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European Citizenship and European Identity**

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A PEOPLES' EUROPE? EUROPEAN CITIZENSHIP AND EUROPEAN IDENTITY

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*"We are not forming coalitions between States,
but union among people."*

Jean Monnet
Washington,
1952

As part of its mission to move beyond a purely "businessmen's Europe", the drafters of the recent Maastricht Treaty on European Union have for the first time attempted to define what it means to be a European citizen.¹ This idea of citizenship is a relatively new one in Community parlance, given that the agenda for integration has hitherto concerned itself mainly with the achievement of economic rather than political or cultural objectives. Moreover, the fact that the original Treaty of Rome refers to several "peoples" - and not a single one - suggests that it did not intend to create any supranational notion of European citizenship. Instead, the individual rights of citizenship were to remain within the competence of individual Member States.² As a consequence, the evolution of European citizenship has been shaped by the more general tension within the Community between supra nationalism and intergovernmentalism, combining concrete rights which can be extrapolated from existing treaties with more general ideas of a common "European identity".³

¹The process of constructing "Peoples' Europe" actually began in 1985 with the publication of the Adonnino Report, commissioned by the Fontainebleau European Council.

²Mancini, "The Making of a Constitution for Europe", *Common Market Law Review*, 26 (1989), 595-614 (p. 596). Hence, citizens of a Member State were still regarded by the Treaty as aliens or foreigners by other Member States, and could suffer discrimination in those areas not covered by EC law.

The result is a weak and ambiguous legal status which does little to reflect or develop a sense of shared goals and values among European peoples.

The Rights of Citizenship

Before tracing the development of European citizenship, it is useful to consider the more established concept of state citizenship that has been discussed by political theorists, economists and sociologists. Citizenship has become an increasingly important subject for social scientists in the latter half of the twentieth century, for reasons existing both within and beyond the nation-state. External factors include the intensifying processes of globalization and modernization⁴, the increase in economic and cultural transnational connections among peoples, and the creation of international guarantees for the protection individual human rights. Internally, citizenship has factored into debates concerning the growing crisis in the welfare state, the erosion of participatory democracy, the link between state and "civil society", and the jurisdictional power struggles between regional and central governments.⁶

In his now famous 1949 article, "Citizenship and Social Class" sociologist T.H. Marshall defines citizenship as a "status bestowed on those who are full members of a community."⁷ Hence, though it is a status accorded to individuals, citizenship is a fundamentally social phenomenon, which has little meaning outside of a collective framework. More importantly, citizenship is an egalitarian symbol: all those who possess it enjoy *de jure*, if not *de facto*, equality with respect to its corresponding rights and duties.⁸ In this sense, notes

³Carlos Closa, "The Concept of Citizenship in the Treaty on European Union", *Common Market Law Review*, 29 (1992), 1137-1169 (p. 1139). This paper will rely heavily on Closa for its legal analysis.

⁴For a discussion of the link between globalization and citizenship, see *Global Politics: Globalization and the Nation-State*, edited by Anthony G. McGrew, Paul G. Lewis et al (Oxford: Polity Press, 1992), Part IV.

⁵The development of these guarantees is discussed by R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986).

⁶An overview of these current debates, with a particular emphasis on Britain, can be found in *Citizenship*, edited by Geoff Andrews (London: Lawrence and Wishart, 1991).

⁷T.H. Marshall, "Citizenship and Social Class", in *Class, Citizenship and Social Development: Essays by T.H. Marshall* (London: University of Chicago Press, 1964), 71-134 (p. 92).

