



**Department of Political and Social Sciences**

# **Transnational European Citizenship: Tracing Conceptions of Citizenship in the European Integration Process**

**Espen D. H. Olsen**

Thesis submitted for assessment with a view to obtaining the degree of  
Doctor of Political and Social Sciences of the European University Institute

Florence, February, 2008

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## Abstract

This thesis asks what kind of *conception(s)* of citizenship that have emerged *over time* within the European integration process. The starting point for this research aim is a critique of the existing literature on European citizenship. Research on European citizenship has tended to fall into a sceptical strand relying on the nation-state model of citizenship (often called the *no demos* position) or a more visionary strand which interprets the developments of rights on the EU level as a *postnational* disconnection of citizenship from nationality. These normative strands have tended to translate the question of “what should it be?” into factual statements on what citizenship in the EU actually is.

This thesis has sought to overcome this through a theoretically informed, yet empirically oriented study of how conceptions of European citizenship have developed. Theoretically, the thesis eschews the typical model approach of citizenship studies. It does so by focusing on citizenship as a status of individuals constituted through four analytically distinct, yet potentially inter-related dimensions: membership, rights, participation and identity. This provides a dynamic theory of citizenship where the appearance of and relationship between dimensions is not settled *a priori*, but rather needs to be scrutinised in practice. Empirically, therefore, these dimensions are utilised in order to ascertain how citizenship has been conceived on two levels of EU integrative politics. The first level is practices of policy- and law-making, starting with the founding treaties of the 1950s and ending with the post-Maastricht debates on Union citizenship. The second level is three instances of constitution-making importance within European integration: the Spinelli Project of the European Parliament, the Maastricht Process and the Convention on the Future of Europe. Methodologically, the analytical assessment of European citizenship discourse is provided on the basis of a process tracing exercise geared towards highlighting the crucial junctures of appearance, consolidation, and/or change with regard to the concept of citizenship.

The main conclusion is that European citizenship discourse has created a conception of *transnational* citizenship, rather than *postnational* membership. This is visible on both empirical levels. The inherent transnationalism of European citizenship is found to have been initiated already in the founding ECSC and Rome Treaties. Citizenship elements in early European integration, such as free movement, market participation and, later,

membership based on nationality in a Member State, created a frame upon which ensuing conceptions of citizenship developed. There were proposals for alternative conceptions based on a stronger notion of a more free-standing European status, for instance in elections to the EP, and more radical ideas of membership through dual European and national citizenship within constitution-making instances. Such proposals did, however, not significantly alter the conception of European citizenship as articulated around the border-crossing of Member State citizens. As much as this has highlighted – against the *no demos* view – that issues of citizenship are not incompatible with institution building and policy-making “beyond the nation-state”, it is also clear that one cannot detect a significant dissociation of citizenship and rights from nationality, as professed by postnationalists. Citizenship has evolved – mainly within policy practices – as a significant status of individuals within European integration through a transnational “right to have rights” in second countries. Constitution-making instances have on the whole contributed to a consolidation of the basic tenets emanating from policy practices, rather than producing radical “constitutional moments” of EU citizenship politics. The conceptual path of European citizenship discourse has, therefore, brought forward a conception based on a core principle of “no rights without movement”; where elements such as political rights on the European and Member State levels, personhood as an additional condition for access to rights, and residence rights have been added as a consequence of evolving policies and practices of European integration.

# Chapter 1. Introduction

## 1.1. Introduction and Background

The broad topic of this thesis is the development of citizenship related to policy practices and constitution-making in the European Union (EU). More specifically, the thesis explores the kind of *conception(s)* of citizenship that have emerged *over time* within the European integration process, ranging from the founding treaties to the Convention on the Future of Europe. This is related to the question “what is citizenship?” which has been repeatedly asked within citizenship studies. Curiously, this general question has not been replicated to any significant extent with regard to the development of issues related to citizenship within the EU. While “what *is* it?” has seldom been asked outside the legal literature (see e.g. Durand 1979; Evans 1984; d’Oliveira 1995; O’Keefe 1999; O’Leary 1996) or institutionally oriented studies within the political science literature (see e.g. Maas 2007, Meehan 1993; Wiener 1998), questions like “what *can* it be?” or “what *should* it be?” have been more frequent within the literature on European citizenship (see e.g. Aron 1974; Bauböck 2007; Bellamy 2001b; Grimm 1995; Habermas 1992, 1998; Kostakopoulou 2001a; Linklater 1998a, 1998b; Miller 1995; Preuss 1996, 1998a; Shaw 1997a; Shore 2004; Weiler 1999). Such studies have advanced our knowledge of significant theoretical and normative *questions* which European citizenship pose, with regard to for instance the nature of the relationship between individual citizens and European institutions, the multi-level character of European integration, and the prospects for a common European identity among the citizens and peoples of Europe. Yet, despite the propensity to raise the same *types* of queries, the literature has been deeply divided between a sceptical strand which denies the possibility of “genuine” citizenship outside the framework of the nation-state based on the claim that there is *no* European *demos*, and a more visionary strand which interprets such developments as a *postnational* disconnection of citizenship from nationality.

That research on European citizenship has been predominantly theoretical and normative is therefore not surprising. The traditional understanding of membership in a bounded community (see e.g. Beiner 1995; Brubaker 1992; Heater 1999; Miller 2000; Schnapper 1994), has been that “[a] citizen is by definition a citizen among citizens of a country among countries” (Arendt 1968: 81-82). The *idea* of European citizenship alone, then, challenges this paradigmatic understanding of citizenship. Theoretically, European

citizenship therefore challenges the notion of congruence between nation, state and citizenship (see Preuss 1998a) as the EU is not a state or a homogenous nation (see Hix 2005) and is a polity in the making, that is without clearly defined territorial and politico-legal boundaries (see Snyder 2003).

In a post-war context of reconciliation and rebuilding, the European project of unification commenced with integrative measures pertaining to national economies and markets focusing on aims such as free movement and reduction of tax barriers. At the time of increasing migration flows in the 1960s and 1970s, European institutions brought in questions of identity, communal symbols and genuine European elections. After the fall of the Berlin Wall, the Union became a reality and citizenship was made an explicit institution of European integration. In addition to these institutional developments of the EU as such, the question of European citizenship is pertinent, not only as part of a scholarly debate linking it to the broader processes of European political order, but also as a real-world phenomenon which affects the lives of individual citizens. For instance, in parallel to the aims of free movement and the weakening of intra-European borders, *actual* mobility across national borders has increased since World War II (see Hollifield 2004). Transnationalism is a pervasive phenomenon, for different segments of contemporary societies, be it the economy, political institutions or individual citizens. Taken together, these different EU-specific and broader developments draw attention to what happens with the status of individuals as they increasingly take part in different political communities as a consequence of less rigid borders between nation-states. To understand how such developments have affected Member State citizens we cannot merely ask normative or theoretical questions. There is a clear need for empirical *answers* to these issues and questions, in addition to those that have been raised in the protracted debates between sceptics and advocates of European citizenship.

Hence, a main argument of this thesis is that it is imperative to understand the development citizenship issues within European integration in *practice*. Yet, this does not mean that a study of European citizenship should eschew theoretical issues. Citizenship is a contested concept (see Connolly 1983), which historically has been linked to concrete political projects (see Isin 2002), and still serves as a crucial inclusionary/exclusionary mechanism for individuals (see Brubaker 1992). It is therefore important for any study of

citizenship to critically examine and discuss its constituent elements and establish empirical indicators to avoid the dangers of reifying existing ideas or models.

The aim of this thesis, therefore, is to conduct a theoretically informed, yet empirically oriented study of the kind of conceptions of citizenship that have emerged in the European integration process.<sup>1</sup> The more concrete objective is to move beyond the prevalent nation-state paradigm (see Bauböck 2007: 454) within citizenship studies and the normative thrust of existing research. Through such a focus, this thesis will provide the study of European citizenship with a more grounded perspective on its conceptual development. The basic argument for this specific research objective is that it is highly problematic to take the model of the nation-state as indicative of a certain normative or theoretical standard of citizenship as *no demos* theorists often do. One example is the argument that genuine European citizenship is not *possible*. Different authors base this on its purported incongruence with the triptych of citizen, nation and state (see e.g. Shore 2004: 29; Smith 1992: 62), or that genuine *political* citizenship is only possible within the nation-state frame (see e.g. Aron 1974: 642ff.; Miller 1995: 162ff.). The main problem with these assessments of citizenship “beyond the nation-state” is that they narrow the scope of interpretation with regard to new configurations of citizenship that do not fit with the nation-state model. They simply rule out the possibility of new developments regarding long-standing political concepts. At the same time, it is equally problematic to postulate theoretically how citizenship outside the nation-state as its paradigmatic frame will develop; a tendency that is frequent among postnationalists. With regard to the debate on European citizenship this is based on the expectation that the concepts of citizenship and nationality will be dissociated. One example here is Oliver Gerstenberg (2001: 299) who argues that as the EU is more than an international organization, but less than a federal state, it harbours a predisposition to release the concept of citizenship from that of shared nationality (for similar arguments, see e.g. Curtin 1997; Habermas 1996, 1998, 2000; Preuss 1998a). This is linked to an understanding of citizenship as a historical construction that one can decompose theoretically and thereby come up with new models. The “double coding of citizenship”<sup>2</sup> as a legal status and group membership is

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<sup>1</sup> Caporaso (1996: 49) has argued along the same lines, albeit on a more general level with regard to our understanding of what the EU amounts to as a specific political unit: “Endless debate about ‘what the EU is’ cannot be productive unless tied to detailed, though theoretically informed, empirical studies. Similarly, these empirical studies are unlikely to acquire their full significance unless integrated with broader conceptions of the nature and significance of the evolving European Union.”

<sup>2</sup> This phrase is taken from Habermas (1998: 113).

seen as a remnant of nationalism that *supranationalism* will do away with. The plausibility of this account needs to be probed through an examination of how different elements of citizenship have developed against the backdrop of policy-making, constitutional debates and institution building in the EU. Again, it can be argued that citizenship in the EU might well be re-configured, but this does not necessarily have to entail that nationality is redundant within citizenship *practices*.

The focal core of citizenship has remained much the same in historical perspective; a membership status linked to a particular political community distinct from other such communities, attached with certain rights and duties and a formative identity. This focal core has, however, been subject to an array of different realisations in practice, both in terms of which dimensions are seen as imperative to citizenship and the type of entity it is realised within. The emergence of a discourse on European citizenship thus raises the puzzle of how citizenship is conceptualised within the EU. Has the EU advanced the idea of citizenship reminiscent of some other practical experience of citizenship politics, or can we see a different conception emerging “beyond” the nation-state? Through which elements did European institutions first affect individual citizens, and how have these developed further as the integration process has been deepened politically and institutionally?

Given these remarks, I argue that an investigation which seeks to take a more practical approach to understanding what citizenship means in a given polity, thus needs to be doubly aware. Firstly, regarding the stable dimensions of citizenship, that is, the questions and problems that cover different individual and collective aspects of the concept; and secondly, concerning the empirical aspect of citizenship, that is, the ways in which citizenship has been conceptualised in a given time frame and entity. Only then can one reach a sound understanding of the meaning of citizenship, say, in the EU, as the preconditions conjured up normatively or theoretically can only be ascertained empirically in the final analysis: in what ways are different elements at work and how are they combined in practical conceptions of citizenship? The contribution of this thesis to the literature on European citizenship is, therefore, its focus on the *practice* of citizenship dimensions. To exemplify, through such a focus one can gauge the relative importance of different types of rights, norms of membership such as the significance of the nationality principle, the notion of identity that prevails, and finally, the facilitation of different

modes of participation on the part of citizens. Hence, it follows that a critical assessment of theories and conjectures does not have to lead to the building of yet another normative or theoretical model. And, further, a study of European citizenship in this vein can provide not only a grounded interpretation of its specific trajectory, but also of the degree of boundedness in the European polity, of how citizenship plays a role in augmenting (or perhaps diminishing?) the fixity of the EU as a political organisation of states, as well as citizens.

## **1.2. Research Questions and Empirical Focus**

This thesis aims to go beyond the current literature and study European citizenship as a conception in development within the integration process. Hence, the aim is not an assessment of its viability or desirability in theoretical and normative terms, or an investigation into the minute details of legal provisions. The thesis rather amounts to a conceptual study of European citizenship, with a two-pronged approach that will focus both on its development in conjunction with policy practices as well as its place within different constitution-making instances. With these preliminary queries in mind, two more concrete research questions can be formulated:

- 1) *What kind of conception(s) of citizenship have emerged and developed in the ongoing integration process of the EU?*
- 2) *What is the trajectory of the conceptual development comparing policy practices with specific instances of constitution-making in the Spinelli Project, the Maastricht Treaty and the Convention on the Future of Europe?*

As stated in these questions, the study will focus on conceptions of citizenship and the development of its vocabulary in the evolving process of EU integration. This focus raises several questions of both a theoretical and empirical nature. What are the components of European citizenship and how is this reflected conceptually in EU citizenship discourse? Does it emulate a statist notion of citizenship or is it rather indicative of a new non-statist understanding of citizenship? Has the process of EU constitution-making contributed to conceptual changes or shifts in the vocabulary of citizenship or can one merely observe institutional changes in the attributes of statist citizenship? What are the implications for theories of citizenship when this concept is introduced: are novel theoretical lenses and concepts necessary in order to understand the development regarding conceptions of European citizenship?

These questions testify to the need for a research design that does not reify a certain practice of citizenship in terms of stylised theoretical models.<sup>3</sup> The specific conceptions and their developmental trajectory in the process cannot be *a priori* assumed to be in compliance with paradigmatic models of citizenship such as a liberal, communitarian or republican, to name only a few. Therefore, the thesis will seek to employ a method of analysis where citizenship is treated as a so-called *conceptual variable* (see Brubaker 1996: 16). The analytical focus is thus on dimensions of citizenship rather than pre-defined models.

### 1.3. Outline of the Chapters

In chapter 2, a theory of citizenship will be presented. In doing so, the focus will be on laying out elements of citizenship that have been pervasive in diachronic terms. A further focus will be on dimensions that cover different individual and collective elements of the relation between citizens and political units. Finally, the main argument of the chapter is that in order to capture polity-specific conceptions in empirical terms, one should study citizenship as concept which varies across time and between political communities. This is made possible through a discussion of how the theorised dimensions of citizenship give rise to empirical indicators of how they operate in practice.

This theoretical framework provides a background for the appraisal and critique of the existing literature on European citizenship which follows in chapter 3. Through this approach, the different strands of the literature are scrutinised and assessed against the plea for studying the variability of citizenship in practice, rather than through fixed models. The main argument of this literature review is that the literature has been marked by three inter-related tendencies that have pre-empted sound empirical research within the field: a propensity to study European citizenship from strict theoretical and normative frameworks, a tendency to rely on *a priori* models of citizenship often based on the nation-state template, and finally, a bias towards specific dimensions such as (social) rights or identity.

With these theoretical and field-critical chapters as a background, the methodological and empirical approach is put forward in chapter 4. In this final chapter of the approach

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<sup>3</sup> For a discussion regarding the problem of reification on contested political concepts, see Brubaker (1996) who discusses this problem with regard to the concept of nationalism.

section of the thesis, the main argument is that in order to capture the complexity of European citizenship, the thesis will employ a process tracing strategy studying policy practices and constitution-making as different levels of political import within European integration. More concretely, this entails a preliminary focus on how theoretical puzzles and empirical indicators regarding the concept of citizenship point the study towards certain critical junctures within the European citizenship discourse.

Following these theoretical and methodological discussions, the empirical analysis is conducted in chapters 5 and 6 respectively. In the first of these chapters, policy practices of European integration will be analysed in diachronic terms, starting with the ECSC Treaty (1951) and ending in the Charter on Fundamental Rights (2001) as the momentary culmination of the integration process with regard to its relation to individual citizens. In doing so, the focus in empirical terms will be on so-called critical junctures where issues pertaining to citizenship have been raised, implicitly or explicitly. Analytically, the focus will be on illuminating how different dimensions of citizenship have emerged within these junctures, and the way in which they have been inter-related in affecting the status of individuals related to European institutions. In the second of these chapters, the empirical lens is changed and takes in three concentrated instances of explicit or perceived constitution-making. In doing so, the focus will be on how issues of citizenship emerged and developed within different phases of each instance, and how they were dealt with in the final drafts of constitutional or treaty texts. The approach is thus less diachronic than in chapter 6, and focuses more on the process within each instance of constitution-making.

The main argument and empirical findings of the thesis are dealt with in the concluding chapter 7. This amounts, not only to a concrete summary of the main findings, but also a broader argument about the trajectory of European citizenship discourse when we compare developments within policy practices and constitution-making instances. Linked to this, the main argument of the chapter is that European citizenship has been predominantly a transnational rights-status giving European citizens a privileged status within second countries of the Union, and not a postnational membership which has superseded the national dimension of citizenship to any significant extent. With this broad conclusion in mind, the chapter continues with a discussion of theoretical and methodological issues within the study of European citizenship. Following this, the

conclusion is also drawn into a discussion on the place of the thesis within the larger debate on EU studies. Here, the main argument is that the thesis has shown that one should continue the propensity within the larger field to eschew *sui generis* studies of the EU in favour of more general theoretical approaches. Finally, the chapter is concluded with a sketch of possible avenues for future research, focusing especially on the comparative dimension of multi-level citizenship.

## Chapter 2. Theorising Citizenship

### 2.1. Introduction

Writing about citizenship in *The Politics*, Aristotle (1992: 168) claimed that “(...) there is no unanimity on this, no agreement as to what constitutes a citizen.” This contested character of citizenship has been evident since classical times. It has been subject to a plethora of differing realisations in practice as well as understandings in theory (Bellamy 2004: 4ff.; Heater 2003: 3). To state that citizenship is a contested concept is to repeat what is almost a *cliché* in the field of citizenship studies. So, why start out with this *again*? This is due to the fact that citizenship has nevertheless often been pinned down theoretically as given and “natural”; as a static concept (Turner 1994: 211ff.).

This is visible in two main ways. First, there is a tendency to what could be called the *reification* of citizenship. This means that specific historical realisations of citizenship are translated into general theories. One example is those theorists that take Marshall’s (1992) historical tri-partite model of rights as the template for citizenship in theoretical terms (see e.g. Barbalet 1988; Meehan 1993). The Marshallian description might be accurate for the case of citizenship in modern Britain, but treating this paradigmatically overlooks the institutional and conceptual character of citizenship. It is, for example, not given at the outset which criteria are attached to the assignment of rights in given circumstances (Bauböck 1994: 211). The combination of different individual and collective as well as formal and informal aspects of citizenship should also not be postulated on the basis of one *given* model. In addition, intentional or not, much theorising on citizenship couches normative ideas in the analytical language of ideal-typical models or perceptions of the appropriate level for citizenship politics. In such perspectives, citizenship is, for instance, only desirable or viable within territorially bounded nation-states. Although the normative dimension – claiming the *ought* of citizenship in terms what it *should* be – is interesting for discussions regarding, for instance, inclusion of new citizens, or the participation of those already having the status, theoretically this is not necessarily instructive if one wishes to understand and explain the current state of citizenship in a given polity. As citizenship will always be constituted according to certain norms or understandings within a political community and its institutional framework (Balibar 1988: 724), what is interesting, rather, is to investigate *empirically* how these are parts of specific conceptions of citizenship and are established, change and/or are consolidated in practices over time.

Second, there is a tendency to focus on one or only a small number of dimensions to underlie the theory of citizenship. This means that theories or models based on, say, rights or identity as the *ultimate* defining feature of citizenship are seen as covering all possible aspects of citizenship politics through a distinct theoretical understanding of “what it is and/or should be.” These tendencies are evident in the main theoretical models that have emerged in the literature (see Beiner 1995; Bellamy 2004). Four ideal-typical models – three classical and one more recent – have dominated the field of citizenship studies. By way of example, of the three classical models of citizenship, *liberal* perspectives highlight civil rights (see e.g. Rawls 1985, 1993; Schuck 2002), *communitarians* emphasise membership in the pre-political, cultural community (see e.g. Miller 1995, 2000; Taylor 1985a, 1992), and lastly *republicanism* is the doctrine of active participation (see e.g. Bellamy 2001a, 2001b; van Gunsteren 1988).<sup>4</sup> A more recent theoretical debate has brought about *cosmopolitan* theories which advocate the scaling down of state boundaries and the usage of human rights as the building bloc of global citizenship (see e.g. Falk 1994; Linklater 1998a, 1998b).

With regard to the specific topic of this thesis, there has further been a tendency within European studies to treat the EU as a *sui generis* phenomenon which requires polity-specific theories in order to understand and explain its peculiarities as a political order (see Pollack 2005). Should European citizenship not then also be theorised as an unprecedented phenomenon which would require taking these peculiarities of the EU as a starting point? I argue that this is not a fruitful avenue for a theoretically informed study of European citizenship. The *sui generis* approach would, for instance, not be able to capture the range of conceptions that have emerged diachronically. There is, furthermore, much disagreement within the EU literature on exactly what “the nature of the beast” is (see Risse-Kappen 1995). A more general theoretical focus can thus pre-empt the need for a prior understanding of the EU as something unique and thus the contention that our theorising about it or aspects of it needs to be particularly geared towards this understanding.

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<sup>4</sup> In a similar argument, Bellamy (2004: 7ff.) points out that ideal-typical approaches to citizenship separate dimensions or components of citizenship as offering distinct models of citizenship. Bellamy points out three main models each compatible with the models outlined here: Citizenship as rights (liberal), citizenship as belonging (communitarian) and citizenship as participation (republican).

Rather than focusing on citizenship as identified by historically and/or normatively entrenched models, the EU as a unique phenomenon which would require a polity-specific theory, or the exclusive focus on *one* dimension, this thesis takes as its theoretical point of departure that citizenship on the most general level is *a status of individuals tied to a political unit*. A “political unit” could potentially mean anything from a state to, say, a political party. For the purposes of this thesis I will narrow it down to political or legal orders which, formally or informally, establishes a relationship to individuals through a monopoly of force (see Weber 1978: 54-55) and/or (legally binding) rules which serves to structure the scope of individual action (see Olsen 2007: 118) through norms of membership, rights and/or duties. This signifies that citizenship links individuals to some collective order. This does not necessarily need to be structured within a state, but clearly citizenship does create a bounded legal and political space shaped by the entitlements and burdens bestowed on those individuals who are designated as members of *that* given collective. Thus, citizenship would hold no meaning if it was devoid of a collective component (see Arendt 1968: 81ff.; Walzer 1983: 34). On the general level, this collective component is obvious in that citizenship as a status is always bestowed by *someone* to the individual in question.

Citizenship does not emerge in a void, however, it is always linked to concrete practices. It is, according to Nisbet (1974: 612), “(...) more than simply a condition or status; it is a process, with identifiable phases in time and with contexts in history.” Emphasising the historical character of citizenship also highlights its *conceptual* quality. As a concept, citizenship is invoked in various discourses which in the final instance affect it as a status. Hence, defining citizenship as a status of individuals is fruitful because it directs our attention to how the status is established, consolidated and changed in different political settings. By focusing on citizenship as a concept that varies diachronically in time, and synchronically across polities, its specificities in given political settings can be ascertained empirically. But, this does not say much at the outset about what citizenship entails more specifically in terms of its basic characteristics: Through which attributes does citizenship practice evolve? On this broad background I will theorise citizenship as a concept consisting of four dimensions.

Before providing brief impressions of each dimension, I will clarify the background for preferring these four dimensions. Notwithstanding its contested character, citizenship

gives rise to certain salient questions, issues and problems. I argue that these are linked to the intrinsically individual and collective characteristics of citizenship. The four dimensions that are employed in this thesis cover such characteristics in different ways, but clearly highlight the interplay between the individual and the collective features of citizenship politics. This is firstly evident in the *membership* dimension which signifies *who* (as individuals) are seen as citizens of a given political unit (as a collective) and who are not through criteria of inclusion and exclusion. The content of citizenship is noticeable in the *rights* granted to citizens on the basis of membership, the mode and degree of citizenly *participation* derived from these rights as well as linked to certain duties of the status. *Identity* signifies the understanding of “we” as citizens and “they” as non-citizens, that is, the stipulation of “who we are” and “what distinguishes us from others” in terms of both individuals as part of a collective community and the community as such.<sup>5</sup> Identity can thus be understood as a reflection on what a given political community entails and what sets *its* citizens apart from other citizens, not only through membership decisions, but also in terms of how the very community is conceived as such.

Based on these initial remarks, I will proceed as follows. First, some preliminary points will be made with regard to analysing concepts within the framework of this thesis. In this section it will be argued on a general level that social scientific analysis cannot disregard the practical nature of concepts. The main argument is that as concepts are part of social practice, the work of the social scientist is not to provide exhaustive conceptual definitions limiting the study of specific phenomena to discreet values on given variables, but rather to stipulate their focal core and consequently investigate their development in practice. This is especially fruitful with regard to a phenomenon like citizenship which clearly has some defining features that nevertheless has been endemic to different practical realisations. Second, based on these remarks regarding concepts, a theoretical framework focusing on citizenship as a conceptual variable is presented as an alternative to the reifying and modelling tendencies within the field. Such an emphasis highlights what I will call the dimensional features of citizenship. Accordingly, in the third section of the chapter, the focus will be on defining membership, identity, rights and participation as

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<sup>5</sup> In his book on transnationalism and citizenship, Bauböck (1994: vii) argues along the same lines in claiming that “[a] comprehensive analysis of citizenship has to take into account three different aspects: (1) the rights and obligations attributed to citizens as members of the polity, (2) the determination of individual membership, and (3) the nature and shape of the polity itself.”

the basic dimensions of citizenship, and subsequently to spell out their focal core for the purposes of studying conceptions of European citizenship.

## 2.2. Analysing Concepts

Prior to defining citizenship for the theoretical and analytical purposes of this thesis, some remarks should be made on the issue of concepts and the study of politics. On a general methodological level, Davis (2005) has emphasised that the question of concepts and conceptualisation should be at the forefront of the scientific inquiry of politics. He further argues that concepts are not “given”, that they “(...) are evolving, continually emerging, and fading out” (ibid.: 46). This character of concepts highlight their indistinct borders in so far as one very rarely (or never) can provide an *exhaustive* definition of when a concept applies and when it does not to a given *social* situation, phenomenon or kind. But, does this mean that concepts could potentially mean anything? Is their application completely dependent on the subjective viewpoint from each arbiter of what the concept entails? According to Davis, this is not the case. Inspired by cognitive-psychological work on language, he argues that concepts consist of a so-called *focal core* which has the generic quality of stipulating what the concept minimally entails, but which does not stipulate the reach of it in terms of practical situations or novel developments (ibid.: 33ff., 61ff.). In social scientific terms, a concept should therefore be “(...) understood as being generated by focal or prototypical core members and then extended to novel observations or experiences on the basis of perceived similarities” (ibid.: 81). Concepts can thus be seen as historically situated and malleable, signifying that they are subjected to changes or consolidation over time.

A study on citizenship – in whatever historical or political configuration – should therefore engage with an initial explication of its core conceptual features, that is, to identify salient dimensions and problems. In Kratochwil’s (1994: 486) terms, the concept of citizenship “(...) necessarily becomes historical, requiring an examination of the genealogy of the concept and its temporary reconciliations.” This obviously holds for the empirical study of citizenship. Citizenship is a concept that cannot be conjured up *ex nihilo* – it is rather connected to concrete social practices in given political settings. Yet, acknowledging the practical character of citizenship does not necessarily provide us with the tools to “recognise” it. How do we know citizenship when we see it? What is at stake for a *theory* of citizenship is thus to highlight those features of it that are salient, not in

concrete political conceptions or “models” (as these will always vary diachronically as well as spatially), but conceptually. Thus, in defining each dimension of citizenship in terms of its focal core, historical examples will be utilised *heuristically* in order to illuminate the significance of issues concerning the status of individuals connected to political entities. Prior to laying out the dimensions of citizenship in more specific theoretical terms, however, some more general points highlighting how a conceptual focus can improve on the reifying and modelling tendencies of the literature on citizenship will be provided in the next section.

### 2.3. Theorising Citizenship as a Conceptual Variable

The requirement of emphasising the conceptual character of citizenship indicates that one should not theorise citizenship as *always* consisting of *certain* attributes linked in a *fixed* way. In more specific terms, this theoretical concern highlights the need to overcome linking citizenship to the nation-state as the *given* space of politics as well as to pre-specified configurations of different dimensions through *models*. Charles Taylor has illuminated the tendency to “modellise” the dominant understandings of a given social phenomenon: “(...) the dominant interpretations and practices may be so linked with a given model that this is, as it were, constantly projected for the members as *the way things obviously are*” (Taylor 1984: 21).<sup>6</sup> Relying exclusively on *one* model or dominant interpretation of a phenomenon like citizenship then weakens the search for possible changes and re-conceptualisations of it in given political settings.

On this background, therefore, in this thesis the point of departure is an approach where one does not start out with certain given models where citizenship *ex ante* is attributed some clearly defined *atemporal* properties in a fixed relationship. I will rather argue that citizenship should be theorised and studied as a *conceptual variable* conducive to a variability of realisations across time and space (Brubaker 1996; see also Nettl 1968), as this enables one to capture more of its empirical complexity. Brubaker (1996: 15ff.) holds that studying a concept as a conceptual variable rather than as a “frozen” phenomenon yields the following methodological advantages. First, it is a strategy that is not trapped in the problem of adopting *categories of practice* as *categories of analysis*. This type of reification is evident for instance in theories of citizenship that holds national political communities as

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<sup>6</sup> My emphasis.

the sole sites for citizenship politics proper (see e.g. Miller 2000: 81).<sup>7</sup> Second, it facilitates asking not only “what is x?” in theoretical terms, but also how it is conceptualised and institutionalised as a practical category in specific settings.

In this thesis, citizenship is theorised as a bundle of different dimensions, that is, as consisting of membership, rights, identity, and participation, each of which have an *analytically* independent status but which also combine at any given moment in a specific conception of citizenship. The dimensions should be understood theoretically as complementary facets of citizenship. It is important here to point out that while each of the dimensions has an analytically independent status, they are also (potentially) interrelated in specific conceptions of citizenship. This does obviously not rule out that one or more dimensions can be *omitted* from such conceptions. It is, for instance, not given that identity issues figured to any extent within the predominant economic mode of integration in the early period of the European project, but this should not be precluded theoretically. A dimension has analytical import, therefore, whether it was activated or not as this will either way provide evidence of the *kind* of conception of citizenship that was present at a given juncture. Thus, one should scrutinise the four dimensions as the *potential* of citizenship rather than as always consisting of certain attributes linked in a *fixed* way (see Kratochwil 1994: 486). How and to what extent the analytically distinct dimensions are *empirically* related can only be ascertained by analysing actual practices in which issues of citizenship emerge. The theoretical point here is more specifically that the traits of one dimension often will have a bearing on other dimensions in practice. By way of a brief example, the manner in which, say, membership is defined clearly has an effect on the bestowal and extension of individual rights. That said, however, one cannot rule out that the way rights are delineated also can affect the definition of membership – not least in circumstances where the notion of membership is not formally settled. Analysing citizenship from the vantage point of dimensions thus provides the opportunity to flesh out such linkages in polity-specific conceptions of citizenship.

In other words, one can thus study citizenship as composed of a possible “cluster of meanings” that is realised differently across time as well as space – historically and

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<sup>7</sup> In a discussion on the concept of “the state” in connection with studies regarding the degree of “stateness” in the EU, Caporaso (1996: 31) brings forward a similar argument: “At best, we can speak of different state forms, thought of as clusters of institutions embedded in specific social formations which in

politically: “(...) from very early in its history the term [citizenship] already contained a cluster of meanings related to a defined legal or social status, a means of political identity, a focus of loyalty, a requirement of duties, an expectation of rights” (Heater 2004a: 166). Such a methodology is then particularly conducive to the study of citizenship as it is not certain how membership, rights, identity or participation is conceptualised in a given polity. Kratochwil (1994: 486) suggests that “[i]t is perhaps best to conceive of citizenship as a space within a discourse on politics that institutionalizes identities and differences by drawing boundaries, both in terms of membership and in terms of the actual political practices that are connected with this membership.” As a result, putting the emphasis on the practical character of citizenship leads us away from abstract *a priori* theorising to a more inductive approach where our ultimate understanding depends on close scrutiny of its configuration in relevant political practices. In short, it requires connecting practice with theory in the sense that what is ultimately at stake is understanding how the status of individuals is conceptualised, consolidated and/or changed in conjunction with evolving practices of a given political system.

