate the incorporation of foreigners into its system of privileges. Welfare states are also conceived as "compelled by their logic to be closed systems that seek to insulate themselves from external pressures and that restrict rights and benefits to members" (Freeman 1986:51; see also Leibfried 1990). Not that this logic of closure is empirically realized in the world of welfare states. Many of the most advanced welfare states, especially those that are small in size and trade-dependent, have open economies that operate as part of an increasingly integrated global economy (Katzenstein 1985; Cameron 1978). Nevertheless, welfare states are expected to operate with the assumption of closure: the effective distribution of welfare among citizens and maintenance of high standards of benefits and services require the exclusion of noncitizens (see Schuck and Smith 1985; Walzer 1983). As such, the welfare state is universal only within national boundaries.

The denizenship model depicts changes in citizenship as an expansion of scope on a territorial basis: the principle of domicile augments the principle of nationality. Denizens acquire certain membership rights by virtue of living and working in host countries. Within this framework, denizenship becomes an irregularity for the nation-state and its citizenship, that should be corrected in the long-run (see Heisler and Heisler 1990, and the articles in Brubaker 1989 and Layton-Henry 1990).

In construing changes in citizenship as territorial, these studies remain within the confines of the nation-state model. They do not recognize the changing basis and legitimacy of membership or the recent, fundamental changes in the relationship between the individual, the nation-state, and the world order. As I see it, the incorporation of guestworkers is no mere expansion of the scope of national citizenship, nor is it an irregularity. Rather, it reveals a profound transformation in the institution of citizenship, both in its institutional logic and in the way it is legitimated. To locate the changes, we need to go beyond the nation-state.

**A Model for Postnational Membership**

This section introduces a model of membership that delineates the contemporary restructuring and reconfiguration of citizenship. The summary in table 8.1 compares this model, which I call *postnational*, with the classical model of national citizenship as conceptualized in political sociology. The two models differ in various dimensions, some of which are mentioned in the discussion of guestworker membership in chapter 7. A comparative discussion, in terms of each dimension, follows.

**Time Period**

The modern history of citizenship begins with the French Revolution. Although the idea of national citizenship emerged at the time of the Revolution, the realization of this particular form of membership occurred much later. Only quite recently has national citizenship become a powerful construct. The
classical instruments for creating a national citizenry, the first compulsory education laws and universal (male) suffrage acts, were not enacted before the mid-nineteenth century (Ramirez and Soysal 1989; Soysal and Strang 1989). Moreover, construction of the dichotomy between national citizens and aliens, through the first immigration and alien acts, and made visible in the introduction of passports, identity cards, and visas, did not take place until as late as the First World War.³

The reconfiguration of citizenship is mainly a postwar phenomenon. Even as the nation-state and its membership became authorized and taken-for-granted, its classificatory premises were beginning to be contested. By the 1960s, the classical model of nation-state membership was loosening its grip on the Western world, while consolidation of national polity and citizenship was an impassioned item on the agenda of many countries in Africa and Asia. The increasing flow of goods and persons and the large magnitude of labor migrations after World War II have facilitated this process.

**Territorial Dimension**

The classical model is nation-state bounded. Citizenship entails a territorial relationship between the individual and the state (Bendix 1977; Weber 1978). It postulates well-defined, exclusionary boundaries and state jurisdiction over the national population within those boundaries. The model thus implies a congruence between membership and territory: only French nationals are entitled to the rights and privileges the French state affords—nobody else.

In the postnational model, the boundaries of membership are fluid; a Turkish guestworker can become a member of the French polity without French citizenship. By holding citizenship in one state while living and enjoying rights and privileges in a different state, guestworkers violate the presumed congruence between membership and territory. The growing number of dual nationality acquisitions further formalizes the fluidity of membership.⁴

The fluid boundaries of membership do not necessarily mean that the boundaries of the nation-state are fluid. Neither does it imply that the nation-state is less predominant than before.⁵ Indeed, the nation-states, still acting upon the national model—since their existence is predicated on this model—constantly try to keep out foreigners by issuing new aliens laws and adopting restrictive immigration policies. However, these continued attempts testify that European states have not succeeded in controlling the influx of foreigners. In particular, such measures have failed to prevent migratory flows justified on humanitarian grounds—political asylum and family unification, two major sources of persisting immigration to European countries discussed in chapter 2.

**Rights and Privileges**

The classic order of nation-states expresses formal equality in the sense of uniform citizenship rights. Citizenship assumes a single status; all citizens are entitled to the same rights and privileges. The postnational model, on the other hand, implies multiplicity of membership—a principal organizational form for empires and city states. As we have seen in the case of guestworkers, the distribution of rights among various groups and citizens is not even. In the emerging European system, certain groups of migrants are more privileged than others: legal permanent residents, political refugees, dual citizens, and nationals of common market countries.⁶
In earlier polities, multiplicity of membership was also a given, but inequality was considered a "natural" characteristic of social order. Differential membership status, such as that of slaves, was thus constructed as part of the formal definition of the polity. Modern polities, however, claim a uniform and universal status for individuals. As Turner (1986a:133) comments, in the modern polity "the particularistic criteria which define the person become increasingly irrelevant in the public sphere." What makes the case of the guestworker controversial is that it violates this claim for unitary status. Rendering differential status unjustifiable within the framework of universalistic personhood, the modern polity encourages a climate for diverse claims to and further expansion of rights.

