Tackling Racism in Europe

An Examination of Anti-Discrimination Law in Practice

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The Aim of this Study

Unquestionably, Europe is experiencing a period of momentous change. The collapse of the monolithic structure of the Soviet Union, the fragmentation of Yugoslavia, the re-unification of Germany and the creation of the European Union are all changing the map of Europe. With these changes have come a host of problems, not least of which are the inter-ethnic conflicts now raging in many of the recently formed and emerging states. These conflicts are often violent, and there is no doubt of the need for urgent political remedies.

However, there is a danger that attention will focus too strongly on the urgency of solving these conflicts and will be deflected from the fragile and at times precarious social relationships between the more stable communities of Western Europe and the minority groups which exist within them. Today in Western Europe the post-Second World War emigrants from the Caribbean, Asia, Africa and the Middle and Far East, who were often invited into Europe to help fuel the engine of industrial recovery, are now classed as the new settlers. Their legitimate hopes and aspirations for equal opportunity within pluralist democracies and within a tolerant European Union have been frustrated not only by overt racism, manifested in incitement, intimidation, physical violence and harassment, but also in the pervasive, persistent and equally corrosive racial discrimination which they meet in every aspect of life.

The first states to ratify the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD, 1965) were quick to suggest that discrimination was alien to the naturally harmonious race relations existing within their own territories.[1] Today, however, there

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1. M. Banton, 'Effective Implementation of the UN Racial Convention', *New Community*, Coventry, 1994, vol. 20, no. 3, 1994, pp. 475–487.

is a healthier acceptance that all is not well in the state of Denmark or in her 11 or more colleagues in the Union. But not all states have accepted that a legal framework outlawing racial discrimination and enabling or requiring positive action is a necessary, if insufficient, prerequisite to effecting social change in order to promote equality of opportunity. Article 119 of the Treaty of Rome has brought the subject of equal opportunity for women within the competence of the European Union, and the Social Charter has been designed, at least in part, to create a level playing field in the enlarged free market. There is now a need for the European Union to make racial equality one of its primary concerns, and there is a particular need for an anti-discrimination directive.

The principal aim of this book is to provide a straightforward overview of anti-discrimination law and its context in a representative selection of European states. It is also intended to make comparisons between states and to examine what opportunities exist for the European Union to introduce its own legislation to promote more effective measures against racial discrimination.

An important reference point for national legislation is the body of international law to which all member states are signatories. In the field of human rights there is a wealth of international agreements setting out standards in areas such as education, employment and civil and political rights as well as race relations, to which the majority of European states adhere. Recently, the European Community incorporated the European Convention on Human Rights (1950) into its jurisprudence and the European Court consciously interprets Community Law with a view to compliance with the Convention. Accordingly, this study also provides an overview of relevant international obligations and their enforcement provisions, not only to discover any differences in application by member states but also to explore the scope for their incorporation into Community Law.

Clearly, the social context in which anti-discrimination law is located may differ from one country to the next and may inform what the law covers and how it is enforced. Accordingly, this book also presents case studies of anti-discrimination law in four core states of the European Union, France, the Netherlands, Germany and the United Kingdom, and in three peripheral states, Denmark, Ireland and Greece. The aim of these case studies is to outline the social context in which the laws are placed as well as the nature of the laws themselves. Forming anything more than tentative conclusions from this study will be problematic because of the number of variables which affect the law in each member state as well as Community law itself. Nonetheless, an attempt is made to draw out those common features and models of good practice which may encourage opportunities for further study and for legal reform.

Ethnic Minorities in Europe

The history of human kind is in some ways the history of human mobility. There have been many kinds of population movements throughout history, whether voluntary or forced, peaceful or violent, gradual or sudden. Immigration is by no means a twentieth-century phenomenon in Europe and there have been many earlier movements. However, earlier migrant groups such as the Italian and Polish communities in France no longer view themselves as having any allegiance other than to their country of adoption.[2]

Following the Second World War, however, many European countries experienced a significant new wave of immigration in the 1950s and 1960s. Opportunities for labour were created by the need to rebuild and expand the European industrial base and there was large-scale recruitment of unskilled migrant workers from southern Europe, North Africa and colonies or former colonies of many European states. One of the myths of post-war immigration was that the immigrants would return to their home countries, a myth found frequently in the perception of migrants as well as the host community itself. However, when the recession which followed the oil crisis in the early 1970s reduced opportunities for cheap labour and created severe unemployment in immigrant communities, few immigrants or their settled families wished to return. Primary immigration in many European countries virtually ceased at that period but secondary immigration, of wives and dependents to effect family reunion, continued during the late 1970s and 1980s.