These last remarks lead to an important caveat. Treating citizenship as a conceptual variable does not imply that it can mean anything, that it is a type of “empty signifier” (see Billig 1995) which can be filled with *any* content in theory and practice. As Bellamy (2004: 3) has emphasised, “[t]o be recognisable as accounts of citizenship, conceptions must share certain common... conceptual features.” I argue that the concept of citizenship *does* raise certain historically and theoretically relevant questions and problems such as designating criteria for membership (inclusion and exclusion), what constitutes the community of citizens in terms of identity, the mode of participation, as well as the rights and obligations linked to the status of citizen. Hence, what one should refrain from is *not* connecting the study of citizenship to certain problems or dimensions, but rather the tendency to overlook its variability in practice. One can expect that questions of membership, rights, identity, and participation have been raised also in the citizenship discourse within the EU polity. It is against the backdrop of such questions that “(...) different national traditions were formed, and a European citizenship is emerging” (ibid.: 5). Still, one cannot rule out that *new* questions and problems of citizenship have emerged on the EU level – that the practices have overcome the models, so to say. Due to this, the

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turn are embedded within distinctive historical periods. These state structures should not be reified and thought of as eternal fixtures of politics.”

empirical study regarding conceptions of European citizenship should be based on general definitions of citizenship and its dimensions that do not hedge in the range of possible interpretations of actual developments and practices.

## 2.4. Defining Dimensions of Citizenship

### 2.4.1. Introduction

As a category of political order, citizenship has existed since the definition of political community in Greek antiquity (Magnette 2005: 7). Given this linkage to the issue of political community, it is often imbued with a strong normativity, that is, a focus on what it *should* be, rather than what it is in theoretical and empirical terms. As argued above, investigating questions of citizenship from a normative vantage point is valid *per se*, but not valuable if the interest empirically is in what kind of citizenship has emerged in a certain political unit. On the most general level, therefore, I will start out by defining citizenship as *a status of individuals tied to a political unit*. With this in mind, the concept of citizenship involves issues both of individuality and collectivity (Heater 1999). The concept of citizenship would hold no meaning if it was devoid of a collective component – it is always granted by *some* political unit (Walzer 1983: 32ff.). In fact, it can be argued that it is exactly at the interface relating the individual with a political unit that conceptions of citizenship arise.

But, stating that citizenship is a status of individuals does not provide much in empirical terms. How is it constituted, that is, what are its constituent parts? As the focus is on providing a theoretical framework for the analysis of European citizenship discourse, it is necessary to *define* what I have called the generic characteristics of citizenship. Generic here means the basic *conceptual* attributes of citizenship, that is, the core content of different dimensions. By way of a preliminary example, the dimension of rights signifies the status of individuals in terms of their entitlements *as* citizens against those of non-citizens. This, however, does not at the outset stipulate anything about *which* rights are accorded to citizens, their eventual *extension* to non-citizens or their *location* within a specific citizenship practices. Consequently, the task of theorising citizenship is to properly define these conceptual properties so as to provide indicators for investigating its practical realisations empirically. What the dimensions entail in generic terms will be dealt with in the following sections discussing membership, identity, rights and participation.

#### 2.4.2. *Membership*

It is often argued that the Greeks “invented” the concept of citizenship<sup>8</sup> through the word *politeia* – a word etymologically connected to *polis* (Magnette 2005: 9). Already in this inventive move, a language of citizenship crystallised around a certain dimension. Citizenship was connected to the *polis*: it designated a relationship between citizen and collectivity. This relationship was mediated through what we can call *membership*. As Pocock (1995: 31) underlines, membership of the *polis* was granted to a certain group of *worthy* citizens. Hence, already in its first practical approximations, citizenship served as a marker for inclusion and exclusion, for differentiating between those legitimately belonging to the entity from those outside it.

The contrast with *metics*, strangers and slaves<sup>9</sup> as “the others” of citizenship was evident in what all these out-groups were short of; the status of political citizens, of citizens having the rights and duties of taking part in all aspects of the *polis*’ political identity (Riesenberg 1992: 28). This is thus indicative of what Isin (2002: 276) points out as a persistent phenomenon in the history of citizenship, namely that the groups who articulated their identity as citizens within a given community “(...) constituted strangers, outsiders, and aliens as those *bête noire* who *lacked the properties they defined as essential* for citizenship”.<sup>10</sup> The membership connected to citizenship in the late medieval and renaissance city was territorial in the sense of being confined within the walls or other boundaries of the composite city. Still, this was not the only marker for belonging and identity. Membership of a guild was the basic principle of inclusion and exclusion. The individual’s position within the economic structure of the city was deemed essential for acquiring the rights of citizenship (Weber 1978: 1238ff.; see also Leca 1994: 152ff.). Thus, we see that citizenship still was a membership institution (see Brubaker 1992: 21ff.), linked not only to *territory*, but also *economy*. In the modern setting, citizenship is the primary marker for membership in political communities due to the unitary character of the territorial and sovereign state.

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<sup>8</sup> The English word “citizenship” of course has a certain origin of its own (see Magnette 2005: 5) and is not immediately transitively translatable to, say, the German *Staatsbürgerschaft*, the French *citoyenneté*, the Italian *cittadinanza*, or the Swedish *medborgarskap*, to name a few other designations of the concept in European vernaculars. In the lack of a more encompassing term that could be seen to bridge basic language differences, the term “citizenship” will be used throughout the text.

<sup>9</sup> These three categories signify different degrees of non-citizenship. “Metics” is a concept signifying those individuals holding certain rights of citizenship, but not full citizenship in the sense of being part of the political community (Riesenberg 1992: 28). “Strangers” signify the category of people without given rights of citizenship this *given* political community, but who in contrast to “slaves” nevertheless could enjoy the status of citizen in *another* political unit (Isin 2002: 31).

<sup>10</sup> My emphasis.

In basic terms, membership is a device for signifying the individual's belonging to a specific political unit: "Citizenship is a relation between individuals and states (...) the classification of individuals into groups of different state membership" (Bauböck 1994: 23). Further, as Brubaker (1992: 21) has pointed out, modern citizenship is internally inclusive in the sense that all members are seen as equal citizens. The principle of exclusion is therefore directed at foreigners or strangers only: "There is a conceptually clear, legally consequential, and ideologically charged distinction between citizens and foreigners" (ibid.: 21). Thus, the dimension of membership clearly retains its pivotal place within the citizenship complex, however in a slightly different practical realisation than earlier historical periods. It is no longer *primarily* or at the outset tied to a prior quality of the citizen, such as his moral stature or professional status. In conceptual terms, the organising principle is first and foremost *territorial*, not moral, economic or religious as was the case in earlier periods.

Given these initial points, how should one define the membership dimension on a generic level? What is its focal core in theoretical and conceptual terms? Clearly, the question of citizenship goes to the core of *inclusion* and *exclusion* in a polity (see Brubaker 1992: 21ff.). It does on some level involve the question of who belongs and who does not belong. The membership expression of citizenship is the definition of what Bellamy (2001a: 19) calls the "subjects of politics", that is the definition of authority and the establishment of the individuals with capacities and commitments connected to the polity. Thus, the concept and institution of citizenship "ties" a human being to *some* collective organisation. This is forcefully expressed by Michael Walzer (1983: 31) when he states that "[t]he primary good that we distribute to one another is membership in some human community." Why is this so important? Through the notion of membership a demarcation between members and strangers is established, between those *included in* and those *excluded from* a given community. Indeed, in the absence of a world state,<sup>11</sup> "[a]ll polities are bounded communities" (Bauböck 2003: 17). Following this, the membership question then presupposes some "self"-understanding of the choosing community, it is not only a reflection on the strangers to, but also the members, of the community (Walzer 1983: 32ff.). This phenomenon is not necessarily only visible in terms of a *formal* membership principle such as nationality, but also through more *informal*, sometimes identity-oriented

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<sup>11</sup> As Arendt (1968: 82) has pointed out: "The establishment of one sovereign world state... would be the end of all citizenship."

criteria (that might not coincide with the formal) through which citizens and outsiders are distinguished (see Isin 2002: 22). Thus, in operational terms, membership can be ascertained by identifying *who* are seen as members and on *what* basis they are included. The notion of membership inherent in practical conceptions of citizenship is, then, visible in terms of *the criteria* by which members and non-members are differentiated. These remarks further underline that the question of membership is not vacuous, but clearly connects to what Bauböck (1994: vii-viii) has emphasised as the question of the shape and character of the polity as a collective in time and space and its representation as a community of citizens *identified* as such.

### 2.4.3. Identity

As the preceding section showed, membership entails the drawing of boundaries of the community of citizens, through signifying the grounds and criteria for individual access to citizenship. Migdal (2004: 5) asserts that “(...) boundaries signify the point at which something becomes something else, (...) at which ‘we’ end and ‘they’ begin.” In modern terms, this boundary-drawing entails a legal dimension in that it confers through law the legal status of membership upon each citizen. Still, within citizenship theory, this legal dimension is supplemented with an *identity* dimension (Heater 2004a: 187ff.). The notion of boundaries not only spells out the relation between a bounded community and its surrounding environment in terms of memberships – “we” are Norwegian, “they” are Swedish or Finnish, or, in the EU, “we” are European, “they” are American? – it is also a deeper expression of what *constitutes* a given community and its more specific “differentials” from other communities. The question of identity relates, as Taylor (1985a: 34) argues, to the questions of “who we are” and “what distinguishes us from others.”

Historically, answers to these questions of identity have been moral, political, cultural, economic and even religious. Crudely speaking, for the Greeks, citizenship was a part of the *ethos* of the already established *polis* and the community of citizens emanated from this source. The political community and identity was thus given at the outset and at least in theory infused with a certain ethical inertia against possible changes of the very foundations of the offices and statuses of citizenship (Riesenberg 1992: 4ff.). As polities, they could not be changed in terms of their *ethos*, the specific background for and understanding of political community and the public life to be led by their citizens (Magnette 2005: 15ff.). Citizenship was more of a flexible status in Rome, in that it was

not, as in Greece, “(...) by definition confined to the ‘natural’ boundaries of the city” (ibid.: 19). The expansion of its borders led to the subsumption of former strangers under the guise of Roman citizenship. With Christianity, the weight was put on a narrower loyalty and identity directed towards the self in search for paradise in the afterlife and the brotherhood of believers within the Church (Riesenberg 1992: 88). In the Late Middle Ages and the Renaissance, identity questions were again directed towards the territorial boundedness of citizenship in the *city*, albeit with an emphasis on the individual’s membership of and identification with the guild – with his economic status. With the emergence of the nation-state, loyalty was taken to be based, not only in the contingent territorial borders of the state, but in the identity of the citizens with the political community of the *nation*-state (Heater 2003: 88ff.).

In theoretical terms, then, what is the focal core of identity as a dimension of citizenship? Notwithstanding the historical differences that have been briefly sketched above, I argue that the crucial question relating to identity in all political entities which conceptualise themselves partly through citizenship, is and has always been concerned with the life and basis of this very community. In this sense, identity goes to the core of what *kind* of community citizens are members of. Without making any assumptions about the normative or factual content of identity, citizenship is clearly an institutionalised marker for the identity of the constitutive community in modern polities. Accordingly, citizenship links up, not only with the question of “who are members?”, but also with asking “who *is* what?” (see Brubaker 1992: 182). Given that identity involves the question of “who *we* are?” it will necessarily be polity-specific. It is futile to assert some universal practice of what citizenship and identity entails since the answers to the question are highly likely to be as manifold as there are identity-requiring political communities (Parekh 1994: 503). On this basis, it is only through carefully tracing the discourse of citizenship politics and practice one can gain insight into how identity is conceptualised within a polity. In order to understand conceptions of citizenship, we can not only rely on studying formal rules regarding access to citizenship, we should also take into account what underpins these rules in practical terms. This requires illuminating, as Parekh (ibid.: 502) has asserted, on the one hand, how the community to which citizens belong is constituted – the ways in which citizenship is cast in terms of *commonality* – and, on the other hand, how identity is used to *distinguish* and *differentiate* citizenship in a community from other such citizen-communities.

Through the theoretical understanding of identity as related to *distinction* and *difference* on the part of the political community, some clues are given as to what one should look for when assessing how citizenship is conceptualised within a polity. In operational terms, then, identity can be discovered by investigating *notions* of what draws the community of citizens together, the way in which membership is framed in terms of *belonging* and *which* attributes are used to distinguish between “insiders” and “outsiders.” In short, one can scrutinise how a community based on individual access through a conception of citizenship *identified* at a given juncture.

#### 2.4.4. Rights

Whereas identity and membership in relation to citizenship link up with a communal aspect in the sense of the individual belonging to a given community, the notion of *rights* is clearly more individually oriented at the outset. Rights are invariably *individual*, they are “(...) resources provided by social institutions which protects and legitimates the existence, the needs and interests, or the actions of the bearer of the right” (Bauböck 1994: 209). Still, understanding and defining the notion of rights<sup>12</sup> linked to citizenship is imperative for scrutinising it empirically. The reason for this is that rights invariably are connected to the membership dimension of citizenship. As a dimension of citizenship, rights can be defined as the entitlements that derive from this status (ibid.: 233). In simple terms: Citizens have an array of rights that non-citizens do not enjoy. Investigating the location of rights within a specific discourse can thus provide further clues as to the practical conceptions of citizenship.

The foremost proponent of theorising citizenship as a bundle of rights, T.H. Marshall, essentially argues that citizenship is a matter of ensuring that each citizen is treated as a *full* and equal member of society. Marshall (1992: 78ff.) traced the development of this in the gradual evolution of civil, social and political rights of citizenship. Although this strategy provided useful insights into how different types of rights evolved over time into a post-war conception of (British) citizenship, it is clearly more illuminating to focus on rights linked to citizenship on a more general level. This means that the focus should not be

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<sup>12</sup> There is a significant literature, mainly from legal theory and philosophy, on rights, what they entail in legal, political and moral terms and their location within political collectivities (see e.g. Bauböck 1994; Cranston 1973; Dworkin 1977). The purpose of defining rights in this chapter clearly speaks to the question of “what is a right?” I will, however, only deal with this cursorily, so as to answer the question in relation to the concept of citizenship. In this theoretical context it is thus more a question of how rights are invoked in

restricted to *certain* types of rights and what they entail. The focus should rather be on mapping the *extension* and *kinds* of rights that are invoked in discourses on citizenship, not limiting these to the civil, political and social. The focus is thus on rights as one dimension of citizenship, rather than as its ultimate defining element.

Further, in historical terms, the dimension of rights defined as entitlements based on citizenship obviously has a longer trajectory than the modern British history presented by Marshall. The Greeks clearly distinguished between citizens and “the others”, not only through their moral and hereditary link to the community of citizens, but also by way of stipulating a difference to non-citizens in terms of what *only* citizens had the right (and obviously the duty) to do (Riesenberg 1992: 8ff., 27ff.). Roman citizenship meant a hierarchy or rights-*statuses*. Full-blown Roman citizens enjoyed all rights and privileges including the right to political participation. Yet, a substantial number of Romans – both born and naturalised – received the first form of formalised *denizenship* which consisted of legalised economic, commercial and certain personal privileges or rights, but not full political citizenship. The denizens were perceived as a *legal* class of citizens, albeit as *civitas sine suffragio* – as citizens without political rights (Magnette 2005: 8). In *Christianopolis* as Isin (2002: 113ff.) calls the citizenship of the Middle Ages, in the sense that “rights” existed, they were not so much linked to a clearly circumscribed entity (although it was often situated in a city) as more concretely to privileges of profession in the guilds (ibid.: 121ff.). In modernity, rights are linked to citizenship through giving the citizens the *equal* status of private and public rights-holders (see Poggi 2003: 42). Equality is here important, because in modern citizenship practices within nation-states, the catalogue of citizenship rights have not been subject to hierarchy or membership in extra-statal organisations such as churches or guilds, but rather to the individual as citizen of a given state. *After* membership, citizens cannot be rendered un-equal in terms of the entitlements derived from the member-status. Crudely speaking, then, the foundation of rights is individual – it is not tied to an idea of the citizen as for instance participant in the moral, religious and political community of the *polis* or as professional member of the guild in late medieval city-states.

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citizenship practices, than explaining their *philosophical* import in relation to human agency and collective community.

Given these points, what is the focal core of rights as a dimension of citizenship? As the preceding historical remarks testify to, the notion of rights have been inherently linked to the designation of membership. Generically speaking, rights are always linked to citizenship in terms of (non-)membership. When assessing conceptions of citizenship, in operational terms, we must investigate the extension of rights, that is, *who* are given *which* rights – and how exclusive are they? Are there clear boundaries between the rights of citizens and non-citizens? And, if so, where is the line drawn? These questions link to the exclusiveness of rights and can thus inform us about an important aspect of citizenship, that is, concerning who are *included*, not only in terms of the membership decision, but also in terms of being (*un-*)*equal* or *partly equal* in relation to the political unit through their derived rights (see Bauböck 1994: 214). Connected to this, a further question is the importance of rights: are some types of rights deemed more important than others? As Bauböck (1994: 211) also argues, “[t]he list of citizenship rights is open ended and varies with particular political traditions, social structures and cultural understandings.” Investigating this evidently provides clues as to how the status of individuals is perceived within a given polity.

#### 2.4.5. *Participation*

Citizenship rights designate certain entitlements attached to or derived from the status. Solely focusing on, say, civil rights of protection or social rights geared towards a certain level of economic well-being does not tell the whole story. In addition to the *private* autonomy of such rights, citizenship also provides so-called *public* autonomy through political and/or other participatory rights (Habermas 1996: 83ff.). In the debate on rights this brings up the issue of *participation* and its place within the citizenship experience; of how the citizen relates to her community. Thus, in addition to the membership decision, attachment to some identifying notion of what holds the members as a collective together and the rights linked to the status of citizen, citizenship entails, if not always the duty, so the potential of citizenly participation. In fact, it is argued that all democratic political communities rely on some sort of participation on the part of its citizens (Heater 2004a: 216ff.).

The *mode* of participation and its location within the broader conception of citizenship in a political unit has, however, not been convergently understood in historical terms. In the Athenian *polis*, the virtue of active participation and willingness to take on public office –

to serve the state and community of citizens according to their needs – were expected from any full-blown citizen: “What effectively distinguishes the citizen *proper* from all others is his participation in giving judgment and holding office” (Aristotle 1992: 169; see also Riesenberg 1992: 27ff.). The active, participating citizen was also important in Roman citizenship. This was, however, not only linked to taking part in the affairs of the polity through public office – narrow *political* participation as the very definition of citizenship<sup>13</sup> – but also through a broader notion of participation in the common republic of citizens with equal, legal rights (Magnette 2005: 23ff.). In the modern concept of citizenship, citizens are understood as having *public* autonomy, that is, the *right* to political participation in the affairs of the political community of which they are members (see Habermas 1996; Rawls 1993). As Poggi (2003: 42) states, the capacity of modern citizenship “(...) not only protects the private interests of all citizens, but authorises them to acquire a certain awareness of the state’s doings and even to make some input into those doings.” Not only that, as Bellamy (2004: 7) points out, these “voluntary” rights to participate such as political rights of voting has also been tied to duties such as paying taxes or doing military service. Thus, participation in the modern setting seems to have been connected, not only to rights, but also to certain duties of citizenship.

On the basis of these remarks, I argue that the focal core of participation as a dimension of citizenship, is that it stipulates the status as a relation of the individual towards a political unit and not only vice versa as the designation of individual membership and rights on the part of the collective. In operational terms, two salient aspect of participation are therefore visible. First, through what I will call the *facilitation* of voluntary participation. Such facilitation connects to the types of participatory rights that are linked to citizenship and how the community promotes active (political) participation. Second, it is visible in the *specification* of duties that derive from the status of citizenship. Thus, on a generic level, the notion of participation addresses how the polity relates to its citizens, not only through specific entitlements, but also through modes of acting out (or not) of citizenship rights and duties within the political community.<sup>14</sup>

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<sup>13</sup> As Magnette (2005: 24) further argues: “The freedom of the citizen was guaranteed by law, it is even obedience to the law, but it does not appear as clearly that citizenship was *defined* by participation in the power of enacting the law.”

<sup>14</sup> To be sure, here one could also have included a wide focus on the extent of *actual* participation within relevant spheres of society on the part of citizens vested with participatory rights. The reason why this thesis

#### 2.4.6. Summarising Remarks

This section of the chapter has dealt with defining dimensions of citizenship as a status of individuals. Having done that, in these summarising remarks, the definitional issues will be drawn together by focusing on how they give rise to certain empirical indicators to be utilised in the study of European citizenship, as well as addressing and rebutting some potential critical points regarding the theoretical choices made.

A first critical point could be directed at the designation of *these* four dimensions. Why not include other dimensions such as residence or duties? I argue that the four dimensions that are theorised in this thesis cover relevant questions across the spectrum of citizenship issues. The dimensions are salient, not in terms of their specific content, but rather in terms of their generic qualities. Membership, identity, rights and participation are generic dimensions around which different practical reconciliations of citizenship have crystallised historically and spatially. First, membership signifies the decision on who are to be seen as citizens and those who are not. Thus, the dimension of membership is the first indication of the politics of inclusion and exclusion in a specific practice of citizenship. The notion of residence would then be seen as an indicator of membership, rather than as a dimension in itself. Second, identity designates the understanding of what signifies and distinguishes a political community of citizens with the same membership. It can in a sense be seen as an *expression* of the broader meaning of citizenship. Third, rights denote the entitlements vested in each individual in their capacity as a citizen. Fourth, the notion of participation addresses the acting out (or not) of citizenship within the political community. The dimensions thus cover the formal designations of citizenship in terms of, say, membership or rights as well as informal aspects such as identity or participation. In addition to that, they also cover individual as well as collective aspects of citizenship. Focusing on dimensions of citizenship in generic terms is therefore conducive to studying how citizenship is at work in practice. From the vantage point of such theorising one can ask more basic questions in empirical terms than if the concept is *a priori* pinned down as has been typical, for instance, with regard to the focus on rights as broken down to civil, social and political rights, and only those.

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eschews such a focus is that it concentrates on the institutional and conceptual side of citizenship, rather than its properties in terms of concrete actions and beliefs among European citizens.

Another potential critique could be directed at the differentiation between membership and identity. Many would argue that this differentiation overlooks the fact that both dimensions connects to the issue of belonging and political community. Why not theorise these as *one* dimension? Indeed, membership decisions have been shown by Brubaker (1992) to be intimately linked to identity and belonging. However, focusing on membership and identity as virtually inseparable is too crude for empirical purposes. The reason is the following: membership signifies the very *decision* of who are citizens, seen against all those who are not citizens, regardless of other specific traits of personhood. As mentioned, identity can be intimately linked to the “rationale” *behind* the membership decision. Thus, deciding on membership can inform us about what characterises the “choosing” community to invoke Walzer (1983). Still, identity is not only that. It also refers to the broader discourse on “who we are” and “what distinguishes us from others”. How can that be understood against the backdrop of membership? If identity were to be seen *merely* as a component of the ultimate decision on membership, we could potentially overlook tensions between the two dimensions. Our understanding of specific conceptions of citizenship would be under-theorised. To illustrate: if we conflate the two dimensions, our findings in terms of membership – say, that membership is based on *jus domicile* – would necessarily lead us to conclude that the conception of citizenship is *not* culturally grounded, but rather on the situatedness of *any* given individual who happens to be in a particular territory. This is, however, not necessarily telling the whole story, as the identity vested in the conception of citizenship potentially could transcend membership on exactly cultural grounds. In the above illustration, identity could be evoked *post-membership* in the articulation of what holds the community together besides the criterion of domicile for *access* to citizenship. The extent to which notions of identity influences decisions on inclusion and exclusion as well as possibly “transcends” them can thus not be ascertained *a priori*.

This brief look at potential criticisms of the theoretical framework and their rebuttals highlight once again the need for empirical indicators that can guide the study of citizenship in actual political practices. Such empirical indicators were brought forward in the discussion of each dimension by spelling out the parameters by which citizenship can be studied as practice rather than as a frozen phenomenon in normative or theoretical terms. The empirical indicators based on the preceding theoretical argument can be summarised as in the following table:

Table 2.1. Dimensions of Citizenship and Empirical Indicators

<i>Dimensions of citizenship</i>	<i>Empirical indicators</i>
Membership	<i>Criteria for who are seen as members (and hence non-members) and on what basis</i>
Identity	What <i>kind</i> of community citizenship is linked to <i>Notions</i> of what draws the community of citizens together The <i>way</i> in which citizenship is framed in terms of belonging
Rights	<i>Extension</i> of rights – exclusivity in terms of <i>who</i> are held to have <i>which</i> rights
Participation	<i>Facilitation</i> of voluntary participation <i>Specification</i> of duties linked to the status of citizenship

The upshot of the preceding theoretical discussion is that the four generic dimensions and the empirical indicators stemming from them can vary in two ways. First, it is not given at the outset how they are reconciled in specific political settings and practices. This means that it is not obvious, for example, what membership or rights as dimensions of citizenship will mean in a polity at any given time. Are they completely exclusive for full citizens only? Are they rather subject to hierarchical structures facilitating differentiated citizenship within a polity? Second, there will be variation in how the dimensions are *combined* in practical conceptions of citizenship. This will be visible in investigating which dimensions have priority in conceptions of citizenship, that is, where the basic meaning of citizenship is vested. Is a given cultural or linguistic identity the basis for inclusion and membership? Or, is the designation of membership rather primary in the conceptualisation of citizenship? Which rights are deemed as significant for citizenship? In what way is participation framed as a part of citizenship institutions? Hence, it is not *a priori* given, say, whether a specific notion of identity presupposes the institutionalisation of membership, or vice versa. Thus, without taking actual politics and practices into account, our understanding of citizenship will remain not only under-researched in empirical terms, but also under-theorised in the sense that it does not take the variability of the concept into account. The theorisation on citizenship in this chapter has tried to avoid just that by focusing on dimensions of citizenship and indicators for how to ascertain their realisation within given political settings.

## 2.5. Concluding Remarks

The main argument of this chapter has been that citizenship should be theorised in terms of dimensions laying the ground for studying it in its temporary, practical realisations,

rather than in terms of how it fits with what Bellamy (2004: 4) has called “(...) abstract philosophical, ideological or analytical models.” In more specific terms, it was argued that this was possible by focusing on the conceptual character of citizenship as well as theorising it as a so-called conceptual variable. This means that in order to ascertain the meaning of citizenship, the focus should be directed to the practical level of citizenship politics. Such an emphasis on practice rather than the “how ought”-question of normative thought or the reifying tendencies of model theorising did not, however, pre-empt a discussion in theoretical terms. In fact, the focus on practice was shown to require close theoretical enquiry into how different dimensions of citizenship make available indicators for the empirical scrutiny of the concept.

Thus, having focused mainly on conceptual and theoretical issues with regard to citizenship on a general level, a further question is how European citizenship has been treated in the literature. The central questions are to what extent the “problem” of European citizenship is, not only substantial, but also theoretical and methodological; and how the theoretical framework advanced in this chapter could improve on empirical studies in the field. These questions will be answered in the ensuing chapter, which reviews the main strands in the literature on European citizenship. Following this, the arguments of this chapter and the literature review will provide the impetus for chapter 4, which focuses on the analytical and empirical research design of the thesis.



# Chapter 3. The Problem of European Citizenship: A Review

## 3.1. Introduction

Having laid out the theoretical framework for studying citizenship in the previous chapter, an appraisal of the already existing literature on European citizenship is in order.<sup>15</sup> How does the literature own up to the plea for theorising citizenship as a conceptual variable consisting of four basic dimensions? And more specifically, from which theoretical and empirical angles have conceptions of European citizenship been studied, and what are the merits and/or flaws of these approaches? Taking such perceived merits and flaws into account, how can the theoretical approach advocated in this thesis contribute to the literature on European citizenship?

As a preliminary sign of a certain viewpoint in the literature, the following statement is useful: “[T]here are no such animals as ‘European citizens.’ There are only French, German, or Italian citizens” (Aron 1974: 653). This conclusion is taken from one of the first articles that discussed issues pertaining to European citizenship in the social scientific literature. The core of Aron’s argument has had resonance in several later studies of what European citizenship entails, as well as what it can or should be. But the literature is of course not one-sided. As will become evident in this chapter, not all studies are sceptical towards a viable concept of citizenship beyond the nation-state. Rather the opposite, it is argued by several students of European integration that it is both theoretically possible and normatively desirable to promote a European citizenship different from that of the paradigmatic model of nation-state citizenship. In addition, some historical-institutionalist

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<sup>15</sup> A vast literature in the field has evolved over the years, especially after the Maastricht Treaty in 1992. In scrutinising the literature it is therefore impossible to take all its contributions into account. This literature review is therefore focused in a two-fold way. Firstly, the focus is on three major sub-fields of the literature – theoretical, normative and historical-institutional studies – with an emphasis on seminal contributions within each of them. Due to the conceptual aim of this thesis, the literature review therefore refrains from assessing research that has focused on processes from below, for instance how individual citizens and organisations have sought to shape the development of citizenship issues in the EU (see Bellamy et al 2006). Secondly, it concentrates on studies within the social scientific vein broadly speaking. Placing the focus on three major strands of the literature does not mean that the borders between them are firm. Many studies, including most of those focused in this chapter, overlap between two or more sub-fields. Breaking the literature down in this way is thus more of an ordering device, than an accurate description of the clear divisions within it. The reason for focusing mainly on the social scientific literature is that the main interest of the thesis is on the interplay between conceptions of citizenship and the broad practices of the system, rather than the minute descriptive details of legal provisions. This does of course not mean that legal studies of European citizenship are not important (see e.g. Carrera 2005; Closa 1992; Durand 1979; Evans 1984; Mather 2005; O’Keefe 1999; O’Leary 1996; d’Oliveira 1995).

contributions have illuminated the evolving and contested character of citizenship within the European polity. Nevertheless, the main argument of this appraisal regarding the state of the art in the field is that there are some problems with most research done on European citizenship, such as relying exclusively on a nation-state model, conversely postulating the linear evolution of citizenship away from the nation-state form, or emphasising only one dimension such as rights or identity. These aspects are particularly problematic if one seeks a broader understanding of what kind of conceptions have emerged in European integration and the trajectory of its development.

Taking these introductory remarks into account, the chapter will proceed as follows. First, mainly theoretical studies focusing on the viability of European citizenship will be scrutinised. In doing so, it will be shown how these studies set out from a specific theoretical stance on what citizenship is in their appraisal of how the concept would fare on the supranational level. Some of these studies further display normative tenets. Second, the focus will therefore turn to more normatively oriented research on what can be called the desirability of European citizenship. Third, having shown the tendencies in much normative research in the field to translate the question of “what should it be?” into factual statements on what citizenship in the EU actually is, the focus will be on more pronounced empirical studies concentrating on historical and institutional aspects. Lastly, the main points of the chapter will be summarised in the concluding remarks by pointing out some recurring themes and key problems of European citizenship, thus setting the stage for the particular analytical and empirical focus of this thesis.

### **3.2. Theoretical Studies: On the Viability of European Citizenship**

That the *sceptical* thrust of Raymond Aron’s (1974) seminal article on the prospect of what he called “multinational” citizenship in many ways marks the advent of an extensive literature on the possibilities of citizenship beyond the nation-state is not surprising. The European project of unification was still very much imbued with ideas of economic integration and had yet to reach a more political level (Dinan 2004; Gillingham 2003; Hix 2005). Further, as has been shown to be the case in the European setting, explicit citizenship politics prevailed *within* nation-states (Bellamy et al 2004). Its practices diverged horizontally between states and citizenship was not perceived to be involved in a vertical relationship between states (or citizens) and the supranational institutions of the EU. In addition, there seems to have been agreement in conceptual terms that the

meaningful domain of individual membership and political community was to be situated within the boundaries of the nation-state form of political organisation (see Rawls 1993: 12, 40ff.; Walzer 1983: 34; for retrospective commentaries on the literature, see e.g. Beiner 1995; Kymlicka and Norman 1995; Turner 1994). Hence the view of citizenship as relevant *only* in connection to *one* nation-state naturally follows.