⁸*Ibid.*

political theorist David Held, citizenship is a particularly interesting concept, for it "combines in rather unusual ways the public and social with the individual aspects of political life. ... Individual citizens enjoy entitlements on the basis of a fundamental equality of condition, which is their membership of the community."⁹

In concrete terms, the rights of citizenship were originally translated as entitlement to equality under the law - what Marshall refers to as civil rights. This essentially "negative" conception of rights,¹⁰ particularly dominant in Enlightenment thinking, granted citizens a free space in which to pursue their individual goals without the risk of state interference. It therefore included the right to freedom of speech, the right to private property, and the access to legal process.¹¹ Over time, however, it became clear that such rights were not necessarily exercised by all and that a negative interpretation of rights did not give citizens a sufficient degree of empowerment. While in theory there was equality before the law, in practice there were non legal barriers restricting the capacity to choose between different courses of action or to guarantee the possession of certain entitlements. As Marshall puts it: "A property right is not a right to possess property, but a right to acquire it, if you can, and to protect it, if you can get it."¹²

Consequently, over the course of the nineteenth century, citizenship expanded to include the right to participate in the decision-making process. These political rights for the most part consisted of the right to vote and to stand for public office. In our own twentieth century, further "positive" rights have been added to the status of citizenship. Through the institutions of the modern welfare state, social rights (e.g., access to health care, education, and social services) have become part of the catalogue of citizenship entitlements in many nation-states of Europe.

⁹David Held, "Between State and Civil Society: Citizenship", in Andrews, *op.cit.*, 19-25 (p. 21).

¹⁰The distinction between negative and positive liberty is made by Isaiah Berlin.

¹¹For a history of the development of citizenship rights in France, see Catherine Withol de Wenden, *Citoyenneté, Nationalité et Immigration* (Arcantère: Paris, 1987).

¹²Marshall, *op.cit.*, p. 97. The same could be said for the rule of law: while in theory everyone has access to due process, in reality litigation is too costly for many individuals to pursue.

The Rise of European Citizenship

Until very recently, the European Community did not assert such a substantive list of entitlements for individuals living within its boundaries. Indeed, the founding fathers of the European post-war order consciously avoided creating a relationship between the individual and the Community akin to that existing on a domestic level between the individual and the nation-state. If any concept of "Peoples' rights" motivated these engineers of European integration, it was a relatively embryonic one, based on civil notions such as the pre-eminence of law, respect for human rights and the equality of all Europeans. The first post-war European organisation, the Council of Europe (1949), was to be the incarnation of these general humanist principles.¹³

Building on this legacy, the individual rights of European peoples implicit in the Treaty of Rome and the subsequent Single European Act were limited in scope, negative in character, and exercised by only a few. These civil and economic rights - such as free movement, non-discrimination, or the right to appeal to the European Court - were intended primarily to facilitate the completion of the common market. Similarly, while rudimentary political rights were introduced with the election of Members to the European Parliament (1979), they did not prove strong enough to generate a coherent notion of Community citizenship. First, as legal scholar Carlos Closa argues, given the lack of legislative competence of the EP, the individual's condition as elector did not "reproduce the constitutional link between citizens and the exercise of sovereignty characteristic of the concept of citizen."¹⁴ And second, the condition of elector did not stem from subjection to EC law or a concept of single citizenship, but from the condition of national of a Member State. In other words, the rights provided by these changes to the EC legislative process still failed to untie the tight knot between nationality and political citizenship. Voting rights were limited to nationals or citizens of each State, and only exceptionally granted to

¹³See Peter Leuprecht, "La Forteresse et les Droits de l'Homme", *L'événement Européen*, 11 (1990), 51-60 (p. 51).

¹⁴Closa, *op.cit.*, p. 1144.

citizens of other Member States.¹⁵ As we shall see below, this reluctance to base voting rights on residence rather than nationality reflects a more general preference to reserve the political domain (the realm in which one can influence state policy) for one's own nationals.¹⁶