A new trend developed in the late 1980s and early 1990s, which witnessed an unprecedented number of refugees seeking asylum in Western Europe, particularly from Eastern Europe and Africa. In 1992 450,000 asylum seekers sought refuge in Germany alone. Significant increases in asylum seekers have also been experienced by the Scandinavian and Benelux countries, Spain, Portugal, Italy, France, the UK and Greece.

The creation of the European Community by the Treaty of Rome in 1956 and its development into the European Union following the Single Europe Act in 1988 and the Maastricht Agreement in 1991 were initially driven by economic considerations, the prospect of wealth facilitated by free movement of capital, labour and establishment. Later there came the prospect of monetary union – deferred no doubt by the collapse of the ERM – and the creation of a European nationality, at least in the sense of

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2. Council of Europe, *Community and Ethnic Relations in Europe: Final Report of the Community Relations Project of the Council of Europe*, Council of Europe, Strasbourg, France, 1991, document MG-CR (91) 1 final E.

the absence of internal customs and borders and the conferment of a right on individuals to move within the Union subject to their being nationals of a member state. The impact of this development will not materialise for some time, but it does increase the difference between citizens and non-citizens and gives rise to a well-founded fear that members of visible minorities are those most likely to be subject to oppressive policing over their status.[3]

States determine entitlement to citizenship, that is, who has a right to belong to the state and who does not. The basis for that judgment is largely untrammelled. There is no binding international convention which sets out standards to be applied by state signatories, and wide differences of approach exist within Europe. Thus third-generation Turkish settlers in Germany may be denied citizenship, classified as guest workers and suffer systematic discrimination on the grounds of their nationality.[4]

At present the position of minorities in Europe may be characterised under five generic headings as follows:

1. *State Diversity.* There is a recurring myth that European states were formed by the occupation of a particular geographical region by a single dominant cultural group. While this may be an attractive political concept, in reality most European states were created by the merger of a number of ethnic minorities, for whom the classification 'immigrant' has either never been apposite or has been inappropriate in recent years. Even the insular United Kingdom has Welsh, Irish, Scottish and English cultural groups in addition to other long-established minorities such as Jewish and Romany peoples. In Ireland the division between the British Protestants of Ulster and the Catholics of the Republic is a relic of fairly distant immigration and more recent colonialism. The current conflict between the Protestants and Catholics in Ulster serves to illustrate the complexity of inter-ethnic conflicts; in this instance there are divisions along the lines of religion, language, cultural identity and ethnic and national origins, and the result has been a clash of class and social hierarchies and of power, privilege and resultant discrimination.

State diversity is also represented in indigenous communities which straddle state borders. In France and Spain the Basque communities have long sought for identity and recognition within states which have been less than supportive of cultural diversity. In addition, many countries have distinctive indigenous communities such as the Bretons in France, the

3. See T. Bunyon, *Statewatching the New Europe*, Statewatch, London, 1993.

4. Thus comprehensive car insurance premiums for Turks is three times that of Germans and for Greeks it is one and one-half times greater, irrespective of the longevity of residence or driving experience (information provided at Anglo-German Conference in Berlin, November 1993).

Catalans in Spain and the Pomacs in Greece. As a consequence it would be erroneous to categorise ethnic homogeneity of European states as a norm.[5]

2. *Settled Communities*. Migration in earlier periods by groups such as Romany Gypsies into Greece and northern Europe and Jews from eastern to western Europe has led to the development of long-established ethnic groups. In some cases there has been reciprocal migration, such as that between Germany and Denmark which has led to the development in these countries of Danish and German minorities, respectively.

3. *Refugees*. Since the Second World War there has been a significant increase in the number of refugees in Europe. Many of these have come from Africa, but there have also been many European exiles from the Ukraine, Poland and Lithuania who have settled in the UK, France and Germany. More recently, refugees from Vietnam, Sri Lanka and Iran have settled in Europe, becoming in some cases naturalised citizens.

4. *Colonial Immigration*. In the mid-twentieth century countries such as the UK, France, Portugal and the Netherlands have decolonised most or all of their dependent territories. One consequence has been the take-up of rights of immigration to the 'mother' country, particularly in the 1960s when the large, expanding European labour markets were receptive to immigration in order to meet labour and skill shortages.

