

EUROPEAN IDENTITY AND CITIZENSHIP

BETWEEN MODERNITY AND POSTMODERNITY

SANJA IVIC



European Identity and Citizenship

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Between Modernity and Postmodernity

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1

Introduction

The aim of this study is to interpret and understand the concepts of citizenship and identity within the framework of European philosophical thought. Furthermore, the purpose is to examine whether European identity and European citizenship indicate an emergence of new, postmodern categories in legal and political discourse. Official European Union (EU) documents will be analysed with the help of a theoretical framework that consists of various models of citizenship and identity. The main research questions explored in this study are:

- Should European citizenship and European identity be considered modern or postmodern categories?
- Do they challenge the old concepts of citizenship and identity?
- Are they built on fluid borders?
- What is the place of difference and alterity in defining European citizenship and European identity?

The following sub-questions will also be considered:

- How can the concepts of European citizenship and European identity be interpreted in relation to various theoretical models in European philosophical thought?

2 European Identity and Citizenship

- What patterns can be discovered in EU documents concerning the linguistic use of the concepts of EU citizenship and European identity?

This book aims to contribute to the debate about modernism versus post-modernism. Modernity and postmodernity are narrative categories that are interpreted differently by various authors. For instance:

In France, the modern is understood in the sense of that modernity which begins with Baudelaire and Nietzsche and thus includes nihilism: it has been ambivalent from the outset, in its relations with modernization and with history in particular, in its doubts and suspicions about progress... In Germany, however, the modern begins with the Enlightenment, and to give it up would mean abandoning civilized ideals (Jameson 2002, p. 99).

The same can be argued about postmodernity. This term can be traced back to 1940 in Anglo-American usage. In the 1960s, this term was commonly employed in artistic and cultural criticism. The term ‘postmodern’ embraces a number of related concepts: posthistorical, post-Aristotelian, postrational, postliberal, postindustrial, and so forth (Köhler 1977).

This study relates metatheoretical questions about the criteria for evaluating theoretical approaches to various issues within contemporary European policies. The term ‘postmodern’ is not sufficiently explained in legal and political studies and is often misrepresented and misinterpreted. Authors who examine the nature of EU citizenship (Bauböck 2010; Isin and Saward 2013; Kochenov 2009; Kochenov and van den Brink 2014; Kostakopoulou 1996, 2005, 2011; Shaw 2008; 2010; Soysal 1994) fail to identify postmodern traits of EU citizenship. The same can be argued about some major European research platforms and research projects on EU citizenship such as: Barriers to European Citizenship—bEUcitizen,¹ Enacting European Citizenship,² MACIMIDE,³ and so on.

¹ This project has received funding from the European Union’s Seventh Framework Programme for research, technological development, and demonstration. A team at Utrecht University is responsible for the organization of the project.

² Enacting European Citizenship was a consortium that brought together researchers from Belgium, The Netherlands, UK, Hungary, Latvia, and Turkey. The project was completed in January 2011.

³ Maastricht Centre for Citizenship, Migration, and Development (MACIMIDE) is the interdisciplinary research platform of Maastricht University that brings together scholars working in the fields of citizenship, mobility, migration, development, and family life.

These authors examine the postnational nature of EU citizenship. However, their research is not further developed towards examining EU citizenship as a postmodern concept. The consequence of this research gap is understanding ‘postnational’ and ‘postmodern’ categories as synonymous within political and legal studies. The concept of ‘postmodern’ is often equated with the concept of ‘postnational’ in studies that offer semantic and discourse analysis of EU citizenship and European identity (Van Ham 2001; Düzgüt 2012; Tekin 2014). These studies start with a false premise, which leads to a false conclusion: that if the EU fails as a postnational order, it also fails as a postmodern order.

In the following chapters it will be shown that this standpoint is not correct. Even if the European Union, EU citizenship, and European identity are not postmodern categories, they can still reflect postnational categories. Terry Eagleton poses the question of whether ‘post’ is a ‘historical or theoretical marker’ (Eagleton 1996, p. 30). Within this study, this prefix will be primarily perceived as a theoretical marker, as postmodern thought should not be tied to a certain historical period, but to a way of living and a perception of the world. On the other hand, the prefix ‘post’ in the word ‘postmodernism’ theoretically leaves behind the essentialist and universalist ‘modernism.’ Nevertheless, it does not leave it behind historically, as a matter of the past, since modernism, with its binary hierarchies, is still part of our present. This will be shown in the analysis of European identity and citizenship.

Caporaso (1996) addresses the postmodern nature of the European Union. However, Caporaso does not explore the postmodern nature of EU citizenship and European identity. While a great deal of attention has been paid to European citizenship and European identity, as yet no comprehensive study has been undertaken of the philosophical reading of these concepts and the difference between modernist and postmodernist accounts of European citizenship and European identity.

Enacting European Citizenship (2013), edited by Isin and Saward, develops a distinctive perspective on European citizenship and its impact on European integration by focusing on ‘acts’ of European citizenship. However, this book does not address the philosophical aspects of European citizenship that give it a particular value.

European Identity and Culture—Narratives of Transnational Belonging (2012), edited by Rebecca Friedman and Markus Thiel, centres on European identity and the role of political culture, but it does not sufficiently explore the concept of postmodernism and hermeneutic⁴ and contextual approaches to the concepts of European identity and European citizenship. Düzgit (2012) examines EU discourses and reveals the discursive construction of European identity. However, the author focuses on the EU representations of Turkey. The author relies on a poststructuralist framework that conceptualizes identity as discursively constructed through difference, and the book applies Critical Discourse Analysis to the analysis of various legal and other texts. While the book addresses poststructural and postmodern notions of identity, it is mostly focused on binary oppositions (we/they, identity/difference, citizen/stranger, and so forth) inside the framework of the subject of the accession of Turkey to the EU. The dynamic and changeable nature of both European identity and citizenship is not sufficiently recognized by Düzgit.

Hansen and Hager (2010) analyse the concept of European citizenship. However, the subject matter is tackled only from the critical political economy perspective, neglecting some important topics, such as symbolic oppression (based on various binary oppositions) within European law.

Van Ham (2001) focuses on the idea of the European Union as a postmodern political community. Miller (1993) Bridges (2004), Minda (1995), Thiele (1997), Madison (2001), and Douzinas (2004) explore implications of postmodern subjectivity and its relevance for postmodern legal studies. Nevertheless, these authors do not sufficiently investigate the concepts of EU citizenship and European identity within the context of postmodernism. Although the concept of European identity is widely discussed (Bauman 2004; Berezin and Schain 2004; Bruter 2005; Checkel and Katzenstein 2009; Delanty 2002; Dell'Olio 2005; Fligstein 2008; Gfeller 2012; Guisan 2012; Kuhn 2015; Pinheiro, Cieszyńska, and Franco 2012; Stråth 2002; Taylor 1992), the question of European identity as a postmodern category is still not sufficiently explored.

⁴ Hermeneutics is the theory of interpretation of meaning. According to Bleicher, there are three separate strands of hermeneutics: hermeneutic philosophy, hermeneutic theory, and critical hermeneutics (Bleicher 1980).

Benedict Anderson described the nation as ‘an imagined political community’ (Anderson 1983, p. 49). From the poststructuralist and post-modernist perspective, the European Union can also be perceived as an ‘imagined political community,’ which is constantly in the process of reconstruction and the articulation of its goals and of its meaning (Düzgit 2012, p. 8). The emergence of EU citizenship represents a paradigm shift towards a postnational model of citizenship.

The historically dominant concept of ‘national citizenship’ has come under particular challenge from supranational developments such as EU citizenship as well as changes occurring within and across the boundaries of states, such as increased toleration of dual and plural nationality, the tendency to allocate political and welfare rights to non-nationals under the heading of ‘integration’, and the legal treatment of transnational minorities. (Shaw and Štikš 2010, p. 7)

An overview of the major philosophical schools addressing the issues of citizenship and identity is presented in the following chapters, because different models and traditions of citizenship and identity in European philosophical thought provide the research with a theoretical framework of the binary oppositions on which EU citizenship and European identity are based. The key concepts have been derived from these different models of citizenship and identity (classical, modern, postmodern), which have facilitated the hermeneutic analysis by providing the interpretation of EU citizenship and European identity with a philosophical framework.

In Chapters 2 and 3, the plurality of philosophical discourses about citizenship and identity is presented. These discourses disclose a background of meanings against which it is possible to perceive citizenship and identity as hermeneutic categories. In Chapters 2 and 3, various (often conflicting) interpretations of citizenship and identity are presented. They provide an adequate background for addressing the concepts of ‘identity’ and ‘citizenship’ as hermeneutic constructions.⁵

⁵A similar approach is presented by Roberto Alejandro (1993) (however, he mostly relies on Gadamer’s hermeneutics).

The theoretical literature of importance to this research consists of different philosophical models of citizenship and identity that place the concepts of European citizenship and European identity into a theoretical framework. Chapters 2 and 3 provide the study with a theoretical framework through which the empirical data presented in Chapters 4 and 5 will be examined. The focus will be upon the two dominant philosophical perspectives on citizenship and identity—modern and postmodern. These models constitute the two main conflicting views in the contemporary philosophical debates over the nature of citizenship and identity. The purpose of this study is to explore whether European identity and citizenship are instances of new, postmodern models of citizenship and identity. The subtitle of the book, ‘Between modernity and postmodernity,’ requires detailed analysis of both modern and postmodern conceptions of citizenship and identity.

The concept of ‘European citizenship’ includes citizens of both the European Union and a broader Europe. Thus, ‘European citizenship’ is a broader concept than ‘EU citizenship.’ However, these two concepts are often considered as synonymous, although it is clear from EU treaties that they legally define citizenship of the European Union, not European citizenship. The same can be argued for the concept of European identity, which ‘is much more widely used than EU identity in both academic and political debates’ (Düzgit 2012, p. 8). Equating ‘European citizenship’ with ‘EU citizenship’ leads to Eurocentrism. According to Mitja Velikonja, this discursive practice in which the notions of ‘Europe’ and ‘European’ are equated with the ‘European Union’ may be perceived as ‘the original sin of the new Eurocentrism (...) Under the pretence of simplification, abbreviation or eloquence (*eulouquence?*), the two terms are simply equated—the political and economic unit appropriates the geographical and historical name of the entire continent’ (Velikonja 2005, p. 17).

The same can be argued about the ‘European Union,’ which is often equated with ‘Europe’ in political discourse. However, it should be noted that becoming ‘European’ and joining the European Union are not the same thing. For instance, neither Norway nor Switzerland is an EU Member State, but each is as European as it gets.

European citizenship can be perceived as an ideal of solidarity and union of European peoples and of a more inclusive form of political and social

membership in Europe. However, the definitions of ‘Europe’ are ambiguous or even polyphone. This term sometimes refers to the geographical name of the continent (whose borders are not clear, as there are still various interpretations and standpoints); and sometimes is a synonym for the European Union, as is the case in the vast majority of scholarly literature.

In a time of economic and financial crisis in the Eurozone, ‘Europe’ is often equated with the Eurozone and with the wealthiest EU Member States (which are depicted as the EU ‘core’) within the EU public political discourse. Member States affected by the crisis are labelled as ‘periphery’ and ‘less European’ since they do not sufficiently reflect European (market) values, which are considered the cause of crisis. There are also divisions between ‘old’ and ‘new’ Europe—between old and new Member States. The new Member States are underrepresented within the European External Action Service (Rettman 2012).

EU institutions and legal documents affect the wider concept of European citizenship by their mechanism of exclusion. In this way they define different statuses of different inhabitants across Europe. In the following chapters, both EU citizenship, which is legally established by treaties and the legal and political system of the EU, and European citizenship, as an ideal of more emancipated and inclusive form of citizenship, will be examined. In this work, the term ‘European citizen’ also refers to European inhabitants who live in the territory of the European Union and outside (in countries that are not Member States of the EU). The wider context of European citizenship embraces the question of European identity, different types of migration, and the borders of Schengen space.

To find the answers to the initial research questions, a hermeneutic study has been carried out, aimed at interpreting European identity and European citizenship as hermeneutic categories. Thus, in this study both European identity⁶ and citizenship will be perceived as texts.⁷

⁶ According to Paul Ricoeur, the ‘self’ can also be perceived as the model of the text. Ricoeur asserts: ‘There is no self-understanding that is not mediated by signs, symbols, and texts, in the last resort understanding coincides with the interpretation given to these mediating terms.’ (Ricoeur 1991, p. 15) In *Oneself as Another* (1992), Ricoeur ties understanding of one’s self to narrative configuration. For instance, authors and readers make sense of various elements of literary texts by employing configuration. Ricoeur argues about the narrativity of a person’s life based on configuration.

⁷ Following Roberto Alejandro (1993), the term ‘text’ employed in this study is understood as a social event, which is open to a plurality of meanings.

Furthermore, both identity and citizenship will be perceived as ‘narrative paradigms.’ These concepts may be perceived as an interpretative dialogue between various traditions, institutions, laws, practices, and social and political circumstances (Alejandro 1993, p. 14). They are contingent categories. This means that they are open to various interpretations. Struggles for recognition of various social groups are amenable to the hermeneutic approach. Such issues address the question of whether equality in the practices and institutions of the European Union is compatible with the preservation of various identities and interests.

Struggles for recognition can be effective only if essentialist and quasi-essentialist conceptions of identity are reformulated towards contingent notions of identity. Identities perceived as texts include plurality of interpretive horizons in which we can understand both ourselves and the ‘other.’ The sharp distinction between the ‘self’ and the ‘other’ has to be avoided in political and legal discourse, since these categories are inter-related. Reasoning based on the sharp distinction between the ‘self’ and the ‘other’ is imperialistic.

European identity and citizenship are developed in dialogue with various traditions, which will be presented in Chapters 2 and 3 of this study. The term ‘tradition’ employed here is not a dead concept that belongs only to the past. It is a dynamic and vivid concept, and as T. S. Eliot argues, it includes both ‘the pastness of the past’ and the presence of the past (Eliot 1982, p. 37). For instance, in the history of literature, a certain poem, novel, or a play is always valued in relation to the poems, novels, or plays of the past. On the other hand, these past works are constantly revalued with every new work that arises.⁸ Thus tradition is founded on dialectics between old and new, past and present. Tradition is also a hermeneutic category, which includes a number of various interpretations, and it may be perceived as a text.

As already argued, the aim of this study is to interpret and understand the concepts of European citizenship and European identity following

⁸ ‘But the difference between the present and the past is that the conscious present is an awareness of the past in a way and to an extent which the past’s awareness of itself cannot show’ (Eliot 1982, p. 38).

a hermeneutic approach.⁹ Legal concepts and ‘lawmaking instruments’ are dynamic and they can be perceived as hermeneutic categories. For instance, in the Tyrer case of 1978,¹⁰ the European Court of Human Rights stressed that the European Convention on Human Rights (ECHR) was a ‘living instrument proceeding with [the] current situation’¹¹ (Xiaoqing 2004). In addition, the court declared that the ECHR was a ‘living instrument’ and should be explained with changed situations in the Marckx case,¹² the Dudgeon case,¹³ and the Soering case¹⁴ (Xiaoqing 2004). The dynamic and hermeneutic approach to ECHR is even more obvious in the Loizidou case.¹⁵ ‘[The] European Court of Human Rights indicated in the case that articles of the *Convention* should not be followed by statically ... but be explained dynamically by the treaty powers’ (Xiaoqing 2004). This point of view stresses a hermeneutic dimension of law. That is why the analytical approach, which explains how law operates, is not sufficient and should be accompanied by hermeneutic understanding.

The hermeneutic analysis performed in this study has two steps. The first consists of analysing the theoretical framework (different models of citizenship and identity presented in Chapters 2 and 3) from which European citizenship and European identity emerge. Moreover, important binary oppositions have been identified within the different models of identity and citizenship, which serve as ‘analytical tools’ in the analysis (presented in Chapters 4 and 5).

A hermeneutic analysis of EU documents influenced by the theoretical framework, from the concepts of citizenship and identity in European history, was found to be the most appropriate method to achieve the aim of the study. Following Paul Ricoeur (1985), the hermeneutic goal of

⁹Hermeneutics may be defined as a philosophy or theory of interpretation of meaning (Bleicher 1980, p. 1).

¹⁰Tyrer v. the United Kingdom, Judgment of 25 April 1978. Publications ECHR, Series A vol. 26.

¹¹Tyrer case sentence, para. 31.

¹²Marckx v. Belgium, Judgment of 13 June 1979, Publications ECHR, Series A vol. 31.

¹³Dudgeon v. the United Kingdom, Judgment of 22 October 1981, Publications ECHR, Series A vol. 45.

¹⁴Soering v. the United Kingdom, Judgment of 7 July 1989, Publications ECHR, Series A vol. 161.

¹⁵Loizidou v. Turkey, Judgment of 18 December 1996, European Human Rights Reports (EHRR), vol. 23.

this study is not limited only to text. It includes the reality of the world and the layers tradition that precede the text. It also encompasses the reception of the text, which is based on narrative competence and narrative understanding. Thus, this research includes various philosophical traditions of citizenship and identity that precede the configuration of European citizenship and European identity. This study also encompasses the reception of EU documents, which constitute these two concepts. The reception of EU documents presented in this study is based on narrative understanding.

Although some authors (Vick 2004) argue that qualitative methods are subjective, unrepresentative, and incomparable and lead ‘towards the theoretical rather than the empirical,’ it will be shown that a hermeneutic, contextual method is necessary, since both European citizenship and European identity are dynamic, not static. They represent processes that are constantly reinvented and reinterpreted.

One of the methods employed in this study is ‘close reading.’ Close reading involves paying attention to individual words and the order in which ideas and sentences unfold. The method of close reading will be enriched by situating the text in its social, political, historical, or philosophical context. The method employed within this study also includes deconstructing the text, relying on various critical strategies. In this book, deconstruction¹⁶ will be performed using the critical strategies of postmodernism.¹⁷ Postmodern and

¹⁶Although hermeneutics and deconstruction are often perceived as two bodies of thought, both points of view deny the possibility of language-free thinking and understanding. Both twentieth-century hermeneutics and ‘Derridean deconstruction present a significant challenge to the metaphysics of modernity, whose assumptions continue to dominate not only a good deal of thinking within philosophy but also within other interpretative disciplines, including literary criticism, theology, and the social sciences. And, however far apart their views of language may appear to be, both find a common ground in this challenge itself, in questioning the metaphysical assumptions that language is at our disposal’ (Michelfelder and Palmer 1989, p. 2).

¹⁷Terry Eagleton makes a distinction between ‘postmodernism’ and ‘postmodernity.’ He argues that the concept of postmodernism refers to ‘a form of contemporary culture,’ while the term ‘postmodernity’ refers to a specific historic period (Eagleton 1996, p. vii). In this study, these kinds of binary oppositions within postmodern thought will be avoided as they contradict the nature of postmodernism, which is beyond sharp divisions.

poststructuralist approaches emphasize the performative and enacting quality of discourses, while focusing on power relations inherent in discursive practices. Discourse is often regarded as the key entry point to access the social world (...) Poststructuralism establishes a relationship of co-constitutionality between the social world and the subject, the social structure and the agents. (Carta and Wodak 2015, p. 6)

Binary oppositions that produce inequality will be identified in European philosophical and political thought as well as in EU documents.

Close reading is a text-centred hermeneutic method identified by New Criticism, which arose in 1920s. The most important representatives of New Criticism are T. S. Eliot, I. A. Richards, Cleanth Brooks, and Robert Penn Warren. The New Critics focused on the internal characteristics of texts, excluding social, historical, cultural, and other contexts. ‘The emphasis on the close reading of a text involves the careful reading of a literary text, paying close attention to words and their meaning, syntax, sentence structure, imagery, the themes that are treated, the way the narrative unfolds, and the view of the world created by the text’ (Aune 2010, p. 121). As already argued, in this book the approach of close reading will be extended to include philosophical, political, sociological, and other contexts. It will also encompass deconstructive discourse analysis.

In his book *Hermeneutics, Citizenship, and the Public Sphere* (1993), Roberto Alejandro addresses citizenship as a hermeneutic problem and explores various models of citizenship. However, Alejandro does not acknowledge the interrelatedness of citizenship and identity within his hermeneutics of citizenship. Also, Alejandro does not further explore the implications of hermeneutics of citizenship for new, postnational forms of citizenship. The same can be argued for works edited by Patrick Nerhot, *Law, Interpretation and Reality* (Nerhot 1990) and *Legal Knowledge and Analogy* (Nerhot 1991). Although it is acknowledged that legal argumentation has a narrative structure, the hermeneutics of the citizen as the main subject of legal argumentation is not developed.

Within the study *Law and Interpretation: Essays in Legal Philosophy* (1995), edited by Andrei Marmor, authors analyse the role of interpretation in legal studies. They argue that interpretation is relevant for a wide

range of different disciplines, such as law, literature, politics, and philosophy. In particular, authors make analogies between the realm of law and the realm of art and criticism regarding the concept of interpretation and various issues that this concept includes (the question of objectivity of interpretation, the issue of the role of intention in the process of interpretation of a text, and so on). Nevertheless, authors do not sufficiently explore the method of close reading, which is relevant for legal, political, social, philosophical, literary, and many other studies.

The main purpose of this analysis is to identify patterns and narrative paradigms¹⁸ in European philosophical and legal thought. In his *Time and Narrative* Vol. 2, Paul Ricoeur's main question is: *What makes the foundation of a narrative paradigm?* Ricoeur states that it is the plot understood in the broadest sense as a synthetical, configurative, and integrative tenet of creation of 'discordant concordance' of the work of narrative (Ricoeur 1985, p. 14). In Chapters 2 and 3, various plots¹⁹ of citizenship and identity will be analysed to identify the systems of paradigms on which European citizenship and European identity are based. According to Ricoeur (1985), narrative²⁰ persists because it is impossible to imagine culture without narration. Ricoeur emphasizes the dominance of human need for the Apollonian principle of order over the Dionysian fascination with chaos. According to Ricoeur (1985), the entirety of communication is based on narrative.

The hermeneutic analysis performed in this study also includes a second step—analysing relevant official EU documents, which define the concepts of European identity and citizenship. The purpose is to grasp the concepts of European citizenship and European identity as expressed

¹⁸ Paul Ricoeur argues that his idea of 'paradigm' refers to the narrative understanding of a competent reader. He has chosen to use the term 'paradigm' as a general term synonymous with a rule for composition. However, the term 'paradigm' should not be confused with the terms 'paradigmatic' and 'syntagmatic,' which stem from semiotic rationality (Ricoeur 1985).

¹⁹ Ricoeur defines plot as a synthetical and schematic principle. That is why he instead employs the term 'emplotment,' which means 'building of a plot' (*la mise en intrigue*) (Ricoeur 1985).

²⁰ 'I am calling narrative exactly what Aristotle calls *muthos*, the organization of the events. I do not differ from Aristotle, therefore, on the plain he places himself on, that of "mode." To avoid any confusion, I shall distinguish narrative in the broad sense, defined as the "what" of mimetic activity, and narrative in the narrow sense of the Aristotelian *diegesis*, which I shall henceforth call diegetic composition.' (Ricoeur 1985, p. 36)

within the context of EU legal documents (which represent the semantic field in which these concepts are interpreted in this book).

Political self-understanding in the European Union is reflected by various EU documents, which shape the European Union. It is also reflected in the interpretation and implementation of those documents. Finally, political self-understanding in the European Union is created by public discourse (Medrano 2009, p. 81). That is why the method of this study will include both the close reading of EU documents and various interpretations of citizenship and identity enriched with EU public discourse analysis (Krzyzanowski 2010).

The concepts of EU citizenship and European identity are interpreted in official EU documents, which form their semantic context. A number of documents from the European Commission are analysed in this book. These documents were chosen because the European Commission outlines the guidelines for the EU policies. The EU treaties analysed in this book were also perceived as appropriate since they constituted the concept of EU citizenship. The Charter of Fundamental Rights of the European Union was taken into account, since it defined the rights of EU citizenship and European values. The Declaration on European Identity and the Charter of European Identity were perceived as appropriate since they defined the concept of the European identity legally.

Documents relating to the EU visa liberalization for Western Balkan countries are analysed, since they provide an overview of the perception of 'other' within the borders of the European continent. Within these documents, countries that geographically belong to Europe are not considered sufficiently 'European' in terms of values and policies. On the other hand, the European Commission's Ageing Reports are taken into account, as they serve as an example of another form of othering in the EU—older adults in the EU are clearly distinguished from the younger population, and their rights are still not sufficiently developed. As the European Commission's citizenship reports show, EU citizenship can fully be exercised only by young, educated, employed people, since the capacity to access rights depends on an individual's economic and social position. All these documents were analysed using the hermeneutic method of close reading, combined with deconstructive discourse analysis.

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2

Modernist and Postmodernist Accounts of Identity

2.1 Introduction

In the following lines, various traditions and models of identity and citizenship will be presented: classical, modern, postnational, and postmodern. These various traditions will be examined and presented as dynamic and extant within both European identity and European citizenship, which are multilayered concepts. It will be argued that concepts of both European identity and citizenship cannot completely be understood without reference to these various identity and citizenship traditions.

Thus, one of the main goals of this study is to emphasize the fruitfulness of various philosophical traditions of citizenship and identity for analysing and understanding European identity and European citizenship. For instance, Descartes's modernist notion of identity, which is based on various binary oppositions, is relevant for understanding European identity, which includes various dichotomies such as: we/they, European/non-European, Christianity/Islam. A poststructuralist and postmodernist notion of identity is also relevant for understanding European identity, which is polyphonic and heterogeneous. That is why both modernist and postmodernist accounts (as well as their critiques) will be presented.

The term 'tradition' is here understood as dynamic. The dynamic notion of tradition is advocated by T. S. Eliot in his essay 'Tradition and Individual Talent.' According to Eliot, the most individual parts of a poet's work are those in which his ancestors, the dead poets, 'assert their immortality most vigorously' (Eliot 1967, p. 48). Eliot argues that an author's authentic, original approach exists only as a modified and broadened tradition. Eliot emphasizes the significance of tradition, and he argues that tradition cannot be inherited, but it must be obtained by great labour (Eliot 1967, p. 49). Eliot's conception of tradition is based on a historical sense that

involves a perception, not only of the pastness of the past, but of its presence; the historical sense compels a man to write not merely with his own generation in his bones, but with a feeling that the whole of the literature of Europe from Homer and within it the whole of the literature of his own country has a simultaneous existence and composes simultaneous order. This historical sense, which is a sense of the timeless as well as of the temporal and of the timeless and of the temporal together, is what makes a writer traditional. (Eliot 1967, p. 49)

According to Eliot (1967), it is difficult to comprehend tradition without comprehending history—but, on the other hand, comprehending history does not mean, at the same time, comprehending tradition. Eliot emphasizes that the significance of a certain author is always measured in his relation to the dead authors. Thus, an author's work cannot be valued alone. The historical sense, which means an ability to see the past as part of the present time, is significant for the universality of authors' work. The historical sense includes the realms of both the historical and the ahistorical (as the works of art transcend historical categories).

The significance of the new work of art can be comprehended only in relation to the works of art in the past. The entire history of literature is a dynamic system, which is constantly reinterpreted and revalued in the context of tradition and innovations. Evaluation is a twofold process—on the one hand, it comprehends new literary texts in light of old ones and, on the other hand, it reevaluates older literary texts in the light of new ones. Works of art can be understood only within a wider historical

context. The present changes the past in the same way as the past influences the present time. According to Eliot, the poet must be aware that Shakespeare, Homer, or Dante are always significant—they are part of both of our present and our past.

Eliot's idea of tradition may be applied to European and political and legal studies. Political and legal concepts and ideas are historically produced and interpreted, and they reflect various traditions. The entire history of citizenship and identity is a dynamic system, which is constantly reinterpreted in the context of new movements, cultural multiplicity, and global political changes. For instance, the new value of political pluralism and cultural multiplicity requires breaking with old concepts of citizenship based on homogeneity and sameness. However, the significance of new concepts of identity and citizenship that celebrate difference and alterity can be comprehended only in relation to old concepts of citizen and alien.

Thus, the concept of 'tradition' employed within this study is not understood chronologically. The philosophical traditions of identity and citizenship that will be presented in the following lines include various narrative paradigms, which are part of both our past and our present. The impact of these traditions on the development of European identity and citizenship will be analysed in Chapters 2 and 3. It will be argued that both European identity and citizenship as narrative paradigms did not arise fortuitously. They are built on the remains of various traditions of identity and citizenship, perceived as different narrative paradigms. As Frank Kermode puts it:

Even where there is a profession or complete narrative anarchy (...) it seems that time will always reveal some congruence with a paradigm – provided always that there is in the work that necessary element of the customary which enables it to communicate at all. (Kermode 1967, p. 129)

Gadamer's idea of legitimate prejudices follows from a similar understanding of tradition. According to Gadamer, legitimate prejudices follow from the historicity of human beings and are embedded in the context of tradition, which makes understanding possible. Thus, legitimate prejudices represent the framework whereby we experience, encounter, and interpret the world. Gadamer rehabilitates tradition as a framework of

legitimate prejudices. He states: 'Understanding is not to be thought of so much as an action of one's subjectivity, but as the placing of oneself within a tradition, in which past and present are constantly fused' (Gadamer 1975, pp. 274–275). Hence, the interpretation of the text should always be put in the context of the tradition to which the interpreter belongs.

This hermeneutic situation is also a historical situation, since history influences understanding. 'The point of a genuinely hermeneutic relation to the past is our openness to its difference or autonomy from what we already believe and our willingness to be addressed by it' (Warnke 2002, p. 93). According to Gadamer, reason is also historical. All human beings are also historical beings whose understanding is based on prejudices inherited from tradition.

According to Paul Ricoeur: 'One aspect of the very idea of traditionality ... is that identity and difference are inextricably mixed together in it' (Ricoeur 1985, p. 20). The identity of style is characterized by the schematism of the narrative understanding, which is constituted through a cumulative and sedimented history. 'This is why this identity is transhistorical rather than atemporal' (Ricoeur 1985, p. 20). Tradition includes dialectics between innovation and sedimentation (Ricoeur 1985). It is to sedimentation that we ascribe the models that constitute the history of literary genres. But innovation also remains a rule-governed behaviour; the work of imagination does not come out of nowhere: 'It is tied in one way or another to the models handed down by tradition' (Ricoeur 1991a, p. 25).

Today, a wider global perspective also reveals interesting analogies with the idea of metamorphosis within both European and non-European traditions. The idea of metamorphosis in identity and citizenship traditions may be perceived as a metaphor of interchange among various political, philosophical, and cultural models. Metamorphosis applies also to the interplay between various identity and citizenship narratives, to the way in which those different narratives (from different traditions) are reinvented, revised, and rewritten into new narratives. Thus, metamorphosis is a metaphor of cross-culturalism and intertextuality (and palimpsest). Moreover, it is a metaphor of self-development and transformation. The meaning of the idea of metamorphosis as the basic trait of every tradition can be described as the result of the union of two couples of opposing categories: identity and difference and change and continuity.

The concept of metamorphosis within the idea of citizenship tradition unifies binary oppositions: citizen/alien, we/they, self/other, and so on.

Western metaphysics is based on binary oppositions, where opposed terms are not equally valued. One of the terms is dominant, while the other is subordinated and defined by the negation of dominant term. This conception of identity was strongly advocated by philosophers René Descartes and John Locke. Descartes defines a subject as a 'thinking thing.' He argues that rationality and consciousness¹ are the basic characteristics of all human beings. Consequently, binary oppositions arise: rational/irrational, mind/body, justice/care, conscious/unconscious, and so forth. Only the first terms in those binaries are considered human characteristics. Those individuals who represented the second terms of those binary oppositions were excluded from society and legal discourse.

Representatives of the Enlightenment equate human nature with rationality and define human beings as 'endowed with reason.' This point of view is the basis of the ethics of justice and the modernist notion of political equality. Rights are perceived as the same for all and applied to all in the same manner. In this way, the uniqueness of every human being is denied. The idea of the primacy of reason rejects different narratives and experiences that are culturally and socially produced. The Enlightenment's philosophy ascribed unity, coherence, and homogeneity to the concept of identity and, in this way, ignored the heterogeneity and disparities of a number of social groups and individuals.

Representatives of postmodern and poststructuralist thought are attempting to reconceptualize the rational tradition on which the Enlightenment is founded. They argue that this rational tradition has produced physical and political oppression. Women, workers, immigrants, and other social groups are marginalized and excluded in the name of 'sameness' and universal principles based on reason. Those social groups are excluded because they are considered different from rational, universal principles of law and human nature.

¹ 'Like most seventeenth-century thinkers, however, Descartes does not elaborate on the notion of consciousness, and in his case it seems difficult to determine precisely, on the basis of his writings, what kind of self-relation consciousness is. After Descartes, consciousness continued to be understood as a form of relating to one's own thoughts, but for the most part the concept itself was left unexplained' (Thiel 2011, pp. 48–49).

Although various models and traditions of identity and citizenship deal with various problems and questions, they all encompass the problem of inclusion and exclusion. It is an old problem, but with new developments and changes of societies in the contemporary era, this problem gains new perspectives. Postmodernism dismisses the ideal of a justice governed by reason that produces universality, coherence, and equality. It emphasizes the particularity and contextual embeddedness of truth and justice. It does not embrace grand narratives² but promotes the idea of constant reinterpretation. Consequently, it employs the notion of a more flexible and shifting identity.

Postmodern understanding of identity is crucial for access to certain rights in the European Union. Social groups should be understood as heterogeneous and fluid. This means that the modernist idea of heterogeneous social groups based on the modernist notion of fixed and essentialist identity should be rejected. Otherwise the obstacles to exercising rights remain for some European citizens. For instance, ‘older adults’ should not be perceived as a fixed, homogeneous social group, as this group consists of individuals who are representatives of various statuses such as gender, health, race, and educational level. All these elements should be taken into account in definitions of the rights and identity of ‘older adults’ to cross barriers to the exercise of citizenship.³ Nevertheless, the EU legal system is still based on a homogenous and fixed idea of identity that originates from modernist philosophy.

Identity is an open process. It is a dynamic hermeneutic category, which is constantly reinterpreted and reinvented. There are various philosophical traditions of *cogito*—some of them perceive it as the foundation of all knowledge and some of them perceive it as a mere illusion. In all these philosophical perspectives, the self is understood only through interpretation. The self is constituted as a narrative, as a text. Understanding oneself means understanding oneself in front of a text. The self is reinterpreted all over again in light of narratives provided by culture. The task of hermeneutics is not only understanding the subject, but also rethinking the subject.

² ‘Grand narrative’ is a totalizing explanation of historical, social, scientific, political, and other concepts and events.

³ See Chapter 3.

Postmodern hermeneutics of the subject rejects the idea of contemplative knower and objective knowing. An interpretative situation is oriented towards the text. The subject who interprets the text is perceived as decentred, polyphonic, and unstable. Postmodernism celebrates heterogeneity. Both subjects (social groups) and texts are perceived as heterogeneous. The heterogeneous character of social groups is explained by various narratives and experiences of the representatives of the group, which cannot be universalized and united into a single metanarrative. However, the heterogeneous character of the text is explained by intertextuality—the meaning of the text is always shaped by another text. Sometimes the reader is referencing a certain text by reading another. According to Eagleton, the heterogeneous character of postmodernism itself brings confusion:

If postmodernism covers everything from punk rock to the death of meta-narrative, fanzines to Foucault, then it is difficult to see how any single explanatory scheme could do justice to such a bizarrely heterogeneous entity. And if the creature is so diverse then it is hard to see how one could be in some simple sense either for or against it. (Eagleton 1996, p. 22)

However, this point of view is flawed since it cannot be argued that ‘postmodernism covers everything,’ as will be shown in this chapter.

2.2 Hermeneutic Approaches to Subjectivity

Michel Foucault identifies two main hermeneutic approaches to the subject in antiquity. One is *gnōthi seauton* (‘Know yourself’) and the other is *epimeleia heautou* (‘Care of the self’). The Cartesian approach requalified the *gnōthi seauton* and put the subject’s existence as a foundation of all knowledge and a ‘source of access to being’ (Foucault 2001, p. 14). Thus the Cartesian approach⁴ makes ‘Know yourself’ a fundamental principle

⁴“Cartesian moment” takes on its position and meaning at this point, without in any way wanting to say that it is the question of Descartes, that he was its inventor or that he was the first to do this. I think the modern age of the history of truth begins when knowledge itself and knowledge alone gives access to the truth. That is to say, it is when the philosopher (or the scientist, or simply someone who seeks the truth) can recognize the truth and have access to it in himself and

of the existence. This approach discloses the principle of care of the self. Greek, Hellenistic, and Roman cultures built the hermeneutics of subject on the principle of care. This hermeneutics included various practices, such as, ‘examination of conscience,’ meditation, and memorization, and it was based on the idea of ‘a complex, multifaced, and constantly changing framework of self-subjectivity’ (Menihan 2012). ‘Care of the self’ involves constant reinterpretation of the subject. Modern hermeneutics of the subject is based on the idea of a fixed, stable identity. Foucault reinterprets the theme of Goethe’s *Faust*, arguing ‘that there cannot be knowledge without a profound modification of the subject’s being’ (Foucault 2001, p. 27). This modification of the subject’s being is presupposed by the *epimeleia heautou* and is neglected by the modern hermeneutics of the subject.⁵

Modern hermeneutics of the subject starts with an observing consciousness as arbiter of the knowledge and world. Descartes’s *cogito ergo sum* and his ‘evil genius argument’⁶ reflect the interpretative situation in which the interpreter is not trying to genuinely understand the text, but is trying to rule out the possibility of deception. This hermeneutics is based on the idea that the data are detachable from theory and from the interpreter; that meanings are determined by correspondence with facts; that the language of science is exact and literal, and so forth. The interpretative situation aims towards the world ordering by the medium of language. In this way binary dichotomy is created between the subject (interpreter) and the world (the object of interpretation). However, this model of understanding is problematic, since

the world is not made up of ‘silent objects’ but of ‘other persons’ for whom the modes of manipulative understanding fall short. It fails most glaringly

solely through this activity of knowing, without anything else being demanded of him and without him having to change or alter his being or subject.’ (Foucault 2001, p. 17)

⁵These two hermeneutic approaches (*gnōthi seauton* and *epimeleia heautou*) represent the origin of two ethics—ethics of justice and ethics of care. The ethics of justice is the origin of policies that characterize the citizen as an independent, disembodied subject (Kittay et al. 2005). The ethics of justice based on modern hermeneutics of the subject presumes a self-sufficient, independent, atomistic individual (Sevenhuijsen 1998).

⁶This argument starts with a premise that if someone really knows that Y, then he can rule out the possibility that there is a powerful evil genius deceiving him about Y.

of course, in the hermeneutical situation, where one confronts, not some natural object that is silent about man and his world and in which one makes 'judgments' about, but rather an 'enworlded', 'embodied', linguistically mediated other, namely a text. (Strauss [n.d](#))

Modern hermeneutics has persisted in taking a stable, fixed, and conscious subject as its foundation. This hermeneutics does not leave room for otherness and difference. In Chapters [4](#) and [5](#) it will be examined whether European law reflects modernist hermeneutics, which perceives citizens as silent objects, not as subjects, and excludes otherness and difference.

2.2.1 The Modernist Conception of Identity: Descartes's and Locke's Accounts of Identity

The Enlightenment is a complex project and has many aspects, thus leaving room for various interpretations. For example, John Gray identifies the Enlightenment with the works of Bacon, Hobbes, Descartes, Locke, Kant, and Gibbon (Schmidt [2000](#), p. 738). However, Bacon, Hobbes, and Descartes are not considered representatives of the Enlightenment by the majority of philosophers and historians. Some thinkers equate the Enlightenment with rationalism '(but David Hume criticized reason and explored the sentiments); for some it meant optimism about human nature (but Voltaire was wickedly sceptical about many human qualities); for others it meant science (but Rousseau was hardly a friend of science)' (Wilson [1993](#), p. 196).

Although the Enlightenment project is controversial and complex, it employs a single conception of the truth. The Enlightenment advocates the idea of the correspondence theory of truth.

On such a conception, truth is a property which a statement has in virtue of a relation of correspondence that holds between the statement and the way the world is. A statement is true just in case what the statement claims to be the case is in fact the case. The relation of correspondence is, therefore, a relation between the language and reality. For it is a relation between a statement couched in a language and an extralinguistic state of affairs that obtains in reality. (Sankey [2002](#), p. 67)

The correspondence theory of truth aims to define the essence of things on which the idea of identity is built. Therefore, it produces categories and hierarchies, putting many different individuals into one category.⁷ In this way uniformization and homogenization are produced.

The Enlightenment's notion of identity is founded on the idea of a stable, conscious subject who has inherent or natural rights. However, philosophers of the seventeenth and eighteenth centuries do not make a clear distinction between the issue of identity and the problem of individuation (Thiel 2011, p. 18). The question about individuation 'is about what it is that makes an individual the individual that is, and distinguishes it from all other individuals of the same kind. (...) The question about identity, by contrast, concerns the requirements for an individual's remaining the same through time and partial change' (Thiel 2011, p. 18). Within the framework of the Enlightenment theory, the self is perceived as a unified, stable, and coherent category. Descartes's philosophy is often considered the foundation of this idea of subject.

Descartes's philosophy is significant as it was a challenge to the authorities of a feudal age. Descartes argues that any rational man can discover truth, not only wise sovereigns and priests who interpret God's will (St. Pierre 2000, p. 494). Descartes's philosophy represents the foundation of modern Western philosophy, in particular, his privileging of reason over nature, his search for metaphysical foundations, and his conception of a man as a rational, conscious being who uncovers true knowledge about the world (St. Pierre 2000, p. 494).

René Descartes employs the method of 'systematic doubt' to examine all knowledge—his goal being to arrive at firm, certain knowledge. Descartes argues that all that he accepted as true stemmed from the senses. However, Descartes found that the senses deceive, and that is why they cannot be trusted. Descartes argues that his method shows him that only one thing is certain: the subject who thinks.⁸ He states:

⁷For example, many very different people are slotted into the category of woman and their differences across the other identity categories—race, class, ethnicity, sexual orientation, age, wellness, and so on, are subsumed under the essence of a single identity category, gender, in an attempt to produce order and regularity' (St. Pierre 2000, p. 481).

⁸Descartes concludes: *Cogito ergo sum!*

I noticed that, during the time I wanted this to think that everything was false, it was necessary that I, who thought this, must be something. And noticed that this truth – I think, therefore I am – was so firm and so certain that the most extravagant suppositions of the sceptics were unable to shake it, I judge that I could accept it without scruple as the first principle of the philosophy I was seeking. (Descartes 1993, p. 19)

Descartes emphasizes that insofar as he is thinking or doubting, he cannot be deceived about his existence. He states: ‘But what then am I? A thing that thinks. What is that? A thing that doubts, understands, affirms, denies, is willing, is unwilling, and also imagines and has sensory perceptions’ (Descartes 1993, p. 19).

The proposition ‘I exist’ cannot be false in any possible context, otherwise he could not think of it. Descartes ascribes the unquestionable certainty to consciousness.⁹ He makes a sharp distinction between soul (*res cogitans*) and body (*res extensa*).¹⁰ According to Descartes, the mind is conscious, thinking substance, which does not extend through space and time. On the other hand, the body is extended, but non-conscious. Descartes makes sharp binary oppositions between extended and unextended, conscious and unconscious, which according to him cannot exist at the same time. According to Descartes, the self can exist without the body. For Descartes body and soul are related as two independent substances; they are not related as soul and matter (Thiel 2011, p. 38). However, the identity of the human body depends on its unity with the same soul.¹¹ For instance, some body parts can be replaced or lost without affecting the individual’s identity.

According to Descartes, the soul is complete and independent substance. Descartes only defines the identity of the human soul, but he does not take into account its individuality. ‘Although Aquinas too argues that the human soul is incorporeal, subsistent, and indestructible, he still

⁹ ‘By the term *conscious experience (cogitationis)* Descartes understands “everything that takes place within ourselves so that we are aware of it” (Ricoeur 1974a, p. 101).

¹⁰ However, Descartes expresses the belief that body and soul are linked: ‘I am not merely present in my body as a sailor is present in a ship, but that I am very closely joined, and, as it were, intermingled with it, so that I and the body form a unit’ (*The Philosophical* 1984, p. 56).

¹¹ This point of view was common throughout the seventeenth century, and it is derived from the Scholastic tradition.

thinks of it as a form, and not, as does Descartes, as a complete substance in itself' (Thiel 2011, p. 38). According to Aquinas, soul alone cannot constitute the human being or person, Descartes argues that the self remains the same with or without the body (Thiel 2011, p. 38). In this way, the self is equated with the soul. Descartes defines the soul (or mind or self) as a thinking thing (*res cogitans*). He emphasizes that the mind does not change if thoughts change: 'For even if all the accidents of the mind change, so that it has different objects of the understanding and different desires and sensations, it does not on that account become a different mind' (*The Philosophical* 1984, p. 10). Descartes accounts for the unitary concept of the self, which is homogeneous and fixed. Descartes's distinction between the soul and the body produces a number of binary oppositions, such as objective/subjective, self/other, and human/non-human.

Descartes argues for a coherent, autonomous, rational, and conscious self. He derives knowledge from this idea of the thinking subject and emphasizes the difference between the rational, conscious, unified, and knowing subject, on the one hand, and an object, on the other. Descartes's epistemology is based on the idea of the superiority of the mind. He separates the observer from the observed, subject from the object, and reader from the text. According to Descartes, the phenomenal world is external to the subject. Thus it can only be approached through the subject's understanding of itself.

John Locke's idea of identity also implies various binary oppositions. However, unlike Descartes, Locke makes a distinction between the soul and consciousness. In Chapter 27 ('Of Identity and Diversity') of his *Essay Concerning Human Understanding*, Vol. 1, Locke also makes a sharp distinction between identity and diversity.¹² As already argued, Descartes leaves aside the question of individuation, and he is mostly concerned with identity issues. Unlike Descartes, Locke takes into account the question of individuation (i.e., *principium individuationis*) (Locke 1836, p. 221).

¹²'For we never finding, nor conceiving it possible, that two things of the same kind should exist in the same place at the same time, we rightly conclude, that, whatever exists anywhere at any time, excludes all of the same kind, and is there itself alone. (...) That, therefore, that had one beginning, is the same thing; and that which had a different beginning in time and place from that, is not the same, but diverse' (Locke 1836, p. 220).

However, in some parts of his *Essay Concerning Human Understanding*, Locke equates the concept of 'identity' with the concept of 'individuation,' which makes the terminology that he employs unclear. He defines the *principium individuationis* in the same way he defines the identity, as 'existence itself; which determines a being of any sort to a particular time and place, incommunicable to two beings of the same kind' (Locke 1836, p. 221).

To explain his idea of identity, Locke argues that the ideas of 'human being,' 'person,' and 'substance' (or soul) should be explained. 'Man' is compared by Locke with animals as 'a living organized body' (Locke 1836, p. 225). Locke defines a 'person' as a 'thinking intelligent being' endowed with reflection and reason. He emphasizes that this thinking being can consider itself as the same being in different times and places only if the consciousness is not separated from thinking (Locke 1836, p. 225). Locke emphasizes that these three entities (human being, person, and soul) are ontologically distinct, as they differ from one another considering their identity conditions (Lin 2005, p. 243). In short, Locke regards these three entities as three 'different abstract ideas under which we may consider the human subject' (Thiel 2011, p. 109).

According to Locke, the identity of human being and soul persists even if total memory loss occurs. Nevertheless, the same cannot be argued about the identity of 'person' (Lin 2005, p. 243). When Locke writes about personal identity, he finally explains his idea of individuation, which he defines as based on consciousness, which makes the self. Consciousness gives the individual authenticity and distinguishes it from all other individuals of the same kind. An individual identifies herself or himself as the same self through consciousness (memories) of the prior events. Locke posits the self by equating it with the continuity of consciousness, which is independent of reliance on any kind of substance. He does not make a sharp distinction between the soul and body. Unlike Descartes, Locke perceives the self as both the body and the mind. He argues that consciousness is inseparable from thinking.

Consciousness unites actions, thoughts, and experiences within the same person. According to Locke, 'for as far as any intelligent being can repeat the idea of any past action with the same consciousness it had of it at first, and with the same consciousness it has of any present action; so far

it is the same personal self' (Locke 1836, p. 226). Subsequently, the self can be defined as a 'sameness of a rational being' (Locke 1975, p. 322). According to Locke, the limits of the self are the limits of consciousness. Locke excludes irrational, unconscious,¹³ and imaginary aspects of the self. He is aware that consciousness may be interrupted in sleep, having no thoughts, or by forgetfulness and by losing memories of certain past actions. According to Locke, these examples are not inconsistent with his conception of personal identity:

I say, in all these cases, our consciousness being interrupted, and we losing the sight of our past selves, doubts are raised whether we are the same thinking thing, i.e. the same substance or no. Which, however reasonable or unreasonable, concerns not personal identity at all. The question being what makes the same person; and not whether it be the same identical substance, which always thinks in the same person, which, in this case, matters not at all. (Locke 1836, p. 226)

Locke argues that consciousness unites actions that are remote in time, as it does with the present actions, within the same person. The self does not depend on substance, but merely on consciousness. When one part of the body is separate from another, it is the consciousness that makes the same person (Locke 1836, p. 230). Thus, personal identity consists of the identity of consciousness, not of the identity of substance (body or soul). In this way, by positing the self independently of the soul, Locke leaves room for multiple identities. However, even those multiple identities remain fixed and static, as Locke emphasizes that nothing but a consciousness can unite different experiences in the same person. Locke does not identify the changeability of the individual, which is never exactly the same. Locke argues that if identity included the possibility of fluidness and dynamism, the distinction between 'sameness' and 'difference' would not be possible.

In the seventeenth century, when Locke wrote his major works, the concept of 'unconsciousness' was not scientifically developed. According to Locke, the

¹³ However, it should be emphasized that the unconscious aspect of the self was not discovered until the twentieth century and Freud's theory.

self is limited by the consciousness, which excludes the domain of irrational and unconscious.¹⁴ However, Locke is aware of the unconscious part of the psyche:

But is not a man drunk and sober the same person? Why else is he punished for the fact he commits when drunk, though he be never afterwards conscious of it? Just as much the same person as a man that walks, and does other things in his sleep, is the same person, and is answerable for any mischief he shall do in it. Human laws punish both, with a justice suitable to their way of knowledge; – because, in these cases, they cannot distinguish certainly what is real, what counterfeit: and so the ignorance in drunkenness or sleep is not admitted as a plea. For, though punishment be annexed to personality, and personality to consciousness, and the drunkard perhaps be not conscious of what he did, yet human judicatures justly punish him; because the fact is proved against him, but want of consciousness cannot be proved for him. (Locke 1836, p. 251)

The concept of ‘unconscious’ was developed by eighteenth- and nineteenth-century romantic philosophers, poets, and writers, such as Friedrich Schelling, S. T. Coleridge, and E. T. A. Hoffmann. However, the concept was further explored and popularized in the twentieth century by Sigmund Freud, the father of psychoanalysis.

The consequence of Descartes’s and Locke’s ideas of a rational, coherent, and conscious self is the creation of the concept of citizen as a political atom. Political atomism arose in the seventeenth century in the theories of Grotius, Pufendorf, Locke, and others. Premodern ideas of identity understood the human agent as an element in a meaningful cosmic order (Taylor 1992, p. 193). The modern idea of subjectivity disengages the individual from cosmic order and equates individual with the self (mind, soul, consciousness, *ratio*, etc.).

¹⁴The unconscious mind includes affects, memories, and other thoughtful process that are not controlled by reason. The unconscious phenomena include: subliminal perceptions, repressed feelings, complexes, hidden desires, and phobias. The unconscious processes are manifested in dreams, vision, imagination, jokes, slips of tongue, and so forth.

2.3 The Critique of the Modernist Idea of Subjectivity: Hume and Feminist Thinkers on Identity

Feminist authors such as Genevieve Lloyd and Susan Bordo argue that Hume's philosophy celebrates all capacities of human mind: imagination (memory), passion (sentiment), and intellect (Sukhu 2010). Unlike Descartes and other modernist humanist philosophers, Hume does not make a sharp distinction between mind and body. Hume integrates intellect, imagination, and passion—mind and body (Lloyd 2000). He rejects the idea of totalizing, universalizing transcendental rationality. Consequently, Hume reconstructs a modernist notion of reason.