Aron (1974: 638) clearly picks up on this when he asks the rhetorical question: “How could a citizen possibly belong to several political entities at once?” Aron does indeed acknowledge the development of economic rights in the EU from the Treaty of Rome in 1957, but a specific theoretical view of citizenship renders a broader assessment of what kind of status was in the making in the early developments of European integration futile. Thus he contends that “[t]he notion of multinational citizenship has a primary sense which is of no immediate philosophical import to us” (ibid.: 644). Citizenship is seen as inherently unitary, and “multiple” citizenship is denied as a possibility between *any* political communities or levels. In the end this is connected to an analysis where *political* rights are seen as unequivocally *national* in character; and separated from other types of rights in their significance for the *ethos* of citizenship (ibid.: 642ff., 651). Anthony Smith (1992: 62) argues in similar fashion by linking the exercise of citizenship to the nation as a political community which “(...) embodies a common culture and a common social will.” Privileging political rights linked to political community in this way is akin to the Hegelian distinction between what one can call *Bürger* and *citoyen*, between private and public aspects of citizenship politics. The private character of the *Bürger* was to facilitate participation in the economic life of civil society, while the *citoyen* was recognised by active participation in the political life of the community (see Hegel 1952 [1821]: 124ff.).

Indeed, Aron was correct in pointing out the predominantly economic character of the EU in relation to its citizens in the beginning of the 1970s (ibid.: 647ff.; see also Gillingham 2003: 82ff.). His point is that this did not amount to a citizenship politics proper given the lack of a political dimension (Aron 1974: 647ff.). But, the very specific view of citizenship as tied exclusively to the political dimension of participation in a particular political community stops short of acknowledging the potential novelty of an *emerging* concept of citizenship in European integration. A conception of citizenship that differs from the one Aron advocates through a historical analysis of citizenship could be visible, but is not rendered significant from Aron’s own theoretical scheme. Thus, I argue

that there is a clear tendency in this strand of theorising to reify a certain historical practice of citizenship – the nation-state one – as the ultimate theoretical yardstick for an appraisal of practical developments *possibly* pointing in other directions.

Shore (2004, see also 2000) has provided more recent contributions dealing with the problem of European citizenship. This body of work is especially interesting as its explicit aim is to *interpret* European citizenship from a political and anthropological stance. Although he does not engage directly with Aron's analysis, Shore clearly shares some of its predominant features. One of the key questions resemble Aron's rhetorical question underlined above: "(...) how can one be a citizen of a *non-state*?" (Shore 2004: 32). In asking the question of how feasible the idea of postnational citizenship is, Shore (*ibid.*) emphasises citizenship as designated through membership of "a State", further highlighting the citizen as "a native or naturalized person" – points on which "most legal scholars agree". The concept of citizenship is frozen within a certain frame, indeed it "belongs firmly to the lexical set of 'nation', 'state' and 'peoplehood' (Williams 1976, cited in Shore 2004: 31). What is paradoxical is that Shore here relies on predominantly legalistic definitions of citizenship even though he emphasises the need for going beyond the legal reading of (European) citizenship, to "(...) focus less on its legal content than on the political and symbolic uses of citizenship and its functions as a classificatory device and identity-marker" (*ibid.*: 28).

Indeed, the study does ask theoretically significant questions regarding the feasibility of constructing citizens of a non-state; of where a genuine European *demos* can stem from. But, what is ultimately problematic with a study in this vein is that the aim of a discursive, non-legalistic study of European citizenship does not acknowledge the possible trajectory of its conceptual development over time in a protracted and evolving process of integration and polity-building. The commendable search for clues regarding the viability of creating European citizens gets lost in a specific view where the concept of citizenship is tied to a very specific nation-state oriented model of citizenship. It ends in a purely theoretical exercise showing the inconsistencies of an emerging conception against a specific view of citizenship as tied to exclusive community building in a *state*. The reason for this is that rather than relying on a more dynamic approach of studying how citizenship is conceptualised in European integration, it falls back on a theoretical critique of the process at the outset. The research strategy employed by Shore thus goes against

theorising citizenship as a conceptual variable as was advocated in the previous chapter. Shore's emphasis on the theoretical connection between citizenship and the state is similar to Aron's rhetorical conclusion and perhaps all the more problematic if it is the case as Meehan (1993: 4) has argued that "(...) his evidential judgment about lack of support for the transformation that would be necessary to be able to speak of European citizenship has not stood the test of time." The "animals" of European citizens might have emerged in the thirty odd years since the sceptical analysis of Aron and this is seemingly not invoked in Shore's attempt at a critical appraisal of EU citizenship discourse.

What I argue is that there is not much leverage for further theoretical *reflection* in the contributions reviewed here. One merely ends up with a statement on the impossibility of different practical realisations of a phenomenon that is already reified in theory (see Brubaker 1996: 16). It is important to state that these points do not render theorisation wrong, especially not in a contested field such as citizenship studies. What this critique of the sceptical contributions to the study of European citizenship shows is that the theoretical perspectives by which one deals with such an "unprecedented" phenomenon need to be broad in the sense that they will not at the outset deny a certain interpretation on the grounds that the practice is theoretically unfeasible. The theoretical framework should provide the ability to acknowledge institutional and conceptual novelty. In the preceding chapter it was argued that this is available by breaking citizenship into generic dimensions rather than focusing on particular models in normative or theoretical terms. The theorisation of citizenship does not then presuppose the primacy of certain elements in practice or a given politico-organisational setting for citizenship politics proper. A theory that starts out postulating that citizenship is *only* feasible within a specific frame of political organisation is then reductive against possibly new reconciliations in practice. As Wessels (1997: 292) has emphasised: "[W]e are confronted with realities and challenges that might be outside our traditional categories." There is then a need to adjust the theoretical lenses by which a phenomenon such as citizenship is assessed and categorised.

Attempts at more conceptually open studies are evident in what is often dubbed the *postnational* literature on European citizenship. In his writings on the European experience, both on the nation-state and EU levels, Habermas (1992, 1996, 1998, 2000) has emphasised the historically contingent character of the link between the idea of national identity and the institution of citizenship. The emphasis of the contingent and contested

character of citizenship highlighted earlier thus has resonance in the postnational literature on the EU. Shaw (2001: 76) emphasises that postnationalism is a concept designed to get at the dynamic elements of European integration as a “*process* of polity formation.” Given this dynamism, the broad idea of this literature is that the “(...) link implied by nationalism between cultural integration and political integration can be prised open” (Curtin 1997: 51). In this light, the gradual development of integrative measures in the EU as well as the explicit adoption of the concept of citizenship is interpreted as evident of a possibly new phase in modern citizenship politics; the phase when citizenship rids itself of its national “accomplice” (ibid.: 51; Gerstenberg 2001: 299; Habermas 1996: 505ff.; Preuss 1998a: 149). Reflecting further on these developments, Preuss (1998a: 139) points out that European citizens “(...) enjoy rights... which do not originate in their respective national parliaments.” This serves to counter the so-called “disabilities of alienage”, meaning the basic gap between citizen and alien (ibid.: 145ff.); or the hierarchy between different loyalties, the belief that the loyalty to the nation-state is *always* necessarily the most important (Preuss 1995: 280). The argument is further that this is indicative of a broadening of the space for the exercise of rights against political entities. It is not anymore tied *exclusively* to the citizen as an author of the law through the use of political rights of participation within *her* specific political community (Preuss 1996: 159). The distinction between insider and outsider – the classical view of membership – is blurred and citizenship is seen as taking on a new meaning within the postnational literature (Neveu 2000: 122). Here one clearly sees the contrast with the sceptical analyses of Aron and Shore. Given Preuss’ comments and the initial theoretical analysis of other authors, the postnational perspective is able to advance the view that European integration renders questionable the exclusive relationship between nationality and citizenship, meaning that elements of citizenship are *only* available from a national frame.

Yet, there are also some problems with the postnationalist analysis of European citizenship. The separation of the national perspective from citizenship on the EU level, often overlooks the grounding of a European political community of citizens in the exclusive membership decision of each member state. In this reading, citizenship *ultimately* remains dependent on nation-state institutions (Aziz 2002: 5). There is clearly also a point at which “we” end and “they” begin within the European polity. This boundary is visible in the exclusion of third country nationals from the rights enjoyed by European citizens (Kostakopoulou 2001b: 181). The exclusionary aspect of the European polity is in fact

recognised within the postnational camp (Preuss 1998a: 140ff.). It does, however, not stop many of the theorists within this literature from claiming an almost linear evolutionary perspective on citizenship where it will or *necessarily* should transcend the national and mark a new phase in its history. The argument goes that by eroding state monopoly powers and harbouring an identity built on human rights and procedures of a universal character – that is, which transcend the pre-political dimension of cultural group identity – citizenship as membership and rights can be decoupled from nationality (see e.g. Curtin 1997: 52; Eriksen and Fossum 2007: 8; Gerstenberg 2001: 299ff.). Yet, in terms of citizenship *practice*, this claim is not corroborated through an explicit empirical appraisal of the links between institutional developments, policy trends and the conception of citizenship in the system. As such, the critique of this evolutionary perspective is similar to the critique above of the tendency in several sceptical studies to reify the nation-state as the sole locus of a viable model of citizenship (see also Habermas 1998: 159). The postnational critique is in danger of actually flipping itself on the head through “essentialising” its own preferred model as the *only* possible outcome of the on-going process of citizenship discourse in the EU.

Connected to this quest for a “new” model of citizenship – in which they locate the separation of nationality and citizenship – postnationalists further tend to overlook the possibility of a *different* practical realisation of citizenship on the European level, for instance a *cultural* conception of citizenship emerging. With the possibility of such a European nation in the making, the concepts of nationality and citizenship would then not be divorced, rather “re-married” on a new level of political organisation. The tendency to equate the development of European citizenship with a linear evolution away from the thinking of the nation-state overlooks the dynamism and open-ended character of the EU that the postnationalists often take as a starting point for the critique against the national position on citizenship. As such this strand of the literature also lacks in sophistication in order to provide a more accurate lens from which to study the complex developments of European citizenship. This is not only due to a theoretical view, but also an inherent normativity in much of this literature implying that the national model of citizenship is undesirable and problematic in the present stage of modern political organisation.

### 3.3. Normative Studies: On the Desirability, Problems and Possibilities of European Citizenship

Citizenship is indeed a concept infused with normative aspects. As citizenship is closely linked to notions of political community, identity and mechanisms for inclusion and exclusion, normative questions such as “who should be seen as citizens?”, “what distinguishes our political community from others?”, or “what should be the character of political participation?” clearly enter the picture. It is then not surprising that much research within the field engage in normative critique or defence of European citizenship. There is a strand of the literature that on normative grounds is *critical* of constructing citizenship on the EU level.<sup>16</sup> The main claim of the so-called *no demos* thesis is that European citizenship is neither desirable nor feasible given the lack of a proper *popular* basis for it (Grimm 1995).<sup>17</sup> At the outset, this seems to be merely an empirical statement: there is no European *demos* comparable to the nation-state experience and thus it is not likely that democracy and citizenship can evolve in the EU. But, at the heart of this reasoning there is clearly a normative idea of what constitutes the *demos* and thus the basis for a viable political community. As Miller (1995: 162) puts it, “(...) shared national identity is the precondition for achieving political aims.” According to this view, the points made by Preuss regarding the abolishment of “disabilities of alienage” through individual rights on the EU level have nothing to do with citizenship itself (see Miller 2000: 92). The institution, let alone the concept, of citizenship *cannot* surpass the particularity of the popular national identity that lays the ground for a functioning political community within certain historically relevant boundaries (Miller 1995: 22ff., 59). Whether this community is “real”, “constructed” or “imagined” is according to Grimm (1995: 297) beside the point. What matters is that the only meaningful container for citizenship is found in the clearly demarcated sphere of the nation-state. In this sense political community has reality in its essentially historical particularity.

This is further perceived to be intimately connected with the means of communication within a political community of citizens (Miller 1995: 137ff.). With regard to the EU the

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<sup>16</sup> Clearly, many of the studies presented in this section offer not only normative assessments of European citizenship; they also engage in reasoning on theoretical grounds. The reason I have the specific focus of normativity here is that these studies show an additional side of the predominantly theoretical literature on European citizenship. That is, they employ a specific normative frame of what citizenship should be and thereby offer a normative interpretation of the developments on the EU level regarding citizenship.

sceptical argument goes that the theoretical and normative pre-requisites for the integration of a political community are not available, as there is no common language leading to a “weakly developed collective identity and low capacity for transnational discourse” (Grimm 1995: 297; see also Aron 1974; Shore 2004). And, “the pre-requisites cannot simply be created” (Grimm 1995: 294) or “it cannot be simply conjured up *ex nihilo*” (Miller 2000: 96). Thus, from the viewpoint of the sceptical literature, citizenship in the EU is futile or problematic at the outset. It can simply never amount to a meaningful concept of citizenship. The type of normative reasoning evident in this section is thus problematic taking into account the approach to studying citizenship as laid out in theoretical terms in the preceding chapter. As with the literature focusing on the theoretical viability of European citizenship, the scepticism of Grimm and Miller leaves a lot to be desired in terms of acknowledging the contested and dynamic character of citizenship. I argue that it is problematic to base a study of European citizenship and its conceptual trajectory on a preceding analysis that takes the very specific understanding and practice of citizenship *qua* national for granted.

This is of course not only due to a difference in emphasising the contestedness of citizenship, but obviously also in terms of which model of citizenship is employed on the theoretical level. Miller, and to some extent Grimm, espouses a republican model that concentrates on citizenship as a participatory device within the composite political community. It is therefore evident that a more balanced theoretical account regarding elements of citizenship is needed, and not one that privileges *one* aspect of it. Such a theoretical framework will be geared more towards studying the conceptualisation of citizenship, given that the lack of a republican idea of participation on the EU level does not necessarily mean it is devoid of citizenship elements.

In stark contrast to the more negative normative assessments, Linklater (1998a, 1998b) puts forward a normative and critical-theoretical defence of European citizenship as a building bloc of an emerging cosmopolitan citizenship.<sup>18</sup> The main thrust of this work is the normative stance that advancing universalistic cosmopolitan citizenship will be conducive to “(...) the widening of the moral boundaries of political communities”

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<sup>17</sup> Grimm (1995) is not an explicit study of European citizenship. It is focused on the (non-)possibility of a European Constitution. But, I argue that it can also be read as a normative and theoretical critique of the idea and institution of citizenship beyond the nation-state.

(Linklater 1998a: 2). Acknowledging that citizenship is a dynamic and contested concept historically and normatively, Linklater (1998a: 197) argues that citizenship could and should be detached from its exclusive association with the state. It is further argued that this normatively desirable development is partly visible on the EU level (ibid.: 199). As Gerstenberg (2001: 312) states, the EU delivers “[a] promise to release the ideas of citizenship and democracy from territorial sovereignty and shared nationality.” I will argue that this argument is based on a cursory interpretation of the impact of establishing Union citizenship in the Maastricht Treaty. The legal provisions and rights of this citizenship are seen as indicative of a process “(...) towards uncoupling citizenship from sovereignty” (Linklater 1998a: 200). As a normative vision this might suffice. Yet, this argument is backed up by a conjecture about actual developments. This does, however, not rest on sufficient empirical evidence of how European integration has affected citizenship. Hence, we cannot rule out that closer empirical scrutiny of the EU citizenship process will yield a different picture, and render the normative vision, if not futile, so in need of a more realistic foundation in its empirical claims.

Bellamy (2001b) brings forward a similarly positive analysis and normative vision for EU citizenship construction. Envisaging citizenship as a continuously reflective practice (ibid.: 41ff.), rather than taking the development of rights provisions as a point of departure, his normative plea is for a neo-republican type of citizenship where the content of European citizenship is to be built in an everyday process of struggle between different citizens and beliefs on the EU as a political community (ibid.: 42). Bellamy clearly counters the study of European citizenship that emphasises its legal and political framework of treaties and verdicts from the ECJ. As a prescriptive strategy of how citizenship should be practiced by the citizens in the EU this might be plausible. But for empirical purposes it does not take into account the citizenship problematic in the practice of policy- and constitution-making. Given that the status of the EU as a polity is unclear – as Snyder (2003: 67) states “(...) EU boundaries are problematic, flexible, permeable, often situationally defined and frequently negotiable” – the study of how it has affected the status of individuals within the system should focus not only on citizen-to-citizen struggles, but also on the very discourses where the character of the EU has been at stake. Thus, it seems that the somewhat diverging normative and theoretical points of Linklater’s and Bellamy’s analyses

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<sup>18</sup> For discussions on cosmopolitan citizenship on a more general level, see e.g. Delanty (2000), Falk (1994) and Heater (2004b).

will in fact benefit from further empirical scrutiny of the many political and constitutional processes where the problem of European citizenship has been involved.

Much of the problem with the normative literature presented here is not its normativity as such. It is rather that they further lead to assessments of the practical development from a frame originally focused exclusively on the *desirability* of the evolving phenomenon. This is visible in the stance of Grimm and Miller who normatively claim that citizenship cannot function without a common language conducive to meaningful deliberation in a democratic political community. This is not available on the European level and hence, the development of a European citizenship is deemed normatively undesirable since it cannot work at the outset. The problems of such normative “freezing” of citizenship are also visible in the strand of the literature that advocates the fostering of European citizenship as the most prominent site for dissociating the concepts of nationality and citizenship. The work of Linklater is astute in its normative ideals of universalism and the widening of political communities. But this does not add much to the empirical study of how citizenship is conceptualised in the EU. The normativity of Linklater’s analysis stops short of addressing the conceptual implications of a European citizenship that *a priori* cannot be expected to be less particularistic than its national “counterpart.”<sup>19</sup> The problem here is not the normative claim as such, rather that it sets obstacles for further investigation into what kinds of conceptions of citizenship that have emerged. Perhaps a different kind of citizenship is emerging in the EU? In what ways does it differ from or emulate the nation-state experience? Does it transform political community as we know it or does it rather profess the development of a specific European political community akin to that of the nation-state? The investigation of such questions can further inform the highly interesting normative debate on its wider implications for the functioning of political community. In this sense, these perceived flaws of the normative strand of the literature points to the need for a more practically and conceptually sensitive methodology when studying citizenship in the EU.

This is partly provided by legal scholar Joseph Weiler in his book *The Constitution of Europe* (1999). In his treatment of European citizenship, Weiler takes an explicitly normative position, albeit not one that aims to defend or oppose it as such. Taking the actual

institutionalisation of Union citizenship as his point of departure, he rather seeks to discuss the normative *meaning* of European citizenship – “not what it means, but what it ought to mean” (ibid.: 324) – seen against questions regarding the vocabulary of citizenship, nationality and peoplehood (ibid.: 327).

As has been highlighted, several studies of European citizenship have emanated from the template of a specific statist model of citizenship. Indeed, Weiler (1999: 327) points out that the introduction of the concept of citizenship into the discourse of the European integration process is problematic at the outset if one assumes that “(...) the traditional, classical vocabulary of citizenship is the vocabulary of state, the nation and peoplehood.” As he further states, the question is whether there is a unitarisation inherent in the concept of European citizenship, that is, a change in the *raison d’être* of European integration from a focus on the *peoples* of Europe to one *people* of Europe. However, rather than studying the process of citizenship discourse empirically, Weiler engages in a theoretical and normative analysis of the meaning of European citizenship. This is done on the backdrop of supranationalism as a specific challenge to the codified expressions and cultural excesses of the concept of nationality (ibid.: 342). In doing so, Weiler’s methodology is still more “grounded” than much of the normative theorising discussed in this chapter, as it posits the normative questions against actual developments, and not principally through a “top-down” approach to what European citizenship is or should be. In this sense, his contribution is clearly more fruitful than those of Aron, Miller or Linklater.

Still, this does not mean that one should be completely “local” in the study of citizenship, something which Weiler is not. Citizenship is imbued with contested values and normative aspects. It is clearly connected to questions of boundaries, identity and *demos*. In his normative discussion, Weiler thus focuses on these questions, however, without taking the nation-state model for granted. Rather, he seeks to re-address the question of European citizenship normatively through a concept of co-existing multiple *demoi* where there is simultaneous belonging on the part of citizens to different levels of political community (ibid.: 344). This is connected to the question of whether introducing citizenship “(...) to the conceptual world of the Union could be seen as just another

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<sup>19</sup> Granted, Linklater (1998a: 2) does acknowledge the “danger” of particularism in many cosmopolitan theories of ethics and political community, but this is not sufficiently addressed as a possible obstacle to his

step... towards a statal, unity vision of Europe” (ibid.: 344). Weiler’s normative stance opposes this “unity” vision of the EU. Thus, his normative discussion of European citizenship seeks to “rescue” it from the broader vision of statehood as the *finalité* of European integration. This thesis seeks to investigate what kind of conception(s) of citizenship has emerged in this discourse. Weiler’s work is fruitful on the normative dimension of this conceptual discussion, but does not provide further clues as to the conceptualisations in the practical discourses, political processes and constitution-making instances where citizenship has been raised as an issue of European integration.

### **3.4. Historical and Institutional Studies: On the Emergence of Citizenship as a Policy Field in European Integration**

The review of the literature in the two preceding sections referred to a frequent quandary in many studies of European integration and the problem of citizenship – that of not looking beyond the “old language” of citizenship and statehood – when studying the phenomenon of citizenship on the supranational level. This is less evident in the more historically and institutionally oriented literature on the development of European citizenship. Warleigh (2001) for example provides an institutionalist account of the *struggle* over Union citizenship in and after the process of the Maastricht IGC. In fact, he claims that it is “(...) a key battleground in the struggle over European integration” (ibid.: 19). The main argument of the study is that the provisions of Union citizenship served both instrumental and normative purposes in the integration process: “the facilitation of the single market and the Council’s need to rectify the democratic deficit” (ibid.: 27). But, the study does not offer a further historical or conceptual analysis of the *meaning* of citizenship in the EU once introduced directly in its treaties and subsequently developed in ensuing practices of the EU system. The implications of citizenship are only ascertained in connection to the different EU institutions and *their* use of the concept in the ongoing struggle over the direction of European integration, rather than in itself. It does not, for example, discuss the extent to which European citizenship is not only an institutional battleground as such, but also involves a struggle over the *ethos* of the European polity through the concept of citizenship.

In a more historical and conceptual appraisal, Eder and Giesen (2001: 2) have indeed recognised that European citizenship discourse can be understood as “(...) an attempt to

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analysis of European, or what he calls “post-westphalian” citizenship.

towards defining who is an insider and who is not.” They also emphasise that it can be seen as an attempt at defining a *demos* for a polity beyond the nation (ibid.: 2). The question of an emerging European *demos* has also been raised more comprehensively by Kostakopoulou (2001a). This question is related to an analysis of the kind of European identity that has emerged in the wake of direct and indirect citizenship politics in the EU mainly on the institutional level (ibid.: 14ff.). This study is commendable in its emphasis on studying the on-going discourse of citizenship and for stressing that citizenship is a contested concept (ibid.: 84). Still, this is surprisingly not heeded to in the establishment of what Kostakopoulou (2001a: 84ff.) calls “a theory of European citizenship.” Here, the study explicitly takes the nation-state framework for granted in order to provide an analytical frame that can overcome what is perceived as limitations in the EU’s policy on European citizenship and identity. Given the theoretical argument of the thesis, this is not a beneficial strategy for researching European citizenship. Kostakopoulou argues for a heuristic use of the nation-state framework, but does not take into account that this at the outset will steer the focus of what to look at when assessing the stature of European citizenship.

This seems to be connected to a further normative aim of the study which is to provide a so-called “constructive” theory of citizenship in the EU (ibid.: 101ff.; see also Kostakopoulou 2005). The normative model brought forward emphasises the highly political and contested character of identity questions in a multi-faceted polity such as the EU. In locating the question of identity empirically in the integration process, Kostakopoulou (2001a: 40) argues that the overcoming of the sectoral approach in the ECSC through the Treaty of Rome signalled and affirmed the “political” character of European integration. It was, “a stage in the process towards political union” (ibid.: 40). I will not discuss this empirical assertion in detail here as it will be dealt with extensively in chapter 5. One point, however, merits mentioning. Kostakopoulou seeks to empirically trace and explain, and ultimately normatively criticise the development of what she calls European identity within the integration process. She locates this institutionally in the treaties, institutions and policies of European integration. So far, so good; but, it seems that there is a constant search for affirming “the political” already in the first treaties regarding what she calls the construction of European identity. There is thus a clear tendency to force a normative programme, so to say, on the empirical reality one investigates. The more appropriate puzzle would be to ask *what kind* of identity and

individual membership was implied in a Community whose first phase was predominantly marked by economic integration and market-making (see Dinan 2004; Gillingham 2003). The theorisation of citizenship as a specific kind of political identity thus leads to the failure to notice elements of citizenship that might not be conducive to the *a priori* model of what citizenship *should* be.

Another conceptually and historically oriented approach is evident in Elisabeth Meehan's (1993) comprehensive study of the emergence of a concept of citizenship after the triple summits of Paris and Copenhagen in 1972-74. In fact, this study starts out with a critique of Aron's perspective on the viability of European citizenship. The core of the argument is that "(...) a new kind of citizenship is emerging that is neither national nor cosmopolitan" (ibid.: 1). This argument is, however, not founded on a purely theoretical discussion on the feasibility of European citizenship. It is rather based on a historically oriented methodology in the study of citizenship. This means that Meehan employs a research strategy where the historical process of European integration and the development of citizenship discourse is mapped and traced. There is a clear merit in this kind of approach as it provides a broader account of European citizenship as a novel phenomenon of citizenship politics. As was shown to be the case with much of the theoretical and normative literature, Meehan's study does not presuppose that European citizenship is a "mission impossible", but rather takes it seriously as a developing institution within the integration process.

But to the extent that Meehan's broad historical and institutional outlook is something to be brought forward in the study of European citizenship, her study is not sufficient in its theoretical framework. The theoretical discussion of citizenship commendably starts out with the understanding of citizenship as a contested concept characterised by different realisations in historical practice and ideas in theory (ibid.: 4ff.). In setting out her theoretical view of citizenship, however, Meehan takes the three-fold division of civil, political and social rights for granted (ibid.: 6ff.). In a sense, this fixes the meaning of citizenship (rights) at a specific point, that is in the nation-state of the 20<sup>th</sup> century (see Marshall 1992), contrary to Meehan's own statement that "(...) the meaning of citizenship is neither fixed in time nor the same in different societies" (Meehan 1993: 17). Further, in the actual analysis of what citizenship in the EU entails, the emphasis is clearly on aspects that pertain to social rights. This is, however, not only a product of the empirical analysis.

It is a conscious choice on the part of the author. Arguing that social rights indeed *are* a part of citizenship against Aron's emphasis on political rights as its ultimate defining feature, Meehan (1993: 21) goes on to postulate that European citizenship involves a different ordering "(...) of the acquisition of a triad of citizenship rights." In this sense, it is more a specific study of the development of the social rights of European citizenship, than a comprehensive interpretation of what it means broadly speaking, that is, how it is conceptualised within the European integration process. This is surely not only oriented towards social rights?<sup>20</sup> In fact, Leibfried and Pierson (2000: 268ff.) have emphasised that social rights remains weakly developed on the European level, despite several efforts to further its harmonisation. The absence of a thorough theoretical and empirical discussion concerning aspects of identity and belonging further attests to the somewhat narrow focus.

Meehan thus tends to fall into the same "trap" as Aron in reifying *one* specific understanding of citizenship and using this as a template for the empirical study of its practice. Scattered throughout the study is also a tendency to act as a futurologist ("it may happen in future developments") as well as furthering a normative agenda of the primacy of social rights to citizenship, without making this an explicit stance of the study at the outset (Meehan 1993: 26). These weaknesses notwithstanding, the relatively early study of Meehan (written before the Maastricht Treaty was finalised) has clearly furthered our understanding as regards the development of a vocabulary of citizenship in the EU by emphasising its place within the policy process and institution building. Additionally, in methodological terms the study is laudable in its convincing argument of overcoming the reifying aspects of much research on citizenship. But, the clear emphasis of a particular dimension – social rights – indicates the need for broader empirical studies taking more aspects and nuances of citizenship into account.

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<sup>20</sup> The point here is not to say that the three-fold division of rights has no meaning for European citizenship. It is rather to emphasise that this should not be taken for granted. The perception and idea connected to rights within a specific discourse on citizenship will give evidence to conception(s) of citizenship. Indeed, Bauböck (1994: 211) has underlined that the list of citizenship rights in fact is open-ended and has tended to vary within and between different political traditions, structural conditions and cultural backgrounds. Focusing on only one dimension (i.e. social rights) might then lead to skewed interpretations of a citizenship practice where this dimension is not present. Is a conception where social rights are not considered as part and parcel of it less of a citizenship? Or, can it not be interpreted as a specific conception of citizenship; that is, one devoid of a social dimension?

The theoretical plea of taking more elements of citizenship into account was in fact heeded by Antje Wiener in her historical-institutionalist account of the emergence of citizenship practice as a policy field within European integration (Wiener 1998: see also Wiener 1997; Wiener and Della Sala 1997). Also taking the contested character of citizenship as a point of departure, this study takes a different theoretical route than that of Meehan. Rather than focusing merely on (social) rights, Wiener's approach is to outline a more general theory of citizenship upon which she studies the development of European citizenship from the 1970s onwards. The basic theoretical point of the study is that citizenship is comprised of rights, access and belonging as three historical elements (ibid.: 24ff.). With this theoretical model as a yardstick it then investigates the process of citizenship building for the combinations of these historical elements. The main finding of the study is that a fragmented citizenship practice between different levels of political organisation and community – where legal, institutional and socio-historical dimensions were crucial – has emerged in EU policy-making (ibid.: 293ff.).

This approach comes closer than any of the earlier discussed studies in taking European citizenship seriously in itself. The theoretical design rendered possible findings that would fall on the wayside of traditional nation-state oriented models of citizenship. Wiener's analysis argues that the unitary character of national citizenship is not emulated on the EU level. Such a finding would be deemed either unfeasible or undesirable if the methodologies of many studies of European citizenship had been put to use: "The fragmented character of 'European' citizenship thus posed a challenge to conceptualizations of citizenship as universal" (ibid.: 294). As will have been evident from the first two chapters of this thesis, I concur with many of the core aspects in Wiener's book.

Three critical remarks should however be made; all three pointing to the complementary character of my thesis vis-à-vis Wiener's research. Firstly, a critical remark can be made in terms of the time aspect. The case study commences with the claim that "[c]itizenship practice was initiated in the early 1970s" (ibid.: 63). Indeed, this is true in terms of *explicit* citizenship politics in the EU. This timing of the case study does, however, overlook the potential impact of institutions, treaties and policies on the status of individuals within the system from the outset of the integration process with the ECSC in 1951. In asserting that the book takes the discursive character of citizenship practice as the core of its

investigation, it is somewhat surprising that it does not acknowledge how the initial treaties and policies of the Community could have an effect on subsequent and more explicit measures as regards the issue of citizenship.

Secondly, the critique in terms of the time element can also be connected to the question regarding levels of analysis. Wiener (1998: 44) explicitly focuses on different policy areas as “a way of filling the time ‘lags’ between ‘history-making’ decisions.” Focusing on policy-making within different areas and how these affect the concept of citizenship makes sense. There is, however, a possibility of escaping the larger picture by focusing exclusively on policy. It simply overlooks the fact that the so-called “history-making” decisions can provide further clues to the place of citizenship within the political system of the EU.

Thirdly, on a more theoretical level, Wiener’s study is exclusively oriented towards *institutional* aspects of European citizenship practice. That is, in concluding each part of the case study, the emphasis is laid on illuminating how the citizenship issue has developed from informal resources such as ideas and broad political goals to institutionalised practices of the system. In doing this, it overlooks the question of how the vocabulary of citizenship as such has evolved. As this chapter has shown, this is a highly relevant puzzle given the diverging interpretations of European citizenship in the literature – ranging from its impossibility as citizenship is theorised as only viable in the nation-state form of political organisation to theorising it as the only path to dissociating citizenship from nationality. As these – and other contributions of the literature – have been shown to be problematic in theoretical and methodological terms, putting the emphasis on the development concerning *conceptions* of citizenship can serve as a final “test” of the critique presented in this chapter in addition to broadening our empirical knowledge of citizenship beyond the nation-state.

To conclude this section, the historical and institutional studies reviewed provide broader image of what European citizenship entails and its historical development. They are further commendable in the critical stance towards employing the blueprint of a nation-state model in the study of European citizenship. As these studies tends to be oriented more or less exclusively toward institutional struggles and policy issues, this thesis can be seen as complementary rather than directly critical of them. A study taking both policy

practices and constitution-making into account can then contribute to the already extensive body of empirically grounded research on European citizenship.

### 3.5. Concluding Remarks

This chapter has consisted of a critical appraisal regarding the main strands of the literature on European citizenship. Given the rich literature within the field, the review focused mainly on a selection of research that highlighted different ways of theorising, normatively scrutinising as well as approaching its empirical study. To generally conclude, the review showed that existing literature can give us some clues as to the theoretical feasibility or normative desirability of European citizenship. Additionally, some historical and institutional studies have furthered the understanding of citizenship as a policy issue and institutional battleground in the EU.