5. *Guest Workers*. Those states such as Germany, Spain, Switzerland and Italy, with a less significant colonial past, responded to post-war labour shortages in their home markets by employing immigrant workers. Some states such as Switzerland looked for a source of labour inside Europe, particularly in Italy; Spain, France and Portugal sought labourers in North Africa, while Germany, the Netherlands and France were receptive to labourers from Turkey.[6]

Immigrants in Europe today fall into one of three principal categories of residential status. First, there are those with irrevocable rights of residence; these are usually classified as citizens. Second, there are denizens who have residential status but have more limited rights of residents, and do not have citizenship. Third, there are those most commonly classified as 'guest workers', who are subject to severe

5. Anthony D. Smith, *The Ethnic Origins of Nations*, Blackwell, London, 1988.
6. M. MacEwen and A. Prior, *Planning and Ethnic Minority Settlement in Europe: The Myth of Thresholds of Tolerance*, Research Paper No. 40, Edinburgh College of Art/ Heriot-Watt University School of Planning & Housing, Edinburgh, 1992.

restrictions on residents by virtue of their 'temporary' status, although the nature of this status and restrictions varies considerably from one state to another. Of the 13 million members of visible ethnic minorities resident in Europe today, probably more than two-thirds are non-citizens.

These classifications are important for a number of discrete reasons. Firstly, settled ethnic minority communities will establish nationality by the second generation in those countries which recognise the law of *ius soli*, meaning that citizenship is acquired by reason of birth within the country concerned. Conversely, those countries which recognise the acquisition of citizenship by reason of descent or *ius sanguinis* will have a significant number of second- or even third-generation immigrants who remain classified as 'foreigners'. Germany is a particularly important example of this latter case, with its large population of Turkish immigrants who are not recognised as citizens. There are significant differences in the respective rights of citizens and aliens from state to state, but in general it is clearly advantageous to be classified as a citizen. For example, in some countries only citizens may be hired for civil service jobs, a classification which may extend all the way down to teachers in local community schools.

It can be seen from the above that states often reserve the right to discriminate against immigrants, both in the immigration process itself and in the status and privileges afforded to non-nationals and also in the conferment of citizenship. In exercising its right to discriminate in these matters, the state may, and indeed is likely to, delineate categories of applicants by reference to their racial or ethnic origin. The extent to which a state does not discriminate arbitrarily in this fashion will be a symbol of its good faith and will in turn affect the credibility of its anti-discrimination law.

As a consequence of the variety of immigration patterns (let alone rights assigned to relatives and dependents in respect of family reunification) Western Europe, or Europe defined by membership of the European Community, is characterised by diversity. This diversity may be found in areas such as the longevity of settled communities, in its religious allegiances, in its linguistic expression, in its cultural forms and aspirations and perhaps most importantly in the legal status and social position of its residents.

Multi-Ethnic Societies

Today in most states of Western Europe immigrant communities account for between one and five per cent of the total population (see Table 1). In respect of particular localities within states ethnic minorities may constitute a much more significant proportion of the total population: the

Table 1.1 Population Size and Foreigners in EC Countries (1988); Table 2 in Sarah Spencer (edit) 'Immigration as an Economic Asset: the German Experience', Trentham Books, London, 1994, p. 43

| | Thousands | | | | Per cent | | | |
| | Population (1) | Foreigners (2) | Foreign (3) | EC (4) | (2):(1) | (3):(1) | (4):(1) | Foreign Employment |
			Workers					
Belgium	9,884	853.2[b]	187.0	140.8	8.6	1.9	1.4	6.4
Denmark	5,130	128.3[b]	45.5	12.4	2.5	0.9	0.2	1.4
West Germany	61,451	4,489.1	1,577.1	472.7	7.3	2.6	0.8	7.7
France	55,884	2,785.0[a]	1,172.5	589.3	5.0	2.1	1.1	6.4
UK	57,065	1,736.0[c]	820.9	398.2	3.0	1.4	0.7	4.2
Greece	10,010	193.4[b]	24.9	6.6	1.9	0.3	0.1	0.9
Ireland	3,538	–	19.9	16.1	–	0.6	0.5	2.7
Italy	57,441	429.4[d]	57.0	14.0	0.8	0.1	0.0	–
Luxembourg	375	96.8[b]	58.8	55.9	25.8	15.7	14.9	33.2
Netherlands	14,760	568.0[b]	175.7	86.2	3.8	1.2	0.6	3.1
Portugal	10,305	89.8[b]	30.5	6.8	0.9	0.3	0.1	0.6
Spain	38,809	354.9	57.0	22.0	0.9	0.2	0.1	0.2