Basis and Legitimation of Membership

In the classical model, shared nationality is the main source of equal treatment among members. Citizenship invests individuals with equal rights and obligations on the grounds of shared nationhood. In that sense, the basis of legitimacy for individual rights is located within the nation-state.

However, guestworker experience shows that membership and the rights it entails are not necessarily based on the criterion of nationality. In the postnational model, universal personhood replaces nationhood; and universal human rights replace national rights. The justification for the state’s obligations to foreign populations goes beyond the nation-state itself. 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. This is the most elemental way that the postnational model differs from the national model.

Universal personhood as the basis of membership comes across most clearly in the case of political refugees, whose status in host polities rests exclusively on an appeal to human rights. Refugees are in essence stateless (some carry a United Nations passport) but are nonetheless still protected and granted rights as individuals. Similarly, the most universalized aspects of citizenship are those immediately related to the person—civil and social rights—which are often the subject of international conventions and discourse. These rights are more commonly secured in international codes and laws, and they permeate national boundaries more easily than universal political rights that still imply a referential proximity to national citizenship.

Organization of Membership

While the basis and legitimation of membership rights have shifted to a transnational level, membership itself is not really organized in a new scheme. In both models, the responsibility of providing and implementing individual rights lies with national states. In other words, one still has to go through, for instance, the German, British, or French welfare system. The state is the immediate guarantor and provider, though now for “every person” living within its borders, noncitizen as well as citizen. Actually, the very transnational normative system that legitimizes universal personhood as the basis of membership also designates the nation-state as the primary unit for dispensing rights and privileges (Meyer 1980).

This is critical to explaining why residency in a state is consequential in securing various rights. The world is still largely organized on the basis of spatially configured political units; and topographic matrixes still inform the models and praxis of national and international actors. Hence the nation-state remains the central structure regulating access to social distribution. The material realization of individual rights and privileges is primarily organized by the nation-state, although the legitimacy for these rights now lies in a transnational order.

Transnational Sources of Membership

How can we account for the manifest changes in national citizenship, that celebrated and stubborn construction of the modern era? As it stands, postnational membership derives its force and legitimacy from changes in the transnational order that defines the rules and organization of the nation-state system. I regard two interrelated lines of development as crucial in explaining the reconfiguration of citizenship.
The first one concerns a transformation in the organization of the international state system: an increasing interdependence and connectedness, intensified world-level interaction and organizing, and the emergence of transnational political structures, which altogether confound and complicate nation-state sovereignty and jurisdiction (Abu-Lughod 1989a, 1989b; Boli 1993; Meyer 1980; Robertson 1992). I refer not only to growth in the volume of transactions and interactions, which, in relative terms, has not changed significantly over the last century (Thomson and Krasner 1989). More important are qualitative changes in the intensity of these interactions, and their perception by the parties involved.

In the postwar era, many aspects of the public domain that used to be the exclusive preserve of the nation-state have become legitimate concerns of international discourse and action. The case of guestworkers clearly demonstrates this shift. The host states no longer have sole control over migrant populations. The governments of the sending countries and extranational organizations of various kinds also hold claims vis-à-vis these populations, in regard to their lives, education, welfare, family relations, and political activities. A dense set of interactions facilitated by inter- and transnational market and security arrangements (NATO, the EC, and the UN system) constrain the host states from dispensing with their migrant populations at will. In fact, this system not only delegitimizes host state actions that attempt to dispense with foreigners; it obliges the state to protect them.

This is a different picture than that of nineteenth-century conceptions of the international system, which assumed a world of discrete nation-states with exclusive sovereignty over territory and population. In the postwar period, the nation-state as a formal organizational structure is increasingly decoupled from the locus of legitimacy, which has shifted to the global level, transcending territorialized identities and structures. In this new order of sovereignty, the larger system assumes the role of defining rules and principles, charging nation-states with the responsibility to uphold them (Meyer 1980, 1994). Nation-states remain the primary agents of public functions, but the nature and parameters of these functions are increasingly determined at the global level.

The intensification and connectedness of the global system do not necessarily signal that nation-states are organizationally weaker or that their formal sovereignty is questioned. Rather, it refers to the explicitness of global rules and structures, and the increasing invocation of these rules. In that sense, nation-states, as authorized actors, function concurrently with inter- and transnational normative structures, ordering and organizing individuals' lives.