David Hume argues that all important questions concerning personal identity cannot be decided, and they should 'be regarded rather as grammatical than as philosophical difficulties' (Hume 1896, p. 139). Hume criticizes philosophers who perceive the self as sameness, and who argue that an individual is 'intimately conscious' of the self (Hume 1896, p. 151). David Hume emphasizes that the self cannot be considered as the individual's consciousness (memory) nor impression as they are changeable. 'It cannot, therefore, be from any of these impressions, or from any other, that the idea of self is deriv'd; and consequently there is no such idea' (Hume 1896, p. 134).

Hume compares the human mind with the theatre, where different perceptions and impressions take place and actors constantly change (Hume 1896, p. 134). He argues that men, animals, and plants are in constant change, yet the same identity is attributed to them. This 'identity' proceeds from imagination:

The identity, which we ascribe to the mind of man, is only a fictitious one, and of a like kind with that which we ascribe to vegetables and animal bodies. It cannot, therefore, have a different origin, but must proceed from a like operation of the imagination upon like objects. (Hume 1896, p. 137)

Hume perceives the self as a number of various impressions united by imagination. He argues that all ideas are derived from impressions. As impressions are variable and non-persisting, it follows that the knowl-

edge about the 'self' cannot be obtained. In the same manner, it can be argued that there is no 'self' at all.

The other element that produces identity is memory, which produces the relation of resemblance between the perceptions and impressions (Hume 1896, p. 138). However, there are many past actions of which we have no memory. Thus Hume argues that identity should be extended beyond memory. Nevertheless, he does not offer any solution of the problem of identity, but concludes that 'all disputes concerning the identity (...) are merely verbal' (Hume 1896, p. 139). Hume also analyses why philosophers often consider the self existent. He argues that these philosophers perceive the self as sameness. According to Hume, the self is in constant flux, it is dynamic, and it is always made of different impressions and perceptions. That is why its identity is always questionable.

David Hume takes a different view of the notion of subject and of the status of Descartes's idea of certain knowledge. However, Hume's conception of subjectivity does not alter Descartes's and Locke's point of observing consciousness as arbiter of 'truth.' Descartes, Locke, Kant, and Hume place man at the centre of a world, of which he is the judge. Man gives the context to the world and controls the nature.

From this has arisen modern subject centered, consciousness-oriented, verifiability-seeking philosophies with their consequent misconception of man, language, and the world, and their technologized conceptions of understanding and interpretation. (Strauss, n.d)

However, this conception excludes the other.¹⁵ Hume does not disregard emotions and senses, which are considered separate from reason and

¹⁵The quest for objectivity dominates Western thought in the nineteenth and twentieth centuries as well. Positivism was found by Auguste Comte in the first half of the nineteenth century. Its main characteristic is methodological monism. The proponents of positivism argue about the universality of the method employed in natural sciences. Consequently, they claim that this method should be applied to humanities as well. The philosophers and historians who accept this idea argue about the unity of scientific method. They ignore the subjective experience and argue that scientific explanation is a 'causal' explanation. Logical positivism of 1920s and 1930s advocates ideas different from positivism. Nevertheless, logical positivism has been in the spirit of positivism. The contributors of analytical philosophy argue that the whole human knowledge can be reduced to logical or scientific explanations. They argue about the elimination of metaphysics and subjective experience and advocate methodological monism.

ascribed to femininity. He moves away from the patriarchal epistemology established by Descartes. With Descartes, reason became associated with humanity. Descartes establishes binary opposition between ‘rational man’ and ‘irrational woman’ within humanity. In this way, women became invisible and unknowable within the masculine epistemology (Sukhu 2010).

Nevertheless, the idea of reason that is associated with masculinity and binary oppositions such as soul/body, culture/nature male/female, and reason/emotion do not originate with Descartes. These binaries, whose first term was associated with ‘male’ and second with ‘female,’ can be traced back to Ancient Greek philosophy. Nevertheless, with Descartes, reason becomes the foundation of the method for obtaining certainty (Lloyd 1993). In his search for the ‘clear and distinct ideas,’ Descartes abandons the imaginative, the sensuous, and the emotional and creates polarizations—reason *versus* imagination, intellect *versus* the emotions, and mind *versus* matter (Lloyd 2000, p. 57).

Hume’s philosophy may serve as a foundation of epistemology ‘more hospitable to female presence’ (Lloyd 2000, p. 57). If we ‘follow Humean philosophy, which locates the source of knowledge in the senses, and unifies mind and body, then women become knowable, and reasoning beings’ (Sukhu 2010). According to Hume, conceptions of knowledge are socially constructed. He argues:

Custom, then, is the great guide of human life. It is that principle alone which renders our experience useful to us, and makes us expect, for the future, a similar train of events with those which have appeared in the past. Without the influence of custom, we should be entirely ignorant of every matter of fact beyond what is immediately present to the memory and senses. We should never know how to adjust means to ends, or to employ our natural powers in the production of any effect. There would be an end at once of all action, as well as of the chief part of speculation. (Hume 1896, p. 45)

From this point of view, it can be concluded that identities are also socially constructed (i.e., they are dependent on habitual perception).

Poststructuralist¹⁶ feminist authors also argue that subjectivity is constructed. ‘Subjectivity is produced in a whole range of discursive

¹⁶This term is polyphonic. It does not have fixed meaning, but it includes a range of theoretical positions, presented in the work of Jacques Derrida, Julia Kristeva, Jacques Lacan, Louis Althusser,

practices—economic, social and political—the meanings of which are a constant site of struggle over power’ (Weedon 1987, p. 173). Unlike the modernist idea of unified, knowing, and conscious subject, postmodernism perceives subjectivity as a site of conflict, disunity, and constant change (Weedon 1987). Subjectivity is produced historically, culturally, and politically. Both poststructuralism and feminism, in all its forms, are concerned with subjectivity.

The recent feminist movement began with the politics of the personal, challenging the unified, apparently ungendered individual of liberalism and suggesting that, in its gender blindness, liberal humanism makes structures of male privilege and domination. Poststructuralism, too, has been anxious to deconstruct the liberal-humanist subject in order to theorize how meanings are produced, how they are effective, why they conflict and how they change. (Weedon 1987, p. 173)

Poststructuralist feminist authors argue that oppression of women can be perceived in symbolic terms, which binary oppositions reflect. Luce Irigaray, Jacques Lacan, and Julia Kristeva emphasize that the binary opposition man/woman reflects the fact that women are excluded from the symbolic order and reflected as ‘man’s other.’ Luce Irigaray argues that the neutral subject of Western discourse refers only to masculine, excluding the feminine. Women are excluded as autonomous subjects from legal discourse, public domain, and entire social existence (Irigaray 1985). Irigaray emphasizes that women were excluded from both philosophy and psychoanalytic theory.

Modern philosophers perceive the ‘self’ as conscious, rational, and stable. However, this notion of the self is associated with ‘male.’ Irigaray focuses particularly on philosophy as the master discourse. In her *Speculum of the Other Woman* (1985), Irigaray demonstrates how philosophical discourse from ancient times creates metaphysical, ontological, and epistemological truths from the male perspective (Donovan 2005). The same can be argued for psychoanalysis, which derives subjectivity and entire human experience by relying on the male model. Irigaray suggests reconstruction of binary oppositions, such as male/female, soul/body, culture/

Michel Foucault, and so on. Although there are different forms of poststructuralism, they share certain assumptions about subjectivity, meaning, and language.

nature, identity/difference, rational/irrational. Irigaray argues that both terms should be reinterpreted. Social change will not occur if women merely step over the line of the second term in those binary oppositions into the first one. Both terms in these binary oppositions require reconstruction. 'Irigaray believes that the social change will not occur only if society challenges its perception of nature as unthinking matter to be dominated and controlled. Thus, while women must attain subjectivity, men must become more embodied' (Donovan 2005).

Binary oppositions that exist in Western law and discourse are not ahistorical, universal, or fixed but constructed (Scott 1988). Joan W. Scott and many other representatives of feminism argue that politics represents a gendered concept, where gender is socially constructed (Scott 1988). However, the problem with this definition is that gender is as determined and fixed as it was under the biology-is-destiny formulation (Butler 1997). In this case, culture becomes destiny. As Judith Butler correctly identifies, the meaning of the term 'construction' is controversial. Construction can imply another kind of determinism—a social determinism that can be opposed to biological determinism.

In some accounts, the notion that gender is constructed suggests a certain determinism of gender meanings inscribed on automatically differentiated bodies, where those bodies are understood as passive recipients of inexorable cultural law. When the relevant 'culture' that 'constructs' gender is understood in terms of such law or set of laws, then it seems that gender is determined and fixed as it was under the biology-is-destiny formulation. In such a case, not biology, but culture, becomes destiny. (Butler 1997, p. 281)

This is also the main obstacle of any analytical method based on the social and cultural constructivism that aims to replace essentialism.¹⁷ It is contradictory and points to the essentialism of another kind. This was well perceived by Wieringa (1998) who argues that constructivism creates new metaphysics of binary oppositions that are no less oppressive than the Western metaphysical binary oppositions

¹⁷Although originating from classical philosophy, the concept of 'essentialism' is used in the multi-cultural and postmodern theories as a signifier of uniform, monocultural, and homogenous visions of identity.

that were described by Derrida. ‘However, a “strong” constructivism which rejects any mention of the body (...) as essentialist falls prey to reinforcing the binary opposition between the body and the social which constructivism set out to criticize in the first place’ (Wieringa 1998, p. 366). She argues that binary oppositions between body and mind, between nature and culture, and essentialism and constructivism need to be deconstructed. On the other hand she implicitly employs the binary opposition between women and men, which reflects new power relations, when she, implicitly, excludes men from the ‘gender project’ (Wieringa 1998, p. 368). In this way the new metaphysics and new symbolic oppression are created, where ‘female’ has priority over ‘male.’

The feminist critique of ‘reason’ is not monolithic, as different scholars define reason differently. However, the feminist authors agree that Western culture ascribes reason to men. The Humean and feminist account on identity can be applied to analysing European family and non-discriminative law, which will be presented in Chapter 4.

2.4 Paul Ricoeur’s Hermeneutics of Suspicion as a Critique of the Modernist Concept of Identity

The symbolic oppression originates from the idea of fixed and stable identity, defined by binary hierarchies. This understanding of identity is dominant in the European philosophy and culture. Binary oppositions such as nature/culture, male/female, reason/emotion, and so on, are mostly reexamined by Lévi-Strauss (1963). Lévi-Strauss argues that mythical thought consists of binary oppositions, which can be considered its basic elements. The entire idea of myth can be compared to the idea of explanation. Myth represents logic, which aims to overcome contradiction posed by opponent dichotomies. According to Lévi-Strauss, binaries are universal. The distinction between day and night, male and female, life and death, good and bad, and so on, are made in all human societies,

regardless of historical period and geographical space. Binary oppositions can be found in proverbs, folktales, riddles,¹⁸ even in courses.¹⁹

The presence of binary oppositions is the most evident in the religious phenomenology, and the most prominent is the distinction between the 'physical' and 'spiritual.' According to C. G. Jung, all binaries are 'brothers-in-arms' as the one often converts into another (Jung 1991, p. 212). According to Jean Baudrillard, those binary oppositions are resolved within the domain of the symbolic.

What Baudrillard calls 'the symbolic' (...) puts an end to all disjunctions between life and death, soul and body, humans and nature, the real and non-real. 'The symbolic' refers to a mode of thought beyond the binary oppositions of the terms of Western metaphysics and rationality, and in symbolic operations. These terms lose their distinctiveness and penetrate each other (...) He claims that all such metaphysical divisions contain the projection of an imaginary by its opposite by the privileged term. Thus, in the partition human/nature, nature (objective, material) is only the imaginary of the human thus conceptualized. (...) Each term of the disjunction excludes the other which becomes its imaginary. (Kellner 1989, p. 105)

According to Derrida the entire Western thought is logocentric. Logocentrism²⁰ gives priority to identity over the difference. Derrida argues that binary oppositions are not ahistorical or fixed, but constructed.

We need a refusal of fixed permanent quality of binary oppositions, a genuine historization and deconstruction of the terms (...) We must find ways (however imperfect) continually to subject our categories of criticism, our analyzes to self-criticism. If we employ Jacques Derrida's definition of deconstruction, this criticism means analysing in context the way any

¹⁸ The example of the oppositional riddle includes: 'I am rough, I am smooth; I am wet, I am dry; my station is low, my title high; my king my lawful master is; I'm used by all, though only his. (Highway)' (Dundes 1997, p. 47).

¹⁹ For example, 'You should have lockjaw and seasickness at the same time' (Dundes 1997, p. 47).

²⁰ According to Derrida, logocentrism is the main characteristic of Western thought. It associates philosophical discourse with *logos* (reason, law). Logocentrism gives priority to identity over difference and speech over the written word. Thus, logocentrism expresses priority of the signified over the signifier, which means priority of presence/speech over absence/writing.

binary opposition operates, reversing and displacing its hierarchical construction, rather than accepting it as real or self-evident or in the nature of things. (Scott 1988, p. 40–41)

Opposition between binary oppositions is contextually defined and constantly reconstructed.

Paul Ricoeur identifies three thinkers who question the hierarchy represented by binary oppositions, which arose from the idea of fixed, rational identity. He argues that those three thinkers represent hermeneutics of suspicion²¹ and attack the illusion of self-consciousness.²² Ricoeur identifies the conflict of interpretations represented by two different hermeneutics: on the one pole, there is the hermeneutics of suspicion, which demystifies the illusions of consciousness; on the other, there is the hermeneutics of faith, which aims at recovering and restoring the meanings of symbols (Ricoeur 1970).

Paul Ricoeur argues that there are two main meanings of identity, depending on whether one understands ‘identical’ as the equivalent of the Latin *ipse* or *idem* (Ricoeur 1992, p. 2). Ricoeur’s conception of narrative identity is based on the distinction between identity as sameness (*idem*) and identity as selfhood (*ipse*).²³ Each form of identity represents a different mode of permanence in time. *Idem*-identity depicts permanence of some qualities in time, and it includes numerical identity, qualitative identity, continuity, and permanence in time (Ricoeur 1991c). On the other hand, *idem*-identity is based on the capacity of the self to affirm its identity despite changes (Kaufmann 2010, p. 16). Thus *idem-identity* may be comprehended as a contingent category. Understood in this

²¹The hermeneutics of suspicion may be considered as hermeneutics of demystification.

²²According to Ricoeur, ‘We still pay too much attention to their differences, i.e., to the limitations which are the prejudices of their time imposed on these three thinkers: and we are, above all, still victims of the scholasticism in which their epigones have enclosed him. Marx is thus relegated to Marxist economism and to the absurd theory of consciousness as reflex, while Nietzsche is associated with biologism if not with an apology of violence, and Freud is confined with psychiatry and dressed up with simplistic pansexualism’ (Ricoeur 1974b, p. 148).

²³‘The equivocalness of identity concerns our title [*Oneself as Another*] through the partial synonymy, in French at least, between “same” (*même*) and “identical.” In its diverse uses, “same” (*même*) is used in the context of comparison; its contraries are “other”, “contrary”, “distinct”, “diverse”, “unequal”, “inverse”. The weight of this comparative use of the term “same” seems so great to me that I shall henceforth take sameness as synonymous with *idem*-identity and shall oppose to it selfhood (*ipseity*) understood as *ipse*-identity’ (Ricoeur 1992, pp. 2–3).

sense, *ipse*-identity is (1) inherently relational, because it is constructed in combination with an environment, and (2) fluid and dynamic, because this construction is an ongoing process as the environment changes (Hildebrandt 2008, p. 330). This notion of identity substantively differs from the modernist notion of identity as a fixed, essentialist category.

Ricoeur argues that in all philosophies of the subject, the subject is formulated in the first person. There are various definitions of the *I* within the framework of different philosophies of subject. However, they are all 'equivalent to "philosophies of cogito,"' according to Ricoeur, as in all these philosophies the subject is *I* (Ricoeur 1992, p. 4). To bring out the problematic of the self and of the binary opposition self/other, Ricoeur formulates the 'hermeneutics of the self,' which is 'placed at an equal distance from the apology of the cogito and from its overthrow' (Ricoeur 1992, p. 4). Ricoeur's hermeneutics of the self includes the dialectic between *idem*-identity and *ipse*-identity. Unlike Descartes, who initiated the modern tradition, Ricoeur argues that there is no immediate access to the cogito or unmediated self-understanding. 'There is no self-understanding that is not mediated by signs, symbols and texts; in the final analysis self-understanding coincides with the interpretation given to these mediating terms' (Ricoeur 1991b, p. 15).

According to Ricoeur, Descartes's cogito has to be mediated by the works, actions, ideas, monuments, and institutions that objectify it. Ego must lose and again find itself in these objects, understood in the broadest sense (Ricoeur 1992). According to Ricoeur, Descartes's first truth, *cogito ergo sum*, remains abstract as it does not answer the question 'of knowing what I am' (Ricoeur 1992, p. 7). Ricoeur states: 'But I do not yet understand well enough who I am—I who now necessarily exist' (Ricoeur 1992, p. 7). Ricoeur identifies 'the gap between "I" of *I am* and "I" of *I think*' (Murakami 2003, p. 19).

Ricoeur calls Descartes's philosophy of subject, 'shattered cogito,' which is best expressed by Nietzsche's philosophy (Ricoeur 1992, pp. 11–16). Nietzsche rejects the certainty of the Cartesian cogito, and argues that cogito is an illusion. Ricoeur articulates his hermeneutics of the self 'within the context of the history of the philosophy of the subject' (Reagan 2002, p. 4). According to Charles E. Reagan:

One of the most important dialectics in Ricoeur's philosophy is between the auto-foundational claims of idealistic philosophers of the self, such as

Descartes's and Husserl's, and the skeptical philosophies of the 'masters of suspicion,' Nietzsche, Marx, and Freud. (Reagan 2002, p. 5)

According to Ricoeur, Marx, Nietzsche, and Freud question consciousness itself. Ricoeur emphasizes that these three masters of suspicion should be understood 'as three masters of skepticism' (Ricoeur 1970, p. 33). According to Ricoeur:

The philosopher trained in the school of Descartes knows that things are doubtful, that they are not what they appear to be. But he never doubts that consciousness is at it appears to itself. In consciousness, meaning and consciousness of meaning coincide. Since Marx, Nietzsche and Freud, however, we doubt even this. After doubting the thing, we have begun to doubt consciousness. (Ricoeur 1974b, p. 148)

These authors pose the novel problem of 'consciousness as a lie' (Ricoeur 1974a, p. 99).

Ricoeur argues that Marx, Nietzsche, and Freud uncover false consciousness through an exegesis of meaning (Ricoeur 1974b, p. 149). In other words:

Descartes triumphed over the doubt as to things by the evidence of consciousness; they triumph over the doubt as to consciousness by an exegesis of meaning. Beginning with them, understanding is hermeneutics: henceforward, to seek meaning is no longer to spell out the consciousness of meaning, but to *decipher its expressions*. (Ricoeur 1970, p. 33)

They emphasize that a new relationship has to be established between the apparent and the latent, because consciousness is not what it seems to be.

Nietzsche attempts to demystify the unconsciousness through his conception of ethics and idea of 'the will to power'; Marx uncovers the 'unconsciousness' through his concept of social being and the problem of ideology; and Freud reveals the unconscious by his analysis of dreams and neurotic symptoms. They all reveal illusions of reality and emphasize the importance of interpretation, which makes our world. Marxist ideology is based on grand narrative, which criticizes the idea of subject based on

rationality and consciousness, relying on historical analysis of economic factors, class struggles, and production. The subject of Marxist ideology is not an abstract being, which is independent of social sphere.

According to Marxist theory, the subject is produced by social and historical circumstances. Consequently, beliefs, attitudes, and purposes are also socially and historically constructed. Hence, the subject cannot be described by universalist and rationalist theory. Marx aims at liberating praxis from the bondage of religion. According to Marx, religion ‘is the opium of the people’ (Marx 1974, p. 244). Religion creates illusions and makes people believe that the miseries of life must be borne with dignity, because salvation and glory await in eternal life (Itao 2010, p. 6). Marx argues about the necessity of liberalization and elimination of religion and life’s miseries.

Freud’s concept of subject also represents the critique of Cartesian cogito. Freud criticizes the idea of the autonomy of consciousness, relying on his analysis of dreams and neurotic symptoms. According to Freud, the subject is founded on the unconsciousness. In this way he rejects the idea of coherent, rational, autonomous, and stable identity. Freud emphasizes irrational and unconscious aspects as crucial aspects of identity. He unmasks religion as men’s inner ‘nostalgia for the father,’ which indicates ‘desire for protection and consolidation’ (Ricoeur 1974c, p. 459).

Nietzsche argues that it is an illusion that reason discovers the truth. He does not identify personal identity with rational faculty or with any act of consciousness, but with ‘will to power.’ This illusion comes from our formation of concepts. According to Nietzsche, ‘every concept originates through our equating what is unequal’ (Nietzsche 1873, p. 3). He argues that the concept is obtained by overlooking what the actual and individual is.²⁴ According to Nietzsche, our truth in fact is

²⁴ Nietzsche gives the following example: ‘No leaf ever wholly equals another, and the concept “leaf” is formed through an arbitrary abstraction from these individual differences, through forgetting the distinctions; and now it gives rise to the idea that in nature there might be something besides the leaves which would be “leaf”—some kind of original form after which all leaves have been woven, marked, copied, colored, curled, and painted, but by unskilled hands, so that no copy turned out to be a correct, reliable, and faithful image of the original form’ (Nietzsche 1873, p. 3).

a mobile army of metaphors, metonyms, and anthropomorphisms – in short, a sum of human relations which have been enhanced, transposed, and embellished poetically and rhetorically, and which after long use seem firm, canonical, and obligatory to a people: truths are illusions about which one has forgotten that this is what they are: metaphors which are worn out and without sensuous power; coins which have lost their pictures and now matter only as a metal, no longer as coins. (Nietzsche 1873, p. 3)

Nietzsche rejects every idea of the absolute truth. He doubts even the subject itself (i.e., Descartes's *cogito*). He also unmasks religion. Nietzsche argues about the necessity of increasing man's power. According to Nietzsche, religion discourages men from attaining power and encourages them to be contented in humility, submissiveness, weakness, and fragility (Itao 2010, p. 6).

Marx's, Nietzsche's, and Freud's theories may be understood as 'procedures of demystification' (Ricoeur 1970, p. 34). These thinkers question philosophies of subjectivity, based on unitary concepts. They argue that the idea of some kind of abstract consciousness that knows the world is a fiction. These three authors do not destroy the idea of consciousness, but they aim to extend it. What Marx, Nietzsche, and Freud 'attempted, in different ways, was to make their "conscious" methods of deciphering coincide with the "unconscious" *work* of ciphering which they attributed to the will to power, to social being, to the unconscious psychism' (Ricoeur 1970, p. 34). However, some of those protagonists of the hermeneutics of suspicion create another metaphysics. Freud gives priority to unconscious and irrational aspects of the psyche and creates new metaphysics—metaphysics of unconscious. This metaphysics does not transcend binary hierarchies; it only reverses power relations and announces the dominance of unconscious (over conscious), irrational (over rational), culture (over nature), and so forth.

2.5 Poststructuralist and Postmodernist Concepts of Identity

The postmodern²⁵ idea of identity leaves room for *epimeleia heautou* and for care for 'other' (Foucault 2001). The postmodernist shifting notion of the self presupposes the contingent nature of the human condition and contextuality. Postmodernism questions and overcomes binary oppositions such as self/other, public/private, rational/irrational, mind/body, and justice/care.

Postmodern thought questions all grand narratives. The concept of 'grand narrative' was introduced by Jean François Lyotard. 'Grand narrative' is a term often used by postmodernist authors and is thought to be a comprehensive explanation of historical, social, political, scientific, or any other kind of knowledge or experience. 'Metanarrative' is a totalizing explanation of events and concepts, which unifies them into a whole. Postmodernist authors use this concept to point out unifications, which justify various power structures. From the postmodernist perspective, science, religion, and different political theories can all be perceived as metanarratives. Lyotard describes the 'postmodern condition' as scepticism towards all kinds of totalizing and unifying narratives, which aim at 'absolute truth.'

Postmodernism dismisses the ideal of a justice governed by reason that produces universality, coherence, and equality. It emphasizes the particularity and contextual embeddedness of truth and justice. It does not embrace grand narratives but promotes the idea of constant reinterpretation. Consequently, it employs the notion of a more flexible and shifting identity. According to Lyotard, modernism has produced two major grand narratives.

The first is political; state and knowledge become legitimate because they promise the emancipation of people and humanity. The second is philosophical. It promises that the scattered sciences, empirical knowledges and popular cultures can come together again in the becoming of spirit, a project of totalisation through speculative knowledge. (Douzinas et al. 1991, p. 16)

²⁵This term was originally coined to label an architectural movement associated with the eclectic style of Le Corbusier. The term developed a number of usages and meanings within the context of philosophy, art, sociology, literature, film, theatre, and political and legal studies.

Grand narratives tend to ignore heterogeneity and unify human experience. Lyotard's vision of politics is based on different 'language games,'²⁶ and it implies the idea of pluralist truth. 'Language games' construct different truths, as embedded in different contexts. Postmodernists advocate pluralism of truths, discontinuity, and fragmentation. They transcend grand narratives by focusing on the diversity of human experience and specific local contexts. The entire postmodernist project aims at liberating various social groups, cultures, and identities from the terror of totalizing metanarratives. Critics of metanarratives do not deny the existence of truth. They emphasize that the truth is always institutionally produced and cannot be separated from its contextual framework.

However, Lyotard's idea of the 'postmodern condition' is found inconsistent. Some critics of Lyotard's idea of postmodern condition argue that the critique of grand narratives can be perceived as a grand narrative itself (Habermas & Benhabib 1981). Nevertheless, this point of view is based on a misunderstanding of postmodernism and tends to make a unifying metanarrative of shifting, fragmented, and polyvalent postmodernist ideas and concepts.

According to poststructuralist and postmodernist thinkers, biological traits such as race or sex, which are considered as natural and essentialist by modernist theorists, are constructed by discourse. Consequently, a new postmodern form of contingent and dynamic identity is produced. This notion of identity offers new understanding of concepts such as 'nation,' 'citizenship,' 'society,' and 'power'. Subsequently, these concepts are perceived as socially and historically constructed and thus are constantly reinterpreted and reconstructed by different historical conditions as well as social movements and changes.

Identities are based on 'the unchanging oneness' that overcomes superficial differences (Williams 2005, p. 185). The postmodern idea of the self represents an alternative to the Cartesian idea of the unitary subject. The postmodernist and poststructuralist idea of identity represents a fragmentary, hybrid, and dynamic notion of the self (Table 2.1).

Postmodernist and poststructuralist authors argue that 'identity processes are fundamentally ambiguous and always in a state of flux and

²⁶The idea of language games is introduced by Ludwig Wittgenstein (1953).

Table 2.1 Modernist and postmodernist accounts of identity

Modern idea of identity	Paul Ricoeur's idea of identity: between modernity and postmodernity	Postmodern identity
Identity as rational, conscious, coherent, stable, fixed	Identity as hermeneutic category; the self as a narrative text	Fluid, polyphonic, unstable
It tends to universalize and essentialize human nature	Dialectic between <i>idem</i> and <i>ipse</i> , that mediates between modern and postmodern ideas of identity	Implies fluid identity produced by discourse, which is constantly reinterpreted
Based on binary oppositions: self/other, mind/body, we/they, reason/emotion, objective/subjective, and so forth.	Unifies binary oppositions	Overcomes binary oppositions

reconstruction' (Collinson 2006, p. 182). Consequently, identity is a multiple and changeable category. The idea of fluid identity does not imply a stable, unitary, conscious, and self-identical subject. Fluid identity is based on the assumption that the subject is produced by discourse. Hence identity is shifting, fragmented, and polyphonic. It cannot be considered as rational and stable, and it is always in the process of rethinking. This approach emphasizes that meaning is not fixed—it is deferred and represents an interplay between two opposites. Therefore, concepts such as 'identity,' 'difference,' 'equality,' and 'nature' are always open to different interpretations.

The Cartesian notion of the self is described as a pure, unified consciousness, which is not affected by culture, history, religion, and so forth. Subsequently, the self is perceived as a fixed foundation, which is the origin of knowledge and truth. 'By defining himself as the all-knowing subject, Descartes defined everything that is not the subject as object. By defining his self as identity, he defined everything else as difference: *ipseity* vs. *alterity*' (St. Pierre 2000, p. 500). It could be argued that the modern rationalistic and individualistic notion of self reflects 'an ethnocentric Western view of personhood' (Hermans et al. 1992, p. 23).

There are three critiques of the modernist notion of subject: Marxist, psychoanalytic (Freudian), and Lacanian (St. Pierre 2000). The Marxist critique of the autonomous subject implies that identity cannot be perceived apart from social reality. The self is always socially and historically constructed. It is a product of social activity and historical circumstances. The Freudian critique of the modernist subject, for its part, ‘decenters the subject of humanism by theorizing the unconscious’ (St. Pierre 2000, p. 439). Freud argues that the subject is never centred, coherent, and rational, but is mostly determined by the ‘unconscious.’ As for the Lacanian critique of the modernist subject, it implies that identity is constituted by language.

Poststructuralist authors reject the correspondence theory of truth based on the assumption that language is a *mimesis* of reality. They accept some basic assumptions of the structural theory of language defined by Ferdinand de Saussure (1966). According to de Saussure, language is an abstract system of signs that consists of a *signifier* (sound and written image) and *signified* (concept). Those two elements of the sign are not naturally connected—their relationship is arbitrary. Language consists of chains and signs, and the meaning of each sign is derived from its relations to all other signs in the language (Weedon 1987, p. 25).

Although poststructuralist authors accept some presuppositions of de Saussure’s theory of language, they also make some significant revisions of it. The poststructuralist critique of language is represented by Derrida’s *Of Grammatology* (1974). Jacques Derrida moves beyond Saussure’s theory of language. According to Derrida, Saussure’s theory includes a number of binary oppositions such as: *langue/parole*, signifier/signified, form/substance, synchronic/diachronic, and syntagmatic/paradigmatic, where one term is prioritized over another.

Saussure (1966) founds his system on the duality between *langue* (language) and *parole* (speech). He focuses on *langue* as the main object of linguistics and defines it as a fixed, stable structure. Saussure divides the sign into signifier and signified, and the relationship between the two as arbitrary. According to Saussure, the meaning of the sign is determined by its relation to other signs.

Poststructuralist authors also argue that the primary function of language is not to refer to things in the world, but that the signs derive their meaning through their relations to other signs. However, they reject Saussure’s

idea of fixed meaning 'recognized by the self-consciousness of the rational speaking subject' (Weedon 1987, p. 176). Saussure's idea of fixed signs does not embrace plurality of meaning and possibility of competing discourses. According to Derrida (1974), meaning is constantly deferred. The meaning of signifiers is different in different discursive contexts.

Derrida introduces the concept of *différance* to explain how the meaning of language changes in different social contexts (Weedon 1987, p. 176). Derrida emphasizes that the Enlightenment is based on the false belief that reason is independent from language. On the contrary, Derrida claims that the 'rational' is produced by discourse. The reason is not transhistorical and universal, but historical and contingent. Reason is socially and historically constructed, as are all other modernists concepts. Thus reason is just another grand narrative among many. The self is also a product of different, overlapping discourses. Thus, the self should not be reduced to rationality.

The entire Western political philosophy is based on the homogeneous, essentialist concept of identity. This concept of identity is considered as coherent, stable, and autonomous. Derrida (1974) attempts to overcome any kind of essentialism, because it excludes and marginalizes certain groups and individuals. According to Derrida, only the transformation of language leads to the transformation of politics.

According to Derrida (1974) the history of Western metaphysics and thought can be perceived as the history of metaphors and metonymies. He rejects phonocentrism and the priority of speech and voice over the written word in the history of Western discourse. According to Derrida, on this dominance of speech, logocentrism as the foundation the Western metaphysics is built. In his *Of Grammatology*, Derrida argues that logocentrism is part of his project of deconstruction. Logocentrism perceives Western discourse as based on *logos* (reason, law). It gives priority to identity over difference, universality over particularity, necessity over contingency, nature over culture, and so forth. The first term is perceived as dominant and universal, because it is perceived as originating in reason, which is the same for all human beings. The other is perceived as contingent and particular and mostly excluded from Western discourse.

The purpose of Derrida's critique is not to change power relations in these binary oppositions, because this will make another kind of metaphysics.

Derrida aims at the deconstruction of Western metaphysics and discourse. Derrida's deconstruction exposes assumptions that underlie these binary oppositions and create discrimination and inequality at a metatheoretical level. Hence, the aim of Derrida's deconstruction is not to reject these binary oppositions but to reconstruct them and interpret them in a different way. The two terms of the binary oppositions present in Western discourse (signifier/signified, objective/subjective, male/female, etc.) cannot be opposed, because every term of these binary oppositions contains in itself the phantom of the other. The concept of *différance*, introduced by Derrida, overcomes the fixed identity of *difference* and represents a constant interplay of meanings.

The purpose of Derrida's deconstruction is transformation of the hierarchical structures that create the metaphysical character of philosophy. Deconstruction rejects the discourse based on the power of reason. However, Derrida's idea of deconstruction was often misinterpreted. Deconstruction is often seen as a method that

consists of deliberately inverting traditional oppositions and marking the play of hitherto invisible concepts that reside unnamed in the gap between opposing terms. In the move from hermeneutics and semiotics to deconstruction there is a shift of focus from identities to differences, unities to fragmentations, ontology to philosophy of language, epistemology to rhetoric, presence to absence (...) Deconstruction celebrates dissemination over truth, explosion and fragmentation over unity and coherence, undecidable spaces over prudent closures, playfulness and hysteria over care and rationality. (Sarup 1988, p. 59)

This point of view is flawed. Derrida emphasizes that his deconstruction is not a method. It also cannot be perceived as a critique, since a critique presupposes a choice.

Derrida's deconstruction was perceived by poststructuralist feminists as a perspective of reconstruction and reinterpretation of the patriarchal power relations. Scott argues,

Precisely because it addresses questions of epistemology, relativizes the status of all knowledge, links knowledge and power, and theorizes these in terms of the operations of difference, I think poststructuralism (or at least some of the approaches generally associated with Michael Foucault and

Jacques Derrida) can offer feminism a powerful analytic perspective. (Scott 1988, p. 45)

A proponent of neither essentialism nor constructivism, Derrida argues that meaning is always dispersed—it represents a free interplay of signs—and he rejects all kinds of dualisms based on their homogeneity and firm identity. That means that identity is neither essentialist nor contingent. Postmodern thought does not completely reject modernism; otherwise, it would be established on the binary distinction modern/post-modern, which is contradictory to the nature of postmodernism, which rejects all kinds of binary hierarchies. For instance, modernist fiction is often characterized as epistemological (as it is concerned with problems of understanding and knowledge), while postmodernist fiction is often characterized as ontological (as it is concerned with different worlds of being) (Connor 2004a, p. 66).

This distinction has been troublesome for those who have failed to see that the latter is an intensification of the former, rather than a clear break with it. To move from epistemology to ontology, from world-witnessing to world-making and world-navigation, is to recognize that the problems of knowing are both intensified and transformed when the very acts of seeing and understanding are themselves taken to generate new worlds or states of being. (Connor 2004a, p. 66)

It should be noted that categories employed both within the Enlightenment, and poststructuralism and postmodernism²⁷ are not

²⁷ According to Butler, some characterizations ‘are variously imputed to postmodernism and post-structuralism, which are conflated with each other and sometimes conflated with deconstruction, and sometimes understood as an indiscriminate assemblage of French feminism, deconstruction, Lacanian psychoanalysis, Foucauldian analysis, Rorty’s conversationalism and cultural studies. On this side of the Atlantic and in recent discourse, the terms “postmodernism” or “poststructuralism” settle the differences among those positions in a single stroke, providing a substantive, a noun, that includes those positions as so many of its modalities or permutations. It may come as a surprise to some purveyors of the Continental scene to learn that Lacanian psychoanalysis in France positions itself officially against post-structuralism, that Kristeva denounces postmodernism, that Foucauldians rarely relate to Derrideans, that Cixous and Irigaray are fundamentally opposed, and that the only tenuous connection between French feminism and deconstruction exists between Cixous and Derrida, although a certain affinity in textual practices is to be found between Derrida and Irigaray’ (Butler 2001, p. 630).

homogeneous: they require rereading and reinterpretation before they can be rejected. In poststructuralism, 'all categories are unstable, all experiences are constructed, all reality is imagined, all identities are produced, and all knowledge provokes uncertainties, misrecognitions, ignorances, and silences' (Britzman 1995, p. 153). It is impossible for individuals who represent different cultural, social, and national backgrounds to share the same rights 'simply by virtue of being human' (Easton 2002, p. 30).

According to Connor (2004b), there are four stages in the development of postmodern thought. The first stage extends through the 1970s and the early 1980s and is represented by Daniel Bell and Jean Baudrillard, who offer new perspectives of consumer society; Jean-François Lyotard, who critiques modernist metanarratives; Charles Jencks, who depicts architectural postmodernism; and Ihab Hassan and his new account of writing scientific texts (Connor 2004b, p. 2). According to Connor, during the second, syncretic phase, 'postmodernism' becomes the name for discourse in which new attitudes in society and culture are discussed. In the third phase of its development, 'postmodernism became the name for the activity of writing about postmodernism' (Connor 2004b, p. 4). Many thinkers associated with postmodernism actually focused on modernist authors in their writings (Lacan on Joyce, Foucault on Russel, Derrida on Mallarmé) (Connor 2004b, p. 5).

By 1990, after the break-up of the Soviet Union and the revolutions across Europe had both confirmed the hypothesis of the unsustainability of historical grand narratives (or their appropriation on behalf of states) and brought to the surface new problems of ethnic and religious diversity, postmodernism became centered not on any one cultural form but in the problems attaching to the plurality of cultures. The postmodern condition no longer seemed a possible future, to be adumbrated allegorically by literary texts, buildings, or other works, but had become a real and urgent predicament. (Connor 2004b, p. 12)

In the fourth phase of its development, at the beginning of a new millennium, postmodern thought faces new questions and challenges. It is focused both on modernism and on 'old' postmodernism of the previous decades. Costas Douzinas's work in legal studies represents the fourth phase of the development of postmodern thought (2004).

According to Derrida, the politics of a (fixed) identity, which privileges unity, represents dangerous ethics and politics (Caputo 1997, p. 13). Derrida rejects identity based on totality and unity as an illusion. He argues that on the one hand linguistic, cultural, and national identities are different from themselves. On the other hand, the person is different from its identity. This means that identity should not be perceived as a homogeneous category. Derrida emphasizes: 'Once you take into account this inner and other difference, then you pay attention to the other and you understand that fighting for your own identity is not exclusive of another identity, it is open to another identity' (Caputo 1997, p. 13).

A fragmentary notion of identity introduced by postmodernists emphasizes that ethnic groups are not monolithic and essentialist categories. They should be perceived as heterogeneous, because they consist of different individual narratives and experiences, which are dynamic and constantly in a process of refiguration. Thus they include multiple and often different and opening voices. Consequently, the term 'difference' should also be perceived as fluid and changeable. It should not be perceived as a term to which all marginalized groups can be assimilated, because, in this way, it is perceived as a modernist, homogeneous, and monolithic term.

Braidotti (2005) argues that even neo-liberal notions of 'difference' imply new forms of exclusion on national, regional, and local levels. For this reason, Derrida introduces his concept of *différance*, which is open to different meanings and reinterpretations. This concept overcomes the homogeneity of the modernist notion of difference, which perceives marginalized groups as homogeneous.

Derrida's concept of *différance* represents a pluralist notion of difference, which moves beyond binary hierarchies. Consequently, heterogeneity and dissociation are promoted. According to Derrida, the concepts of borders, nations, culture, citizenship, and so on, do not have fixed meanings. Rather, the meaning is a free interplay between two opposites (O'Neill 1994, p. 78). Thus it is always open to different interpretations.

Nevertheless, it can be argued that poststructuralism is a universalizing theory that puts the different theories under a single point of view. This problem is emphasized by Judith Butler, who states:

Do all these theories have the same structure (a comforting notion to the critic who would dispense with them and all at once?) Is the effort to colonize and domesticate these theories under the sign of the same, to group them synthetically and masterfully under a single rubric, a simple refusal to grant the specificity of these positions, an excuse not to read and not to read closely? (Butler 1992, p. 5)

However, most poststructuralist and postmodernist theoreticians reject classifying their theories under the name 'poststructuralism' or 'postmodernism'.²⁸

Despite their diverse approaches²⁹ authors who are considered 'poststructuralist' and 'postmodernist' agree on rejecting an essentialist notion of identity. Poststructuralists like Foucault³⁰ and Derrida attempt to deconstruct the idea of humanity. They argue that human nature and reality are constructed. The poststructuralist approach represents neither objectivism nor relativism, emphasizing instead that both positions 'deny the partial and located position of the knowing subject' (Weedon 1999, p. 182). Poststructuralist authors argue that this partial and located concept of subject should be the foundation of the new conception of objectivity.

The dialogical approach to identity also represents the self as a multiple, fluid category. The dialogical self is based on the assumption that an individual lives in multiple worlds. This notion of the self is inspired by Bakhtin's polyphonic novel,³¹ which emphasizes the heterogeneity and fluidity of identity. However, 'in contrast to the saturated postmodern self, plurality does not translate into fragmentation or saturation'

²⁸ According to a number of authors, these two approaches are interchangeable, and authors such as Derrida, Lyotard and Foucault can be considered as both poststructuralist and postmodernist. This perspective was criticized by Judith Butler who argues that Lacanian psychoanalysis in France rejects poststructuralism, that Kristeva denounces postmodernist, that Foucault's and Derrida's theories are diverse, and so forth.

²⁹ Norris is particularly clear on the differences between Derrida and Foucault. Foucault's extreme epistemological skepticism leads him to equate knowledge with power, and hence to regard all forms of enlightened progress (in psychiatry, sexual attitudes or penal reform) as signs of increasing social control. Derrida, by contrast, insists that there is no opting-out of that post-Kantian enlightenment tradition. It is only by working persistently within that tradition, but against some of its ruling ideas, that thought can muster the resistance required for an effective critique of existing institutions' (Sarup 1988, p. 130).

³⁰ Foucault's core idea is that all social relations are power relations.

³¹ Mikhail Bakhtin (1984) describes his ideas regarding the polyphonic novel in his *Problems of Dostoevsky's Poetics*.

(Barcinski & Kalia 2005, p. 105). The dialogical notion of the self contains both unity and disunity, universalism and pluralism. It is based on the one, substantial self, regardless of multiple I-positions. Consequently, it bridges the gap between the modern and postmodern notions of identity. The notion of a dialogical self overcomes modern and postmodern dichotomies.³² According to Barcinski and Kalia, the dialogical self falls into the same pitfall as the postmodern self, since neither notion of self resolves the confusion of the dispersed identity (Barcinski & Kalia 2005).

However, this point of view is flawed because it equates the nature of the dialogical self with the nature of the postmodern self. It should be noted that the dialogical notion of the self represents a broader notion of identity than the postmodern approach to self. As has already been argued, the dialogical self includes various historical accounts of the self: premodern, modern, postmodern, and so forth, and fragmentation is just one of its traits. The dialogical self is unitary as well, because of its polyphonic nature. Bakhtin argues that dialogue epitomizes both the literary genre and the foundation of personality (Hermans et al. 1992, p. 28).

Derrida's deconstruction, Foucault's archaeology of knowledge, and analyses by Deleuze and Guattari (1983) dismiss the idea of stable referents for the subject. The characters in the postmodern novels represent the postmodern notion of the self well:

Postmodern characters typically fall into incoherence: character-traits are not repeated, but contradicted, proper names are used, if at all, inconsistently; signposts implying gender are confused (...) At every stage in the representation of character, the finality of the character, a determinate identity for the characters if deferred as the proliferation of information about the character leads into irrationality, incoherence, or self-contradiction. (Docherty 2000, p. 140)

³² "The dialogical self can be seen as a multiplicity of "I" positions or as possible selves. The difference, however, is that possible selves (e.g., what one would like to be or may be afraid of becoming) are assumed to constitute part of multifaced self-concept with one centralized "I" position, whereas the dialogical self has the character of a decentralized, polyphonic narrative with a multiplicity of "I" positions. This scene of dialogical relations, moreover, is intended to oppose the sharp self-nonsel boundaries drawn by Western rationalistic thinking about the self' (Hermans et al. 1992, p. 30).

Subsequently, philosophical postmodernism is often described as anti-anthropocentric, non-narrative, postmetaphysical, non-referential, and hyper-realist.

Representatives of postmodern theory perceive identity as performative, not constative. Judith Butler (1990), Jacques Derrida, and a number of poststructuralist, postmodern, and queer theorists argue that identity is performative. Consequently, identity does not preexist the discursive field. This means that 'we come to understand who we are through the re-iteration or performance of identity. In this sense, identity is not about fixed attributes possessed by individuals, but is instead constructed in a variety of ways at a variety of levels' (Morgan 2000, p. 217).

In his article 'Declarations of Independence,' (1986) Derrida argues that 'to declare' is a performative (not a constative), which means that the *Declaration of Independence* of the United States of America 'genuinely constitutes the people of the United States as an independent people authorized to sign each document' (Owensby 1994, p. 193). Derrida argues, on the other hand, that the *Declaration* cannot be authorized without a previously existing independent people. He states that the main paradox is that 'signatures create the people who authorize the signing of the document' (Owensby 1994, p. 193). Derrida shows the performative nature of the *Declaration*. He argues that the *Declaration* creates the people, so it cannot be argued that the *Declaration* is created by the people (De Ville 2008, p. 88).

Derrida argues that Jefferson can be considered as a people's representative in the draft of the *Declaration of Independence* (1776). However, these people did not exist at the time of the drafting of the *Declaration*. 'It is only through the signing of the Declaration that the people come into effect and that the representatives obtain their legitimacy' (De Ville 2008, p. 97). Derrida makes a distinction between constative and performative.³³ He argues that the American 'people' as an entity cannot exist before the act of the signing of the *Declaration*. Derrida argues that the *Declaration* is presented as a constative, while it can only be considered to be a performative. Subsequently, it does not have any fundamental origin.

³³ *Constative* describes what already exists. In a *performative* speech act the language performs the action it describes. It embraces promises, getting married, giving a gift, making a bet, and so on.

2.6 Conclusion

The postmodernist approach offers an expanded, alternative idea of the political. As Foucault points out, instead of perceiving power as based on prohibitions, use of power should be observed as production of a whole range of meanings, identities, bodies, knowledge, beings, and actions (Foucault 1984). The meaning is placed in the discursive practices that are produced, disputed, and transformed in socio-historical actions, rather than in a *sui generis* scheme of timeless categories. Postmodern theory is shaking homogenous, coherent, and monolithic modernist constructions based on reason, and postmodernists question the metaphysics based on *logos*. Postmodernists believe that homogeneous and fixed identities produce violence and repression, questioning the naivety and the groundlessness of every identity that excludes *otherness*.

Poststructuralist and postmodernist thinkers, in short, question the main concepts of the modernist metaphysics such as subject, identity, truth, and reality. Poststructuralist and postmodernist authors reject the essentialist notion of identity and argue that identity is dynamic, hybrid, and changeable. They argue that universalist aspirations are oppressive and they emphasize multiple perspectives that are discursively produced. Thus, a poststructuralist and postmodernist approach promotes disintegration, particularity, and difference. Some critics of the poststructuralist idea note that poststructuralist theory is universalist and essentialist itself: 'But this sort of Nietzschean pluralism or perspectivism is fundamentally inconsistent because, in fact, the right to difference can only be held by universal principles' (Sarup 1988, p. 166).

As an anti-foundationalist view that includes multiple and shifting identities, postmodernism can represent not only the context in which EU citizenship can be studied but also a source of criticism of essentialist claims of European citizenship, and citizenship in general.

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3

Philosophical Roots of Citizenship

3.1 Introduction

‘Citizenship’ is still a contested concept. A complete and united definition of citizenship does not exist. However, citizenship has been ‘a key aspect of Western political thinking since the formation of classical Greek political culture’ (Turner 1993, p. vii). According to Max Weber (1927), citizenship may be considered a Western concept. Weber argues that oriental civilizations did not recognize this concept. However,

This claim is problematic, if not ethnocentric, because what Weber is searching for in these civilizations was an already worked-out conception of citizenship as a legal status. It can be argued, however, that each of these civilizations had a different conception of political membership and status and, thus, a different conception of citizenship. In other words, Weber made citizenship originate in the West in the sense that he worked out an ideal type and searched for its origins. (Isin and Wood 1999, p. 5)

There are different kinds of citizenship, including traditional, post-national, global, dual, multicultural, diasporic, ecological, and flexible.

Two aspects are often ascribed to the concept of citizenship—status and practice. Status is a legal aspect of citizenship, which includes various rights and duties,¹ while practice represents a social and political aspect of citizenship, which often implies active participation in symbolic, cultural, economic, and political life. Those two aspects form a certain dialectics and should not be perceived as separate (this point of view would be based on binary opposition status/practice, where one term is perceived as dominant, and the other is subordinated or denied).

It could be argued that ‘many rights often first arise as practices and then become embodied in law as status. Citizenship is therefore neither a purely sociological concept nor purely a legal concept but a relationship between two’ (Isin and Wood 1999). Both status and practice should be considered contingent. They arise in accordance with certain interests, narratives, and beliefs. Citizenship should not be perceived as an essentialist and universalist concept, which is not affected by historical, social, and other circumstances.

Another fundamental element that should be ascribed to citizenship is identity. It reflects individuals’ feeling of belonging to a certain political community. This should be considered as the ‘psychological aspect of citizenship,’ which defines the strength of collective identity of political community.

The identity aspect of citizenship is especially theoretically challenging, but at the same time highly problematic to grasp and understand, because of its pretensions of universality (i.e. universal citizenship rights that stem from citizenship status shared by all members of one state, as argued by T.H. Marshall) which are seen to be in collision with multiplicity of contested and differently represented identities, that, in turn, challenge the equality implied by the universal citizenship status. (Vasiljević 2011, pp. 4–5)

The citizenship debate is often turned into a debate about identity. In the history of citizenship studies, there are two dominant groups of theorists. Representatives of the first group argue about the essentialist and universalist nature of individuals and social groups, while representatives

¹They can be civil, political, and social.

of the second group argue that individual and group identities are socially and historically constructed. The first group can be considered to subscribe to the modern liberal idea of identity, based on binary oppositions such as essential/contingent, citizen/stranger, and nature/culture. Both elements of those binary oppositions are perceived as fixed and static. The second group moves towards a postmodern concept of identity as polyphonic, contingent, and flexible. As shown in the previous chapter, postmodern thinkers argue that identity is produced by discourse—it is socially and historically constructed. Consequently, identity should be comprehended as heterogeneous, because it includes different voices and perspectives, which are constantly reinterpreted. However, ‘postmodern’ and ‘postnational’ are not synonymous concepts. The postnational state implies multiple identities; nevertheless, those identities can still be perceived as homogeneous and fixed.

The concept of citizenship is often based on a sharp distinction between those individuals who are considered members of the *demos* and those who are not. The Ancient Greek philosopher Aristotle considers citizenship an instrument of virtue. He excludes workers, slaves, and women from the category of citizenship, because he argues that they are not governed by virtue. On the other hand, those boundaries of citizenship based on the binary opposition we/they or citizen/stranger have always been contested. ‘Even the Ancients wrestled with such debates: the Greek warriors and peasants fought bloody wars for centuries and there was never a long period where the institution was stable and durable. Similarly, Roman patricians and plebeians fought violent battles to define and re-define citizenship’ (Isin and Wood 1999, p. 5).

According to Roberto Alejandro the modern era ‘displaced the citizen as a central object of reflection, and the citizen became the public garb of the self. The citizen was no longer an all-encompassing category enjoying both the public and private. The individual came to be the new universal principle’ (Alejandro 1993, p. 97). According to Alejandro, ‘Modernity itself became the primary source of political principles’ (Alejandro 1993, p. 11). Alejandro emphasizes that the declining status of the citizen started with modernity. In the modern era, the ‘political’ is understood as a dimension of relations among individuals, while in ancient Greece it was perceived as ‘a space of relations among citizens’ (Alejandro 1993, p. 11). The emergence

of subjectivity in European philosophical thought transformed the realm of political theorizing.