Nevertheless, as the functions and jurisdiction of the European Community have expanded, giving it an increasingly "state-like" character, many constitutional lawyers have argued for an enrichment of the status accorded to individual Europeans.¹⁷ In addition to this legal reasoning, a rough idea of European citizenship has gradually coalesced around two practical realities: 1) the rights that the progressive completion of the internal market had granted to individuals, regardless of nationality (e.g., free movement); and 2) the increasing need to differentiate those individuals from citizens of non-member states. As a result, terms such as "Community citizen", "European citizen" or "Community national" have been coined to describe those persons subject to the ever-expanding jurisdiction of EC law. Today, this latter term - "Community national" - has become a formal Community concept, denoting a status to which the rights and benefits of European citizenship may be attached.¹⁸ With the Treaty on European Union, negotiated in December 1991, the Community has endeavoured to formalise these rights of the European citizen. Citizenship of the Union is included in Part Two of the "Provisions Amending the Treaty Establishing the European Economic Community", which contains a catalogue of rights attached to the condition of citizen (8a to 8d) and a procedure for further development of citizenship should current rights need to be strengthened or new ones added (8e). Article 8a grants to every citizen of the Union the right to move and reside freely within the territory of any Member State. On this point, the Treaty implies a broadening of the previous Community principles by removing the explicit link between free movement and the exercise of economic

¹⁵Only Belgium, Ireland and the Netherlands gave "active rights" - i.e. the right to vote - to residents who are citizens of another Member State.

¹⁶Closa, *op.cit.*, p. 1145.

¹⁷A.C. Evans, "Nationality law and European integration", *European Law Review*, 16, p. 197, in Closa, *op.cit.*, p. 1145.

¹⁸Closa, *op.cit.*, p. 1149.

activity. Article 8b is intended as a new expression of political citizenship, which recognises the right of every individual in the Union to vote and stand for election in the European Parliament and in municipal elections in the Member State in which he/she resides.¹⁹ Article 8c reproduces the principle of equality of treatment in the external dimension, by offering diplomatic protection to every citizen of the Union in the territory of a third country.²⁰ And finally, the right of European citizens to petition the European Parliament and to appeal to an ombudsman is set out in Article 8d.

There is a running debate as to whether these newly enshrined rights of European citizenship were latent in existing treaties and intergovernmental bargains, or whether they have an autonomous character as one of the new bases of an emerging European political union and collective European identity. On the one hand, it could be argued that the rights of free movement and residence were already incipient in Articles 48, 51 and 52 of the Rome Treaty (even if certain categories of individuals were excluded, and even if residence was tied to ability to avoid becoming a burden for the social security system of the host Member State).²¹ On the other hand, many interpreters of the Maastricht Treaty insist that its provisions for European citizenship are meant to not only reflect economic reality, but also further the goals of political co-operation. In the Spanish Memorandum which preceded the intergovernmental negotiations, citizenship was defined as one of the three pillars of European political union, the other two being European Monetary Union and a Common Foreign and Security Policy.²² Furthermore, in its Opinion

¹⁹Voting rights are the only strictly political rights included in the Treaty. They fall well short of the Spanish government's proposals for more positive rights, such as freedom of expression, association and assembly, or the more general right of a citizen to take part in the political life of any Member State. See the Spanish Memorandum, *Towards a European Citizenship*, Council Doc. SN 3940/90, 24 September 1990.

²⁰However, this right of diplomatic protection is not general or automatic. A citizen is only entitled to protection in a third country in which the Member State of which he or she is national is not represented.

²¹In Article 51, migrant workers and their dependants are entitled to welfare benefits, vocational training and equal treatment in the matter of taxation and social rights. One could argue that these rights (e.g. non-discrimination and freedom of movement) were not newly created, but merely needed a juridical guarantee or improved provisions for their exercise. See Closa, *op.cit.*, p. 1143.

²²In the Spanish view, the creation of a new instance of political power (i.e., the Union) requires a new definition of the rights and duties of the affected individuals. See Closa, *op.cit.*, p. 1154.

of 21 October, 1990, the European Commission made clear that the development of a concept of European citizenship was central to its objective of strengthening democratic legitimacy and explicitly noted the exclusion of the "people of Europe" from the economic and neofunctionalist dynamic of the 1992 process. The Commission's contribution to the intergovernmental conferences therefore called for the establishment of targets for the civic, economic and social rights of European citizens, which would be properly defined at a later stage.²³

In the final text which emerged at Maastricht, citizenship is listed as an objective of the Union, and not just a derivative of previous treaties. This wording gives European citizenship the legal character of "additionality": it is supplementary to rights and obligations attached to every national as a citizen of their own Member State. Consequently, in theory citizenship rights will be governed mainly by Community law and with the involvement of Community institutions.²⁴