The second major development is the emergence of universalistic rules and conceptions regarding the rights of the individual, which are formalized and legitimated by a multitude of international codes and laws. International conventions and charters ascribe universal rights to persons regardless of their membership status in a nation-state. They oblige nation-states not to make distinctions on the grounds of nationality in granting civil, social, and political rights. The Universal Declaration of Human Rights (1948) unequivocally asserts that "all beings are born free and equal in dignity and rights, independent of their race, color, national or ethnic origin." The International Covenant on Civil and Political Rights (1966) further imposes a responsibility on the state to respect and ensure the rights of "all individuals within its territory and subject to its jurisdiction" (Goodwin-Gill, Jenny, and Perruchoud 1985:558). The European Convention on Human Rights (1950) expounds almost identical provisions, with further protection against the collective expulsion of aliens. Both the Universal Declaration of Human Rights and the European Convention have been incorporated into the constitutions and laws of many countries.

In addition to these principal codes of human rights, many aspects of international migration, including the status of migrant workers and their particular rights, have been elaborated and regularized through a complex of international treaties, conventions, charters, and recommendations. Some of these instruments originated in the early 1950s, at the onset of large-scale labor migration. Over time, their span has expanded to include entry and residence, the rights to choice and security of employment, working conditions, vocational training and guidance, trade-union and collective bargaining rights, social security, family reunification, education of migrant children, and associative and participatory rights, as well as individual
and collective freedoms. These conventions differ in scope. Some have universal application; others are country-specific. Nonetheless, they all aim to set standards for the “equitable” treatment of migrants and the elimination of disparities between nationals and migrants of different categories.

The conventions concluded under the aegis of the International Labor Office (ILO) and the Council of Europe are especially noteworthy. According to the ILO Convention of 1949, the contracting states agree to treat migrant workers “without discrimination in respect of nationality, race, religion, or sex” regarding employment, conditions of work, trade union membership, collective bargaining, and accommodation (ILO n.d.: 2). The 1975 convention goes further, promoting the social and cultural rights of migrant workers and their families, in addition to provisions strictly concerned with labor. It explicitly states that the participating countries will take all steps to assist migrant workers and their families “to maintain their own culture” and to provide for their children “to learn their own mother tongue” (ILO 1986: 7).

In a similar vein, the 1955 Convention of the European Council on Establishment requires the contracting parties “to treat the nationals of the other contracting states on a basis of equality and to secure for them the enjoyment of civil rights . . . [and] the same economic rights as are possessed by nationals of the state in which the alien is established” (Plender 1985: 3). Later conventions of the Council (1961, 1977) introduce provisions regarding freedom of association and information, residence and work permits, social security, social and medical assistance, and family reunification. More recently, the Council has given priority to extending the lists of individuals’ rights, specifically to include further rights in the cultural and political spheres. The Council organizes meetings and conferences to promote cultural rights and make national and local authorities aware of “specificities” of minorities, both native and foreign.

More generally, the United Nations has produced a series of instruments with implications for international migration and migrants. The UNESCO Declaration on Race and Racial Prejudice (1978) extends provisions for the cultural rights of migrants—the right to be different, to have one’s cultural values respected, and to receive instruction in one’s mother tongue. The United Nations convention on the Protection of the Rights of All Migrant Workers and Their Families, adopted in 1990, aims to establish universal standards that transcend national definitions of foreigners’ status. The convention guarantees minimum rights to every migrant, including women and undocumented aliens and their families (see International Migration Review 1991). In doing so, it constructs the category of “migrant worker,” including such subcategories as “seasonal worker” and “frontier worker,” as a universal status with legitimate rights. The ILO and the European Council also have provisions dealing specifically with illegal aliens and their protection (Niessen 1989).

Lastly, political refugees are protected by a set of international legal instruments designed to ensure their rights. According to the Geneva Convention on the Legal Status of Refugees (1951), persons shall not be forced to return to their country of origin if they have a “well-founded fear of persecution” for reasons of race, religion, nationality, membership of a particular social group or political opinion. The Convention further guarantees treatment in the country of asylum equal with that of nationals in regard to religious freedom, acquisition of property, rights of association, and access to courts and public education (Plender 1985).

The multitude and scope of these instruments are impressive. The rights defined and codified assure not just the economic, civil, and social rights of individual migrants—membership rights, in Marshall’s terms—but also the cultural rights of migrant groups as collectivities. Within this context, the collective rights of foreigners—the right to an ethnic identity, culture, and use of one’s native tongue—emerge as a locus of international legal action. Appendix C provides a selected list of the conventions applicable to international migrants, and appendix D cites the inter- and nongovernmental organizations that deal with them.

The most comprehensive legal enactment of a transnational status for migrants is encoded in European Communities law. Citizenship in one EC member state confers rights in all of the others, thereby breaking the link between the status attached to citizenship and national territory. The provisions specify a
migrant regime under which European Community citizens are entitled to equal status and treatment with the nationals of the host country. The basic tenets of this regime are as follows:

- Citizens of member states have the right to free movement, gainful employment, and residence within the boundaries of the Community.
- Community law prohibits discrimination based on nationality among workers of the member states with regard to employment, social security, trade union rights, living and working conditions, and education and vocational training.
- Community law obliges host states to facilitate teaching of the language and culture of the countries of origin within the framework of normal education and in collaboration with those countries.
- The Commission of the European Community recommends full political rights in the long run for Community citizens living in other member states. Under current arrangements, they have the right to vote and stand as candidates in local and European elections.14

These rights are protected by a growing body of directives, regulations, and laws that locate them within a human rights context (Commission of the European Communities 1989b). Moreover, the 1991 Maastricht treaty has created the status of citizen of the Community, to “strengthen the protection of the rights and interests of the nationals of its member states.” The treaty foresees a multilevel citizenship structure that guarantees rights independently of membership in a particular state. Thus, the Community as a supranational organization establishes a direct relationship with individuals in the member nation-states. As such, “European citizenship” clearly embodies postnational membership in its most elaborate legal form. It is a citizenship whose legal and normative bases are located in the wider community, and whose actual implementation is assigned to the member states.