In the modern era, citizenship implies various class and social conflicts. The rights ascribed to citizenship are often fragile. Isin and Wood give an example of neo-liberal regimes in Britain between 1979 and 1997, which ‘scaled back not only social rights, as is well known, but even civil and political rights that are thought to be “sacred” in liberal democracies’ (Isin and Wood 1999, p. 6).

Citizenship is an unstable and shifting concept, which is constantly reinterpreted and transformed. At the end of the twentieth century, the interest in citizenship studies was increasing. During this period, a number of articles and books on the topic of citizenship were published. This interest in citizenship studies is fuelled by various social, economic, cultural, and political changes produced by globalization, which indicates erosion of national sovereignty. The increased migration flows led to cultural pluralism and differentiation of various social milieus within cultural identities.

According to Kymlicka (1990), the stability of contemporary democracy depends mostly on citizens, so it cannot rely only on institutions of justice. Consequently, theories of institutional justice should be complemented by developed citizenship theory. However, Kymlicka emphasizes that old discussions about justice will transform into discussions about citizenship (Kymlicka 1990). It can also be argued that new discussions about citizenship require analysis of the concepts of identity on which citizenship is based.

In the following chapter, various philosophical traditions of citizenship are presented in order to analyse and understand the philosophical roots of European citizenship (and various binary oppositions on which it is based). Chapter 3 presents classical, modern, postnational, and post-modern concepts of citizenship. The traits of all these different notions of citizenship may be found in the European citizenship throughout its development.

Advocating the active character of EU citizenship within the *Treaty of Lisbon* and various European programmes, such as Europe for Citizens, the European Commission’s Plan D for Democracy, Dialogue and Debate

(2005)² in some ways may be compared to the classical idea of active, deliberative citizenship. EU citizenship is also based on modernist Marshall's distinction between civil, political, and social rights. The *Charter of Fundamental Rights of the EU* is based on this classification of rights,³ but has also added the category of economic and cultural rights (which represents the second generation of human rights) as well as rights based on solidarity (which represent the third generation of human rights).

EU citizenship reflects the postnational idea of citizenship, which is not tied to rigid national territoriality but includes fluidity of borders and multiple identities and loyalties. Postnational political communities (such as the EU) imply citizenship and identity as dynamic, contingent categories. The European Union, as an economic and political community, questions traditional forms of citizenship and identity founded on the nation-state. New forms of citizenship arose as a consequence of the evolution of political communities towards postnational and postmodern political orders. Those new political orders originated from different types of migrations and the development of new technologies, which created flexible, shifting, and transnational identities.

Although it still does not reflect a postmodern model of citizenship, EU citizenship tends to develop towards the postmodern model of citizenship that overcomes binary oppositions. That is why classical, modern, postnational, and postmodern models of citizenship will be examined. EU citizenship contains traits of all of these forms of citizenship and cannot be understood without explaining all these conceptions of citizenship.

In this chapter, new forms of citizenship that resulted from the evolution of political communities towards postnational and postmodern political orders are of particular interest. The new political orders originated from different types of migrations and the development of new technologies, which created flexible, shifting, and transnational identities. In the following, it will be shown that the concept of 'citizenship' in modern liberal political thought is fixed and essentialist. This conception of citizenship is derived from Western metaphysics, which establishes homogeneous categories. The modern liberal idea of citizenship is derived

² See Chap. 4.

³ Political and civil rights represent the first generation of human rights, while the social rights represent the second generation of human rights.

from the notions of 'freedom' and 'equality,' which are considered absolute truths, based on the universal concept of reason. These essentialist notions include a number of binary oppositions, such as we/they, citizen/foreigner, and self/other (where the first term is perceived as dominant because it is considered to be derived from reason), which leaves room for exclusion and marginalization. These binary oppositions stem from the modernist essentialist notion of identity advocated by Descartes and Locke.

The Enlightenment project promotes the idea of an abstract citizen who is defined as a rational, conscious, and autonomous subject, independent of the historical, ethnic, gender, age, professional, and other determinations and affiliations. The faith of the Enlightenment in the authority of reason strengthened the utilitarian and instrumental notion of rationality, which emphasizes dominance, efficiency, and profit, which is reflected in the maximum exploitation of natural and societal potentials. The Enlightenment universalized and made uniform the nature of man by omitting cultural, religious, political, gender, and other differences. In this way, the proponents of the Enlightenment project unified identity as such, not allowing the possibility of its change, reinterpretation, or questioning, dictating the self-understanding of the individual, forever subject to the uniformity of the Enlightenment's didacticism. The ideal of the Enlightenment, which is based on neutral, universal principles of reason produces a homogenous conception of the public sphere, by which the diversity and particularity are banished to the private sphere of family and civil society. The idea of a public sphere that is based on the authority of reason excludes a number of social groups that are considered inconsistent with the rational principles.

In the contemporary civilization, the binary opposition we/they is still dominant in the legal and political discourse, and for this reason some authors still regard the contemporary world as 'barbaric' (Meštrović 1993). A barbarian⁴ is traditionally defined as a foreigner whose language, customs, and culture differ from the language, customs, and culture of a 'civilized citizen.' The barbarian is perceived as a civilized

⁴The peoples who were non-Greek, non-Christian, and non-Latin were regarded as barbarians in Western history.

citizen's other—inhuman, cruel, rude, and so forth. Thus, the question is whether we are moving towards greater freedom or greater barbarianism (Meštrović 1993, p. 56). Nevertheless, states, nations, and identities are not fixed. The concepts by which people define who they are—in which they articulate their sense of identity—are all concepts without clear borders and hence cannot provide a basis for sharp demarcations such as political boundaries between states (O'Neill 1994, p. 78).

With the development of the information society, new perspectives on citizenship and identity emerge. Citizenship and identity can be viewed as a state of mind and do not need to be tied to borders or residence. 'The map may well be a mental one, however, and its geography may well be one of the imagination. People are always their own cartographers, moving about in a world arranged according to their needs for affiliation and their senses of affinity' (Kroes 2000, p. 23).

In the following chapter, a postmodern concept of identity and a postmodern concept of citizenship—which is not tied to fixed notions of borders, nations, culture, and common heritage—will also be explored. In this way, the concept of citizenship will be considered as unbounded and constructed. It will embrace various identity possibilities. Thus, in postmodern liberal thought, citizenship is perceived as a contingent cultural (narrative) construct. This postmodern conception of citizenship requires a new ethics of citizenship, which will not be based on the modern liberal idea of priority of right over the good. A new ethics of citizenship will reject the idea of 'one size fits all' ethics, and it will leave room for 'empathy' (not only reason) and different notions of good.

3.2 Aristotle's Conception of Citizenship: Citizenship as Active Participation

The first exact definition of citizenship in the history of philosophy is given by Aristotle in his *Politics*. Aristotle states: 'He who has the power to take part in the deliberative or judicial administration of any state is said by us to be a citizen of that state' (Aristotle 1916, 1275b1). Aristotle's definition is based on the dichotomy we/they, because it emphasizes the distinction between those individuals who are considered members of

the *demos* and those who are not. Aristotle regards a citizen as a virtuous man. He perceives 'citizenship' as an instrument of value, and Aristotle excludes from this category individuals who are (according to his opinion) not governed by virtue (Aristotle 1932, 1278a). Consequently, Aristotle's idea of citizenship includes binary oppositions, which sharply divide citizens from strangers, women, slaves, and workers. Aristotle argues that this exclusion is rational.

Aristotle promotes active citizenship and attempts to develop moral norms and a conceptual framework, which could produce the skills and wisdom necessary for political decision-making. He defines citizenship as participating in governments' decision-making and argues that his idea of citizenship can only be implemented within the democratic political order (Aristotle 1932, 1275b). Aristotle's concept of citizenship and Ancient Greek democracy required deliberative rhetoric (Danisch 2011). Rhetorical ability is perceived as the key element of political power. Aristotle makes a distinction between universalist reason (*sophia*) and practical judgment (*phronesis*), which implies ethics and politics within particular political associations. Aristotle emphasizes that different concepts of citizenship are ascribed to different political orders.

The citizen then of necessity differs under each form of government; and our definition is best adapted to the citizen of a democracy; but not necessarily to other states. For in some states the people are not acknowledged, nor have they any regular assembly, but only extraordinary ones; and suits are distributed by sections among the magistrates. (Aristotle 1916, p.102)

According to Aristotle, a person who is considered a citizen in a democracy will not hold citizenship status in an oligarchy. Thus, Aristotle's idea of citizenship is a contingent, not essentialist, category.

Aristotle does not tie citizenship to ancestry, because 'born of a father or mother who is a citizen, cannot possibly apply to the first inhabitants or founders of a state' (Aristotle 1916, p. 103). Aristotle also does not define citizenship by place of birth. He emphasizes that 'citizen is not a citizen because he lives in a certain place, for resident aliens and slaves share in the same place' (Aristotle 1916, p. 101). According to Aristotle, the virtue of citizenship includes obeying and ruling. Aristotle's model of

citizenship binds ruling and obeying, because he perceives political government as government of free and equal citizens. Nevertheless, Aristotle's idea of equality contains sharp distinctions between those individuals who are considered citizens and those who are not.

Aristotle argues that there are many different kinds of citizenship, but all of them define a citizen as the one who 'shares in the honours of the state' (Aristotle 1916, p. 111). Within Aristotle's idea of citizenship, mechanics, labourers and slaves are not considered citizens. According to Aristotle, slaves, labourers, mechanics, women, immigrants, and so on do not live life in such a way that they can practice virtue.⁵ Aristotle argues that this exclusion is based on reason. The number of citizens in Athens was between thirty thousand and fifty thousand, while the number of slaves fluctuated between eighty thousand and one-hundred thousand (Bellamy 2014). Hence, the Ancient Greek conception of citizenship was elitist.

In Aristotle's conception of citizenship, the exclusion of the larger part of the population stems from Aristotle's ideas of the good man and the good citizen (Bell 2007). According to Aristotle, a good man is not necessarily a good citizen. Aristotle argues that a citizen is good if he contributes to the life of *polis*. A good man is, on the other hand, a person who possesses both theoretical and practical virtue (Bell 2007). For instance, a good man may be a bad citizen if he, relying to his intellectual virtue, disobeys bad laws (Bell 2007). On the other hand, a good citizen obeys laws, regardless of whether he considers them 'good' or 'bad.'

While Aristotle acknowledges that rationality is not a condition for the exercise of liberty, his attempt to merge the good man and the good citizen

⁵In his *Nicomachean Ethics*, Aristotle states that there are certain external goods, which are necessary for happiness (which he equates with virtue) (Aristotle 2000, p. 14). Those 'external goods' are out of reach for slaves and labourers, so they cannot perform a virtuous life. According to Aristotle 'happiness obviously needs the presence of external goods as well, since it is impossible, or at least no easy matter, to perform noble actions without resources. For in many actions, we employ, as it were instruments at our disposal, friends, wealth and political power' (Aristotle 2000, p. 15). However, it should be emphasized that Aristotle considers both citizenship and virtues ascribed to citizenship as contingent. Aristotle states: 'As to the question whether the virtue of the good man is the same as that of the good citizen; the considerations already adduced prove that in some states the two are the same, and in others different. When they are the same it is not the virtue of every citizen which is the same as that of the good man, but only the virtue of the statesman and of those who have or may have, alone or in conjunction with others, the conduct of public affairs' (Aristotle 1916, pp. 111–112).

is a move towards a form of governance in which the highest development of rationality and virtue corresponds to one's liberty. Rationality, a key component of virtue, is what gives some men the moral 'right' to rule over other 'irrational,' men, legitimates multiple forms of unequal social relations. (Bell 2007, p. 12)

Aristotle promotes active citizenship and attempts to develop moral norms and a conceptual framework, which could produce the skills and wisdom necessary for political decision-making. The Aristotelian deliberative rhetoric model provides the framework for development of deliberative democracy. His definition of citizen as someone 'who has the power to take part in the deliberative or judicial administration of any state' (Aristotle 1916, 1275b1) differs from the modern conception of citizenship as a passive status. But in the *polis*, it was part of one's identity to be involved in the life of community and to participate in public affairs. Aristotle emphasizes:

Doubtless in ancient times, and among some nations, the artisan class were slaves or foreigners, and therefore majority of them are so now. The best form of state will not admit them to citizenship; but if they are admitted, then our definition of the virtue of a citizen will apply to some citizens and freemen only, and not to those who work for their living. The latter class, to whom toil is a necessity, are either slaves who minister to the wants of individuals, or mechanics and labourers who are servants of the community. (Aristotle 1916, p. 110)

Nevertheless, Aristotle's conception of citizenship is contingent and particularist, not essentialist and universalist. He states that, for instance, the mechanic and the labourer can get a citizenship status in some political communities (Aristotle 1916, p. 111).

The identity of Aristotle's idea of a citizen is stable and coherent. Aristotle does not take into account the possibility of fragmented or even polyphonic identities. The only threats to the stable identity of Aristotle's citizen are barbarianism and slavery. Thus, Aristotle's concept of citizenship is exclusive (based on the binary opposition we/they), active (as citizenship is defined as participation in governments' decision-making),

and contingent (differently defined in different political orders). As it will be argued, the modern conception of citizenship is exclusivist on a metatheoretical level (although rights are granted to different social groups, various binary oppositions still exist), passive (citizenship is mostly perceived as a status), and essentialist (the idea of universal rights based on rational and conscious human nature arises).

Aristotle's idea of active citizenship and his deliberative rhetoric model are relevant for understanding contemporary EU citizenship and the European Commission's strategy to promote dialogue and deliberation.⁶ However, EU citizenship is a postnational model of citizenship, and it is multilayered and complex. It cannot be reduced to any previous conception of citizenship.

Aristotle's politics is based on *pistis*,⁷ while modern politics is based on *episteme*. Aristotelian political philosophy operated in the

cognitive domain of moral and political practice, the cognitive domain of civic culture. But the abandonment of this cognitive domain by modernist liberal political theory eliminated this buffer zone that separated politics from metaphysics in Greek philosophy. Modernist liberal conceptions of citizenship, thus, became swallowed up by totalizing metaphysical theories about the nature of things. Liberal moral ideals became identified with a cultural perspective that claimed to embrace all humanity. (Bridges 1994)

Modern citizenship is based on universalist assumptions, which do not take into account diverse cultural world views proper to particular classes, ethnicities, and religious communities (Bridges 1994). Aristotle's concept of citizenship is founded on membership and privileges derived from it, while the modern concept of citizenship is mostly based on rights. The modern liberal political idea of citizenship introduces citizens as passive subjects of rights. This conception of citizenship rejects Aristotle's idea of active citizenship. Aristotle's concept of citizenship points to the domain of praxis, while the modern idea of citizenship only guarantees status. Citizenship as status means that an individual's powers and rights

⁶ See Chapter 4.

⁷ *Pistis* is the state of being persuaded; it represents the domain of belief.

are inseparable from citizenship. However, citizenship as praxis requires active participation in the political life of the community.

Where the cognitive task of the Aristotelian political philosopher was to provide resources for the evaluation of constitutions with respect to a specific set of circumstances, the cognitive task assumed by modernist liberal political theory was the legitimation or justification of political institutions by a quasi-metaphysical deduction proving their conformity with first principles – i.e. the natural human condition, the autonomous faculty of reason, etc. (Bridges 1994)

This chapter focuses on Aristotle's idea of citizenship as well as on modernist and postmodernist notions of citizenship, since they contain presuppositions on which European citizenship is based. As was shown previously, Aristotle's account of citizenship advocates active citizenship and deliberation. However, Aristotle's concept of citizenship contains various binary oppositions, which exclude a number of individuals from the category of 'citizenship.' On the other hand, citizenship is perceived as a passive status within the modern conception of citizenship (which still contains various binary oppositions). Postmodern citizenship overcomes binary oppositions and advocates active citizenship and deliberation. The traits of all these different notions of citizenship may be found in European citizenship throughout its development. In the first decade, it was defined as passive based on various binary oppositions. In the second decade of its development, it moved towards the idea of active citizenship, but it still contained various binary oppositions. Recently it has started to reflect some postmodern characteristics. For this reason, this chapter focuses mostly on the classical Aristotelian notion of citizenship as well as modern, postnational, and postmodern concepts of citizenship. The aim of this chapter is not to provide a comprehensive account of the history of citizenship, thus explaining why some accounts on citizenship (such as early modern) are not taken into account.

3.3 The Modern Liberal Concept of Citizenship

The modern liberal conception of citizenship stems from the modernist account of identity. According to Bridges, modern liberal political thought is based on a universalist concept of reason, which is considered the main characteristic of all human beings (Bridges 1994).⁸ Notions of 'freedom,' 'equality,' and 'rights,' on which the modern liberal concept of citizenship is built, are considered as having developed from human rationality. These concepts are perceived as founded on absolute truths based on reason, which transcends all particularistic, contingent conceptions of good. The modern liberal idea of citizenship can be considered metaphysical because it emphasizes a universalist and essentialist standpoint of citizenship (Bridges 1994). According to Bridges, 'In different ways, both Lockean and Kantian styles of liberal theory made the standpoint of the citizen, the standpoint of free and equal individuality, appear to be the natural and essential human standpoint' (Bridges 1994, pp. 82–83).

The modern political idea of citizenship introduces citizens as passive subjects of rights. This conception of citizenship differs from Aristotle's idea of active citizenship. However, both conceptions of citizenship are exclusivist. They both emphasize sharp distinction between citizens and non-citizens.

The modern concept of citizenship can be traced back to the French revolution. Although the idea of national citizenship arises with the French revolution, legal regulation of this concept is achieved later. Modern citizenship is based on universal metaphysical principles (Bridges 1994). 'The cultural project of the Enlightenment, after all, constituted a powerful historical form of belief that served the interests of freedom and equality for almost 300 years' (Bridges 1994). In his article 'What is Enlightenment?' Kant explains the motto of Enlightenment

⁸ Although Thomas Bridges correctly identifies some fundamental problems that can be identified from modern liberal political thought, he oversimplifies this point of view. Modern liberal political thought cannot be perceived as a totality. However, a number of authors fall in this trap and misinterpret the point of view of some modern political thinkers. This can be perceived on the example of Kant's understanding of morality. Kant builds his idea of morality on freedom (i.e., autonomy of will), not on reason (Ivic 2008). This was not recognized by Bridges (1994), Gaut (1997), Korsgaard (1996), and a number of other authors.

‘*Sapere aude!*,’ ‘Have courage to use your own reason!’ (Kant 1997). Kant represents liberal political norms as derived from human reason. Kant’s idea of ‘using one’s own reason’ implies universality, which excludes all particularistic and socially and historically conditioned world views (Bridges 1994). This universality of reason is perceived as the domain of ‘right,’ while all other particularist beliefs are perceived as the domain of ‘good.’ Modern citizenship is based on this distinction and on the priority of the ‘right’ over the ‘good.’ ‘Modernist liberal civic culture tended to present the culture of citizenship as a totalizing culture to which all particularistic ethnic, class, and religious cultures were subordinate both cognitively and morally’ (Bridges 1994).

3.3.1 The Enlightenment Roots of Citizenship and Human Rights Discourse

Human rights and the rights of man (defined in the *Universal Declaration of Human Rights* and the *Declaration of the Rights of Man and of the Citizen*) are not one and the same, which might be concluded at first, based on the concept of ‘man,’ which appears in both texts⁹ (Zaharijevic 2008). The concept of ‘man,’ although by definition inclusive and non-discriminatory, at the time of entering into practical and political use (the Enlightenment age of revolutions) is actually based on tacit exclusion, and only on the basis of that exclusion, could it indicate ‘freedom and equality’ (Zaharijevic 2008).

The history of political philosophy begins, conditionally speaking, with the assertion that man is a ‘political animal’ (*zoon politikon*) destined for life in the politically arranged space (Aristotle 1932). The realm of the ‘political’ cannot be based on some fixed and eternal principles—nor can the consequences of political action be calculated and predicted—so that it can be governed in all future imaginable circumstances. The domain of the political or the politics itself is contingent and dynamic.

The political philosophy of the seventeenth century made a fundamental reformulation of its own subject: by turning politics into science,

⁹This concept appears in the preamble of the *Universal Declaration of Human Rights* and in articles 2, 4, 11, and 12 of the *Declaration of the Rights of Man and of the Citizen*.

it separated it in an essential way from the human power of action, which was situated by Aristotelian political philosophy.

The concept of humanity appears in the philosophical conceptual framework at the same time as the concept of man, in the age of Enlightenment (Kant 1997), and it is inseparable from the idea of historical progress. However, the Enlightenment conception of humanity is exclusive and does not leave room for *every* man; it is limited to only a group of people. Thus it is necessary to review the very idea of man left to us as the legacy of the Enlightenment.

The contemporary era demands reinterpretation of the Enlightenment concept of man. This new conception of ‘man’ and ‘humanity’ embraces those who were de facto excluded from the Enlightenment conception of humanity—women, African Americans, Orientals (Asians, colonized peoples, Third World), Jews, disenfranchised (servants and unpaid or poorly paid workers), persons who resisted the demands of patriarchy with their sexual orientation and practices, people with disabilities and special needs, and so forth. Examples of those excluded from the concept of ‘man’ can be listed almost indefinitely.

For instance, although the *Declaration of the Rights of Man and Citizen* (1789) legally established human rights in the eighteenth century, French women did not receive the right to vote—a political right that allows participation in government and defines full civil status—until 1944 (Zaharijevic 2008). French activist and playwright Olympe de Gouges, who in 1791 wrote the *Declaration of the Rights of Woman and the Female Citizen* (*Déclaration des droits de la femme et de la citoyenne*), was executed in 1793.

Declaration of the Rights of Man and of the Citizen postulates, in a certain sense, the concept of man by renaming the older concept of natural rights as rights of man. This undeniably revolutionary narrative act declares ‘natural, inalienable and sacred rights of man,’ which (from now on) have to be respected since *men* are ‘born and remain free and equal in rights’ (Article 1). According to the Article 6 of the *Declaration*: ‘Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation.’

However, what is actually implied by the phrase *every man*? Who are the *men* and *citizens* produced by this *Declaration* and who do they include?

It could be argued that within the *Declaration*, the concepts of man and citizen complement and compensate each other, which means that both are inadequate without the another.

Despite the fact that it is not obvious at first, there is no doubt that women are not included in the concept of 'man' as defined by the *Declaration of the Rights of Man and of the Citizen*. We might jump to the conclusion that this concept of 'man' actually refers to every *male*. However, it does not really include every male.

In 1789, France was still a slave-owning country. It is needless to say that slaves – inhabitants of the colonies and settlers from Africa – did not have the status of a 'man', a free being who has the right to property, since they themselves were the property of another person, who was a 'man' exactly on the basis of owning his own personality (such definition was offered by thinkers such as John Locke and Thomas Paine, whose views had almost immediate effect on the revolutions of the 18th century). This fact is perhaps even more distinct in the case of the United States of America, whose *Declaration of Independence* (1776) also emphasized in the preamble that 'all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness'. (Zaharijevic 2008, p. 120)

Thomas Jefferson declares that any group of people has the right to govern itself. This right is received at birth, and it can be considered a natural right. Nevertheless, Jefferson owned slaves until the end of his life, apparently not realizing any inconsistency in his own conceptions of freedom (i.e., free 'man') (Zaharijevic 2008).

Modern citizenship and the modern nation-state are based on various forms of exclusion. A whole range of human individuals is excluded from the Enlightenment concept of 'man,' which calls into question the concept of humanity that rests on that idea. The Enlightenment project breaks at this point, since it does not take the concept of 'life' into account but only an abstract concept of 'man' (Zaharijevic 2008). This distinction is based on the separation of 'human' and 'non-human' (often reduced to less-than-human)—those people who were designated 'less human' were excluded from the idea of 'humanity' in the name of 'man.'

From the Enlightenment's concept of man, the idea of humanity cannot follow, because the rights of *man* cannot be the same as *human rights* (Zaharijevic 2008). The subject of the *Universal Declaration of Human Rights* (1948) is 'every individual,' regardless of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (Article 2). Therefore, it is no longer white, 'civilized' man, European, Christian, *pater familias*. Thus it may be asked what kind of conditions led to the transformation (which, at least in principle, is not a mere renaming) of the rights of man into human rights.

It may be asked what is meant by the concept of 'man' in contemporary legal documents. Does that concept have the same meaning today as in the time of the proclamation of the *Declaration of the Rights of Man and of the Citizen*? Does it possess an unambiguous, unbroken continuity that connects every human being? According to Foucault, before the end of the eighteenth century, *man* did not exist (Foucault 2002). Despite the fact that Foucault is not talking about man defined as a holder of natural rights, but as an object/subject of representation/knowledge (Zaharijevic 2008), his thesis coincides here with the assertions set forth in the previous lines.

In an era when it entered wide use and gained its contemporary, widespread meaning, the concept of man (determined on the basis of freedom and equality) strives towards universality and general attributability. 'Men are born and remain free and equal in rights' (*Declaration of the Rights 1789*, Article 1). All who are men are free and equal in rights. However, subsequent, adjoint contents place man in certain classes and groups that are not immanent to humanity (natural state), but to society. Consequently, men, bearers of natural rights that make them equal, establish a community that will provide them with civil rights as well. If that community is a nation, 'political association is the preservation of the natural and imprescriptible rights of man' (*Declaration of the Rights 1789*, Article 2) (i.e., the transfer of equality to the level of civil existence). The nation is, therefore, the first community in history that involves civic equality based on universal attributability of humanity to all future citizens (Zaharijevic 2008).

'Man,' an allegedly universal category, is not a universal symbol, because the word *every* (which, by the logic of universality, must necessarily precede the noun 'man') at the time of its invention is absent from

it. At the moment of birth of the ‘man,’ not all human beings laid equal claim to freedom and equality in rights, because the name of ‘man’ was denied to them.

The rights of *man*, therefore, are not *human* rights (Zaharijevic 2008). Although they are based on the so-called natural rights, the rights of man have been limited since their very beginning to certain human beings, who, more than others, laid claim to humanity. Despite the fact that the concept of ‘man’ aspires to universality (humanity), the rights of man, closely connected to the rights of citizen, do not produce ‘humanity’ but small units—nations—that in turn define the meaning of rights of man.

Article 1 of the *Declaration of the Rights of Man and of the Citizen* states that men are born free and equal in rights. Article 1 of the *Universal Declaration of Human Rights* states: ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’ The bond created between individuals, which gives birth to a ‘man,’ is *fraternity*.

However, why exactly is fraternity considered a consensual bond? Why is the figure that from now on marks a new kind of closeness among *men* borrowed from kinship registry, and why is it—if it includes all those who fall under the concept of ‘man’—unequivocally masculine?

Since he is born as a brother, man’s humanity is recognized only when one man becomes a citizen, since civil status denominates and legitimizes natural rights (rights that are recognized only under the assumption of the existence of society, as something that precedes society). In this elliptical birth of man *through* and *from* the citizen, the brother figure has a mediating role (Derrida 2005). The possibility of being a brother is necessary for man to become a citizen (to enter into the situation of the agreement), while a citizen only as a brother can incarnate equality of the natural state, turning it into a political equality. Only under the assumption that men are brothers is it possible to establish a political fraternity, just as under the assumption of the existence of the nation that affirms freedom and equality, by creating citizens, the humanity of man is established in reverse.

Equating ‘citizen’ with ‘brother’ creates ‘familial, fraternalist and thus androcentric configuration of politics’ (Derrida 2005, p. viii). A commu-

nity of brothers can never be humanity, *because not everyone is a brother*—some individuals and social groups are always excluded from this category. The brothers are *only* those men who are at the same time citizens (or have the ability to become citizens), those who the nation represents as a sovereign political body. The man, this supposedly neutral philosophical invention, reflects in itself this tearing through two figures—as face and reverse, as inside and outside—through which it manifests: the figure of a *brother* (citizen) and a figure of an *alien*—the ‘self’ and ‘other.’

Fraternity, as general will, in conceptual terms is possible only under the assumption of incomplete civil rights or pseudo-democracy. Impossibility of *citoyenne* in the concept of the *citoyen* is the source of the meaning of national political law that establishes *man* as a *citizen*: this is precisely the point from which fraternity constitutes a community of brothers (nation), and not humanity. The recognition of ‘original rights’ for the whole human race would mean that every possessor of natural rights must be a citizen in the strict sense (since men are born and remain equal in rights, and the aim of all political association is nothing more than the preservation of natural and imprescriptible rights of man). Denying these rights to certain members of the human race—converting them into something that is foreign to the concept of man by an elliptical twist on the excluding concept of the citizen—defines a nation as a community of brothers *and* aliens, the community of those who lay claim to the title of man and those who are denied this right (Zaharijevic 2008).

A world in which man is a brother requires the existence of the other, which cannot be understood, which cannot be recognized as a brother. A world divided by nations, miniature fraternities that maintain the illusion of humanity, is a world in which aliens are constitutive. The spirit of fraternity is European, male, and not the spirit of humanity, unless humanity does not refer to a gathering of some future European brothers that bring together the ‘self’ and ‘other’—citizen and alien.

Despite the fact that universality is attributed to fraternity, because all are ‘men,’ free and equal in rights, still, not all individuals are considered brothers. Women are not brothers.

The fraternity may *include* cousins and sisters but, as we will see, including may also come to mean neutralizing. Including may dictate forgetting, for example, with ‘the best of all intentions’ that sister will never provide a docile example for the concept of fraternity. (Derrida 2005, p. viii)

Hence, there are ‘human beings’ who are excluded from the Enlightenment perspective of rights, which gave birth to fraternity. Therefore, it may be asked what if everyone became ‘man,’ *born* free and remained free and equal in rights? By raising this question, we go back to (to paraphrase Heidegger’s (1996) words) the question of all questions: what/who is it/that ‘man’? The answer to this question is no longer possible to get by examining human nature or the humanity of human beings, since this examination, if it is even possible, must proceed from the answer to the question of whose humanity is human enough to fit in consideration of something so universal (such as rights of man).

So the question is: Who is a man?—if that name applies to everyone, but not to every male/female? Or, in other words, what is that seemingly universal place, that pure actuality which, although it should be everyone, is actually never everyone, as it never includes all of its potential figures? The ‘man,’ this supposedly neutral philosophical invention, reflects in itself this tearing through two figures—as face and reverse, as inside and outside—through which it manifests: the figure of a *brother* and a figure of an *alien*.

The modernist concept of citizenship emphasizes homogeneity and sameness and transcends cultural, historical, social, and other particularities. It is founded on a universalist conception of morality based on reason and considered to be the same for all human beings. This concept of citizenship (as well as rights) is emphasized by the *Universal Declaration of Human Rights* (Article 1).

The *Universal Declaration of Human Rights* was inspired by the *Declaration of American Independence*¹⁰ (1776) and the *Declaration of the Rights of Man and of the Citizen*¹¹ (1789). In both of these docu-

¹⁰ The *Declaration of American Independence* was adopted by the Continental Congress on 4 July 1776.

¹¹ The *Declaration of the Rights of Man and of the Citizen* was adopted on 26 August 1789 by the National Constituent Assembly, during the period of French Revolution. It represented the first step towards writing a constitution for France.

ments, the primacy of reason is emphasized. These two declarations were established in light of the ideals of the Enlightenment. The *Declaration of American Independence* asserts that the rights it declares are ‘self-evident.’ The *Declaration of the Rights of Man and of the Citizen* is based on the doctrine of natural rights. It was influenced by the Enlightenment and modern liberal political principles. These principles are founded on a universalist concept of knowledge and reason, which transcends all contingent beliefs derived from historical or cultural circumstances. ‘Modern political thought generally assumed that the universality of citizenship in the sense of citizenship for all, implies a universality of citizenship in the sense that citizenship status transcends particularity and difference’ (Young 1989: 250).

The universality of human rights was also emphasized by the *Vienna Declaration and Programme of Action*¹² in 1993, which claims that: ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.’¹³

This statement was confirmed at the World Summit in New York in 2005.¹⁴ It is argued that ‘the universal nature of these rights and freedoms is beyond question’ (Final Document 2005, para. 120). However, this concept of universalist human rights, which are granted to every individual, is fixed. The concepts that define human rights in the Preamble and the Article 1 of the *Universal Declaration of Human Rights*, such as, ‘inherent,’ ‘inalienable,’ and ‘endowed with reason,’ point to a metaphysical origin of human rights.

In his speech in Geneva on the fiftieth anniversary of the *Universal Declaration of Human Rights*, Václav Havel states that the deepest roots of human rights lie beyond the human covenants—in a realm that he describes as ‘metaphysical’ (Havel 1997). This idea of rights creates a universal and essentialist concept of citizenship. According to Young: ‘Equal treatment requires everyone to be measured according to the same norms,

¹² *Vienna Declaration and Programme of Action* opted by the World Conference on Human Rights in Vienna on 25 June 1993.

¹³ The World Conference on Human Rights, 14–25 June, 1993, Vienna, Austria.

¹⁴ The World Summit, 14–16 September, 2005, New York.

but in fact there are no “neutral” norms of behaviour and performance’ (Young 1989, p. 269). Although liberalism asserted ‘the right of all rational autonomous agents to equal citizenship,’ it excluded from citizenship all those whose reason was not fully developed or questionable (Young 1990, p. 54). ‘Thus poor people, women, the mad and the feeble-minded, and children were explicitly excluded from citizenship, and many of these were housed in institutions modeled on the modern prison: poorhouses, insane asylums, schools’ (Young 1990, p. 54).

The modern liberal concept of citizenship originates from ethics based on the principle of priority of right over good. This ethics is often perceived as an ‘ethics of justice,’ where rights are perceived as universal, rational concepts, independent of any particularistic conception of good. According to Young, modern liberal concepts of citizenship are based on the priority of universality and sameness over particularity and difference and the idea that ‘one size fits all’ in ethics and law. This conception of citizenship implies homogeneity. However, a universal concept of citizenship should be rejected and a new group-differentiated citizenship, based on a heterogeneous concept of the public, should be established (Young 1989).

Different social groups have different needs, cultures, histories, experiences and perceptions of social relations which influence their interpretation of the meaning and the consequences of policy proposals and influence the form of their political reasoning. These differences in political interpretation are not merely or even primarily a result of differing or conflicting interests, for groups have differing interpretations even when they seek to promote the justice and not merely their own self-regarding ends. (Young 1989, p. 257)

However, to promote the idea of a new group-differentiated citizenship, a heterogeneous conception of the group, based on various identities, is needed. Emphasizing the differences between groups is not sufficient, as it can imply a homogeneous idea of the group, which is essentialist.

Modern liberal political thinkers create a number of binary oppositions, such as right/good, essential/contingent, citizen/stranger, nature/culture, and reason/emotion. The first term is considered dominant, because it is perceived as based on reason and the idea of ‘right,’ which is considered universal. The second term in those binary oppositions is often neglected and denied, because it is considered to be based on the concept of ‘good,’

which is regarded as contingent. The modern conception of the public creates a conception of citizenship, which excludes a number of persons.

3.3.2 T. H. Marshall's Concept of Citizenship

According to a number of authors, T. H. Marshall's theory of citizenship is the best reflection of modern-conception citizenship (after World War II). Marshall's essay 'Citizenship and Social Class' is significant, because in it Marshall analyses the concept of citizenship, which was neglected in the previous decades (Marshall 2009). Consequently, the concept of citizenship gains attention and the number of studies on the topic of citizenship increases.

Marshall attempts to specify a set of effective rights proper to citizenship. He also emphasizes that these rights tend to evolve with different historical and social changes. Marshall's research is focused on the evolution of rights and the development of the concept of citizenship within the framework of British society in the eighteenth, nineteenth, and twentieth centuries. According to Marshall, citizenship based on equality should be the key element of modern industrial societies. He attempts to reconcile formal citizenship status with inequalities based on class differences. Marshall emphasizes three different categories of rights ascribed to citizenship, as well as institutions that establish them. He divides citizenship into three different elements: civil, political, and social. According to Marshall these rights are derived from history, not logic.

Civil rights are based on the idea of freedom, and political rights are grounded in the idea of justice, while social rights are founded on the idea of equality. Marshall argues that civil rights include freedom of speech, thought, and faith; liberty of person; the right to justice; and the right to own property and conclude valid contracts. Marshall argues that the courts of justice are the institutions associated with civil rights (Marshall 2009, p. 148). The political element of citizenship means 'the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body' (Marshall 2009, p. 149). According to Marshall, the institutions associated most directly with political rights are the parliament and

councils of local government. Social rights embrace the whole range of rights, such as the right to security and economic welfare and the right to share in the social heritage. The corresponding institutions for this category of rights are the social services and educational system (Marshall 2009, p. 149).

Marshall argues that civil rights developed in the eighteenth century, political rights in the nineteenth century, and social rights in the twentieth century (Marshall 2009). He argues that the development of social citizenship coincides with the genesis of the welfare state. Social citizenship is the core element of social integration, previously advanced by civil and political rights. Social citizenship promotes policies that diminish class inequalities, and in this way, it resists competitive capitalism. Marshall emphasizes that the social citizenship represents the final stage of development of citizenship. Thus his conception of citizenship cannot meet the challenges of contemporary era.

Marshall's concept of social citizenship does not abolish class differences—it just leads to a state in which class differences are not as huge as they have been in the past. Subsequently, the goal of the welfare state is not a classless society, but a social and political system in which class differences are legitimate and justified by the principles of social justice. This also means that in the welfare state both extreme poverty and extreme wealth will be combated. Another task of the welfare state is social integration, which can be achieved by the feeling of belonging based on national identity.

Marshall and other thinkers of his generation (and generations before) completely ignored gender differences and rights. Marshall also does not acknowledge the rights of immigrants and racial equality within his citizenship theory. In his analysis of social classes in his *Social Policy in the Twentieth Century* (1975), he mentions the subject of immigration, but he does not develop it. Marshall's concept of citizenship is often criticized, because a citizen is described as a passive subject of rights. Marshall does not include the possibility of active citizenship. He also does not explore the possible conflicts between different categories of rights. Their different natures often make their interests clash, and they are often not

complementary. Nevertheless, the main problem with Marshall's evolutionary theory of citizenship is that it can be characterized as homogeneous and static. Marshall perceives rights as homogeneous groups, which, once developed in the certain historical period, do not transform and change. He does not analyse how different social movements and changes affect the nature and scope of citizenship. Consequently, Marshall's idea of citizenship is universalist. Marshall also does not explain how the meaning of citizenship and rights ascribed to citizenship are transformed by wars and various crises: economic, ecological, political, and so forth. This demonstrates why his concept of citizenship can be considered static.

The main problem with Marshall's idea of citizenship is that it lacks a cultural dimension. Marshall does not acknowledge the existence of cultural and political pluralism. Thus, his conception of citizenship is not relevant within the context of contemporary societies. Contemporary challenges to Marshall's citizenship theory are: feminism, globalization, development of information and communications technologies, migrations, European integration, and so forth. Citizenship is inseparable from sociological context, as was argued by Aristotle. Citizenship represents a set of different practices: legal, political, economic, cultural, and so on. The nature of citizenship is historically, socially, and politically influenced. Thus, it is contingent as a result of different social and political movements and changes. Citizenship is continually affected and reinterpreted by different social changes. Subsequently, it is a dynamic entity.

Marshall's conception of citizenship defines citizenship as status. However, the aim of Marshall's idea of citizenship is to promote and stabilize national identity. According to Marshall, citizenship cannot be reduced to rights and duties, it also implies an identity. Marshall's argument for broadening the civil and political dimensions of citizenship and also the introduction of social rights, such as the right to education and health care, was to help develop national identity. Marshall's conception of citizenship is tied to the nation-state. His idea of citizenship arises from the idea of an autonomous national culture and a capitalist economy. Marshall does not embrace political,

economic, and social rights at subnational and supranational levels. The concept of citizenship, which is perceived as inseparable from the nation-state, comprehended as a homogeneous, is exclusivist, because the full range of rights is only guaranteed to national citizens. Within the framework of the national model of citizenship, both the rights and duties of citizens and practices of active participation of citizens in the political community relate only to individuals who are members of the nation. That is why Marshall's conception of citizenship is not relevant within the context of contemporary societies.

3.4 Postmodern and Postnational Concepts of Citizenship

Postmodern political philosophy¹⁵ challenges the tradition of Western reason, and it attends to difference and relies on discussions of the meaning of difference in such poststructuralist and postmodern authors as Jacques Derrida, Michel Foucault, Jean-François Lyotard, Luce Irigaray, and Julia Kristeva (Young 1990, p. 7).

Modern liberal political thought is based on the binary opposition between reason and desire, which ascribes universality reasoning to the public realm of the state and particularity of desire to the private realm of needs. Postmodern political theory overcomes these dichotomies and unites public and private realms. According to Bridges, a postmodern civic culture should provide a conception of citizenship, which will not be based on metaphysical and foundationalist categories (Bridges 1994, p. 3).

¹⁵ According to van Ham, 'Postmodernism offers a new, radical intellectual and political agenda. Its rejection of boundaries of any kind, whether as means of physical demarcation (separating peoples between "us" and "them") or as intellectual ordering devices (distinguishing between academic disciplines) should be read as a means to overcome modernist mechanisms of marginalization and exclusion of peripheral voices: the poor, women and children, racial and other minorities, artists and youth and other sub-cultures, as well as academic endeavors that try to go beyond the well-trodden path of orthodox discourse. It is broadly interdisciplinary in approach and denies that any particular methodology is better than another [...] As a result, postmodernism does not acknowledge monological interpretations of reality, rejects unifying and dominant actors like the nation-state' (Van Ham 2001, p. 16).

In short, a postmodern liberalism must take a rhetorical turn. It must start from a rejection of the essentialist and universalist conception of the normative standpoint of citizenship identified with modernist liberalism and an affirmation of the historically-situated and particularistic nature of civic values. (Bridges 1994)

Postmodern civic culture is not based on the conception of priority of the right over the good, which was the main characteristic of modern liberalism. According to Bridges, postmodern liberalism takes a teleological turn, as it reinterprets:

the modernist liberal doctrine of priority of right over the good in a way that both gives the notion of moral rightness specific ethical content and, at the same time, makes the affirmation of moral rightness compatible with respect and pursuit of particularistic cultural conceptions of the good. (Bridges 1994)

In this way, a postmodern civic culture is defined by both a rhetorical turn (i.e., a turn away from the universalism of modernist rhetoric) and a teleological turn (i.e., a turn away from modernist ethics) (Bridges 1994). Postmodern civic culture affirms the idea of contingent, culturally constructed, and particularistic citizenship.

According to Zygmunt Bauman (1992), in the postmodern era individuals carry more responsibility because moral responsibility is no longer demonstrated by the state and the church as it was during modernism. Both the state and the church, as forms of moral regulation, are in crisis. There is no absolute truth and the 'truth' has become a personal matter.

Western society is becoming more and more *decentered*, since the state no longer serves as the sole or even the primary *locus* of political authority; it has become *fragmented* as a result of growing number of distinct political visions, movements and fashions; and political life has become *eclectic*, as individuals and movements develop political strategies from all sorts of possible political styles. (Van Ham 2001, p. 162)

The postmodern condition implies pluralism and ambivalence and requires rethinking modernist practice. The concept of citizenship and

the notion of public sphere should be reconstructed. Citizenship cannot rest on the political heritage of the Enlightenment, which denies particularity and difference. The public sphere should not be perceived as a unitary concept, and it should be considered as heterogeneous.

Consequently, it is even rather insolent to use the term 'public' in relation to politics, since the sphere of common deliberation has now been enlarged to include a wide range of groups and individuals that were previously simply ignored. Fragmentation and eclecticism have turned the political category of state-centered citizenship into a chaotic hotchpotch of values and accounts of civic life. This may not have made the notion of citizenship trivial, but it is certainly making it more problematic. (Van Ham 2001, p. 163)

Van Ham emphasizes that citizens are more isolated from traditional spaces of politics, since the media have become the public sphere, and there is the proliferation of publics. Mass media have blurred the distinction between politics and entertainment (Van Ham 2001, p. 164), between public and private, and between deliberation and debate.¹⁶

Postmodern society requires postmodern forms of democracy. Democracy as the current dominant political norm in the European Union still reflects modernist categories 'rooted within the project of the Enlightenment' (Van Ham 2001, p. 155). Democracy is still based on metanarratives, such as 'government,' 'people,' and 'nation.' Thus democracy, as both a political theory and political practice, has to be transformed, due to the challenges of postmodern society (Van Ham 2001, p. 166). Postmodern society implies heterogeneity, difference, fluid identities, and new forms of ethics based on contextual morality. However, 'democratic governance still follows the mechanical notions of representation and delegation of political authority which reflects a rather archaic, nineteenth-century political reality, rather than the fragmented eclecticism of postmodern practice' (Van Ham 2001, p. 157). In postmodern societies cultural and ethnic diversity is enhanced, which makes democratic representation problematic. According to Peter van Ham:

¹⁶ See Chapter 4 of this book.

Western democracy continues to organize government by assuming a homogeneous society that no longer exists, and so its method of representation takes for granted the validity of a delegation process that is nothing but a simulacrum, a copy of a copy, for which, in the end, there is no longer an uncontested original. (Van Ham 2001, p. 159)

3.4.1 Postmodern Legal and Political Theory

Postmodernity has undermined the belief in the universality of law (Douzinas 2004, p. 196). The modern law rests on a number of binary hierarchies: public/private, right/good, universal/particular, and so on. Costas Douzinas describes postmodernist reading of law as a 'hermeneutic turn' (Douzinas 2004, p. 199). The modernist idea of law was based on universality of reason and observable, objective phenomena. In this way, the law was understood as a coherent system of norms based on logic. Postmodernity imports semiotics, hermeneutics, and literary theory in jurisprudence. Postmodernist legal theory emphasizes that law interprets texts. The modernist idea of law is 'rooted in the metaphysics of truth' (Douzinas 2004, p. 201).

Power is legitimate if it follows law, *nomos*, and if *nomos* follows *logos*, reason. This peculiar combination of the descriptive and prescriptive, of *logos* and *nomos*, lies at the heart of modernist jurisprudence. The task postmodern jurisprudence has set itself is to deconstruct *logonomocentrism* in the texts and operations of law. (Douzinas 2004, p. 202)

This deconstruction of logonomocentrism of law is founded on the hermeneutical method of close reading. A close reading of texts reveals disparities and contradictions, which are often ignored by textual surface. The nature of legal texts is often intertextual, and a close reading of legal documents displays

discrepancies and inconsistencies arising from the fact that their various elements, parts, and layers, with their different roles, functions, and operations, are brought together with quotes and grafts from other texts, must survive in

uneasy and unstable combinations, and become authoritative in various unpredicted and unpredictable new contexts. (Douzinas 2004, p. 208)

Modernist law turns people into abstract subjects. Postmodern law is founded on the 'ethical turn to the other' (Douzinas 2004, p. 214). Postmodern jurisprudence is founded on the idea that law cannot be abstracted from its context (Minda 1995, p. 191). Law is considered self-referential. It is not perceived as objective or coherent. 'Rules refer to other rules, and their systematic interdependence determines the existence and normative value of any particular term' (Douzinas et al. 1991, p. 22). Postmodernists argue that meaning is constructed and constantly deferred. The meaning of a legal text is constructed by the judge.¹⁷ Legal texts are interpreted in the same way as literary texts. There are several representatives of the postmodern law¹⁸ discourse, such as: critical legal studies scholars, law and literature scholars, critical race scholars, and feminist legal scholars.

Postmodern jurisprudence rejects the concept of the autonomous self. It employs the idea of self as a social, linguistic, cultural, and historical construction. While modern legal thought presupposes a universal and coherent discourse, postmodern legal thought embraces proliferating discourses. Modern legal scholars understand law as belonging to the realm of nature and natural rights. Consequently, law is perceived as universal and essential. Alternatively, postmodern legal scholars argue that law should include different cultural discourses and identities. Subsequently, law is considered to be part of the realm of culture. It is contingent and dynamic.

According to postmodern scholars, jurisprudence has become a multi-cultural field of study (Minda 1995, p. 204). Nevertheless, postmodern jurisprudence does not necessarily include the dismissal of Enlightenment ideals. 'To the contrary, the spirit of the Enlightenment could still be found in the interdisciplinary work of legal scholars who looked outside of law to find a methodological foundation for legal analysis' (Minda

¹⁷ 'Every judge must choose or create a coherent theory of political morality that could account for the institutional materials to hand and present them as the outcome of principled decision-making. In carrying out this task individual judges could differ' (Douzinas et al. 1991, p. 57).

¹⁸ Postmodern law theory was shaped in the late 1980s.

1995, p. 205). Postmodern legal theory embraces contingency and indeterminacy, and employs metaphoric and narrative approaches.

3.4.2 Postmodern and Postnational Notions of Citizenship

A postmodernist critique of the modernist conception of citizenship leads to a new, more inclusive conception. Postmodern citizenship, perceived as based on the postmodern notion of identity, is not defined by nation or culture. It is a state of mind, a mental construct, which is founded on the subjective feeling of belonging. This conception of citizenship implies a more fluid notion of space. Rejection of the modernist notion of the unified subject includes a more fluid idea of boundaries. Foucault (1984) criticizes the idea of space as undialectical and fixed. He emphasizes that space and borders are constructed. Thus, ‘belonging to a common space’ can be perceived as a mental construct, which is determined by feeling and belief.

Postmodern citizenship

does not unite differences, but unites despite differences; it does not homogenize antagonisms, but reduces them to mere “differences”; it does not eliminate disharmonies, but acknowledges and harmonizes them (...); it neither silences various sounds nor drowns them out, but uses them to produce ever new tunes. (Velikonja 2005, p. 16–17)

The postmodern concept of citizenship is in accordance with Derrida’s critique of essentialist and universalist conceptions of identity. Modern liberal concepts of citizenship imply sameness. This idea of identity is the origin of all binary hierarchies. The concept of citizenship based on fixed identity constructs a public sphere that does not embrace difference. Williams argues that ‘identity has been used as a focus for gathering people together under the banner of some unifying notion or characteristic (...) The development of collective identities in this way has always been fundamentally concerned with acts of power’ (Williams 2005, p. 184).

Table 3.1 Modern, Postnational and Postmodern Notions of Citizenship

Modern citizenship	Postnational citizenship	Postmodern citizenship
Essentialist, based on reason/fixed borders	Universal, based on personhood	Implies fluid borders of membership and identity
Based on fixed notion of identity	Based on more fluid notion of identity	Implies fluid identity, which is constantly reinterpreted
Based on binary oppositions	May contain binary oppositions	Overcomes binary oppositions

Derrida does not argue that all forms of unity and gathering need to be overcome (Caputo 1997). He rejects the politics that grant rights to the homogenous groups based on fixed identity. According to Butler:

To claim that politics requires a stable subject is to claim that there can be no *political* opposition to that claim. Indeed, that claim implies that a critique of the subject cannot be a politically informed critique but, rather, an act which puts into jeopardy politics as such. To require the subject means to foreclose the domain of the political, and that foreclosure, installed analytically as an essential feature of the political, enforces the boundaries of the domain of the political in such a way that that enforcement is protected from political scrutiny. The act which unilaterally establishes the domain of the political functions, then, is an authoritarian ruse by which political contest over the status of subject is summarily silenced. (Butler 1992, p. 4)

Identities don't have sharp borders. Thus they cannot provide the foundations for sharp demarcations (Caputo 1997).

Postmodern citizenship is often equated with postnational citizenship.¹⁹ Those authors who equate 'postmodern' and 'postnational' order often conclude that the failure 'of a postmodern European order' is at the same time the failure 'of a postnational European order' (Tekin 2014).

This point of view is flawed, as 'postnational' can still contain various binary oppositions, such as identity/difference and self/other, while 'postmodern' overcomes these binary hierarchies (Table 3.1.). Thus, even if European citizenship or the European Union as a political community

¹⁹ See: Hülse (2006), Featherstone (1995), Düzgit (2012), Tekin (2014).

is based on binary oppositions, either can still reflect a postnational order, although neither reflects a postmodern order.

Postnational citizenship is tied to the existence of global institutions and human rights discourses that challenge the monopoly of the nation-state. Postnational or

transnational citizenship is less expansive than its apparent synonyms, world citizenship and global citizenship, and is more clearly cross-border than the term cosmopolitan citizenship. A longstanding normative theoretical tradition calls for 'global' or 'world' citizenship. In contrast, the term transnational citizenship can refer to cross-border relations that are far from global in scope. (Fox 2005, p. 177)

Postnational citizenship arises with global political changes, such as globalization and pluralism. Globalization challenges the efficacy, sovereignty, and democratic legitimacy of the nation-state. Pluralism erodes the homogeneity of nation-states and refigures the idea of collective identity. Homogeneity of collective identities is also challenged by some contemporary problems—such as ecological disasters, diseases, global economic crisis, global military problems, and organized crime—which transcend borders and cannot be solved by relying merely on the capacity of nation-states. Borders become fluid and capacity shifts from the national to transnational level. Intensive migrations in the past few decades require a new policy that provides for the equality of individuals and social groups regardless of their race, religion, age, sex, language, and so forth.