Sources: Population (middle of the year): OECD, *Main Economic Indicators*, 1991. Foreigners: Statistisches Bundesamt, *Statistisches Jahrbuch für das Ausland*, 1990. Foreign workers and EC workers: Statistisches Bundesamt, *Statistik des Auslands*, 1990. EUROSTAT, *Sozialporträt Europas*, Luxembourg 1991.

a Statistisches Bundesamt, *Länderbericht Frankreich*, 1989; b 1987; c 1985; d 1981

inner cities of Britain, France and the Netherlands, for example, may have up to one-third of their population from ethnic minority groups. Given the longevity of settlement of many of Europe's ethnic minorities, the classification of 'immigrant communities' is becoming less accurate as a description of these groups. It is also misleading with respect to the extent to which the minority groups are integrated into the societies in which they are now settled. The same can be said of ethnic minorities in the United States, Canada and Australia. The ethnicity of minorities may contrast with that of dominant groups in respect of culture, race (or more accurately physical appearance) and language, and national origin may remain a dominant factor in the psyche of a particular group's identity, but their residential status means the classification of 'immigrant' is becoming increasingly irrelevant.

It is clear that immigrants do not constitute a single homogeneous group. Arabs, Indians, Chinese, Africans and Caribbeans have little or nothing in common with one another culturally and face different kinds of problems in the host society. It is also apparent that serious conflicts can arise in the relationships between different immigrant groups, which not infrequently stem from the fact that different groups are required to live in proximity in the relatively disadvantaged parts of large cities.[7] However, that common experience of relative disadvantage and discrimination may bring groups together, thus justifying the composite political description 'black' where the common experience of oppression of 'racialised minorities' demands a united opposition. National, ethnic, racial and cultural diversities have become a characteristic feature of European society, especially in the larger cities where most of the newcomers have settled. In addition to the experience of discrimination, being a member of an 'ethnic minority group' is also likely to imply other shared characteristics including inadequate participation in the major institutions of the established society such as employment, education, housing and social services, and reduced possibilities for influencing democratic decision-making processes. Further, the marginal position of these groups in society is passed on to successive generations.[8]

Ethnocentric Power

However, while the majority of European states are multi-cultural and have multi-ethnic populations, the organs of state and the ideologies which underpin them are mono-cultural. The formation and consolidation of

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7. Council of Europe, *Community and Ethnic Relations in Europe: Final Report of the Community Relations Project of the Council of Europe*, p. 9.
8. Ibid., p. 9.

nation-states have largely been dependent on the centralisation of government power and the promotion of a common culture, religion, language and way of life. Citizens were encouraged to relate their identity with group-identity and the identity of the nation-state itself. This monolithic approach to nationhood does not, of itself, deny ethnic diversity but it does mean its marginalisation and subjugation; the dominant norms are held to be of greater value and minority groups are expected to undergo a process of cultural adjustment or 'acculturation' to ensure that their own ways of life, attitudes and approaches do not clash with or threaten the legitimacy of those associated with the 'national identity'.

While such expectations are common throughout Europe, there are nonetheless both overt and covert differences in the approaches of public agencies to diversity. In the case of France, for example, the centralist nature of the state promoted the ideology of mono-culturalism, leading to assimilationist policies towards minority ethnic groups. In his analysis of the ethnic origin of nations, Anthony Smith observed that if it is true that those units which stand the best chance of forming nations are constructed around an ancient ethnic core, then both 'history' and 'landscape' become essential vehicles and moulds for nation-building. History and landscape are unearthed and appropriated to form the mythology and symbolism of poetic spaces and golden ages which cast their own spell of nationalism. The process of turning motley groups into an institutionalised nation requires the projection of a sense of belonging and identity in order to unify and integrate the nation. Authenticity and autonomy are provided through a symbolic framework, which supports the mythology of the past and translates it into a model for future action and achievements. Those institutions which are common to all citizens, such as the education system, become part of the ideological framework through which the mythology of the past is projected through the adoption of uniform values. Thus the English public schools, the German gymnasia and the French Lycees and Grand Ecole provide the vehicle through which a sense of nationality and identity is transmitted to the younger generations, and the specifics of each national system such as curricula, examinations and teaching practices become a badge of ownership, identity and pride.[9]