At the present, the new Community citizenship and the free-movement provision do not apply to nationals of non-EC countries, who constitute the majority of the migrant populations in Europe. For non-EC migrants, the Community has issued guidelines toward the equalization of their status with that of nationals of EC countries. In 1989, for example, the Community adopted the Charter of the Fundamental Rights of Workers, which requires the member states to guarantee workers and their families from non-member countries living and working conditions comparable to those of EC nationals. More directly, with its authority to engage in international treaties, the Community has made agreements with several non-EC sending countries. These bilateral agreements incorporate the rights of non-EC foreign workers into the legal framework of the Community with provisions in regard to social security, working conditions, and wages, under which workers and their families from signing countries can claim benefits on equal terms with community citizens (Callovi 1992).15

My intention in citing all of these instruments and regimes is to draw attention to the proliferation of transnational arrangements, grounded in human rights discourse, that address the rights and interests of migrants and refugees. These instruments and regimes provide guidelines as to the management of migrant affairs for national legislation, by standardizing and rationalizing the category and status of the international migrant. Like other transnational instruments, the charters and conventions regarding guestworkers do not for the most part entail formal obligations or enforceable rules. This does not mean that they do not effect binding dispositions. By setting norms, framing discourses, and engineering legal categories and legitimate models, they enjoin obligations on nation-states to take action. They define goals and levels of competence, and compel nation-states to achieve specific standards. They form a basis for the claims of migrants shaping the platforms of migrant organizations as well as other public interests. They generate transnational activity and stir up publicity regarding migrant issues.

One of the ways international instruments affect nation-state action on migrants is through the construction of migrants as a legal category. Statutes on aliens, migrant workers, and refugees, which entitle migrants to claim legal protection on the basis of human rights, are now established branches of international law (Perruchoud 1986). In the case of the European Community and the European Council, extragovernmental
bodies have been established, to interpret and give meaning to international codes and laws, thereby both constraining and enabling nation-state jurisdiction in many ways. One such example is the European Court of Human Rights. According to the European Convention of Human Rights, individual citizens of the European Council countries, as well as nongovernmental organizations or groups, can appeal directly to the European Court, whose decisions are binding on member states. In the last two decades, the caseload of the European Court has increased drastically, with some 5,500 complaints filed each year (Lester 1993). The Court has given a significant number of rulings on individual rights in recent years, including decisions on immigration and family unification.

Corresponding to this growth in the activity of the European Court, national courts increasingly invoke the European Human Rights Convention. The resulting panoply of human rights arrangements generates interesting cases. For example, in 1992, a Sudanese political refugee in Germany fled to Britain for asylum, fearing racial persecution in Germany. The British government decided to send him back to Germany, his first port of entry; however, a British high-court judge ordered the government to halt the deportation in accord with the European Convention on Human Rights, acknowledging that in Germany he might be in danger of attack by neo-Nazis (The Economist, 15 February 1992). In an earlier case, some East-African Asians, by appealing to the European Convention of Human Rights, were able to contest their exclusion from the United Kingdom under the 1968 Commonwealth Immigrants Act, which subjected the populations from the New Commonwealth to immigration controls (Pflender 1986). Thereby, an international human rights instrument superseded the decision of the British Parliament.

The Court of Justice of the European Community, another supranational legal arrangement, oversees individual or state-level complaints that fall within Community Law. The Court has the task of harmonizing national laws with those of the Community. Fourteen percent of the cases brought before the European Court of Justice between 1953 and 1986 were related to the free movement of workers and their dependents, the right of abode and work, and other social issues (Commission of the European Communities 1987). The European Convention on Human Rights has been cited frequently by the Court of Justice in elaborating the general principles of Community Law and making decisions (Brown and McBride 1981).

In addition to their effect in the realm of legal rights, transnational laws, rules, conventions, and recommendations also directly influence nation-state policy and action. Let me cite some examples to illustrate this point. The inspiration for foreigners’ assemblies and advisory councils came from a directive of the fifth session of the European Conference on Local Powers in 1964 (Sica 1977). Acting upon this directive, European host governments established several such assemblies and councils between 1968 and 1978 (Miller 1981). In creating specialized social service centers for migrants, the EC Commission’s recommendation of 1962 constituted the basis upon which many national governments acted (Dumon 1977). In the early 1970s, the participation rights for foreigners in the workplace were mainly introduced by the expansion of the European Community law and practice. Similarly, the European Community General Directive on Education of Migrant Workers (1977) afforded a backdrop for national provisions for teaching migrant children their own language and culture. In collaboration with sending countries, many European host states have established arrangements for such instruction.