In sum, the concept of European citizenship embodied in the Maastricht Treaty has institutionalised certain pre-existing Community rights, introduced new ones, and provided a base for their further enlargement. From this point of view, it is a notable advance from the Rome Treaty and Single European Act. Nonetheless, although the Treaty has made great strides toward delineating the rights of a European citizen, its essentially political definition of citizenship suffers from four main defects: 1) it focuses solely on citizenship rights, without outlining a set of corresponding duties; 2) it is unclear whether such rights are meant to be codification of existing practice, or a catalyst for further European integration; 3) it is inherently exclusivist toward non-EC nationals, thereby raising further suspicions about the possibility of a "Fortress Europe"; and 4) it perpetuates a confusion between nationality and

²³*Ibid.*, p. 1155.

²⁴See Article 8-2. As Closa notes, because the Treaty has still failed to establish proper Community procedures for the group of rights listed under 8b to 8d, their development will require bringing into effect ad hoc laws, rules and conditions. Consequently, these rights could be implemented through multilateral, intergovernmental agreements between Member States rather than through Community legal instruments. (*op.cit.*, p. 1159)

citizenship, by relying heavily on the conceptual framework of the nation-state. These weaknesses will ultimately restrict the ability of the legal notion of European citizenship to play a positive role in promoting a sense of common European identity.

Rights without Duties

In its classical form, citizenship was associated not only with the granting of rights, but also with outlining the individual's obligations and duties to society. From as early as Greek times, the image of the active citizen, with a duty to participate in the life of the polis, has been a fundamental component in theories of participatory democracy. Likewise, in the context of the eighteenth century, those few members of society which exercised the civil rights of citizenship were often motivated by a strong sense of "civic duty".²⁵ And finally in post-war Europe, the entitlements and benefits of the welfare state have also been accompanied by the duty to work, to pay taxes and insurance contributions, and to take part in military service.

In current discussions of European citizenship, this dual nature of the citizen has been lost. The civil and political aspects of Union citizenship are one-dimensional, focused mainly on the rights that Europeans can exercise within the Community ambit. But what corresponding duties or obligations do European citizens have? To pay taxes? To subsidise the development of poorer areas? To offer service in a European defence force?

Thus far, the minimalist Community right of free movement (beyond the liberties of free travel) has proven to be too thin to generate any corresponding sense of public duty. While in theory EC citizens are free to migrate, often they do not have the capacity - or the desire - to do so. It is therefore not surprising that those EC citizens who do not exercise this right complain that they are getting nothing out of the Community.²⁶ Here, one only needs to look to the recent protests of French fishermen and farmers.

²⁵Marshall, *op.cit.*, p. 123. For a comparison between civic humanism and modern-day republicanism, see J.G.A. Pocock, *The Machiavellian Moment: Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975).

²⁶European policy-makers have themselves become concerned about the popular perceptions of the benefits of increased integration. In this regard, the wording of a recent Community

As indicated above, the drafters of the Maastricht Treaty clearly hoped that European citizenship would expand beyond the economic requirements of free movement that were set out in the original Rome Treaty. Hence their decision to move from essentially civil rights (equality under the law) to political rights (voting in local elections). More significantly, their language consistently refers to the "dynamic" and "evolutionary" nature of citizenship rights. According to the Commission, European citizenship "reflects the aims of the Union, involving as it does an indivisible body of rights and obligations stemming from the gradual and coherent development of the Union's political, economic and social dimension."²⁷ In Article 8e of Maastricht, there is indication that the list of rights enshrined by the Treaty is not meant to be definitive; instead, the Commission has been entrusted with the task of overseeing the evolution of citizenship as new policy areas are transferred to the Union.²⁸