Erosion of the national model of citizenship is a consequence of the increased circulation of goods and mobility of working citizens after World War II. The national model of citizenship is based on the idea of fixed borders, which determine both the state and national identity. In this way, citizenship as membership in a national community and territorial belonging are concordant. Within the framework of the national model of citizenship, citizenship status and rights and duties are ascribed only to individuals as members of the nation. Belonging to the nation is determined by various myths; historical and cultural heritage; and ethnic, linguistic, and other characteristics. Consequently, the fundamental question—'What is a nation?'—cannot be answered exactly, because it

is often a matter of policy. 'Nation' is a contingent, not an essentialist, category. National citizenship served the interests of the modern state. However, contemporary capitalistic corporations are anti-national and their interests often contradict the interests of singular states.

The traditional order of national citizenship implies uniform citizenship rights and formal equality. Citizenship is perceived as a status ascribed to the individual, whose identity is perceived as rational, stable, coherent, and conscious. However, the postnational model of citizenship implies multiple and complex notions of identity. The postnational condition dissociates nation, identity, and state and implies multiple levels of membership in the community. It includes complex systems of rights and duties and different identities (supranational, national, regional, local, personal, and so on).

According to Tambini (2001), there are three basic forms of postnational citizenship: (1) postnational membership, (2) European citizenship, and (3) multicultural citizenship. In the following lines, the postnational nature of EU citizenship will be analysed. Kostakopoulou argues that EU citizenship, as a postnational form of citizenship, should be conditioned on domicile. 'Domicile could easily be propounded as a Community law concept, thereby ensuring uniformity and fairness in the interpretation of the personal scope of Union citizenship throughout the Union' (Kostakopoulou, 1996, pp. 345–346). EU citizenship based on domicile would embrace a more heterogeneous idea of European identity and the European public.²⁰ This new conception of EU citizenship requires more fluid notions of identity and space. It embraces the idea of fluid boundaries²¹ and politics based on solidarity, not on ethnicized identities. Soysal (1994) describes postnational citizenship as a possible combination of citizenship and denizenship, or as based on dual nationality. It presupposes fluidity of identities and boundaries. According to Soysal, the traditional model founded on national citizenship based on national-

²⁰ 'In such a public, individuals can participate as individual citizens and members of communities or groups which have equal status in the public sphere—they can take action both as citizens and as black citizens, or gay citizens, or old age pensioner citizens. This will free the European demos from the grip of nationality, without at the same time postulating an abstract, undifferentiated collectivity.' (Kostakopoulou 1996, p. 346)

²¹ Boundaries can be perceived as constructed (determined by feeling and belief), not fixed.

ity can no longer embrace the dynamics of belonging and membership in contemporary Europe (Soysal 1994, p. 21).

According to Yasemin Soysal (1994), postnational citizenship implies that national membership is no longer imperative for the role of citizen. Soysal argues that postnational citizenship is based on 'universal personhood.' According to Soysal, the entire postwar discourse on rights is founded on personhood. Her definition of 'personhood' is vague:

As a social code, personhood is not an idealistic, Hegelian notion but one rooted in highly structured discourses, economies, and politics.(...) In the postwar era, the rationalized category of personhood (and its canonized international language, Human Rights) has become an imperative in justifying rights and demands for rights, including those of nonnationals in national polities. (Soysal 1994, p. 42)

Soysal also does not explain on what kind of discourse her concept of personhood is rooted. However, she mostly employs modernist political discourse and universalist and essentialist categories, although she argues about multiple memberships and identities:

My intention is to highlight the emergence of membership that is multiple in the sense of spanning local, regional, and global identities, and which accommodates intersecting complexes of rights, duties, and loyalties. Turkish migrants in Berlin represent an example of this emerging form of membership (so, for that matter, do Moroccans in Paris, Pakistanis in London, and Surinamese in Amsterdam). As foreign residents of Berlin, Turkish migrants share a social space with foreigners from other countries and with German citizens. They pay taxes, own businesses and homes, work in factories and in the service sector, receive welfare, rent government-subsidized apartments, join unions and political parties, organize protests, formulate platforms, and advance claims. Either selectively or concurrently, they invoke, negotiate, and map collective identities as immigrant, Turk, Muslim, foreigner, and European (Soysal 1994, p. 166).

Soysal's idea of postnational citizenship is problematic, as she builds a postmodern idea of multiple, shifting identities on modernist political discourse, which implies universalist and essentialist categories. In this

way, the idea of dynamic and changeable identity is undermined. Soysal states that one of the first examples of the postnational forms of citizenship is rights granted to guestworkers in Europe.

Guestworkers have been incorporated into various aspects of institutional and social order of their host countries, participating in the welfare schemes, educational system, labour markets, and so forth without formal citizenship. The case of guestworkers undermines the national order of citizenship and manifests changes of the understanding of citizenship (Soysal 1994). The case of guestworkers in Europe in the twentieth century is described by Soysal as an empirical anomaly 'with regard to predominant narratives of citizenship' (Soysal 1994, p. 2). According to Soysal, postnational citizenship is an outcome of the paradigm shift—particularistic national rights are replaced by more universalistic rights founded on personhood.

Thus postnational citizenship implies fluid boundaries of membership. Soysal argues that 'a new and more universal concept of citizenship has unfolded in the post-war era, one whose organizing and legitimating principles are based on universal personhood rather than national belonging' (Soysal 1994, p. 1). According to Soysal, this new postnational concept of citizenship is not exclusionary, because it is not based on nationality but on a universal concept such as personhood. The notion of personhood implies universal rights that transcend borders. Postnational citizenship is a consequence of transnational human rights discourse. Soysal considers universal human rights and national sovereignty to be two basic 'institutionalized principles of the global system' (Soysal 1994, p. 7). The national model of citizenship is based on the idea of fixed borders and essentialist identity. This idea of citizenship is exclusionary because it grants rights only to those individuals who are considered state nationals. It implies a number of binary distinctions, such as we/they, self/other, citizen/stranger, and national/non-national. On the contrary, the postnational model of citizenship includes both national and transnational actors (Soysal 1994, p. 7). In this way, the nation-state is no longer perceived as the primary source of identity.

According to Soysal, these two models of citizenship (national and transnational) create a 'dialectic tension' (Soysal 1994, p. 8). However, it can be argued that Soysal's conception of postnational citizenship also implies dialectic tensions and binary oppositions. Soysal argues that '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' (Soysal 1994, p. 137). She emphasizes that the postnational conception of citizenship is universal, while the national model of citizenship is particular. In this way, she derives the postnational concept of citizenship from the binary opposition universal/particular.

Postnational citizenship implies fluid and multiple identities that transcend binary oppositions. The existence of binary oppositions points to an essentialist understanding of identity. According to Soysal, some major developments in the postwar era led to the reinterpretation of national citizenship. The first concerns the emergence of global institutions and transnational political structures that challenge the nation-state monopoly. The pluralism of contemporary societies requires the notion of a citizenship tied to a more fluid notion of identity. The second concerns the emergence of universalist rules of human rights discourse. Soysal argues that 'international conventions and charters ascribe universal rights to persons regardless of their membership status in a nation-state' (Soysal 1994, p. 145).

The idea of personhood presented within the *Universal Declaration of Human Rights* is rational and conscious (Article 1). It excludes other forms of identity and social groups. Thus, it is universalist and essentialist. Soysal argues that the universal concept of personhood should represent the foundation for the postnational model of citizenship. She emphasizes that 'it is within this new universalistic discourse that the individual, as an abstract, human person, supplants the national citizen' (Soysal 1994, p. 164). This idea is flawed and contradicts the basic principles of postnational polity. A postnational perspective implies differentiation and fragmentation of culture, identity, politics, and other concepts. It includes

the decline of 'grand narratives' of legitimation in politics and society; the celebration of the idea of difference and heterogeneity; the globalization of culture with telecommunications networks; the emphasis on flexibility and reflexivity in lifestyle; a decline in the idea of coherence as a norm of personality; and the decline of 'industrial society' and its replacement by 'postfordism' and 'postindustrialism.' (Isin and Wood 1999, p. 7)

Soysal grounds the postnational model of citizenship on the modernist notion of the self as a rational, conscious, autonomous, unified, and stable category. However, this conception of the subject contradicts the postnational model of citizenship, which embraces multiple and fragmentary identities. Soysal is aware that a universalist concept of personhood is not compatible with the idea of multiculturalism, but she does not try to transform this point of view. Another problem of Soysal's conception of postnational citizenship is that it does not transcend dualities such as global/national, universal/particular, self/other, and identity/rights. She recognizes two principles: the universal principle of human rights, which transcends the borders of nation-state; and the particular principle of national sovereignty, that is, tied to fixed borders of the nation-state. She represents these two principles as two completely separate and irreconcilable spheres.

Soysal identifies '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' (Soysal 1994, p. 161). Although she argues that national identity becomes fragmentary and multileveled, she does not apply this point of view to the idea of personhood, which she perceives as universalist. She describes the postnational state as a multiplicity of membership (Soysal 1994, p. 164). Although Soysal highlights the multiplicity of membership that embraces global, regional, and local identities, she grounds those identities on universalist and essentialist assumptions. In this way, they are fixed and do not support pluralism of contemporary societies in a substantive way. She grounds those multiple identities in the universalist, stable, autonomous, and fixed notion of personhood, and thus cannot represent the postnational model of citizenship. Postnational citizenship implies fluid boundaries. Its nature is contradictory to all kinds of binary oppositions. Therefore, it requires the notion of identity that resolves discord between universal and particular, global and local, essential and contingent, and so on.

The postnational state still allows the conflict between personal and social identity, because, as is shown by the example of Soysal's understanding of postnational citizenship, those identities can still be defined

as monolithic.²² In that case, postnational citizenship does not transcend borders or the modernist idea of identity. In the following lines, it will be argued that postnational citizenship requires the postmodern idea of identity based on politics of affinity (not stable and essentialist identity).

Soysal's idea of postnational citizenship based on universalist assumptions reflects a politics of identity. The politics of identity arose in the second half of the twentieth century. It implies the struggle for recognition of different social and political groups and movements (feminism, Black civil rights, gay rights, and so on). Nevertheless, the politics of identity homogenizes experiences and narratives of diverse individuals. It aims to develop and strengthen collective identities. It employs various identifiers as instruments of its operationalization. Those identifiers simplify narratives, experiences, and characteristics of different social groups and produce stereotypes. The politics of identity does not transcend power relations and binary hierarchies. It perceives 'gender,' 'citizenship,' 'class,' 'nation,' and so forth as static and essentialist categories. Thus, it denies a voice to certain groups. As an essentialist politics it 'asserts that some relations are more important than others (i.e., the Marxist assumption of class as the defining social and economic category) and therefore have to be taken into account when constructing strategies for political change' (Van Ham 2001, p. 69).

Postnational citizenship requires a politics of more flexible identity. This model of citizenship should be based on a politics of affinity, which implies otherness and difference. According to Haraway, every form of identity aspires to essentialize and categorize the subject. For this reason, she denies the notion of identity, and replaces it with 'affinity.' Affinity represents a result of 'otherness, difference and specificity' (Haraway 1991, p. 156). A politics of affinity is based on the idea that individuals join the group through sharing affect, not ideology. Although identity politics arose as a critique of various forms of oppression,²³ it can be considered

²²This is also characteristic of the modern idea of identity, which is described in Franz Kafka's novels. Kafka describes the impossibility of reconciliation of personal and social identity, and is why, in most of his novels, the main character dies.

²³According to Sonia Kruks: 'What makes identity politics a significant departure from earlier, preidentitarian forms of the politics of recognition is its demand for recognition on the basis of the very grounds on which recognition has previously been denied: it is a *qua* woman, *qua* blacks, *qua*

essentialist because it is based on unifying arguments. Identity politics gives priority to one, stable form of identity and separates it from all other possible forms. Thus, for example, being a third-country national is perceived completely separable from being a woman. On the other hand, there are often generalizations made about various social groups within the realm of identity politics. In this way, social groups are perceived as homogeneous, which leaves room for various forms of marginalization and discrimination. The politics based on the term ‘identity’ is often criticized by political philosophers. Indeed, it is still not clearly explained by scholars on whom the idea of identity the politics of identity is founded.²⁴ Politics of identity only identifies marginalized identities as a result of dominant discourses. Carl Stychin argues:

A politics of affinity differs from one centered on a fixed identity in that affinity suggests that the fictions of a homogeneous and totalizing group attribute have been rejected in favor of a recognition that a shared characteristic and experience – which may lead to (or require) common endeavors – cannot overwhelm the differences that exist between the members of the group. (Stychin 2001, p. 112)

Although Stychin argues that a politics of affinity should, in the first instance, provide the foundation for a European politics of sexuality, it has greater relevance and should represent the ground for the entire EU citizenship policy. The politics of affinity does not only emphasize group-based differences, but the differences among members of the group as well. Stychin claims that the politics of affinity transcends the self/other dichotomy. The politics of affinity denies a ‘parochialized, narrow sense of Self’ (Van Ham 2001, p. 70).

lesbians that groups demand recognition. The demand is not for inclusion within the fold of “universal human kind” on the basis of shared human attributes; nor is it for respect “in spite of” one’s differences. Rather, what is demanded is respect for oneself as different’ (Kruks 2000, p. 85).

²⁴ Richardson et al. argue about four notions of the self: (1) traditional notion, based on the idea of moral responsibility; (2) modern notion founded on the idea of conscious, rational, and unitary subject; (3) postmodern notion that emphasizes discursive constructedness of the self; and (4) dialogical notion that contains all three ideas of the self: premodern, modern, and postmodern (Richardson et al. 1998).

Soysal argues that a postnational mode of citizenship is produced by ‘dialectical tension between national citizenship and universal human rights’ (Soysal 1994, p. 164). Individual rights are no longer defined by a nation-state. They transcend its borders and become universal. Consequently, ‘the rights of the person transcend those of the citizen’ (Soysal 1994, p. 165). Soysal argues that international declarations and charters ascribe rights to all human beings as free and equal individuals. She emphasizes that this perspective is presented in the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966), and the *European Convention on Human Rights* (1950). However, Soysal does not recognize that the language of universality and sameness employed in these documents substantively denies heterogeneity and difference. This was clearly explained by Iris Marion Young (1989).

According to Young, the modern ideal of citizenship represented in most human rights declarations and conventions perceives equality as sameness, which creates the binary opposition universal/particular, where what citizens have in common is perceived ‘as opposed to how they differ’ (Young 1989, p. 250). Hence, the modern political ideal of universal citizenship implies that the law is applied to all in the same way, regardless of their differences. In this way, a logic that imposes sameness over difference is created (Benhabib 1994, p. 7).

The European Union is developing towards the ‘post-parliamentary governance’ (Van Ham 2001, p. 170).

But, since the Euro-polity is still in *statu nascendi* and not firmly rooted in traditional modern state-structures, postmodern governance is more obvious and more visible on the European level than anywhere else. The EU’s elaborate decision-making structure, based to a large extent on comitology, not only undermines classical notions of governance, but classical notions of democracy as well. (Van Ham 2001, p. 171)

The idea of the European Union as a very specific political category requires the notion of a fluid identity. Thus,

the developments in the European Union have brought forth the possibility of membership in various overlapping and strategically interacting

political communities on supranational, national and subnational levels and have unleashed the potential of rethinking citizenship, community and identity (Kostakopoulou 1996, p. 344).

According to Kostakopoulou, the idea of EU citizenship should be based on the assumption that citizens have multiple identities. It should not be based on the foundationalist notion of the community or the essentialist conception of identity (Kostakopoulou 1996, p. 344). The values of political pluralism and cultural multiplicity require breaking with homogeneity and sameness; citizenship is a dynamic, continually changing category composed of many narratives and different worldviews, and it cannot be reduced to membership or a territory.

3.5 New Ethics of Citizenship: The Ethics of Care

This new, postmodern account of citizenship requires a new ethics of citizenship. Bridges argues that the postmodern ethics of citizenship should explain not only what it means to be a citizen but also why it is good to be a citizen (Bridges 1994). This is the main difference between ethics based on the priority of the principle of right (which gives only a normative standpoint to citizenship) and the ethics in which the right and the good intertwine (which also promotes difference, and thus gives a substantive standpoint to citizenship). This ethics is based both on justice and care. It applies rules accompanied with empathy (i.e., care). 'Social and moral phenomena are bound in terms of interpersonal relations, context and values, and are multifaced and dynamic in nature' (Botes 2000, p. 1073).

Applied to citizenship, such ethics does not recognize borders, and promotes diversity. In recent studies, the distinction between an ethics of justice, which is based on the principle of the priority of right over good, and an ethics of care, which is based on empathy, has been emphasized. The ethics of justice is based on reason, which is considered the same for all human beings, while the ethics of care embraces contextuality and feeling.

Some authors argue that modern liberal political thought is mostly based on the ethics of justice, while postmodern thinkers may be con-

sidered representatives of the ethics of care. This point of view is flawed, however, because the ethics of care rejects all dichotomies. Although it is based on empathy, it does not completely deny reason. However, the question of how empathy can be incorporated into the framework of the legal system is often asked. First, the autonomy of individuals and the notion of a fluid and dynamic identity should be recognized. Only in this way would rights not be applied in an abstract manner and the particular situation of the applicant would be recognized. The postmodern ethics of citizenship is one in which right and good are interwoven.

According to Eaglestone, postmodernism may be regarded as an 'ethical position' (Eaglestone 2004, p. 182). Postmodern ethics are often applied in terms that are not defined clearly (for instance, 'otherness' and 'openness'). As postmodernism does not mean a clear break with modernism (otherwise it would be based on the binary opposition modern/postmodern, which is contradictory to the nature of postmodern thought), it does not offer a completely new system of ethics based on new concepts, but it reinterprets old concepts such as 'virtue' and 'duty.'

Carol Gilligan and a number of feminist authors make a distinction between the 'ethics of justice' and 'ethics of care' (Gilligan 1982). The ethics of justice is represented as an ethics of modernity, which advocates priority of the universal concept of right over the particular notion of good. The ethics of justice is mostly founded on Kant's deontological ethics, based on his categorical imperative, which advocates the priority of 'right' over 'good.' Justice (which represents the domain of 'right') precedes interests based on cultural or religious diversity, or the conception of a good life (which represents the domain of 'good'). The proponents of the ethics of justice argue that all human beings endowed with reason can agree upon what 'right' is.

The origins of this universalist ethics can be traced back to Aristotle. In his *Nicomachean Ethics*, Aristotle argues about the existence of universal and natural moral order, which represents the foundation for a true and rational system of justice (Aristotle 2000). Aristotle makes a distinction between 'natural justice' (based on reason) and 'legal justice,' which is determined by social and historical conventions. Aristotle gives priority to 'natural justice,' because he considers it the same in different societies. He argues that his conception of justice is essential and does not depend upon acceptance.

The following lines will argue that the problems with an ethics of care, such as its poor recognition inside the framework of the law, can be addressed if an ethics of care is institutionalized through deliberative democracy. Both the care ethics and deliberative democracy imply the idea of the personal autonomy (i.e., autonomy of the will). However, autonomy of the will should not be equated with self-interest. Autonomy of the will is founded on the idea that the human being is an end in itself. According to Kant, each rational being is free and possesses the intrinsic dignity of an end in itself. Therefore, anyone acting against the freedom of others would diminish the total amount of freedom, which is contrary to the idea of the autonomy of the will.²⁵

The ethics of care institutionalized through deliberative democracy can provide the pluralist conception of justice, based on the concept of autonomy of will. However, the deliberative democracy as a philosophical political theory is broad in scope and has different forms and representatives. This means that the ethics of care does not support all models of the deliberative democracy. In the following lines, it will be argued that the ethics of care, which leads to a more inclusive and substantive idea of citizenship inside the framework of contemporary pluralist societies, requires second-generation deliberative theory represented by Iris Marion Young (1990), Amy Gutmann and Dennis Thompson (2004), John S. Dryzek (2000), and so forth. This form of deliberation leaves room for hermeneutical understanding, which promotes otherness and heterogeneity.

Although deliberative democracy²⁶ has traditionally been defined in opposition to self-interest, recent studies emphasize the close relationship

²⁵ Although Kant's idea of autonomy of the will is acceptable as a foundation for the ethics of care, that does not imply that care ethics is tied to Kant's idea of morality. On the contrary, Kant's ethics and the ethics of care represent two different approaches.

²⁶ Mansbridge et al. argue 'that there is a considerable consensus among theorists on many of the regulative ideas of deliberative democracy. The deliberation should, ideally, be open to all those affected by the decision. The participants shall have equal opportunity to influence the process, have equal resources, and be protected by basic rights. The process of "reason-giving" is required and central. In that process, participants should treat one another with mutual respect and equal concern. They should listen to one another and give reasons to one another that they think the others can comprehend and accept. They should aim at finding fair terms of cooperation among free and equal persons. They should speak truthfully. One criterion that most clearly distinguishes deliberative from non-deliberative mechanisms within democratic decision is that in the regulative ideal, coercive power should be absent from the purely deliberative mechanisms' (Mansbridge et al. 2010, p. 66).

between self-interest and deliberative democracy. Mansbridge et al. (2010) argue that deliberation has different forms: (1) classic deliberation,²⁷ founded on antithesis between aggregation and deliberation, which excludes self-interest, (2) the expanded version of classic deliberation, and (3) newly reconstructed ideal of deliberative democracy.

Classic deliberative theories equate deliberation with reason, and they cannot embrace pluralism (Mansbridge et al. 2010, p. 67). Consequently, the modernist liberal ideal of universal citizenship based on sameness²⁸ is not transcended by deliberation. If deliberation is merely based on reason, citizens are only representatives of the general will. This point of view is exclusionary to certain social groups. Mansbridge et al. argue that theories that expand classic deliberation are based on 'mutual justifiability,' which include different conceptions of the common good. Thus, they do not aim at determining a unitary conception founded on reason. These theories include storytelling. They point to different (narrative) experiences and open the door to empathy and hermeneutic understanding. The newly formulated ideal of deliberation (the third model) makes a clear reference to self-interest.

Including self-interest in deliberative democracy reduces the possibility of exploitation, introduces information that facilitates reasonable solutions and the identification of integrative outcomes, and also motivates vigorous and creative deliberation. Excluding self-interest from deliberative democracy is likely to produce obfuscation. (Bächtiger et al. 2010a, p. 14)

However, deliberative democracy cannot be based on self-interest, because this idea is contradictory to the deliberation itself. If deliberative democracy is based on self-interest, it does not transcend boundaries of universal citizenship. Thus, it denies diversity. Deliberative democracy can be founded on the idea of the autonomy of the will, which

²⁷This form of deliberation is considered represented by Habermas's early work.

²⁸'With equality conceived as sameness, the ideal of universal citizenship carries at least two meanings in addition to the extension of citizenship to everyone: a) universality defined as general in opposition to particular, what citizens have in common as opposed to how they differ, and b) universality in the sense of laws and values that say the same for all and apply to all in the same way; laws and rules that are blind to individual and group differences' (Young 1989, p. 250).

reflects its ideals. The idea of self-interest is usually associated with selfish choices and preferences. Moreover, the concept of autonomy of will presupposes individual freedom that is not a threat to the freedom of the other individual. This idea of autonomy of the will implies Kant's formula of humanity, which asserts that treating rational nature not merely as means is treating people always in ways that respect the unconditional and incomparable dignity of their personality.

3.5.1 An Ethics of Care: From Feminist Theory to the Idea of Contextual Morality

The ethics of care was introduced more than thirty years ago, and it is still not exactly determined. Ethics of care was first defined by Carol Gilligan in her book *In a Different Voice* (1982):

In this conception, the moral problem arises from conflicting responsibilities rather than from competing rights and requires for its resolution a mode of thinking that is contextual and narrative rather than formal and abstract. This conception of morality as concerned with the activity of care centers moral development around the understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to understanding of rights and rules. (Gilligan 1982, p. 19)

Subsequently, the proponents of the ethics of care, who have followed Gilligan, made a distinction between the 'ethics of care' and the 'ethics of justice' (Meyers 1998, p. 142).

According to feminist authors, the ethics of care and the ethics of justice²⁹ represent two different conceptions of morality. The proponents of the ethics of justice argue that morality is impartial, which is denied by the proponents of the ethics of care. An ethics of care is often represented as a particularist and contextual ethics, while the ethics of justice is perceived as a universalist and essentialist ethics. However, this perspective produces

²⁹ The ethics of justice is mostly founded on Kant's deontological ethics, based on categorical imperative, which advocates the priority of 'right' over 'good'. The justice (which represents the domain of 'right') precedes interests based on cultural or religious diversity, or conception of a good life (which represents the domain of 'good').

binary oppositions: care/justice, particularist/universalist, contextual/essential, female/male, and so forth. If this point of view is employed, the ethics of care is understood only as a trait of the feminine voice, which is flawed. There are some passages in Gilligan's work that make this confusion:

For the present, my aim has been to demonstrate the centrality of the concepts of responsibility and care in women's constructions of the moral domain, to indicate the close tie in women's thinking between the conceptions of the self and conceptions of morality, and finally to argue the need for an expanded developmental theory that would include, rather than rule out from developmental consideration, the difference in the feminine voice. Such an inclusion seems essential, not only for explaining the development of women but also for understanding in both sexes the characteristics and precursors of an adult moral conception. (Gilligan 1985, p. 34)

This basic problem with this point of view is that it is based on a homogeneous notion of identity.

A number of contemporary feminist authors argue that Gilligan's book *In a Different Voice* is silent about the voices of women of colour and contexts such as class, race, and sexuality. Consequently, she perceives women's experience as homogeneous and does not resolve the problem of multiple discrimination. There are different women—older, those with mental disabilities, refugees, and so forth—and they can be marginalized in different ways. Even these different groups of women are not homogeneous and include different experiences and narratives. This was not mentioned by Gilligan. However, this heterogeneity is the basic trait of the contextual ethics of care.

According to Meyers, it could be argued that Gilligan's distinction between care and justice puts 'care outside the bounds of justice' (Meyers 1998, p. 142). Binary opposition between care and justice is flawed. It represents new metaphysics with new symbolic forms of oppression, where care has priority over justice, particular over universal, contextual over essential, and so forth. It represents the pitfall that feminist theory attempts to escape. This was argued by a number of feminist authors who emphasized that binary oppositions between nature and culture, self and other, essentialism and constructivism, for example, need to be deconstructed. However, some feminist authors

employ binary opposition between male and female and perceive these notions as essentialist. This point of view creates new power relations where men are excluded from the 'gender project' (Wieringa 1998).

Gilligan rejects the idea that a sharp distinction between 'care' and 'justice' can be made. However, she does not explain in which way these two concepts are complementary (Meyers 1998, p. 153). A similar point of view is expressed by Kohlberg and Rawls, who both represent the ethics of justice. Kohlberg argues that rules and principles are always applied in various circumstances and contexts. This means that morality 'is not just a matter of using abstract concepts like justice. It concerns the use of such concepts to guide the moral choice' (Colby et al. 1987, p. 58). In this way, justice is considered a practice of justification.

This was also argued by Rawls. Rawls's political thought as presented in his *Political Liberalism* (1993) and *The Law of Peoples* (1999) represents a shift from the conception of liberalism as a universalist doctrine to a conception of liberalism as a particularist doctrine.³⁰ In his *Law of Peoples*, Rawls argues that consensus about the rights can be achieved. However, there is a possibility of various interpretations of these rights. Rawls argues that the same norms have different argumentation. Consequently, they can be justified and interpreted differently in different societies and be in accordance with the traditions of different societies.³¹ Therefore, Rawls's conception of liberalism accepts the possibility of different conceptions of justice. He argues that his conception of justice as fairness cannot be measured by cognitive standards of truth and falsity (Rawls 1985).

In *Political Liberalism*, Rawls argues that his conception of justice is reasonable, not rational. Rawls argues that 'Holding a political conception as true, and for that reason alone suitable basis of public reason, is exclusive, even sectarian, and so likely to foster political division' (Rawls 1993, p. 129). According to Rawls, there are various conceptions of reasonableness. Rawls's idea of reasonableness is based on solidarity. While

³⁰ This was argued by John Rawls (1985).

³¹ Rawls argues that human rights described in his *Law of Peoples* can be interpreted in different ways. They can be perceived as the part of liberal political conception of justice as liberties guaranteed to all citizens as free and equal. However, they can also be perceived from associationalist perspective (held by a decent system of social cooperation) 'which sees persons first as members of groups, associations, corporations and estates' (Rawls 1999, p. 68).

political theory based on rationality promotes sameness,³² political theory founded on reasonableness promotes difference and pluralism. The ethics of care differs from the ethics of justice, because it emphasizes particular individuals and their concrete needs and point of views in specific circumstances. 'Care ethics is thus distinct from moral theories that start out from broad principles and rules of action, and it is this particularism that has led many writers to conclude that it is misguided for general moral and political relations among people' (Engster 2004, p. 114).

Engster identifies three critiques of the ethics of care in the recent studies. The first one is represented by Noddings and addresses the problem of parochialism as a consequence of the notion of 'care' itself, which can be extended only to the people we know and does not embrace the relationships with most people in the world (Engster 2004, p. 117). Joan Tronto argues that from the ethics-of-care approach, it can be concluded that care ethics 'could quickly become a way to argue that everyone should cultivate one's own garden and let others take care of themselves' (Tronto 1994, p. 171). The third critique of the ethics of care addresses the problem of relativism. A number of authors argue that care ethics cannot serve as a basis for a moral theory because of its contextual, non-foundationalist nature.

Even if the ethics of care is clearly defined as based on the notions of empathy and respect, the question of the meaning of these concepts still remains. It is hard to make a strict definition of those concepts. Some authors identify different generations of the ethics of care. Joan Tronto emphasizes that Olena Hankivsky (2004) identifies two generations of the ethics of care. The first generation emphasizes charity, compassion, benevolence, and so forth (Tronto 2007, p. 39). The second generation emphasizes 'human vulnerability' and social and political dimensions of the ethics of care, which should not just be applied to the domain of private (Tronto 2007, p. 39). Fiona Williams identifies four paradigms of care inside the framework of the care ethics. In the 1970s, the ethics of care represented the critique of the community care politics (Williams 2001, p. 475). 'Central to this was the concept of care as (oppressed)

³²It is argued that all human beings that are endowed with reason can agree upon the same principles of justice and universal truths.

labor and the political demand for the recognition and reward of carers' (Williams 2001, p. 475).

In the 1980s, the paradigm of care changed. It turned into the idea of promotion of women's difference and women's identity. In the 1990s the paradigm of care divided into two directions. The first dimension represents the celebration of difference and deliberation and a focus on responsiveness (Liedtka 1996). However, a number of authors equate the ethics of care with the social and health policy. Noddings finds the ethics of care as suitable for the proposals for addressing the issues of public school curriculums, euthanasia, abortion, and finding homes for the homeless (Noddings 1984). Nancy Folbre proposes similar solutions that address the issue of the 'work of care' and problems such as maternity leave (Folbre 1995). However, the ethics of care includes a broader range of options and can be applied to the political system as a whole, which was not recognized by these authors. 'Their proposals amount to something less than an overarching institutional political theory, these scholars say very little, for example, about the nature of government institutions, decision making and rights' (Engster 2004, p.121).

3.5.2 Ethics of Care as the Basis of Deliberative Democracy

Tronto argues that care requires 'a politics in which there is, at the center, a public discussion of needs, and an honest appraisal of the intersection of needs and interests' (Tronto 1994, p. 168). She emphasizes debate and democratic participation, which help citizens discuss their interests and needs, as important parts of the ethics of care. However, she does not emphasize the significance of deliberation. Mere debate does not lead to transformation of preferences. According to Archon Fung, deliberative democracy is a 'revolutionary political ideal,' which requires 'fundamental changes' in decision-making (Fung 2005, p. 397). Deliberative democracy is based on the idea that decisions made by citizens and their representatives need to be justified (Gutmann and Thompson 2004). In deliberative democracy the autonomy of personality is respected and citizens are not only perceived as 'objects of legislation' (Trifiro 2005,

p. 7). The reasons given in the process of justification are accessible to all citizens. The decisions produced in deliberative democracy are not permanent. They are open to different changes and transformations. They reflect the social world, which is not a static but a dynamic category, constantly reinterpreted by different attitudes, movements, and actions.

Deliberative democracy is based on the idea of contingency of human beliefs and practices. Deliberative democracy may be perceived

as a form of government in which free and equal citizens (and their representatives), justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future. (Gutmann and Thompson 2004, p. 7)

Ethics of care and deliberative democracy are based on a similar approach. They both recognize the 'other' and promote pluralism and diversity. They both represent a path to a more inclusive citizenship, which includes different voices. Consequently, they are based on the broader notion of identity, which is not fixed. Deliberative democracy and ethics of care promote heterogeneity and they both broaden the modern liberal idea of citizenship.

The modern political idea of citizenship 'implies a universality of citizenship in the sense that citizenship status transcends particularity and difference' (Young 1989, p. 250). It is perceived as an equality as sameness, which creates the binary opposition universal/particular, where what citizens have in common is perceived 'as opposed to how they differ' (Young 1989, p. 250). However, the modern political ideal of universal citizenship implies that the law is applied to all in the same way. This point of view is strongly rejected by representatives of the care ethics. Ethics of care and deliberative democracy point to the 'politics of difference,' which is based on the idea of participation, inclusion, and equal moral worth (Lister 2007, p. 52). They are both contextual and include discursive situatedness. However, there are different forms of deliberation, and not all of them can be perceived as tied to care ethics. Deliberation that is based merely on reason is not relevant for the care

ethics, because it excludes a number of citizens.³³ Only the conception of deliberative democracy, which represents a critique of modern liberal democracy and its universalist paradigm of citizenship and rights, can be considered as the foundation of the ethics of care.

The proponents of the ethics of care argue that it is based on empathy, responsibility, respect, responsiveness, and so forth. However, it still not emphasized by these authors how this ethics is institutionalized. Meyers argues that the ethics of care is modelled in dialogue (Meyers 1998, p. 159). In the following lines, it will be argued that mere dialogue is not sufficient for the ethics of care, which requires deliberation. There are different definitions of deliberation, but all of them perceive it as ‘a process of public discussion in which participants offer proposals and justifications to support collective decisions’ (Fung 2003, p. 343).

Bächtiger et al. (2010b) argue that the proliferation of meanings of this term can lead to concept stretching.³⁴ They make a distinction between deliberation based on the idea of rational discourse,³⁵ which leads to ‘common understanding’ (type 1), and deliberation that leaves room for narrative and rhetoric and leads to a more authentic portrayal of the person (type 2). The type 1 definition makes a sharp distinction between deliberation and other forms of communication, which do not adhere to standards of rational justification. Young emphasizes that this criterion leads to uniformity, which is contradictory to the idea of deliberation itself. It excludes certain social groups and individuals who cannot engage in this form of deliberation. This idea of deliberation creates a homogeneous public sphere and does not include otherness. Subsequently, Mansbridge et al. (2010) define the third model of deliberation (type 3) as based on self-interest.

³³I. M. Young identifies storytelling, greeting, and rhetoric as the modes of speech on which deliberation is based.

³⁴In many cases it is not clear whether some commentators on deliberative democracy merely refer to any kind of communication, or to deliberation in the sense of systematically weighing rational arguments. Some references to deliberation appear to involve nothing more systematic than merely talking. Other deliberationists hold firmly to Habermasian communicative action as the standard of deliberation both too broadly and too narrowly can lead to serious confusion’ (Bächtiger et al. 2010b, p. 33).

³⁵This form of deliberation is closely tied to the classic conception of deliberative democracy. It is represented by Habermas’s *Theory of Communicative Action* (1981).

The type 2 definition³⁶ transcends the borders determined by *ratio*, and includes different voices and experiences by narrative and rhetoric as the foundation on which deliberation is built. Thus, it leaves room for multiple voices and identities. According to Bächtiger et al. (2010b),³⁷

type II deliberation has the potential advantage of broadening the deliberative program (...) One danger is that almost every communicative act may qualify as ‘deliberative’ (at least in function) leading to the problem of concept stretching. Rhetorics, storytelling, humor, or even threats may indeed be part and parcel of inclusive and successful deliberative process involving preference transformation. (Bächtiger et al. 2010b, p. 48)

Nevertheless, these authors do not recognize the hermeneutic *potential* of the type 2 deliberation. Understood as only hermeneutic understanding, type 2 deliberation can include both diversity and comprehension. Hermeneutical understanding attempts to unify theory and praxis, law and life. Hermeneutics rejects all hierarchies and comprehension *a priori*. Hermeneutics represents a universal phenomenon, and not merely a method of humanities as argued by Dilthey (1996).

A number of philosophers argue that hermeneutics does not include any universal method, because it rejects the idea of the ‘absolute truth.’ Consequently, numerous interpretations are possible. Both Ricoeur (1981) and Gadamer (1975) argue that hermeneutics is more than a common methodological thinking on interpretation. Hermeneutical thinking is not directed towards methodology but to a hermeneutical situation. Therefore, hermeneutics encompasses a number of criteria that together make a sort of hermeneutical method. Thus, the nature of hermeneutics is not exclusionary. It rejects all kinds of hierarchies as fixed and argues about fluid and dynamic nature of concepts.

According to Gadamer, hermeneutical understanding implies the ‘fusion of horizons’ (*Horizontverschmelzung*). Gadamer introduces this concept in his *Truth and Method* (1975). He argues that ‘fusion of horizons’ leads to the transformation of human understanding. It represents the process of expanding our horizons, in which we collectively come to

³⁶This form of deliberation is represented by Young, Gutmann, Thompson, and Dryzek.

³⁷Bächtiger et al. argue that type I and type II deliberation forms are often complementary.

accept certain beliefs through the interaction of dialogue. In this process individuals learn to move in a broader horizon in which binary hierarchies are overcome. Subsequently, what was formally taken for granted as the background to valuation is perceived as just one possibility alongside other different ones. Thus, only deliberation based on the idea of hermeneutical understanding can represent the foundation for care ethics.

Gadamer argues that hermeneutical understanding is founded on dialogue. According to Taylor, individual identity is based on dialogue—in regard to actual dialogues with others. According to Taylor, Gadamer's term 'fusion of horizons' refers to 'cross-cultural dialogue that transforms human understanding' (Rockefeller 1994, p. 92).

3.5.3 The Autonomy of the Personality as the Fundamental Idea of the Ethics of Care and Deliberative Democracy

The term 'autonomy' is often understood as the right or capacity of individuals to determine their own choices and actions and govern their behaviour. However, there are different conceptions of the idea of personal autonomy itself. On the one hand, in his *Social Contract* (1913), Jean Jacques Rousseau equates this term with the idea of moral liberty. On the other hand, Kant's moral philosophy is built on the idea of autonomy of the will. Kant defines the autonomy of the will as 'the property of it by which it is a law to itself (independently on any property of the objects of volition)' (Kant 2008, p. 56). Kant contrasts this idea to the heteronomy, according to which the will 'does not give itself the law, but it is given by the object through its relation to the will' (Kant 2008, p. 57). According to Kant, only autonomy of the will makes rational beings ends in themselves.

Modern political thought considers citizenship an expression of general will, which transcends diversity. Young emphasizes that the modernist idea of citizenship enforces 'a homogeneity of citizenship' (Young 1989, p. 251). Some individuals and groups are excluded on the grounds that they are not capable of adopting a general perspective. General will implies a universalist self as well as the definition of citizens as representatives of universal characteristics. In this way, a homogeneous public sphere is created. However, the concept of citizenship founded on the idea of

autonomy of the will promotes particularity and leads to more substantive inclusion and participation, based on heterogeneity. The idea of autonomy of personality is also explored within the framework of political philosophy. This idea is mostly analysed on 'principles-based approach.' It is considered in universalist terms, which are the same for all human beings.

An alternative approach to the idea of the autonomy of the personality is defined by Marina Oshana in her book *Personal Autonomy in Society* (2006). Oshana develops a particularist account on the autonomy of personality, which perceives this concept as derived from the certain social context. Thus, autonomy of the will is not perceived 'as a kind of metaphysical capacity for choice' (Cao 2008, p. 171). She emphasizes that the concept of autonomy is often influenced by culture, religion, political system, and so forth. Nevertheless, Oshana's conception of autonomy implies that 'people are passive actors in society' (Cao 2008, p. 172). She does not analyse how people reflect on these external conditions and how they transform those external elements (Cao 2008, p. 172).

The idea of autonomy of personality is still not sufficiently developed within the framework of the law itself. The ethics of care can represent the basic tool for the development of the concept of personal autonomy within the law discourse. The ethics of care can be institutionalized through deliberative democracy, because both care ethics and deliberation employ a contextual approach to humanity and law. They do not promote a universal ideal of citizenship based on the general will, which leads to a homogeneous public sphere. They emphasize the idea of citizenship based on the autonomy of the will, which leads to a heterogeneous public. In a heterogeneous public, differences are publicly recognized and acknowledged as 'irreducible,' which means

that persons from one perspective of history can never completely understand and adopt the point of view of those with other group-based perspectives and histories. Yet commitment to the need and desire to decide together the society's policies fosters communication across those differences. (Young 1989, p. 258)

The contextual moral theory cannot be applied to all in the same ways. It is situationally oriented and contingent. Tronto argues: 'Proponents of an ethic of care must specify which social and political institutions they

understand to be the context for moral actors' (Tronto 1987, p. 661). The ethics of care includes a wide range of options to protect personal autonomy. The idea of personal autonomy includes a number of rights—not only social and economic, but political, cultural, religious, and so forth. Subsequently, the ethics of care cannot be reduced to social and health policy. First of all, the ethics of care requires the contextual approach to rights and its applicants. The norms of the ethics of care are fluid, not fixed. According to Cook: 'It requires the ethicist to grapple not with abstract precepts and norms but with the lived experience of those affected by the decision. (...) each situation is different and each decision must ultimately rest' (Cook 1993, p. 2471) on its own ground. It rejects universalist and essentialist reading of rights.

Ivana Radačić (2008) gives a number of examples of an essentialist reading of gender equality in the 'Islamic headscarf' cases in the European Court of Human Rights. Radačić emphasizes that the ruling does not acknowledge the difference and does not recognize the right to personal autonomy (Radačić 2008, p. 853).

The Court started from the assumption that wearing a headscarf is an oppressive patriarchal practice which connotes the submission of women to men and the control of their sexuality, which can never be freely chosen, while research shows that the practice has a more complex meaning. (Radačić 2008, p. 853)

Some women disagree with this point of view and argue that wearing a veil represents submission to God. For others it represents an identity expression (Radačić 2008, p. 854). In the cases *Leyla Sahin v. Turkey*, and *Dahlab v. Switzerland*, the Court threatened applicants's right to personal autonomy.³⁸ According to Radačić:

If the Court conceptualized equality as challenging disadvantage (...) and if it applied a more contextual approach which would include the ethics of care, it could have found the way to reconcile the principle of gender equal-

³⁸ According to Radačić, in the *Leyla Sahin v. Turkey* case, 'an adult woman challenged the prohibition on students wearing headscarves at university campuses as contrary to her freedom of religion, freedom of expression, right to education, right to respect for her private life, and right to non-discrimination on the basis of religion. The government claimed that the prohibition served the aims of the promotion of secularism and gender equality' (Radačić 2008, p. 852).

ity with the right to personal autonomy rather than putting them into conflict. (Radačić 2008, p. 856)

Deliberative democracy emphasizes personal autonomy as a fundamental human right. Subsequently, the basic deliberative democracy principle is based on the idea that ‘only those norms and practices can be deemed morally and politically legitimate which are the result of a free and fair process of public decision-making that includes all who will bear the consequences of their implementation’ (Trifiro 2005, p. 7). Deliberation does not aim at ‘absolute truth.’ Consequently, numerous interpretations are possible. Thus, the nature of deliberation is not exclusionary. It rejects all kinds of hierarchies as fixed and argues about the fluid nature of concepts.

Deliberative democracy, which includes the basic characteristics of the ethics of care, is an effective tool for producing a new form of citizenship founded on the idea of autonomy of personality. However, this idea should be perceived as contingent and contextual. Deliberation is an effective tool for the recognition of personal autonomy and identity because they are partly defined with conversation with other people. Deliberation leads to a transformation of common understandings of certain practices in society (Marshall 2008, p. 190). Deliberation based on care enables individuals to express their authenticity and question the existing social structures and norms. It leads to understanding and expecting otherness and diversity. Consequently, it leads to the transformation of existing social and political norms.³⁹

Care ethics can be institutionalized through deliberative democracy, because they both imply the idea of contextual morality. However, the care ethics does not support all models of deliberation, because it cannot be argued that all forms of deliberation imply the idea of contextual morality. The first-generation model of deliberation, represented by Habermas’s early work, does not transcend the government of reason. Consequently, it points to the universalist notion of citizenship, which

³⁹ For example, in the ‘headscarf cases,’ deliberation starts ‘with others taking seriously and listening to [an] individual woman who has made the decision. This respects her as an equal – a subject who is an end in herself – capable of creating a life for herself and being who she wants to be’ (Marshall, 2008, p. 191). Subsequently, deliberation and ethics of care equate gender equality with the personal autonomy of every individual.

denies diversity. Furthermore, the third-generation model of deliberation, represented by Mansbridge, ties deliberation to self-interest, which is contradictory to the basic task of deliberative democracy. It leads to an instrumental notion of citizenship (a means to an end), not to a substantive idea of a citizen (as a good in itself). It also contradicts the notion of care. Only the second-generation model of deliberation can be considered to be the foundation of the ethics of care, because it includes the idea of hermeneutical understanding. The second-generation model of deliberation represented by Young, Gutmann, and Dryzek points to the contingency of human experiences, narratives, beliefs, and practices. It is based on neither reason nor self-interest. It embraces multivoicesness and the uniqueness of every human being. Thus, it does not lead to a universalist notion of citizenship based on general will and a homogeneous public sphere, but it points to a more substantive idea of citizenship founded of diversity and personal autonomy, which embraces the idea of a heterogeneous public sphere.

3.6 Conclusion

In Chapters 2 and 3, various concepts of citizenship and identity have been presented. These models of citizenship and identity persist within European citizenship and European identity, as they are multilayered categories. European citizenship involves the idea of active participation and deliberation (introduced by Aristotle's conception of citizenship). Nevertheless, it also embraces a modernist exclusivist notion of citizenship, since European citizenship is still tied to the nationality of Member States (as will be shown in Chapter 4). Moreover, European citizenship reflects a postnational model of citizenship. The same can be argued about European identity, which is heterogeneous. Thus both European citizenship and European identity may be perceived as texts that contain various narrative paradigms. The discourses of narrative and citizenship are not antagonistic, and a reconsideration of the narrative is necessary for developing a postmodern model of citizenship and a postmodern model of identity.

In Chapters 2 and 3, ideological assumptions that have supported various notions of citizenship and identity have been interrogated. Some of these assumptions continue to dominate debates about citizenship and identity within legal and political discourse.

Chapters 2 and 3 focused mostly on comparing modern and postmodern conceptions of citizenship and identity. As was shown, the modernist idea of citizenship and identity is fixed and essentialist, and rights are applied in an abstract manner. In the postmodern ethics of citizenship, on the other hand, right and good interweave, rejecting false dichotomies between ‘rationality’ and ‘irrationality,’ ‘reason’ and ‘emotion,’ ‘objective’ and ‘subjective,’ and so on. It rejects the picture of law as a rational and neutral instrument of justice. The postmodern concept of citizenship is based on the idea that citizenship is a dynamic category, which is socially and historically constructed. It is based on the fluid notion of identity and is constantly reinterpreted and revised by different social movements and changes. The following chapters will examine whether EU citizenship can be considered a postmodern citizenship and whether the European identity presents a postmodern notion of identity.

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4

The Concept of European Citizenship

4.1 Introduction

In Chapters 2 and 3, a system of paradigms in the philosophy of citizenship and identity was presented. European citizenship and European identity arise from these paradigms, as it is impossible for every configuration or innovation to arise fortuitously (Ricoeur 1985). This study is focused on two main paradigms—modern and postmodern. It examines the traces of modernism within both European identity and European citizenship on their path towards postmodern categories.

This chapter examines the nature of the European Union as a political community and emphasizes its postmodern character based on its hybrid identity, which encompasses subnational, national, and supranational levels. The hybrid nature of the European Union arises from the fact that it reflects the traits of both supranational and intergovernmental political communities. This chapter analyses some contemporary problems of both the European Union as a political community and EU citizenship. One of the issues analysed is the problem of ‘democratic deficit’ of the European Union. It will be explored whether some solutions presented by the European Union (such as ‘Europe for Citizens’ and the *Plan D*

for Democracy, Dialogue and Debate) lead to creation of a heterogeneous, European public sphere, which represents a path towards a postmodern concept of citizenship based on overlapping and fluid identities.

This chapter also investigates the metatheoretical presuppositions on which EU citizenship is founded. It will be argued that these metatheoretical presuppositions originate from the Enlightenment ideals on which the entire idea of modern political liberalism is based. The Enlightenment project advocates the idea of the abstract citizen, which is defined as rational, conscious, and autonomous, independent from historical, social, and other circumstances. The concept of EU citizenship defined by the legal system of the European Union is still a metaphysical concept. This will be shown by hermeneutical analysis of various EU legal documents and EU identity policies, demographic change, Western Balkan visa liberalization, and so forth. These documents are diverse and heterogeneous so as to present the wider perspective of EU legal and political discourse.

A number of documents from the European Commission are analysed in this chapter, since the Commission outlines the guidelines for EU policies. The EU treaties analysed in this chapter were also perceived as appropriate, since they constituted the concept of EU citizenship. The European Commission's Ageing Reports are also taken into account, as they serve as an example of another form of othering in the European Union; older adults in the European Union are clearly distinguished from the younger population. The othering in the European Union is reflected in the *Charter of Fundamental Rights of the European Union* and in the *European Convention on Human Rights* that still contain various essentialist categories, which leave room for discrimination.

European citizenship is a heterogeneous, dynamic, and multilayered concept. In the European Union local, national, and European identities and citizenship exist together. According to Elizabeth Meehan,

A new kind of citizenship is emerging that is neither national nor cosmopolitan but that is multiple in the sense that identities, rights and obligations associated (...) with citizenship are expressed through an increasingly complex configuration of common Community institutions, states, national and transnational voluntary associations, regions, and alliances of regions. (Meehan 1993, p. 1)

Thus, European citizenship is heterogeneous, dynamic, complex, and contingent.

The concept of EU citizenship is defined in Article 8 of the Treaty of Maastricht¹: ‘Every person holding the nationality of a Member State shall be a citizen of the Union.’ *The Treaty of Amsterdam*² in Article 17 emphasizes that ‘citizenship of the Union shall complement and not replace national citizenship.’ *The Treaty of Lisbon*³ reconstructs this formulation and states that EU citizenship is additional to national citizenship.

Before European citizenship was established, the only citizenship that was recognized in Europe was national citizenship. The traditional understanding of citizenship is synonymous with nationality. It is tied to certain rights and duties ascribed to members of a nation-state. The concepts of citizenship and membership arose in ancient Greece; however, assimilation of citizenship to nationality can be traced back to Article 3 of the *Declaration of Rights of Man and of the Citizen (1789)*, which states that sovereignty originates from nationality. Traditional rhetoric of citizenship is a rhetoric of state, nation, and citizenship. Although EU citizenship does not replace national citizenship, it transforms the idea of national citizenship in the European Union.

From now on national citizenship can only be conceived as a pluralistic form of political membership in Europe; pluralistic in qualitative terms *qua* membership of the many layers of political governance in Europe, but also and most importantly pluralistic in qualitative terms *qua* membership of an inclusive national polity. Thus, the concept of citizenship we are familiar with must be fundamentally reconsidered. (Besson and Utzinger 2008, p. 186)

The European Union establishes the concept of EU citizenship as a membership in different, overlapping political communities on supranational, national, and subnational levels. This perspective allows rethinking and

¹ *The Maastricht Treaty* (officially called the *Treaty on European Union*) was signed on 7 February 1992 and entered into force on 1 November 1993.

² *The Treaty of Amsterdam* was signed on 2 October 1997, and entered into force on 1 May 1999.