Existing national policies are also sometimes revised in response to transnational instruments. In Sweden, limitations on the political activity of aliens were rescinded in 1954 as an effect of the European Convention on Human Rights and Fundamental Freedoms (Hammar 1985c). Similarly, in 1985 the Austrian Supreme Court ruled the Foreigners Police Law unconstitutional, “since it did not accord with Article 8 of the European Convention on Human Rights, . . . interfering with private and family life” of migrants (Bauböck and Wimmer 1988:664). This decision resulted in an amendment of the law, requiring the foreigners police to take into account an individual’s family situation and length of residence before making a decision about deportation.

All of these examples substantiate the impact of transnational instruments in the rationalization of the status of international migrant. Migrants’ rights increasingly expand within
the domain of human rights, supported by a growing number of transnational networks and institutions. The crucial point is that this intensified transnational modus operandi very much determines the discourse of membership and rights on the national level. The universalistic conceptions of rights and personhood become formally institutionalized norms through the agency of an array of collectivities—international governmental and nongovernmental organizations, legal institutions, networks of experts, and scientific communities. These collectivities, by advising national governments, enforcing legal categories, crafting models and standards, and producing reports and recommendations, promote and diffuse ideas and norms about universal human rights that in turn engenders a commanding discourse on membership. The same discourse is adopted by states, organizations, and individuals in granting and claiming rights and privileges, thereby reenacting the transnational discourse.

Human rights discourse is widely evoked in national policy language and government rhetoric pertaining to the rights of international migrants. As Catherine de Wenden remarks, since 1981, French immigration policies have been transformed from "a mere body of laws dealing with labor" to legislation and governmental guidelines that prescribe "equal treatment of foreigners and nationals, and human rights." Over the years, the basic rights of migrants, including "the fundamental right to a family life" and the "expression and representation of migrants in a multicultural France," have become part of policy discourse (de Wenden 1987). After the electoral victory of conservative and centrist parties in 1993, the French parliament passed a series of restrictive laws concerning the nationality code, family unification, and illegal immigration. The restrictions were criticized not only by civil rights groups and opposition parties, but also by prominent cabinet members, expressing concerns about human rights (New York Times, 23 June 1993). The French Constitutional Council ruled against the legislation concerning family unification on the grounds that it would violate the rights of migrants as individuals. The Council reasoned that "foreigners are not French, but they are human beings" (Le Monde, 16 August 1993).

Germany's policy language and official rhetoric have also changed over time. In 1981, Richard von Weizsaecker, then the mayor of West Berlin, insisted that foreigners must decide between repatriation and becoming Germans (Castles 1985). In the 1990s, however, Berlin offers its foreign residents a "multicultural society" and "no forced integration," as was noted in the official address of the secretary of the Berlin City State at a conference at the Free University in June 1990. The term multicultural society is invoked in public debates and has gained currency among experts on foreigners' issues and government officials responsible for implementing policies of integration. As attacks on migrants and asylum seekers have risen, the debate about easing Germany's restrictive nationality law and allowing dual citizenship has intensified. The argument of the Social Democratic Party for extending dual citizenship was that "it would send a signal to our foreign residents that we fully recognize them as human beings" (Reuters news agency, 4 June 1993). The major rally organized by the government to protest the killings of three Turkish migrants by neo-Nazis convened under a banner proclaiming that "Human Dignity is Inviolable" (Boston Globe, 8 November 1992). In addressing another such protest, Richard von Weizsaecker, the president of Germany, reasserted the theme of human dignity: "The first article of our constitution does not say 'the dignity of Germans is inviolable' but 'the dignity of man is inviolable'" (United Press International, 3 June 1993).

In much official debate, arguments for furthering the rights of migrants are typically presented in terms of the inalienable right of personhood. For example, the Belgian delegation to the 1981 Conference of European Ministers, in making a case for multicultural policies, reasoned that "any attempt to deprive a people of its history, culture, and language produces human beings who are incomplete and incapable both of forming plans for the future and of participating in community life and politics. It is to prevent alienation of this kind that any initiative permitting multilingual and multicultural education and a well-developed community life must be encouraged" (Council of Europe 1981:205). Claims for the political rights of migrants are framed within the same discourse: "The migrant's integration—apart from economic, social, and cultural aspects—involves the question of political participation, since
the migrant has a political dimension, as does any other human being; his status in the receiving country cannot be divorced from this fundamental dimension" (International Migration 1977:78, citing the conclusions of the seminar on Adaptation and Integration of Permanent Immigrants of the Intergovernmental Committee for Migration [ICM]). Such an understanding of political rights clearly contradicts the construction of the individual's political existence as a national citizen.