In the opinion of some, this dynamic character of citizenship could serve as a channel for incorporating more controversial social rights. The Spanish, for example, contend that a real political Union demands a more "meaty" interpretation of European citizenship - one that would overcome economic and social inequalities among individuals.²⁹ Indeed, as the history of the late nineteenth century has shown, there is a logical link between political rights, the requirements of democracy and the granting of social entitlements. This is especially clear in arguments put forth for the right to a state-funded education. Moreover, as Marshall's work illustrates, the most common method for establishing such social rights is through the exercise of political power.³⁰

publication on European citizenship is particularly striking. "*We may not be aware of it*", the authors write, "but we all benefit on a daily basis from the emergent single market: access to a wide range of goods; competition which helps to keep prices down; policies to protect the consumer and environment; and standards usually harmonized at the highest level." (emphasis mine) See Pascal Fontaine, *Europe in Ten Lessons* (Luxembourg: European Documentation Centre, 1992), p. 24.

²⁷See "Union Citizenship". Contributions by the Commission to the Intergovernmental Conference SEC (91) 500 Bull EC Supp. 2/91., p. 87. Also cited in Closa, *op.cit.*, p. 1168.

²⁸The Commission will issue its first report by December 1993 (and every three years after) on the implementation of the provisions of Article 8.

²⁹See Spanish Memorandum, *Towards a European Citizenship*, p. 87.

³⁰Marshall, *op.cit.*, p. 90.

But to enrich European citizenship in this way, by moving along Marshall's continuum of civil, political and social rights, is to invite a host of new problems. The dilemmas of welfare capitalism, which Marshall notes in relation to the post-war European nation-state, would potentially hold true for a European Community based on a substantive conception of citizenship rights.

The first problem is the potential tension between a social conception of citizenship based on an ethic of egalitarianism, and a free market economy based on the logic of unequal gain. As Marshall demonstrates, the early civil rights of citizenship (e.g. the right of contract) were predominantly individual and therefore compatible with the functioning of a competitive market economy. But as citizenship expanded into the realms of the political and social, it gradually came into conflict with the economic system of capitalism. In his words: "The incentive that operates in the free contract system of the open market is the incentive of personal gain. The incentive that corresponds to social rights is that of public duty."³¹ A similar incompatibility may confront the European Community in its attempt to balance economic rights of citizenship - such as free movement with collective and social rights.³²

The second difficulty concerns the parameters of the "imagined political community".³³ Marshall observed that the boundaries of the national community had become too large to command a sense of loyalty or duty on the part of citizens, even with the existence of social rights.³⁴ Moreover, as Anthony Smith has argued, all nation-building projects ultimately require a base of common history and ethnicity if they are to succeed.³⁵ If these obstacles to identity formation are true for the nation-state, how much truer are they for

³¹*Ibid.*, p. 126.

³²In terms of strict economic logic, the right of free movement is ultimately based on differential incomes and wages; otherwise, there would be no incentive to move. However, if social rights are incorporated into European citizenship, there will be greater equalization of incomes and perhaps less incentive to migrate.

³³This term is Benedict Anderson's. See *Imagined Communities* (London: Verso/New Left Books, 1983).

³⁴Marshall, *op.cit.*, p. 129.

³⁵Anthony Smith, "The Nation: Invented, Imagined, Reconstructed?", *Millennium*, 20 (1991), pp. 364-5.

a supranational entity such as the European Community? And, will they not become even more problematic as the Community contemplates expanding to include members from Eastern Europe?³⁶

In fact, the growing sense of alienation from national governments has led many Europeans to demand a greater degree of regional and local autonomy. Thus, at the precise moment when the sovereignty of the nation-state is being eroded from above, through the supra nationalist forces of integration, it is also under attack from within.³⁷ All over Europe, from Lombardy to Brittany to Moravia, there is a resurgence of regional identity which encourages Europeans to focus their affections and obligations closer to home.

Codifier or Catalyst?

The current configuration of European citizenship is also ambiguous as to whether individuals rights are meant to be a codification of existing practice - much like granting a passport to a prospective national once she has memorised the national anthem - or a catalyst for further European integration. More specifically, it is unclear whether the new political rights set out in Maastricht were enshrined in order to reflect and facilitate free movement, or to address the deeper problem of the "democratic deficit" within the Community.