³ *The Treaty of Lisbon* was signed on 13 December 2007 and entered into force on 1 December 2009.

reinterpreting concepts of ‘citizenship,’ ‘identity,’ and ‘political community.’ A number of authors analyse the historical process of forming the idea of postnational citizenship, which was, for the first time, publicly discussed at the Copenhagen Summit in 1973 (Wiener 1997). Postnational citizenship is often tied to postmodern political communities, which transcend the borders of nation-state. According to Caporaso, the European Union represents a postmodern political community, because it has a weak core, many spatial locations, and multilayered politics (Caporaso 1996, p. 47). The postmodern character of the European Union is also based on its hybrid identity, which encompasses subnational, national, and supranational levels. It includes a number of overlapping configurations: blocks, regions, networks, Member States, and so on. Unlike the modern condition on which the basis of authority lies in the nation-state, the postmodern condition includes a number of overlapping interests and identities. The hybrid nature of the EU arises from the fact that it reflects the traits of both supranational and intergovernmental political communities, as will be shown.

EU citizenship includes heterogeneous identities. Thus the rights and duties it encompasses affect different categories of citizens in different ways ‘Females and males youngsters and the elderly, insiders (European nationals) and outsiders (e.g., third-country nationals (TCN)) are affected differently by the rules and regulations pertaining to citizenship’ (‘All Rights Reserved?’ 2014, p. 3). EU citizenship is legally established, while global citizenship still represents only a philosophical, sociological, and anthropological concept. EU citizenship is legally defined by different European treaties from the Treaty of Maastricht to the *Treaty of Lisbon*. In this way, EU citizenship has gained real content, which includes the common passport, the right to vote, the right to access to legal, social, and other services, and so forth. However, the concept of global citizenship is still differently interpreted. Some authors perceive global and postnational citizenship as synonyms. However, ‘postnational citizenship’ is a less expansive concept than ‘global citizenship.’ Postnational citizenship embraces cross-border matters, whose nature is not global. Unlike EU citizenship, which is derived from the European Union, which got a legal personality through

the *Treaty of Lisbon*,⁴ global citizenship is still not legally established and does not include a common passport, the right to vote, and other rights and duties. However, both EU citizenship and global citizenship encompass various identities on supranational, national, and subnational levels.

According to Huntington, only the hegemonial politics of identity are possible because of irreconcilable differences between political communities and systems of values (Huntington 1993). Huntington discusses the clash between cultures and the battle between different political identities and makes a conclusion that global citizenship founded on global political identity is just an illusion.

Another point of view is presented by Yasemin Soysal. She argues that postnational citizenship should be based on the idea of human rights (Soysal 1994). Human rights should be guaranteed to every individual, regardless of place of residence or citizenship status. According to Soysal, the concept of postnational citizenship transcends the borders of national citizenship, which represents the modern notion of citizenship. However, as was shown in the previous chapter, Soysal does not analyse from which idea of identity human rights are derived. She does not recognize that human rights represent a modernist project based on a modernist notion of a fixed and stable identity. The conception of human rights is based on the modernist idea of universality of human nature based on reason, and it excludes various social groups and individuals not considered part of this definition. That is why postnational citizenship requires a broader notion of identity, which will expand the borders of the modernist subject on which the human rights' project is founded. Global community embraces various overlapping responsibilities and identities. Additionally, the idea of postnational citizenship based on human rights implies problematic asymmetry between those human rights that guarantee protection, and those that guarantee political participation (Meyer 2004). In this way, a sharp distinction between citizens as active and passive subjects is formed, which produces inequality.

⁴The *Treaty of Lisbon* established the legal personality of the European Union that, enables the European Union to join international organizations and to conclude international agreements.

EU citizenship is polyphonic and multilayered—citizens of the European Union are members of various communities. Thus analysis of this concept of citizenship should avoid static perspectives based on fixed identities. This analysis requires overcoming traditional methods of legal and political research.

A project which restricted itself to the internal legal analysis of the relevant national, transnational, European and international legal sources on citizenship regimes would be very limited in the insights it could offer. It would tend to present the law as it if were somehow hermetically sealed from the wider political and social context in which law and legal institutions operate. (Shaw and Štiks 2010, p. 8)

Legal and political discourse contain flexible and contingent concepts that cannot be reduced to static postulates of a logic of identity, which often cannot be applied to everyday life. In the following text, law and legal documents are perceived not as static instruments based on fixed identities but as a dynamic field of investigation, which is constantly reinterpreted and revised. EU citizenship went through a number of transformations from its official establishment in 1992. Therefore, it may be perceived as a postmodernist category, which includes shifting identities.

The method of the following research includes two assumptions. The first one identifies the challenges of postmodernism and postindustrialism, which require a rejection of a fixed and monolithic idea of citizenship, and a move to polyphonic and shifting concepts of identity. This is particularly relevant to EU citizenship and to the European Union as a postnational political community. The second assumption reflects social and political changes produced by global political transformations, which require rejection of the essentialist notion of identity. Citizenship cannot be defined by fixed categories. It represents a dynamic process of continual negotiations between 'identity' and 'difference.' The concept of 'essentialism' originates from ancient philosophy. However, it is often employed within multicultural and postmodern theories as a signifier of uniform and homogeneous identities. Despite insisting on the recognition of difference, some representatives of multiculturalism still perceive social groups as homogeneous. They do not recognize the different narratives, identities, and interests of

their members. In this way, those authors do not succeed in overcoming *aporias* of essentialism.

The fact that EU citizenship includes multiple and flexible identities is emphasized by anthropological, philosophical, sociological, and political theory. However, this fact is ignored or is not sufficiently recognized within the EU treaties, European charters, and other legal documents. In this chapter, it will be shown that the legal definition of EU citizenship is based on metatheoretical assumptions, which can be traced back to the Enlightenment. It will be explored how rejection of the modernist idea of stable, fixed, and monolithic identities affects legal and philosophical comprehension of European citizenship in the broadest sense.

One of the key questions that will be explored in this chapter is whether political development of the European Union requires modification of a normative definition of citizenship of the European Union in accordance with institutional and social frameworks of citizenship of the contemporary era, which implies shifting identities. The concept of EU citizenship represents a dynamic and socially and historically constructed category, which is constantly transformed and reinterpreted. Both 'Europe' and the 'European Union' should also be perceived as processes, which are continually changing. Thus, citizenship of the European Union should not be founded on universalist metaphysical presuppositions. If the concept of citizenship is based on universalist assumptions, the idea of multiple, heterogeneous identities is denied. Civic culture includes different narratives, identities, and discourses, which are contingent and historically constructed. That is why they cannot be essentialized.

4.2 EU Citizenship: Towards a Postmodern Concept of Citizenship?

This section explores European citizenship presented within the framework of the work of political theorists and political philosophers in the past two decades, on the one hand, and within the framework of European Union law, on the other. It shows that these two conceptions of EU citizenship are completely different. In the first decade, EU citizenship reflected the modernist notion of citizenship, while in the second decade,

EU citizenship reflects the postnational notion of citizenship and moves towards the postmodern idea of citizenship.

EU citizenship is a polyvalent concept, which implies various contradictions. As will be argued, EU citizenship reflects a politics of fixed identity, which guarantees rights only to homogeneous groups (and individuals as representatives of these groups). The legal definition of EU citizenship creates various binary oppositions, such as EU/non-EU and citizen/stranger (or citizen/third-country national, or citizen/refugee).

Research on European citizenship should avoid the search for simple policy solutions as well as methodological approaches centred only on monolithic perspectives. It should go beyond the traditional understanding of citizenship, law, and borders as static, fixed, and permanent. It should be based on close textual interpretation and the hermeneutical analysis of legal sources. The European context includes a wide range of citizenship models: nested, diasporic, cultural, regional, and traditional.

4.2.1 Postmodern and Postnational Traits of the European Union, and EU Citizenship

James Caporaso (1996) compares the European Union to the postmodern state.⁵ He describes the postmodern state as fragmented and multileveled. There are three aspects of postmodernity that can be found in the European Union: (1) a weak core, (2) a large number of spatial locations, and (3) a multilevel policy that is based on interconnectedness rather than nestedness (Caporaso 1996, p. 147). According to Caporaso, domestic institutions still play a more significant role in the domain of social policy, citizenship rights, and welfare policy than the political institutions of the European Union. Secondly, the European Union represents a multileveled polity that includes many spatial locations. Thirdly, this multilevel polity is based not on the idea of nestedness⁶ but on an inter-

⁵ Caporaso (1996) examines the European Union in the light of three state forms—the postmodern state, the Westphalian state, and regulatory state.

⁶ “‘Nestedness’ implies the traditional federal (territorial) principle by which smaller units (counties, states, provinces, cantons) are situated within larger units’ (Closa 1995, pp. 511–512).

connectedness that implies interaction ‘among various levels above and below the nation state’ (Caporaso 1996, p. 47).

Peter van Ham argues that postmodern polities are concerned with individual well-being, prosperity, and the improvement of democratic governance. Postmodern polities reject the idea of an undialectical border and fixed identity, and are less concerned about state sovereignty (Van Ham 2001, p. 15). A postmodern polity implies a postnational notion of citizenship that is not fixed by borders nor by essentialist notions of identity. Postnational citizenship should not be defined by nation or culture. This notion of citizenship should embrace challenges of processes of globalization and pluralism. Those processes require a multilayered conception of citizenship founded on the idea of multiple identities.⁷

The European Union represents a new political and historical category, which differs from modernist political communities, whose main form is the sovereign national state. The EU represents a post sovereign model of political community, and it shows the traits of both intergovernmental and supranational political communities, which is why its nature is hybrid and ambivalent.

Its intergovernmental character is reflected by the European Council. On the other hand, supranational traits of the European Union are reflected by the European Commission and Parliament, because they represent the interests of the European Union as a whole. European social democratic parties expressed doubts in January 2010 about qualifications of Rumiana Jeleva, Bulgaria’s nominee for European Commissioner. Facing the disapproval, Jeleva stepped down as Commissioner-designate. The European Parliament rejected the Italian candidate Rocco Buttiglione for Commissioner on Affairs of Justice and Freedom in 2004. His views on homosexuality and women’s rights were incompatible with this position. The *Treaty of Lisbon* allows the president of the European Commission to dismiss Commissioners. This is another example of the supranational character of the European Union.

⁷Given the proliferation of legal statuses in Europe—among others, (Member State) national, dual national, European citizen, third-country national, resident, permanent resident—traditional notions of citizenship are simply not the correct standard against which to measure the actual context of European citizenship’ (Horváth 2008, p. 97).

The European Union represents the model of political community in which competences and duties overlap. This perspective is reflected by the principle of subsidiarity, which enables coexistence of both national and European authorities.⁸ National problems gain a greater transnational dimension. The immigrant flow from Africa into the EU Mediterranean Member states becomes the problem of the European Union, not only of the Member States. Greek budgetary deficit became the budgetary deficit of the European Union. Another example showing the supranational character of the European Union points to diplomatic sanctions against Austria in 2000, imposed by the other fourteen European Union Member States. ‘The sanctions, the first of their kind in the EU history, were imposed over concerns that the Freedom Party members and then-party leader Joerg Haider, had fomented a hatred of immigrants’ (Kenety 2000). Some representatives of this political party expressed xenophobic and racist views in its political campaign.

According to Peter van Ham, the European Union, perceived as a post-modern society, requires a new model of democracy, which is not ‘territorially-based’ (Van Ham 2001, p. 177). This means that the modern social contract cannot be considered as a satisfactory framework for contemporary democracy (Van Ham 2001, p. 182). ‘The anachronistic model of representative democracy can no longer manage the dynamic postindustrial society; this requires new systems (most likely cybernetic models), which are self-regulated and contain feedback loops at all levels’ (Van Ham 2001, p. 179). Nietzsche argues that modern democracy rests on a fundamental contradiction—it promotes an individualist culture, but in fact produces a social framework in which there is an absence of genuine individuality. Similarly contradictory are the relationships between man and citizen, freedom and necessity, autonomy and authority, and so forth (Potter 2006, p. 25).

⁸ ‘Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of the subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol’ (*Treaty of Lisbon* 2007, Article 3b.3).

The basic conditions for democracy have changed dramatically, and 'a digital democracy could be envisaged' (Van Ham 2001, p. 179). This new form of democracy will enable an interaction between decision-makers and EU citizens. According to Kostakopoulou,

developments in the European Union have brought forth the possibility of membership in various overlapping and strategically interacting political communities on supranational, national and subnational levels and have unleashed the potential for rethinking citizenship, community and identity. However, the dynamics of the European Union citizenship have not been fully and properly explored. (Kostakopoulou 1996, p. 338)

The content of rights and duties ascribed to citizenship changes over time. This change in the content of rights can also be caused by the development of human rights and different social movements. This dynamic nature of EU citizenship should be explicitly stated within the EU legal framework. Kostakopoulou introduces the concept of 'constructive citizenship,' which transcends the idea of the nation-state (Kostakopoulou 1996, p. 338). This conception of citizenship rejects essentialist notions of identity. It embraces multiple identities that include difference. Constructive citizenship is differentiated according to gender, race, class, and so forth. Constructive citizenship implies that the nation-state is no longer perceived as the primary source of identity. Thus, it represents a form of postnational citizenship.

Tomas Hammar (1994) popularizes the concept of 'denizenship.' The legal origins of this concept can be found in English common law dating from the thirteenth century. 'Denizen' is established in English common law as an intermediate position between a naturally born subject and an alien. According to this law, a foreigner could gain some of the privileges of an English subject, such as the right to hold land (Walker 2008). Hammar revises the concept of 'denizenship' and uses this term in the context of the European Union. The nature of 'denizenship' is hybrid, and this concept embraces the status of permanent residents who possess a range of legal and social rights but are not entitled to full political citizenship. There are different interpretations of 'denizenship.' It is often interpreted as a temporary status that leads to full citizenship or as

a 'permanent subcitizenship status' (Walker 2008). The establishment of Directive 2003/109/EC, which defines the status and rights of long-term third-country residents, reflects the idea of denizenship within the EU legal and political systems. These long-term residents are neither Member State nationals nor EU citizens.

Neil Walker (2008) argues about the potential of 'denizenship' to overcome the binary opposition citizenship/non-citizenship. EU citizenship created a new form of inequality based on a distinction between citizens with rights and non-citizens, who are not entitled to them. There is also a huge gap between theory and practice, between law and life. Having rights defined by the legal system of the European Union often does not mean having the opportunity to exercise these rights ('All Rights Reserved?' 2014, p. 10). The capacity to access rights entitled to full citizenship status often depends on various factors, such as educational level, economic position of individuals, age, health, position in the labour market, mastery of dominant language, and so forth ('All Rights Reserved?' 2014, p. 10).

According to Walker, the concept of 'denizenship' bridges the gap between citizenship and alienship. He states that 'the denizen may indeed be an appropriate archetype for imaging political community at the supranational level' (Walker 2008, p. 1). According to Walker 'denizenship is an "in-between" concept' that overcomes binary oppositions such as insider/outsider, citizen/alien, territorial/extraterritorial, and national/international. Walker emphasizes that the concept of 'denizenship' overcomes the Westphalian narrative and Westphalian logic. 'Denizenship' requires revision of the idea of membership.

The very idea of membership, with its ordering of a binary legal distinction (member/non-member), with its connotation of highly specified entry and exit rules and regimes, and with its symbolic self-and-other-interpolation of belonging and not-belonging, is arguably too rigid and too enveloping a notion for a world of more diverse and fluid commitments. (Walker 2008, p. 6)

If the concept of 'denizenship' really overcame these binary oppositions, it could be considered as a postmodern category. However, this is not the case, as denizens (third-country nationals in the European Union) are perceived as 'other.' The current EU legal system 'falls short of elaborating a

truly European approach to the status of rights of those *de facto* Europeans who cannot boast the citizenship of the Union' (Kochenov and van den Brink 2014, p. 6). A change in perception of 'otherness' and 'alienness' in the European legal and political systems is necessary to approach the status of third-country nationals in the European Union. The Council Directive 2003/109/EC, concerning the status of third-country nationals who are long-term residents, does not solve a number of problems. The Directive does not grant political rights to third-country nationals who are long-term residents, it provides limited free-movement rights, and its geographical scope of application is limited⁹ (Kochenov and van den Brink 2014). It also does not fully detach the permanent residence status in a given Member State from the acquisition of a long-term resident status in the European Union (Kochenov and van den Brink 2014, p. 12). Article 4(1) of the Council Directive 2003/109/EC states: 'Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for 5 years.' However, the Directive does not cover those who resided in one Member State for a longer period and moved to another Member State. In this way, a number of long-term residents are excluded from obtaining the status (Kochenov and van den Brink 2014, p. 13).

EU citizenship could be considered a postmodern category that overcomes binary oppositions only if it is expanded 'to allow TCNs to acquire European citizenship without the simultaneous acquisition of national citizenship in any Member state' (Becker 2004, pp. 132–133).

4.2.2 The First Decade of EU Citizenship: EU Politics as a Reflection of the Modernist Politics of Identity

Here, it will be argued that the politics of EU citizenship in the first decade does not represent the politics of affinity. EU citizenship in the first decade does not represent a postnational model of citizenship because it is tied to nationalist paradigms and stable and fixed identities and borders. Elizabeth Meehan emphasizes the distinction between citizenship and nationality. She argues that:

⁹The Directive does not apply to Ireland, the United Kingdom, and Denmark.

nationality is a legal identity from which no rights need arise, though obligations might—as is obvious when nationals are called ‘subjects’. Conversely, citizenship is a practice, a form of belonging, resting on a set of legal, social and participatory entitlements which may be conferred, and sometimes are irrespective of nationality—or denied, as in the case of women and some religious and ethnic minorities, regardless of nationality. (Meehan 2000, p. 4)

The traditional account of citizenship has been linked with nationality. However, the supranational political order of the European Union requires a new transnational concept of citizenship. On the one hand a number of critics of EU citizenship note that this concept is limited by nationality of the Member States. Therefore, EU citizenship is a prerogative of the Member States. Some authors support the opposite point of view—that European citizenship completely separates nationality from citizenship and it represents a postnational model of citizenship.¹⁰ However, this point of view is mostly ascribed to the second decade of EU citizenship.

The concept of EU citizenship¹¹ is defined by Article 8 of the *Treaty of Maastricht*: ‘Every person holding the nationality of a Member State shall be a citizen of the Union.’ The Declaration (No. 2) on Nationality of a Member State annexed to the *Treaty of Maastricht* 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’ (The Declaration No. 2). The *Treaty of Amsterdam* states that

¹⁰ According to Horváth, ‘the political community—circumscribed by state borders—is no longer linked to the territory in which rights may be exercised. Instead, the territory of rights spreads far beyond the territory of the community. Thus, Member State nationals enjoy a number of citizenship rights (free movement and residence, non-discrimination, etc.) throughout the Union that used to be limited to the nation state [...] As a corollary [...], it is not only nationals who enjoy certain rights in the territory of the Member State, but a much larger group, including European citizens and extending, through the Long-Term Residence Directive, to third-country nationals legally residing in a Member State. The citizenship-nationality link that formed the basis of the nation state has thus been broken. Because of this development [...], it is not the members of the given political community who determine the content of applicable rights, but a supra-state entity, namely, the European Union’ (Horváth 2008, p. 980).

¹¹ Soysal argues: ‘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’ (Soysal 1994, p. 154).

national citizenship is complemented and not replaced by EU citizenship. The nature of EU citizenship was not changed by the *Treaty Establishing a Constitution for Europe*,¹² which states that citizenship of the Union is additional to national citizenship (Article I-10). According to a number of scholars, the Constitutional Treaty was not a path towards the EU as a postnational entity, because EU citizens are considered sovereign only as nationals of Member States. However, the *Charter of Fundamental Rights of the European Union*¹³ extends EU citizenship to legally resident non-nationals. This does not change the exclusive nature of EU citizenship, because it embraces only nationals of the Member States and legally resident non-nationals and excludes all others.

Kochenov argues that the European citizenship is ‘derivative,’ because it is ‘largely left within the virtually exclusive domain of the Member States’ (Kochenov 2009, pp. 181–182). Member states grant the status of citizenship. Thus, they decide who gains the status of EU citizenship.¹⁴ This makes the concept of EU citizenship vague and unclear. Within the legal system of the Member States, a unified rule of gaining citizenship does not exist. Consequently, in some Member States it is easy to gain citizenship status, while in others it is very complicated. The differences between the citizenship laws in the various Member States strongly affect EU citizenship. Those differences are based on different legal and political traditions. Consequently, EU citizenship is merely contingent and mostly depends on where the agent lives.

Nationality as such (...) is effectively ‘abolished’ within the EU by Article 12 EC.¹⁵ Why would anyone wait eighteen years to naturalize in Finland if it is possible to do the same in Belgium in three years, or in Spain in one,

¹²The *Treaty Establishing a Constitution for Europe* was signed in Rome on 29 October 2004.

¹³The *Charter of Fundamental Rights of the European Union* was signed and proclaimed at the European Council meeting in Nice on 7 December 2000.

¹⁴Kochenov emphasizes that ‘such practice is not without limitations, however. As spelled out by ECJ in Micheletti, any decision of a Member State related to that state’s nationality, should be taken with “due regard to Community law”. At the same time the Member States are not given any discretion as far as regulation of the nationality of any other Member State is concerned’ (Kochenov 2009, p. 182).

¹⁵Article 12 of the *Treaty on European Union* states that ‘without prejudice to any special provisions contained [in this Treaty], any discrimination on the ground of nationality shall be prohibited.’

and to acquire the same European citizenship rights, including the right to move to Finland, with your new Belgian, Spanish, or Bulgarian passport and thanks to article 12 EC to be treated there exactly like any Finn would be treated? For third-country nationals residing in the EU it is becoming increasingly irrelevant in which Member State to naturalize. (Kochenov 2009, p. 183)

Article 8 of the *Treaty of Maastricht* defines who is not an EU citizen. Thus, it creates binary oppositions: EU/non-EU, citizen/stranger, we/they, and so forth. Nevertheless, the *Treaty of Maastricht* does not define who EU citizens are. It leaves it to the Member States. The first interpretations of EU citizenship provisions within in the European Court of Justice (ECJ) were very weak.¹⁶ Citizens continue to be perceived as ‘economic subjects’ long after the *Treaty of Maastricht* was established.¹⁷ Dora Kostakopoulou argues a ‘judicial minimalism¹⁸ during the period 1993–1997’ (Kostakopoulou, 2005, p. 145). She emphasizes that those cases reflect a huge gap between European citizenship norms and reality.

The ECJ for the first time used the term ‘citizenship’ to extend the rights of EU citizens in the case of *Martínez Sala* [1998] ECR I-2691.¹⁹ According to Hamernik,

the revolutionary case or saga about European citizenship starts in the decision of European Court of Justice C-85/96 *Martínez Sala v Freistaat Bayern* [1998] ECR-I-2691. *Martínez Sala* was greeted as [a] potential bridge between the orthodoxy of economic rights for economic migrants

¹⁶ See the cases: Case C-214/95 *Boukhalfa v. Bundesrepublik Deutschland* [1996] ECR I-2253; the joined cases C- 65/95 and C-111/95 *The Queen v. Secretary of State for the Home Department ex parte Shingara and Radion* [1997] ECR I-3343; the joined cases C-64/96 and 65/96, *Land Nordrhein-Westfalen v. Kari Uecker, Vera Jacquet v. Land Nordrhein-Westfalen* [1997] ECR I-3171.

¹⁷ However, inside the framework of the *Treaty of Rome*, EU citizens are perceived merely as economic subjects.

¹⁸ See: Kostakopoulou 2005, pp. 244–245.

¹⁹ ‘The case concerned a Spanish resident in Germany who whilst unemployed claimed a German child-benefit allowance. Under German social security law, her application was refused because she was not in a possession of a valid residence permit. The Court did not accept this limiting condition [...] lawful and authorized residence in another Member State by the national of one of the Member States is sufficient, alone, to bring a person within the personal scope of the Community law. This the contribution of the concept of Union citizenship as universal ascription to all nationals of the Member States, regardless of economic status’ (Bulvinaite 2003, p. 4).

and the new horizons lit up by comprehensive rights to equal treatment of Union citizens. (Hamernik 2007)

Another significant case that extends the scope of EU citizenship is *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* (CPAS) [2001] ECR I-6193. Grzelczyk is a significant judgment because it allows nationals of other Member States who are lawful residents in that Member State access to social benefits, beyond existing secondary community law (*Rudy Grzelczyk* 2001).

Some authors argue that the cases of Grzelczyk and Sala do not represent a substantive change in the exclusionary nature of EU citizenship (Van der Mei 2003). Citizens who are economically inactive are required to present proof that they will not depend on the social assistance of the host Member State.²⁰ The same can be argued for the cases of Trojani²¹ and Bidar.²² Consequently, rights as a part of EU citizenship are not unconditional.²³

²⁰ According to Van der Mei: '[The] economically inactive can still be required to present proof that they will not become a burden on the host of State's social assistance schemes. Grzelczyk does not imply recognition of a general unconditional right to freedom of movement. The ruling merely implies that Union citizens who have initially convinced the host State's authorities that they are able to provide for themselves but who, contrary to initial expectations, become temporarily in financial need do not automatically lose their right to reside. Secondly, Grzelczyk does not necessarily imply that Community students can actually claim social assistance in the host state. The ruling merely implies that Community students can claim social assistance benefits where, and under the same conditions as, national students have right to such benefits. National social assistance laws, however, may contain eligibility criteria, which students often are not able to meet [...] Further, Article 12 (1) of EC Treaty does not object to national rules which make entitlement to social assistance and other minimum subsistence benefits subject to requirements of habitual residence or domicile on the national territory' (Van der Mei 2003, p. 150).

²¹ Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles* (CPAS), judgment of 7 September 2004.

²² Case C-209/03 *Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills*, judgment of 15 March 2005.

²³ 'Trojani had no community right to reside since he could not support himself but it appeared that he has been lawfully resident under Belgian law. That was sufficient for the Court to decide that his right arose from Article 18 and to bring the equal treatment requirements of the Treaty into play in terms of his entitlement to the minimex. On the other hand in the Bidar case the Court has accepted the residence right of a French student who had completed his secondary education in the UK and his entitlement to student grant. The Court after accepting the direct applicability of Article 18 EC was able to arrive at such broad conclusions mentioned above' (Göçmen 2008, p. 61).

This can also be perceived in the case of Mr de Cuyper.²⁴ ‘Mr. de Cuyper was a Belgian citizen who was granted unemployment allowances and also was exempted from the condition to be subject to control procedures, however, only if he stays resident in Belgium to monitor his employment and family situation’ (Hamernik 2007). The ECJ in Case C-413/99 *Baumbast and R v. Secretary of State for the Home Department* [2002] ECR I-7091 shows the limited scope of EU citizenship. The ECJ ruled:²⁵

A citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of Article 18(1) EC. The exercise of that right is subject to limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of community law and, in particular, the principle of proportionality.²⁶

The European Council, at its meeting in Tampere, in October 1999, stated that the status of third-country nationals who resided legally for a period of time in a Member State and who held a long-term residence permit in that Member State should be equated to the status of Member State nationals. However, the idea of ‘the long-term resident’ within EU law discourse is often complex and vague. The Council Directive 2003/109/EC states: ‘The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country.’²⁷ It could be asked what ‘putting down roots’ in the new country means.

²⁴ Case C-406/04, 18 July 2006.

²⁵ Para 3 of the judgment.

²⁶ Case C-413/99 *Baumbast and R v Secretary of State for the Home Department*, [2002] ECR I-7091, para 94 of the judgment.

²⁷ ‘Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis’ (Council of the European Union 2003, para. 6).

This condition is dependent on not only the person who resides in the new country but also how this person is treated by the environment and the national legal framework of that country. According to Article 5 of the Council Directive 2003/109/EC, Member States will require third-country nationals to provide evidence that they have regular and stable resources sufficient to maintain themselves and their families. They should also comply with integration conditions determined by national laws of host Member States. The list of rights guaranteed to third-country nationals defined by Article 11 (Equal treatment) is limited. On the other hand, Member States are allowed to restrict those rights with respect to the provisions of paragraph 1 (Council of the European Union 2003, para. Article 11.2). It seems that the rights of third-country nationals are dependent mostly on the host Member State.²⁸ 'Member States may limit equal treatment in respect of social assistance and social protection to core benefits' (Council of the European Union 2003, Article 11.4). This leaves room for various forms of discrimination, for example, before taking a decision to expel a long-term resident, Member States take into account the age of the person concerned (Council of the European Union 2003, Article 12.3b).

According to Jo Shaw, the EU's own elections show that EU citizenship still does not represent a postnational model of citizenship, because they

tend to be fought on the basis of national political platforms by national political parties fielding national candidates, despite the existence of electoral rights for EU citizens under Articles 22(2)(b) and 23 TFEU²⁹ allowing them to vote on the basis of residence rather than citizenship. Thus, in practice, most of the regulations governing European Parliament elections are national, not European in character. (Shaw 2010, p. 2)

²⁸'Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1. Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1' (Council Directive 2003/109/EC 2003, Article 11.5). 'Member States may take a decision to expel long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security' (Council of the European Union 2003, Article 12.1).

²⁹*Treaty on the Functioning of the European Union.*

The list of rights granted to Union citizenship is extended and strengthened by the *Treaty of Lisbon*.³⁰ However, this treaty itself does not reflect postmodern traits of citizenship, although it leads to postnational citizenship. Article 8 of the *Treaty of Lisbon* states: ‘Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.’ The Treaty of Amsterdam defines the citizenship of the Union as being complementary to national citizenship, while the Treaty of Lisbon revises this definition and expresses EU citizenship as additional to national citizenship (Shaw 2008, p. 2). ‘Expressing Union citizenship as additional to national citizenship was insisted upon by the Member States, in order to reinforce the point that EU citizenship can only add rights, and cannot detract from national citizenship’ (Shaw 2008, p. 2).

4.3 EU Citizenship as a Mental Construct: Mental Maps of Keeping In and Keeping Out

In this section, a symbolic geography within the European context will be presented. Symbolic geography is founded on mental maps created by various binary oppositions, not geographical borders. According to Maria Todorova, politics creates (symbolic) geography (Todorova 1997). In this way, a dialectical process is created, because the politics itself is affected by the mental maps³¹ it has previously created. This means that mental maps are not just the reflection of historical, social, and economic factors. The idea of mental maps is closely connected to the idea that the nature of social reality is symbolic. The basic presupposition of this point of view

³⁰ ‘Citizens are directly represented at the Union level in the European Parliament’ (Article 8 A.2). ‘Every citizen shall have the right to participate in the democratic life of the Union’ (Article 8 A.3). ‘Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties’ (Article 8B.4).

³¹ ‘Mental maps incorporate elements of the meaning people attach to spatial configurations, the loyalties they hold, the emotions and passions that groupings evoke, and their cognitive ideas about how the world is constructed’ (Migdal 2004, p. 7).

is that a mind-independent reality does not exist.³² Concepts of ‘mental maps’ and ‘mental cartography’ are formulated within the framework of cognitive psychology. Mental maps represent schemes that gather chaotic impressions and representations.

Mental maps are not based on mathematical measures but take into account social, political, and moral parameters. The idea of mental mapping is mostly employed in discourse analysis as representations fixed by language. It identifies a symbolic geography, which is founded on subjective and narrative factors (not only objective and structural). This point of view is mostly represented by Anderson (1983), Todorova (1997), Wolff (1994), and Foucault (1979). Identifying mental maps of inclusion and exclusion is significant, because it reflects political instrumentalization, which relies on power relations.

Mental maps create a symbolic logic of keeping in and keeping out within the European context. If this logic is identified and overcome, it can create another form of citizenship perceived as a mental construct. Citizenship as a mental construct is based on the radicalization of the idea that the ‘concepts by which people define who they are—in which they articulate their sense of identity—are all of them concepts without sharp borders, and hence cannot provide a basis for sharp demarcations such as political boundaries between states’ (O’Neill 1994, p. 73). This form of citizenship presupposes a contingent, porous, and shifting concept of borders. However, EU citizenship is still a long way from this perspective, because it is fixed by borders. There are some paradoxes that can be considered consequences of the EU citizenship policy, which is based on the modernist notion of (essentialist) identity and a number of binary oppositions. Those examples show that EU citizenship is still closely tied to nationality and the matter of the Member States’s laws and policies.

Former Romanian president Traian Basescu promised hundreds of thousands of Romanian passports to Moldovans. Around one-hundred-and-twenty thousand Moldovans gained Romanian passports and another eight-hundred thousand were waiting to have their applications

³² Representatives of this point of view within philosophy of science are anti-realists: Larry Laudan, Bas van Fraassen, and so forth.

for Romanian passports approved (Bidder 2010). Although Romanians and Moldovans live in two separate countries, former Romanian president Traian Basescu emphasized that they represented one nation (Bidder 2010). However, according to polls, two-thirds of the Moldovans wanted to be part of the EU and they did not support reunification with Romania. Only 2 % identified themselves as Romanian. Spain granted permanent residency and the right to work to six-hundred thousand irregular migrants. Poland offered citizenship to one million ethnic Poles in Russia, Belarus, Kazakhstan, and Ukraine. Finally, Warsaw feared the possible complications of joining the EU's Schengen zone. Thus, ethnic Poles were granted a 'Polish Card'³³ in 2007.

The EUDO Citizenship Observatory reports that Slovakia and Hungary transformed their citizenship laws on 26 May 2010.

In Hungary an overwhelming majority of parliamentarians voted for offering persons with Hungarian ancestry access to Hungarian citizenship without asking them to renounce their present citizenship and without requiring that they take up residence in Hungary. The addressees of this new opportunity are up to 2.5 million Hungarian linguistic minorities living mostly in Slovakia, Romania and the Serb province of Vojvodina. (Bauböck 2010)

Some other EU Member States also offer citizenship status to persons whose ancestors were citizens. According to Bieber, those citizenship laws support ethno-nationalist perspectives (Bieber 2010). They are based on an idea of citizenship that is tied to ethnic identity. However, in reality, this attempt is often subverted. Ethnicity and patriotism are often not motives for those who accept citizenship status. Many Bosnian citizens who accepted Croatian citizenship (before visa-free travel was granted to Bosnia and Herzegovina in 2010) did not consider themselves Croatians, but saw an opportunity to receive a passport that could help them travel in EU countries. A similar argument can be made about Macedonians who are granted Bulgarian citizenship. Most of them do not consider themselves Bulgarians but took the opportunity of receiving a Bulgarian passport. Although Macedonia

³³ This card guarantees limited rights to access to health care, a cheap bus pass, and a refund of visa costs.

is part of the EU visa liberalization program, it is not an EU Member State. Consequently, holding a Bulgarian passport certainly means more rights. These are the examples that show that EU citizenship is still more tied to ethno-nationalist perspective than to European identity and values. Hence, it is often merely an instrumental category. The consequences of this situation are numerous distinctions and hierarchies on the map of Europeanness.

4.3.1 The Second Decade of EU Citizenship: Towards a Postmodern Conception of Citizenship?

EU citizenship in the second decade represents a postnational concept of citizenship. However, this does not mean that EU citizenship represents a postmodern concept of citizenship. As stated previously, a postnational concept of citizenship may still contain various binary oppositions (such as citizen/alien, European/non-European, identity/difference, and self/other), while this is not the case with the postmodern idea of citizenship, which overcomes these binary hierarchies.

The Lisbon Treaty strengthened the idea of EU citizenship. The rights of EU citizens are defined in the *Treaty on the Functioning of the European Union* (TFEU). These rights are further developed in the *Charter of Fundamental Rights of the European Union* within chapter 5, 'Citizens' Rights.' However, a gap remains within legal rules and reality. Europeans still face various obstacles when they attempt to exercise their rights. Some of these obstacles were presented in the European Parliament's report on 'Problems and Prospects Concerning European Citizenship' in 2009. The Commission identified twenty-five main obstacles that citizens face in their daily lives (European Commission 2010). For instance, 'the right to free movement is hindered by divergent and incorrect application of EU law and by cumbersome administrative procedures' (European Commission 2010); the right of EU citizens in third countries to enjoy consular protection is not fully effective;³⁴ EU citizens do not

³⁴The right of EU citizens in third countries to enjoy consular protection and protection by diplomatic authorities of all Member States is guaranteed by Article 20(2)(c) *Treaty on the Functioning of the European Union* (TFEU) and expounded in Article 23 TFEU.

fully benefit from cross-border health care; there is difficult cross-border access to justice; and the formalities regarding cross-border recognition of civil status documents are costly and cumbersome.

When registering citizens on the electoral roll, some Member States require EU nationals coming from other Member States to fulfill conditions which prevent them from exercising voting rights under the same conditions as their own nationals (possession of a national identity card, obligation to renew registration for each European election, etc.). (European Commission 2010)

In the *EU Citizenship Report 2010: Dismantling the Obstacles to EU Citizens' Rights* (2012) various other obstacles are identified. There are still too many problems in existence seven years after the Directive 2004/38/EC ('Free Movement Directive' or 'FMD') was established. There are still many complaints about the rights of EU citizens of permanent residence, the rights of their family members, their right to entry, and so forth (Report on EU Citizenship 2012). A number of citizens do not have access to information concerning the scope of rights granted to EU citizens by the FMD. Although the rights of EU citizens and third-country nationals are established, various problems persist. The issue of the deportation of Roma people by France in 2010 is problematic from the perspective of free movement, fundamental rights, and discrimination. Another problem arose in 2011 when several Member States decided to continue to limit Bulgarian and Romanian nationals' access to their labour markets, despite the resolution on freedom of movement for workers within the European Union (with an emphasis on the rights of Bulgarian and Romanian workers in the single market) on 15 December 2011 ('Romanian Workers' Mobility' 2012). There are still obstacles to the development of active EU citizenship, due to a lack of information on the part of EU citizens on their rights and a lack of 'clearly structured, widely publicized information services' (Report on EU Citizenship 2012).

EU citizenship as a postmodern category requires recognition of otherness. Postmodern citizenship implies difference. Nevertheless, EU citizenship still excludes a significant number of people from full participation. For instance, homeless people are excluded from accessing the benefits of

European Citizens' Initiative (ECI) and other rights ('Homeless People Excluded' 2013). The ECI website claims:

'All EU citizens [...] old enough to vote in the European Parliament elections [...] can sign a citizens' initiative.' Unfortunately, this is not true. Homeless people, despite being citizens of member states, are excluded from taking part in an ECI in 14 out of 27 countries. In order to sign a petition launched under the ECI framework, signatories must have proof of a permanent address. In all countries, they need proof of identity. ('Homeless People Excluded' 2013) (ECI 2012)

However, homeless people don't have a permanent address. Thus they are not allowed to participate in a Citizens' Initiative and they are not equal to other EU citizens. Thus, 'homeless' are perceived as an 'other,' which is marginalized and discriminated against.

Roma are also perceived as 'other' in contemporary Europe. Roma are victims of discrimination, and a significant number of them live in extreme poverty. Roma cannot exercise full European citizenship. Although EU Member States are failing to protect Roma communities, 'some European leaders are choosing to blame Roma themselves for "failing to integrate"' ('We Ask' 2014). There is still a huge gap between theory and praxis in exercising rights guaranteed by European treaties and charters. Former Romanian President Traian Basescu strongly defended the freedom of movement on 31 January 2013, arguing that Roma from Romania³⁵ have the same rights as other citizens of the European Union (Pop 2014). According to Basescu, seven years after Romania joined the European Union, this country is still not 'fully integrated' as it is still waiting to be accepted in the border-free Schengen zone, and in 2018–2019, in the Eurozone (Pop 2014). Because of these obstacles, Romanian nationals are having difficulties exercising full EU citizenship.

EU citizenship is still based on a number of binary oppositions, as discrimination in Europe is widespread. Discrimination is an obstacle that produces various obstacles to exercising full citizenship status. Discrimination is mostly widespread in ethnic origin, disability, and sexual orientation

³⁵It is estimated that around three million Roma live in Romania.

(‘Discrimination in the EU’ 2012). The economic crisis is contributing to increased discrimination in the labour market, especially for people over fifty-five years old (‘Discrimination in the EU’ 2012). Thus, Europe now contains a number of ‘outsiders’ (Van Ham 2001, p. 176).

A number of authors analyse the historical process of forming the idea of postnational citizenship, which was publicly discussed for the first time at the Copenhagen Summit in 1973 (Wiener 1997). However, EU citizenship (in its attempt to transcend national borders and become postnational citizenship) remains limited by a territorial, exclusivist idea of membership, which includes only some inhabitants of the European Union (Kochenov 2009).

It is quite ironic that the Schengen Agreement (which seeks to abolish all border controls among Benelux countries, France, Germany, Italy, Spain and Portugal) has spurred national governments to strengthen their external borders and their competence and ability to carry out checks and controls, as well as to store and exchange information, on ‘unwanted individuals’. The Schengen Implementation Agreement includes detailed measures on illegal immigration, the status of refugees, asylum and cross-borders surveillance, as well as a common computerized system for the exchange of personal data in the so-called Schengen Information Service (SIS). The very notion of citizenship therefore makes it clear that all political communities are by definition of a ‘limited solidarity.’ (Van Ham 2001, p. 176)

In the second decade (during the 2000s), EU citizenship reflects postnational traits in the sense that some rights in the European Union are guaranteed to persons, not only citizens. This is also reflected in the ECJ rulings, which are obligatory for all EU Member States. In the cases of Garcia Avello³⁶ and Micheletti,³⁷ the Court of Justice of the European Union stated that citizenship of the Union should be regarded as ‘fundamental status’ of Europeans. The *Rottmann*³⁸ judgment may also be regarded ‘as a substantial increase in the effects of EU citizenship

³⁶ Case C-148/02, *Carlos Garcia Avello v État Belge* [2003] ECR I-11,613.

³⁷ Case C-369/90 *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria* [1992] ECR I-4239.

³⁸ Case C-135/08 *Janko Rottmann v Freistaat Bayern*, 2 March 2010.

vis-à-vis national citizenship' (Shaw 2011a, p. 4). In the *Rottmann*³⁹ case, the Court found that the revocation of Mr Rottmann's German citizenship and the German law that governs it affect the scope of EU law.

Since the TFEU states that every citizen of a Member State is also a citizen of the Union it follows that any national measure determining the scope of national citizenship also affects the scope of Union citizenship, and as such the scope of EU rights. It is obvious that national citizenship law therefore falls within the sphere of EU law and must respect its rules and principles. (Davies 2011a, p. 6)

The violation of Union law by a Member State cannot be easily justified. Member States have a duty to comply with the EU law. An exception can be made only if this duty is annulled by the ECJ.

However, the Court made a distinction between the *Rottmann* and *Kaur*⁴⁰ cases. The Court said that in *Kaur*,⁴¹ the applicant had never enjoyed the rights of Union citizenship, and thus could not be deprived of these rights and the status of Union citizenship. However, in the *Rottmann* case, the applicant is deprived of EU citizenship, which he had enjoyed. The implication that only the deprivation of Union rights falls within EU law, not the denial of them, shows that EU citizenship still depends on the nationality of a Member State. EU citizenship and the internal market both transform and reconceptualize Member States's nationality policies. The nature of EU citizenship is neither 'derivative' nor autonomous. According to Kochenov, nationality of the Member States and EU citizenship are two co-existing legal statuses⁴² (Kochenov 2011, p. 11).

The case law that addresses EU citizenship was not sufficiently developed for almost two decades. However, there are reasons for optimism

³⁹ Mr Rottmann is an Austrian who became German, and consequently is required to give up his Austrian nationality. He doesn't have an automatic right to retain Austrian nationality although his German nationality is later revoked because of fraud. Therefore, he is stateless. This means that he has also lost his EU citizenship, which he was entitled to both as a German and an Austrian.

⁴⁰ Case C-192/99 *The Queen v Secretary of State for the Home Department, ex parte: Manjit Kaur* [2001] ECR I-1237.

⁴¹ In this case a refusal to grant British nationality is challenged.

⁴² 'The days of a one-way relationship between EU citizenship and the nationalities of the Member States are over. The link between the two is now much more complex than a simple dependency relationship of one status on another' (Kochenov 2010, p. 1).

considering future development of EU citizenship towards postnational category. Although the Member States's authority in matters of nationality was affirmed by the Court, the necessity for national authorities to exercise their competence in ways that do not put into question the effectiveness and integrity of the EU legal system is older. Some scholars emphasize that 'the Court of Justice has not gone far enough in articulating a positive notion of an EU citizenship which would exist in a constructive interrelationship with the constitutional character of the emergent euro-polity' (Shaw 2011b, p. 34). Another problem is reflected in the situation of third-country nationals, which is different in Member States.

Thus it can be argued about evolution of EU citizenship in the last decades. EU citizenship will continue to be transformed as a legal and political concept and phenomena are dynamic, not static. Although 'the case law concerning the personal scope of Union citizenship remained relatively undeveloped and modest for nearly two decades' (Kostakopoulou 2011, p. 21), the *Rottmann* and *Micheletti* cases show that Member States's competence regarding nationality should be exercised in accordance with Union law (Kostakopoulou 2011).

Commencing with *Micheletti*, the Court confirmed that determination of nationality falls within the exclusive competence of the Member States, but it went on to add that this competence must be exercised with due regard to the requirements of EU law, and in *Kaur* it stated that 'it is for each Member State, having due regard to EU law, to lay down the conditions for the acquisition and loss of nationality.' (Kostakopoulou 2011, p. 21)

Although Member States keep their authority in matters of nationality, they have to exercise their authority in accordance with the European Union legal order.⁴³ The loss of nationality of a Member State does not automatically result in the loss of EU citizenship as EU citizenship became a fundamental status, which established the link between the citizen and EU (Kostakopoulou 2011, p. 22). According to Kostakopoulou, a 'relative autonomy' can be ascribed to Member States. This means that neither the Member States enjoy complete authority in granting EU citizenship

⁴³For instance, see: Case C-200/02, *Zhu and Chen v Secretary of State for the Home Department* [2004] ECR I-9925.

nor the superior status independent of the law of a Member State can be ascribed to EU citizenship (Kostakopoulou 2011, p. 22).

4.4 Poststructuralist Feminist Critique of European Law

Poststructuralist critique can be applied to human rights discourse as its main concepts (family, equality, difference, woman, man, and so on) are still regarded as fixed, not as constructed.⁴⁴ And although there have been some efforts recently to improve the European legal system, there are still some fundamental problems based on the metatheoretical presuppositions⁴⁵ that create inequality. The fundamental idea of the poststructuralist feminist critique of the law, science, truth, history, knowledge, and subjectivity was to deconstruct patriarchal forms of subjectivity and power relations (Weedon 1987, p. 171). Joan Scott argues:

Precisely because it addresses questions of epistemology, relativizes the status of all knowledge, links knowledge and power, and theorizes these in terms of the operations of difference, I think post-structuralism (or at least some of the approaches generally associated with Michael Foucault and Jacques Derrida) can offer feminism a powerful analytic perspective. (Scott 1988, p. 4)

According to Luce Irigaray, the transformation of the patriarchal symbolic order is a necessary condition for establishing a female-defined femininity (Irigaray 1985). As previously shown, feminist authors argue that women do not have access to language and that the patriarchal symbolic order represses 'women.' The significance of feminist poststructuralist thought is reflected in the thesis that oppression of women can be

⁴⁴In the case of *Christine Goodwin v. United Kingdom* (2002), the European Court of Human Rights held that 'gender' is not fixed but is constructed. However, within the discourse of European law, gender is often comprehended as fixed. The main problem is that the final decision is often left to national courts, which interpret these laws.

⁴⁵Although there are many articles and conventions established by European law, it still reflects inequality on its metatheoretical level.

perceived in symbolic terms (not only political, social, economic, or cultural). Feminism as the ‘politics of transformation of social relations of gender towards a greater equality between the sexes’ must emphasize that ‘feminist processes are located at the intersection of the material and the symbolic’ (Wieringa 1998, pp. 350, 352).

The fact that women are excluded from the symbolic order and reflected as ‘man’s other’ represents cultural repression. This was often stressed in the work of poststructuralists, especially Jacques Lacan and Luce Irigaray. Irigaray argues that ‘the neutral subject’ of the law (and Western discourse) actually refers to ‘masculine.’ Thus the Western discourse is patriarchal and monosexual. Women are denied and repressed, and their subjectivity and bodies are not represented in the Western discourse and law. Woman’s access to law is thus only through ‘masculine’ symbolism and systems. According to Joan W. Scott,⁴⁶ politics is a ‘gendered concept’:

Gender is one of the recurrent references by which political power has been conceived, legitimized, and criticized. It refers to but also establishes the meaning of the male/female opposition. To vindicate political power, the reference must seem sure and fixed, outside human construction, part of the natural or divine order. In that way, the binary opposition and the social process of gender relationships both become part of the meaning of power itself; to question or alter any aspect threatens the entire system. (Scott 1988, p. 49)

Thus, the power is also constructed. Poststructuralist feminist critique of European legal discourse reveals a number of binary oppositions on which the European law is founded: public/private, action/passivity, independence/dependence, culture/nature, objective/subjective, mind/body, order/anarchy, logic/emotion, legal/political, and so forth. Feminist scholars argue that the first term of these binary oppositions signifies ‘male’ characteristics, while the second term signifies ‘female’ characteristics (Charlesworth 1999). These terms are not equally valued in the legal discourse and various systems of knowledge—the higher values are ascribed

⁴⁶ Scott is not considered a poststructuralist scholar. However, her theory is compatible with some basic principles of poststructuralist thought.

to the first term of these binary oppositions, and the first term dominates the second. The greatest number of critics of international law emphasize that it is based on the idea of universality. Feminist thinkers argue that the universal agent does not exist.

Poststructuralist theory can help question some of the main concepts of European law. The main concepts that European law contains are not fixed—they are constructed. That means that they can constantly be reread and that they can be transformed.

Poststructuralist analysis of law is based on two tasks. The first one is deconstruction of the definitions and standards that represent the foundation of the law. It questions the ‘objectivity’ and ‘rationality’ of the legal system. The second task is the transformation of those definitions and standards—reconstruction. It rebuilds the basic concepts of European law ‘in a way that they [does not] support or reinforce the domination of women by men’ (Charlesworth and Chinkin 2000, pp. 60–61). This aspect of the law requires not only an epistemological approach but also a hermeneutic approach. Subsequently, poststructuralist analysis is not sufficient for explaining this transformative aspect of the law and showing how it can be improved. Poststructuralist analysis should be complemented with hermeneutic understanding.

The law has symbolic, normative, and transformative aspects. The symbolic aspect of law represents preexisting concepts and roles that exist in the culture independently of the law itself, and the law is influenced by them. The normative dimension of law (i.e., the prescriptive aspect of law) includes treaties, charters, and declarations. The transformative aspect of law is its ability to refigure our experience and understanding of our reality. The transformative aspect is not a one-way process—law transforms our experience, and reality, but, on the other hand, law is transformed by our praxis and worldview.

Since poststructuralist feminist scholars ignore transformative aspect of the law, they only explain the law; they do not succeed in understanding it.

Law is both real and ideal; it is both determined and determining. Law is a collection of symbols and signs that structure and effect choices, options, consequences. It operates in the continua between the real (concrete facts) and the ideal (nonconcrete interpretation) and constructs there a dispersed and contradictory realm of hierarchical power. (Eisenstein 1988, p. 42)

From the normative point of view, law configures the concepts that already exist in the culture and society. By ordering them in its normative dimension, law transfigures them and influences society and culture to perceive these concepts as it prescribes. In this way, analysis of European law, and law in general, embraces not only an analytical method but also a hermeneutic method based on understanding.

Feminist poststructuralist critique of law can be employed to deconstruct some basic concepts crucial for establishing equality guaranteed by the law. However, this critique does not embrace all aspects of the law. It can be applied only to symbolic and normative aspects of the law. The poststructuralist feminist approach can embrace only an explanation of the normative (*configurative aspect*) of the law, but it does not include the transformative (*transfigurative aspect*), which requires hermeneutic understanding. The law does not only have a normative role, but also a transformative role. For instance, more than any other texts, legal texts can affect how women perceive themselves. Thus poststructuralist feminist critique needs to be supplemented by a hermeneutical approach to encompass the transformative dimension of the law and rights.