Migrants themselves repeatedly urge the universalistic concept of personhood as the grounding principle for membership rights. Claims for membership become publicly coded as human rights, as is clearly discernable from the platforms and action programs of foreigners. In its sixth congress in Stockholm, the European Trade Union Confederation called for a more "humanitarian European unity," referring to the rights of migrant workers, especially those from the non-EC countries (İkibin'e Doğru, 29 January 1989). Debates about local voting rights invariably center on the universal/humanistic versus national/particularistic controversy. The most notable argument put forth is that "the right to take part in the political process of one's country of residence is an essential aspect of human life" (Rath 1990:140). In their manifesto for local voting rights, the foreigners' organizations in Switzerland explicitly referred to human's "natural right" of self-determination. The motto of the 1990 voting rights campaign of migrants in Austria was "Voting Rights Are Human Rights" (Milliyet, 10 October 1990). All these claims portray suffrage not only as a participatory right, but as an essential aspect of human personhood.

Human rights discourse dominates calls for cultural rights, as well. Multiculturalism, the right to be different and to foster one's own culture, is elementally asserted as the natural and inalienable right of all individuals. What is ironic is that the preservation of particularistic group characteristics—such as language, a customary marker of national identity—is justified by appealing to universalistic ideas of personhood. The Turkish Parents Association in Berlin demands mother-tongue instruction in schools on the grounds that "as a human being, one has certain natural rights. To learn and enrich one's own language and culture are the most crucial ones" (from the 1990 pamphlet of the association). In the same vein, the Initiative of Turkish Parents and Teachers in Stuttgart publicized its cause with the slogan "Mother Tongue Is Human Right" (Milliyet, 4 October 1990).

Urging Islamic instruction in public schools, migrant associations also assert the natural right of individuals to their own cultures. During the 1987 national elections, Islamic associations in Britain justified their demands for the observance of Islamic rules in public schools and the recognition of Muslim family law by invoking the Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance based on Religion or Belief (Centre for the Study of Islam and Christian-Muslim Relations 1987). In May 1990, when the local authorities refused to permit the opening of another Islamic primary school, the Islamic Foundation in London decided to take the issue to the European Court of Human Rights. As part of the debate over the foulard affair in France, the head of the Great Mosque of Paris declared the rules preventing the wearing of scarves in school to be discriminatory. He emphasized personal rights, rather than religious duties: "If a girl asks to have her hair covered, I believe it is her most basic right" (Washington Post, 23 October 1989). Accordingly, the closing statement of the fourth European Muslims Conference made an appeal for the rights of Muslims as "human beings" and "equal members" of European societies (Kaypi, July 1990, p. 15).

In all of these examples, the prevalence of transnational discourse is evident. Membership rights are recast as human rights; governments, organizations, and individuals recurrently appeal to this "higher-order" principle. The changes I have delineated indicate, not only the empirical extension of rights, but the existence of legitimate grounds upon which new and more extensive demands can be made. The dominance of human rights discourse, and the definition of individuals and their rights as abstract universal categories, license even foreign populations to push for further elaboration of their rights. The fact that rights, and claims to rights, are no longer confined to national parameters, supports the premise of a postnational model of membership.

One caveat: Although my discussion draws on cases from
western Europe, the arguments I develop are not exclusive to Europe. As the transnational norms and discourse of human rights permeate the boundaries of nation-states, the postnational model is activated and approximated world-wide. However, in countries where the nation-building efforts are still underway, or are contested by alternative groups or ideologies, national citizenship constitutes a significant category and has important organizational consequences. In such cases, the boundaries between citizens and noncitizens are sharply constructed, without much space for ambiguity. The expulsion of hundreds of thousands of Ghanaian laborers from Nigeria in 1983 is an example (Plender 1985). Similarly, during the 1990 Gulf war, when the Yemeni government sided with Iraq, Saudi Arabia deported about a half-million Yemeni workers, some of whom were long-time residents (Esman 1992). In most of these countries, definitions and categories of foreign labor and their rights are not as elaborately codified and institutionalized as they are in the West. In several of the Gulf countries, for example, there are few labor codes, and international labor conventions have not been ratified (Nakhleh 1977). Foreign workers in these systems are generally excluded from most forms of participatory rights and entitlements. Obvious examples are Turks in Libya, Indians and Pakistanis in Saudi Arabia, and Filipinos and Sinhalese in other Gulf states—but, note also the Palestinians in Israel and Iranians and Koreans in Japan.

The Dialectics of Postnational Membership and the Nation-State

Unfolding episodes of world politics in the 1990s may seem to contradict my assertions about postnational membership and the declining significance of national citizenship. Consider the reinventions and reassertions of national(ist) narratives throughout the world: fierce struggles for ethnic or national closure, in former Yugoslavia, Somalia, India, and Ireland; the violent vocalization of anti-foreigner groups throughout Europe, accompanied by demands for restrictive refugee and immigration policies.

How can we account for these seemingly contradictory propensities? In order to untangle such trends from the perspec-

tive of this book, let me return to the dialectical dualities of the global system with which I began.

The apparent paradoxes reflected in postwar international migration emanate from the institutionalized duality between the two principles of the global system: national sovereignty and universal human rights. The same global-level processes and institutional frameworks that foster postnational membership also reify the nation-state and its sovereignty.