Notwithstanding the limited merits of many studies within the theoretical and normative strands of the literature, as has been pointed out in this literature review they do not significantly advance our knowledge of how different dimensions are configured as a consequence of institution building, policy-making and constitutional debates in the EU. This is due to the fact that the “old language” of the nation-state is for the most part employed in the study of citizenship on the EU level. This has been done to a large extent without further reflection about the viability of such a theoretical strategy in the first place. In a sense this is understandable given the fact that citizenship is always about giving certain individuals rights (and claiming their corresponding duties) based on some decision on membership in the rights-giving polity. The nation-state is the most recent and elaborated site for this type of citizenship politics. But this has gotten in the way of locating what one can call the vocabulary of citizenship; that is, the way citizenship has been understood and conceptualised in the very *process* of European integration. These traits of the sceptical literature have not necessarily been overcome by the more positive literature. It was shown that postnationalists tended towards essentialising their preferred model and thus impeding interpretations that could go *against* the thesis of an imminent dissociation of nationality and citizenship on the European level.

Having pointed out severe problems with many theoretical and normative accounts, this study in fact corresponds with some of the main traits in research on the historical and institutional dimensions of European citizenship, such as directing attention to practices

and developments over time. Still, several of these studies were found wanting in theoretical terms, due to overly focusing on *specific* dimensions of citizenship. By not taking the interplay between dimensions seriously, there was thus a danger of overlooking potentially important aspects of complex developments over time. This is problematic in studying the EU, as it has evolved immensely since the outset. Focusing on citizenship *politics*, and not only social rights or identity, is thus critical for reaching a sufficient understanding of the novel phenomenon of citizenship beyond the nation-state.

In sum, reviewing the literature has in fact rendered all the more acute a conceptual perspective on citizenship when it is introduced on another level than the nation-state. A conceptual perspective here means that one focuses on how citizenship is conceptualised within its specific practical discourse, rather than primarily transposing a certain idea of its feasibility or desirability. Such a methodological outlook does *not* mean that citizenship is devoid of any normative precepts on the part of significant institutions, actors and discourses in the process of figuring out what it means within the frame of a given polity. Yet, as should be evident from this chapter, a main argument of this thesis is that the citizenship discourse in the EU should not *only* be studied from a normative or theoretical viewpoint. A study that focuses on its conceptualisation within the on-going integration process might uncover the underlying normative core of citizenship. In order to trace the development of the vocabulary of citizenship within the EU one should then employ a broader analytical and empirical framework than what has been done thus far in the literature.

# Chapter 4. Researching Conceptions of Citizenship in the European Union

## 4.1. Introduction

In the preceding chapters it was argued that citizenship as a status consists of certain generic dimensions which should be studied empirically as practical realisations; it was further shown that this has not been heeded to in the bulk of the existing literature on European citizenship. Three concrete examples of key points in the literature review can be used as a further guide to the argument behind the research design and the contribution of this thesis to the literature. Firstly, among sceptics, Shore (2004) held that European citizenship is not viable due to the inherent link between the concept of citizenship and that of the “state.” Further, he asserted that the precondition of a *demos* does not exist on the EU level. Such theorising overlooks the empirical variability of citizenship across time and space, and thereby the potential for novel configurations of citizenship elements in given political settings. Secondly, in the more optimistic postnational strand of research, Gerstenberg (2001) delivered the typical conjecture that as a result of EU integration, the concept of citizenship would be decoupled from citizenship. There might be plausible normative reasons for such a view, but for our understanding of the *kind* of citizenship that has emerged in the EU it is insufficiently grounded in empirical research. Thirdly, among more empirically oriented studies, Kostakopoulou (2001a) commendably focused on the historical evolution of citizenship in the EU, but ultimately exaggerated the empirical evidence supporting a “political” notion of identity as central to European unification. Consequently, the aim of this thesis is not to reinvent the wheel by engaging in yet another attempt to craft theoretical or normative solutions to the issue of European citizenship. Rather, it is to contribute to the literature through a more grounded approach making it possible to highlight the empirical particulars of citizenship in the European integration process.

Within research on European integration two main levels of analysis have been stressed, such as focusing on either history-making instances or complex policy-making processes (for overviews, see e.g. Hooghe and Marks 2001; Peterson 1995; Pollack 2005; Rosamond 2000). Taking into account the argument for a more grounded approach, this thesis will focus in empirical terms on a *two-level* design researching the emergence of citizenship *both* as a “practice among practices” and its location within different instances of EU

constitution-making. This allows for capturing more of the complexity regarding what citizenship has amounted to within the EU as it takes into account not only its “longevity” from the outset of the founding treaties and subsequently its practical development against the backdrop of different evolving policy issues. It also allows for elucidating how the status of individuals have been raised when the EU has engaged in argument over broader questions regarding its character as a political community within the more “concentrated” sphere of constitution-making. Further, connecting to the level of theory, rather than merely stipulating on a normative or legal level how the concept of citizenship should evolve or has evolved in the EU, in this thesis the emphasis will be on illuminating where, what, and how policy practices and constitutional principles have affected the status of individuals.

In order to come to terms with the “where, what and how” of citizenship in the protracted and multi-faceted European integration process, I argue that so-called *process tracing* becomes apparent as the preferred method of inquiry. As will be shown in this chapter, process tracing is suitable for studying diachronic processes where the interest is in understanding the trajectory of a given phenomenon or concept. Through this method one can identify the critical junctures of a process and the degree of change or consolidation that occurs over time. Thus, the research design usefully combines the theoretical issue of what citizenship is in terms of generic dimensions and the empirical issue of how citizenship has been conceptualised in a given process.

Based on these remarks, the chapter is structured as follows. I begin by locating the two-level empirical design of the thesis against the literature on European integration. The emphasis will be put on the fruitfulness of focusing on policy practices and constitution-making as well as laying out empirical indicators of what would account for changes or consolidations in the understanding of European citizenship. This is facilitated by connecting the theoretical framework of generic dimensions as the conceptual core of citizenship with a preliminary appraisal of the steps in the empirical argument. Following this, the focus will be put on methodological issues of analysing and comparing conceptions of citizenship within the two levels of European integration. In doing this, attention will first be paid to the method of process tracing emphasising in particular the modification of “traditional” process tracing approaches to fit the conceptual approach of this thesis. Having done that, the analytical framework will be presented. Here, the focus

will be on how concentrating on dimensions of citizenship will provide the empirical indicators that are to be utilised for assessing the emergence and development of conceptions of citizenship.

## **4.2. A Two-Level Empirical Design for the Study of European Citizenship: Policy Practices and Constitution-Making Instances**

### *4.2.1. Introduction*

The European integration process is multi-faceted, both in political and historical terms. In reviewing the literature on European citizenship in the preceding chapter it was shown that there were problems not only with regard to theory, but also in the grounding of much empirical research in the field. The question of where to locate the analysis of European citizenship empirically should therefore be addressed before focusing on issues regarding the method of inquiry and analytical framework. Probing the empirical design of the thesis connects to a set of inter-related questions. How do we know citizenship within the EU when we see it? And, how can we account for the ways in which the status of individuals has been affected by the evolving integration process? Further, what will account for changes in understandings and conceptions regarding European citizenship? Finally, where is the concept of citizenship located within European integration?

I will commence with the last question. The evolving character of European integration has produced a plethora of different theoretical interpretations regarding its origins, the forces of integration and what it entails as a political system (see e.g. Gillingham 2003; Hix 2005; Rosamond 2000). The literature is in fact spread on a continuum between conceptualising the EU merely as a form of international organisation to understanding it as resembling statehood.<sup>21</sup> Notwithstanding the protracted debate on “the nature of the beast” (Risse-Kappen 1995), there is still widespread agreement within the literature that the EU is engaged in an ongoing process of “building” itself as the metaphor often goes (see Shore 2000). This building process is visible in continued integrative efforts through institutional and political reform and some form of constitutionalisation or constitution-making (see Eriksen et al 2004; Hix 2005; Hooghe and Marks 2001; Snyder 2003; Weiler

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<sup>21</sup> In more specific terms, the “game of labelling” within the literature has resulted in different interpretations such as seeing the EU among other things as *condominio* or *consortio* (Schmitter 2000), an intergovernmental organisation or regime (Moravcsik 1998), a multi-level governance structure (Hooghe and Marks 2001) or a nascent postnational federation (Habermas 2001). For comprehensive overviews of the theoretical and historical debates on how to understand and conceptualise the EU as an entity, see e.g. Chrysochoou (2001) and Rosamond (2000).

1999). More specifically it has meant developments pertaining not only to the institutional level within the EU or the relationship between Member States; “building Europe” has also entailed engagement with the theme of individuals, of the relation between the EU as a political entity and individual citizens.

Locating citizenship within European integration thus connects to the question of where this process finds its *momentum*. The differing views on this in the literature are linked to differences in labelling or conceptualising the EU as a political entity. Some authors emphasise the “grand bargains” of treaty revision in the so-called Intergovernmental Conferences (IGCs) as the primary sites for the development of European integration through institutional reform and the interests of Member States (see e.g. Beach 2005; Keohane and Hoffmann 1991; Moravcsik 1998). As Moravcsik (1998: 1) argues, “[i]n the history of the EC, the most important... choices are five treaty-amending sets of agreements that propelled integration forward.” The core of the argument is that the Member States as the “masters of the treaties” make the decisions that mark out the EU as a political entity.

Another strand of the literature also emphasises major occasions of European integration as the driving force of integration, albeit focusing on deliberate constitution-making for instance in the Convention or the constitutional character and outcome of Treaty negotiations and/or judicial jurisprudence (for the deliberate constitution-making case, see e.g. Eriksen et al 2004; Fossum and Menéndez 2004; Walker 2005; for the “constitutional character” case, see e.g. Weiler 1999; Snyder 2003). Here the argument goes that through efforts of constitution-making and constitutionalisation, the question concerning the character of the European polity and its community of citizens is highlighted.

Contrary to these “grand” views on what signifies the European integration process, a third strand of the literature rather highlights the gradual “day-to-day” policy-making process as conducive to the ultimate developments of the EU (see e.g. Cram 1997; Jachtenfuchs 2001; Peterson 1995; Pierson 1998). This view argues that the exclusive emphasis on major treaty changes or constitution-making instances fails to take into account the fact that the institutional nexus of the EU and its policy- and law-making instruments have supplemented the overarching treaty framework and “(...) succeeded in expanding the scope of EU competence” (Cram 1997: 2). This expansion has increasingly

linked the EU to individual citizens and has thus highlighted questions and problems of citizenship such as the scope of European rights, elections to the European Parliament, free movement and European identity.

As citizenship establishes the status of individuals in relation to the polity, it evidently registers with queries regarding the character of the status-giving political entity. It can be argued that the concept of citizenship has been central in different instances of treaty change and efforts of constitution-making in the EU. The Spinelli Project in the European Parliament (1984), the Maastricht Process (1991-92), and the Convention on the Future of Europe (2002-03) are all instances where there has been debate over the character of the EU as a polity. In the literature on EU constitution-making it is further argued that these instances were centred on problems and questions directly or indirectly linked to European citizenship; such as rights, democracy and European identity (see Capotorti et al 1986; Shaw 1997a; Eriksen et al 2004).

But placing the sole focus on these restricted instances of constitution-making would not entail taking the broader process of integration and its impact on the understanding of citizenship within the system into account.<sup>22</sup> This is especially important in the EU where there has been no initiating constitutional moment as compared to, say, the American and French Revolutions (Eriksen et al 2004: 6; see also Ackerman 1991; Arendt 1965). Further, it is evident that the EU has emerged as a polity through both the dynamics of political decision-making and (amending) periodic treaties constituting its institutional framework (Bellamy and Castiglione 1998: 153). As Pierson (1998: 30) has claimed in a plea for more historically sensitive studies of the EU: “(...) what one makes of the EC depends on whether one examines a photograph or a moving picture. Just as a film reveals meanings that cannot be discerned from a single photograph, a view of Europe’s development over time gives us a richer sense of the nature of the emerging European polity.” This study therefore provides a two-pronged take on European citizenship by looking, not only at specific instances of constitution-making, but also the broader emergence of citizenship issues as a policy practice within the EU. To use Moravcsik’s (1998) words one can perhaps say that “the choices for Europe” have not only had resonance within the major instances of treaty- and constitution-making. The choices

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<sup>22</sup> Peterson (1995) has argued on similar grounds in a broader discussion on the traits of the EU as a multi-tiered system of government and political decision-making.

made in a polity on issues such as citizenship also reflect the *continuous* process of integration. Different *context(s)* of citizenship policies, politics and principles should thus be taken into consideration. As Pierson (2004: 72) argues:

“(...) ‘context’... becomes a point of entry for thinking about how events and processes are related to each other in social dynamics that unfold over extended periods of time. It is decidedly not a matter of treating each social setting as unique and infinitely complex. Instead these inquiries urge us to recognize that any event or process is environed by its temporal location, its place within a sequence of occurrences, and by its interactions with various processes unfolding at different speeds.”

Juxtaposing constitution-making efforts and the diachronic aspects of policy practice(s) within the integration process renders possible a more nuanced understanding of what European citizenship entails and has entailed. Yet, a caveat is in order here. Through the two-level design, the focus is on making sense of the initial citizenship politics inherent in the founding treaties and how this has developed over time within evolving practices and constitution-making instances of European integration. Still, notwithstanding the diachronic characteristics of these analyses, the analytical chapters will not resemble a close historical narrative. They will rather consist of translating events or instances in the process into an analytic vocabulary that can contribute to a more grounded understanding of what kind of conceptions of citizenship that has emerged – and their conjunction with other relevant practices of the system.

This kind of two-level empirical design is further fruitful due to the character of citizenship. It is a concept which raises different questions and problems related to generic dimensions such as membership, identity, rights and participation. The queries associated with these dimensions cannot be subsumed under *either* a constitution-making or policy-making framework. By way of an example, the issue of membership is intimately linked with the decision regarding those to be designated as *included* (and thus set apart from *the excluded*) in the political community (re-)established through the constitutional structure of a polity. Notwithstanding this *constituting* aspect of individual membership in a political entity, *at the same time*, the concept of citizenship can be re-formulated through changes in other practices within the same political system. This is especially contentious with regard to the EU as it is a political system that has evolved gradually from a specific starting point of market integration, but with an unsettled and very much contested future – often called its *finalité* in the literature – at any given point in time. With regard to the

EU, one can thus not rule out that the conceptions in the constitution-making instances are at odds with the policy practice of citizenship. Only taking into account one of these tracks within the EU would then not enable such a state of affairs to be captured. Thus, rather than for example shifting the focus from “policy to polity” (Chrysochoou 2001: 5) as the task for research and theorising on the EU, this thesis maintains that the one cannot be understood independent of the other. As such, focusing the analysis on two levels of political integration highlights the import of an issue such as citizenship at different, but inter-related junctures of polity-building in the EU.

To summarise, the two-pronged design will provide empirical indicators to answer the research questions of the thesis. It broadens the empirical scope concerning what has affected the status of individuals in a process that started out as a project of market integration and political amalgamation on the level of states, but which clearly also has had ramifications for individuals – be it citizens, denizens or non-citizens related to Member States. In short: What has the citizenship politics of the EU been like and how has it affected the status of individuals? Where and in what ways has the understanding of citizenship in the emerging European polity been changed within policy practices and constitution-making instances respectively? The empirical and methodological aspects of these questions will be dealt with in the remaining sections of this chapter.

#### *4.2.2. Citizenship as an Emerging Policy Practice in the EU Integration Process*

All political systems engage in some form of policy-making (Lindblom 1968). The definition of a policy area in the EU is not so straightforward (Wiener 1998: 41ff.). This is due to its unclear character as a polity. When compared to the state experience it is an evolving polity without clearly definable boundaries in legal (Snyder 2003: 66ff.), political (Chrysochoou 2001: 97ff.), and territorial terms (Bialasiewicz et al 2005: 335ff.). The unclear character of citizenship as a policy field within the EU is captured by the term *policy practice(s)*. Investigating the development of European citizenship should focus on the different practices emerging from treaties, policies, legal decisions, reports and committees which have dealt directly or indirectly with issues related to citizenship. The concept of citizenship is thus not treated in isolation from the broader integrative processes, it is rather assessed both in terms of the policies and decisions *explicitly* focusing on citizenship issues and the ways in which changes in other practices within the system – such as market integration – have a bearing on its ongoing development. Citizenship is

hence studied not as exclusively *preconditioned* by reference to specific normative notions of membership, rights or identity, rather as constituted relationally (see Barth 1999: 2) to other practices in the system. This does, however, not exclude the possibility of a clear normative or value-oriented “bias” in the conceptions that are discovered in the analysis. Still, this is an empirical question in so far as the thesis does not take as its point of departure normative models of citizenship, but rather theoretical dimensions with generic characteristics that must ultimately be appraised in terms of their practical reconciliations. Focusing on the process of European integration and different developments within it thus provides a starting point for examining what kind(s) of conceptions of citizenship that emerged in the European project.

The concept of citizenship was not explicitly stated at the outset of European integration, but several aspects speak to what has been called an “incipient” form of European citizenship (Kostakopoulou 2001a; Plender 1976; see also Maas 2005a) inherent in the ECSC and Rome Treaties and subsequent developments of the EU’s relation to individual citizens, such as the direct effect of Community legislation on states and citizens settled by the ECJ in the 1960s, expansion of rights under the principle of free movement and political rights from the late 1970s. Empirically, the analysis will take as its point departure the ECSC and Rome Treaties (1957) and trace the development of citizenship within the subsequent practices of integration that followed from these treaties as the founding documents of the European polity.

A potential criticism arises here. Why are the “founding treaties” of the European polity treated as elements in the on-going policy practice rather than as constitution-making instances? The argument could be that the treaties are merely the legal or constitutional basis for the institutions, policies and practices of the European integration process (see MacCormick 1999). In this view, practices would evolve post-treaty, so to say. The treaties should then not be researched as *parts* of the practices. In a broader perspective on European integration, they could even be interpreted as instances of implicit constitution-making (see Fossum and Menéndez 2004). Surely, they do not differ that much from, say, the Maastricht Treaty which is often interpreted constitutionally, rather than in terms of policy? I reject this potential criticism. First, the ECSC and Rome Treaties were clearly, at the outset of European integration, not conceived as vehicles of a European constitutional order (Wind 2001: 124). Rather, they seem to have been perceived as

facilitators for policy convergence between formerly separated national and sectoral markets (see Dinan 2004; Gillingham 2003). In addition, the focus on constitution-making is directed to *concrete* instances of explicit constitution-making within the Spinelli Project and the Convention on the Future of Europe, and the widely held constitutional import of the Maastricht Process (see Maas 2007: 45). Second, I argue that these treaties in fact can be seen as having provided the practical impetus for subsequent developments in terms of policy practices (see Hooghe and Marks 2001: 35ff.). They are the starting point for all integrative policies and practices that emerged in the 1960s and 1970s.<sup>23</sup>

Some preliminary empirical clues can thus be obtained by focusing on the founding treaties and the initial period of integration. The protracted European integration process was formally launched with the limited European Coal and Steel Community (ECSC) in 1952.<sup>24</sup> As the name indicates this was an integrative effort in a very limited area of trade. However, the functional boundaries of this system were soon broadened with the advent of the European Economic Community (EEC) through the Rome Treaty in 1957. In this treaty, the aspirations were shifted from *sector* to *market economy*. European integration was considerably broadened with the longer term goal of a customs union in most areas (Dinan 2004: 89ff.). With regard to the concept of citizenship what is important to understand is the “vision” of the citizen in the first treaties of the EU. What was the status of the individual in the initial phase of market integration? What kind of membership was linked to the ordo-liberal goal (see Gillingham 2003: 87ff.)<sup>25</sup> of a market-oriented European project designed to foster both economic prosperity and peace? A further indicator could be looking not only at the included, but also the vocabulary of exclusion in the Rome Treaty. Was there a clear distinction between insiders and outsiders concerning the relation to the integrating markets? This not only links to the question of membership, but also to identity in the sense that a certain idea of what this Europe entailed was already emerging. Did market integration render a self-understanding exclusively connected to the *mode* of integration or did the incipient discourse on the relation between individual and the emerging European polity give rise to other understandings of such a link? In short, focusing on the first treaties of the EU provides

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<sup>23</sup> These points do not mean that I would for all research purposes claim that the founding treaties or, say, the Single European Act do not have a constitutional import (see e.g. Rittberger and Schimmelfennig 2006).

<sup>24</sup> With the so-called “Europe of Six” as members: France, Germany, Belgium, the Netherlands, Luxembourg and Italy.

<sup>25</sup> For an extensive introduction to ordo-liberal conceptions of modern market economics, see Streit and Wohlgemuth (2000).

an indicator regarding the status of the individual in the initial phase of European integration and how this set the stage for and possibly shaped subsequent developments of the relation between individual citizens and the EU.

In addition to the incipient citizenship emerging through the first treaties of the EU, seminal verdicts in the ECJ and related secondary legislation pushed the (implicit) citizenship agenda further. Through what has been called its “judicial activism” (see van Gerven 2005: 28), the ECJ adjudicated on issues of importance for the self-assertion of the EU as a political entity. It established the basic principles of supremacy, direct effect and protection of fundamental rights within the EU order (Weiler 1999: 19ff.). In addition, the Council passed directives (Kostakopoulou 2001a: 42ff.) that underlined the rights of free movement across the borders of member states for workers. These practices of market integration can be interpreted as the beginning of establishing a link between the citizens of Member states and the EEC (Weiler 1999: 19ff.; Preuss 1998a: 139) and the broadening of certain boundaries of individual belonging within the system. Which understanding of membership was inherent in sustaining the principle of free movement? In empirical terms, these queries provide a further characteristic related to the conceptualisation of European citizenship as they reflect the on-going development of policies and practices within the system through the “day-to-day” legislative process. By asserting that not only member states were to be integrated, but also their citizens, what kind of citizenship was emerging? Did the conception of citizenship crystallise around the principles of market integration – a citizenship of producers, workers or consumers – or did it signify a broadening of the European citizenship practice? By closer scrutiny, what can be discerned from the seminal verdicts of the ECJ in terms of individual European rights? What did the affirmation of the access to European Courts mean for the status of the individual?

The market integration of the beginning stages of European integration was supplemented by explicit discussion on issues relevant for citizenship in the 1970s and 1980s. The triple summits in Paris and Copenhagen (1972-74) and the subsequent Tindemans (1975) and Adonnino (1984) reports emerged with an agenda of fostering European culture and an identity for the Community (Kostakopoulou 2001a; Shore 2000; Wiener 1998). These efforts might indicate that European integration no longer was purely market-oriented. The vision of a “People’s Europe” was to be achieved by giving

citizens of member states special rights (excluding third country nationals), fostering identity on the basis of a common cultural heritage of Europe and the principles of democracy and social justice (Kostakopoulou 2001a: 45). As these first *explicit* discussions on the concept of citizenship within the EU framework emerged under the guise of “European culture and identity” it is timely to ask how this actually affected the status of individuals. Were the expressions of integration broadened so as to encompass a more communal belonging of individuals possibly transcending their status as producers, workers or consumers? Did it entail more explicit designations of membership and identity in a European citizenship? Was a notion of a European community of belonging based on something *more* than individuals as market actors evolving? In what way did the drawing of a clear boundary between Community citizens and third country nationals with regard to rights in the Community signify a point in which the EU “we” end and the non-EU “they” begin in terms of identity issues? Thus, we see that a broadening of the practical discourse in the integration process provides more indicators as to the conceptions of citizenship within the system.

These developments coincided with the establishment of direct political rights in the elections to the European Parliament in 1979. Having established economic rights connected to the market and civil rights in access to the European Courts, finally voting rights were introduced. But, before concluding that this can be seen as the advent of a European *demos* in a political sense, one should investigate the meaning vested in such European political rights and their effect on the status of individuals. Political rights give citizens the entitlement to *participate* in the affairs of the political community, in its associational life, so to say. The bestowal of participatory rights thus provides indicators of how the polity and its citizens are linked in terms of political community. The link between citizens and the European polity in its initial phase seems very much to have been connected to market integration. Did direct political rights then lead to changes in the understanding of European citizenship towards more “holistic” conceptions of citizenship – consisting of membership, rights and participation attached to a *political* community?

Notwithstanding these developments with regard to political rights in elections to the EP, further developments in the 1980s focused again on market integration. The Single European Act (SEA) was launched in 1986 with the creation of a *Single* Market for

Europe as the main objective (Dinan 2004: 206ff.). The practice of market integration was thus taken to another level, breaking down internal market boundaries while emphasising the external ones against other major markets such as the US one (Gillingham 2003: 157ff.). Perhaps not surprisingly, these efforts at “reviving the ideals of the European integration project” (Capotorti et al 1986: 25ff.) and the “untapped potential of the Rome Treaty” (Dinan 2004: 205) coincided in time with the Schengen Accord<sup>26</sup> which aimed at the abolition of territorial border controls of citizens in Europe. What did this entail in terms of European citizenship? Did it revert to market-oriented conception of the European citizen – was membership again linked primarily to the capacity of individuals to participate in the market as workers or consumers? What did a strategy of revival concerning the ideals of the European integration project entail for the conception of citizenship in the system?

These questions aside, the SEA provided the impetus for the Maastricht negotiations on a European *Union* which have been interpreted as having a constitution-making import in the integration process (Fossum and Menéndez 2004: 119; Greve and Jørgensen 2002: 67ff.; Weiler 1999: 3ff.). It will thus be dealt with in the next section focusing on the level of constitution-making instances. The treaties emanating from the Maastricht Process have been amended at the Amsterdam and Nice IGCs and have also spurred several legislative processes that might have had an impact on the understanding of European citizenship. Thus, investigating the post-Maastricht developments will provide indicators, not only to the trajectory of European citizenship as such, but also to the link between emerging policy practices emanating from treaties, the ECJ, committees and legislative processes and the conceptions of citizenship inherent in the restricted instances of more or less deliberate constitution-making.

#### *4.2.3. Citizenship within Instances of EU Constitution-Making*

The ongoing process of policy-making that has marked European integration since its advent with the first treaties of the 1950s has been “punctuated” (see Caporaso 1996: 30; Moravcsik 1998: 1) by specific instances of Intergovernmental Conferences (IGC) and the Convention on the Future of Europe. In the literature, these instances – and others such as the Spinelli Project in the European Parliament – have been seen as indicative of

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<sup>26</sup> The Schengen accord was originally an intergovernmental agreement signed by France, Germany and the Benelux countries outside the EC Treaty. It was “communitarised” in the Amsterdam Treaty and had by

varying degrees of constitution-making within the overall integration process of the EU (Fossum and Menéndez 2004: 118ff.; see also Shaw 1997a; Snyder 2003; Weiler 1999). This continuing constitution-making process has gradually embraced questions, concepts and institutions such as legitimacy, democracy and citizenship (Eriksen et al 2004; Weiler 1999; Wiener and Della Sala 1997).

Constitution-making in the broad sense entails discussion and debate on the basic values and institutions of the polity – it is a process of figuring out its self-understanding as a bounded and specific community (Grimm 1995: 287ff.). For the purposes of this study, constitution-making can further be defined as a “(...) process of change in which the norms, principles, decision-procedures, and modes of justification that underpin and inform a written body of rules are presented, deliberated, and eventually encoded in a constitution or in binding constitutional interpretations” (Blichner and Fossum 1997: 3, cited in Fossum 2000: 115). This broad definition of constitution-making speaks to the process of constitutionalisation in the EU, as it is not exclusively connected to constitutional conventions and moments in the traditional sense, such as in the American and French Revolutions (see Ackerman 1991; Arendt 1965). Indeed, as Fossum and Menéndez (2004: 119) argue the IGCs since the 1980s have developed into what one can call a quasi-constitutional model for the European polity.

In chapter 1 it was argued that the concept of citizenship relates to questions concerning the self-understanding of the polity – the self-understanding which separates it from other polities. The concept of citizenship can thus be expected to have been central to circumstances where the EU has been in a state of debate over its basic character and form as a polity (Wiener and Della Sala 1997: 598ff.). This has been shown to be the case within instances of treaty revision and deliberate constitution-making (Fossum and Menéndez 2004: 135ff., 149ff.). The Spinelli Project, the Maastricht Process and the Convention on the Future of Europe are three instances of more or less deliberate European constitution-making that can be utilised as a type of *inter-mediaries* in the citizenship discourse that has evolved since the ECSC and Rome treaties. An interesting question is whether there is a clear trajectory or ruptures comparing these three constitution-making instances with the broader citizenship discourse visible in the practices of European integration. When investigating this, one must probe the ways in

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then been ratified by most EU member states in addition to the non-member Norway (Hix 2005: 348ff.).

which citizenship was framed in each constitution-making instance and how this will have affected the status of individuals in the system – in practical as well as conceptual terms.

In order to investigate the discursive import of citizenship within EU constitution-making, a variety of queries and questions indicate what one should look at. The three instances to be studied are not identical in terms of their institutional structure or location within the European integration process. Further, their origins differ widely as the Spinelli Project was initiated by Members of the European Parliament, the Maastricht Process was originally an IGC convened to discuss the establishment of a European Union – albeit not with an explicit agenda of citizenship issues and constitution-making at the outset – and finally, the Convention on the Future of Europe was a deliberate effort at establishing a European Constitution based on a Convention consisting of representatives from the Member States as well as the EP. Thus, the three instances further designate different indicators that can be utilised for analysing conceptions of citizenship within them.

A first common indicator will be who are seen as the ultimate authors and addressees of the constitution in the making. This clearly connects to the question of belonging – of membership and identity. As Fossum (2000: 115) highlights: “In the EU this is best seen as a question of *who*, and in what sense individuals ... should be included or excluded, as well as *which* sense of identity and attachment such inclusion requires.” This is, however, not necessarily as straightforward as in the case of national constitution-making. The EU arguably has no fixed boundaries, neither territorially or politically, – it is a polity whose “(...) foundation, mission or vision remains open” (Closa and Fossum 2004: 2; see also Maduro 2003: 81ff.). It is further unclear whether *states* or *citizens* are the primary authors and addressees of the European polity being constituted. Investigating the place of citizenship within this conundrum thus requires looking at how the status of individuals was framed in each constitution-making instance. Is the concept of the individual at the forefront of constitution-making debates? If so, how is this framed in terms of citizenship? Further, to which other dimensions of the constitution was the question of citizenship linked? Was it framed in terms of already existing rights or were new rights attached to the status of European citizenship?

The Spinelli Project had an explicit aim of establishing a European political union. In the process of drafting a treaty constitution the question of constitutionalising a European

citizenship as well as several issues connected to citizenship such as rights, identity and the territorial reach of the European polity was discussed.<sup>27</sup> How did this affect the conception of citizenship? Did it bring forward the recent developments of more explicit debate on citizenship? Or, did it rather remain true to the original market vision of European integration? What did “constitutionalising” citizenship mean for the status of individuals? What kind of belonging did this entail – was it geared towards a European super-state or linked to the nation-states as the core agents of European integration?

In terms of the status of individuals, the Maastricht Process culminated with the inception of Union citizenship into the legal and political framework of the EU.<sup>28</sup> This process sparked a vigorous debate in the academy as well as in broader society and politics on the feasibility of a constitution for Europe, the EU’s democracy and legitimacy deficits and the prospects for a genuine European identity to emerge (see Weiler 1999). For the inquiry of European citizenship, the ultimate question is what the effect of such an institutionalisation had for the status of individuals. Did the explicitness of introducing the concept of citizenship into the treaty framework *clarify* and *settle* the question of belonging – of who the status is attached to through membership and subsequently the notion of identity in the citizenship-granting political community? What were the effects of additional rights linked to Union citizenship? As citizenship was *explicit* for the first time, did citizenship rights render any corresponding duties on the part of citizens? These queries can partly be answered by the fact that Union citizenship was institutionalised as *additional* to and *dependent* on national citizenship. The status of European citizen was granted solely to citizens of the Member States – it was grounded in the national decisions

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<sup>27</sup> The Spinelli Project was based within the European Parliament and produced significant amount of preparatory documents from different working groups. A comprehensive overview of these is found in Capotorti et al (1986) and in Bieber et al (1985). The working group documents summarised discussions on problems and questions raised concerning which issues should be entrenched in a constitutional document for a European Union. In terms of the time frame, the analysis focused on the proceedings of the Spinelli Project from the inception of a committee on institutional affairs in 1981 to the adoption of the final draft by the EP on 17 June 1984.