Law embraces dialectics between normative and transformative aspects. For instance, the normative character of family law constructs the concept of a woman (the worldview, as well as their perception of their roles), but, the concept of a 'woman' understood and defined in society creates the law and revises and transfigures it as well. The transformative dimension of the law shows the interaction between the law and society or culture. Hermeneutics is, therefore, an alternative to deconstruction, because it is a dialectic, dynamic process.⁴⁷

4.4.1 The Problem of Discrimination against Women in the European Union

Today it is a widespread opinion that discrimination against women is a problem of the past. There are many instruments inside the framework of European law that prohibit discrimination and guarantee all kinds of fundamental rights. However, there is still a huge gap between theory

⁴⁷ Paul Ricoeur (1981) emphasizes the dynamic relationship of both explanation and understanding as two main methods of hermeneutical analysis.

and praxis, law and reality. In the Parliamentary Assembly of the Council of Europe in 2005,⁴⁸ there was a discussion about discrimination against women in the workplace. It is concluded that women are still discriminated against in various ways across Europe. In most of the Council of Europe Member States, the unemployment rate of women is higher than that of men, in the most cases they are overqualified for the work they do, and they encounter a lack of access to the labour market.⁴⁹

The second problem emphasized is that women are often paid less than men for the same work (on average 15 %). In general, women also earn less than men in their lifetimes and thus receive smaller pensions when they retire. The third problem identified is the ‘glass ceiling.’ There is still a very small number of women in high positions. Today, almost a decade after this discussion, the problem of discrimination against women in the European Union still exists.

The real discrimination against women exists in terms of their career development, as in 2014 women are still payed 16 % less than men per hour of work, ‘despite the fact that they constitute 60 % of university graduates’ (Bos 2014, p. 1). Subsequently, senior positions in employment are mostly held by men. ‘Women account for approximately 27 % of senior government ministers in Europe, and just 17.8 % of the members of boards of directors in the largest, publicly listed companies’ (Bos 2014, p. 1). The proportion of female board members varies in different Member States, ‘and it is certain that there is still a long way to go until 40 % quota is achieved’ (Bos 2014, p. 1). Establishing gender equality still includes a number of problems’:

Demands for a larger number of women in parliament (...) raise difficult questions about who represents whom and what is being represented. These elected women represent political parties and not women’s issues, and there is no guarantee that the issues connected with women’s situation will be better taken into account in the political agenda. The question is whether women’s common experiences with citizenship enable the build-

⁴⁸Council of Europe, Assembly debate on 27 April 2005 (13th Sitting), see Doc. 10,484 report of Committee on Equal Opportunities for Women and Men.

⁴⁹It is emphasized that, however, there are regional variations and that a greater number of women than men work in part-time jobs (which is not always their choice).

ing of collectivities with common points of interests and perspectives, though not with identical interest. (Marques-Pereira and Siim 2002, p. 182)

In addition, women are more likely to interrupt their careers to care for family members and work part-time, and this contributes to a high pension gender gap, which currently goes up to 39 % (Bos 2014). Furthermore, women outpace men in the share of unpaid work within the family and household. Men are generally entitled to significantly less paternity leave (than women are entitled to maternity leave) throughout Europe. This directly contributes to strengthening social stereotypes about the roles played by men and women in family and work (Bos 2014, p. 1).

Another problem represents the position of disabled women and women belonging to minorities, who usually suffer from ‘double discrimination.’ In the Parliamentary Assembly of the Council of Europe, it is concluded that all these problems show that discrimination against women is still part of the European reality. It is concluded that ‘women are not discriminated against for economic reasons—they are mainly discriminated against because of stereotyping and misguided preconceptions of women’s roles and abilities, commitment and leadership style’ (Discrimination Against Women 2005). Thus, discrimination can be also perceived from the symbolic aspect.

Gender equality is advocated by EU treaties and charters. Article 13 of the *Treaty of Amsterdam* lays down important foundations for the development of gender equality. It is followed by Articles 21 and 23 of the *Charter of Fundamental Rights of the European Union*. In the post-Amsterdam period, Article 8 of the *TFEU* mainstreams gender equality. Article 10 of the *TFEU* is also important for gender equality.

Thus, it can be argued that:

The gap between the symbolic life of the law and the ineffectiveness of the law in action imposes a cost borne by the intended beneficiaries of civil rights policies. The inability of civil rights strategies to fulfill their promise appears to have left many who experience discrimination on uncertain ground between the public and private action while they are without faith in themselves or the law. (Bumiller 1987, p. 439)

The question of inequality is not just an economic, social, and political question. The symbolic aspect of inequality must be taken into account, because it includes metatheoretical presuppositions that work from within the discourse of law and undermine the basic rights it guarantees. Therefore, it can be argued about the symbolic oppression of women inside the framework of law. This symbolic oppression implies binary logic, which forms hierarchical thinking.

4.4.2 The Concept of 'Family' in European Law

Article 8 of the *European Convention on Human Rights* states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 7 of the *Charter of Fundamental Rights of the European Union* also guarantees the right to respect for private and family life. Nevertheless, State respect for the privacy of the family is founded on the presupposition that there are preexisting roles and obligations (Gerhard et al. 2002, p. 127).

The operation of family law has also been underpinned historically by implicit assumptions regarding female dependence rather than individualization. (...) The relationship between the process of female emancipation and changes in family law, which has very different traditions in Western Europe is complicated. (Gerhard et al. 2002, pp. 126–127)

In recent theories about the concept of 'family,' there are three orientations, based on: (1) contract, (2) community, and (3) rights. They all attempt to represent an alternative to the patriarchal approach of common

law (Kittay and Feder 2002). Theories based on contract suggest that the family is a contractual association, in which partners set the terms of their relationship (Becker 1981; Kymlicka 1990). Theories based on community define the 'family' and its recognition by the state by the moral standards of the community (Sandel 1982; Regan 1993; Galston 1998). Theories based on rights attempt to derive family law based on equal opportunities and the freedom of every individual in society (Hunter 1995; Okin 1989).

Family policy institutions have both a normative (prescriptive) and transformative character. They affect how women perceive their lives and their 'proper role'. The term 'family,' as employed in European law, is still understood too narrowly and is still based on different symbolical, political, and economical oppressions of women and same-sex couples. The family is presented as 'the natural and fundamental unit of society which is entitled to protection by society and the State' (*Universal Declaration of Human Rights*, Article 16, para. 3). In the preamble of the *Convention on the Rights of the Child*,⁵⁰ the same conception of family is presented:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

As it can be perceived, the family is portrayed as prepolitical and natural. According to Charlesworth and Chinkin:

Emphasis on the family as natural foundation of society assumes (...) that human rights are not applicable within the family circle. The sacrosanct image of the family in human rights law discourages intervention and proper scrutiny of whether the rights to life, liberty, freedom and slavery, and the security of the person are realised in particular family contexts. International human rights law rests on and reinforces a distinction between public and private worlds, and this distinction operates to muffle, and often completely silence the voices of women. (Charlesworth and Chinkin 2000, p. 232)

⁵⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

Furthermore, describing the family as a ‘natural and fundamental unit of society’ excludes all units that are considered unnatural and non-fundamental. In this way, there is an opening for various forms of discrimination and stereotypes. ‘Family’ should be perceived as a socially and historically constructed category, which is open for reinterpretation (as are other concepts within European law).

Article 21 of the *Charter of Fundamental Rights of the European Union* prohibits discrimination:

Any discrimination based on any ground such as sex, race, colour ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation should be prohibited.

Nevertheless, to be effective, this article should refer to the polyphonic nature of the main concepts it entails. ‘Sex,’ ‘race,’ ‘age,’ and other concepts included in this article should be perceived as socially and historically constructed, not as naturally given. However, they are still mostly perceived as essentialist categories. For instance, ‘sex’ is often represented as determined by nature, while in the EU gender policy, ‘gender’ is defined as follows: ‘Gender refers to the social differences between women and men that are learned, changeable over time and have wide variations both within and between cultures’ (European Commission 1998). ‘Gender,’ as defined this way, leaves room for confusion and different interpretations. According to Scott, symbolic orders and gender systems produce men and women, and their roles in the society. Gender is socially constructed; it denotes

The entirely social creation of ideas about appropriate roles for women and men. It is a way of referring to the exclusively social origins of the subjective identities of men and women. Gender is, in this definition, a social category imposed on a sexed body. (Scott 1988, p. 32)

Scott emphasizes that ‘the use of gender emphasizes an entire system of relationships that may include sex, but is not directly determined by sex nor directly determining of sexuality’ (Scott 1988, p. 32). According to Scott, gender is a constitutive element of social relationships, and it is ‘a primary way of signifying relationships of power’ (Scott 1988, p. 42).

4.5 The Concept of EU Citizenship within European Public Discourse

In this section, the European Communication Strategy for creating active European citizenship and a European public sphere will be explored. In the past two decades, the question of the European public sphere was often understood within the context of discussions of the European ‘democratic deficit.’ A deeper look at how European political institutions create and affect the European public sphere has not yet been sufficiently explored. This study broadens this discussion and analyses various deliberative democratic attempts to construct the European public sphere. In particular, the European Commission’s *Plan D for Democracy, Dialogue and Debate (Plan D)* and the European Commission’s proposal for the European Year of Citizens will be analysed.

This inquiry will advocate deliberation and deliberative democracy as effective tools for the creation of a more inclusive European citizenship and European public sphere. Deliberative democracy also solves the problem of democratic legitimacy of the Union. The European Commission made several deliberative democratic attempts to create active European citizenship and a European public sphere. Former European Commission President José Manuel Barroso states: ‘I would like to see the development of a European public space, where European issues are discussed and debated from a European standpoint. We cannot continue trying to solve European problems just with national solutions’ (Barroso 2012).

Both the European Commission’s *Plan D for Democracy, Dialogue and Debate* and the European Year of Citizens advocate deliberative democracy as a necessary part of active citizenship. However, these attempts were not successful since they led to mere debate, not deliberation. Another problem that will be taken into account in this study is the static and homogeneous understanding of the public sphere within European legal documents.

The purpose of this inquiry is to show the dialectical relationship between ideas of European values, European identity, and European public sphere. Concepts of ‘European values,’ ‘European identity,’ and the ‘European public sphere’ should not be understood as homogeneous and

static entities. They should be perceived as dynamic and polymorphous entities, because they are constantly reinterpreted and changed. Successful deliberation on the European level requires clear determination of ‘European values’ and the ‘European public sphere’ as heterogeneous, contingent, and shifting concepts.

4.5.1 The European Commission’s *Plan D for Democracy, Dialogue and Debate*

Deliberative democracy can serve as an effective tool for creating a more inclusive conception of European citizenship and a European public sphere. It also solves the problem of the democratic legitimacy of the Union. From 2005, the European Commission organized a number of initiatives and projects to promote deliberative democracy and make it an inseparable part of EU policy and discourse. The Commission proposed *Plan D* during the ‘period of reflection.’⁵¹ The ‘period of reflection’ aimed to enable broad debates involving civil society, citizens, political parties, national parliaments, and so forth. This chapter will analyse whether *Plan D* led to a more inclusive conception of citizenship based on the principles of deliberative democracy.

Václav Havel argues that the European Union includes a broad range of values that originate from antiquity, Christianity, the Renaissance, the Enlightenment, and liberalism.⁵² Those values also originate from legal principles of democracy, tolerance, and the rule of law. Havel and many scholars argue that there are two aspects of European values—legal and cultural. However, both aspects are often described as essentialist and metaphysical. Cultural determination of European values is problematic for two reasons. Firstly, values are defined as static and homogeneous. They are reduced to cultural and historical heritage perceived as unified categories.

⁵¹‘At the end of the European Council on 18 June 2005, Heads of State and Government adopted a declaration on ‘the ratification of the Treaty establishing a Constitution for Europe’, this declaration called for a “period of reflection” following the negative votes in France and The Netherlands on the European Constitution’ (European Commission, 2005).

⁵²From the Speech made by Václav Havel, former president of the Czech Republic, to the European Parliament in Strasbourg on 8 March 1994, www.europa-web.de/europa/02wwswww/203chart_gb.htm.

Secondly, this conception contradicts the legal dimension of those values, which implies flux and contingency. The legal aspect of European values includes constant reconfiguration in accordance with different political and social changes and movements. Nevertheless, this is often ignored within EU legal discourse. Both legal and cultural aspects of ‘European values’ are often considered monolithic and fixed, which is flawed.

The legal aspect of ‘European values’—as based on tolerance, democracy, the rule of law, and human rights—represents moral universalism. Europe is defined by universal, not European, values. However, the cultural aspect of European values, defined by scholars and politicians, represents universalism and essentialism of another kind. It is based on a selective approach to the European past, which excludes non-European contributors and includes only those segments that affirm the normative idea of a united Europe. European integration should not be built on universalist assumptions nor should it be built on the metaphysical understanding of cultural and historical heritage. It should be built on political relations between different entities. Thus, Europe should exorcise ontological apriorism, because it is a political, not mythological, project.

Successful deliberation on the European level requires clear determination of ‘European values’ and of the ‘European public sphere’ as heterogeneous, contingent, and shifting concepts. The following shows that *Plan D* failed because it employed homogeneous and static concepts of public sphere and European values. In this way, it reduced deliberation to mere debate.

4.5.2 Deliberative Democracy as a Key to the ‘Democratic Deficit’ in Europe

It is often argued that the democratic deficit ‘is due to the lack of European political parties, representative accountability and a properly functioning public sphere’ (Eriksen 1999). The problem of the lack of democratic legitimacy implies that citizens are expected to obey laws not authorized by themselves. Subsequently, the European Union is a ‘Europe of the experts and elite’ and not a ‘Europe of citizens.’

Although the EU touches directly upon the innumerable prosaic concerns of all Europeans, for the general public ‘Brussels’ still remains remote and

emotionally distant. Europe's citizens have for decades offered their 'permissive consensus' by accepting EU policies without asking too many difficult questions about democratic legitimacy and accountability. (Van Ham 2001, p. 172)

Some authors argue that the question of the democratic deficit is closely tied to the question of the nature of the entity of the EU (Eriksen and Fossum 2000, p. 2).

However, there are also authors who reject the notion of a democratic deficit in the European Union. According to Moravcsik (2002), the democratic legitimacy in the EU is guaranteed by the democratically elected national governments, which have a strong role in the decision-making process in the European Union. Moravcsik perceives the European Union as an intergovernmental organization.

Consequently, European democracy is a highly disputed and contested area (Abels 2009). In recent European studies, it has been argued that deliberative democracy can solve the problem of the democratic deficit in the European Union. Deliberative democracy promotes diversity and pluralism. It is a path towards active and more inclusive citizenship, which is based on participation, inclusion, and equal moral worth (Lister 2007, p. 52). According to Bohman, deliberative democracy begins with the critique of practices of liberal democracy (Bohman 1998, p. 400). He argues that in the early formulations of deliberative democracy in the 1980s, 'deliberation was always opposed to aggregation and to the strategic behavior encouraged by voting and bargaining' (Bohman 1998, p. 401). Deliberative democracy aims at the agreements of all citizens affected by the decision and rejects the idea of 'simple compromise of bargaining equilibrium' (Bohman 1998, p. 401). The superiority of deliberative democracy is its idea to go beyond liberal democratic ideals and to embody the will of all citizens derived from the public reason of all citizens. Deliberative democracy founds legitimate political decisions on the deliberation of all citizens as free and equal individuals.

Aggregative democracy reflects only the basic preferences of individuals. On the other hand, deliberative democracy leads to the transformation of preferences. Deliberation implies the process of communication in the open discussion, which follows the strength of the better argument. Actors do not agree upon all decisions, but deliberation gives opportunities to all participants to acknowledge different standards and values. The

force of better argument influences the decision-making process, not the qualified consensus.

Deliberative democracy⁵³ requires justification of the decisions made by citizens and their representatives. In deliberative democracy, 'leaders should therefore give reasons for their decisions, and respond to the reasons that citizens give in return' (Gutmann and Thompson 2004, p. 3). Those reasons should be accessible to all citizens who are affected by the justified decisions. Deliberative democracy does not produce permanent decisions and it constantly examines its arguments and conclusions. Consequently, it is open to the process of reconfiguration and change. Thus it perceives citizenship as a dynamic category, which is constantly affected by social movements and changes. According to Gutmann and Thompson 'Deliberative democrats care as much about what happens after a decision is made as about what happens before' (Gutmann and Thompson 2004, p. 6). The purpose of deliberative democracy is to encourage public discussion and debate on important political decisions and other issues that affect citizens. Deliberative democracy includes 'informed preferences.' Deliberation can succeed only if citizens are well informed, respect opponent opinion, and have equal resources (Gutmann and Thompson 2004, p. 11).

Applied to the European Union, the starting point for deliberative democracy could be discussing "the notion of public sphere, the role of parliamentary discourse and negotiations in the committee system" (Eriksen 1999). Some authors argue that there is a lack of European collective identity (Fligstein 2008). Consequently, European *demos* does not exist, and there is no public sphere in the European Union.

European identity is established by the *Declaration on European Identity* (1973). The definition of European identity within the framework of this document involves taking account of the dynamic nature of European unification and reviewing the common heritage. Subsequently, there is a collective identity in the European Union, which can stimulate the

⁵³ There are different models of deliberative democracy. According to McAfee, there are three models: (1) 'the preference-based model' advocated by deliberative authors in the social sciences; (2) 'the rational proceduralist model' suggested by John Rawls's political philosophy and Jürgen Habermas's discourse ethics; and (3) 'integrative model' which is employed in deliberative forums (McAfee 2004, p. 44).

formation of a European public sphere. Eriksen emphasizes that the public sphere is not missing in the European Union as there are new social movements, identity politics, and European audio-visual spaces such as newspapers and television (Eriksen 1999).

The European public sphere should not be considered as a homogeneous category defined by borders. There are different public spheres in the European Union: local, regional, national, European, general, and so forth. None of them are monolithic and they all contain different groups. Eriksen emphasizes that pluralism of public spheres leads to fragmentation, but also that, more public spheres lead to more debate, and consequently to more democracy (Eriksen 2004). Proponents of deliberative democracy argue that civil society can contribute to the development of the European public sphere. ‘Civil society thus introduces an element of popular control to the EU system of governance which complements existing elements of parliamentary control’ (Finke 2007). The concept of ‘civil society’ is ambiguous and includes both active citizenship and involvement of groups and organizations of citizens in the decision-making process (Finke 2007). According to Finke, there is a problem of implementation of both objectives if they contradict each other. Hurrelmann and DeBardeleben identify three modes of democratic input in the EU: ‘the European Parliament, national democratic processes influencing the Council of Ministers, and civil society participation in consultation procedures of the European Commission’ (Hurrelmann and DeBardeleben 2009, p. 229).

4.6 *Plan D for Democracy, Dialogue and Debate*

The existence of the democratic deficit in the Union was officially recognized by the European Commission in 2005. Subsequently, the European Commission organized a number of initiatives and projects⁵⁴ to generate

⁵⁴ Citizens Conference on new Regional and Urban Sustainability Approaches in Europe, 2005; Meeting of Minds—European Citizens’ Deliberation on Brain Science 2005/2006; European Citizens’ Consultation on the Future of the EU 2006/2007, European Citizens’ Panel on Rural Areas in Future Europe, 2006/2007, and so forth.

transnational deliberation by European citizens.⁵⁵ The European Commission mostly focused on the question of inclusion of civil societies and organized groups of citizens. Former Vice President of the European Commission Margot Wallström presented *Plan D for Democracy, Dialogue and Debate* in 2005. This plan was based on the idea on engaging Member States with citizens in a debate on the Europe Union and its future. This plan was a reaction to the rejection of the European Constitution. It aimed at restoring public confidence in the European project. The main purpose of *Plan D* was to help Member States organize national debates on the future of Europe.

Plan D aimed at enabling a broad debate in Member States ‘involving citizens, civil society, social partners, national parliaments and political parties’ (European Commission 2005). The Commission Vice President at that time, Margot Wallström, believed that these discussions would lead to the creation of a ‘European public sphere.’ Within the framework of *Plan D*, thirteen initiatives aimed at stimulating national debates were presented. This plan proposed inclusion of European citizens in the decision-making process in the European Union. It emphasized the significance of public sphere, civil society, and well-informed citizens. Therefore, it is argued that this plan represented a shift from the European Union as a project made by the elite to the European Union as a European citizens’s project. Consequently, the European Commission did not aim to rescue the *Constitution for Europe* (European Commission 2005).

The European Commission created *Plan D* to promote active citizenship. *Plan D* is complemented by the Action Plan on communicating Europe and the White Paper on communication strategy. These documents had a role to develop and strengthen a European public sphere ‘where citizens are given the information and the tools to actively participate in the decision making process and gain ownership of the European project’ (European Commission 2005). *Plan D* was introduced as a ‘listening exercise,’ which enabled the European Union to take into account the concerns of its citizens (European Commission 2005). *Plan D for Democracy Dialogue and Debate* states:

⁵⁵ The European Commission supported another project of deliberation in 2007. It supported ‘Tomorrow’s Europe,’ a European Deliberative Poll, which included twenty-seven Member States and their citizens.

There is no standard model for the organization of debates in the Member States. In some, there are permanent structures, forms of platforms which seek to hold regular debates on European issues. In others, there is less of an organized system for dialogue and debate. Models such as the National Forum in Ireland or the Platform for Europe in Spain may offer inspiration to Member States. (European Commission 2005)

These dialogues are mostly organized and promoted by national, regional, and local parliaments.

According to the main characteristics of *Plan D*, it seems to represent a path towards deliberative democracy in the European Union. The Commission stated that the plan was based on three principles: ‘inclusion (all citizens should have equal access to information in the EU); diversity (all actors should have a voice); and participation (all voices should be heard)’ (Boucher 2009). These three principles represent basic traits of deliberative democracy. A number of initiatives represented within the framework of *Plan D* point to its deliberative character.

1. Partnership with the European Institutions and Bodies

Plan D states that the Commission will work with the current and forthcoming Presidents, Council, European Parliament, European Economic and Social Committee, and Committee of Regions. The purpose of this collaboration is to stimulate debate at the level of the Union. Consequently, the decision-making process is founded on the mutual respect between all parties, which is one of the basic conditions for the realization of deliberative democracy. (European Commission 2005, p. 6)

2. Stimulating a Wider Public Debate

This initiative aims at stimulating national and regional debates in which the voices and concerns of citizens will be heard. In this way, the Commission would have more direct contact with citizens. This initiative also involves the members of the European Parliament who should meet with governments, national parliaments, civil society, business and trade union leaders, regional and local authorities, and students. This objective contributes to the formation of a European public sphere. In this way, the public spirit of the basic political and other questions that mostly affect citizens is strengthened, which is the core idea of deliberative democracy. (European Commission 2005, p. 7)

3. Commissioner's Availability to National Parliaments

'National Parliaments are the bridge to ensuring effective scrutiny of decisions taken by National Governments on European issues (...) The Commission intends to play an active role in facilitating the debate on European issues and to increase transparency about European policy making in all political fora' (European Commission 2005, p. 4). Transparency is one of the fundamental requests of deliberative democracy. It is based on the idea that political decision making has to be founded on reasons accessible to all citizens affected by those decisions.

4. European Round Table for Democracy

The European Round Table for Democracy, established by the Commission, is intended to promote active citizenship. It aims at enhancing cross-border debate on common European issues by gathering civil society actors and citizens from 'different horizons' and all Member States. This initiative establishes deliberative democracy in which citizens as free and equal individuals discuss political issues and offer arguments and reasons for their decisions. Those decisions are always open to new discussions and examination, which implies their change and transformation. (European Commission 2005, p. 8)

5. Promoting Citizens' Participation in the Democratic Process

The European Commission proposed the program 'Citizens for Europe' to promote inclusive and active citizenship. This program establishes a number of citizens' panels at the local level in Member States. These panels should examine the results of the current policies. The Commission also proposed to other European institutions to find the ways to increase voter participation in European elections and national referenda on European issues. The proponents of deliberative democracy emphasize that the principle of inclusion represents the key element of the deliberative democracy. (European Commission 2005, p. 8)

4.6.1 Critique of *Plan D* for Democracy, Dialogue and Debate: Deliberation versus Debate

Plan D does not fulfill its basic purpose. EU citizens are still excluded from decision-making processes in the European Union. The *Treaty of Lisbon*

was ratified without open and public debate, which is proposed by *Plan D*. The European Commission Vice President emphasizes that the core idea of *Plan D* is transformation of the European Union in accordance of expectations and concerns of its citizens; the exclusion of European citizens from the creation of the draft of the *Treaty of Lisbon* contradicts the conception of citizens as actors of political changes.

Subsequently, *Plan D* did not produce deliberation. It reinforced mere debate. Debate cannot be equated with deliberation. Debate and dialogue do not always lead to deliberation, which is a broader term. There are different definitions of deliberation, but they all emphasize its power to transform preferences that an agent previously held. On the other hand, the term ‘debate’ applies to argumentative exchange governed by rules. The debate does not necessarily lead to a transformation of preferences. Consequently, from the normative point of view, *Plan D* does not lead to deliberation. Deliberation is based on the idea that what is common has to be decided in public (Cohen 1991, p. 29). The result of different processes of consultation and open dialogue proposed by *Plan D* is nothing more than an open letter that contains a list of twenty-seven recommendations. This letter was presented to the European leaders in December 2007.⁵⁶ It does not make a substantive change to European citizenship or the decision-making process in the European Union, emphasized by *Plan D* (Citizen’s Projects 2006–2007).

Fishkin argues that the European Union lacks a deliberative structure: ‘There is yet no deliberative infrastructure for the EU or, at best, it is tentative, frail and sub-optimal’ (Boucher 2009, op. cit, p. 4). *Plan D* states that the primary responsibility for responding to the call for open dialogue about common European issues rests with Member States. According to Bruell, this point of view is utopian: ‘Why should national governments be interested in promoting balanced arguments and quasi-objective information on EU policies, if they are so successful in using them in their blame-games? This request entirely ignores political strategies and struggle upon power positions’ (Bruell 2007).

⁵⁶By this date the *Treaty of Lisbon* was already drafted.

Another problem is represented by the concept of ‘public sphere,’ employed within the framework of *Plan D*. *Plan D* states that every public sphere has its unique local, regional, and national traits.⁵⁷ However, ‘actors within the public sphere are not restricted to territorial division. This means that the public sphere is not a materialized arena restricted to the national, regional and local level’ (Bruell 2007). This perspective is contradictory to the idea of open dialogue that transcends borders and includes all European citizens as free and equal. The public spheres cannot be perceived as monolithic bodies, and different spheres and struggles (ethnic, class, religious, and so forth) have to be recognized within the framework of different public spheres (Bruell 2007). Public spheres are heterogeneous and polyphonic entities.

The European Commission establishes a very limited concept of the public sphere, which is perceived ‘as an information providing instrument’ (Bruell 2007). *Plan D* does not provide the opportunity for the realization of heterogeneous and contradictory projects, which is a basic characteristic of a democratic public sphere. Consequently, the public sphere can be ‘misused as propagandistic organ’ (Bruell 2007).

Previously it has been argued that deliberation leads towards active and more inclusive citizenship. However, deliberation is reduced to mere debate within the framework of *Plan D*. Thus, it does not lead to transformation and change. The notions of ‘citizenship’ and ‘public sphere’ employed within *Plan D* are monolithic and homogeneous. Consequently, *Plan D* does not reflect deliberative democracy, although it has some of its basic traits. The basic problem of this European Commission’ document can be identified in the fact that the determination of European values is ignored. Consequently, the concept of European values employed is based on the widely accepted assumption that it is built on the homogeneous concepts of cultural and historical heritage and liberal theory. The European public sphere produced by this point of view is thin and instrumental—perceived only as a means to an end, and not a good in itself (substantive concept). However, the failure

⁵⁷ ‘In seeking to promote a common framework, the Commission fully recognises that each debate has its own local, regional and national characteristics. Different issues will be highlighted and the importance of the European Union will differ according to the country and policy content discussed’ (European Commission 2005).

of the European Commission's *Plan D* can serve as a good example for other European initiatives, which should reject homogenizing assumptions and mere instrumental concepts.

4.6.2 Discursive Production of 'European Public Sphere,' 'European Identity,' and 'European Values'

The idea of the European public sphere is often connected to the question of European identity (Calhoun 2002; Bruell 2007; Risse and Grabowsky 2008; Bee 2008). It is often argued that the lack of a strong European identity means the absence of a European public sphere (Risse and Grabowsky 2008).

The emergence of a European public sphere depends upon constructing a common identity and sense of belonging. It entails dialogue over issues that concern 'Europeans.' On the other hand, 'actively engaging in a discourse on issues of common concerns actually leads to a collective identification process and creates a community of communication rather than presupposing it' (Risse and Grabowsky 2008, p. 7). In this way, concepts of European public sphere and common European identity are interconnected.

European public sphere, European values, and European identity are constructed through political discourse and social practices. Concepts of 'European values,' 'European identity,' and 'European public sphere' should not be treated as given. They should also not be understood as homogeneous and static. They are dynamic and polymorphous, because they are constantly reinterpreted and changed.

The European Commission developed its own ideas of European values and European identity. Both 'European values' and 'European identity' are narrative constructs. 'The EU has invented a symbolic reality in order to define a set of rules and traditions aimed at integrating the European peoples' (Bee 2008, p. 434). European values have been constructed since 1990 as the European interpretation of universalist values of human rights, democracy, and rule of law. According to Viviane Reding, a former European Commissioner for Justice, Fundamental Rights and Citizenship:

Owing to our history, we in Europe often have a different sense of values and fundamental rights than in the USA, as evidenced above all by our rejection of the death penalty and the importance attached to data protection in the EU Charter of Fundamental Rights. We in Europe also have a different view of the relationship between the market and the state. (Reding 2012)

4.6.3 The European Year of Citizens

The European Commission proclaimed 2013 the ‘European Year of Citizens.’ It aimed at: encouraging public debate and informing citizens about their rights; closing the gap between EU citizens and European institutions; and at strengthening the European public sphere and active EU citizenship (Van de Putte 2014). One of the objectives of the European Year of Citizens was to invite citizens to debate various European issues: EU citizens’s rights, the economic crisis, and the future of Europe. The European Year of Citizens aimed at encouraging ‘the participation of citizens in the construction of the European Union of tomorrow’ (European Commission 2014).

The European Year of Citizens was complemented by a number of Citizens’ Dialogues. EU citizens had the opportunity to debate with relevant EU politicians on various European issues. The Citizens’ Dialogues, which occurred in accordance with the concept of the European Year of Citizens, did not lead to deliberation, only to debate (Van de Putte 2014). The same can be argued about the European Year of Citizens, which involved citizens debating about their expectations for the future of the European Union and about EU rights. A tagline ‘It’s about Europe. It’s about you. Join the debate’ remained unclear as the nature of the debate was not precise (European Commission 2014). This tagline did not raise awareness of EU rights, whereas this was one of the main focuses of the European Year of Citizens (European Commission 2014).

The speech of former President of the European Commission José Manuel Barroso, ‘State of the Union’ (2012), and Viviane Reding’s speech ‘United States of Europe’ (2012) are significant for understanding the

main ideas of the European Year of Citizens 2013.⁵⁸ Both speeches focus on the ideas of the ‘European public space’ and ‘European values’ (Van de Putte 2014). Viviane Reding advocates the idea of ‘United States of Europe’ emphasizing ‘the specific context of European history, our values and the unique diversity’ (Reding 2012). Vivien Reding often employs the terms ‘our goal in Europe,’ ‘we in Europe,’ ‘our values,’ and so forth. She uses these terms as constatives, although they are performatives.

In Chapter 3, Derrida’s textual analysis of the United States’s *Declaration of Independence* is presented. Derrida asks who signs the declarative act that founds a certain institution (Derrida 1986, p. 8). The pronoun ‘we’ is often used in the Declaration to speak ‘in the name of people.’ ‘But this people do not exist. They do not exist as an entity, it does *not* exist, *before* this declaration, not *as such*. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of signature. The signature invents the signer’ (Derrida 1986, p. 10). According to Derrida, ‘to declare’ is a performative (not a constative), which means that the Declaration of Independence of the United States of America constitutes the people of the United States. In this way, paradoxically, ‘the signature creates the signer’ (Derrida 1986, p. 10).

Invention of the ‘people’ can be ascribed both to the United States’s *Declaration of Independence* and to the European Commission’s efforts to develop a public sphere in Europe. Both Reding and Barroso construct the European ‘we’ from the discourse on ‘European values.’ Thus it can be argued about performative nature of ‘Europeanness’ and ‘European people’ (Van de Putte 2014). ‘Europeanisation (...) is a performative intersubjective system by which Europeans define both the European order, and themselves, based on a shared conception of a European political community’ (Bélanger 2014, p. 30).

The performative nature of Europeanization can be concluded from the European Commission’s statement: ‘We must build up a European public space and public opinion, so that European citizenship can be fulfilled and completed’ (European Commission 2013, p. 3). Here the

⁵⁸ Both texts were presented on the European Commission’s website as references for the main ideas of the European Year of Citizens 2013 (Van de Putte 2014, p. 43).

pronoun ‘we’ is used in the name of ‘European people.’ This is another example of how a ‘signature creates the signer.’

According to Van de Putte, the use of the terms ‘we Europeans,’ ‘our values,’ ‘us,’ and so forth can often be identified in the phase of creating ‘ideology prior to policy making’ (Van de Putte 2014, p. 58). In the policy-making phase, these terms often turn into ‘you’ and ‘your.’ This can be identified both in the slogan of the European Year of Citizens (‘It’s about Europe. It’s about you. Join the debate’) and in the title of the EU Citizenship Report 2013 (‘EU Citizens: Your Rights, Your Future’) (Van de Putte 2014, p. 58). In this way, a sharp distinction is made between EU citizens (‘the you’) and ‘European institutions’ (‘us’), which is contrary to the European Commission’s efforts to bring European institutions closer to citizens.

4.6.4 Metaphysical Origins of Europeanness: Creating Narratives for Europe

Former President of the European Commission José Barroso invited artists and academics to create ‘a new narrative for Europe’⁵⁹ (Barroso 2013). These constructed discourses on Europe are, in fact, grand narratives that aim to establish ‘truths.’ Definitions of European identity, European values, and the European public sphere may be perceived as grand narratives. Both European identity and European values are grand narratives that transcend the plurality of Europe (Delanty 2010). ‘By improving debate and dialogue between institutions and citizens, the Commission is still trying to develop a new kind of democratic imagined community in which governing takes place in a dialogic environment and in the context of a new demos’ (Bee 2008, p. 437). This democratic imagined community often includes various other grand narratives that point to metaphysical determination of Europe. One of them is an idea of a ‘common destiny.’ Former President of the European Commission

⁵⁹ ‘The New Narrative for Europe’ pilot project was launched at the Center for Fine Arts (BOZAR) in Brussels in 2013. José Manuel Barroso, President of the European Commission, was joined by Commissioners Viviane Reding and Androulla Vassiliou and one hundred civil society leaders to initiate this project.

José Barroso states: 'It is not enough to say that we, Europeans, share a common destiny! A sense of belonging to Europe, to a community of values, culture and interests, is essential to forge that common destiny' (Barroso 2014). The idea of common destiny of European peoples is also mentioned in the preamble of the *Treaty Establishing a Constitution for Europe* (2004).

Barroso also argues: 'Europe I believe has a soul. This soul can give us the strength and determination to do what we must do' (Barroso 2012). The Conference 'A Soul for Europe' took place in Berlin on 3 March 2014. The President of the European Commission, Jean-Claude Juncker,⁶⁰ José Manuel Barroso, Martin Schulz, and Guy Verhofstadt debated with writers, movie directors, and art festival organizers on how to find 'a soul for Europe.' However, the idea of Europe should be political, and metaphysical assumptions should be avoided. The European Union is a dynamic and polyphonic political community and should not be based on 'totalizing metaphysical theories about the nature of things' (Bridges 1994). The concept of the European Union within European political discourse should be revised to move towards the postmodernist political standpoint, which bases its concepts not on metaphysical and moral assumptions but on a political and constructivist approach, which emphasizes heterogeneity and multiple identities.

This section examined the deliberative character of the European Commission's *Plan D* and the European Year of Citizens. In the previous lines, it is argued that deliberation leads towards active and more inclusive citizenship. However, deliberation is reduced to mere debate within the framework of *Plan D* and within the framework of the European Year of Citizens. The European Commission's *Plan D* failed because it employed homogeneous and static concepts of public sphere and European values. In this way it reduced deliberation to mere debate. The European Year of Citizens was not sufficiently successful for the same reason. It involved citizens debating about EU rights, but it did not produce deliberation. A tagline 'It's about Europe. It's about you. Join the debate' remained unclear, as the nature of the debate was not precise

⁶⁰Jean-Claude Juncker was candidate for this position at that time, while the President of the European Commission in March 2014 was José Manuel Barroso.

(European Commission 2014). This tagline did not rise awareness of EU rights whereas this was one of the main focuses of the European Year of Citizens. Both *Plan D* and the European Year of Citizens did not fulfill their aim to close the gap between European citizens and the European institutions.

4.7 Demographic Change in the European Union: A Challenge to EU Citizenship and European Identity

The EU's population has increased over the past sixty years, as a result of both demographic growth and enlargement. The number of older adults is rapidly increasing. 'It will almost double arising from 85 million in 2008 to 151 million in 2060 in the EU' (European Commission 2009). According to the 2009 'Ageing Report', the number of people aged eighty years and above will almost be tripled: from twenty-two million in 2008 to sixty-one million in 2060 (European Commission 2009). Due to the lower birth rates and lower death rates expected in the future, the percentage of older adults is constantly increasing. The number of older people in the European Union is rapidly increasing, which will soon put pressure on welfare systems. The demography challenges Europe's size, Europe's wealth, and Europe's social contract (Fargues 2011). The world population will continue to increase, while the population of Europe will stabilize or decrease. Europe will lose 11 % of its total population by 2050 (if immigration is not taken into account), while the world population will experience an increase of 32 % (Fargues 2011).

Secondly, the European workforce will decrease, which could produce a new economic crisis. The largest decrease is expected to occur during the period 2015–2035, when the 'baby-boom' cohorts will enter retirement (European Commission 2009). Thirdly, 'the unprecedented rise of an elderly population combined with shrinking members of working-age natives alters the generational contract and will put Europe's welfare systems at risk' (Fargues 2011, p. 9).

The European Union has started to prepare for major social, budgetary, and economic challenges, which will arise from the combination of low birth rates and ageing.

Decreasing numbers at working age combined with increasing numbers at retirement age will double the old-age dependency ratio in the coming 40 years, from 0.256 in 2010 to somewhere between 0.468, in the best case scenario (with migration and enlargement to Turkey and the other acceding countries), and 0.584 in the worst case scenario (no migration and no enlargement) in 2050. Though it is a universal trend, population ageing is twice as marked in Europe as in the rest of the world: in every single EU member state old-age dependency ratios will remain around two times higher than the world average from 2010 to 2050. (Fargues 2011, p. 9)

These demographic trends will increase public spending in housing, education, health, and pension expenditure (European Commission 2009). Economic crisis makes these challenges even more serious.

Studies on demographic change are mostly focused on economic, ethnographic, and social aspects of this problem, while legal and identity dimensions of the demographic change are not yet sufficiently explored. The principal objective of this research is to fill the gap left by studies on demographic change at the end of XX century and beginning of XXI century. This research not only focuses on possible solutions for this negative demographic trend in Europe but also looks at the dimension of legal and institutional change, which is necessary to make these solutions possible. This inquiry focuses on the need for improvement of EU citizens's rights to address the consequences of demographic change. In particular, free movement and workers's mobility help address the consequences of demographic change on the labour market, while also increasing the employability of people and improving the competitiveness of European industries. Despite the fact that the right to residence and free movement are included in primary EU law and developed in secondary law, a gap still remains between the reality and the legal rules (European Commission 2011).

To find a solution for negative population trends, the European Union will have to develop various strategies. Some of possible solutions are:

- 1 Geographic enlargement, which will include new countries in the European Union and bring additional population to the European Union. This sort of enlargement affects only the size of the total population (not necessarily its structure).
- 2 Immigration policies: calling in immigrants to replace key workers in the labour market. This solution affects both the size and the structure of the population.
- 3 Retirement policies that increase the age limit for retirement. This solution does not affect the size or structure of population. (Fargues 2011)

Some of these solutions are proposed in the vast literature on the subject. However, the consequences of these solutions in a wider political, legal, and social context are not sufficiently explored. It is also not sufficiently explored in which way demographic change affects current understanding of European identity and EU citizenship. The idea of European identity should be broadened and revised if immigration and enlargement are considered as the European answer to the problem of its ageing population.

The problem of ageing in Europe requires further exploration. While a great deal of attention has been paid to finding possible solutions to the problem of demographic change in the European Union, as yet no mature and comprehensive study has been undertaken of the identity and broader citizenship issues, which are produced by demographic change. Demographic change also raises the issue of human rights of older adults, which are still not sufficiently developed—the debate about the rights of older adults is still in its infancy. In 2009, the European Commission announced that age discrimination in Europe is widespread (European Commission 2009). In most studies concerning older adults, this social group is perceived as homogeneous, which leaves room for multiple discrimination.

‘Older adults’ represent a specific social group, which should be considered heterogeneous. Representatives of this group are different and cannot only be identified and classified by their age. They represent different experiences, attitudes, narratives, interests, and so forth. Gilleard and Higgs (2000) argue that old age is fragmented. They divide ‘old age’ into ‘third age’ (active and independent persons) and ‘fourth age’ (frail

and dependent persons). As Lloyd correctly identifies, 'they point to the power of age-resisting practices in Western cultures to argue that agendas for the fourth age remain agendas for the "other", always framed in the third person' (Lloyd 2006, p. 1173). The experience of old age is different, and it depends on race, class, gender, occupation, place of living, and so forth. One of the tasks of this project is to explore how the rights of older adults are regulated within European law. Ageing in Europe is accelerating and puts pressure on welfare systems. That is why both the retirement system and the perception of older adults should be revised. In dealing with the problem of demographic change, this project will explore whether some changes in EU citizenship policy and current definitions of European identity (within EU treaties and other legal documents) are necessary.

The work of Philippe Fargues at the European University Institute concentrated on establishing the consequences for welfare systems of demographic change in Europe, and in particular it focused on possible solutions for ageing (Fargues 2011). Fargues perceives immigration as the key element for dealing with the problem of the ageing population in Europe. However, Fargues does not analyse further implications of the new immigration policies. He does not take into account the political and legal framework that should be set to make these new immigration policies possible. In particular, he does not explain how immigration (as a possible solution for demographic challenge) challenges current definitions and understanding of both EU citizenship and European identity. In the study 'Impact of Future,' Paul Demeny also focused on the problem of demographic change in Europe and possible solutions from the perspective of comparative demography. However, Demeny's approach is descriptive, and he draws a rather pessimistic conclusion: 'Apart from catastrophic events of incalculable magnitude, there is no demographic scenario that could substantially modify the ongoing shift' (Demeny 2003, p. 14) in population size.

A great number of analyses of demographic change in Europe are either outdated or somewhat narrow in approach. The analyses presented by Bermingham (2001), Hewitt (2002), and Jimeno (2004) require urgent updating and recontextualizing in the light of subsequent events (Eastern enlargement of the European Union; economic and financial crisis and

so on). A number of works look at the future of the European social model caused by demographic change. Those works also focus on the economic and social dimension, neglecting the legal and symbolic aspect of demographic change. The nature of ageing is changing. According to Giddens (2007), the concept of retirement could be rejected in future. It will be replaced by more flexible attitudes about work. There will be no sharp distinctions between working and non-working periods in life (Giddens 2007). The future of the European social model is not only based on investing in young people but also relies on the intellectual and professional capacities of older adults. A number of Member States prolonged working life for this reason, and this strategy will be employed in the European Union in future. Consequently, the rate of older workers will grow. Postindustrial society requires revising attitudes towards older adults.⁶¹ This point of view strongly rejects the idea, represented by Callahan (1987) and Jecker (1988), that older adults should be excluded from social citizenship and that society should be focused on the young.⁶²

Mégret analyses political and legal frameworks, which define the rights of older adults. According to Mégret, 'developing a human rights regime that is adopted to the needs of the elderly should be seen as part of the larger fragmentation of the human rights project, as the latter increasingly seeks to apply to select populations (women, children, persons with disabilities, migrant workers, indigenous peoples, sexual minorities, etc.)' (Mégret 2010, p. 2). Mégret's analyses can be broadened to show that the question of inequality is not just economic, social, or political. The symbolic aspect of inequality must be taken into account, because it includes metatheoretical presuppositions based on binary oppositions that work from within the discourse of law and undermine the basic rights guaranteed by the law. This can be applied to the symbolic oppression of older

⁶¹ Youth unemployment is one of the current problems in the European Union, but it exceeds the limits of this volume.

⁶² On the other hand, older adults can also represent a powerful group in society. However, Jecker's paper focuses on ageism, which accelerates in contemporary societies mostly guided by youth imperialism dictated by the media and consumer society.

adults⁶³ inside the framework of law.⁶⁴ This symbolic oppression implies binary logic, which forms hierarchical thinking founded on sharp distinctions such as young/old, citizen/alien, and self/other, where the first terms are perceived as valuable, while the second terms are considered undesirable and subordinated to the first term.

The ethics of care is one possible solution to challenges of demographic change in Europe and ageing societies. The European Union needs to build institutional mechanisms that will support ethics of care to meet the future needs of the ageing population. The ethics of care requires 'a politics in which there is, at the center, a public discussion of needs, and an honest appraisal of the intersection of needs and interests' (Tronto 1994, p. 168). Therefore, ethics of care requires political action, which will be based on voice, not identity (Lloyd 2006, p. 1182). Deliberation and democratic participation are important parts of the ethics of care, which help citizens to express their interests and needs.

4.7.1 Rights of Older Adults within EU Legal Discourse

The rights of older adults are still neglected within both international and European law, although some efforts for their development have been made. The *Vienna International Plan of Action on Ageing* was adopted by the World Assembly on Ageing in 1982. In 1991, the *UN Principles for Older Persons* were established. A General Comment on the rights of older adults is issued by the Committee on Economic, Social and Cultural rights. Furthermore, the Madrid International Plan of Action on Ageing was established. There are also some private international law instruments that focus on the rights of older adults, such as the Hague Convention on the International Protection of Adults (2000). The European Commission, on 6 September 2010, proposed that 2012 will be designated the European Year for Active Ageing to raise awareness about issues concerning the rights of older adults.

⁶³The same can be argued about other social groups such as workers, immigrants, women and so forth, but this project will focus on the rights of older adults.

⁶⁴This was argued by poststructuralist feminists.

Both the *Universal Declaration of Human Rights* (1948) and the *European Convention on Human Rights* (1950) define the same theoretical rights to all human beings. However, understanding the needs of older adults requires a certain context, because old age represents a specific experience, which cannot be embraced by a universalist definition of rights. Some rights guaranteed by the *ECHR* are particularly vulnerable, considering older adults. For example, Article 2 guarantees the right to life, but the meaning of the term ‘life’ is not clear. It can be questioned whether living in poor conditions, which is contradictory to human dignity, can be considered the ‘right to life.’ The *ECHR* also includes freedom from torture and inhumane treatment (Article 3): ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’ However, the nature of torture can be mental, as well as physical. This is not recognized by this convention. Furthermore, some social groups (children, persons with disabilities, older adults, and so on) are particularly vulnerable to inhumane treatment. The abuse of older adults ‘may also involve more discreet forms of neglect (e.g.: malnutrition, insufficient medical care) and be of a predominantly psychological nature (intimidation, humiliation)’ (Mégret 2010, p. 8).

This symbolic oppression is reflected in a number of rulings of the ECJ, although it is often argued that those decisions are based on ‘justifiable reasons.’ In *Felix Palacios de la Villa v Cortefiel Servicios SA* (Case C-411/05), Spanish legislation that permitted an employer to retire a worker at sixty-five against his will, was challenged (Baker 2007). ‘The Spanish court referred the matter to the ECJ to establish whether mandatory retirement ages are inconsistent with the Equal Treatment Directive, under which the European Union prevents its member states from discriminating against employees’ (Baker 2007). The ECJ held⁶⁵ that the directive allows states to impose mandatory retirement ages, if they can

⁶⁵In *Age Concern Case C-388/07*; [2009] IRLR 373, the European Court, echoing the earlier *Palacios de la Villa* case, stated that: ‘Article 6(1) of Directive 2000/78 gives Member States the option to provide, within the context of national law, for certain kinds of differences in treatment on grounds of age if they are “objectively and reasonably” justified by a legitimate aim, such as employment policy, or labor market or vocational training objectives, and if the means of achieving that aim are appropriate and necessary. It imposes on Member States the burden of establishing to a high standard of proof the legitimacy of the aim relied on as a justification’ (Age Discrimination 2010).

be justified in the context of labour market objectives and employment policy (Baker 2007). This point of view highlights the contradiction, because it combats discrimination, on the one hand, but permits it on the other hand ‘in the scenario that hits older staff [the] hardest’ (Baker 2007). In the case⁶⁶ concerning the *Incorporated Trustees of the National Council on Ageing v Secretary of State for Business, Enterprise and Regulatory Reform* (Case C-388/07) the European Court of Justice held that EU law is not necessarily infringed by dismissing workers on account of their age for justifiable reasons (McKay 2009). In both cases, *Kucukdeveci v Swedex GmbH and Co. KG* (Case C-555/07) and *Georgiev v Tehnicheski universiteit—Sofia* (Case C-250/09), the ECJ rulings were also not to the advantage of the employee.

The case *Commission v Greece* (Case C-559/07) raised the issue of understanding social groups as heterogeneous. The issue of the Greek Civil and Military Pensions Code was considered in this case. The Code:

stipulates differences between male and female workers with regard to pensionable age and minimum length of service. The differences seek to address the disadvantages faced by female workers, who, as a result of their social roles, generally had fewer years of paid employment. The ECJ noted that the Article 141 of the EC Treaty prohibits discrimination with regard to pay. (McKay 2009)

The ECJ held that the Greek pension scheme, as based on employment record, is regarded as pay, not a social scheme. For that reason, the ECJ held that its imposed rules, which differ on the grounds of the worker’s gender, is contrary to the principle of equal treatment (McKay

⁶⁶‘The case addressed the issue of the UK’s transposition legislation, which specifically permits employers to dismiss their employees at the age of 65 years without such treatment being regarded as discriminatory. The National Council on Ageing (NcoA), a UK charity promoting the well-being of older people, challenged the legality of the UK legislation as being contrary to the Council Directive 2000/78/EC, arguing that the country’s legislation had failed to specify the kinds of differences in treatment that would be justified under an Article 6 exemption. (...) However, the ECJ ruled against the NcoA, stating that there was no requirement to specify these differences in the national law. Provided that the national courts in the Member States determined that the legislation issue was consistent with a legitimate aim, as highlighted in Article 6, and that the means chosen were appropriate and necessary to achieve that aim, the law was deemed to be in compliance with the EU directive.’ (McKay 2009)

2009). This ruling reflects a homogeneous definition of the concept of 'worker.' It ignores that this concept embraces different individuals, who represent different lifestyles, social roles, skills, and narratives. According to Sonia McKay (2009), the ECJ did not take into account that women have shorter service than men, which is a result of their specific social role. This ruling is discriminatory because it imposes sameness over difference.

The *Charter of the Fundamental Rights of the European Union* considers 'older adults' a homogeneous group within Article 25 (Rights of the elderly). However, the concept of 'the elderly' includes different narrative practices, interests, and experiences and should be considered heterogeneous. It includes different groups of older adults, such as immigrants, refugees, mentally disabled older people, and ill older people. The idea of older adults presented within the *Charter of the Fundamental Rights of the European Union* does not take into account multiple discrimination from which older adults suffer.

The European Federation of Older People (EURAG),⁶⁷ which represents the interests of older persons established the *Charter for the Elderly* (2005). This charter includes: autonomy and self-determination; respect for older adults; equal treatment; social participation; active citizenship; financial security; personal development, social contact, and meaningfulness; access to information; housing and living environment and care and service provision geared to a good quality of life. EURAG argues that this charter is employed as a framework for testing institutions and government policy. The *Charter for the Elderly* is significant because it emphasizes that older persons have responsibilities, not only rights. Those responsibilities include productive contributions to society. Older persons also bear responsibility for the generations that come after them. However, it is not sufficiently emphasized that 'older adults' represent a heterogeneous social group within the EURAG *Charter for the Elderly*. The terms 'the elderly' and 'older persons' employed within the charter are monolithic. In this way, those individuals are only characterized by

⁶⁷ EURAG is a non-profit, non-political, and non-religious organization that embraces thirty-four countries. It cooperates with the United Nations and the World Health Organization and acts in advisory capacity at the European Union.

their age, regardless of their lifestyles, skills, health conditions, and so forth. The needs of specific groups of older persons who are particularly vulnerable (such as refugees, women, older persons with health problems) are not recognized within this charter. The only exception to this monolithic representation of 'older adults' can be found within the definition of the free movement, where the needs of different older adults (such as those with limitations) are recognized.