The principle of human rights ascribes a universal status to individuals and their rights, undermining the boundaries of the nation-state. The principle of sovereignty, on the other hand, reinforces national boundaries and invents new ones. This paradox manifests itself as a deterritorialized expansion of rights despite the territorialized closure of polities. The postwar period has witnessed a vast proliferation in the scope and categories of universalistic rights. Human rights have expanded beyond a conventional list of civil rights to include such social and economic rights as employment, education, health care, nourishment, and housing. The collective rights of nations and peoples to culture, language, and development have also been recodified as inalienable human rights. Women's rights have become "women's human rights" of freedom from gender violence and "certain traditional or customary practices, cultural prejudices and religious extremism" (from the draft document of the 1993 World Conference on Human Rights, cited in the New York Times, 16 June 1993).

Incongruously, inasmuch as the ascription and codification of rights move beyond national frames of reference, postnational rights remain organized at the national level. The nation-state is still the repository of educational, welfare, and public health functions and the regulator of social distribution. Simply put, the exercise of universalistic rights is tied to specific states and their institutions. Even though its mode and scope of action are increasingly defined and constrained by the wider global system, the sovereign nation-state retains the formally and organizationally legitimate form venerated by the ideologies and conventions of transnational reference groups such as the UN, UNESCO, and the like.

Expressions of this duality between universalistic rights and the territorially confined nation-state abound. Faced with a
growing flux of asylum seekers in 1990s, Western states have defensively reconsidered their immigration policies. Regulation of immigration is often articulated as indispensable to national sovereignty, and several host countries have initiated restrictions. On the other hand, the category of refugee has broadened to encompass new definitions of persecution. For example, Canada's Immigration and Refugee Board has begun to grant asylum to women persecuted because of their gender; cases involving rape, domestic violence, and states' restrictions on women's activities qualify for asylum (New York Times, 27 September 1993). France recognized "genital mutilation" as a form of persecution in granting asylum to a west African woman (New York Times Magazine, 19 September 1993). In the United States, an immigration judge in San Francisco granted asylum to a gay Brazilian man, as a member of a "persecuted social group" in his home country (New York Times, 12 August 1993). So, even as Western states attempt to maintain their boundaries through quantitative restrictions, the introduction of expanding categories and definitions of rights of personhood sets the stage for new patterns of asylum, making national boundaries more penetrable.

A parallel dynamic is also manifest in the German government's attempts to control the flow of refugees. At the end of 1990, a significant number of Gypsies from Yugoslavia was denied asylum, but nonetheless allowed to stay after much public debate concerning human rights (Süddeutsche Zeitung, 23 November 1990). In 1992, the German government again decided to repatriate Gypsies, "who do not qualify for asylum," to Romania. This time, to "compensate" for human rights, Germany pledged financial aid to assist the Gypsies "reintegrate" into Romanian society (Boston Globe, 1 November 1992). Thus, while acting in its "national interest" by denying entry to potential refugees, the German state simultaneously extends its responsibilities beyond its national borders by "providing for the welfare" of deportees.

The European Community, as an emerging political entity, is not immune to the dualities of the global system either. The doctrine of human rights is frequently invoked in European Community texts and provisions. For instance, the Maastricht treaty and other EC conventions declare that immigration poli-

cies will comply with "international commitments" to human rights and the "humanitarian traditions" of EC states. Concurrently, the Community is engaged in boundary-maintaining activities through arrangements such as "European citizenship" and the Schengen agreement. While the latter aims at drawing the borders of a supranational entity through common visa and immigration procedures, the former reconstitutes an exclusionary membership scheme at a supranational level. However, constrained by its own discourse, conventions, and laws, the Community establishes, and compels its member states to provide, an expanding range of rights and privileges to migrants from both EC and non-EC countries.

These seemingly paradoxical affinities articulate an underlying dialectic of the postwar global system: While nation-states and their boundaries are reified through assertions of border controls and appeals to nationhood, a new mode of membership, anchored in the universalistic rights of personhood, transgresses the national order of things.

The duality embedded in the principles of the global system is further reflected in the incongruence between the two elements of modern citizenship: identity and rights. In the postwar era, these two elements of citizenship are decoupled. Rights increasingly assume universalism, legal uniformity, and abstractness, and are defined at the global level. Identities, in contrast, still express particularity, and are conceived of as being territorially bounded. As an identity, national citizenship—as it is promoted, reinvented, and reified by states and other societal actors—still prevails. But in terms of its translation into rights and privileges, it is no longer a significant construction. Thus, the universalistic status of personhood and postnational membership coexist with assertive national identities and intense ethnic struggles.