Here, it is interesting to study the reasoning used by EC officials concerning the right to vote. In a 1989 Resolution on voting rights in local elections, members of the EP argued that although the original Community treaty did not provide the necessary powers, complete equality of treatment between citizens, regardless of nationality or residence, was an essential Community objective. In other words, political citizenship (in the form of voting rights in local elections) was a natural outcome of the process of European

³⁶For a discussion of the "widening" vs. "deepening" debate, see Peter van Ham, *The EC, Eastern Europe and European Unity: Discord, Collaboration and Integration Since 1947* (London: Pinter, 1993).

³⁷For an assessment of this recent preoccupation with a "Europe of the Regions", see David Marquand, "Nations, Regions and Europe", in *National Identities*, edited by Bernard Crick (Oxford: Blackwell, 1991).

integration.³⁸ The 1986 Single European Act, which added a political dimension to the official aims of the Community, gave further weight to this interpretation. The general commitment to democracy established in the Act Preamble allowed the Commission to argue that democratic participation by individuals within the Community was one of the ends to be achieved through Article 235. While the Commission excluded the question of voting in national elections, since it would impinge on national sovereignty, it contended that local elections did fall within the scope of the existing treaties. It therefore concluded "that Articles 235 and 236 of the Treaty provided enough legal basis for granting voting rights to any citizens from a Member State, regardless of his residence."³⁹

This focus on residence, rather than nationality, seems to coincide logically with the EC's commitment to facilitating free movement for all European citizens. However, by bringing the issue of the "democratic deficit" into its discussions of voting rights, the Community has left many questions unanswered. First, as the theoretical distinctions between local, regional and national jurisdiction become increasingly blurred in practice, there may be louder calls to widen the voting power of European citizens to include national elections and referenda. And second, if one of the purposes of granting voting rights in local elections was to foster democratic participation, then it is unclear why this right has been granted only to nationals of states of the European Community. Indeed, if it is at the local level that decisions taken by governments most directly affect individuals, why should immigrants from non-EC states be treated any differently than immigrants from states within the Community?

Fortress Europe

This confusion concerning the expansion of political rights highlights a further problem with European citizenship: its potentially exclusivist impact. By extending voting rights only to nationals of Member States, the Community has sent a highly ambiguous message to those resident individuals who are outside the

³⁸Closa, *op.cit.*, p. 1147.

³⁹*Ibid.*, p. 1149.

legal parameters of the European Union. Have they been relegated to the status of "second-class citizens"? And if so, what does this preferential treatment say about the universality of European Community values? According to Council of Europe President Peter Leuprecht, the situation of foreigners in Western Europe is posing the greatest threat to the founding fathers' commitment to protecting and advancing individual human rights.⁴⁰

One could argue that this exclusivity is inherent in the very idea of citizenship itself. Because citizenship is a social status, contingent upon a pre-existing community, there are no universal principles which can set out its rights and duties. It is the particular community in question which must define them, and only for its particular members. Thus, the first question which must be asked in all cases of citizenship is who is "in" and who is "out".

This emphasis on membership and solidarity can lead to a kind of enforced unity. As Stephen Howe has noted, the community in which citizenship rights are exercised is often constructed "by rallying people against internal dissidents or external enemies."⁴¹ In the past, there have been frequent attempts to create such a boundary between insiders and outsiders. Think, for example, of the French Constitution of 1791, which differentiated between "active citizens" (those who could influence the public domain) and "passive citizens" (those seen as contributing nothing to the public well-being).⁴² In the present day, the exclusivist nature of citizenship is most often manifest in the drafting of immigration and nationality laws which place conditions and tests on aspiring citizens.⁴³

In today's states of Western Europe, attitudes and policies concerning the rights of foreigners exhibit a similar kind of protectionist mentality. Hostility against these 'Resident Others' is

⁴⁰Leuprecht, *op.cit.*, p. 51.

⁴¹Stephen Howe, "Citizenship in the New Europe: A Last Chance for the Enlightenment?", in Andrews, *op.cit.*, 123-35 (p. 130).