<sup>28</sup> The Maastricht Process was clearly less “structured” than the deliberate effort of constitution-making in the EP. Further, as an IGC its scope was significantly larger in terms of the institutions, actors and issue areas that were parts of the process. The main focus with regard to the Maastricht Process will thus be on debates concerning Union citizenship from the initiation of the Maastricht IGC initiated until the concept of citizenship was inserted in the Treaty text. This has entailed the utilisation of an array of different sources such as reports from the presidencies during the process, transcripts and/or accounts of the negotiations and preparatory reports. IGCs are characterised by negotiations on the highest level, conducted behind closed doors between executives of the Member States. In most cases hard primary sources accounting for the debates and discussions are not available. Still, the different Treaty drafts and texts are publically available and close scrutiny of these has been important in revealing how the concept of citizenship emerged in the process and gradually took shape as an institutionalised conception through the phrasing “Union citizenship.”

on individual membership. Without further qualification, the additionality of Union citizenship can thus be taken to signify the insignificance of such a concept. As sceptics would ask, however, does it really matter? Granted, union citizenship was “derivative” and “complementary”<sup>29</sup> in the sense that it was linked to the membership decision of the single member state, but it also explicitly stated that the EU is an entity which has a direct link to its citizens and grants them certain *European* rights. Analysing European citizenship seriously thus requires close scrutiny of the Maastricht process in ascertaining how the concept of Union citizenship was framed in the debates and the reasoning behind its final institutional status.

The Convention on the Future of Europe was unprecedented as a deliberate constitution-making effort involving not only members of the EP (as in the Spinelli Project), but also representatives from the Member States.<sup>30</sup> Against the backdrop of the deliberate character of the Convention, one can ask whether this had a particular effect on the understanding of citizenship within the European framework? Was there any evident perception of how citizenship would fit within the constitutional structure of the European polity? The point at which the EU “we” end was ambiguously treated in the Constitutional draft; the criteria for state membership in the EU seem to be couched in legal, political and cultural terms rather than the issue of territoriality (see Bialasiewicz et al 2006). The emphasis on democratic rule, adherence to shared values and human rights clearly point to an abstract notion of the boundaries of the European political project. It further highlights that the EU is still in the making and that its boundaries are not settled. In what way was the question of citizenship framed against this background? What was more important – the question of delineating (or not) the scope of state membership in terms of settling the potential final boundaries of the European polity, or the EU’s relations to its citizens? An investigation into such questions provides indicators as to the terms in which a constitution of Europe was framed, the place of citizenship within it and its affect on the status of individuals in the system. This all, however, gives rise to the sceptical question: Why does the Convention matter given that the Constitution broke down after the two no’s in France and the Netherlands? Firstly, it matters for our

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<sup>29</sup> As emphasised first in the Edinburgh-declaration (1992) and subsequently “paragraphed” in Article 17 of the Amsterdam Treaty (1996).

<sup>30</sup> The Convention on the Future of Europe was organised through thematic working groups and plenary sessions. Many publications and relevant information was published on the Convention website. In addition to this, verbatim reports of the different debates within the working groups and the plenary have been

understanding of the integration process simply because as an effort of drafting a more lasting constitutional blueprint for the EU, the Convention was clearly unprecedented. Secondly, the rejection of the Constitution in two of the Union's founding members renders it interesting in a final, more speculative analysis. What does this predicament tell us about the European project? Has it affected the individual status of citizens too much; or perhaps too little? Studying the Convention thus provides the final indicators regarding conception(s) of European citizenship; its practical and discursive trajectory within the European integration process.

#### 4.2.4. Summarising Remarks

The last two sub-sections have been extensive in laying out a preliminary take on the development of European integration and its possible effects on the notion (deliberate or not) of citizenship within the system. The indicators that have been laid out are not systematic in the sense that they are “universal” across the different aspects of European integration that are taken into account for understanding European citizenship. Rather, the focus has been on the more or less specific questions raised by different junctures in the policy practice and three constitution-making instances. Differences in historical and institutional settings have thus given rise to various types of questions pertaining to the diverse developments in the integration process. The reason for this is that the aim is to catalogue the repertoire of instances where a conception of citizenship has been changed or consolidated within the ongoing process of practical policy-making and concentrated constitution-making instances in the EU. Still, through employing the theoretical categories of generic dimensions, the scope of “what to look for” has been considerably narrowed. Thus, in summarising the queries and indicators regarding European citizenship discourse in table 4.1., dimensions of citizenship serve as analytical ordering devices.

Table 4.1. *Dimensions of Citizenship, Empirical Indicators and Junctures of European Integration*

<u>Juncture of European integration</u>	<u>Dimensions of citizenship</u>			
	<i>Membership</i>	<i>Identity</i>	<i>Rights</i>	<i>Participation</i>
<i>The Founding Treaties: ECSC and Rome</i>	Initial decision of inclusion/exclusion. Any clear vocabulary linked to	Linkage to mode of market integration or broader self-understanding of	Linkage to market integration	Limited to the market aspect?

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released. The Convention was, therefore, analysed in terms of its plenary debates and working groups as these commenced in early 2002 and ended with a draft of the Constitutional Treaty 18 June 2003.

	citizenship? Predominantly market oriented?	the “polity in the making”?		
<i>ECJ: Judicial activism and citizens-EU relations</i>	Citizens or states as primary “agents” of integration.	What kind of community of citizens emerges?	What kind of fundamental rights were asserted?	Access to courts – as full-fledged citizens or market actors?
<i>Free movement legislation in the 1960s/1970s</i>	Again a question of linkage to market integration – how strong and far- reaching?	Community of former aliens – free movement as the abolition of disabilities of alienage <sup>31</sup> ?	Degree of linkage to the sustained principle of free movement	Only as market actors or broadening the frame of moving across national borders
<i>Explicit citizenship debate in the 1970s and 1980s</i>	More explicit in terms of a specific European citizenship?	Communal belonging that transcends the market?	Rights geared towards issues of identity and culture?	Beyond the market? Common participatory space?
<i>Political rights in elections to the EP</i>	A political <i>demos</i> in the making? Membership linked to not only market and culture, also political participation?	Degree of identification with political rights. Perception in terms of the <i>Europeanness</i> of the rights	Link to national rights	Degree of usage, extent of participation on the part of rights- holders
<i>The Schengen Agreement</i>	Towards a clearer differentiation between insiders and outsiders?	Transnational identity based on boundary crossing?	More general right of free movement?	Back to basics? Boundary crossing and market participation?
<i>SEA and the single market</i>	Rejoinder to market as signifier of membership in European polity?	Market as core of European community?	Which rights attached to Single Market?	Back to work and consumption?
<i>The Spinelli Project</i>	Membership in supra-state or nation-states?	Notion of the community to be constitutionalised	New or old? Constitutional?	Citizens as authors <i>and</i> addressees?
<i>The Maastricht Process</i>	Meaning of institutionalisation of the citizenship concept. The issue of additionality	What kind of <i>Union</i> ?	With explicit citizenship, did rights follow?	Corresponding duties, such as participation?
<i>Post-Maastricht developments: Amended treaties, ECJ case law and secondary legislation</i>	Clarification of membership through statement of not replacing national citizenship?	What kind of “amended” Union?	Clarifications? Implementation of rights in Union citizenship – status	.After explicit citizenship – role of citizen in shaping the Union. Degree of actual participation?
<i>The Charter on Fundamental Rights</i>	More pronounced individual membership rights?	Rights-based?	Broader rights catalogue based on personhood?	Towards a stronger <i>European</i> focus on participation?
<i>The Convention on the Future of Europe</i>	Given “constitutionality”: a more direct status of citizenship?	Boundaries of states or community of citizens – a clearer EU “we”?	Degree of fundamental rights. Any new rights?	Why constitution? Engagement of citizens prior to and after draft

<sup>31</sup> This phrase is taken from Preuss (1998a).

### 4.3. An Approach to Analysing Conceptions of Citizenship in the EU

#### 4.3.1. *The Method of Process Tracing: The Conceptual Path of European Citizenship Discourse*

The two-pronged approach laid out in the preceding section highlighted the different settings where issues of citizenship have been prevalent within the integration process and the preliminary queries these raise. The diversity of these questions highlight that detailed knowledge regarding the minutiae of citizenship requires an illumination of the practices and instances wherein the status of individuals has been at stake. Such an awareness is particularly important given what Paul Margette (2005: 167) has underlined in a historical account of citizenship: “Political concepts never cease to evolve.” In laying out the theoretical framework to be utilised in this thesis, the practical and evolving character of the concept of citizenship was underlined. Given this diachronic aspect of the thesis – studying European citizenship from the outset of the integration process to recent developments – its very *process* should be at the centre of attention methodologically. In political science, a methodological literature has emerged which advocates putting the focus on process and time (Abbott 2001; Bennett and George 2005; Pierson 2004; see also Davis 2005). The overall argument of this literature is that understanding political behaviour, institutions or concepts require taking their *temporality* seriously. Inspired by this literature, I argue that *process tracing* is a viable method for an empirical study of European citizenship.

In the literature, process tracing is primarily portrayed as a method of inquiry which puts the emphasis on identifying causal or constitutive mechanisms that link *ex ante* specified variables with a particular outcome (Bennett and George 2005: 206; Checkel 2005: 5; Davis 2005: 176). In more general terms, it implies the close study of a given process in order to reach a more grounded understanding of a specific occurrence (ibid.: 177). Thus, *time* is not bracketed in terms of discreet variables and the mechanisms connecting them at a *one given* point in time. To be more precise, the process in *itself* is deemed important for understanding a phenomenon; it is scrutinised as “a whole” in which one searches for a trajectory and pattern of concepts or causes (Abbott 2001: 163ff.). Focusing on process in this manner facilitates the evaluation of “(...) the degree to which the broader pattern appears to ‘fit’ with putative explanations or understandings” (Davis 2005: 176). Thus, the “case” is not treated as a single data point (ibid.: 177), but rather as a complex configuration of aspects that must be accounted for in order to reach a sufficient understanding of it. This is indeed the aim of this study; it seeks to reach a more grounded

understanding of how citizenship has been conceptualised in the European integration process. Such an approach thus adheres to Pierson's (2004: 170ff.) argument for re-contextualising social science research through focusing on time, paths and sequence in the explanation or understanding of social phenomena. This means, focusing on relatively bounded social entities where boundaries should be seen as temporal, spatial, or both. Thus, one should focus on developing social scientific accounts of a specific phenomenon through specifying its "time and space."

Still, proponents of process tracing as a method differ somewhat in terms of their emphasis on historical process, causality, and variable-oriented language. Bennett and George (2005: 206ff.) most explicitly posit it as a method of inquiry whereby one "(...)" attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable." This view is on the whole supported by Checkel (2005: 5ff., 22ff.) who nevertheless acknowledges that this does *not* mean adhering *only* to positivist epistemologies where causation and process is understood in correlational terms, contrary to focusing on mechanisms and the very process at play. Davis (2005: 175ff.) offers an account of process tracing which is more geared towards thinking of "(...)" cases as complex phenomena, each of which comes with a history." In order to properly understand the emergence of an event or outcome, social science should turn to tracing its historical process; to uncover "the single case [as] a series of events and observations" (ibid.: 176). Such an emphasis on historical process is according to Barnett (1998: 12) suitable as it enables focusing on events which "(...)" can be moments of change, bounded periods of time when a transformation of thought, experiences and social relations occur." Based on this, one can utilise process tracing for the study, not only of causal explanation in terms of  $x_n$  causes  $y$  under given conditions, but also inquiries regarding constitutive or conceptual processes. This means focusing on processes where one does not locate  $x$  and  $y$  as independent of each other, but rather where the interest is in answering questions such as what a phenomenon constitutes in terms of structural preconditions for social action (see Wendt 1999: 83ff.), the emergence of a given concept within a certain historical period (see Skinner 1989: 95ff.), or conceptual developments within a specific political-institutional framework as is the objective of this thesis.

Subsequently, the question is therefore how one should reason about utilising process tracing when the aim is to trace the development of a concept such as citizenship within a given process, in my case European integration? Analysing the emergence of citizenship as a “practice among practices” within the EU system approximates a diachronic process tracing exercise highlighting the *crucial* junctures of appearance, consolidation and/or change. What is then the methodological status of the three concentrated instances of constitution-making? These are not “prolonged” processes as is the case concerning the level of day-to-day policy-making. They serve as more singular, circumscribed occasions of intense argument than as elements of on-going policy practice(s). This raises different methodological questions in terms of probing the location of citizenship within them. The burden of proof in studying constitution-making instances is thus not so much on illuminating the crucial points *in time* as highlighting the vocabulary emanating from debates (where available), preliminary reports and drafts of statutes. In the sense that some elements of focusing on process will be taken into account, this will amount to accounting for significant changes and alterations, say, between preliminary and final drafts of official texts.

As should be evident by now, this thesis is not aimed at explaining *why* a given understanding and institutionalisation of citizenship has “won through”, but rather its conceptual development in the course of the process and highlight those instances and practices whereby the conception(s) of citizenship have been altered and possibly taken on a new “meaning” within the European polity. One of the reasons why this is fruitful is that there is no agreement, neither politically nor in the literature on what European citizenship means. As shown in chapter 3, a whole array of different scholarly interpretations and explanations has been presented with regard to it. In methodological terms, the thesis will move beyond this theoretical (and empirical) stalemate through a more grounded approach highlighting what I will call the *conceptual path* of European citizenship.<sup>32</sup>

Focusing on the conceptual path of citizenship warrants a re-iteration of some aspects of concepts and conceptual analysis that were raised briefly in chapter 1. According to Davis (2005: 12), concepts are mental representations of phenomena in the social world

“produced” through language. For the purpose of scholarly investigation, a specific phenomenon and its properties should not be perceived as given *ex ante*, but rather as developed through social practice. As was highlighted in chapter 1, the concept of citizenship should be understood as consisting of a conceptual or focal core which has the quality of stipulating what the concept minimally entails, but which does not stipulate the reach of the concept in terms of novel developments (ibid.: 33ff., 61ff.). Thus, tracing the conceptual path of citizenship entails looking at the generic dimensions such as membership, identity, rights and participation and their reconciliations within concrete practices. Taylor (1985b: 33ff.) has indeed highlighted the importance of situating social scientific inquiry in the practices through which a given vocabulary takes shape: “(...) the realities here are practices; and these cannot be identified in abstraction from the language we use to describe them, or invoke them, or carry them about.” This emphasis on practices and discourse clearly underscore the generally conceptual aim of this thesis, that is, to study citizenship as an EU phenomenon not reducible to, say, certain actors’ interests and ideas. Yet, in the empirical analyses, I will also provide commentary on which actors or institutions supported “prevailing” or “alternative” conceptions at critical junctures of the process. As the above ought to have made clear, this will not be part of an explanatory endeavour to show which actors have “driven” the issue of citizenship within European integration. Rather, it will be done heuristically to highlight instances where specific alternative conceptions could have changed the conceptual path, and thus our understanding of what European citizenship entails. In the broader analysis, this will serve as a useful additional perspective reflecting upon the observed conceptual path.

A final remark on methodology and the character of the thesis is in place here. In assessing whether the “story” told about the trajectory of European citizenship in this thesis is valid and reliable, traditional epistemological criteria of “rigour” and “parsimony” may not be very fruitful. What instead is important is to focus on completeness and coherence or followability (Gallie 1968, cited in Kratochwil 2006: 7). In this sense, “(...) the crucial question is whether or not anything relevant has been left out” (Kratochwil 2006: 7). Thus, in probing the emergence of citizenship inside policy-making in the next chapter and its location within efforts of constitution-making in chapter 5, the burden will

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<sup>32</sup> Hence, focusing on the conceptual path of European citizenship can be seen as a combination of discourse/textual and process-tracing approaches (see Checkel 2005: 23) as it involves stressing *both* the broad discourse of the concept and the events which highlight its trajectory within the discourse.

be on making good of each “turn” in citizenship politics – of cataloguing the repertoire of instances where the status of individuals has been affected significantly.

#### 4.3.2. *Analytical Framework: A Rejoinder to Dimensions of Citizenship*

In analytical terms, the task of using process tracing is to accurately account for the instances and events where the concept of citizenship has been explicitly raised or implicitly invoked in the European integration process. Through connecting the empirical results of the process tracing exercise with the theoretical framework spelled out in chapter 2, one can commence with analysing the trajectory of European citizenship discourse.

Based on the arguments presented in earlier chapters and sections on the potential openness of European citizenship due to the evolving and unsettled nature of the EU, the aim in this thesis is thus, borrowing the words of Barnett (1998: 12), to be both “(...) theoretically distinctive and historically instinctive.” More concretely, an analytical framework attentive to this aim will be utilised as follows. First, the empirical focus will be – as argued in chapter 2 – on how the different dimensions work as practical realisations of citizenship. Second, the observations from this initial phase of the analysis are converted into a vocabulary of *conceptions* specific to phases and levels of the European integration process. These conceptions thus make possible both a detailed account of the development of citizenship within policy practices in chapter 5 and a comparison across the three instances of EU constitution-making in chapter 6. Third, the two analytical chapters and the conceptions emanating from them will be drawn together with the ultimate goal of chapter 7 which is to give a final assessment on the *trajectory* of the European citizenship discourse; comparing policy practice and constitution-making instances.

The analytical framework as it has been laid out here is conducive to answering the research questions for several reasons. First, it makes possible a fine-grained appraisal of the European citizenship discourse. The main reason for this is that focusing on inductively explored conceptions of European citizenship makes possible “case”-specific comparison in diachronic terms, as well as comparison between different levels of the process. Second, the approach focusing on conceptions in the final analysis will supply the study with a “test” of the theoretical critique stated at the outset – that existing theories

and models of European citizenship are incapable of providing a grounded understanding of its vocabulary due to limitations in their theoretical lenses. This will then provide ample evidence of the extent to which new lenses and approaches are needed when we encounter possible *changes* of concepts linked to new forms of political organisation. A research design which primarily analyses the conceptual development of citizenship on the basis of generic dimensions open to different realisations in practice does then not presuppose that the EU might develop towards “a state” or conversely in a *non-statist* or postnational direction. One of the interesting aspects of European citizenship is exactly that the question of what it amounts to is something that should not be presupposed, but which rather should be studied empirically within the *practice* of policy- and constitution-making in the EU.

#### **4.4. Concluding Remarks**

This chapter has consisted in extensive discussions on the empirical design, method of inquiry and analytical framework of the thesis. The main argument of the chapter has been that in order to reach a grounded appraisal of European citizenship discourse, the research design should be based on a theory of citizenship as consisting of generic dimensions and an empirical design taking different levels of European integration into account. Hence, in empirical terms it was argued that one must engage with not only the emergence of citizenship as a “practice among practices” in the EU system, but also its place within the more “concentrated” constitution-making process of the European polity. Is there a difference between the two empirical levels in how citizenship has been conceptualised, and if so, what does the difference consist in? Notwithstanding such possible differences in comparative terms, how have the features of citizenship raised in policy practices been reflected in instances of constitution-making and discussion on the deeper character of the EU as a political community? To what extent does a broad empirical investigation of European citizenship discourse testify to the emergence of a conception that engulfs the nation-state model of congruence between the boundaries of citizenship, the state and national identity?

These are some important queries as the literature has been overtly focused on the theoretical viability or normative desirability of European citizenship, rather than focusing on its practical reality as a concept in the complex process of European integration. Answers to these queries will be provided in the ensuing analytical chapters of the thesis.

As should be evident from the approach section of the thesis, in theoretical terms, the crucial question of *analysis* is not how single aspects or wholesale models of citizenship have been raised within these two levels of European integration. It is rather what kind of conceptions of citizenship can be imputed from focusing on generic dimensions as the focal core of citizenship.



# Chapter 5. Conceptions of Citizenship in EU Policy Practices

## 5.1. Introduction

When the “group of six”<sup>33</sup> established the European Coal and Steel Community (ECSC) in 1951, no-one could have foreseen a European Union (EU) of 27 Member States, with a directly elected European Parliament (EP), wide-reaching policies and a common currency.<sup>34</sup> For sure, we can imagine that they would also not have anticipated all the talk about European citizenship that has emerged after Union citizenship was institutionalised in the Maastricht Treaty (1992). This chapter is not about explaining the institutional driving forces and the agency behind these accomplishments of the European integration project. It has been dealt with extensively elsewhere in the vast literature in the field (see e.g. Eriksen and Fossum 2000; Hooghe and Marks 2001; Milward 1992; Moravcsik 1998; Stone Sweet and Sandholtz 1998). What is the purpose of this chapter, rather, is to provide the first take in an empirically grounded understanding and interpretation of the relation between the EU and “its citizens.”

The exclamation marks here are not coincidental. In fact, they go to the core of the puzzle in this thesis. In what ways has the emerging European polity related to individuals, to the “groundworkers” of the integration project? Can we impute some form of European citizenship at different junctures? And, if so, how did such conceptions evolve against the backdrop of initial treaties, policies and judicial decisions – in short, policy *practices* of European integration? From these questions it becomes evident that issues pertaining to the status of individuals in the EU can be perceived to have been at stake also prior to the direct institutionalisation of citizenship in the Maastricht Treaty.

But, in the *longue duree* of European integration until Maastricht, the prevailing understanding of citizenship still seems to have been one of institutionalisation within the clear and present boundaries of the nation-state (see Bellamy et al 2004). In conceptual terms, this understanding linked *one* citizen to *one* nation-state with *one* prevailing national

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<sup>33</sup> A phrase often used about the six founding members of the institutions of European integration: Belgium, the Netherlands, Luxembourg, Italy, France and Germany.

<sup>34</sup> Notwithstanding the clearly *federal* aspirations of many pro-integrationists in the immediate Post-War period, including calls from the *Movimento Federalista Europeo* for the creation of a European ‘continental’

identity. Thus, citizenship was *unitary* and linked to a specific awareness of political community and order. As Monar (1998: 168) highlights, the very notion that citizenship could emerge in “(...) something other than a nation-state polity – and the EU is clearly not a nation-state – seems to contradict all inherited notions of political order.” How can one then impute anything significant regarding citizenship outside the framework of the nation-state? By employing the theory of citizenship and empirical indicators laid out in chapter 2, one can pre-empt *a priori* judgments of this question. I argue that shifting the attention from purely theoretical or normative questions to how issues of citizenship are raised in concrete practices can tell us a great deal more about such a phenomenon.

These preliminary points raise the question of which instances and events within the process should serve as starting points for the analysis? The issues, questions and empirical indicators regarding membership, identity, rights and participation that were laid out in chapter 1, directs attention to junctures within European integration where the status of individuals has been at stake. Some of these, such as verdicts on rights in the ECJ in the 1960s, discussions on European identity in the 1970s, voting rights in the elections to the EP, the fundamentals of European citizenship in the Maastricht Treaty, or post-Maastricht developments stand out as they unequivocally raised issues pertaining to the status of individuals. Others, such as the founding treaties of Paris (1951) and Rome (1958) or the Single European Act (1986) are for the most part understood on an institutional level in the literature – that is, as frameworks for European institutions and policies – not as having an import for the status of individuals in the system (see Beach 2005; Moravcsik 1998). Yet, by stressing how citizenship evolves within concrete practices, it is obvious that different treaty frameworks have had an impact on the status of individuals in the system. Citizenship is not only about expressed policies concerning membership or rights. One can also expect that broad policies and practices within the system have had a bearing on the standing of individual citizens within the political unit in question. Analytically, the burden is therefore on illuminating all the instances – explicit and implicit – in *the process over time* where the status of individuals has been at stake. The main argument that emanates through the empirical analyses of these critical junctures is that, in overall terms, the embryonic and incipient conceptions of citizenship evident in

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citizenship co-existent with national citizenship (Maas 2005a: 988; for broader historical accounts, see Dinan 2004; Gillingham 2003; Griffiths 2000; for personal accounts, see Nelsen and Stubb 2003).

the founding treaties provided the frame upon which later conceptions were constructed and developed.

Based on these remarks, the chapter will proceed as follows. First, several instances within the European integration process will be analysed respectively with regard to how they have affected the status of individuals within the system. In doing so, within each instance an assessment will also be made with regard to the conception of citizenship within it. But, the instances are of course not treated in isolation. The analytical import of each instance is to illuminate how it can be seen as a critical juncture in European citizenship discourse. Accordingly, the second main aspect of the chapter is to summarise and synthesise the findings of the process tracing exercise. This is done by illuminating the trajectory regarding conceptions of citizenship within different phases of European integration: the initial phase between 1951 and 1971, explicit citizenship discussions politics of the 1970s, market-making and the Single European Act in the 1980s, and finally the developments of Union citizenship and the ensuing post-Maastricht debates on citizenship.

## **5.2. The Founding Decades: Treaties, Policy Decisions and Legal Activism**

### *5.2.1. Introduction*

When European integration finally became a reality, the institutional set-up and policy approach was geared towards the dual aim of integrating previous enemies through the pooling of sovereignty and upholding national independence (see Dinan 2004; Moravcsik 1998). Yet, the specific institutional and policy oriented approaches would have a strong impact on the developments of European institutions in the first two decades of integration. Thus, although European integration at the outset was about the “high politics” of institutional integration, market building and political interdependence, it would also have an impact on political issues outside the restricted domains of the first communities. The often raised evolving and dynamic character of European integration was evident already in its first phase, and it is therefore crucial to investigate how the status of individuals was framed within the founding treaties and subsequent political and judicial developments.

### 5.2.2. ECSC Treaty: Sectoral Integration, Embryonic Citizenship

The ECSC Treaty signed in Paris (1951) marks the *institutional* advent of European integration. Through this treaty, the BeNeLux, France, Germany and Italy sought to create a single market in coal and steel among the signatory countries (Dinan 2004: 52). At the outset, this integrative effort was thus highly sectoral and limited, both in political and territorial terms. One could thus argue that issues pertaining to individuals and citizenship were not rendered important for European integration in its first political and institutional approximation. This is, however, not necessarily the case if one studies the text of the ECSC Treaty more carefully. Indeed, Maas (2005a: 985, 997) has shown that arguments over European rights were present at the beginning of European integration, and even pre-dated the negotiations on the ECSC Treaty.

Integrating six countries within the limited fields of coal and steel production, the ECSC Treaty was still rather comprehensive in laying out the historical and political foundations for such a community. It stated aims of the ECSC such as “maintenance of peaceful relations”, “the establishment of common bases for economic development”, and to raise “the standard of living and... furthering the works of peace.” Finally, it stated that historic rivalries were to be counteracted “by creating an economic community, the foundation of a broad and independent community among peoples, ...and giving direction to their future common destiny.” Obviously one must be careful of exaggerated interpretation regarding “lofty” considerations in a preamble. Still, it is interesting that the very limited fields of coal and steel gave rise to such towering assertions of the “rationale” behind integration. In fact, as Dinan (2004: 46) points out, choosing “(...) the word *community*, rather than simply *association* or *organization*, connoted common interests that transcended economic goals.” In terms of shedding light on the concept of citizenship within the treaty, one interesting question is thus whether the assertions of peace and community in the broader sense were also raised with regard to the status of individuals within the ECSC.

Clearly, there was no direct, formal designation of individual membership in the ECSC Treaty. In fact, there was furthermore no direct reference even to *rights* of individuals that could emanate from the treaty. Still, a notion of individuals and their rights did figure in the treaty, if not comprehensively or deliberately. To the extent that individuals were rendered a status within the framework of the treaty, it was primarily in the capacity of

consumers, workers or producers.<sup>35</sup> It seems obvious that within the prevailing understandings of citizenship at the time these roles would not be seen as part of citizenship. To be sure, the aforementioned scepticism of Aron (1974) concerning even the conceptual *possibility* of *European* citizenship as something similar to the national counterpart would possibly have rung even more true in 1951. Against this backdrop, Neunreither (1995: 5) could be right in claiming that the ECSC represented “European integration without the citizens.” On the contrary, I argue that some aspects of the ECSC Treaty did indeed activate issues of citizenship

The thrust of provisions on individuals in the treaty is found in Article 69. This refers to the renouncement of employment restrictions based on *nationality* for workers in the coal and steel industries. Hence, the lofty assertions of promoting peace did not foster *any* direct assertion of measures to integrate Member State citizens further. There was no notion of a European identity common to citizens of diverse nation-states. The treaty explicitly dealt with the status of individuals in their limited capacity as potential workers in a clearly defined sector of production and market transactions. The basis for individual membership under the ECSC thus emerged as an effect of other dimensions – it was linked, not to formal membership criteria, but to participation as a prospective individual activity, sectorally defined and circumscribed.

The rights attached to this status as a limited “coal and steel worker-citizen” were further meant to facilitate what the treaty referred to as “movement of labour.” In theoretical terms, the possibility to move freely across national boundaries constituting the reach of state jurisdiction and citizenship rights can be interpreted as the “abolition of the disabilities of alienage” (Preuss 1998a: 145). Being an alien – a non-citizen – is then no longer such a precarious status given that rights of free movement to some extent “trump” the state’s exclusive right to deny the access of foreigners to its territory. But, given the clearly limited character of movement provisions under the ECSC, this cannot be interpreted as the backbone of a genuine *European* citizenship status cross-cutting national citizenship institutions and territorial jurisdictions. The free movement provision inherent in Article 69 of the ECSC Treaty was even stated under the heading “movement

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<sup>35</sup> ECSC Treaty, Articles 3c, 3e, 4b, 46, 56, 69.

of labour”,<sup>36</sup> rather than, say, “free movement of persons” which would have signified a broader curbing of the traditional exclusiveness of states in terms of territorial control.

What this brief analysis has highlighted is that concerning the status of individuals, certain narrow issues of citizenship were raised, if not explicitly, certainly implicitly under the guise of the ECSC. As there was no direct designation of individual membership under the Treaty, the focal point regarding the status of individuals was exclusively linked to the participation of workers through rights of free movement. Hence, already in the ECSC Treaty dimensions of citizenship were dynamically interconnected in generating a thin status of individuals. More concretely, this can be interpreted as a *partial, sectorally* defined *embryonic* citizenship – and nothing by way of a more comprehensive conception taking into account different dimensions of citizenship.

### *5.2.3. The Treaty of Rome: Economic Integration, Market Citizenship*

As the ECSC Treaty, notwithstanding its highly sectoral and technocratic mode of integration, invoked an embryonic conception of European citizenship based on abolishing restrictions based on nationality regarding the movement of workers across state boundaries, no less can be expected from the establishment of the European Economic Community (EEC) through the Treaty of Rome. The designation of the new community as “economic” rather than confined to two narrow sectors clearly signified the broadened scope of institutionalised European integration. In fact, on the back of the failure regarding the European Political Community in 1954 (see Griffiths 2000), one of the priorities of that process was retained: the establishment of a common market in Europe (Dinan 2004: 64). This more complete vision of economic integration renders the question of whether the broader scope of integration had further ramifications for the status of individuals within the system. Did the embryonic citizenship of the ECSC make way for a more complete conception of citizenship through the EEC?

The more comprehensive scope of integration inherent in the Treaty of Rome is evident in its preamble. The “loftiness” of the preceding treaty was retained, however with a somewhat different slant to it. It re-iterated the aims of fostering peace through “eliminating the barriers which divide Europe”, by “constantly improving the living and working conditions of their [the Member States’] peoples”, and finally “to strengthen the

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<sup>36</sup> ECSC Treaty, in the title of Chapter VIII: “Wages and Movement of Labor.”

safeguards of peace and liberty.” What is further striking about the preamble in terms of issues regarding citizenship is the emphasis on integration, not only between Member State citizens as such, but the determination to establish “an ever closer union among the European *peoples*” (my emphasis). This did not bring the single citizen to the forefront of the aims of European integration. Still, the focus on peoples rather than merely states did signal the link between the institutions of the integrative process and individuals was not only mediated by the Member State level. European integration did signify something more than a simple international treaty or regime. It was perceived to have ramifications for the collectives of individuals underpinning the Member States in terms of community and legitimacy.

It is thus not surprising, notwithstanding the lack of focus on integration among citizens as such, that issues pertaining to the status of individuals were scattered throughout the Treaty of Rome. Again, the prevailing image is one of focusing on the status of individuals as workers and producers.<sup>37</sup> Yet, there was some development compared to the ECSC. The treaty explicitly stated in Article 7 that “any discrimination on the grounds of nationality shall hereby be prohibited”, without specifying the specific circumstances to which this principle would apply.<sup>38</sup> The principle of non-discrimination thus seems to have been broader – at least in terms of the exact wording of the provision – than a narrow focus on proscribing such measures for specific groups, such as workers. The designation of membership, the criteria for who were seen as members and on what basis, were thus not straightforward. On the one hand, it is clear that the treaty established the individual as meaningful within the framework of European integration in his/her capacity as a worker, albeit on a general level. Membership was related to participation contingent on the crossing of political borders in order to work within the common market. Without the primacy of such work-related participation through market-oriented rights there would be no activated status of individuals under the EEC. On the other hand, the broad wording of the general article on non-discrimination points to a tension

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<sup>37</sup> Treaty of Rome, Articles 3, 48, 49, 51, 52, 53, 54, 57, 92, 117, 119, 123, 220.