The highly centralised nature of French administration owes much to the status and tradition of the monarchy and the need to evolve a Paris-based royal French mythology and symbolism to combat tendencies of localism and provincialism and even ethnic diversity represented by the

9. Anthony D. Smith, *The Ethnic Origins of Nations*, Blackwell, London, 1988, p. 134.

Breton, Alsatian, Provencale and Basque cultures. In other words, ethnic diversity was perceived as a threat to central control. But such central control is not a necessary prerequisite to nation formation; in India the multiplicity of divisions in caste, region, language and even religion, while dominated by Hindu beliefs, are accommodated to a large extent in the decentralised nature of its parliament and other institutions. Further, neither the adoption of tight centralist control nor the tolerance of diversity are guarantors of continuity and stability in inter-ethnic relations; the recent disturbances in Assam and in Kashmir and the bombings in Calcutta and Bombay, as well as those in London and Manchester and the arson attacks on holiday homes in Wales, demonstrate that inter-ethnic relations are always precarious.

Colonial expansion, particularly in Britain, France and the Nether-lands, has intensified the need for a sense of belonging and cultural identity. Expatriates needed to reinforce their links with the 'mother country'. At the same time, Christian evangelism among the colonial populations, trading expansion and even the more mundane opportunities for travel and adventure were undertaken in the name of a claimed innate superiority of the coloniser over the colonised. Opportunities for exploitation were frequently legitimatised by being transformed into the obligation for cultural, social and linguistic conversion. This proselytisation not only alienated and devalued the indigenous culture in the eyes of the coloniser, but also divorced the colonised from their own heritage even to the point of zombification.[10] Inevitably those who suffered most from such oppression were the slave communities, who were removed both physically and psychologically from their roots and self-identity.

In modern Europe the existence of ethnocentric state power remains evident but does not go unchallenged, partly because of its association with a crude expression of nationalism. As Benedict Anderson observed:

> In an age when it is so common for progressive, cosmopolitan intellectuals (particularly in Europe?) to insist on the near pathological character of nationalism, its roots in fear and the hatred of the Other, and in its affinities with racism, it is useful to remind ourselves that nations inspire love, and profoundly self-sacrificing love.[11]

10. F. Fanon, *The Wretched of the Earth*, MacGibbon and Kee, London, 1965.
11. B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Verso, London, 1983 as quoted in David McCrone, *Understanding Scotland: The Sociology of a Nation*, Routledge, London, 1992, p. 201.

Inevitably, then, there is a tension between the state's de facto recognition of increasingly plural societies and its desire to protect and foster those legitimate sentiments of national identity which attracts such passionate support from its citizens.

Regionalism and State Integrity

In Eastern Europe the drawing back of the veil of totalitarian control and the establishment of state democracy has revealed many unresolved tensions and conflicts. The disintegration of the Soviet Union and the re-emergence of independent states such as Lithuania, Estonia and Latvia and the Caucasian republics has in some cases resulted in open warfare. In Yugoslavia, it has become clear that Tito's control over ethnic divisions had done little to assuage conflicting aspirations for dominance not only in Slovenia, Croatia and Serbia but, as we are now witnessing, in Bosnia, Kosovo and Macedonia. But it is not only in totalitarian states that ethnic groups have begun to assert themselves. In Canada the constitutional referendum in October 1992 provided an opportunity not just for the Quebecois but also for the indigenous peoples, the Inuit and the Cree Indians and those of mixed descent, the Metis, to question their association within the English-dominated Canadian Federation. In the case of the indigenous 'nations', which do not have an established power base, treaties and agreements are being reexamined so as to determine the most effective way for renegotiating the relationships between the peoples and the state.

There are thus considerable tensions between existing states which, as we have seen, are frequently an association of multifarious ethnic groups but are nevertheless intent on upholding the existing centralised bureaucratic structures – complete with networks of economic, diplomatic and military ties – and minority groups who are intent on asserting their own ethnic or cultural identity. In many cases these ethnic groups are also intent on creating their own nation-state to mark the boundaries of their interests.