⁴²Andrews, *op.cit.*, p. 13. In a similar way, a recent group of British scholars has tried to draw a line between active citizens, who are "successful, self-reliant, enterprising, consuming consuming and property-owning", and non-citizens, who are part of the "dependency culture". See Ruth Lister, *The Exclusive Society: Citizenship and the Poor* (London: Child Poverty Group, 1990).

⁴³A pertinent example is Norman Tebbit's suggestion that every aspiring British citizen should have to pass a cricket test.

especially strong if the fear of economic competition is combined with ethnic prejudice, as in the case of the North Africans or Turks.⁴⁴ It is important to remember that immigration itself is not a new phenomenon in Europe, and that the legislation of various European governments have displayed favouritism towards migrants coming from "culturally similar" environments.⁴⁵ Nonetheless, as the recent events in Rostock have shown, the sense of resentment and paranoia regarding migrant peoples is not limited to those perceived to be civilisationally alien. The current flood of refugees from Eastern to Western Europe may be offering a new and more pressing case of backlash against non-citizens. "What the Maghreb is to France", writes Pierre Hassner, "the South and East of Europe are to Germany and Austria."⁴⁶

Even in the policy declarations of the EC, there is a frequent tendency to conflate questions relating to foreigners and immigration on the one hand, with issues of crime, drugs, and terrorism on the other.⁴⁷ In addition, there is a schizophrenic mindset which seeks champions the crumbling of borders *within* the European Community area, but which erects a "Fortress Europe" against nationals of third countries. This paradox can be seen clearly in the Schengen Agreement of 1985, which is meant to serve as a dress rehearsal for the Maastricht provisions for increased co-operation on immigration and refugee policy.⁴⁸ The terms of Schengen have led to

⁴⁴See *The New Islamic Presence in Western Europe*, edited by Tomas Gerholm and Yngve Georg Lithman (London: Mansell, 1988).

⁴⁵This discrimination is usually reflected in the administrative status given to an incoming refugee. While some have been granted formal refugee status according to the definition of the 1951 Geneva Convention (e.g., East European refugees in the immediate post-war period), many Third World refugees have been treated as illegal migrants or accorded "humanitarian" or "tolerated status". The latter category protects refugees from *refoulement*, but provides them with few work, travel or educational benefits and often leaves them in a state of administrative limbo. See Johan Cols, "Responses of European States to *de facto* Refugees", in *Refugees and International Relations*, edited by Gil Loescher and Laila Monahan (Oxford: Oxford University Press, 1989), 187-215. For a further comparison between post-war and contemporary immigration policy, see Daniele Joly and Robin Cohen, "The New Refugees of Europe", in *Reluctant Hosts: Europe and its Refugees*, edited by Daniele Joly and Robin Cohen (Aldershot: Avebury, 1989), 5-18.

⁴⁶Pierre Hassner, "Culture and Society", *International Spectator* (1991), p. 150.

⁴⁷This confusion of thinking is particularly marked in the activities of the Trevi Group, an ad hoc consultative body composed of the ministers of Justice and Interior from the Twelve Member States.

⁴⁸The relevant portion of the Treaty is Article K (Provisions on Cooperation in the Fields of Justice and Home Affairs).

strict controls at external frontiers which encourage people to resort to illegal immigration, as well as a more oppressive control of foreigners in their countries of residence.⁴⁹

It is evident, then, that free movement is becoming a selective guiding principle for the Community. Moreover, there is a fundamental difference in attitude toward the inflow of people and the inflow of goods and capital.⁵⁰ In the end, as Leuprecht points out, Europeans need to ask what kind of a common home they are seeking to construct. Will it be an open and outward looking Community that seeks to protect and promote diversity? Or, will it become a "fortress Europe where we can hide ourselves and our riches and defend ourselves from assault by the invaders?"⁵¹

The paradox of the Community National

This spectre of an introverted European Community leads directly to the fourth and final difficulty with the current expression of European citizenship: its strong reliance on the framework of the nation-state. Indeed, in almost all of the symbols chosen to represent the European Community - passport, flag, currency, anthem - the model of the nation-state and "nation-building" has loomed large in the background.⁵²

According to Western constitutional tradition, citizens were those who were entitled to form the *political* subject, as distinct from those who enjoyed protection and rights of a more general kind. In the words of one legal scholar: "The essence of citizenship

⁴⁹Leuprecht, *op.cit.*, pp. 56-9.