<sup>38</sup> Article 7 further stipulated that the principle of non-discrimination must fall “[w]ithin the field of application of this Treaty and without prejudice to the special provisions mentioned therein.” A narrow interpretation of this could be that as the treaty was geared towards economic integration and facilitating a common market, the principle would only apply to individuals as they engaged within spheres falling under these specific aspects of European integration. It can, however, also be interpreted as a more fundamental individual right under European law stipulating a beginning shift from nationality to individuality in ascertaining the worth of citizens and their relationships to collective units, be it firms or states (see Menéndez 2002).

between a conception of the “worker-citizen” and an individual citizen to be protected from discrimination on the basis of her nationality *per se*. There thus seems to have been a tension inherent in the treaty between the practical and functional focus on market integration and the broader “vision” of overcoming the national divisions of the two wars.

The thrust of individual rights provisions were linked to the principle of free movement.<sup>39</sup> This was clearly related to the notion of workers as the primary individual actors in European integration. Still, it was not a universal principle. Firstly, the right was bestowed on Member State nationals only. Secondly, free movement could be curtailed by arguing for reasons of public order and public safety. Grounding European rights on prior national membership as well as emphasising exceptions to the principles of free movement and free right of establishment based on such reasons underlines that there were no explicit state-aspirations inherent in the treaty foundation of the EEC. When theorising types of boundaries involved in “polity-making” in modern Europe, Bartolini (2006: 7-13, 28) has underlined that the limits surrounding market transactions can be seen as *fringes*, that is, rather malleable boundaries subject to ongoing developments of market relations and practices, while politico-administrative units are delineated by more settled *borders*. Thus, the principle regarding free movement of persons which was to facilitate a common European market through the ‘abolishment’ of the fringe boundaries between national markets could cut across the borders of politico-administrative units previously holding exclusive jurisdiction over national territory. In light of the pervasiveness – in theoretical and practical terms – regarding the unitary character of modern nation-states encompassing citizenship, identity, political institutions and territory (see Bauböck 2003: 8), principles “over-riding” these inter-locking boundaries were clearly powerful. Ultimate decisions about citizenship did, however, remain national, perhaps due to the persistent frontiers of states in the final instance: “Territorial integrity of states is a deeply entrenched norm in the international state system” (ibid.: 8). Further, the potential challenge to the link between individual and political units from free movement was clearly thwarted by the onus on economic integration and market-making in the EEC. The range of rights linked to free movement did not entail a deep “intrusion” into the political borders of Member States, say through political rights. In addition, the emphasis that exceptions could be made by reference to reasons of public order and public safety

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<sup>39</sup> Treaty of Rome, Article 48.

clearly show that there was no vocabulary ready at the time of the Treaty of Rome to challenge the ultimate boundaries of states and thus of national citizenship institutions.

To conclude, then, the answer to “who are the Europeans?” in the vocabulary of the Treaty of Rome was obviously not *the democratic citizen* as a participant in a political community, but rather the *individual-as-worker* and market participant. As Preuss (1998b: 11) points out, “[t]he political term citizen was thoroughly alien to the wording of the original Treaty.” There was no clear notion of a broader identity transcending the links generated by integrating markets, common institutions and legal framework on the European level. Still, the tension regarding non-discrimination possibly points to at least a broadening of the potential effect of European integration on the status of individuals within the system. Still, by and large the Treaty of Rome amounted to a very *partial* conception of citizenship with a heavy emphasis on *participation* in the common *market* by the *potential* crossing of previously pervasive boundaries of national markets and nation-states. The analysis of the last two sections has shown that the founding treaties can be seen as the starting point for all integrative policies and practices that emerged in the 1960s and 1970s. Hence, I will now turn to an assessment of the practice of the ECJ in interpreting and underlining the rights path of European integration as well as the implications of free movement legislation in this period and how this affected the status of individuals within the system.

#### 5.2.4. ECJ Jurisprudence: Partial Citizenship-As-Rights

Within the literature on European integration, the judicial activism of the ECJ is often put forward as one of the main factors in the development of the EU as more than an international organisation – as an integrative project with state-like features, but still not a state in its own right (for historical appraisals, see e.g. Dinan 2004; Gillingham 2003; for legal-political appraisals, see e.g. Alter 1998; Conant 2002; MacCormick 1999; Stein 1981; Weiler 1999). Part of the peculiar interest regarding the ECJ in the literature stems from its so-called seminal decisions in the 1960s establishing the basic principles of supremacy, direct effect and protection of fundamental rights within the EU order (see e.g. Weiler 1999: 19ff.; Stein 1981: 3ff.). These decisions – and especially those on supremacy in *Costa*<sup>40</sup> and direct effect in *Van Gend en Loos*<sup>41</sup> – were not brought to court only to

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<sup>40</sup> Case 6/64 *Costa v. ENEL* [1964], ECR 585.

<sup>41</sup> Case C-26/62 *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963], ECR 1.

adjudicate the status of individuals. In terms of the subject matter, they focused primarily on specificities of the common market such as rights of establishment after the exercise of free movement in the former and customs duties in the latter. Yet, in these cases, the ECJ chose to enunciate principles which reached well beyond the technical minutiae of the cases as such. It can be argued, therefore, that the principles as such, and the practices which emanated from these cases signified the establishment of a direct link between the EU as a political unit with certain powers and individual citizens “formerly” linked *only* to their nation-states through citizenship (Preuss 1998a; Weiler 1999). Perhaps not surprisingly, then, lawyers and politicians in the Member States raised concerns over these principles as they infringed on national sovereignty (Alter 1998: 132). They did, however, not succeed in thwarting the principles which became cornerstones of “the constitutional evolution” of the EU (Stein 1981: 3).

Taking the cue mainly from the two seminal cases of *Van Gend en Loos* and *Costa*, what is most clearly striking about ECJ judicial activism in the 1960s is the vigorous assertion of the EU as a legal system in its own right (MacCormick 1999: 113). In terms of investigating its impact on the status of individuals, the sceptic could argue that this does not tell us much, as ECJ jurisprudence in that period was primarily linked to judgements on the specificities of a common market rather than the rights of individuals. But, *Costa* (2003: 740) points out that “[f]rom a legal point of view, European integration concerned the citizens at a very early stage.” From the vantage point of investigating European citizenship, then, the question is how this legal preoccupation with issues concerning individuals and their rights in the system “translated” into noteworthy contributions to citizenship *politics* in the Community.

In *Van Gend en Loos*, the Court ruled that “Community law... confer upon [nationals of Member States] rights which become part of their legal heritage.” It further stated that these were rights “which national courts must recognise and enforce,” and emphasised that it has “direct effects in the relationship between Member States and their subjects.” In *Costa*, the emphasis was on the “precedence of Community law”. This was affirmed by the declaration that any European legal norm overrides national legislation in conflict with it (Weiler 1999: 20-21). Through these judgments, European law thus circumscribed the exclusive discretion of nation-states in relation to their citizens’ rights and obligations (Durand 1979: 3). In one sense, the judgments can be read as *partial* responses to the

question of “who the Europeans are” and what binds them together in a community. In short, the ECJ answered people with European *rights*. This answer clearly highlights that the ECJ provided elements of a dynamic, albeit thin conception of European citizenship and identity through rights (see Evans 1984: 684).

In terms of the subjects that the Court ruled would give rise to individual rights, they centred on aspects of the common market such as aid to companies or industrial sectors, monopolies, and the right of (commercial) establishment. This does obviously not amount to a very “thick” notion of individual identity or citizenship within the Community. It is rather the assertion of principles regarding non-discrimination and the direct effect of Community law for Member States and thus for citizens, that provides the thrust of affecting the status of individuals. This legal development can further be interpreted as containing broader political implications through establishing that the EU could not ascribe duties (to follow European and not only national law) on individuals without also granting them certain rights against it (see Stein 1981: 5).

What is interesting from the vantage point of citizenship, furthermore, is the assertion that rights derived from the European level would have implications on the level of each nation-state in the system. The Community created a status which cuts across the borders of previously insulated legal-political systems in terms of membership and the scope of rights. In this sense, the conception of citizenship was not only linked to the European level as such, but to two levels; European and national. It was not just *transnational* in the sense of cutting across national boundaries, but also *supranational* through the creation of a direct link between European institutions and individual Member State citizens; a link that was not present in the founding treaties.

From this discussion, we see that the Court evidently brought issues regarding the status of individuals much more to the fore than was the case in the founding treaties. The citizen was “established” as significant *per se* through European rights. In this sense, primacy was given to the dimension of rights in the location of individuals within the system. From the ECJ judgments, it was further the case, and not surprisingly so, that individuals were given rights as a consequence of national citizenship. Thus, membership was based on the national level in terms of formal citizenship, but the European rights can also be interpreted as stipulating a kind of membership as an effect of other activated

dimensions. Here, the jurisprudence of the Court clearly continued the predominant economic and market-oriented language of the treaties. This again illuminates that a dimension such as membership – in addition to formal criteria on the national level – was also determined informally through the development of concrete rights that were related to participation in the common market.

One should, however, be somewhat cautious in drawing too sweeping conclusions from this. Empirical research on the impact of these principles on the *actual* use of individual capacities to legal action for instance, show that these have been utilised to a very small extent: “There is still today a persistent cleavage between the theoretical individual rights granted by EU integration and the rights that private individuals can actually benefit from” (Costa 2003: 744). As a result, empirical findings of this sort warn us of inferring, say, anything resembling democratic qualities from legal provisions on individual rights. Its scope was the *private* market actor, rather than the *public* political participant. In this manner, it did not significantly develop compared to the embryonic and market-oriented conceptions of the ECSC and EEC respectively. Nevertheless, it cannot be denied that calling attention to the fact that the Community not only dealt with states, but also with individual citizens marked a significant shift insofar as it brought about fundamental questions regarding sovereignty and autonomy on the macro-level, as well as its impact on the bearers of legitimacy in modern states – the individual citizens. To conclude, then, the ECJ brought forward a conception of *partial citizenship-as-rights* within a binding legal and political system.

#### 5.2.5. Free Movement Legislation: Citizenship-As-Qualified Residence

As the analysis of the founding treaties of the Community and ECJ jurisprudence have highlighted, the status of individuals within this system was primarily linked to rights for citizens *qua* workers and more specifically to the issue of free movement. In the first phase, European integration was undoubtedly geared towards economic integration, albeit as a means for further integration of previously warring states. Following the founding treaties and ECJ judicial activism, issues pertaining to dimensions of citizenship were further raised in legislative measures regarding free movement in the 1960s. Hence, the foundation through treaties and legal struggles over their interpretation spurred more specific policy measures. Through creeping fashion, then, practices linked to individuals

emerged within European integration. It is thus interesting to explore how such specific policies contributed to the framing of individuals and citizenship in the Community.

The principle of free movement contained the thrust of the idea of economic integration. Through abolishing previously pervasive boundaries between national markets as well as political entities, it was believed that not only would Europe prosper economically, but also peacefully (Haas 1958; see also Rosamond 2000: 50-68). But, as has been shown, the exact content and scope of free movement was not entirely clear in the Treaty of Rome. Subsequently, a series of legislative acts sought to underpin the *principle* with *policy*. In short, the policy measures – directives and regulations<sup>42</sup> – did so by affirming that the principle of free movement connected to individuals primarily as workers and secondarily as spouses or families of these workers.

For instance, *Regulation 1612/68* was a broad piece of legislation which in remarkable language underlined the principle of free movement for the idea and functioning of European integration. Interestingly, it stated in its “preamble” that “(...) freedom of movement constitutes a fundamental right of workers and their families.” The principle was further linked to guaranteeing “the possibility of improving his living and working conditions and promoting his social advancement.” In this setting, the status of individuals within European integration was thus linked, not only to their potential partaking in the common market, but also to their basic well-being. Interpreted broadly, the wording of this regulation thus implies that the individual citizen – still primarily in her capacity as a worker – were to be seen as an end in herself and not only as a means for amalgamating markets. The assertion of the previously effective *Regulation 38/64* that the benefits of free movement were only to be granted to nationals of Member States was, however, upheld. This was contrary to the proposals from the Commission and the EP that the right of free movement should be extended to refugees and stateless persons.<sup>43</sup>

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<sup>42</sup> The analysis in this section has focused on the following legislative acts: Regulation (EEC) No 38/64 on freedom of movement for workers within the Community, OJ 62, 17 April 1964; Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the community, OJ L 257, 19 October 1968; Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State, OJ L 142, 30 June 1970; Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 149, 5 July 1971.

<sup>43</sup> Seventh General Report on the Activities of the Community, European Commission, June 1964, p. 48ff.

Thus, it was unequivocally affirmed that European rights were derivative of prior national membership.

The “nationality question” was, however, not the main objective of free movement legislation. The *rights* of free movement were further underlined in *Regulation 1251/70* which stated that *post-work*, citizens had a qualified right – generally based on work – to *remain* in the territory where they had worked without being national citizens. European citizens were thus granted a kind of membership based on what could be called “qualified residence.” What qualified for rights enjoyed under European law was participation as workers, albeit increasingly linked to a broader conception of their worth *qua* individuals. This orientation was upheld by the subsequent *Regulation 1408/71* which laid down the principles for approximation of social rights in the wake of free movement of persons. Here, the focus was on facilitating free movement and mobility in Europe through transnationalising certain social rights and benefits linked to work and family.

In this sense, even though it was still the worker who was at the forefront of the relationship between European integration and the individual, a somewhat broader conception of citizenship slowly evolved. Individuals mattered *not only* as participating workers, but also to some extent as citizens who enjoyed certain fundamental rights as persons (see Durand 1979). This is further visible if we focus on the identity-question of what binds citizens together in a community. Free movement legislation did not cast this question only in purely technocratic terms. Emphasising that free movement was created for individuals *as well as* collectives – for the potential improvement of the individuals’ social (and economic) well-being – can be interpreted as an approximation of a European identity beyond the image of the worker or market actor. This is also evident in the importance granted to the need for ‘equality of treatment’ based on ideas of the “freedom and dignity” of individual citizens; as in *Regulation 1612/68*.

Obviously, these points cannot be interpreted as laying the ground for *any* thick and comprehensive form of identity akin to those based on language, a common heritage and history or ethnicity. It was rather indicative of a very *thin* conception of citizenship centred on the given scope of rights and participation; the worker remained at the forefront of the status of individuals. But, as De Búrca (1995: 29) argues, “[i]n the face of the apparently overwhelmingly economic impetus of the Community, the language of

fundamental rights offered potential to articulate and establish a place for other values.” Such values were, however, not pronounced inside free movement legislation. The rights of free movement and market participation dominant in the founding treaties were retained as basic elements. On this basis, the legislation outlined some measures which point to a broadening regarding the status of individuals to include something more than simply their function as workers. This was primarily connected to a more fundamental status being accorded to rights of residence and equality of treatment in addition to free movement rights. Thus, the prior establishment of economic rights affected further rights, elements of belonging and the designation of significant individuals related to the European institutions. What needs to be investigated further is therefore the extent to which the integration process after its initial phase actually fostered more concrete conceptions of citizenship not only rooted in economically circumscribed rights, but also conceptions geared towards a grounding in notions of political community, belonging, and participation, beyond the private sphere of the market.

#### *5.2.6. Summarising Remarks*

By highlighting the empirical development of citizenship elements already in the first two decades of European integration, this section has offered evidence that contradicts Aron’s (1974) strong scepticism with regard to citizenship on another level than the nation-state. More concretely, it is clear that issues concerning citizenship throughout the period analysed were linked to the impetus of integrating markets in Europe. Individuals were first and foremost rendered significant via their function as workers or consumers; as (potential) participants in the common market. Rights were primarily linked to this narrow inclusion of individuals in the mode of integration. In this sense, there was no clear notion of what European citizens would have in common, surpassing their function as “factors of production” (Plender 1976: 39). To the small extent that identity issues were in fact activated, it was as a knock on effect of changes in the scope of rights and participation as the primary dimensions of European citizenship established already in the founding treaties. The emergence of issues linked to citizenship clearly did not generate conceptions of a *thick* citizenship on the European level. Ultimately, citizens were not perceived as *directly* taking part in a *political* project with further collective aims. The collective aim of peace in Europe was perceived to be attainable through market integration, not by the integration of citizens politically or culturally.

Nevertheless, there were some differences between the four instances pointing to a certain trajectory regarding conceptions of citizenship. Not surprisingly, the conception of citizenship was less sectoral and limited in the Treaty of Rome than in the ECSC Treaty. One can impute a more basic *market* citizenship in the former compared to the clearly sectoral and *embryonic* citizenship in the latter. Notwithstanding these differences in the *scope* of incipient citizenship politics, on the whole, both treaties signified market actors as the primary category of citizens within the system.

The market vision of the founding treaties was persistent in the seminal rulings of the ECJ. Yet, through these rulings it was established that individual citizens had certain *European* rights enforceable against the Member States. The citizenship elements of the treaties were mainly incipient and implicit; through the ECJ they were clearly more pronounced. The domains in which the Court ruled were very much linked to economic integration; its adjudication was in the first place centred on the functioning of the common market. Yet, it did focus on the rights of *individuals* derived from the Treaty of Rome as *more* than an international treaty.<sup>44</sup> Thus, through a more marked notion of membership a supranational conception of citizenship emerged, possibly creating the impetus for later discussions on European identity, culture and citizenship. The membership assertion was furthered in subsequent free movement legislation towards the end of the initial phase of European integration. Even though the onus was still on economic integration and creating a common market, several of these legislative acts emphasised free movement as a *fundamental right* of citizens.

In terms of the time frame, the vocabulary thus shifted from no explicit mentioning of rights in the treaties, via acknowledging the link between citizens and the Community as a legal-political entity through certain rights, to perceiving these as fundamental for traversing previously exclusive borders, if not the ultimate frontiers of nation-states. These findings point to an increasing awareness of the citizens as persons already in the

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<sup>44</sup> This was highlighted in *Van Gend en Loos*: “The objective of the EEC Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting parties. This view is confirmed by the Preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. Furthermore it must be noted that the nationals of the states brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee.”

first phase of European integration. Still, the prevailing impression is anyhow one where the citizen in the initial phase of European integration was secondary to the aim of integrating states and *peoples*. The integration of workers and citizens was mainly a *facilitator* for the aim of market integration and peace-building in Europe. This is further highlighted by the fact there were no *duties* to participation inherent in these conceptions of citizenship. The emphasis was always on how the political or collective unit – the Community – could *facilitate* participation in the Common Market. Again, this is indicative of a partial conception of citizenship geared mainly towards limited rights linked to the function of work. The analysis has thus showed that the image of the citizen was not at the forefront of integration efforts; conceptions of citizenship rather developed as the scope of principles and policies gained practical momentum. Citizenship in this phase was then not so much a practice in itself, as a very partial, derivative individual status dependent on emerging legal, legislative and political practices within the system.

Table 5.1. *Conceptions of Citizenship in European Integration, 1951-1971*

	<i>Significance of event – logic of integration</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
ECSC (1951)	Institutional establishment of European integration.  Highly sectoral and technocratic.	Exclusive focus on individuals as coal-and-steel-workers, and to some extent as consumers. Rights to movement linked exclusively to function and participation in labour.	Partial, sectorally defined <u>embryonic</u> citizenship
EEC (1957)	Institutional establishment of European Economic Community.  Broadly market-based.	Focus on individuals as workers. But tension because principle of non-discrimination in its first approximation (art. 7) transcends the notion of the worker and focuses merely on nationality. Free movement rights explicitly linked to workers and to facilitate participation in the internal market.	Fundamental <u>market</u> citizenship
ECJ judicial activism (1960s)	Legal interpretations of relation between Community law and national law as well as individual rights deriving from the treaties.	Rights linked to economic enterprise/participation and the functioning of the common market. Assertion of direct effect of European rights in nation-states.	Citizenship-as- <u>rights</u> for workers
Free movement	Legislative measures	Rights still linked	<u>Qualified</u> citizenship-as-

legislation (1960s-70s)	building on the free movement provisions of the EEC Treaty.	primarily to workers. Some tendencies towards emphasising rights <i>qua</i> individuals. Transnationalising membership through rights of residence in second countries, but still qualified through prior work in the territory.	<u>residence</u>
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### 5.3. Bringing Identity, Rights and Elections In

#### 5.3.1. Introduction

On the back of legislation on free movement provisions and assertions of the Court on the direct relationship between individuals and the Community, in the 1970s the EEC went into a period of further reflection on its nature as an entity. The preceding analysis has made clear that the impact of European integration on the status of individuals was by and large linked to the broader aim of market integration. So, then, what can be imputed with regards to issues of citizenship when the Community evidently took matters further in the 1970s with declaring “the European identity”, reports on political issues of European unification and the granting of universal suffrage in the elections to the European Parliament?

In the first period of European integration, the formal treaty framework, direct legislation from the Council and judicial decisions of the ECJ developed incipient conceptions of citizenship. This shifted somehow in the period at hand here. The agenda regarding the location of individuals was pushed to a greater extent by the European Parliament in addition to the (European) Council which informed the discourse not only by enacting secondary legislation, but also through debates and resolutions on the character and future of a European Union as well as European identity. The point here is merely that the discourse on European citizenship has not been one-sided in institutional terms; which only lends clout to the methodological argument of this thesis that one should probe the *process* in itself and not only *some* restricted cases or institutions providing mere “pilot” examples of the ongoing discourse.

#### 5.3.2. Paris, Copenhagen, Paris – 1972-74: Visions of Political Union and European Identity

The project of the first treaties was unequivocally one of integrating Europe through building down the barriers between national markets. As has been shown by several

students of European integration, this starting point was well within the vision of functionalist and neo-functionalist thought on regional integration (Chrysochoou 2001: 38; Rosamond 2000: 51ff.; see also Dinan 2004: 57). Against the backdrop of declining national economies and the general state of world affairs, the EC went into a changing “mode” in the beginning of the 1970s. The lofty assertions of peace and European unification as pronounced in the ECSC and Rome Treaties, were eventually backed up by more specific measures regarding *political* traits of European integration. How did such measures play out in terms of the ongoing discourse on the place of the individual within the European project? And further, did it bring about more specific policy measures that could affect the creeping conceptualisation regarding the status of individuals within the EC?

At the first summit of the newly enlarged Community<sup>45</sup> – in Paris – new and old Member States concerted on a declaration of “intent” for the coming years of European integration. The final communiqué of the summit stated that the time had come to “realize the unity behind her interests.”<sup>46</sup> This “unity” was further conceived to be based on “(...) democracy, freedom of opinion, free movement of men and ideas and participation by the people through their freely elected representatives.”<sup>47</sup> And finally, in terms of stating future aims for the Community, the Member States declared their intention to convert their institutionalised relations into a “European Union” by the end of the decade.<sup>48</sup>

In terms of conceptualising its relation to individual citizens, these statements did not add much, if anything, to the conception of the boundary-transgressing market citizen of the founding treaties and free movement legislation. If this was an important occasion in the assertion of the EC as an entity of its own (see Kostakopoulou 2001a), it was noticeably devoid of any explicit notion of the political community’s basic unit; the individual. In fact, the only direct assertion of the role of citizens was evident in the re-iteration of free movement as a groundstone in the European construction and the rather vapid assertion of participation given the lack of European voting rights. Thus, this purported initiation

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<sup>45</sup> In fact it was not yet formally enlarged. Denmark, Great Britain and Ireland had through varying procedures decided to join the Community from January 1973. The three acceding countries were nevertheless invited to take part in the subsequent summit. Thus, the “Six” became “Nine.”

<sup>46</sup> Declaration of the Heads of Governments, Bull. EC 10-1972, p. 15.

<sup>47</sup> Ibid., fn 13.

<sup>48</sup> Ibid, fn 13, p. 16, 23.

of the Community's market-transcending reflection of its nature as an entity did not foster any significant development in terms of citizenship politics. It did underline what one believed to be drawing the community on the "macro-level" together: that is, core values such as democracy and freedom. The identity question was thus placed above individual citizens, it did not entail a notion of what drew the citizens as such together, but rather what was common for the Member States; the self-proclaimed "driving wheels of European construction."<sup>49</sup> In other words, the prior assertions of the ECJ on the direct relation between citizens and the Community were not taken in as part of the foundation for the Council's proposal on a future political union in Europe. Explicit citizenship politics remained on the "sidelines"; the market citizenship of two decades or so of integration remained intact and supported by the treaty framework, policy-making and seminal verdicts in the ECJ.

One should think, then, that a declaration on European *identity* would explicate issues of citizenship in a way that the Paris summit in 1972 refrained from. At the Copenhagen summit the following year, the final declaration from the foreign ministers of the Member States was on what was called "the European identity."<sup>50</sup> In declaring what European identity was about, the emphasis was on defining the baseline for the external relations of the EC, of "the place which they occupy in world affairs." This indicates an externalised conception of identity on the collective level rather than a clear perception of the link between the collective and its individual citizens. Still, the declaration was somewhat ambiguous on this score. It also highlighted that European identity was about defending and upholding "the principles of representative democracy, of the rule of law, of social justice... and of respect for human rights." Indeed, these are all elements which connect to crucial issues of citizenship, albeit on a general level.

At best, then, this indicates a minimally implicit notion of these values as imperative also for the individuals linked to the Community through primary citizenship in one of the Member States. This connects further to the final remark of the Declaration that can be seen directly in connection to conceptions of citizenship. Notwithstanding the clear intention of pronouncing the *commonality* of the Community, this remark stated that there was a "(...) diversity of cultures within the framework of a common European

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<sup>49</sup> Ibid, fn 13, p. 16.

<sup>50</sup> "Declaration on the European Identity", Bull. EC, 12-1973, pp. 118-122.

civilization.” In declaring what European identity was about, the focus was not only the assertion that the Community had common traits, but also that it consisted of *different* entities each with its specific history and culture. In a sense, then, the assertion was that what brought Europe together, was not only certain norms or values, but also a kind of “unity in diversity.” Historically, citizenship has exactly been about constructing or perceiving unity among diverse individuals through settling norms of membership, bestowing rights and facilitating participation on the part of citizens. All these elements were lacking in the Copenhagen Declaration. Only identity remained, and, as shown, it lingered in the echelons of high politics, on the level of asserting how the Community could utilise its common norms and values in external relations.

Given these remarks, I disagree with Kostakopoulou’s (2001a: 44ff.) claim that the “Declaration on the European identity” was primarily about creating the basis for *Europeans* (as in Germans or Italians) given the aim of establishing a European political union. It was clearly more about creating the basis for *Europe* in relation to the Other writ large.<sup>51</sup> Confronted with the realities of a weakened world economy due to monetary disorder and rising calls for national protectionism (see Gillingham 2003: 105), the Community asserted its identity in terms of foreign relations. The declaration was more about answering the question “what brings us together as a force on the international scene” than, say, “what brings individual citizens together as a European political community?” Focusing on more than identity (which is Kostakopoulou’s main focus), we can observe that the declaration was clearly lacking in terms of laying out indicators of who those “Europeans” were in terms of membership, potential rights attached to being “a European” and ideas of how they would participate in such a community.

If there was a significant shift, then, in the discourse on issues linked with citizenship, it was a “step back” compared to the budding ideas and practices of a direct link between citizen and the Community that were evident in the late 1960s. Issues of belonging and identity were perceived mainly on the macro-level when the Community asserted elements of *its* identity. The tendency was on the whole external – geared towards foreign relations – rather than inward-looking in terms of identifying the traits of a common European citizenship. In comparing such a declaration with evolving practices on the ground one

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<sup>51</sup> For a theoretical discussion and subsequent empirical appraisal regarding identity discourses on “the Other” and “Otherness” in international relations, see Neumann (1999).

should of course not over-stretch interpretations. It is not given that the concreteness of practices necessarily translates into the “high” politics of summits. It is, however, worth noticing that the conceptions of identity and unity were constrained in the sense that they – at least in explicit terms – dealt with questions of the community as such in its relation to other political and economic entities and not with the location of individuals within it. The Paris summit of 1974<sup>52</sup> did not develop the issues raised on European identity and the Community’s foreign relations to any significant extent. It merely re-iterated the need for progressing towards “European unity” by “gradually adopting common positions... in all areas of international affairs.” The Belgian Prime Minister Leo Tindemans was further assigned the task of sounding out opinions across the Member States and Community institutions on the subject of European Union. There was, however, an important contribution to more *explicit* citizenship politics than had been the case in the preceding summits. This contribution was initiative, in the sense that one asked for the assignment of two working parties to present reports on establishing a *passport union* as well as the possibility of giving “the citizens of the Member States *special rights as members* of the Community.”<sup>53</sup> This last remark merits some further comments.

Suddenly, citizens of Member States were also understood as individual members of the EC. The macro-level assertions of the need for a European Union and on European identity were complemented by acknowledging that citizenship was as an element in the life of the EC. The criteria on which individual membership on the level beyond the nation-state would be based were, however, not spelled out explicitly. They were rather derivative and indirect, that is, based on citizenship in a Member State. Yet, it is worth noting that this was the first time the notion of citizens as members of the Community was made explicit.

### 5.3.3. *Passport Union: Citizenship-As-External Membership*

The institution and symbol of the passport is strong in modern politics (see Salter 2003). When crossing state boundaries, the passport is the foremost proof a person’s legal belonging to a political entity. Without the passport a state can further legitimately restrict a citizen of another state in her boundary-crossing ventures. Just by raising the issue of a passport union, the Community thus underlined that the belonging of individuals – the

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<sup>52</sup> Declaration of the Heads of Governments, Bull. EC, 12-1974.

<sup>53</sup> My emphases.

perennial question of *membership* – mattered for its self-understanding as a polity. But, acknowledging this is not sufficient to understand its impact on conceptions of citizenship in the system. How did the talk of a European passport impact on conceptions of citizenship within the EC?

In fact, the novelty of a concept like passport union was acknowledged at the outset of the Commission Report to the Council.<sup>54</sup> It simply stated that “[t]he concept ‘Passport Union’ is a new one.” Still, the report did not purport to have created the concept *ex nihilo*. It was linked to past concepts and developments of significance in the integration process. Unification in terms of the foremost institutional signifier of membership in individuals’ external interactions was, perhaps unsurprisingly, linked with the principle of “(...) free movement *within* the Union.”<sup>55</sup> This political aim of a passport union clearly connects to the *Royer* verdict of the ECJ.<sup>56</sup> Here, the Court declared that the right to enter the territory of another Member State was conferred *directly* by the Treaty. Border-crossing was to be independent of prior authorisation by the host state. Such a principle was in accordance with the aim of abolishing internal border controls of the Community through the unification of passports. In addition to the linkage with free movement, the report suggested that unification in terms of passports would play part in the “(...) the confirmation of it as an entity in relation to non-member countries in the form of a joint action *vis-à-vis* such countries (common foreign policy).” In terms of suggesting more specific policy developments that could have an impact on the conception of citizenship within the system, the report discussed the introduction of a uniform passport, harmonisation of legislation on aliens and abolition of passport controls within the Community.

The transfer of authority to issue passports from the national to the European level was ruled out at the outset. Issuing of such identity documents was to remain a national prerogative. But, it was underlined that a passport union would only have an import if some common appearance was reached, “so as to demonstrate, in addition to a connection to the country in question, a definite connection with the Community.” Not only practical aspects of this issue were taken up in the report. One also suggested the potential “psychological effect... which would emphasize the feeling of nationals of the

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<sup>54</sup> A Passport Union, Bull. EC, Supplement 7-75.

<sup>55</sup> My emphasis.

nine Member States of belonging to the Community.” This aspect of belonging was also linked to suggesting harmonisation of the *rights* of Community passport holders when confronted with the laws of non-member countries.

The question of abolition of border controls in the Community, on the other hand, dealt with the internal aspects of a purported passport union. The report suggested that if this was to be achieved it would have to require of “(...) each Member State abolition of all forms of controls of individuals, whatever their nationality, carried out at the internal frontiers of the Community.” This was a rather sweeping suggestion which has not been put into effect, even after the Schengen Agreement. Third country nationals are still subject to border controls upon travel internally in the EU (see e.g. Lavenex 2001: 858, 860ff.; Huysmans 2006: 68ff.). Finally, the discussion on a possible harmonisation of legislation affecting aliens did not amount to much and was linked explicitly to the preceding question on the abolition of internal border controls.