In the European context the aspirations of settled minority ethnic communities do not generally include formal 'independence', even within a federal conglomeration. More frequently aspirations focus on the legitimacy of language and culture, and ethnic groups seek to create a power base which will promote recognition of these within a state dominated by other norms. The European Community's decision to create a Committee of Regions, as part of the Maastricht Treaty, may provide a mouthpiece for localised minority groups. However, the principal concern of minority groups throughout member states of the European Community is to achieve a power base within existing structures for

promoting equality of opportunity and redressing a significant power imbalance in contra-distinction to that realisation within alternative or parallel structures.

Visible and Non-Visible Minorities

In any given European state, ethnic minority groups are likely to share a number of common interests in promoting their own culture, language and traditions against centrist pressures for assimilation and in their most extreme form, denial. Nonetheless, visible minorities are much more frequently identified as 'aliens' irrespective of their national origin or current citizenship, and are also much more frequently the subject of racial attacks and harassment as well as discrimination in housing, employment and education. In the UK, there is much evidence to demonstrate that the discrimination experienced by visible minorities reflects, not their cultural divergence from dominant norms, but the fact that they are seen and perceived to be 'different'. The extent of racist violence and harassment catalogued in the Glyn Ford Report[12], together with evidence from national studies including those by the Home Office, the Policy Studies Institute, the Commission for Racial Equality (CRE) and Scottish Ethnic Minorities Research Unit (SEMRU) in the UK, confirms the vulnerability of visible minorities in comparison with others. Moreover, the specific evidence of discriminatory practice in education, employment and the provision of goods, services and facilities provided in these studies demonstrates further that it is the perception of being different by reason of race (or more accurately the perception of race) that triggers off discriminatory treatment.

Some commentators have suggested that xenophobia or the fear of foreigners is the factor triggering off discriminatory treatment rather than visible differences from the 'norm'. Thus in France the fact that many of the Moslem population are immigrants from Morocco or Algeria may justify a view that their experience of discrimination is based on their apparent foreignness. But equally many Moslems, whether their ancestors came from North Africa or elsewhere, are French nationals, have been resident in France from birth, are fluent French speakers and are 'French' by any objective test; yet they still suffer from systemic discrimination. Similarly in Germany, any explanation of the harassment of Turks and Gypsies – many of whom, like French Moslems, are second- and third-generation residents – as mere xenophobia ignores the essentially racist

12. G. Ford, *Report of the Committee of Inquiry into Racism and Xenophobia*, by a Committee of the European Parliament with Mr Glyn Ford, MEP as rapporteur, Office for Official Publications of the European Communities, Luxembourg, 1991.

manner in which German nationality is conferred. It seems difficult to conclude that xenophobia is materially different from racism in most of its manifestations, and it is the visible identity of the victim which is the telling factor in the vast majority of cases of racism. Clearly, however, there are also other grounds for discriminatory treatment, and those who wish merely to discriminate on religious grounds may use colour as a form of convenient, if not always accurate, shorthand to identify deviants from religious norms.

Nationality and Citizenship

Formally, the European Community is not concerned with ethnicity nor indeed with race; the Treaty of Rome of 1956, the Single Market of 1986 and the European Union of 1990 confer rights, benefits and obligations on the basis of nationality. Thus freedom of movement of workers, establishment and capital, and indeed freedom to settle with one's family, is dependent on citizenship of a particular state within the European Community; and citizenship is defined by that state itself and not by the European Community. For fairly pragmatic reasons the European Community has determined that it is for the individual state concerned to determine who becomes a citizen and who will benefit from the expanding rights conferred by the treaties and agreements and the European laws thereunder.

But the concept of a Europe without frontiers for nationals, that is without passports or customs controls between member states, is equally built on an assumption that so-called permeable boundaries in Spain, Italy, Portugal and Greece will be shored up and tighter national controls on immigration will protect the member states from an influx of non-nationals from other states. In consequence this means not only fairly tight controls on visitors but also a common view of the treatment of refugees. If there are no passport controls, then non-nationals who gain entry to one European Community state have access to all. The only method of controlling or checking the legitimacy of the movement of third-party nationals on the removal of border checks is to 'stop and search', either randomly, on receipt of information of illegal entry or, most worryingly, on the assumption that a black person is more likely to be a non-national than a white person. However, despite the impact of these provisions on race relations within the European Community, there has been little institutional concern about the consequences of the abolition of internal frontiers.