⁵⁰Robert Goodin, "If People were Money", in *Free Movement*, edited by Brian Barry et al (Oxford: Clarendon, 1992), 6-22. Goodin accuses the European Community of adopting a "communitarian" stance in its attitude to open borders and free movement: i.e., that different peoples are morally entitled to lead their lives in their own different ways, without undue influence from other communities organised on alternative or conflicting premises. For Goodin, moral consistency demands starting from a presumption of symmetry: "however free or constrained such movement is to be, it ought to be equally free or constrained in both directions and for both money as well as for people." (p. 19)

⁵¹The danger of engendering ethno-centrism or an extreme "euro-patriotism" was noted by Euro MP's in their debates on European citizenship. See *J.O.C.E Débats du Parlement Européen*, No. 2-376, séance du 14 mars 1989, p. 98 et 15 mars, p. 180.

⁵²See the models developed by S. Rokkan, "Dimensions of State Formation and Nation-Building" in *The Formation of Nation-states in Western Europe*, edited by Charles Tilly (New Jersey: Princeton University Press, 1975).

<remained> the constitutional arrangements made for participation by a defined category of individuals in the life of the State."⁵³ In domestic law, this enjoyment of political rights - and this ability to influence state policy - has been reserved almost exclusively to nationals.

But is this same equation necessary for citizenship of the European Community? Is it true that a person cannot be a citizen of Europe without being a national of one of its Member States? Why not isolate residence, rather than nationality, as the criterion for the enjoyment of individual rights? As David Held suggests, the "historic moment seems to have passed for trying to define citizens' claims and entitlements in terms of membership in a **national** community."⁵⁴ Now that sovereignty is increasingly being challenged - both from within and without - why not start from the presumption of individuals rather than nation-states?⁵⁵

The current stresses and strains within the integration process illustrate that Europe is not yet ready to abandon the nation-state in the name of supra nationalism or a collective European identity. To date, therefore, the European Community has opted to retain the close link between citizenship and nationality. As is evident in the wording of Article 8 (1) of Maastricht⁵⁶, the road to European citizenship is an indirect one, driving through the barrier of EC Member States. Lacking a strict definition of a citizen of the Union, nationality in any one of the Twelve becomes the requisite *sine qua non* for the enjoyment of the rights of European citizenship.⁵⁷ Furthermore, Member States will continue to decide who are to be considered their nationals for Community purposes and may amend this decision whenever they consider it necessary.

Conclusion

⁵³Evans, "Nationality law", in Closa, *op.cit.*, pp. 138-9.

⁵⁴Held, in Andrews, *op.cit.*, pp. 24-5.

⁵⁵Ironically, the fact that Member States of the EC had to change their national legislation to allow for voting rights in local elections demonstrates that national sovereignty can be and has already been infringed.

⁵⁶The article reads: "Every person holding the nationality of a Member State shall be a citizen of the Union".

⁵⁷Closa, *op.cit.*, pp. 1160-1.

While the European Community has been a pioneer in challenging us to think about new possibilities for shared sovereignty and joint decision-making, it is crucial to keep in mind its essentially intergovernmental rather than supranational character. As Closa writes, though the Maastricht Treaty upgrades the condition of citizens under Community law, "citizenship of the Union has not superseded nationality of the Member States, in much the same way as the European Union has not abolished the sovereign existence of the Member States."⁵⁸ In the final analysis, the Community is still a long way from building a union among European peoples or a coherent European identity. Until it does, the decisive social and political status for individual Europeans is not European citizenship, but nationality in one of the Twelve.

⁵⁸*Ibid.*, p. 1168.



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