Several issues arise here concerning the status of individuals. There seems to have been a clear intent in raising the issue of a passport union to create a catalyst for *identifying* “the European.” By opening up the borders more profoundly than what could be achieved through a narrow interpretation of free movement as linked primarily to work and production, elements of a more pronounced European citizenship emerged. The focus on a possible “psychological” impact on the feeling of *belonging* to the Community attests to such an interpretation. Such a belonging was, however, not cast in any radical new language of *membership* or *identity*. The lack of a more pronounced notion of membership testifies to the European citizen as still being conceptualised as “derivative” of her status as a national in one of the Member States. Identification on the part of citizens with “Europe” can then only be understood as secondary to the primary (or perhaps primordial?) national identity. The conception of citizenship on the European level was here one of a secondary nature. It was by no means something that stood alone – it was always conceptualised with the “original” level of citizenship politics in mind.

This does not, however, mean that the very fact of discussing the unification of a strong symbol of the territorial nation-state did not bring forward important corollaries for citizenship within the system. The most radical measure proposed by the report was the

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<sup>56</sup> *Royer*, Case 48/75 [ECR], 1976, p. 497.

approximation of the *rights* of European citizens when encountering third countries. This suggests a distinctive notion of individual membership as an effect of a principled rights status. All European citizens were construed as *equals*, not only in terms of the specific rights bestowed on them from the Community, but also through belonging to the Community as such. In doing so, the report also emphasised the external dimension of belonging or identity, albeit on the individual level rather than Community level which was shown to be the case in the Copenhagen declaration. The status of being “European” was seen to render necessary equality when encountering third countries. This is indeed the very upshot of membership externalised, so to say. Historically, it has for example been seen as a powerful instrument to assert ones citizenship in encounters with the law or external powers: the famous example is citizens of the Roman Empire which could raise the issue of their membership affiliation and get special treatment (Pocock 1995: 36). As much as this was a novel assertion of who belonged to the European polity, it did not amount to a more pronounced notion of what would bring these citizens together as members of a community as such. There was no notion of participation or identity involved in this “external” membership that could be seen as building blocks of a more complete conception of European citizenship. Connected to this it is further interesting that the aim of the passport union was also explicitly linked to the principle of free movement of persons. The market privilege of preceding conceptions of citizenship was thus retained even when discussing the potentially important symbol that some sort of European passport would represent.

To conclude, it seems clear that a measure such as a passport union with regard to *external* relations with third countries as well as for the facilitation of a borderless *internal* Europe was linked intimately with market integration. Yes, one perceived for instance of a passport union as having *potential* “psychological” import for the sense of belonging to the European entity among Member State citizens. But, in terms of conceptualising the location of the individual *within* such an entity it did not really amount to much more than yet another measure of *facilitation* for a well-functioning European market. In this sense, this effort by the Commission clearly did not alter the conceptual path of European citizenship as it had developed until the mid-1970s. Not surprisingly, then, in the end, the measures proposed in terms of harmonising passports did not add up to much more than the design of national ones: in 1981 it was finally decided that passports of Member States were to share the same colour and be inscribed with “the European Community.” To sum

up, the proposal of unifying passport politics in terms of border controls amounted to a conception of citizenship as what can be called an “external membership.” All of the “novel” traits of the proposal were concerned with the external relations both of the Community as such and of the single citizen *inter alia* through suggesting that European citizens should be regarded as having the same *rights* when encountering third countries.

#### 5.3.4. *Special Rights: Residence-Based Quasi-Citizenship*

The more explicit question of individual rights was in fact on the agenda concerning individuals and their relation to the Community *at the same time* as that of a Passport Union. Ideas and queries regarding rights of European citizens were brought forward in the report on “The Granting of Special Rights.”<sup>57</sup> At the outset, the report circumscribed the discussion on the scope of rights by confirming that the intention of the initiating communiqué at the Paris summit (1974) was that those entitled to special rights were “(...) the nationals of the Member States of the Community.” Nationals of non-member countries were explicitly excluded from attaining such rights. In discussing *which* rights were to be granted to these nationals, the report did, however, highlight the allusion to *citizens* of the EC in the communiqué from the Council.<sup>58</sup> But, in spelling out the types of rights that could be bestowed on European citizens, the report did not focus on genuine *European* rights. The focal point was how European citizenship could render rights in second countries (of the EC) – that is, rights that were previously exclusive for national citizens only. This was indicated in the assertion of what such special rights could *not* be: 1) rights which nationals of the host state did not possess; 2) human rights granted by states to *all* foreigners; and, 3) rights which followed by virtue of the ECSC and Rome Treaties.

In laying out the *positive* rights that could follow from a “special” European status, then, the reference to citizens in the communiqué was clearly the guiding principle. In fact, it was claimed that focusing on citizens rather than nationals highlighted “(...) the civil and political nature of the special rights.” Building on this, the report held up the rights to vote, to stand for election and become a public official at all levels of government, including the national level. Indeed, it was further acknowledged that these were “(...) political rights traditionally withheld from foreigners.” Taken to its extreme, such an

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<sup>57</sup> The Granting of Special Rights, Bull. EC, Supplement 5/75.

<sup>58</sup> Declaration of the Heads of Governments, Bull. EC, 12-1974, point 11.

assertion could be seen as major conceptual shift in the contemporary understanding of citizenship – the core of the status would no longer be exclusively national. It would have changed the conceptual path of European citizenship discourse by a clearer separation of the enjoyment of rights within a given territory from membership through nationality of that given polity. To speculate here, the potentially radical upshot of this was perhaps perceived of as going to far; in the final instance, the report indeed emphasised that the distinctive status of the rights discussed in fact precluded *complete* equality with nationals of the host country with regard to political rights.

Taking the cue from this, the ideas regarding special rights within the boundaries of the Community were important in that they involved explicit discussion regarding what a status for individuals not only on the national, but also on the European level entailed. The upshot in analytical terms is of course the kind of conception of citizenship this amounted to. It further raises the question of the extent to which the ideas of the report gained practical momentum. The issue of membership was clearly at stake in this setting, albeit through the approximation of the type and extension of the rights in question. There was congruence in the scope of rights and the basis upon which it was decided who could be the holders of such rights. Here, we clearly see that there was a dynamic interplay between the dimensions of rights and membership. There was an oscillation between the criteria for who were seen as members – based on nationality – and the extension of rights linked to the specific community to which European citizens were connected. This section has thus highlighted that when the Community finally engaged in more explicit discussion on rights, these were indeed premised on *national* membership in one of the Member States. And further, the special rights did not entail “material” rights in terms of specific entitlements from the Community level. Rather, it was a “right to have rights”<sup>59</sup> in the political community of a Member State other than that of the original national citizenship.

This notion of an “alien’s” potential right to have rights in the host country’s political community did, however, not foster any explicit discussion on questions pertaining to identity and participation. Such an omission is somewhat surprising given the highly symbolic nature of opening up the political community by giving certain formerly exclusive rights to non-citizens. This clearly touches on the issue of identity as it involves

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<sup>59</sup> On the notion of “the right to have rights”, see e.g. Lefort (1988: 37).

the openness of citizen communities and the way in which citizenship is framed in terms of belonging; what are the outer boundaries of a credible political community and what draws it together? Linked to this is the omission of discussion on the participating aspect of citizenship rights. The discourse on citizenship in the Community remained on a formal level, so to say. It did not perceive how the granting of such rights would facilitate the actual participation of European citizens in second countries' political life. The clarification on the nature of the rights on the national level stemming from the transformation of a set of previously excluded non-citizens into partly included denizens through the original treaty framework was at the forefront of the endeavour rather than perceiving of European citizenship *de novo*.

The conception of European citizenship that was brought forward in the discussion on special rights was thus one of a secondary character, of what I will call a type of *residence-based quasi-citizenship*. What does this mean more specifically? On the basis of residence in another Member State, European citizens were treated as *special* in terms of their access to rights in the host country. Yet, it amounted merely to a quasi-citizenship as the range of rights was circumscribed through the specifics of the Treaties and linked exclusively to residence. When leaving the host country, these rights would no longer be attainable for the European citizens. Further, there was clearly no notion of a *free-standing* European character of the rights invoked by the report. The focal point was rather how the European status could provide special access to rights in other Member States.

Notwithstanding these caveats regarding the European character of the individual status here, the scope of such a quasi-citizenship was somewhat broadened compared to the first years of integration measures. It went from the facilitation of free movement to the question of political rights in second countries. Finally, the specific rights one envisaged is of importance here as the extension and type of rights as well as the degree of boundary between rights of citizens and non-citizens ultimately tells us something about the conception of citizenship at play in given practices. That the emphasis was mainly on rights of a political character is indeed interesting as the scope of rights in earlier practices were very much limited to market integration and the facilitation of the free movement of workers. In this sense, the *political* had finally entered the discourse on European integration and its relation to the individual citizens.

### 5.3.5. *Voting Rights in Elections to the European Parliament: “Veiled” Political Citizenship*

Having opened a discussion on so-called special rights for European citizens to partake in the political community of Member States, what followed was the implementation of a long-standing aim of the Treaty of Rome: that of a directly elected European Assembly or Parliament.<sup>60</sup> The original “representative” parliamentary body of the first treaties was in fact given the right of initiative in drawing up the proposals for subsequent adoption of direct elections through a uniform procedure.<sup>61</sup> This right of initiative was unique within the institutional nexus of the Community – the Commission enjoyed this right in all other areas of Community law (see Judge and Earnshaw 2003: 35). The EP pursued this right of initiative through a Draft Convention in 1960<sup>62</sup> as well as much of its work throughout the 1960s (Shaw 2007: 103). It was, however, not until the mid-1970s that the issue of a directly elected, representative EP gained momentum. After the Hague summit in 1969<sup>63</sup> had re-iterated the need to look into the case of universal suffrage for the Community, the EP stepped up the ante. The so-called Patijn Report<sup>64</sup> (1974) provided a discussion on why direct elections of the EP would be an important step for the Community as well as the more technical re-writing of the original Draft Convention from 1960. The timing here is interesting in itself. At the same time as the EC was in “soul-searching” mode through addressing the idea of a European Union, asserting its European identity and raising the issue of rights, the question of a democratically elected, representative parliament was elevated onto the agenda.

The various resolutions passed by the EP during the 1960s invariably highlighted the commitment of the EC to grant universal suffrage as laid down by the Treaty of Rome (ibid.: 103). In the initial work of the EP on these issues, it argued strongly for the establishment of a *uniform* procedure<sup>65</sup> for such elections, cross-cutting the boundaries between national political systems. The background reports and working groups of these resolutions mainly discussed administrative issues and problems that could arise if direct voting rights were introduced. They did, however, also consistently point out the

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<sup>60</sup> The Assembly decided on 30 March 1962 to change its name to the European Parliament (see Judge and Earnshaw 2003: 36). Accordingly, I will in the following use the acronym EP when referring to the European Parliament.

<sup>61</sup> ECSC Treaty, Article 21(1); Treaty of Rome, Article 138(3).

<sup>62</sup> European Parliament, Resolution, OJ C 37, 2 June 1960.

<sup>63</sup> Final Communiqué of the meeting of Heads of State, The Hague, 1 and 2 December 1969, Bull. EC-1, 1970.

<sup>64</sup> European Parliament, Report on the adoption of a Draft Convention introducing elections to the European Parliament by direct universal suffrage, Doc 368/74, 13 January 1974.

<sup>65</sup> European Parliament, Resolution, op.cit., p. 837.

importance of a direct link between the ultimate bearers of legitimacy – the peoples of the Member States – and the European institutions. Already the first motion brought up in 1960 emphasised that universal suffrage would constitute an essential element of European unification.<sup>66</sup> This was clearly followed up by the Patijn Report. In the preamble of the subsequent resolution<sup>67</sup> passed by the EP based on the recommendations of this report, it was forcefully emphasised that “(...) the process of European unification cannot succeed without the direct participation of the peoples affected” and it stated further that a directly elected EP “(...) was indispensable... in achieving further progress towards integration and establishing a better equilibrium between the Community institutions on a democratic basis.”

These assertions were clearly mirrored in the explanatory statement of the Patijn Report where it was forcefully stated that “[d]irect elections to the European Parliament are essential to enable the peoples to play an immediate part in the unification of Europe.” This enabling of the peoples to partake directly in the dealings of the Community – and not the least the broader aim of unification of Europe evident throughout the discourse of the 1970s – was further linked to the question of legitimacy. Through political rights it was envisaged that the power of the Community would be supplemented by the necessary “(...) legitimacy which has hitherto been lacking.” This legitimacy was directly linked to the requirement of creating “(...) measures to extend the peoples’ participation in the construction of Europe.” Still, in laying out the potential scope of the rights, the national level was retained as the basic unit for European elections. This meant that European political rights were *directly* linked to national voting rights and did not have “cross-border” import analogous to, for instance, social rights based on the principle of free movement.

On the back of the Patijn report and the subsequent resolution and Draft convention passed by the EP, the Council finally approved of direct voting rights for European citizens in 1976. The Council decision<sup>68</sup> in itself did not significantly alter the content of the Patijn Report and the Draft convention, including the issue of voting rights for

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<sup>66</sup> European Assembly, *Relazione sulla elezione dell’Assemblea Parlamentaro Europea a suffragio universale diretto*, Doc 22/60, 30 April 1960.

<sup>67</sup> Resolution of the European Parliament on the adoption of a draft convention introducing elections to the European Parliament by direct universal suffrage, OJ C 32, 11 February 1975.

<sup>68</sup> Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278/1, 8 October 1976.

European citizens in second countries of the EU. It was further devoid of any substantial comments and merely laid down the rules and procedures for the functioning of direct elections on the European level.<sup>69</sup>

The question of universal suffrage and political rights was in many ways treated as having an administrative import rather than a more profound significance for the evolution of the Community as a polity in its own right. Many of the documents reviewed above dealt mainly with questions of time and procedure. Yet this notwithstanding, there were some aspects of the discussions that points towards the conceptualisation of the individual citizen within the European project. This was mainly the case of the Patijn Report which subsequently had a vital impact on the granting of voting rights in the EU; it was clearly the catalyst that brought the discussion to its final level before implementation.

To begin with, the very granting of political rights was an empowerment of the individual European citizen by rendering her a more direct role in the political system of the EU.<sup>70</sup> Yet, in ascertaining its import for the conception of citizenship, we must consider not only the “face value” of the rights, but also their conjunction with other issues pertaining to the status of individuals. If we for instance see the very right in itself – that of voting in elections of the EP; juxtaposed with the issue of the *scope* of the rights, interesting corollaries arise. Neither the legislative Act in itself, nor the Patijn Report based voting rights on a *European* membership. The voting rights were clearly circumscribed through the electoral systems on the national level.<sup>71</sup> No European right *per se* was perceived. This would have required establishing it on, say, free movement, residence and the harmonisation of electoral rules for EP elections, rather than primarily on national membership. Granted, the Patijn Report raised the issue cursorily in its conclusions. It is, however, surprising given the vigorous assertions regarding the significance of universal suffrage that this was not highlighted as an issue of vital importance for the legitimacy of

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<sup>69</sup> As in fact did the conclusions of the European Council in Rome, 1-2 December 1975, where it was decided that the Community should pursue the aim of direct elections of the EP, see Bull. EC 11-1975.

<sup>70</sup> See for instance Tenth General Report on the Activities of the Communities, European Commission, 1976, p. 23ff.

<sup>71</sup> This was the case until the passing of two directives: Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L329/34; Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ L 368/38. Further, the very electoral systems are still at the core of the EP elections as the much-sought “uniform procedure” has not yet been agreed upon by the Member States.

the EU. Further, it is worth noticing that at virtually the same time free movement had been emphasised as the core of the access to “special” rights.

The restriction of voting rights through privileging the national level in terms of access to them thus points to a conception of citizenship which was political, yet evidently constrained in its extension. These specific designations of rights (and membership) further intersect with the understanding of participation within the EU. By not linking European elections with the core principle of integration “on the ground” – that of free movement – an opportunity to foster the embryonic beginnings of a European *demos* went amiss. *Political* participation on the part of citizens was linked to the national level while *market* participation was perceived in terms of free movement. What this further shows is that voting rights were conceptualised as rendering legitimacy for the EP as one branch in the institutional nexus of the EU and not ultimately as being legitimated by a European *demos* as such. Its linkage to national electoral systems did not foster a notion of a “nation-transcending” European *identity*. There are indications that it rather affected European politics in the opposite direction. Research on European elections indisputably shows that from the first ones in 1979 they have been dominated by “(...) national political issues, national parties and the political standing of national governments at the time” (Judge and Earnshaw 2003: 71).<sup>72</sup> In this sense, the conception of what drew the community together was not one of commonness in terms of a shared electoral space, but rather the dispersal of European voters across multiple *demos*<sup>73</sup> with specific political systems and notions of membership. The long-standing efforts of a common European market were thus not paralleled by a common European political space. Thus, the establishment of voting rights in EP elections did not alter the conceptual path of European citizenship to any significant extent. The political dimension of being a European citizenship was more visible for the citizens, but it did not, say, contribute to a radical re-configuration of citizenship by adding a genuine European electoral space to those already existing in the Member States. To conclude, what this analysis of the process leading up to the granting of voting rights in the EU has shown is that if this triggered a conception of European *political* citizenship, it was at best “veiled” given its ubiquitous linkage with the national level.

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<sup>72</sup> They have thus often been characterised as so-called “second-order” elections (see Reif and Schmitt 1980, reference in Judge and Earnshaw 2003: 71).

### 5.3.6. *The Tindemans Report: Diminished Citizenship*

At the very end of 1975 the so-called Tindemans Report on European Union<sup>74</sup> was presented. Why is this report interesting to investigate when it has been deemed an overall failure and insignificant for immediate policy- and law-making in the EC (see Dinan 2004: 163)? Having been initiated at the Paris Summit in 1974 and by following suit after discussions on explicit issues of citizenship such as passport union, special rights and voting rights, the Tindemans Report is important for its temporal place in the discourse on the future of the European construction that evidently went on in the 1970s. It is further clear that the mandate of the Tindemans Report was perceived to involve issues regarding the relation between individual citizens and the European institutions, and not only institutional concerns of a purported European Union.

The report did not develop significantly the aims and lofty assertions made at the triad of summits from 1972-74 on European unity and identity. Given the explicit mandate stemming from the political declarations of these summits, this is not surprising. In terms of the more specific issues that the report addressed, these were mainly geared towards how policies, aims and institutions were to be reconciled and properly integrated on the supranational level in light of the aim of European Union. This was advocated mainly through a call for the “federalisation” of the Community in order to bring about a common foreign policy and more effective institutions.

For our understanding regarding issues of citizenship, the part on a so-called “Citizen’s Europe” is obviously the most important. In this section, the report starts out with the broad assertion that “Europe must be close to its citizens.” This assertion linked to an analogy with what the report called “democratic countries.” The report asserted that, in the process of preserving the values which are the common heritage of such countries, the will of governments alone would not be sufficient. Such a project was also perceived to require the involvement of all those affected by it. This statist analogy did, however, not bring about any substantial discussion about how this could be perceived in terms of a genuine European citizenship. In discussing issues pertaining to citizenship, the report stated that a European Union ought to work towards “*the protection of the rights of Europeans*, where this can no longer be guaranteed solely by individual states.” It further advocated

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<sup>73</sup> On the notion of “multiple *demoi*”, see Weiler (1999).

<sup>74</sup> European Union, Bull. EC, Supplement 1/76.

the “concrete manifestation of European solidarity by means of *external signs* discernible in everyday life.” With regard to rights, the report merely stipulated that this should be discussed further by the institutions, in addition to upholding consumer rights and environmental rights as essential. Relating to the issue of solidarity, the report explicitly supported the process of unifying passports. As a corollary to this purported passport union it additionally proposed a “(...) gradual disappearance of frontier controls on persons moving between member countries.” Lastly, there were some more proposals regarding transport infrastructure, educational integration and the harmonisation of health schemes – but without any clear notion linking these to a conception of citizenship.

As the preceding remarks testify to, the Tindemans Report clearly did not amount to much in terms of conceptualising European citizenship. In its proposals relating to the status of citizens, there was clearly a tendency to re-iterate measures and discussions already under the way, such as passport union. Novel assertions with regard to dimensions of citizenship were mainly the ones on developing consumer rights and environmental rights. The discussion regarding these new rights was, however, not dealt with to any substantial extent. They remained on what I will call a *declaratory* level without any real import for European citizenship politics. In the statement that Europe should be brought close to its citizens, one could have expected a more pronounced notion of who could be perceived as these citizens. There was, however, no clear notion of membership or even identity in the report. To the extent that identity was brought up, it was explicitly linked with the notion of externalised European identity courtesy of the Copenhagen declaration. Indeed, it is interesting that when a report on the broader issues of European unification was requested, substantial questions of citizenship fell out of vogue. Stating that a purported European Union should be close to its citizens does not amount to much. Political rights and issues of participation were for instance not raised explicitly. If any conception of citizenship can be drawn out of the Tindemans Report it must be designated as a *diminished* rights-status which lacked genuine political import when compared to previous conceptions.

### 5.3.7. *Summarising Remarks*

To begin with, it is clear that issues concerning citizenship in the 1970s developed further than the market impetus of the first period of European integration. Still, this did not engender a radical re-conceptualisation of citizenship within the integration process. The

*rights* bestowed on European citizens were broadened somewhat to include political rights in the elections to the EP. Through this, *participation* was also widened so as to encompass not only work or production, but voting for popular representatives on the European level. Despite the early arguments in the EP for instituting a uniform European procedure in these elections, they were ultimately tied to the electoral systems and traditions of the Member States. Thus, this development in European citizenship was visible by the formal bestowal of voting rights in EP elections, and did contribute to a stronger supranational notion of citizenship increasingly detached from the national level, for the purposes of European issues. It is therefore not surprising that this process did not lead to any clear notion of what would bring citizens together as a community of citizens. The belonging of citizens was invoked as a *possible* effect of unifying passports, but when *identity* was explicated in the Copenhagen declaration this remained on the level of asserting the distinctiveness of the Community in external affairs rather than its internal traits as a community not only of states and peoples, but also of individuals.

The minor changes in conceptions of citizenship are further highlighted by the fact that the principle of free movement remained a pervasive issue in the relation between individual citizens and the European polity. In such diverse instances as declaring the intention of creating a European Union on the institutional level and adopting a passport union, free movement was highlighted as the guiding principle whereupon issues pertaining to the status of individuals were pieced together. This notion of free movement was, however, less ubiquitously attached to an overriding purpose of market integration. Indeed, this was still the most tangible political aim of European integration. Yet, a notion of a more complete freedom of movement attached to the status of European citizen in itself was *inter alia* perceived through the idea of building down internal border controls within the scheme of a passport union. And further, the bestowal of voting rights in elections to the EP did add a *political* element to European citizenship politics.

In addition to the pervasiveness of free movement as a “guiding light” for the status of individuals, the period highlighted a certain cementing of *membership*. This dimension of citizenship was unequivocally linked to the *national* level. In the designation of who were to be seen as members of the Community, the crucial criterion was national membership in one of the Member States. This derivative form of membership was in fact more pronounced than in the first period of European integration where the ECJ affirmed a

direct link between individual citizens and the Community. The notion that was consolidated through concrete legislation and the raising of issues such as passport union and special rights was evidently more indirect while unceasingly forming the very *basis* of individual membership on the European level. The indirect bestowal of membership was further tied to the notion of rights. By locking in membership within the confines of national membership norms, the scope of rights which derived from such a European status was affected. In particular, this dynamic was noticeable in the discussion of special rights and the approval of voting rights in elections to the EP. Special rights were deemed “special” not by virtue of being specifically European; that is, linked to the supra-national level of politics. Rather, they were framed as a kind of privileged denizenship whereby citizens of Member States could be rendered certain civil and political rights not available to citizens of third countries. With regard to EP elections, then, the potential for a democratic culture dependent on genuinely border-transcending rights was precluded and *limited* by the explicit linkage between voting rights and national electoral systems.

Table 5.2. *Conceptions of Citizenship in European Integration, 1972-80.*

	<i>Significance of event – logic of integration</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
Paris (1972)	Declaring goal of a European Union.	Free movement as essential. A notion of collective identity.	No independent conception of citizenship (pivotal for raising the issue of Union)
Copenhagen (1973)	Declaration of the European identity.	<i>Collective</i> identity. Rights and participation raised only on the declaratory level of asserting the core values of the Community.	<u>Externalised</u> in terms of the aim of invoking a common stance towards foreign policy issues
Paris (1974)	Re-iterate aim of European Union and unity in international affairs.	Nationals of Member States were perceived also as <i>members</i> of the Community.	Derived membership
Passport Union (1975)	Suggest the unification of passports and abolishing internal border controls.	Practical link to the right of free movement. Advocated equal rights for European citizens in third countries. Membership was mainly asserted on an external level. Identity was raised as a possible “psychological” outcome.	Citizenship-as- <u>external membership</u>
“Special” rights (1975)	Suggest granting special rights status for European citizens within Member States.	Focus on access to political rights in national political communities, albeit in the final instance only	<u>Residence-based quasi-citizenship</u>

		on the local level. Explicit and “special” rights status only for European citizens with prior national membership. Political participation.	
Voting rights in elections to the EP (1975-79)	Implement universal suffrage on the European level.	Direct political rights. But, no uniform electoral procedure. Thus, European rights were linked directly to the national level. Multi-level political membership, premised on national level. Political participation.	<u>Veiled political</u> citizenship
The Tindemans Report (1976)	Recommendations for a European Union.	Focus on free movement as core principle. Rights should be left to institutions, upheld consumer and environmental rights as new rights to be raised.	Diminished conception, issues of citizenship only briefly discussed

## 5.4. Reviving the Market and Creating a Borderless Europe: The Single European Act, Schengen and Images of Community

### 5.4.1. Introduction

It is widely held that European integration was re-invigorated in the 1980s (see Dinan 2004; Gillingham 2003; Moravcsik 1998). After the previous decade where the prospects of a Union had been raised, rights of individuals had been implemented and *the* European identity had been ascertained, European integration entered a phase of deeper market integration paralleled by extensive efforts of “image-building” through the “A People’s Europe” campaign. How did these developments add details to already existing conceptions of citizenship as these had evolved through the first two phases of European integration?

### 5.4.2. “A People’s Europe”: Limited Political Citizenship

At the Fontainebleu European Council in 1984, it was decided to set up an *ad hoc* committee to prepare measures to “strengthen and promote the identity and image of [the Community] for both its citizens and for the rest of the world.”<sup>75</sup> This effort led to the

<sup>75</sup> Bull. EC 6-1984, point 1.1.9. See also Eighteenth General Report on the Activities of the Communities, European Commission, 1984, p. 26ff.

two so-called Adonnino reports<sup>76</sup>: the first of which dealt mainly with issues regarding border controls *within* the Community, and the second which brought topics such as rights and participation to the fore.

In setting out issues pertaining to citizens within the integration project, the Adonnino Committee took its cue from questions that had already been raised within the citizenship discourse of the Community. In fact, it started out with a call for the implementation of a common European passport as this had not been done in all Member States. In laying out the general aim of the Committee, the first report stated that it was “(...) of great importance in making the Community more credible in the eyes of its citizens.” This general aim was connected explicitly to developing policies in the field of “freedom of movement for Community citizens” and “(...) the full and integral implementation of a ‘Europe without frontiers’.” Finally, this was highlighted as a “(...) necessary corollary of... the completion of the internal market.” In connecting these aims more explicitly to citizenship issues, the first report ended with advocating the adoption of a *general* right of residence in other Member States for European citizens. Such a change would clearly mean that European integration had finally surpassed the worker as the core of citizenship issues. Yet, on closer reading, the measure proposed would be made “(...) subject to requirements of public order and security” as these were laid out in Article 56 of the Treaty of Rome.

Taking the cue from the last point on the territorial rights of European citizens, the second report of the Adonnino Committee claimed to put forward overall political appraisals of issues often dealt with on a more technical and administrative level. At face value, then, this report can be read as putting the *politics* of European citizenship firmly on the agenda. But, what did this translate into in terms of more specific measures? In dealing with the special rights of citizens, the report harked back to the Declaration on the European Identity from 1973 and its emphasis on principles of democracy, the rule of law, social justice and human rights as the core of the European project. In doing so, the Adonnino Committee noticeably overlooked the fact that the purported European identity *did not* raise the issue of individuals as part of a European community of citizens, but rather what was earlier deemed as its foreign policy identity.

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<sup>76</sup> A People’s Europe. Reports from the *ad hoc* Committee, Supplement 7/85, Bull. EC.

In terms of more concrete measures, the second report focused on the citizen as a *participant*, both on the European and nation-state levels. On the European level this amounted to encouraging the implementation of a uniform procedure for elections to the EP, a right to petition Community institutions and the institutionalisation of an ombudsman. On the nation-state level it most importantly urged the granting of “special” voting rights in host Member States in *local* elections as well as ensuring that European citizens would be granted the same rights as nationals to free speech and assembly. As if emphasising the clearly symbolic import of raising the rights of non-nationals to free speech and assembly within the European context was not enough, the Adonnino Committee ended its two reports with measures geared towards the *image* and *identity* of the Community. These amounted to, among other things, tangible imagery such as a European flag, an anthem and finally standardised sign-posting at the internal and external borders of the Community. As these proposals make clear, emphasising the issue of identity – of what draws a community of citizens together – was subsumed by the perceived import of imagery and symbols. It did not engender further discussion on European identity as an identity of *citizens* as an element of a larger community. The “high politics” agenda of the European identity declared in 1973 was not amplified as such, but an alternative notion of identity as tangible for individuals/community was not suggested or even raised as a possibility. Rather, it was all about *portraying* and *presenting* (not representing) the existence of the EC to the public.

The image(s) of Europe have been criticised for being overtly benign and symbolic; and thereby facilitating the evasion of the real issues and problems of European integration (see e.g. Shore 2000). The Adonnino Committee did not sidestep real issues pertaining to the status of individuals. Still, despite its relatively high profile and the breadth of its mandate, it resorted to dealing with issues *already* on the table within the integration process and rather unimaginative image building symbols. Indeed, the first report started out with linking the principle of free movement with the programme for the completion of the internal market. The perennial question of individual *membership* was, however, not addressed explicitly. One can only speculate on the possible reasons for such an omission. Taking into account the findings hitherto, it is perhaps indicative of the “nationality prerogative” as having been institutionalised – even internalised – in the citizenship architecture of the Community. This is not only visible by the very omission of the membership issue in terms of inclusion, but also due to the fact that the case of third

country nationals and their rights on the European level were not raised and discussed within the framework of the report. Furthermore, membership also concerns the question of residence. As was highlighted in the first section of this chapter, free movement legislation towards the end of the first period of European integration brought forward “citizenship-as-qualified-residence.” This conception was qualified in the sense of being plainly linked to the individuals’ status as a worker – as participants in the European market.

The Adonnino Committee brought the idea of residence further by *generalisation*. This idea was strongly supported by the Commission who also urged the Council to re-focus this issue.<sup>77</sup> It advocated a general right of residence in second countries for citizens of the Member States. Standing by itself, this would no doubt mean the “liberation” of European citizenship from the corollary of work. But, on closer inspection, the right of residence envisaged by the reports was *contingent* on the requirements of public safety and public order as these were laid out in the Treaty of Rome. Even though work was less definite as a criterion for being a member, individual membership was *not* conceived as *unconditional* in the European setting. The *general* import of such a right of residence was thus put into doubt by the report itself. By circumscribing a citizenship based on a right of residence in this way, the report might in fact have highlighted the derivative character of European citizenship. There is broad consensus within theoretical work in the field that citizenship is unconditional for members in terms of their right to territorial residence (see e.g. Brubaker 1992: 24). Once you are a citizen, the state to which you belong as a member cannot *legitimately* restrict your residence on its territory. The corollary of this for understanding conceptions of citizenship within European integration is that by “conditionalising” it through such measures, its development vis-à-vis national citizenship is somewhat clarified. In terms of settling membership, national citizenship was always prior. Until 1985, European citizens were gradually bestowed a *special* rights status favouring them vis-à-vis third country nationals in other Member States. The conceptions of citizenship coming out of these piecemeal developments and declarations of intent cannot, however, be adequately interpreted against the frame of national citizenship. Rather, the emphasis on the rights status as special and exceptional in its import for citizens is yet another indication that elements of European citizenship developed in

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<sup>77</sup> European Commission, Commission Communication to the Council on A People’s Europe, COM (85) 640 final.

*specific* ways within concrete practices of policy-making, legal interpretations and discursive interventions aimed at the broader question of the relationship between individual citizens and European institutions.