Article 25 of the *Charter of Fundamental Rights of the European Union* states: 'The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.' However, it is not clear what 'independent living in dignity' means. Those people who have earned their pensions are often considered independent, but in some European societies those pensions are too low and cannot cover some basic costs. Older adults in those societies live in poverty, which is far from living in dignity. Although some governments have supported the rights of older adults, such as free or discounted medical care and social security, those systems relied on the presupposition that older persons represent a lower percentage of the population than young and middle-aged individuals ('The Rights' 2003), which is why they are not well prepared to meet the needs of the growing ageing population. Furthermore, societies should establish a more active role of older adults in political, social, and cultural domains. 'Although many countries currently have universal healthcare systems, these systems are beginning to feel the strain of an increasingly aged population, and there is some question about how these systems will be maintained in the future' ('The Rights' 2003).

Another problem is reflected by analyses that emphasize the decline of pensioners's income in Member States in the future, because of the growth of the ageing population and pressure it will make on pension system. The European Social Charter establishes the system of medical care and social security, relevant for older adults. The *Charter of Fundamental Rights of the European Union* guarantees the right to liberty and security (Article 6), social security and social assistance (Article 34), and health care (Article 35). However, it should also be recognized that some social groups, such as older adults, are particularly vulnerable to the violation of those rights. Consequently, those rights should be related 'to the right

to an adequate standard of living, which is often affected in the case of the elderly, due to lack of an adequate support system for them' ('The Rights' 2003).

Article 21 (Non-discrimination) of the *Charter of Fundamental Rights of the European Union* does not solve the problem of implicit discrimination against older adults. The *Charter of Fundamental Rights of the European Union* separates the rights of older adults, the rights of children, and women's rights (which are determined in the chapter 3 of the charter) from citizens' rights (which are defined in the chapter 5 of the charter). Article 23 (Equality between men and women⁶⁸) of the *Charter of Fundamental Rights of the European Union* is still not fully applied and is still not part of reality and everyday life. A formal guarantee of fair inclusive treatment is not sufficient, because it often implies a 'mechanical interpretation of fairness' (Young 1990, p. 11). According to Young, sometimes the promotion of full participation of certain groups should be emphasized to reduce their oppression. Young argues: 'Some fear that such differential treatment again stigmatizes these groups. (...) This is true if we continue to understand difference as opposition—identifying equality with sameness and difference with deviance or devaluation' (Young 1990, p. 11).

The European Union will face a number of challenges in the framework of health care systems in the future. 'Public expenditure on healthcare is projected to grow by 1.5 percentage points of GDP in the EU by 2060' (European Commission 2009). Public spending on long-term care will also increase, because the number of very old people will grow. Currently, the nature of care for very old people is informal, and in many cases provided by relatives. However, the availability of informal care will be reduced due to social and political changes in the European Union, such as higher participation of women in the labour force, increased mobility, and changes in family structures (European Commission 2009). That is why an ethics of care should be promoted in the European Union.

⁶⁸ 'Equality between men and women must be ensured in all areas, including employment, work and pay; The principle of equality shall not prevent the maintenance of adoption of measures providing for specific advantages in favor of the under-represented sex' (Charter 2000).

4.7.2 The Obstacles to Development of Active EU Citizenship

As it is already argued, EU citizenship is established in Article 20 (TFEU) and applies automatically to all nationals of Member States. Article 20 (1) of the Treaty states that EU citizenship is additional to national citizenship, and it stipulates that every person holding the nationality of a Member State shall be a citizen of the EU. EU citizenship includes a set of rights, which includes the right to move and reside freely within the territory of all Member States (Article 20 (2)). These rights are further enshrined in Article 21 of the Treaty. EU citizens are entitled to vote and stand as candidates in elections to the European Parliament. EU citizens are also granted the right to stand as candidates in municipal elections in their Member State of residence. Thus, Union citizens are provided with the possibilities to participate in the democratic life of the EU. The framework for the participation of citizens in the democratic life of the Union is set by the *Treaty of Lisbon* (Title II, in particular Articles 9, 10, and 11). The *Treaty of Lisbon* strengthens the status of EU citizenship and includes a new right that is crucial for development of active citizenship. The *Treaty of Lisbon* (title II, Article 8B) also introduces the right that supports citizens's initiative, which is significant for development of active citizenship. The rights of EU citizens are also incorporated in the *Charter of Fundamental Rights of the European Union*. However, to exercise their rights, citizens should be better informed about what EU citizenship entails.

There are still obstacles to the development of active EU citizenship, due to a lack of information on the part of EU citizens on their rights and a lack of 'clearly structured, widely publicized information services' (Report on EU citizenship 2012). EU citizenship has to be more effective in order to meet the challenges of demographic change. A 2010 *Eurobarometer* survey showed that EU citizens lack the knowledge about rights that this status provides (Report on EU citizenship 2012). Only 43 % know the exact meaning of the term 'citizen of the EU,' while 48 % of EU citizens claim that they are not well informed about their rights. *Eurobarometer*

surveys show that more than eight out of ten EU citizens consider that receiving more information on the impact of the EU on their lives and from the European political parties on their programmes could make a substantive change ('Electoral Rights' 2010). The recent surveys on EU citizenship do not reflect improvements regarding the knowledge of EU citizens about their rights (European Commission 2013).

The European Citizens' Initiative (ECI), which was applied from 1 April 2012, constitutes the first transnational instrument of participatory democracy in world history. This initiative enables citizens to be actively involved in constituting European legislation and policies. The Lisbon Treaty opens up the possibility to EU citizens to change European law:

Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. (Article 8B.4)

However, the success of the ECI depends on how the Commission responds to these citizens's initiative. To be effective, the ECI should lead to political decisions. This initiative could be successful only if citizens realize that their voices are heard and that they can be instruments of change. Representatives of the ECI campaign point to some obstacles to their future endeavours. They argue that it is very hard for a citizen campaign run by volunteers to gather one million signatures in twelve months. A request for the extension of the time limit from twelve to eighteen–twenty-four months has been requested. It is also necessary to eliminate ID number requirements, which make the procedure complicated and raises privacy concerns. Adequate practical support for the ECI organizers is necessary, and they should have access to relevant information, translation assistance, and legal advice. First experiences show that this support is not yet adequate.

The broader aim of this section is to contribute a study of the transformation of the nature of EU citizenship in the light of demographic change. This inquiry not only focuses on the possible solutions for the

negative demographic trend in Europe but also looks at the dimensions of legal and institutional change, which are necessary to make these solutions effective. This section is focused on rights of older adults, which need to be better developed. The concept of 'older adults' should not be perceived as homogeneous. This study also advocates building institutional mechanisms that will support ethics of care to meet the needs of the ageing population in the European Union. Deliberation and democratic participation are important parts of the ethics of care, which help citizens express their interests and needs. This inquiry emphasizes the need for improvement of EU citizens's rights to address the consequences of demographic change. In particular, active and heterogeneous EU citizenship has to be promoted to meet the challenges of demographic change in the European Union.

4.8 Conclusion

The new, dynamic, form of citizenship is in the foundation of postnational political communities such as the European Union. The European Union as a political and economic community calls into question the traditional forms of citizenship and identity that are rooted in the nation-state, and, therefore, the idea of EU citizenship is based on the separation of the political and legal content of citizenship from the very idea of nation.

EU citizenship can be perceived as a controversial, polyvalent concept, which reflects both inclusive and discriminatory elements. This concept still includes a number of binary oppositions, and it is contraposing 'the citizen' to 'the stranger,' 'the stateless,' 'the marginalized person,' and so forth. EU citizenship still reflects various forms of exclusion: legal, political, social, and so on. In the following, EU citizenship, in its attempt to transcend national borders and become an example of postnational citizenship, remains limited by a territorial, exclusivist idea of membership, which embraces only some inhabitants of the European Union. The legal definition of EU citizenship, established by the *Treaty of Maastricht* and confirmed by the *Treaty of Lisbon*, excludes millions of inhabitants of the European Union. There are tensions between nationality and citizenship

that cannot be solved by the existing legal definition of the citizenship of the European Union. EU citizenship represents the status of the Member States nationals. This definition leads to paradox—citizens of the Member States are considered citizens of the European Union even if they live outside the territory of the EU, but on the other hand, inhabitants, who are granted permanent residency, are not considered citizens of the European Union (Beasley 2006).

Although it is a fact that European Union citizenship involves multilayered and flexible identities recognized within the anthropological, philosophical, historical, and political studies, it is not sufficiently emphasized, or it is ignored, in the context of treaties, conventions, and other legal documents of the European Union. The definition of citizenship under the contract of European Union is obstructed by certain metatheoretical assumptions, which represent the heritage of the Enlightenment thought.

This chapter examined how the rejection of the policy of stable, fixed, and monolithic identities affects the legal and philosophical notion of EU citizenship. In the opinion of Elizabeth Meehan, the concept of European Union citizenship represents a new form of citizenship that is neither national nor cosmopolitan, but it has a multiple structure, since identities, rights, and duties that are related to this concept gain expression through complex configuration of common EU institutions, Member States, regions, region alliances, and voluntary membership in various associations (Meehan 1993, p. 1). Therefore, EU citizenship involves heterogeneity, dynamism, complexity, and multiple layers.

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5

The European Identity

5.1 Introduction

In this chapter, the idea of European identity within European legal and political discourse will be presented. It will explore whether the concept of European identity defined by the Declaration of European Identity and the Charter on European Identity represents a homogeneous construction based on a fixed and stable notion of identity¹ or whether it is a form of flexible and shifting (postmodern) identity. It will be argued that European identity should be revised towards a postmodern idea of identity. Postmodern thinkers argue that identity is shifting, multiple, and heterogeneous. The European Union is a postnational political community, which includes various identities. Consequently, European identity should not be based on homogeneous perception of values, which reject otherness, because in that way it becomes an instrument of discord.

In this chapter, two main approaches to the idea of European values will be presented. The first one is cultural (or substantive) and includes determination of European values that is religious, ideological, ethical,

¹This idea of identity represents a modernist perspective.

philosophical, and so on. This approach attempts to define the content of ‘European values.’ The second approach is legal (or formal) and attempts to define universal principles on which European values are based, such as, tolerance, democracy, and freedom. In this chapter, it will be analysed whether ‘common values’ could be founded on some kind of Rawlsian ‘overlapping consensus,’ according to which different communities adopt the same norms (i.e., legal definition of values) but interpret them in different ways in accordance with their ‘comprehensive doctrines.’

5.2 The Concept of European Identity

According to Stråth, ‘the history of a European identity is the history of a concept and a discourse’ (Stråth 2002, p. 387). The idea of European identity is still not exactly determined. There are various discourses on European identity in various European societies and various periods in European history. Although it has been described differently by various authors and documents, they all tend to define European identity by using homogenizing assumptions. Another issue is whether European identity is a metanational or supranational category. European identity should not deny national identity. It should supplement national, regional, personal, and other identities. That is why European identity should be considered a metanational category.

European identity has two dimensions—legal and cultural. The legal dimension refers to democratic values such as democracy, the rule of law, and human rights. These values point to Europe’s liberal democratic heritage. They are considered to be universal, not merely European. According to Delanty, this point of view leads to moral universalism (Delanty 2002, p. 347). ‘Robert Schumann, for instance, saw one of the early treaties that led to later EEC, the Treaty of Paris (1951), as a continuation of the Declaration of the Rights of Man and Citizen (1789). This was also the conception of Europe of Jean Monnet’ (Delanty 2002, p. 347). According to Delanty, the legal aspect of European identity can also be criticized as being Eurocentric, because it universalizes the values of European civilization.

Cultural and historical dimensions of European identity refer to European history and European heritage, which include ancient Greek and Roman civilizations, Christianity (primarily Catholicism and Protestantism), Renaissance, the Reformation, the Enlightenment, and liberalism. This conception of European identity and European values is highly represented in history of European philosophy and literature, and its proponents include Edmund Husserl, Martin Heidegger, Karl Jaspers, T. S. Eliot, and Paul Valéry. This definition of European identity based on European heritage produces a monolithic and exclusivist Europe, which does not leave room for other cultures and traditions (such as Orthodox and Islamic) that also contributed to the development of European culture (Delanty 2002).

The nature of European culture is hybrid. The impact of African and Asian culture on the development of European culture cannot be denied. For instance, Egyptian thought had a significant influence on the development of ancient Greek philosophy. Phoenician influence on Greek myth and the Greek alphabet also cannot be denied. European culture originates from Asia Minor, where Thales of Miletus, Heraclitus of Ephesus, and Herodotus lived (Mayer 2004). The Ionic order of classical architecture originated in the mid-sixth century BC in Asia Minor. The Ionic style, together with Doric and Corinthian styles of columns, are significant in the development of Western architecture. Some of the oldest Christian monuments are situated in today's Turkey. Nonetheless, the founding of European identity on European heritage and European history ignores the complex history of Europe and includes selective memory of European history. The Eurocentric paradigm that refers to ancient Greek and Roman civilization, Christianity, Renaissance, Reformation, the Enlightenment, and liberalism ignores the history of exclusions inside Europe.

Furthermore, this one-sided reduction of European history cannot be defended by pretending that genocide, war, persecution, exploitation and so on, were simply deviations, aberrations *faux pas* in European history (in these explanations all such phenomena were simply individual instances of 'degeneration' within Europe). (Velikonja 2005, p. 104)

In the preamble of the *Treaty of Lisbon*, the significance of ‘cultural, religious, and humanist inheritance of Europe’ is emphasized (*Treaty of Lisbon* 2007). In the preamble of the *Charter of Fundamental Rights of the European Union*, European ‘spiritual and moral’ heritage is emphasized (*Charter of Fundamental Rights of the European Union* 2000). These expressions imply universalist and essentialist assumptions, which make sharp distinction between ‘European’ and ‘non-European.’ The drafting for the European Constitution began in December 2001 at the Laeken European Council, which called for a new debate on the nature of Europe and its future. After the Laeken European Council, the debates about the nature of the European Union were very intense. One of the key topics referred to the justifiability of insisting on Christian roots for the European community. This topic included *a priori* negative answer to the eventual accession of Turkey to the European Union. This was (and it still is) a very subtle strategic, political, and economic question for the European Union. For this reason the draft of the *Treaty Establishing a Constitution for Europe* did not include reference to Christianity or God. However, in the preamble of the *Treaty Establishing a Constitution for Europe*, the inspiration from the religious inheritance of Europe is mentioned (*Treaty Establishing a Constitution for Europe* 2004).²

Article I-8 states that one of the symbols of the European Union is a flag with twelve golden stars on a blue background. This flag may be perceived as a Christian symbol. The Book of Revelation (12:1) states: ‘A great sign appeared in the sky, a woman clothed with the sun, with the moon under her feet, and on her head a crown of twelve stars.’ This woman is often associated with Mother Mary in Christian interpretations of Revelation. The number twelve is a biblical symbol and refers to, among other things, the twelve apostles and twelve tribes of Israel. In this way Christian heritage is implicitly drafted as the foundation of European values and European identity. According to Wolfgang Schmale, blue colour was a symbol of Europe in the XII/XIII century (Schmale 2001). In the eyes of Muslims the colour blue represents Christianity and in the eyes of non-Europeans it represents Europeans (Schmale 2001).

In the preamble of the *Treaty of Lisbon*, the religious inheritance of Europe is mentioned (as well as cultural and humanist inheritance). Weigel argues that Christianity is the basis of both the cultural and the legal dimension of European identity:

² As well as the inspiration from cultural and humanist inheritance.

The democratic project did not emerge, in a kind of political virgin birth, with either the Glorious Revolution of 1688 in England or the Declaration of the Rights of Man and Citizen of 1789 in France. Those were indeed turning points in the history of democratic institutions and modern political thought, but the cultural foundations had been laid centuries before. In that sense, Peter Brown and Christopher Dawson, for all that they would have disagreed on precisely how it happened, are agreed on the more fundamental point: there is no apprehending Europe without taking full account of what Christianity taught European man about himself, his dignity, his communities—including his political communities—and his destiny. (Weigel 2004, p. 35)

The cultural dimension of European identity is based on the primacy of cultural heritage. European identity is presented as being shaped by European historical roots that can be traced back to classical antiquity, Christianity, and the Enlightenment. In this way, Europe is described as an exclusive entity. It is perceived as Christian (Catholic and Protestant). The Orthodox and Islamic traditions are either excluded or marginalized (Delanty 2002, p. 349). Nevertheless, the proposed European Constitution did not include any references to Christianity. The text of the proposed Constitution was criticized by those who define European identity as Christian. Those critics emphasized that Christian values had to be included in the European Constitution and other EU documents. German Chancellor Angela Merkel supported the campaign of Pope Benedict XVI to include reference to Christian origins of European identity and values. In his speech in Regensburg in 2006, Pope Benedict XVI emphasized both the European nature of Christianity and the Christian nature of Europe (Pope Benedict XVI 2007). Pope Benedict XVI argued that Christianity was the foundation of the identity of European peoples: ‘This is, in fact, an historical, cultural, and moral identity before being geographical, economic, or political; an identity constituted by a collection of universal values that Christianity has contributed to forging, thereby acquiring a role that is not only historical, but also foundational in relation to Europe’ (Pope Benedict XVI 2007).

However, the European Union is not a religious project. The Islamic countries Turkey and Albania are candidate countries for EU membership, and Bosnia and Herzegovina were identified as potential candidates

for EU membership during the Thessaloniki European Council Summit in June 2003. For this reason EU legal documents should broaden the definition of European identity, which will not include the religious heritage of Europe.

Another problem with the cultural definition of European identity founded on the European heritage and history is reflected in the fact that in various EU Member States there are different cultures and perspectives on European identity. EU Member States differ by their cultures, languages, religions, and histories. These differences deepened after the accession of new EU Member States in the period after May 2004.³ When Romania and Bulgaria joined the European Union in 2007, the Western perspectives on Europeanness required further redefinition.

Cultural points of view produce various binary oppositions, such as Christian/non-Christian, European/non-European, citizen/stranger, and self/other. Those binary distinctions can be ascribed to both the cultural and legal aspects of European identity, as defined by the European legal framework and various theoreticians. Both the cultural and legal aspects of European identity constitute homogeneous categories.

European identity was legally designed by the *Declaration on European Identity* (1973). However, the idea of a European identity arose earlier. After World War II, European leaders discussed the future of Europe and the ways in which Europe could be reorganized. Winston Churchill used the term ‘United States of Europe’ in his speech at the University of Zürich on 19 September 1946. But this idea did not become reality, because it is hard to define European culture and a European demos.

The *Declaration on European Identity* states that the principles of representative democracy, the rule of law, social justice, and human rights are the key elements of European identity. Although the diversity of cultures is recognized within this document, it is limited to the framework of common values and principles. The *Declaration on European Identity* emphasizes the need for ‘the increasing convergence of attitudes to life,’ ‘common European civilization,’ and ‘the attachment to common values and principles’ (*Declaration on European Identity* 1973). Thus it tends to

³ Estonia, Latvia, Lithuania, Poland, the Czech Republic, Hungary, Slovakia, Slovenia, Cyprus, and Malta joined the European Union in May 2004. In 2007, Romania and Bulgaria also joined.

homogenize and essentialize European identity. It perceives 'Europe,' 'identity,' and 'values' as static categories.⁴ Despite a reference to pluralism, it emphasizes univocal paradigms. The same can be argued for the *Stuttgart Solemn Declaration* (1983), which affirms 'consciousness of a common cultural heritage as an element of European identity' (Solemn Declaration 1983 para. 1.4.3).

One of the committees established to analyse aspects of further European integration examined the concept of European identity under the leadership of Pietro Adonnino. *A People's Europe* (1985), known as the Adonnino Report, was significant for the development of European citizenship. It included the right of residence, freedom of movement, right of establishment, and right of citizens' participation. Within this report the concept of European identity was closely tied to European citizenship. The Adonnino Report focused on culture and education, 'which is essential to European identity and the Community's image in the minds of its people' (The Adonnino Report 1985).

The *Declaration on European Identity* presents European identity as the foundation of EU citizenship, which is tied to socio-economic and market-oriented rights.

The Nine have the political will to succeed in the construction of a united Europe on the basis of the Treaties of Paris and Rome setting up the European Communities and of subsequent decisions, they have created a common market based on a customs union, and have established institutions, common policies and machinery for co-operation. All these are an essential part of the European identity. (Declaration on European Identity 1973)

European identity is described in this Declaration as the awareness of common specific interests, attachment to shared values, principles and civilization, similarity of conceptions of life, and determination to participate in the construction of Europe (Horváth 2008, p. 71).

According to Horváth, European identity has still not been defined within EU treaties. Within the *Treaty of Maastricht*, the term 'European identity' is used only 'in the context of a common defence policy' (Horváth

⁴This is contrary to the idea of the *Declaration on the European Identity* as a definition of the European identity 'with the dynamic nature of the Community in mind' (*Declaration on European Identity* 1973, p. 2.)

2008, p. 69). On the other hand, within EU treaties, the concept of 'identity' often only appears within a national context, and there is no mention of Europe (Horváth 2008, pp. 69–70). Another problem stems from the distinction between Europe and the European Union. Those two concepts are not equivalent. 'Europe' is a vague term, because its borders are not clearly defined and some authors compare it to a mental construct. References to a 'common destiny' within EU treaties point to the equation of European identity with EU identity.

Within EU treaties, European identity is described as an instrumental good. It is perceived as a means to an end, not as a substantive good desirable in itself. The same approach to European identity can be identified within the *Declaration on European Identity*. This Declaration states that its purpose is to enable a better definition of relationships with non-European states. Consequently, European identity is only a tool and does not have any *a priori* value. European identity—as presented within the framework of the *Declaration on European Identity*—embodies a modernist, homogeneous notion of identity. Nevertheless, some parts of this *Declaration* point to dynamic, postmodern, and dialogical notions of identity that embrace pluralism and difference. The third section of the *Declaration*, entitled 'The Dynamic Nature of the Construction of a United Europe,' states: 'The European identity will evolve as a function of the dynamic construction of a unified Europe' (Declaration on European Identity 1973). However, this statement contradicts the basic concepts employed elsewhere within the *Declaration*. The concepts of 'identity,' 'values,' and 'Europe' need to be reconstructed and rewritten in a more multilayered, flexible, and dynamic manner, described by postmodern and poststructuralist authors. Only in this way can it be argued that the European Union and European identity have a dynamic nature.

The *Charter of European Identity*⁵ (1995) also employs a modernist idea of identity. It defines European identity through European values, arguing that fundamental European values are fraternity, humanity, and tolerance. It emphasizes that these stem from European historical and cultural heritage in the classical antiquity, Christianity, the Renaissance,

⁵In a speech to the European Parliament on 8 March 1994, the poet Václav Havel, [former] President of the Czech Republic, indicated the need for a Charter of European Identity. The idea was taken up by Europa-Union Deutschland which at its 40th Congress held in Bremen on 5 November 1994, decided to undertake work of producing such a Charter.' The draft of the Charter 'was debated (...) at the 41st Congress of Europa-Union Deutschland in Lübeck, 28 October 1995, with only two votes against' (*Charter of European Identity* 1995).

Humanism, the Enlightenment, liberalism, and democracy. In this way, the Charter ties European identity to a historical heritage and makes a sharp distinction between European and non-European spheres. Consequently, it allows for the marginalization and discrimination of everything labelled 'non-European.'

On the other hand, understanding European identity as a homogeneous concept based on European values derived from 'European' history and 'European' culture, 'makes invisible the (...) contributors of non-European origin to the economic, cultural and social life of Europe' (Kofman and Sales 1992, p. 24). Subsequently, the statement that the question of Europeanness is a question of education, presented in the Charter (1995), seems to contradict other definitions and descriptions of Europe, European values, and identity described in the *Charter of European Identity*. Thus, the idea of European identity does not transcend the modernist pitfalls. European identity is still homogeneous and fixed.

From the perspective of postmodern legal theory, Europe can be perceived as a contingent, cultural product, not as a homogeneous historical entity. Therefore, Europe can also be perceived as a mental construct. According to Derrida, the European Union reflects the Enlightenment ideals based on homogeneous values, which produce binary distinctions such as European/non-European, self/other, essential/contingent, and universal/particular (Derrida 1992). Derrida argues that European identity should be more open to differences. Hence it should be redefined, which is always possible as political identity is historical and social construct (Stråth 2002; Castiglione 2009).

According to Castiglione, European political identity should not rest on any exact definition. The conception of political identification with contemporary postnational and postmodern societies is fluid and polyphonic. Moreover, the nature of the European Union is hybrid, since it represents a multilayered polity, which includes both supranational and intergovernmental levels of governance (Castiglione 2009, p. 29).

European integration should not be built on the Enlightenment's universalist assumptions nor on the metaphysical understanding of a cultural and historical heritage. It should be built on political relationships between different entities. Thus, the European Union should combat ontological apriorism, because it constitutes a political, not a mythological, project (Rodin 2004, p. 117).

European identity—as presented within the framework of European declarations and charters—still relies on modernist assumptions that tend to categorize and essentialize the notion of the self. This perspective stands in contradiction to the basic principles of postnational citizenship and needs to be reconsidered. The conception of European identity employed within the framework of European declarations and charters should be rewritten in a way that takes into account postmodern and postnational conceptions, so as to be compatible with pluralism and the diversity of European societies.

According to Article 49 of the *Treaty of the European Union*, the European Union is open to all European countries. However, the term ‘European’ remains vague and provides scope for exclusion based on an inside/outside dichotomy. The term ‘European country’ defined by the *Treaty of the European Union* is mostly understood as a political community, which shares ‘European values.’ Thus, ‘European country’ is not defined predominantly geographically. Europe as a continent is divided into ‘Europe’ and ‘non-Europe.’ Countries that geographically belong to Europe are not considered ‘European’ in an economic and political sense. Thus these countries have to be transformed into European ones, regardless of their geographical position and whether they belong to Europe as a continent. They have to share ‘European values.’ Nevertheless, the notion of ‘European’ remains vague, as there are different conceptions of ‘European values.’ From this point of view, symbolic geography and European mental maps can also be considered as a way of keeping in and keeping out, as discussed in Chapter 4.

5.3 The Four Values of the *Charter of Fundamental Rights of the European Union*

The *Charter of Fundamental Rights⁶ of the European Union* (The Charter) is the first formal EU document that defines the values and fundamental rights for EU citizens. With the ratification of the Lisbon Treaty on 13 December 2009, The Charter was given binding legal effect equal to the

⁶The idea of ‘fundamental rights’ is closely connected to the idea of ‘moral rights.’ The idea of ‘fundamental rights’ is highly contested, since it may lead to liberal imperialism. In order to avoid liberal imperialism, fundamental rights should be defined and understood as a substantive, not instrumental good.

treaties.⁷ In the following, an analysis of The Charter based on ‘close reading’ will be performed. In particular, the four concepts (dignity, freedom, equality, and solidarity) presented in the preamble of The Charter as ‘indivisible and universal values’ will be analysed. The definition and the scope of rights guaranteed by these values will also be examined. It will be argued that the values declared in The Charter reflect modernist political liberalism and its universalist and metaphysical assumptions.

According to Article 51 of The Charter: ‘The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.’ The fundamental rights declared by The Charter play a pivotal role in all EU policies. The Court of Justice of the European Union⁸ applies The Charter in its decisions. National courts are also aware of the significance of The Charter in their judgments. The Charter embraces a broader content of rights than does the European Convention for the Protection of Human Rights and Fundamental Freedoms and includes a new set of rights that includes the rights of the elderly (Article 25), integration of persons with disabilities (Article 26), prohibition of child labour and protection of young people at work (Article 32), and the right to good administration (Article 41). Nevertheless, it can still be argued that The Charter neither offers an improved theoretical framework of rights nor that these rights are well defined. The charter of rights that expresses the European Union’s notion of citizenship, goals, and values is necessary.

5.3.1 Metaphysical Presuppositions of the *Charter of Fundamental Rights of the European Union*

The preamble of the *Charter of Fundamental Rights of the European Union* states: ‘The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values’ (Charter of Fundamental Rights of the European Union 2000).

⁷The Protocol No. 30 to the Treaties on the application of the Charter to the United Kingdom and Poland restricts the interpretation of the Charter by national courts of the United Kingdom and Poland and by the Court of Justice of the European Union.

⁸The Court of Justice of the European Union encompasses: the Court of Justice (known as European Court of Justice), the General Court, and the Civil Service Tribunal.

However, the term ‘peaceful future’ remains ambiguous and unclear. The European Union is the project of peace that arose after the devastation of World War II. The leading European countries were interested in providing the continent of Europe with stability and permanent peace. However, the idea of the European Union as a project of peace can be questioned if it embraces a military force.

According to Glasius and Kaldor (2005) and a number of other authors, the European Union should create its own military force. These authors argue that the European Union as a ‘peace project’ should not just be founded on Kant’s principles defined in his *Perpetual Peace*.⁹ The former Italian Foreign Minister, Franco Frattini, argued about necessity of a European Army in the post-Lisbon European Union (Owen 2009). The Chancellor of Germany, Angela Merkel, also argued about establishment of a ‘European fighting force,’ which is independent of NATO (Glover 2007). The other problem is represented by the term ‘common values,’ declared by the preamble of the *Charter of Fundamental Rights of the European Union*.¹⁰ It is stated that ‘the Union is founded on indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law’ (*Charter of Fundamental Rights of the European Union* 2000). Nevertheless, it is not clear in which sense those values are universal. It could be argued that the reading of those concepts requires the point of view established by the philosophers of Enlightenment, who argued that the proclaimed fundamental values (such as freedom, democracy, rule of

⁹ In his *Perpetual Peace: A Philosophical Sketch*, Kant introduces ‘preliminary articles,’ which represent the conditions which need to be satisfied in order to establish a perpetual peace between the states. On the other hand, Kant introduces ‘definitive articles’ on which the peace between the states should be founded. Kant’s preliminary articles are: (1). ‘No Treaty of peace shall be held valid in which there is tacitly received matter for a future war’; (2). ‘No independent states large or small shall come under the dominion of another state by inheritance, exchange, purchase or donation’; (3). ‘Standing armies (*miles perpetuus*) shall in time be totally abolished’; (4). ‘National debts shall not be contracted with a view to the external friction of states’; (5). ‘No state shall by force interfere with the constitution or government of another state’; (6). ‘No state shall, during the war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible: such are the employment of assassins (*percussores*), poisoners (*venefici*), breach of capitulation and incitement to treason (*perduellio*) in the opposing state.’ Kant’s definitive articles for the perpetual peace among the states are: (1). ‘The civil constitution of every state should be republican’; (2). ‘The law of nations shall be founded on a federation of free states’; (3). ‘The law of world citizenship shall be limited to the conditions of universal hospitality’ (Kant 1795).

¹⁰ ‘The Peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values’ (Charter 2000).

law, and so on) represented absolute truth based on reason. For this reason, Enlightenment liberalism is often labelled ‘metaphysical’ (Bridges 1994).

Thomas Bridges emphasizes the distinction between the modernist metaphysical liberalism, which results from the Enlightenment philosophy, and the political or rhetorical liberalism, which is represented by Rawls’s political theory. John Rawls (1993) argues that political liberalism rejects the universalist and essentialist assumptions and emphasizes cultural particularism. Rawls’s political liberalism avoids metaphysical assumptions. It tends to be neutral and does not include terms such as ‘common values,’ ‘moral heritage,’ and ‘inherent rights.’ Rawls also makes a distinction between the norms of rights and justification of these norms. Thus it leaves room for cultural particularism and various interpretations based on different cultural standpoints.

The proponents of modernist metaphysical liberalism argue that this form of liberalism reflects the political morality, which is universal and essential. The preamble of the *Charter of Fundamental Rights of the European Union* follows modernist metaphysical assumptions. It emphasizes European ‘spiritual and moral heritage,’ an essentialist term from which various binary oppositions (self/other, European/non-European, Christianity/Islam, and so forth) arise. The *Charter of Fundamental Rights of the European Union* is divided into seven chapters: (1) ‘Dignity,’ (2) ‘Freedom,’ (3) ‘Equality,’ (4) ‘Solidarity,’ (5) ‘Citizens’ Rights,’ (6) ‘Justice,’ and (7) ‘General Provisions.’ The terminology of The Charter is confusing, and it is based on

a four-fold distinction between ‘values,’ ‘principles,’ ‘freedoms’ and ‘rights’ but the legal meaning of such a categorization is not clearly stated or even consistently followed through the text, not even in the preamble. (...) Equality is characterized as value, while the rule of law is said to be a principle, something far from fitting into the standard use in common constitutional traditions. (Menéndez 2003a, pp. 380–381)

The principles introduced in The *Charter of Fundamental Rights of the European Union* are the principles of democracy and the rule of law. It can be argued that in The Charter the term ‘principle’ is broader in scope than ‘value.’ For instance, the principle of democracy embraces four values defined in The Charter: dignity, freedoms, equality, and solidarity.

The idea of ‘common values’ on which the European Union is based is confusing since the distinction between ‘values’ and ‘principles’ is not clearly determined. Subsequently, different EU documents present different understandings of both ‘values’ and ‘principles.’ According to the preamble of the *Treaty of Lisbon*, universal values on which the European Union is founded include: ‘the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.’ In the preamble of the *Charter of Fundamental Rights of the European Union*, a distinction between ‘values’ and ‘principles’ is made. The values include: human dignity, freedoms, equality, and solidarity, while principles include democracy and the rule of law. Thus there are different perspectives on values and principles in different EU documents.

For instance, the *Treaty of Lisbon* defines democracy and the rule of law as ‘values,’ while the *Charter of Fundamental Rights of the European Union* defines these concepts as ‘principles.’ *The Charter of Fundamental Rights of the European Union* perceives equality and solidarity as ‘values,’ while the *Treaty of Lisbon* defines these concepts as ‘principles’ (*Treaty of Lisbon 2007*, Articles 8 and 10A). The domain of values adheres to the cultural (or substantive) set of categories, while the domain of principles adheres to the legal (or formal) concepts. The unclear distinction between ‘values’ and ‘principles’ within EU legal documents brings confusion and undermines the main purpose of these documents—developing and improving EU citizenship and policy of the European Union.

5.3.2 The Four Values: Dignity, Freedoms, Equality, and Solidarity

Dignity is defined as a basic characteristic that should be attributed to every human being by the preamble and is the first article of the *Universal Declaration of Human Rights*. In the preamble of the *Declaration of the Rights of Man and Citizen*, dignity is described as ‘inherent’ to every human being. However, in Article 1 of the *The Charter of Fundamental Rights of the European Union*, those universalist and essentialist assumptions are not employed;¹¹ it is still not clear what human dignity is. This

¹¹ Article 1 of the Charter of Fundamental Rights of the EU states: ‘Human dignity is inviolable. It must be respected and protected.’

concept has had a variety of definitions throughout the history of philosophy. Various philosophical definitions of dignity are based on different conceptions of human nature and personality. The philosophers of the Enlightenment perceive human dignity as inherent to every human being or human nature, which is defined by reason. The conception of the self advocated by the philosophers of the Enlightenment is derived from the totalizing character of reason. It is based on 'totalizing metaphysical theories about the nature of things' (Bridges 1994). Consequently, this conception of human dignity and personality can be characterized as 'metaphysical.'

In *Groundwork*, Kant equates dignity and humanity. Kant argues that humanity should be perceived of as an end in itself and makes a sharp distinction between 'human beings *per se*' and 'humanity.' According to Kant, 'it is not human beings *per se* but the "humanity" in human beings that we must treat as an end in itself' (Johnson 2004). Kant's *Formula of Humanity* implies that treating rational nature not merely as a means always treating people in respect of dignity of their rational nature. According to Kant, dignity has unconditional worth. This means that the value of dignity has no limits, it is unqualifiable. Kant's *Formula of Humanity* implies that every person should be treated as an end, not as a means. For instance, it seems impossible for an agent to choose between preventing a thousand people from being injured in a way that 'damages rational agency capacity,' on the one hand, and preventing one person from sustaining the same injury, from Kant's conception of dignity (Hill 1992, p. 87) on the other.

Kant's conception of the dignity as well as humanity is moral. Kant makes a distinction between morality and legality. He argues that the action has a moral worth only if it is based on inner maxim (i.e., on the reason why an agent performed it, not on its effects). However, Kant describes his conception of humanity only as an ideal that serves as a guide for performing moral actions. Kant argues that a kingdom of ends or 'systematic union of rational beings by common objective laws (...) is certainly only an ideal' (Kant 2008, p. 50).

John Rawls argues that dignity represents an inviolable right. His conception of *justice as fairness* is based in the idea that all individuals, as representatives of various cultures, religions, lifestyles, and points of view, should be treated with respect. Rawls's (1993) conception of dignity is

derived from his idea of moral personality. He argues that the conception of the person in his political philosophy is a moral concept. Rawls emphasizes that this conception of the person is neither metaphysical nor psychological. Thus, it has to be distinguished from an account of human nature given by science and social theory (Rawls 1993, p. 18). In his *Law of Peoples* (1993), Rawls emphasizes that people have a moral nature. In Rawls's liberal theory people, not persons, have a fundamental role in regard to the establishment of global justice. Thus, he mainly emphasizes the dignity of peoples and their right to have different conceptions of a good life (i.e., comprehensive doctrines). Rawls's idea of justice as fairness is a political conception. Rawls argues that different peoples and individuals with different comprehensive doctrines share political values, which makes toleration possible. That is why Rawls's conception of persons (i.e., peoples) is political, not moral, although he argues that peoples are moral actors as well (Rawls 1999). If Rawls's conception of personality was considered as moral, his political theory would be a comprehensive doctrine itself.

Another account on humanity, dignity, and the self is given by post-structuralist and postmodern thinkers. They reject all the essentialist and biologically determined concepts and argue about social and historical constructiveness of the basic concepts of the law and Western discourse. From this point of view, human nature is not inherited but interpreted. It is not a fixed term but a cultural construct. However, the problem with this perspective is identified by feminist authors, as described in the Chapters 2 and 4. These authors emphasize that a constructivist point of view is in danger of becoming essentialist itself by proclaiming culture (not biology) as destiny (Butler 1997).

So far different accounts of human nature, dignity and the self have been introduced: metaphysical, moral, political, and constructivist. However, the concept of human dignity is not defined legally or politically. This definition is necessary for Articles 1 and 2 of the *The Charter of Fundamental Rights of the European Union* and all its articles¹² to be clearer and more easily applied.

¹² These are: Article 1 (Human dignity), Article 2 (Right to life), Article 3 (Right to the integrity of the person), Article 4 (Prohibition of torture and inhuman or degrading treatment or punishment), and Article 5 (Prohibition of slavery and forced labour).

Human rights documents should not be founded on metaphysical and moral conceptions because of their imperialist assumptions. These conceptions do not allow the possibility of existence of different points of view about ‘a good’ life. The political conception of dignity and of the ‘self’ (inside the framework of the law) leads to more freedom and leaves room for otherness and diversity. Nevertheless, it should be accompanied with a constructivist approach to avoid the trap of universalism and essentialism.¹³

Another chapter of the *The Charter of Fundamental Rights of the European Union* is ‘Freedoms.’¹⁴ A philosophical understanding of the concept of ‘freedom’ is significant for understanding its legal content. According to Immanuel Kant (2008), the idea of freedom makes categorical imperatives possible. Autonomy of the will (i.e., freedom) makes every rational being a member of the intelligible world. Kant argues that if rational beings are ends in themselves, this is not because they have reason, but because they have freedom. Kant emphasizes that only freedom makes rational beings an end in themselves. It enables them to act according to their own will. The argument for the autonomy of the will is based on the idea that rational beings submit to the valid categorical imperative¹⁵ because it has legislated it itself. If the reason for submission to the categorical imperative is based on some interest or inclination, then the imperative is hypothetical (Kant 2008).

In order for the *The Charter of Fundamental Rights of the European Union* to employ the conception of freedom based on the idea of autonomy of will, some Articles should be transformed. For instance, Article 14

¹³There are many critiques that can be applied to articles in chapter 1 (‘Dignity’). For instance, Article 4 (Prohibition of torture and inhuman or degrading treatment or punishment) does not specify what denotes ‘degrading treatment’. It does not include explicit reference to mental torture.

¹⁴Chapter 2 (‘Freedoms’) of the *Charter of Fundamental Rights of the European Union*, includes: Article 6 (Right to liberty and security), Article 7 (Respect for private and family life), Article 8 (Protection of personal data), Article 9 (Right to marry and right to found a family), Article 10 (Freedom of thought, conscience and religion), Article 11 (Freedom of expression and information), Article 12 (Freedom of assembly and of association), Article 13 (Freedom of the arts and sciences), Article 14 (Right to education), Article 15 (Freedom to choose an occupation and right to engage in work), Article 16 (Freedom to conduct a business), Article 17 (Right to property), Article 18 (Right to asylum), and Article 19 (Protection in the event of removal, expulsion or extradition).

¹⁵Kant’s idea is that categorical imperative, as a supreme law of morality, must be valid to all rational beings with absolute necessity. Kant’s categorical imperative states: ‘Act only on that maxim through which you can at the same time will that it should become universal law’ (Kant 2008, p. 18).

(Right to education) should be broadened. According to the Amnesty International Report, Romani children in some European countries, mostly in Slovakia (Slovak Authorities 2013) and the Czech Republic¹⁶ (Czech Government 2012), are placed in ‘special’ schools for children with mild disabilities. In this way they have very limited possibilities for development of their full potential, since they have limited options for finding work and obtaining higher education. Consequently, they are denied not only the right to education but also the freedom to choose an occupation and the right to engage in work, which is guaranteed by Article 15 of the *The Charter of Fundamental Rights of the European Union*. For this reason, it is necessary to incorporate the right to self-development inside the framework of Article 14 or as an independent article inside the framework of chapter 2 (‘Freedoms’) of The Charter.

Isaiah Berlin makes a distinction between negative and positive liberty. Negative liberty is defined as a freedom from constraint, while positive freedom is based on self-realization and self-determination (Berlin 1969). Freedoms incorporated inside the framework of The Charter are mostly negative ones: freedom of thought, conscience, and religion (Article 10); freedom of expression and information (Article 11); freedom of assembly and association (Article 12); right to property (Article 17); and so forth. It is necessary to include more positive freedoms in The Charter, such as the right to self-development and freedom from poverty.

The concept of equality¹⁷ employed in the *The Charter of Fundamental Rights of the European Union* reflects a number of inequalities on the metatheoretical level. Article 23 (Equality between men and women) of The Charter states: ‘Equality between men and women must be ensured in all areas, including employment, work and pay.’¹⁸ However, defined in this

¹⁶ ‘The Constitution of the Czech Republic guarantees that all children have the right to an education. Yet, despite positive measures taken in 2005—in removing the category of “special schools” and the creation of measures to facilitate the integration of Roma children into the main educational system—there is still discrimination and international exclusion of Romani children from mainstream education’ (Amnesty International Report 2009).

¹⁷ Chapter 3 of *The Charter of Fundamental Rights of the European Union*, ‘Equality,’ includes: Article 20 (Equality before the law), Article 21 (Non-discrimination), Article 22 (Cultural, religious and linguistic diversity), Article 23 (Equality between men and women), Article 24 (The rights of the child), Article 25 (The rights of the elderly), and Article 26 (Integration of persons with disabilities).

¹⁸ It also states that: ‘The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of under-representing sex.’

way, Article 23 leaves room for various forms of discrimination. According to feminist authors such as Irigaray (1985), Weedon (1999), and Wieringa (1998), to be treated as equal inside the framework of the law means that women are allowed to compete with men by the same rules in the same institutions. However, these institutions are governed by male standards and values. Therefore, the law allows the existence of some metatheoretical assumptions that create inequality. Eisenstein argues that women are treated in four ways within the law: (1) 'as different from men—reproducers and gendered mothers'; (2) 'as the same as men, like men, and therefore not women'; (3) 'as absent but as a class different from men'; and (4) 'as absent but as a class the same as men' (Eisenstein 1988, p. 55). All these accounts of equality 'ignore the underlying structures and power relations that contribute to the oppression of women' (Eisenstein 1988, p. 55).

It seems that the Article 23 of The Charter represents Eisenstein's second definition of equality between men and women within the law, which is why it is unacceptable to most feminist scholars. According to Charlesworth and Chinkin, the problem of oppression is not solved by increasing women's presence in the law, because it does not itself reconfigure the law and its structures (Charlesworth and Chinkin 2000). These authors argue that it is necessary to recognize the gendered aspects of basic concepts such as 'work,' 'politics,' 'economy,' 'development,' 'democracy,' and so forth. Subsequently, the liberal conception of equality should be revised and broadened so that it addresses structural inequalities and it does not 'oversimplify complex power relations' (Charlesworth and Chinkin 2000, p. 231).

Article 25 (Rights of the elderly) considers the 'elderly' as a homogeneous group. However, this concept includes elderly people with mental disabilities, elderly migrants, and women that cannot be considered as a homogeneous group. A large number of people from this group suffer from double or even triple discrimination, and this problem is neglected. This Article as well as Article 21, which prohibits discrimination on all grounds, cannot solve the problem of implicit ageism, which includes stereotyping and prejudices, which is why Article 25 has to be broadened. It has to emphasize that a person's age is not an indicator of skills, health, or other status.

Article 21 (Non-discrimination) is founded on dichotomies such as biology/construction, nature/culture, and sex/gender. 'Sex' is perceived

as biologically determined, while gender is perceived as ‘socially constructed’ in EU gender policy. As already argued, within European discourse: ‘Gender refers to the social differences between women and men that are learned, changeable over time and have wide variations both within and between cultures’ (European Commission 1998, p. 3). This definition of gender leaves room for various forms of discrimination against women in different cultures and societies and should be changed. The term ‘social differences’ should be avoided, since it creates various binary hierarchies. Judith Butler (1999) points to the problem that arises from the distinctions such as nature/culture and sex/gender, and emphasizes that all these concepts should be considered not essentialist but culturally constructed. ‘If the immutable character of sex is contested, perhaps this construct “sex” is culturally constructed as gender; indeed, perhaps it was always already gender with the consequence that the distinction between sex and gender turns out to be no distinction at all’ (Butler 1999, pp. 10–11).

Solidarity is the fourth value presented in the preamble of *Charter of Fundamental Rights of the European Union*.¹⁹ According to Menéndez, the obligation of solidarity is contradictory to the assumption of its spontaneous character (Menéndez 2003b). However, The Charter has to embrace solidarity, since solidarity is the foundation of the third generation of human rights that consists of collective rights, such as, the right to a healthy environment, the right to peace, the right to development, and the right to humanitarian assistance.²⁰

According to Donnelly, the notion of solidarity cannot be considered the foundation of human rights. He emphasizes that civil, political, social,

¹⁹ Chapter 4 of The Charter, ‘Solidarity,’ includes: Article 27 (Workers’ right to information and consultation within the undertaking), Article 28 (Right of collective bargaining and action), Article 29 (Right of access to placement services), Article 30 (Protection in the event of unjustified dismissal), Article 31 (Fair and just working conditions), Article 32 (Prohibition of child labor and protection of young people at work), Article 33 (Family and professional life), Article 34 (Social security and social assistance), Article 35 (Health care), Article 36 (Access to services of general economic interest), Article 37 (Environmental protection), and Article 38 (Consumer protection).

²⁰ The first generation of human rights consists of civil and political rights, while the second generation embraces social and economic rights. The first generation of rights is based on the idea of freedom, while the second generation of rights is based on the idea of equality.

and economic rights are derived from human dignity, while the rights founded on solidarity arise from the relationship of representatives of a certain group and confer 'benefits on the basis of membership in a particular community' (Donnelly 1989, p. 144). Donnelly concludes that the rights based on solidarity cannot be considered human rights. However, this perception of human rights is deeply flawed. Donnelly perceives human rights as static and unchangeable. Human rights have to be considered as dynamic and constantly reinterpreted as society moves and changes.

The basic problem of this chapter of The Charter is that it is not well defined and is open to interpretation. Articles and the terms employed in this part of The Charter are vague. In Article 31 (Fair and just working conditions), the terms 'safety' and 'dignity' leave room for various interpretations; in Article 32 (Prohibition of child labour and protection of young people at work), the term 'limited derogations' is not clear; and the term 'the high level of environmental protection' employed in Article 37 (Environmental protection) is also vague. Rights based on solidarity should be the foundation of peace and solidarity in the European Union, and they require more exact terms and definitions.

According to Menéndez: 'If one looks for a pattern, one should have resort to the two-fold distinction between rights to solidarity pertaining to citizens and residents, as opposed to those where the right holder is the worker or would-be worker' (Menéndez 2003b, p. 7). In this way, the value of solidarity presented in The Charter presumes homogeneity, which opens up space for different kinds of discrimination.

From this analysis it can be concluded that the values of dignity, freedoms, equality, and solidarity presented in the *Charter of Fundamental Rights of the European Union* lie on essentialist and universalist assumptions. Four values of The Charter presuppose rights ascribed to homogeneous groups. Thus, they reflect the ideas of modernist (rather than postmodernist) political liberalism. The Charter should be revised to move towards postmodernist political liberalism, which does not base its concepts on metaphysical and moral assumptions but on a political and constructivist approach that emphasizes heterogeneity and multiple identities.

5.4 Poststructuralist Understanding of European Identity

The *Assembly of European Regions' (AERs)' Udine Declaration*²¹ points to a new kind of citizenship that has emerged with the establishment of the notion of citizenship of the European Union. The *Udine Declaration* emphasizes that national identity does not provide the only sense of identity for Europeans. This has also been emphasized by other European declarations, such as the *Declaration on European Identity* and EU treaties. However, the *Udine Declaration* brings a new perspective, because it emphasizes the idea of identity as a constantly shifting and changing phenomenon, which was not sufficiently recognized in previous EU documents. The *Udine Declaration* represents a significant contribution to the idea of postmodern politics.

EU policy is still based on the distinction between global and local. The European Parliament does not concern itself with issues such as good health care, quality of education, child care, and safe communities. These problems are left to local policies. 'For the European project to continue to progress, it will be vital to explain how the construction of Europe will both help citizens have greater control by their everyday lives through more empowered local institutions, while also helping to solve the great security, climate, and war and peace related challenges of an increasingly independent world' (Dervis 2007, p. 43).

AERs' Udine Declaration asks European institutions and national governments: to grant regions the financial means and responsibility to create their own policies from which regional identities are developed; to consider the principle of subsidiarity and regional identities as the foundation of strong regions; to recognize interdependence between regional, national, and European identity; to support regions in the process of development of European identity; and 'to restrict the ability of the European Commission to use State Aid policy to limit regions' delivery of cultural, media and education policies' (Illy and Barroso 2007, p. 1). The process of

²¹ The AER is an independent organization that embraces more than 260 regions from 33 countries in Europe. It also includes 14 interregional organizations.

²² The AER General Assembly adopted the *Udine Declaration* in Udine (I) on 9 November 2007.

globalization and Europeanization has a strong impact not only on regional but also on individual identities. Additional problems are represented by regions based on several traditions and heritages. Thus regional identity can be studied from various perspectives: historical, anthropological, interdisciplinary, and so forth.

The *Udine Declaration* attempts to remake the concepts of the 'self' and 'other.' It stresses the crucial role of regions and regional identities in establishing a common European identity, while acknowledging the significant role of regions in strengthening regional, national, and European identity. The expanding borders of the European Union and the dynamic process of globalization requires the old concepts of 'citizen' and 'alien' to be challenged. New social developments require redefined concepts of pluralism and identity. The establishment of the *Udine Declaration* by the AER, which considers the development of regional and European identities, is a step towards the resurgence of the *local* and the diminishing of the gap between the global and the local, between rich and poor EU regions and between the European Union and its citizens.²³

A poststructuralist and postmodernist reading of the *Udine Declaration* follows. It will be argued that the *Udine Declaration* still employs the essentialist notion of identity based on the logic of homogeneity, which is criticized by the poststructuralist approach. However, the *Udine Declaration* is significant, since it acknowledges some postmodernist concepts, such as 'shifting identity.' These concepts were not previously part of legal documents. Thus the *Udine Declaration* represents a move towards postmodern politics.

The *Udine Declaration* presents the idea of regional identity, which is established on the common values and common understanding of what it means to be European. In the following, it will be argued that neither European nor regional identity should be perceived as a homogeneous category based on common values, because this implies essentialism.

²³ As it is argued by José Manuel Barroso, the former president of the European Commission in his speech held at Assembly of European Regions in Udine on 9 November 2007.