The legal status of immigrants varies from one European country to another; in the United Kingdom, Commonwealth citizens have many of the rights of British citizens whereas in most other countries of the

European Community there is a clear distinction between the status of nationals and foreigners. But even in countries where most post-war immigrants have not acquired nationality, a status akin to citizenship may be acquired and the children of long-stay migrants may acquire the nationality of their country of residence. The test applied for the acquisition of citizenship also varies considerably. In the United Kingdom, the British Nationality Act of 1981 adopted the 'patriality' test first introduced by the Immigration Act of 1971. The patriality test means that immigrants can acquire citizenship if their parents or grandparents were born in the UK, and excludes from citizenship others including citizens of the Commonwealth or dependant territories who have no such links. Previously, the British Nationality Act of 1948 had created two principal forms of citizenship, that of the United Kingdom and Colonies and that of a citizen of the Commonwealth and British subject,[13] but the Act did not recognise any difference in immigration status between these two categories. It was the Commonwealth Immigrants Acts in the 1960s which introduced invidious distinctions between these categories; this had the effect, and clearly the purpose, of enabling white Australians, New Zealanders and Canadians (people from the Old Commonwealth) to achieve settlement status more readily than those from the New Commonwealth states of India, Pakistan and the former African colonies.[14]

France, in keeping with the traditions of a centrist state, originally viewed its colonies as an extension of metropolitan France and accordingly conferred French citizenship on their inhabitants. But immigrants who were thus accepted as part of French society were then expected to assimilate French cultural norms. The French approach insisted on formal equal rights for all individuals on the premise that institutional recognition of cultural minorities denies the integrity of the state.[15] Today the French state has clearly moved away from this total assimilationist view, but there is still a strong insistence on the unitary character of the state and official use of the term 'ethnic minorities' remains limited. However, the term 'immigrants' becomes less appropriate to describe people, many of whom were born in France and have French nationality. The term 'populations of immigrant origin' is now passing into widespread use and a new range of official bodies has been developed to coordinated policies for integration. Thus the

13. Ann Dummett and Andrew Nicol, *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law*, Law in Context series, Weidenfeld and Nicolson: London, 1990, p. 137.

14. Ibid.

15. Council of Europe, *Community and Ethnic Relations in Europe: Final Report of the Community Relations Project of the Council of Europe*, p. 13.

traditional French distinction between nationals and aliens, which has been important in respect of the conferment of rights and obligations, has been attenuated by the recognition of minority communities within the category of French citizens. The distinction has also been eroded by the de facto requirement within the European context to provide equal rights to EU nationals and, through various agreements, rights to some third-country nationals who do not enjoy French citizenship.

Germany, whose colonial dependencies were few, has with limited exceptions neither sought nor welcomed permanent settlers from foreign countries but has accepted large numbers of guest workers, principally from Turkey, to meet the needs of the domestic labour market. In Germany, however, citizenship is normally acquired through descent (*ius sanguinis*) and second- and even third-generation immigrants do not automatically acquire citizenship and are generally referred to and considered to be 'foreigners'. The very rigid approach to the conferment of nationality on the settled Turkish community is in sharp contrast to the facility with which 'ethnic' Germans acquire citizenship irrespective of their tangible association with their 'mother country'.

While recognition or conferment of nationality remains the most important and perhaps most effective formal guarantee of rights recognised by the state, obtaining a secure residential status remains important for any non-citizen. European states have frequently adopted additional measures to cope with new situations arising from recent immigration: either rules and legislation have been adapted or completely new pieces of legislation and other measures have been introduced. Some European countries gave recognition to certain religions with a strong following amongst immigrants and even provided them with equal status to the dominant host religion. France belatedly provided the right of association to minorities after 1981, but other European countries were frequently more generous, providing immigrants with a certain longevity of residence with the right to vote and to be elected at the local municipal level of government.

The study 'Community and Ethnic Relations in Europe', conducted by the Council of Europe, illustrates that there is great variety within the European Community as to the rights and the extent of rights extended to non-citizens.[16] There is also evidence of a direct correlation between extending rights to non-nationals and the expectation that they will become nationals by naturalisation. The naturalisation rate is particularly high in Scandinavia, where resident foreigners have been given many opportunities for participation in decision-making processes, but is much

16. Council of Europe, *Community and Ethnic Relations in Europe*, Council of Europe, Strasbourg, France, 1990.