Indeed, the explosion of nationalism can be construed as an exponent of the underlying dialectic of the postwar global system. More and more collectivities are asserting their "national identities" and alleging statehood on the basis of their acclaimed "nationness." These claims are fed and legitimated by the highly institutionalized principle of political sovereignty and self-determination, which promises each people an autonomous state of its own. As political practice, national
sovereignty may be contested (as in the case of Kuwait and Iraq during the Gulf war), but as a mode of organization, it is yet to have an alternative. Sovereignty provides a protected status in the international realm, authenticated by membership in the United Nations. Thus, even when previous nation-states are dissolving (e.g., the Soviet Union and Yugoslavia), the emerging units aspire to become territorial states with self-determination, and the world political community grants them this right. The new (or would-be) states immediately appropriate the language of nationhood, produce anthems and flags, and, of course, pledge allegiance to human rights.

The principle of self-determination further reinforces expressions of nationalism, since, for sovereign statehood, a nationally bounded and unified population is imperative. Therefore, collectivities that have been previously defined simply as ethnicities, religious minorities, or language groups, reinvent their "nationness," accentuate the uniqueness of their cultures and histories, and cultivate particularisms to construct their "Others" (see Hobbs 1990).

At another level, the collective right to self-determination and to political and cultural existence, is itself increasingly codified as a universal human right. Claims to particularistic identities, cultural distinctiveness, and self-determination are legitimated by reference to the essential, indisputable rights of persons, and, thus, are recast as world-level, postnational rights. This recodification is, in fact, what Roland Robertson (1992:100) calls "the universalization of particularism and the particularization of universalism." What are considered particularistic characteristics of collectivities—culture, language, and standard ethnic traits—become variants of the universal core of humanness. In turn, as universal attributes and human rights, they are exercised in individual and collective actors' narratives and strategies.

Framing political self-determination and collective cultural rights as universalistic prerogatives occasions ever-increasing claims and mobilizations around particularistic identities. An intensifying world-level discourse of "plurality" that encourages "distinct cultures" within and across national borders contributes to this new dynamism. An identity politics, energized by narrations of collective pasts and accentuated cul-
tural differences, becomes the basis for participation, and affords the means for mobilizing resources in the national and world polities. If one aspect of this dynamism is re-legitimization and reification of nationness, the other is its fragmentation, displacement of its meaning, and hence its delegitimization.

A growing tendency toward regionalisms (sometimes separatisms) and their recognition by the central states, fragments existing nations and nationalities into infinitely distinct ethnicities and cultural subunits. In Europe more and more groups seek economic and linguistic autonomy on the basis of their regional identities—Bretons, Corsicans, Basques, and Occitans in France; Scots and Welsh in Britain; Lombards and Sarдинians in Italy. And European states, even those that have long resisted linguistic and cultural diversity, increasingly accommodate autonomous entities (as in Spain) and provide for regional languages (as in France and Italy). The multiplication of particularisms and subsequent fragmentation disrupt the presumed contiguities of nationness and undermine the territorial sanctity of nation-states.

Furthermore, as particularistic identities are transformed into expressive modes of a core humanness, thus acquiring universal currency, the "nation" looses its charisma and becomes normalized. The idea of nation becomes a trope of convenience for claims to collective rights and identity. Even groups that may not fit the classic definitions of a nation refer to themselves as such: gays and lesbians claim a "Queer Nation"; the Deaf define themselves as a national subgroup with its own cultural peculiarities and language; and indigenous peoples request to be called, not tribes, but nations, and seek a vote in the United Nations. In this universalizing flux, "the ways of doing identity" (Robertson 1992:99) become standardized exercises, with common themes and modes of presentation. At the center of this activity lies the construction of official taxonomies, with reference to routine markers and attributes of culture; that is, the placid images of cuisines, crafts, life-styles, religious symbols, folklores, and customs.

In the context of this normalizing trend, national identities that celebrate discriminatory uniqueness and naturalistic can-
CHAPTER EIGHT

onizations of nationhood become more and more discredited. It is, for instance, increasingly difficult to protect and practice a code of nationality that inscribes "blood" or "lineage" as its primary principle. Note the widespread reaction to Germany's blood-based citizenship and naturalization laws, and the German government's decision to overhaul these "outdated" laws (Reuters news agency, 12 June 1993). Similarly, national canons that valorize ancestral warmaking and symbols of patriarchy are increasingly less enticing as vehicles for doing identity. It has been truly amazing to observe the remaking of the "Vikings," from warrior forefathers to spirited long-distance traders.26

All of these recontextualizations of "nationness" within the universalistic discourse of human rights blur the meanings and boundaries attached to the nation and the nation-state. The idea of the nation persists as an intense metaphor, at times an idiom of war. However, in a world within which rights, and identities as rights, derive their legitimacy from discourses of universalistic personhood, the limits of nationness, or of national citizenship, for that matter, become inventively irrelevant.

CHAPTER NINE

Conclusion

his book is about the reconfiguration of the institution of citizenship in the postwar era. The modern construction of citizenship affords a framework for sociological analyses of membership in contemporary polities. The predominant conceptions of political sociology posit that populations are organized within nation-state boundaries by citizenship rules that acclaim national belonging as the legitimate basis of membership in modern states. This study, however, finds that the classical formal order of the nation-state and its membership is not in place. The state is no longer an autonomous and independent organization closed over a nationally defined population. Instead, we have a system of constitutionally interconnected