5.4.1 Section A of the *Udine Declaration*—Towards the Logic of Heterogeneity?

The logic of heterogeneity is employed in section A ('Context') of the *Udine Declaration* (AER 2007). This logic emphasizes particularity, contextuality, and difference. Thus it embraces various identity possibilities and rejects the idea of identity as a fixed concept.

This logic resonates with postmodern thought. According to Derrida (1974), identity based on unity and totality is an illusion and promotes heterogeneity and dissociation instead. Derrida argues that the concepts of 'identity,' 'nation,' 'region,' 'state,' 'borders,' and so forth do not have fixed meanings. It can be argued that the concepts employed in section A of the *Udine Declaration* represent a move towards a broader understanding of the notion of identity. The terms used, such as, 'complex layers of identity,' identity as a 'constantly shifting phenomenon,' and 'diverse societies,' point to the logic of heterogeneity.

According to the *Udine Declaration*, an identity should be considered not as a static but as a dynamic category. It is stated in the *Udine Declaration* that

national identity is always an important factor, but at the same time, a sense of European identity is also gradually emerging. These developments have resulted in the emergence of multiple identities, as European and regional identities interact with national ones to create more complex layers of identity. It is clear that identity is not a static concept, but rather a constantly shifting phenomenon. (AER 2007, section A, para. 1)

The term 'constantly shifting phenomenon' also resonates with the language of poststructuralist and postmodern theory. It points to ideas of identity that reject essentialism. The *Udine Declaration* seems to represent this point of view by emphasizing flexible and shifting identities: 'The challenge for Europe and its regions today is to develop this advantage by nurturing strong identities, on a regional and European level, whilst at the same time respecting existing national identities, and adapting flexibly to shifting identities' (AER 2007, section A, para. 5).

The notions of diversity and the concept of multiple identities are also emphasized in the *Udine Declaration*: ‘As regional, national and European identities combine with distinct cultural, linguistic and religious identities, Europe’s diversity increases (...) This process is still ongoing and it is the richness of evolving multiple identities that gives Europe and its regions a unique advantage’ (AER 2007, section A, para. 4). Therefore, it can be argued that section A of the *Udine Declaration* employs the logic of heterogeneity.

5.4.2 Section C of the *Udine Declaration*—Towards the Logic of Homogeneity?

The logic of homogeneity constitutes one of the basic traits of modern political theory. It emphasizes unity, totality, and universality. Modern liberal political thought is based on a universalist conception of reason, which is the same for all human beings. This logic is based on sameness and a fixed notion of identity, which is understood as being free of difference. Politics and culture are created as a set of homogeneous groups in which individuals realize their identities (Young 1989; Benhabib 1994; Bridges 1994; Kostakopoulou 1996; Butler 1999; Weedon 1999).

Section C of the *Udine Declaration* (‘Developing a Shared European Identity’) employs concepts characteristic of modern political theory. These include a ‘clear sense of identity,’ ‘strong identity,’ ‘shared set of values,’ ‘common understanding,’ and ‘sense of belonging to a common space.’ These concepts imply homogenization, and they are contradictory to the ideas presented in section A of the *Udine Declaration*. In particular, it can be argued that these concepts are based on the concept of fixed identity.

Section C states that ‘a strong Europe requires a clear sense of European identity’ (AER 2007, section C, para. 2). Requiring ‘a clear sense’ of identity implies a totalizing, unifying definition. It also states: ‘Creating a strong European identity will help to improve the democratic legitimacy of the EU and to improve citizen participation in European life’ (AER 2007, section C, para. 2). Subsequently, it is argued: ‘A shared European identity can only develop through a shared set of values and

references, and a common understanding of what it means to be European' (AER 2007, section C, para. 3). Furthermore, this section of the *Udine Declaration* goes on to argue: 'A European identity should be based upon a sense of belonging to a common space, as well as European principles and values' (AER 2007, section C, para. 3). These statements imply that the concept of 'multiple identity' is fixed. It is defined by 'belonging to a common space' and embraces regional and national identities determined by the borders, which represent fixed and exclusive concepts, a notion that is rejected by several social theorists, including Foucault (1984).²⁴

Identity understood in this way represents a static category. It is contradictory to the idea of identity as a dynamic phenomenon, as presented in section A of the *Udine Declaration*. It does not embrace the ideas of 'increased population shifts' and 'diverse societies,' which are emphasized in section A. Instead, it defines identity in terms of borders and the 'common heritage' of European people, with the latter mostly being understood as defined by common cultural and historical experiences.²⁵

The statements in section C also oppose the idea of identity based on 'complex layers' (AER 2007, section A, para. 1). In section A, it is stated that regional and European identities 'interact with national ones in order to create more complex layers of identity' (AER 2007, Section A, para. 1). However, the concepts of 'European values,' 'common space,' 'common understanding,' and so forth employed in section C include the binary opposition European/non-European, as well as we/they and self/other, which implies that identity is a static and fixed, rather than a changeable and dynamic, category, as represented in the first section of the *Udine Declaration*.

Even the idea of diversity employed in the *Udine Declaration* is based on a binary opposition—Europe/other: 'Only by cultivating and

²⁴Foucault criticizes the idea of space as undialectical and fixed. He emphasizes that space and borders are constructed. Thus 'belonging to a common space' can be perceived as a mental construct, which can be determined by feeling and belief (Foucault 1984, p. 28).

²⁵In the *Charter of European Identity* (1995), European heritage and European values are defined as built on historical roots in classical antiquity, Christianity, the Renaissance, the Humanist movement, the Enlightenment, and, further in the development of democracy, the rule of law and human rights. European values are perceived as a cultural and historical unity. However, this point of view does not take into account the fact that violence, bloody conquest, and intolerance dominate European history. These can also be considered as foundations of European heritage.

harnessing the myriad identities that exist in Europe, will we be able to preserve the diversity that distinguishes Europe and represents our true competitive knowledge' (AER 2007, section C, para. 6). Diversity and 'myriad identities' are perceived as an instrumental good that aids the development of Europe: 'Diversity, which arises from the preservation and integration of identities, is the best instrument for innovation and for the economic, social and cultural growth of Europe' (AER 2007, section C, para. 6).

Within the *Udine Declaration*, European identity has only an instrumental role—it is perceived as means to an end and it does not represent a substantive good (i.e., the good in itself). Subsequently, it is argued: 'A shared European identity can only develop through a shared set of values and references and a common understanding of what it means to be European' (AER 2007, section C, para. 3). Further, 'A European identity should be based upon a sense of belonging to a common space, as well as European principles and values' (AER 2007, section C, para. 3). From these statements, it can be concluded that the concept of 'multiple identity' described in the *Udine Declaration* is fixed. It embraces regional and national identities determined by the borders, as well as European identity, which is founded on 'European values.'²⁶

Consequently, it can be argued that two different logics are employed within the framework of the *Udine Declaration*. The first is the logic of heterogeneity, based on concepts such as 'the emergence of multiple identities,' 'complex layers of identity,' identity as 'a constantly shifting phenomenon,' 'increased population shifts,' and 'diverse societies (which do not necessarily have a strong common identity).' The second is the logic of homogeneity based on concepts such as a 'clear sense of European identity,' a 'shared set of values,' a 'common understanding,' a 'sense of belonging to a common space,' and 'European principles and values.'

The *Udine Declaration* does not leave room for 'multiple, constantly shifting identities,' as it asserts. Although it introduces these concepts in section A, it undermines them in section C. The notion of identity employed in the *Udine Declaration* is still fixed by territory, and determines

²⁶These values are: democracy, tolerance, respect for human rights, protection and respect of minorities, and understanding of others (AER 2007, section C, para. 3).

values and principles, which are labelled as 'European.' Therefore, the diversity it attempts to promote in section A is, at best, 'thin.' The *Udine Declaration* attempts to establish multiple identities, which require the logic of difference (i.e., heterogeneity) but, contradictorily, still rely on the logic of sameness (i.e., homogeneity).

Nevertheless, the *Udine Declaration* is significant because it shows that EU regional policy should not be considered merely as based on financial solidarity between the Member States and other financial matters. The *Udine Declaration* emphasizes that EU regional policy is, first of all, the policy of multiculturalism. However, it does not recognize that celebrating cultural and ethnic diversity cannot be based on the fixed notion of identity. The *Udine Declaration* employs two contradictory approaches to European and regional identity. This chapter emphasizes the challenges to the problem of identity within the framework of the *Udine Declaration* as well as EU regional policy.

Via a close reading of the *Udine Declaration*, various binary oppositions arise, which point to the essentialist nature of the notion of identity represented in the document. A poststructuralist reading of the *Udine Declaration* shows that this declaration attempts to establish multiple identities, which require the logic of difference (i.e., heterogeneity) by still relying on the logic of sameness (i.e., homogeneity), which is contradictory. Therefore, the poststructuralist idea of the constructed identity can help the legal discourse to extend the notion of identity it employs. Poststructuralist authors reject the idea of common values from which the modern notion of identity is derived. They argue that these common values create metaphysics, which is based on the binary oppositions, and reject the politics of identity based on unity and universal values. Poststructuralist authors mostly emphasize heterogeneity and dissociation. However, this study does not rely on the ideas of those poststructuralist authors, who make new kinds of binary oppositions in which the difference will have priority over identity, dissociation over association, and heterogeneity over homogeneity. These authors create a new metaphysics, which reverses established power relations.

The conception of identity (both regional and European) inside the framework of European legal discourse, should not be developed from the ideas of 'common heritage,' 'universal values,' 'common destiny,' and

so forth. The concept of identity in European legal discourse should represent not a metaphysical but a political category. Only in this way is identity not fixed and able to be considered multiple and unbounded. According to Derrida, the difference is what constitutes European identity, which is open to otherness and is not self-identical.²⁷

5.4.3 European Identity and European Values in a Time of Crisis

The European Union is affected by economic, financial, demographic, and identity crises. Economic crisis in the Eurozone affects the question of European collective identity. This crisis has produced a sharper distinction between ‘centre’ and ‘periphery’ within the framework of European political discourse. The distinction between ‘centre’ and ‘periphery’ is derived from modernist politics.

Various divisions within the European Union created by the crisis question the definition of the European Union as a postmodern political community. EU political and legal discourses that aim at solving the problem of economic crisis in the Eurozone often emphasize the necessity of forming a stable core within the Eurozone. This mode of thinking is not in accordance with postmodern political order, as it creates a number of binary hierarchies. The construction of collective European identity has gained a new direction, whose consequence is a change in the relationship between the ‘self’ and ‘other’ within the European Union. Economic crisis in the Eurozone produced a rethinking of the binary opposition internal/external on which European identity is founded.

Binary hierarchies signify unequal power relations within the European Union. Unlike ‘external’ binary oppositions, which disentangle the ‘European’ and ‘non-European’ (for instance, Europe/Turkey, Christianity/Islam), ‘internal’ binary oppositions produced by the economic crisis in the Eurozone create divisions within the European Union

²⁷ According to Derrida, it ‘is necessary to make ourselves the guardians of the idea of Europe, of a difference of Europe, but of a Europe that consists precisely in not closing itself off in its own identity and in advancing itself in an exemplary way toward what it is not, toward the other heading or the heading of the other, indeed—toward the other of the heading, which would be the beyond of this modern tradition another border structure, another shore’ (Derrida 1992, p. 7).

itself (for instance, centre/periphery, North/South, responsible Member States/irresponsible Member States). ‘This is a new process in which the identity constitutive entities are not the outsiders, the natural, established others such as Turkey or Russia, but internal entities, members of the EU in-group’ (Tekin 2012, p. 3). This process of othering²⁸ does not only include geographical and cultural differences represented by Russia, Turkey, or the Western Balkans; it also points to internal differences within Member States. This process breaks the homogeneity of the European Union, which is very clearly reflected in the Eurozone crisis and, in particular, the Greek sovereign debt crisis, which showed the fragility of European identity (Tekin 2014).

The entire idea of the European Union is based on respecting the equality of its Member States. So the question is how this occurred. The division between ‘centre’ and ‘periphery’ within EU political discourse undermines the main principles on which the European Union is built. The same can be argued about the idea of a ‘two-speed’ Europe, which is often advocated in EU public discourse. By creating these kinds of dichotomies, the EU rejects any responsibility for the situation that occurred in the ‘periphery,’ which is perceived as the European Union’s *other*.

In this way, Europe is equated with the Eurozone, or at least with the centre of the European Union, which is, in turn, equated with the wealthiest EU Member States: Germany, France, Great Britain, the Benelux countries, Austria, and so on. The ‘periphery’ is perceived as consisting mostly of southern and eastern EU Member States. The pejorative acronym *PIGS* is often employed to designate these countries in European public discourse. This acronym refers to countries the most affected by the crisis: Portugal, Ireland (and/or Italy),²⁹ Greece, and Spain. The economic crisis in the European Union is mostly blamed on these countries and their cultural traits.

Hence, both economic and cultural divergences between the ‘centre’ and ‘periphery’ are stressed. The Member States that belong to the ‘centre’ are depicted as productive, efficient, responsible, and competitive. They

²⁸ ‘The term “othering” (...) in commentary on the EU and international relations more generally (...) refers to discourse that emphasizes the outsider’s difference, often with the effect of turning it into a security threat’ (Parker 2008, p. 9).

²⁹ Italy is a special case, since it can also be divided into ‘centre’ (wealthy north) and ‘periphery’ (south).

represent the 'self' that is divided from 'other,' which relates to Member States that belong to the periphery, which are ascribed laziness, inefficiency, irresponsibility, and a lack of competitiveness. These countries are even portrayed as 'autistic.' The German Chancellor, Angela Merkel, used this term to describe the lack of willingness of the Cyprus government to communicate with Germany (Weiland and Wittrock 2013). Because of this perception of southern and eastern Member States, a call for a 'two-speed Europe' is often advocated within the EU political discourse. Former President of France Nicolas Sarkozy suggested focusing on economic management and a 'two-speed Europe' with a powerful Franco-German economic zone at its centre. This idea is also advocated by German Chancellor Angela Merkel and Herman Van Rompuy, former President of the European Council ('Van Rompuy' 2014). Former President of France Sarkozy even calls for two Europes: 'There is not one Europe but two... In the euro zone, we must stop believing in the myth of equal rights between all members' (Vinocur 2014). The exclusion of *PIGS* from the Eurozone was widely discussed by European politicians.

There is also a distinction between 'old' and 'new' (mostly central and eastern European) Member States in EU public discourse. There are too many divisions in the European Union, which contradict the EU motto 'united in diversity.' Hungarian writer Péter Esterházy responds to these divisions in the EU public discourse:

Once I was an Eastern European; then I was promoted to the rank of Central European (...) Then a few months ago, I became a New European. But before I had the chance to get used to this status—even before I could have refused it—I have now become a non-core European. [W]hile I see no serious reason for not translating this new division (core/non-core) with the terms 'first class' and 'second class' still, I'd rather not speak in that habitual Eastern European, forever insulted way. (Case 2009, pp. 112–113)

The debate about European identity is closely connected to the question of the political nature of the European Union. The European Union was declared as the first postmodern political community in the world more than two decades ago (Ruggie 1993). However, various examples presented within this study (which reflect the nature of EU as a political community, EU citizenship and European identity) show that the EU has

failed as a postmodern community, since it is founded on a number of binary oppositions. Nevertheless, this does not mean that the European Union has also failed as a postnational political community. A number of authors equate the terms ‘postnational’ and ‘postmodern’ within political and legal studies (Düzgit 2012; Tekin 2014). This point of view is flawed, since the postnational political community may contain binary oppositions, while a postmodern community overcomes them.

This heterogeneity within the European Union is reflected in different interpretations of the sovereign debt crisis by different media in the European Union. For instance, Greek media portray this question in a different way from German media.³⁰ Thus, it may be argued that there are at least two public spheres currently in the European Union (Dobrescu and Palada 2012). Dobrescu and Palada argue about renationalization of the European public sphere in a time of crisis (Dobrescu and Palada 2012, pp. 22–23). This can be considered as a paradigm shift from the previous process of Europeanization of the national public spheres as one of the main characteristics of European integration.

The shift towards the national sphere is not only a characteristic of the periphery countries, but is a *quasi-general* response of the Union. The reasons for such a shift are varied: some believe that the effort to lend credit to the South has reached the limit, others feel that they are oppressed by the conditions of the loans and by the unbearable rigors of the austerity measures. (Dobrescu and Palada 2012, p. 23)

The *other* has always played a crucial role in the process of establishing and defining European identity. Defining Europe and Europeanness as a more desirable and more dominant term in a binary hierarchy can be traced back to Herodotus’s *Histories*, where Greeks are portrayed as more courageous than and culturally superior³¹ to Persians. Herodotus uses the words ‘barbarian’ and ‘Persian’ as synonyms. In his dialogues *Republic* and *Laws*, Plato makes a sharp distinction between Greeks and Barbarians. In the history of European thought, another point of view

³⁰ See, for instance: ‘Open Letter to Prime Minister George Papandreu,’ *Bild*, 5 March 2010.

³¹ According to Herodotus, Greek valued freedom, while Persians were satisfied to be servants of their king.

arises with Michel de Montaigne's *Essays*. Montaigne doubts that a sharp distinction between 'civilized' and 'barbarian' can be made.

Identity is always defined in relation to *other*. It is a relational concept, which is related to the *difference* that establishes it. Although the word 'identity's origin is from the Latin *idem* ('the same'), this concept signifies not only identification but also difference, since identification is not possible without establishing difference. When the difference is denied or marginalized, an essential concept of identity based on various binary hierarchies arises. Policies of identity founded on an essentialist notion of identity give priority to one dominant, stable form of identity and isolate it from all other possible forms of identity. In this way, various binary oppositions are created, such as we/they, self/other, and internal/external. The consequences of these policies of identity are racism, xenophobia, and various forms of discrimination.

As was shown previously, Greek cultural heritage was often perceived as the foundation of European identity and culture. In the time of Greek sovereign debt crisis, a shift in discourse occurred. Civilizational roots and European heritage are replaced by market values in definitions of European identity (Tekin 2014). 'Europeanness' is defined as a matter of choice, and Member States affected the most by the economic crisis (such as Greece) are perceived as less European than other, more economically stable Member States. According to former French president Nicolas Sarkozy, the Europeanness of Greece is no longer out of the question. It is a matter of choice: 'It is clear that question has to be on the European future of Greece: does Greece want to stay in the euro? We hope it does, but it's up to Greek people to pronounce on that.'³² According to Michael Glos, a member of the German Bundestag and a former Federal Minister of Economics and Technologies in Germany, Greece should be excluded from the Eurozone ('Greece Should Leave' 2012).

In the time of economic crisis, Europe is often identified with the Eurozone in EU public political discourse. According to German Chancellor Angela Merkel: 'Europe will fail if the euro fails. Europe wins if the euro wins' (Tekin 2012 op. cit. p. 4). The same is argued by the President of the European Council, Herman Van Rompuy: 'If we don't survive with the euro zone, we will not survive with the European Union' (Neuger 2010). Former President

³² Former President of France, Nicolas Sarkozy, G20 Summit, 2 November 2011.

of France Nicolas Sarkozy argues: 'If the euro explodes, Europe will explode. It's the guarantee of peace in a continent where there were terrible wars' (Wright 2012 op. cit.). Former Polish Foreign Minister Radoslaw Sikorski warns that the collapse of the Euro could lead to 'apocalyptic' crisis (Wright 2012). German Chancellor Angela Merkel emphasizes: 'The euro is our common fate, and Europe is our common future' (Castle and Dempsey 2010).

In the period of economic crisis, references to European heritage are replaced by identity factors based on market values. Thus it can be argued that a paradigm shift in the perception and definition of European identity has occurred within EU political discourse. The cultural³³ and legal definitions³⁴ of European identity are replaced by new identity constructs founded on the values of the market. This paradigm shift brings the transformation to the perception of the European Union as a political community and identifies the change of a sense of belonging (Tekin 2014). It also puts solidarity at stake.

Solidarity is one of the main European values,³⁵ which is necessary for cohesion, development and improvement of the European Union as a political community. The European idea of solidarity presented in the *Charter of Fundamental Rights of the European Union* and other EU documents is constructed to reduce the gaps between EU Member States. Solidarity among the EU Member States is also promoted by Article 2 of the *Treaty of Lisbon*. Nevertheless, the reactions of politicians to the Greek sovereign debt crisis and the crises in the other EU Member States do not reflect solidarity. According to German Finance Minister, Wolfgang Schäuble: 'Greece has enjoyed a lot of European and German solidarity (...) But solidarity is not a one-way street. That shouldn't be forgotten in Greece' (Neuger 2010). This point of view clearly distinguishes Greece from the rest of 'Europe' and misrepresents the essence of solidarity, since solidarity may be facilitated only by shared identity. It requires identifying with the position of the other.

The reaction of the European Union to the crisis undermined solidarity as one of the fundamental European values (or principles) and

³³ As already argued, this point of view defines European identity as a result of European heritage and European history.

³⁴ Legal definition founds European identity on the main ideals of the Enlightenment, which include human rights, democracy, and the rule of law.

³⁵ As it is shown in the previous lines, sometimes it is defined as 'principle.'

revealed shortcomings regarding the development of solidarity in the European Union (Dobrescu and Palada 2012). The European Union did not respond to the crisis as ‘a union of all,’ but different EU Member States faced this problem within their national borders (Dobrescu and Palada 2012, p. 24). Hence it can be concluded that solidarity is at stake in the European Union and that there is a huge gap between theory (legal documents) and praxis (everyday politics and EU public political discourse). Therefore, the European Union is not consistent with the principles on which it is founded. The European discourse in the time of crisis reveals a shift towards economic union in which capital rules. The European Union as a political community cannot function without solidarity, since political integration without solidarity is almost impossible.

European identity has to overcome these binary hierarchies to embody a postmodern concept of identity and postmodern idea of EU citizenship. It is also necessary to answer the following questions, which regard the concepts of ‘Europeanness’ and ‘Europe’:

Who is the new ‘Other’ in that Europe? Who will be members of the ‘Not-Yet-Europe’, ‘Sub-Europe’ or ‘Never-Europe’ groups? How will Europe’s new anteroom filled with ‘Europe-thirsty’ aspirants look? Who is next in line waiting to join the *process of accession to Europe at any price (or below price)*? How much of Europe vanishes every time a *New Europe* consisting of an elite club is constituted on its soil? How will the process of further antagonistic dichotomization look? How firm will Europe’s new borders be? (Velikonja 2005, pp. 101–102)

5.5 The EU Visa Liberalization Process for Western Balkan Countries as a Reflection of the Politics of Modernity

This inquiry will explore the visa liberalization process and its implications affecting Western Balkan countries from the perspective of post-modern politics. It will be argued that the idea of citizenship that is deduced from the entire idea of the visa liberalization process for Western

Balkan countries rests on a modernist notion of citizenship based on the idea of a stable and fixed identity. This idea of citizenship is contradictory to the concept of European citizenship as a postnational, and, thus, post-modern concept based on multiple and shifting identities. Postmodern European politics should overcome universalist assertions of modernist Europe, which do not acknowledge the ‘non-European world.’

Jakobs and Maier emphasize that it is hard to define Europe geographically, culturally, or historically (Jakobs and Maier 1998). They argue that Europe is a vague concept whose borders are uncertain. According to Lowenthal, ‘Europe has always been more of a mental construct than a geographical or social entity’ (Lowenthal 2000, p. 314). On the other hand, it is often argued that newly constructed term ‘Western Balkans’³⁶ is vague and confusing.³⁷ This concept cannot be sharply defined, as it is constantly transformed. Thus, it is constantly reinvented. However, this is not acknowledged by the EU visa liberalization politics, which perceives Western Balkans as a territory defined only by fixed borders. In this way, the EU visa liberalization process creates a number of binary distinctions, because it perceives various ethnic groups as homogeneous and fixed. Subsequently, it sharpens ethnic divisions and does not represent a path towards more inclusive politics. It does not acknowledge the fact that groups are made up of individuals who have different narratives, experiences, and perspectives. Therefore, they are not homogeneous and they are continually subject to change and reinvention. The EU visa liberalization politics should embrace a postmodern notion of identity, which represents the foundation of a new, more inclusive notion of citizenship.

5.5.1 The Postmodern Account on Identity and Difference

As argued in Chapters 2 and 3, postmodern politics attempts to overcome the dichotomies between global and local, citizens and strangers, self and

³⁶ This term refers to Albania, Bosnia and Herzegovina, Croatia, Serbia, Montenegro, Macedonia, and Kosovo (whose status is not clear yet).

³⁷ This term was officially introduced in 1998 by the Austrian Presidency of the European Union.

other, universalism and particularism, and so forth. 'With the advent of poststructuralist thought, the term "post" has taken an adversarial and phantasmal meaning whereby one always occupies a position of radical contingency in the wake of identity-formation' (Radhakrishnan 1987, p. 219). Postmodern politics rejects grand narratives and comprehensive explanations of historical events, knowledge, and power. Grand narratives imply the modern notion of identity as a fixed, stable, and unified subject. This notion of identity denies the heterogeneity of human experience, which cannot be explored by postulating universal explanations and values. On the other hand, the critics of postmodernism argue that the postmodern critique of grand narratives represents a grand narrative itself. However, this point of view is not valid, because postmodernists argue that the meaning is constructed, and therefore, always open to reinterpretation. This means that even the postmodernist critique of grand narratives is constantly reconstituted and transformed, which is why it is not another grand narrative itself.

The fall of grand narratives led to the emergence of the postmodern fragmentary and shifting notion of identity. 'Postmodern perspectives on the political have tended to adopt non-topographical conceptions which are dynamic and fluid. Rather than focusing on institutions, these perspectives have highlighted discursive, linguistic, psychological and performative moments of political action' (Squires 1998, p. 121). The politics of postmodernism emphasizes the importance of recognizing difference. Postmodernists reject the notion of fixed borders. Borders are perceived as metaphors or mental constructs.

The 'border tensions' of postmodernism as method have blurred the boundaries between genres and disciplines, high and popular culture, theory and practice and a host of binary oppositions—center/periphery, global/local, assimilation/ethnic purity—which validate or authorize restrictive cultural images of social actors inscribing them in terms of fixed being rather than fluid becoming. (Smith 1992, p. 517)

Consequently, ethnicity is perceived as flexible and shifting.

Postmodernist theorists argue that representatives of modernity gave priority to identity understood as a conscious, rational, and stable subject over difference. These thinkers argue that the notion of difference should

not be understood in universalist modernist assumptions. The idea of 'difference' should be understood as heterogeneous. The fragmentary notion of identity emphasized by postmodernists does not perceive ethnic groups as monolithic and essentialist categories. They are considered heterogeneous because they consist of different individual narratives and experiences, which are dynamic and constantly in a process of reconfiguration. Thus, they include multiple and often different and opposing voices.

The postmodern notion of identity does not perceive self-consciousness as the foundation of selfhood. It is based on the idea that an other-consciousness is also a necessary part of the self. The proponents of postmodernism argue that the universal, rational, and global concepts of the Enlightenment do not precede local, and socially and historically particular, concepts. The postmodern notion of identity overcomes the universalist and transhistorical subject of the modernity. Representatives of postmodern thought argue that identity is not stable and unitary but fragmentary. It is culturally and historically constructed. Consequently, "ethnicity" is one such provisional, historically conditioned social construct. Ethnic identity is not a thing outside itself (...) Rather it is a dynamic mode of self-consciousness, a form of selfhood reinterpreted if not reinvented generationally in response to changing historical circumstances' (Smith 1992, p. 512). Subsequently, ethnic identity is continually reinterpreted.

Some feminist authors criticize the postmodern notion of fragmentary and fluid identity, because it undermines the subject in the ontological sense. They argue that the postmodern notion of identity makes politics impossible and it emerges only in times when women, minorities, and other marginalized and denied groups and individuals attempt to form their subjectivity (Smith 1992, p. 525). Nevertheless, postmodernist theorists do not undermine the idea of subject. They argue that the subject is produced by discourse and is constantly reconstituted. Consequently, the term 'difference' should also be perceived as fluid and changeable. It should not be perceived as a term to which all marginalized groups can be assimilated, because in this way it is perceived as a modernist homogeneous and monolithic term (Smith 1992).

Braidotti argues that even the neo-liberal notion of 'difference' implies new forms of exclusion on national, regional, and local levels (Braidotti

2005). To promote the dissociative character of the postmodernist notion of 'difference,' which cannot be equated with a modernist understanding of this term, Derrida introduces the idea of 'différance.' Derrida's notion of 'différance' rejects all kinds of binary hierarchies and is constantly reinterpreted. According to Bhabha, the notion of difference reflects cultural hybridities. Therefore, it is socially constructed (Bhabha 1994). Foucault argues that the postmodern notion of 'difference is transformed into which must be specified within a concept, without overstepping its bounds. And yet above the species, we encounter the swarming of individualities. What is this boundless diversity, which eludes specification and remains outside the concept, if not resurgence of repetition?' (Foucault 1977, p. 82) The postmodern notion of identity is produced through difference and overcomes the idea of stable and unitary self.

5.5.2 The EU Visa Liberalization Process for Western Balkans Binaries

According to Braidotti, the European Union is a paradoxical and controversial project. It contains both characteristics of modernist and postmodernist politics. On the one hand, the European Union represents an attempt to create a united market, but on the other hand, it is an attempt to overcome European nationalism (Braidotti 2005). Europe is reconstructed and decentralized from within Europe. Braidotti argues that this process leads to the creation of a multilayered and shifting European identity, which she refers to as 'nomadic.' She maintains that 'being a nomadic European subject means to be critical of unitary, hegemonic and imperial notions of Euro-centrism' (Braidotti 2005, p. 176). Hence, the nomadic subject rejects the modernist Cartesian idea of the unitary self. For this reason, it can be compared to the postmodern concept of identity. This conception of identity is not tied to a geographical or geopolitical notion of borders. However, the social space of the European Union is paradoxical and is determined both by fixed borders (which represent a form of control between the European Union and its non-member states) and by their erasure within the EU Member States (Braidotti 2005). Braidotti concludes that, in this way, the postnationalist identity

coexists with the discrimination and marginalization that are produced by the fixed notion of identity. Consequently, the European Union as a project does not overcome the dichotomies between modernism and postmodernism.

According to Young (1989), the modern liberal conception of citizenship is based on the priority of universality and sameness over particularity and difference. This means that the rules are the same for all and apply to all citizens in the same way. However, this conception of citizenship implies homogeneity and sameness. Modernist universal citizenship is a myth, which denies diversity. This concept of citizenship is exclusionary, because it is based on the modernist notion of fixed identity, which does not include difference.

Modern liberal political thinkers create a number of binary oppositions, such as right/good, essential/contingent, nature/culture, and reason/emotion. The first term is considered dominant, because it is perceived as based on reason and the idea of 'right,' which is considered universal. The second term in those binary oppositions is often neglected and denied, because it is considered to be based on the concept of 'good,' which is regarded as contingent. The politics of modernity cannot embrace the idea of pluralism and the notion of fluid and multiple identity.

The EU legal discourse still employs modernist fixed terms, which include various binary oppositions, such as European/non-European, citizen/stranger, and self/other. This point of view is the most obvious example of European identity. Delanty argues that 'European identity is becoming a white bourgeois populism defined in opposition to the Muslim world and the third world' (Delanty 1995, p. 3). Fossum argues that idea of supplanting the national identity with a European identity³⁸ should be replaced by the process of transformation of national identity to become postnational (Fossum 2001). The European Union is a multilevel entity that includes local, regional, national, transnational, and other identities. The concept of a unified European identity is founded on the idea of Cartesian³⁹ *cogito*, which is the foundation of modern

³⁸The *Treaty of Amsterdam* (1997) asserts that European citizenship supplements national citizenship.

³⁹However, it should be emphasized that Descartes was influenced by the *Zeitgeist* of the Reformation.

notion of identity. *Cogito* represents the idea of a unified, conscious, and rational thinking self, which cannot be questioned.

The *Declaration on European Identity* (1973) states that ‘unity is a basic European necessity to ensure the survival’ of the European civilization. Although this declaration emphasizes the dynamic nature of European unification, the idea of diversity is defined by common principles and values, which is flawed.

The diversity of cultures within the framework of a common European civilization, the attachment to common values and principles, the increasing convergence of attitudes to life, the awareness of having specific interests in common and the determination to take part in the construction of a United Europe, all give the European identity its originality and its own dynamism. (*Declaration on European Identity* 1973)

Subsequently, the idea of a European identity still represents the modernist notion of identity as a stable and self-contained subject. Consequently, it cannot embrace pluralism and particularism.

Carl F. Stychin criticizes essentialist conceptions of the politics of modernity within the EU and makes a case for a ‘politics of affinity’ and a flexible notion of EU citizenship that accommodates multiple identities. The ‘politics of affinity’ avoids homogenizing assumptions and unitary conceptions of European, national, regional, sexual, and other identities. It promotes the diversity, otherness, and fluid character of the postmodern European citizenship. It also advocates a more fluid idea of boundaries. The politics of affinity grounds European politics and citizenship discourse on affinity (not identity). According to Stychin:

A politics of affinity differs from one centered on a fixed identity in that affinity suggests that the fictions of a homogeneous and totalizing group attribute have been rejected in favor of a recognition that a shared characteristic or experience – which may lead to (or require) common endeavors – cannot overwhelm the differences that exist between members of the group. (Stychin 2001, p. 113)

The *Declaration on European Identity* advocates the modernist essentialist notion of identity. However, Stychin's idea of politics of affinity points to the postmodern notion of fluid identity. Both modernist and post-modernist perspectives are still employed in the studies of Balkan identity. For example, they can be identified within Bechev's distinction between a primordialist and a constructivist approach to Balkan regional identity.⁴⁰ The primordialist approach perceives Balkan regional identity as essentialist, fixed by borders, and with a 'specific cultural content' (Bechev 2004, p. 81). This approach to identity can be compared to a modernist idea of identity. Alternately the constructivist approach to Balkan regional identity introduced by Bechev shows some basic traits of a postmodern notion of identity. It perceives identity as a mental construct, which is dynamic and not based on the distinction between 'us' and 'them.'

The EU visa liberalization process for Western Balkan⁴¹ countries reflects a modernist (i.e., primordial) notion of Balkan regional identities and neglects the postmodern (i.e., constructivist) approach, which should be applied to contemporary, pluralist societies. Postmodern politics rejects the essentialist notion of ethnicity. Radhakrishnan argues that a new conception of 'postethnic' should be introduced 'as a radical and necessary extension of the "ethnic"' (Radhakrishnan 1987, p. 202). The visa liberalization process for Western Balkan countries is based on the idea of a fixed, universalist identity, where the particular and local is diminished. The idea of hybridity of cultures is not taken into account.

On 19 December 2009, visa-free travel was granted to Macedonia, Montenegro, and Serbia. It was argued that 'Albania and Bosnia and Herzegovina are not considered to have met all the benchmarks⁴² agreed under the visa liberalization dialogue with the countries of Western Balkans' (Visa Liberalization 2009). Kosovo was also excluded from the

⁴⁰ Bechev also introduces a continualist approach to Balkan regional identity, which is an intermediary position between primordialist and constructivist approach.

⁴¹ 'The Council decided to grant visa free travel to and throughout the Schengen area for citizens of The Former Yugoslav Republic of Macedonia, Montenegro and Serbia (15,521/09). It did so by adopting amendments to regulation No. 539/2001. The visa waiver will apply from 19 December 2009 to holders of biometric passports' (Visa Liberalization 2009).

⁴² 'The main areas where benchmarks were set under the visa liberalization dialogue are border controls, passport security, fight against organized crime and corruption as well external relations and fundamental rights' (Visa Liberalization 2009).

process of visa liberalization in 2009.⁴³ Consequently, the visa liberalization process divides the people of Western Balkans instead of uniting them. It makes binary oppositions: European/non-European, we/them, Christian/Muslim, majority/minority, global/local, and so forth, where the first term is considered to be dominant.

EU law makes a distinction between Western Balkan countries whose nationals have the right to free movement and those who do not. EU law oversimplifies the notion of identity of Western Balkan country's nationals. However, on 7 October 2010 the European Parliament gave its green light to visa free travel for Bosnia, Herzegovina and Albania (Visa Liberalization 2010). This decision does not substantively change the perception of the Western Balkans within EU law. Western Balkans is still perceived as a monolithic entity:

The Commission entered a statement to the ministers of the Council meeting on the establishment of a follow-up mechanism to the visa liberalization process for the Western Balkan countries. This follow-up mechanism concerns the monitoring of the reforms which these countries need to continue to carry out. It also introduces emergency consultation arrangements so that the European Union and its member states can, in cooperation with the authorities of the countries concerned, react on the best possible conditions to any specific difficulties which might arise with flows of persons from the countries of the Western Balkans and states that the Commission may if necessary propose the suspension of the visa travel. (Visa Liberalization 2010)

It is clear from these lines that the Western Balkan countries are ascribed a homogeneous identity that does not recognize difference. In recent European studies, it is often emphasized that visa liberalization is another example of the conception of the European Union, and Europe as a whole, as a Christian community. In the preamble of the *Treaty of Lisbon*, 'the cultural, religious and humanist inheritance of Europe' is emphasized. However, a number of theorists argue about the homogeneous picture of European heritage, based on Christianity.

Olli Rehn, a former member of the European Commission responsible for EU enlargement, argues that values define Europe, not borders.

⁴³ Kosovo was not included in this process, because its status was not yet clear.

He argues that 'the map of Europe is defined in the minds of Europeans' (Rehn 2005). Rehn argues that 'enlargement is a matter of extending the zone of European values, the most fundamental of which are liberty and solidarity, tolerance and human rights, democracy and the rule of law' (Rehn 2005). However, the definition of these terms is not clear.⁴⁴ Olli Rehn also argues that the country must have a 'European vocation,' which is measured by the will of its people to join the European Union (Rehn 2005). However, the problem of the definition of a 'European vocation' remains. If it is perceived as an instrumental concept defined by exact rules and values, it cannot be perceived as a mental construct defined in the minds of Europeans (as previously argued), but as a fixed term that implies borders. Contradictory to the introducing assertions of his speech, Rehn concludes: 'Although the borders of Europe are more mental than physical, geography still matters when it comes to spreading European values' (Rehn 2005). Consequently, values are tied to borders and, thus, fixed.

EU visa liberalization politics do not take into account that the Balkans is a heterogeneous, multiethnic area. The former EU visa-free regime that included the Former Yugoslav Republic of Macedonia (FYROM), Serbia and Montenegro, did not take into account that Bosnia and Herzegovina was divided into two entities by the Dayton Agreement in 1995. Those entities are the Serb Republic and the Muslim-Croat Federation. In Bosnia and Herzegovina, there are three ethnic groups: Bosnians, Serbs, and Croats. Most Bosnian Croats already have Croatian passports and since Republika Srpska residents can apply for and obtain Serbian passports, the EC proposal for Bosnia would affect the majority of Bosniaks and those Bosnian Serbs, Jews and others that live in the Muslim-Croat Federation.

⁴⁴ For example, what kind of liberties are fundamental for Europeanness? Berlin makes a distinction between negative and positive liberty. Negative liberty is often defined as a freedom from constraint, while positive liberty is founded on the idea of self-realization. The *Charter of Fundamental Rights of the European Union* does not acknowledge some positive freedoms such as freedom from poverty, the right to self-development. It mostly embraces negative freedoms such as freedom of thought, conscience, and religion (Article 10), freedom of expression and information (Article 11), freedom of assembly and association (Article 12), and so forth. On the other hand, the notion of solidarity is not clearly defined within the framework of European legal discourse. The solidarity is described as a 'value' within the *Charter of Fundamental Rights*, while within the *Treaty of Lisbon* it is characterized as a 'principle'. This creates confusion, because principle is a broader concept than value. For example, the principle of democracy embraces four values defined by The Charter: dignity, freedoms, equality, and solidarity.

The EU's message now weakens already non-existent national identity and opposes the EU's earlier multi ethnic ideals (Rusila 2009). Although EU policy emphasizes pluralism and integration, the aim of which is to avoid new ethnic divisions, the visa liberalization process for Western Balkan countries creates new boundaries between ethnic groups.

The Young European Federalists (YEF)⁴⁵ emphasize that the new visa liberalization proposal will make some ethnic divisions deeper. They argue that this process is founded on the binary opposition Christian/Muslim, where Muslim identity is denied. The Young European Federalists emphasize that the EU policy towards Kosovo⁴⁶ shows numerous contradictions: 'If Kosovo is considered as part of Serbia, Kosovars should be allowed visa-free travel like the rest of the country. In contrast if Kosovo is recognized as an independent state, it should be brought on the road to visa liberalization' ('EU-Balkan Visa' 2009). Minority Rights Group International reports on the status of minority groups in Kosovo as being marginalized and discriminated against. Consequently, some minority groups—such as Turks, Serbs, and Ashkali—began to leave Kosovo. However, minority groups such as Roma and Egyptians do not have countries to escape to, which will increase the marginality and poverty of those groups ('Kosovo's Independence' 2009). Thus, in Kosovo's dichotomy majority/minority prevails, where minority is denied and excluded.

The document that establishes the visa liberalization process in the Western Balkans does not acknowledge multiple identities in this area. These identities are heterogeneous, and they are more fluid in the borderlands. One example of the phenomena of shifting and fluid identity is the case of Albanian Crypto-Catholics (Duijzings 2000). The visa liberalization process in the Western Balkans is based on the assumption that every individual who is granted the new right of free movement within the European Union has a new biometric passport. This identification document is perceived as a representation of the individual's real being and true identity, where all particularities are not taken into account. The new biometrical passport is a symbolical representation of the (fixed) identity of peoples of the Western Balkan countries who are part of the visa

⁴⁵YEF is a pro-European political movement.

⁴⁶There are EU divisions over its legal status.

liberalization process. The citizens of Western Balkan countries who are excluded from the visa liberalization process are denied. However, their identities are also perceived as homogeneous. Consequently, new dichotomies in the Western Balkans emerge, such as, included/excluded, we/they, inner/outer, and European/non-European. Identities are not determined by feelings and beliefs but by fixed borders and strict dichotomies.

The visa liberalization process for Western Balkans represents an example of the politics of modernity, which is based on the fixed notion of identity. The modernist account of identity on which the EU visa liberalization politics for Western Balkan countries is founded creates various dichotomies and creates new forms of exclusion, where some ethnic, religious, and other groups are marginalized. These groups are perceived as homogeneous, and their multiple and fluid identities are denied. Although the idea of European citizenship includes multiple identities, such as, regional, national, and European, and creates the room for the new, postnational, and postmodern politics based on the idea of shifting identity, EU visa liberalization does not succeed in escaping modernist pitfalls. It deepens ethnic divisions, and it can be questioned whether it leads toward greater freedom.

5.6 Conclusion

The concepts of 'European values,' 'European identity,' 'European heritage,' and 'European culture' are still defined as fixed categories within the framework of EU legal discourse. The EU documents that define European citizenship and European identity should not include essentialist assumptions based on the distinction between the 'self' and 'other,' which exclude and marginalize a number of citizens. European identity should not lead to new forms of nationalism. That is why it should be flexible and dynamic. It is necessary that the European Union 'set[s] out to define a new identity for its supranational agenda as more and more Eastern European countries started knocking on the Union's doors' (Zemni 2002, p. 160). An agreement on European identity is crucial for further European Union integration processes and resolving the problems of accession of new member states such as Turkey.

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Conclusion

Although postmodern thought has been around for more than sixty years the application of postmodern ideas in legal and political studies remains under researched. *Postmodern* is either ignored or misinterpreted, and within legal and political studies, where the theme is the nature of the European Union as a political community, it is often argued that the European Union is a postmodern, postnational political community. However, postmodern is not sufficiently defined but is used as a signifier for everything that is new and modern. Additionally, *postnational* is usually presented as a *postmodern* phenomenon. However, *postmodern*, in the framework of legal and political theory, is a broader concept than *postnational*; for example, postnational citizenship does not have to be postmodern. As it was explained in the previous chapters, *postnational* can still include various binary oppositions (such as national/postnational, public/private, and the right/good), while the starting point of postmodernism is precisely the need to overcome these dualisms.

This study aimed to analyse whether there was a need for the European Union to modify its definition of EU citizenship and identity in accordance with the new institutional and sociological framework of postmodern reality. The concepts of both EU citizenship and

European identity are dynamic, historically, and socially constructed categories that are in a constant process of reinterpretation. Basing EU citizenship on universalistic assumptions is incompatible with the idea of citizenship that includes multiple identity. Civic culture is a set of different narratives, representations, and discourses that are found on the basis of the justification of norms that define the liberal concept of citizenship. Narratives, representations, and discourses that make up the civic culture of a defined historical period are contingent and cannot be essentialized.

This study focuses on European identity and citizenship and analyses their nature, without attempting to universalize the results and their application to other modern forms of citizenship. The fact is that the European Union, as a political community, differs from the rest of the world. Take, for example, the USA, which also represents a political body.¹ When referring to the European Union as a political community, the heterogeneity of its twenty-eight member countries with their different national governments is always taken into account, and, therefore, the solution to many problems, such as immigration, is more complex. The issue of European identity is still multilayered, while the source of US identity is the US constitution. The US constitution is the traditional basis for a high level of identification of US citizens with their country. This kind of identification is politically conditioned, and in modern times, it is most frequently related to the quality of democracy (Meyer 2004, p. 53).

In addition, the European Union faces the problem of third-country nationals, which is not the case in the USA. Furthermore, in the USA there is one official language,² while the European Union is a multilingual environment with more than twenty official languages. In addition, the European Union borders many developing countries, which are potential members, while the USA borders a single developing

¹The USA is a federal constitutional republic comprising fifty federal states and one federal district. Each federal state has its own government, whose authority is separated from the federal government, but which generally does not deviate from the principles of the federal government in Washington.

²In the federal state of Hawaii, in addition to English, Hawaiian is an official language.

country—Mexico.³ EU law is characterized by conformity—it applies to all Member States, while this cannot be said for the USA: there are irreconcilable differences between individual states. For example, some federal states still carry out the death penalty, while others abolished it. In contrast, the death penalty is incongruent with the European ideal of human rights. Although certain political values—such as respect for human rights, democracy, and tolerance—coincide, there are distinct contextual differences and disagreements between the USA and the European Union.

Methodologically speaking, one cannot persist with the postmodern model of citizenship, bearing in mind some binary oppositions that are difficult to dismiss, namely: Europe/the rest of the world and EU citizenship/global citizenship. Postmodernism applied to European studies means primarily referring to the idea of polyphonic and fluid identities to solve the problem of ‘internal outsiders’ in the European Union. Thus, the application of postmodern idea of identity to EU citizenship and European identity means decentralization, as well as recognizing and rejecting essentialist elements (those contents that lead to homogenization of ‘European values,’ ‘European heritage,’ and so on—by denying and ignoring the contribution of other cultures to the process of their constitution).

Although European Union citizenship involves multilayered and flexible identities recognized within anthropological, philosophical, historical, and political studies, it is not sufficiently emphasized or it is ignored in the context of treaties, conventions, and other legal documents. The research presented in this study tried to show that the definition of citizenship under the contract of the European Union is obstructed by certain metatheoretical assumptions, which represent the heritage of Enlightenment thought.

This study also seeks to avoid the imposition of the discourse of truth, which takes away the rights of marginalized groups and narrative practices, because mobilizing the categories of identity for the purpose of politicization is always threatened by the possibility that identity will become an instrument of the power to which it is opposed (Butler 1992).

³ Mexico is still considered a developing country, as the process of industrialization in this country is not yet sufficiently developed.

While the representatives of poststructuralist feminist theory and critics of the theory of performativity question what kind of opportunities for gender arise from the radical critique of categories of identity, this study examines how the rejection of the policy of stable, fixed, and monolithic identities affects the legal and philosophical notion of EU citizenship.

In Chapters 2 and 3 of the study, different conceptions of identity and citizenship were presented. The first and second chapters dealt predominantly with the analysis of new postnational and postmodern paradigms that give rise to new forms of identity and citizenship as a result of evolving political communities towards postnational and postmodern forms of political order. These postmodern and postnational realities are created by increased migration and the development of information and communication technologies, which enable the creation of new, transnational, and flexible forms of identity and citizenship. The European Union, as a political and economic community, calls into question traditional forms of citizenship and identity that are rooted in the nation-state, and, therefore, the idea of EU citizenship is based on separation of political and legal content of citizenship from the very idea of nation.

In Chapter 4, the nature of the European Union as a political community was examined and its postmodern character emphasized. This stems from its hybrid nature, which includes subnational, national, and postnational levels. The hybrid character of the European Union is reflected in the fact that it has traits of intergovernmental and postnational political communities. It is further analysed whether the characteristics of a postnational political system, which could be attributed to the European Union, indicated the postmodern nature of EU citizenship. Chapter 4 refers to the nature of the relationship between the nationality of the Member States and EU citizenship. The core question is whether European Union citizenship, in its attempt to overcome the boundaries of national citizenship and get closer to the ideas of postnational citizenship is paradoxically limited by territorial, exclusivist ideas of membership that include only some citizens of Europe, is heading towards the postmodern idea of fluid and contingent identities.

The third chapter examined whether the concept of EU citizenship, determined by the legal system of the European Union, contains deposits of metaphysics, which it is necessary to identify and reject. The analysis of defining the concept of EU citizenship under the *Maastricht Treaty*, the *Amsterdam Treaty*, the *Treaty Establishing a Constitution for Europe*, the *Charter of Fundamental Rights of the European Union*, and the *Treaty of Lisbon* demonstrates this problem.

Chapter 4 analysed the problem of the ‘democratic deficit’ of the European Union and the measures taken by European Union for its resolution. The chapter examined whether some of the solutions of the European Union, such as, ‘Europe for Citizens’ and *Plan D for Democracy, Dialogue and Debate*, lead to the creation of a heterogeneous European public sphere, and therefore represent a path to a postmodern conception of citizenship based on overlapping and fluid identities.

Chapter 5 also analysed metaphysical and essentialist assumptions on which the concept of European identity is based, derived from the definition of ‘European values’ and ‘European heritage’ and similar terms, which EU law defines as homogeneous categories. Two basic approaches to European identity were presented—substantial (which includes religious, ideological, and ethical determination of values) and formalistic-legal (which provides principles and norms of universal character, such as freedom, the rule of law, and democracy).

Within Chapter 5, the concept of European identity was analysed. It examined how the idea of European identity is determined by the *Declaration on European Identity* (1973) and the *Charter of European Identity* (1995), and whether European identity is a homogeneous construction fixed by a certain set of European values that does not allow the influence of otherness, or if it is a form of postmodern multiple identity that includes different, even contradictory, subject positions. European identity is supposed to represent a form of postmodern identity, since the European Union is a supranational community, which includes postnational, national, and subnational plans. European identity should not be based on a set of homogeneous values, which exclude otherness. This would turn identity into a passive instrument

of discord. Many Europeans are afraid that the cultural standardization brought by European integration will cause the loss of national or ethnic identity. However, if EU citizenship is a postnational political entity including multiple, contingent, and dynamic identities, this fear is unfounded.

If the investigation of EU citizenship was limited only to the internal legal analysis of the relevant national, transnational, and European legal sources, as well as any other monolithic perspective, the outcome of this study would be incomplete, since the legal discourse would be perceived as completely independent from the broader political, social, and historical context in which law and legal institutions function. Accordingly, this study presented a contextual shift in the field of legal research, based on postmodernism, or postmodernist critique, of traditional metaphysical doctrines.

By questioning European identity and citizenship from the perspective of postmodernism, the static quality and one-dimensionality of many legal studies is avoided. Postmodernism redesigns basic concepts represented in the history of philosophy and calls into question the complete ontological and epistemological regime, which is located in the subtext of the legal system. Postmodernism includes not only critical, discursive practices directed towards a redesign of existing binary hierarchies and authorities but also a critical attitude between the individual representatives of postmodernism that are positioned differently in these disputes, since postmodernism eludes any coherence and homogeneity.

Postmodern theory⁴ is shaking homogenous, coherent, and monolithic constructions, and postmodernists question the metaphysics based on *logos*. The proponents of postmodern theory believe that homogeneous and fixed identities produce violence and repression, questioning the naivety and the groundlessness of every identity that excludes otherness. As an anti-foundationalist view that includes multiple and shifting identities, postmodernism can represent not only the context in which both EU citizenship and European identity can be studied but also a source of criticism of essentialist claims of European identity and citizenship.

⁴ Postmodernists claim that 'theory' does not represent a monolithic entity, and the postmodernism itself includes critical practices that elude any totalization.

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