Securing and developing the *rights* of European citizens as well as their political *participation* were further important issues in the two reports. When focusing on the issue of political participation on the supranational level, the Committee clearly conceptualised the individual as a *European* citizen. It vigorously advocated the adoption of a uniform procedure for European elections. Additionally, through encouraging the right of European citizens to vote in another Member State in EP elections, a budding notion of a European *demos* was put forward. Evidently, “Europeanised” political rights were at the core of the conception of citizenship in the two reports of the Adonnino Committee. This interpretation seems pretty straightforward. But, as much of this chapter has thus far shown, the European citizenship discourse was clearly dynamic; it oscillated between not only dimensions of citizenship, but also different levels of politics. Thus, by taking the measures regarding active participation for European citizens in the Member States into account, I argue that the conception of citizenship was modified. Why is that? Political participation on the Member State level was explicitly linked with access for European citizens to voting rights on the local level. This was also one of the main points of the report on special rights from the mid-70s. Adjacent to conceptualising a European *demos*, it is interesting that the report was silent on the clearly more radical measure of rendering political rights also on the national level as a corollary to the status as a European citizen. This silence on the diffusion of political rights to include more than the local level indicates that the *national* retained a kind of primacy in conceptions of European citizenship. The clearly radical *idea*, then, of a postnational citizenship traversing across national frontiers and surpassing the boundaries of political communities through European rights did not transform to any significant extent the *reality* of institutionalised citizenship in nation-states (see Brubaker 1992: 180ff.).

As this section has shown, citizenship was for the most part cast in terms of issues that had been raised within the EC at previous instances. This was especially obvious with regard to issues such as free movement and political rights. Furthermore, the issue of *identity* was linked to the Copenhagen Declaration on European identity, without further notions of what would draw the community of European citizens together. In laying the

ground for “A People’s Europe”, the Adonnino Committee further brought out the concept of identity in conjunction with the proposed strengthening of the Community’s image. Thus, identity remained on the level of declaratory and symbolic politics of the entity vis-à-vis external actors. The more concrete measures pertaining to citizenship proposed by the reports thus linked up with already evolving practices rather than nascent ideas for a radically new conception of European citizenship. In doing so, and notwithstanding its largely derivative character in terms of the aspects raised by it, the Adonnino Committee noticeably brought a *political* conception of citizenship within European integration to the fore, notwithstanding the emphasis on free movement as a corollary to accomplishing the internal market. Through the emphasis on the need to implement uniform European elections as well as the assertion of the abolishment of fellow European citizens as aliens to the political community of other Member States by advocating their right to partake in local elections, an image of the citizen as a political participant emerges.

A conclusion in this vein must, however, also be cautious. The conception of citizenship by no means reached a radically new phase with the project on “A People’s Europe.” The piecemeal developments of previous years of legislation, declaratory politics and judicial activism were built upon to amplify rather uncontroversial measures for empowering European citizens. The potential of Europeans’ right to have rights in political terms even in national elections was by-passed and left silent. Furthermore, notions of what could bring these European rights-holders together were largely left open. Thus, the conception of political citizenship that transpired within this project was rather limited in terms of its final scope. Further, it is worth noting that once again, the status of individuals was unequivocally linked to the principle of free movement. It was also brought up explicitly as a corollary to bringing about a *Europe sans frontières* through a common, internal market.

#### 5.4.3. *The Single European Act: Citizenship Politics Brought to a Halt*

The impetus of creating a borderless and internal market building on the common market achieved in 1968 is widely attributed to the Single European Act (SEA) signed in 1986 (see Moravcsik 1998: 314).<sup>78</sup> The immediate historical backdrop of the SEA was the Stuttgart Declaration<sup>79</sup>, the previously discussed work on “A People’s Europe”, the

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<sup>78</sup> Single European Act, OJ L 169, 29 June 1987.

<sup>79</sup> Solemn Declaration on European Union, Bull. EC 6-1983, pp. 24-29.

Commission “White Paper on Completing the Internal Market”<sup>80</sup>, and the efforts to write a European constitution within the EP.<sup>81</sup> The SEA was the first major revision of the legal and institutional framework provided by the founding treaties. As with both the ECSC and Rome Treaties, the location of individuals as a part of the European project was dealt with indirectly. On the setting of the SEA within the integration process and the discourse on citizenship, the lack of a more explicit approach to individual citizens - for instance their rights and duties – is surprising seen as the issue of European citizenship had been very much on the agenda in the preceding one and a half decades. Still, as the SEA mainly dealt *inter alia* with institutional reform, policy issues and technical measures pertaining to the creation of a single market, the omission of dealing with citizenship explicitly is less conspicuous.

With these provisos in mind, I argue that, in fact, the SEA still provides some clues to our understanding of the gradually emerging conception(s) of citizenship that culminated in institutional terms with the inscription of citizenship in the very treaty framework at the Maastricht IGC. The initial clues for issues pertaining to citizenship in the SEA are found – as with the founding treaties – in the rather elevated declarations of its preamble. Immediately, the preamble makes a direct link to the aim of a European Union, in accordance with the Stuttgart Declaration. In Stuttgart, the Heads of Governments solemnly pronounced that the future of Europe should be built on its common destiny by affirming the European identity (of the Copenhagen summit of 1973) as well as respect for representative democracy and human rights. In the SEA, this was copied to a large extent, clearly connecting the impetus of a single market with broader issues of unifying Europe.<sup>82</sup> But, where did further issues pertaining to individual citizens figure in these declarations of intent for European integration writ large? On the whole, the status of individuals figured implicitly in affirmations of promoting democracy based on “(...) fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.” And the fundamental *rights* in question? These were “freedom, equality and social justice.” Thus, rights were pigeon-holed as part of the largely symbolic expression of respect for democracy. A further clue to the largely silent issue of

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<sup>80</sup> “Completing the Internal Market”, White Paper from the Commission to the European Council, COM (85) 310 final.

<sup>81</sup> Draft Treaty Establishing the European Union, OJ C 77/33, 14 February 1984.

<sup>82</sup> Solemn Declaration, *op.cit.*, p. 25.

*individuals per se* as significant on the *European* level in the symbolic setting of pronouncing the first comprehensive treaty revision after 1957, is visible in the assertion that new developments corresponded with the “(...) wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression.” Hence, citizens were perceived as members of political communities on the *nation-state* level, rather than having an independent status in individual terms in the legitimation of European politics.

The declaratory claims of the preamble gave way to the rather more legalistic and formalistic language of the Act itself. Its *amending* character further meant that on many counts, it did not bring forward novel pronouncements, but rather measures which modified features of institutions and procedures. Still, by adding titles on Economic and Monetary Union (EMU) and certain aspects of social policy, the SEA contributed to the often asserted “deepening” of European integration. Again, issues of individuals and citizenship did not figure prominently in the text. In Article 13, the aim of a single, internal market was stipulated. Among other things, the free movement of persons was attached explicitly to this aim. There was, however, no specification as to who these persons were. Furthermore, the extent to which the concept of person would surpass the conception of citizens-as-workers – however defined in the founding treaties and extended through legislation and case-law – was not taken into consideration in the SEA. And, in institutional terms, Article 18 stated that issues related to the approximation of national laws and administrative action in the field of free movement of persons and the rights and interests of employed persons were not to be decided by qualified majority voting (QMV).<sup>83</sup>

The brief overview over relevant declaratory assertions in the preamble and more concrete measures revealed that the SEA provided little by way of amplifying European citizenship discourse. Dimensions of citizenship were hardly articulated. The only clue to ascertaining a notion of membership within the SEA was the linkage between the aim of an internal market and the free movement of persons. There was, however, no further designation as to the criteria for *which* persons ought to be considered as members within the confines of such a market polity. Of course, this omission should not be treated as

some mysterious phenomenon. The framework of market integration within the Treaty of Rome and subsequent policy practices established individual membership within European integration as based mainly on *work* and to some extent residence – *and* nationality. By not delving into such questions, the SEA did not provide a template for change of European citizenship.

In addition to not dealing with membership, rights issues remained solely on the declaratory level of the preamble and did not add any significant measures to the concrete developments of the 1970s. Lastly, *identity* and *participation* were on the whole not addressed by the SEA. There was a brief allusion to participation in the acknowledgement of the EP as a means of expression in the determination of the will of the *peoples* of Europe regarding the future path to be taken by the integration process. In terms of adding elements to the conception of citizenship this did not amount to much. The lack of uniform, European-wide elections that possibly could have augmented active participation on the part of citizens was not addressed in the SEA.

This brief analysis testifies that the SEA for the most part was silent on issues of citizenship. One can only speculate on the reasons for this. Perhaps the status of individuals was seen as already settled within the efforts of integration between economies and markets? The Member States – as “masters of the treaties” – affirmed the long-standing conception of citizens as rights-holders in a market polity within European citizenship discourse. Implicitly, the Commission supported such a stance at this juncture as its main aim was to finally achieve the internal market (see Dinan 2004: 216ff.). Such a “hiding” of citizenship issues went against the endeavours of the EP from the 1960s onwards to increase its institutional powers and standing by creating more rights for citizens and a genuine political space on the supranational level through uniform European elections.<sup>84</sup>

As the preceding sections of this chapter have demonstrated, until the time of the SEA, European citizenship discourse had its high watermark at the end of the 70s with

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<sup>83</sup> It has been argued that one of the most salient and varying changes introduced by the SEA was in fact to partly restore the method of qualified majority voting which had been rendered virtually null and void due to the so-called Luxembourg Compromise in 1966 (see Gillingham 2003: 231).

<sup>84</sup> On the struggle of the EP to increase its institutional powers within the institutional nexus of European integration, see Rittberger (2005). On some of the elements in EP’s push for a uniform electoral procedure

extensive legislation and discussion on voting rights, so-called special rights and passport union. These issues were added to legislation that had established the basic tenets regarding free movement of workers and to some extent persons. Against this backdrop, the SEA brought the citizenship discourse to a halt. The individual citizen and her place within an increasingly integrated Europe was not brought into the fray when the founding treaties were amended for the first time. But, the “freezing” of the discourse was only temporary. In fact, parallel to and following the work on the SEA, already initiated policy proposals were being dealt with through various channels of law- and policy-making within and adjacent to the European polity.

#### 5.4.4. *The Schengen Agreement: Visions of a Borderless Europe, (Trans)national Citizenship*

In 1985, the BeNeLux, Germany and France signed the so-called Schengen Agreement.<sup>85</sup> At the time, this agreement was not a part of the legal framework of the Community.<sup>86</sup> Still, it can be argued to have been of import for the discourse on European citizenship (Maas 2005b: 241ff.; Wiener 1998: 130). In fact, in the preamble to the Schengen Agreement, it was explicitly expressed that “(...) the ever closer union of the peoples of the Member States of the European Communities should find its expression in the freedom to cross internal borders for all nationals of the Member States.” Thus, at the outset there was a clear connection between this intergovernmental agreement and free movement as a core principle of European integration with regard to the relations between its institutions and individual citizens.

As regards measures pertaining to dimensions of citizenship more concretely, it also confirmed that the beneficiaries of a borderless Europe would be the *nationals* of Member States in the EC. This is not surprising, as “the EC was set up as a primarily economic construct and its founding treaties contained no provisions regarding the individual rights of third country nationals not resident in one of the Member States” (Lavenex 2001: 858). In Article 17 this was further augmented by explicating the need for the dual measures of

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and individual rights, see e.g. sections 5.3.5 and 6.2. Shaw (2007) also refers extensively to the active role of the EP with regard to European elections and voting rights.

<sup>85</sup> For the text of the original intergovernmental agreement from 1985 as well as subsequent accessions etc., see *The Schengen Acquis*, OJ L 39, 22 September, 2000.

<sup>86</sup> The Schengen Agreement was institutionalised as a part of the *acquis communautaire* as late as the Amsterdam Treaty which entered into force January 1, 1999. Yet, for the purposes of a diachronic appraisal regarding the conceptual import of citizenship issues within the context of the European integration process, the initial agreement from 1985 (and some subsequent developments attached to it) provides significant clues. Hence, the agreement will be dealt with mainly in this section.

safeguarding *internal* security whilst at the same time preventing illegal immigration by third country nationals. And, the subsequent “Convention Implementing the Schengen Agreement” from 1990 underscored this by defining as an *alien* “(...) any person other than a national of a Member State of the European Communities.”<sup>87</sup> In Article 2 (Title II) of the Convention it was further stated that free movement across borders could be curbed for reasons of public policy or national security. Such a limitation on the abolishment of borders between states was clearly reminiscent of the restrictions laid out by the Adonnino Committee with regard to the proposal on a general right of residence.

In Article 19 (Title II) of the Convention, aliens were given the right to free movement across state borders insofar as their entry into the host state was legal. Thus, by raising the issue regarding movement of third country nationals, the Schengen *acquis* contributed to the question of inclusiveness connected to the principle of free movement. Yet, as Wiener (1998: 223) argues, Schengen did not logically link a notion of no internal frontiers with an absence of border checks. Opening up European borders also to third country nationals would imply that movement rights were no longer tied exclusively to individual membership as it had until that time been constructed. Still, in Article 22, for instance, this right of aliens to move freely was made subject to a requirement of reporting to the authorities of the second country upon entry. This considerably curbed the right of movement in practical terms compared to the one enjoyed by European citizens. Guiraudon (2003: 264) has argued that this was linked to a predominant discourse regarding Schengen which held that “(...) free movement within the EC required compensatory measures at the external borders.” By explicitly privileging European citizens as insiders in this sense, the Schengen agreement did, therefore, not go far in challenging the parameters of individual membership and resulting rights increasingly grounded on prior national membership in the first three decades of European integration.

As these brief examples demonstrate, the concept of citizenship was not raised explicitly within the basic architecture of the Schengen *acquis*. The thrust of Schengen with regard to conceptions of citizenship was linked to the principle of free movement and the aim of a borderless Europe. In terms of contributing to the discourse, the introduction of a more pronounced institutional framework for dealing with internal border-crossing through

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<sup>87</sup> The Schengen Acquis, “Convention”, Title 1.

Schengen, amplified free movement as the core of conceptions of European citizenship. In terms of laying out specific rights linked to this principle, Schengen did not add significant measures compared to the practices of free movement legislation in the 1960s/70s. It rather pointed out that the aim of a borderless Europe not only needed individual rights based on a free movement principle, but also *practical* measures to facilitate the movement of citizens *within* Europe.

Its contribution was, as stated above to bring forward the issue of the relative significance of insiders and outsiders. Territorial borders between states also signify the borders between communities based on national citizenship. By advocating the removal of such borders, the Schengen agreement did not push the case for a European citizenship which would have superseded national citizenship institutions, and thus have changed its conceptual path. The framing of individual rights in the Schengen agreement was consistent with the propensity to derive the European status on prior national membership which had been a lasting feature of European citizenship discourse, especially from the 1970s onwards. It is therefore not surprising that this was also the basis for granting individuals the right to move freely within the Schengen area. Notwithstanding the granting of freedom of movement to third country nationals, by not giving them the same status as insiders, the Schengen agreement drew a relatively clear distinction between who would be seen as members and hence also non-members. The upshot of this is that, through Schengen, a conception of European citizenship as (trans)national in its core features was revealed. At the outset – through the radical measure of weakening national borders and jurisdictions – such an agreement had potentially powerful consequences in both theoretical and practical terms. Territorial exclusivity and control has, after all, been one of the defining features of the modern state as a political community (see Weber 1978: 902ff.). But, by linking the *un-conditional* right to cross national borders to a specified set of insiders clearly distinguishing them from outsiders, the truly *transnational* and potentially *cosmopolitan* character of the arrangement was circumvented.<sup>88</sup> Yes, it created a transnational community within an area consisting of previously bordered nation-states. This community was, however, genuinely transnational only for the designated insiders. Under Schengen, borders would still have a *real* significance for outsiders by imposing limits to their movement. More concretely, these limits were linked to a “securitizing” frame which was to bolster internal security through

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<sup>88</sup> For further comments on the limits of transnational citizenship, see Magnette (2005: 177ff.).

limitations in, for instance, the access to EU territory and the rights of movement of third country nationals such as asylum seekers (Geddes 2001: 24, 29ff.; Huysmans 2006: Lavenex 2001: 858ff.) Thus, notwithstanding the import of facilitating a borderless community, not only its internal effects tell us something about the conception of citizenship that it produces. Its external effects are equally important for understanding its import regarding the status of individuals within a system. I will therefore argue that the properties of the Schengen agreement have amplified some previous findings of the chapter, namely the increasing propensity over time to ground and restrict European rights and participation – generally linked to free movement across national borders – on prior national membership.

#### *5.4.5. Free Movement Legislation: Citizenship-as-Right of Residence*

In the same period as the Schengen agreement was reached, the EC worked on finalising legislation on free movement that had been in the system since the end of the 1970s. This culminated in the passing of three directives in 1990, and one additional in 1993.<sup>89</sup> The thrust of these directives was the matter of *residence*.<sup>90</sup> The preambles of the directives significantly linked the issue of residence with the widely stated aim within European integration of “(...) the abolition, as between Member States, of obstacles to freedom of movement for persons.” Not only that, the preambles also related the issue of residence to the completion of the internal market. As was shown earlier, in the Treaty of Rome and the first legislative acts on free movement, the concrete right of European citizens to reside in second countries was unequivocally linked to their status as workers. *Continued* residence in another Member State was also contingent on previous occupation within that territory. In the preamble of Directive 90/365/EEC this was changed. The right of residence was no longer made contingent upon the worker’s previous exercise of free movement to take up occupation in another Member State: “(...) it is desirable that this

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<sup>89</sup> Council Directive 90/364/EEC on right of residence, OJ L 180, 13 July, 1990; Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity, OJ L 180, 13 July, 1990; Council Directive 90/366/EEC on the right of residence for students, OJ L 180, 13.7.1990; Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students. The last directive mentioned here came into force as an annulment of the previous Council Directive 90/366/EEC after the ECJ had ruled that it did not fulfil the principle of prohibition of any discrimination on the grounds of nationality, in this case with regard to so-called vocational training. Yet, the main thrust of the original directive with regard to matters of free movement and residence, for instance for dependents on the persons in questions, were retained in Directive 93/96/EEC. For further comments, see Kostakopoulou (2001a: 48).

<sup>90</sup> All four directives had virtually the same wording in their preambles as well as several substantial articles. The main difference between the directives is in the degree of specificity as to the beneficiaries of the rules

right of residence also be granted to persons who have ceased their occupational activity even if they have not exercised their right to freedom of movement during their working life.” When linking the spirit of these legislative acts further with its ramifications for the individual citizen, the Council expressed the conviction that the right of residence “(...) can only be genuinely exercised if it is also granted to members of the family.” In the concretisation of this conviction, all three directives granted the right of residence to such family members *irrespective* of their nationality.<sup>91</sup>

These pieces of legislation brought two things to the fore in European citizenship discourse. Firstly, specific rights were increasingly opened up for certain categories of non-EU citizens. Secondly, the corollary of work became less significant for the bestowal of European rights. Regarding the exclusiveness of rights, in the first instance, the ever-present grounding of European *membership* and rights on nationality was retained. Yet, the directives made it clear that European rights are available also to non-citizens related to a principal rights-holder, that is, a European citizen. Obviously, this did not transform the notion of individual membership within the European polity as the right to residence of non-citizens was made contingent in this sense. But, the legislation did not restrict the rights of these third country nationals to simply reside on European territory. It also gave them the right to take up work after residence has been attained. Thus, through the backdoor, so to say, non-EU citizens were bestowed the same rights as European citizens to work within the single market.

In addition to this right to work based on residence, work in itself was also made less pervasive as a criterion for individual membership. Previous findings in this chapter, in particular from the first period of European integration, made evident that the notion of work was crucial to conceptions of citizenship. It was through her potential capacity as a worker that a Member State citizen was rendered rights on the European level. By 1990, this was still a significant element of European citizenship, as the directives analysed here attest to. They did, however, make clear that free movement was not only for workers, but also for *persons* by rendering the right of residence also to individuals that had *not* worked within the territory of the given Member State. This not only broadened the

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laid down in them. I will therefore point out only where the single directive contains specific measures that are not part of the other directives. Otherwise I will treat them as one “body” of legislation.

<sup>91</sup> Article 1, Council Directive 90/364/EEC; Article 1, Council Directive 90/365/EEC; Article 2, Council Directive 90/366/EEC; Article 2, Council Directive 93/96/EEC.

notion of membership to citizens as such, but also implied that *participation* as a worker was no longer as fundamental to the conception of European citizenship. The market prerogative of the integration process and its ramifications for the status of individuals was less pervasive than before. In this sense, the issue of *identity* – largely silenced in explicit terms throughout the process – was implicitly brought to a new level. To be sure, one cannot impute the emergence of a “thick” identity akin to national identities based on a shared language or history through the broadening of rights to encompass persons and not only workers. Still, the directives made clear that the kind of community that citizenship rights were linked to would no longer be grounded *solely* on the market. Of course, the free movement legislation of this period did not lead to the disappearance of market citizenship from the discourse. It was rather complemented by a conception that linked individuals and the European project through their rights to reside within the territory of the supranational polity.

#### 5.4.6. Summarising Remarks

In a period marked by the diverse efforts of reviving market integration through the SEA, building the image of the European project through the efforts on “A People’s Europe”, and the intergovernmental agreement on a borderless Europe signed at Schengen, conceptions of European citizenship were both consolidated and to some extent changed in certain of their key properties. The most tangible changes were not, however, linked to the SEA, Schengen or the efforts of the Adonnino Committee, but rather to the evolving practices of free movement legislation and principles, courtesy mainly of the Council.

The gist of individual *rights* was still based on market integration and the principle of free movement. But, by extending rights of residence to a significant group of third country nationals as well as opening up border-crossing for non-EU citizens through Schengen, the notion of *membership* was also somewhat altered. Clearly, the “nationality prerogative” remained the *core* criterion for deciding *who* were seen as full members of the European polity. The change that occurred was to move towards *residence* as an added element of such a membership. Through their family relation to an EU citizen, non-EU citizens were in fact conferred the right to reside within any Member State based on the right of the principal rights-holder. Not only that, the *participation* in the market as a worker was made less crucial to the status of the individual within the system. Previous work within the host state was no longer crucial to obtain the right to continue residence. In this sense, then,

the market *identity* visible through the founding treaties and indeed also in the more “politicised” discourse of the 1970s was paradoxically somewhat altered through free movement legislation meant to facilitate the very market core of European integration. The notion of a community of European *citizens* identified as such and not only *workers* to some extent gained momentum.

Compared to the previous period of explicit citizenship discourse in the 1970s which explicitly took on issues such as identity and political rights, on the whole the conceptions in the following years resembled the key issue of the founding decades of European integration, that is, market integration and free movement. Some conceptual developments were however visible. The work of the Adonnino committee brought a *political* conception of citizenship, albeit in limited fashion. Citizens were perceived as valuable participants, not only in the market, but also through advocating rights of European citizens to vote in local elections of other Member States. Here the limitations of the project’s conception of citizenship also become visible. By restricting the abolishment of political “alienage” only to the local level of second countries, the national level remained external to the benefits of a European citizenship. The rights linked to moving across the borders of European nation-states as a market actor had prevalence over political participation on all levels for European citizens. Symptomatically, then, as the SEA was a treaty-amending venture laying the ground for creating a truly internal European market, it stayed silent on most issues pertaining to citizenship apart from the usual allusions to free movement as a core principle of and corollary to European integration.

The more implicit citizenship discourse of this period clearly consolidated the conception of European citizenship as a market-based citizenship. Free movement – both in the Schengen agreement and secondary legislation – was the catalyst for affecting the status of individuals within the European integration process. Still, by emphasising free movement as the core of such a status, the privileged quasi-citizenship (on the national level) which emanated from political and “special” rights of the late 1970s was broadened to the European level. Contingent on certain elements, non-EU citizens were rendered a broader range of European rights than what had previously been the case. Linked to the lesser importance of work as an unquestionable participatory element of such a European rights-status, these developments point to a conception of European citizenship as

*personal*, akin to what has been called a notion of “citizens-as-human beings” (Meehan 1993: 147). Conceptualising citizenship as “personal” does of course not mean that it is not contingent on an array of modifying demarcations. As the analysis of this section has made clear, the conception of European citizenship visible immediately antecedent to the institutionalisation of citizenship through the Maastricht Treaty was still largely market-based and in its *core* grounded on the nationality prerogative visible through most of the citizenship discourse within European integration. Yet, the evolution of policies and practices towards the end of the 1980s rendered these demarcations less rigid, signifying a somewhat more *flexible* and *open* citizenship status.

Table 5.3. *Conceptions of Citizenship in European Integration, 1980-91*

	<i>Significance of event – logic of integration</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
Adonnino Committee (1985)	Strengthen the image and identity of the Community for its citizens and vis-à-vis the world.	Main focus on rights, however chiefly on aspects discussed in the 70s. Political rights and participation “Europeanised” on the local and supra-national levels. Membership through residence. Identity clearly derivative of Copenhagen declaration.	<u>Limited</u> political citizenship
SEA (1987)	Revive European integration through focus on completing the single, internal market.	Dimensions of citizenship largely left open. Brief, declaratory allusions to rights. Free movement of persons linked to market integration underscored existing conceptions.	Consolidated <u>market</u> citizenship based on previous developments
Schengen Agreement (1985-1990)	Facilitate an internally borderless Europe.	Implicit notion of membership as grounded in national citizenship. Still, aliens rendered right to move within borderless area – but requirement to report upon arrival in a new country. Rights and participation not discussed.	<u>(Trans)national</u> citizenship
Legislative measures building on the free movement provisions of the EEC Treaty and previous legislative acts	Amplify existing legislation and treaty framework .	Right of residence <i>per se</i> emphasised. Rights contingently open to non-EU citizens. Participation as worker	Citizenship-as- <u>right</u> of <u>residence</u>

(1990)		less crucial to obtaining European rights. Shift towards a more “personal” status.	
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## 5.5. Finally a European Citizenship “Out in the Open”: Conception Settled Post-Maastricht?

### 5.5.1. Introduction

Subsequent to legislative measures on the rights of residence for European citizens, citizenship was *institutionalised* through the concept of Union citizenship in the Maastricht Treaty (1992).<sup>92</sup> This was a remarkable event in the history of European integration as the concept of citizenship conventionally has been held to be relevant only within the nation-state frame as Heater (1999: 95ff.) highlights in a historical overview. With the advent of the nation-state following the French Revolution, “(...) citizenship, patriotism and nationhood were no longer separate ideas” (ibid.: 97). Going beyond such historical description, authors like Miller (2000: 83ff.), Schnapper (1997: 202) and Shore (2004: 31, 38) have argued that there is an inherent conceptual link between viable *political* citizenship and the nation-state form of political order. As highlighted in chapters 2 and 3, the main problem with such reasoning is that it eschews the possibility of novel configurations of citizenship which do not *fit* with the basics of the nation-state model. For instance, one should not theoretically pre-empt a development of citizenship elements in the EU linked less to active political participation in *common* public space, than to the exercise of rights which transpire as a consequence of free movement within a borderless Europe. The avoidance of such a link between dominant political practices and theoretical models of citizenship has been a clear aim of this thesis. This is especially important for our understanding of developments after Maastricht as the EU took on board a concept so infused with political, normative and conceptual expectations (see Isin 2002). In tracing the trajectory regarding conceptions of citizenship within the European integration process, the *basics* of such an *explicitly* institutionalised status is therefore a watershed of European citizenship politics. To what extent did this diverge from the nation-state model of citizenship? How did the paragraphs which outlined the content of such a status link up with previous developments of more or less explicit conceptions in earlier periods?

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<sup>92</sup> There is a thematic convergence here with the part on constitution-making in the Maastricht process in the next chapter. In that chapter the focus will be on the whole *process* leading up to the signing of the Treaty on European Union. In *this* chapter, the focus concerning the Maastricht Treaty will be solely on what I will call the fundamentals of Union citizenship present in the treaty text. This will pave the way for the following

Was the conception of European citizenship “settled” once and for all? And, how did successive developments contribute to conceiving the place of individuals within European integration?

### 5.5.2. *Union Citizenship: The Fundamentals of Explicit Citizenship*

Through the institutionalisation of citizenship in the Maastricht Treaty<sup>93</sup> at the same time as a European Union was forged, the integration process clearly took a turn towards a more explicit relationship between individual citizens and the European polity. Fittingly for such an event, a sizeable literature on the nature of this citizenship has emerged in its aftermath. Among legal and constitutional scholars, the thinness of legal provisions regarding Union citizenship was highlighted (see e.g. Closa 1992; O’Keeffe 1994; d’Oliveira 1995). Yet, there was not agreement as to what such a thin status entailed for European citizens, and on its potential for changing European citizenship discourse. For instance, Closa (1992: 1168ff.) and O’Keeffe (1994: 106) highlighted its *dynamism*, holding that it had the potential to strengthen the rights catalogue in *future* legal or political developments, while d’Oliveira (1995: 82ff.) saw it as a “pie in the sky” lacking *real* access to political influence for citizens.

Naturally, within the political science literature, the focus was more on its potential impact on European integration (see e.g. Eder and Giesen 2001; Habermas 1992, 2000; Kostakopoulou 2001a; Meehan 1993; Preuss 1998a; Schmitter 2000; Shore 2004; Weiler 1999). To exemplify, some commentators focused on its potential for developing genuine belonging – a European political identity – between citizens within the European polity (Eder and Giesen 2001: 2ff.; Kostakopoulou 2001a: 40ff.). Habermas (2000: 99ff.) held out the creation of European citizens as the most advanced example of the decoupling of citizenship from nationality, thereby creating the impetus for a *postnationalisation* of European institutions. Conversely, it was also argued that Union citizenship did not add much to the real issues of European integration due to its symbolism and lack of preconditions such as a shared identity and common public space which some find necessary for the viability of political order (see Shore 2004: 35ff.). For Weiler (1999: 332), the official designation of Union citizenship was “banal.” Yet, he saw in it the possibility of saving European integration from a “statal, unitary vision”, through focusing on the

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analysis of the developments throughout the nineties up to and including the Charter on Fundamental Rights (2000).

notion of “multiple *demoi*” (ibid.:344). For Weiler, the introduction of citizenship crystallised what he saw as the principal idea of European unification, that is, to overcome the perverted effects of nationalism, rather than creating a unitary European *demoi*. Lastly, Schmitter (2000: 36ff.) outlined some “modest reform proposals” to democratise the EU grounded in the concept of Union citizenship.

This brief overview highlights a diversity of positions on Union citizenship. The problem with some of these positions is that they overlook the potential links of Union citizenship to previous developments where the market citizen and her dependence on nationality to exercise her rights was central to conceptions of European citizenship. It cannot be postulated that identity in terms of belonging follows from explicit citizenship, or that it automatically leads to a separation of citizenship from the corollary of nationality. Yet, this does not preclude that the Maastricht citizenship provisions did have an impact on the status of individuals within the system as asserted by more sceptical contributions. Finally, the strength of more visionary contributions like those of Weiler and Schmitter will ultimately rest on a sufficient fit with the actual impact of Union citizenship on conceptions of citizenship within European integration. My contribution to the understanding of Union citizenship is, hence, to contextualise it and assess its links to earlier developments in EU citizenship discourse. This makes it possible to illuminate the degree to which “Maastricht citizenship” was a radical departure from the conceptual path of citizenship discourse.

The issue of the standing of individuals within the European integration project was not only made more explicit through the institution of Union citizenship as such. Citizens were brought more to the fore as *loci* of European integration already in the preamble of the treaty, in clear contrast to the founding treaties as well as the SEA. Notwithstanding the usual lofty assertions of peace and stability in a formerly war-ridden Europe, some more specific aims were outlined. Connecting the integration project to individuals, the preamble for instance stated the aim “(...) to establish a citizenship common to nationals of their countries [the Member States].” This was re-iterated in Article B of the treaty, where the establishment of citizenship on the European level was related to strengthening the rights of European citizens as one of the basic objectives of the Union. This was unprecedented within the treaty basis for European integration. Further, free movement

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<sup>93</sup> Treaty on European Union (TEU), OJ, C 191, 29 July 1992.

of persons was underlined as a basic aim of the treaty. And, the core principle of free movement was linked to the aim of “(...) ensuring the safety and security of their peoples” through the adoption of provisions on justice and home affairs. This indicates that the place of individuals was related not only to their potential participation through the facilitation of free movement as was the case already in the founding treaties, but also to their more basic well-being as members of a community.

Still, in the Common Provisions of the treaty, this did not engender a more pronounced notion of an identity bringing individual citizens together as a part of a *specific* European collective. Identity was conceived purely in external terms as an assertion of its international role, in particular through the framing of a Common Foreign and Security Policy (CFSP).<sup>94</sup> In the preamble and common provisions laying out the overall aims of a European Union, then, rights clearly had primacy over identity in locating individuals within its remit.

The core of Union citizenship was spelt out in a specific section of the treaty.<sup>95</sup> To start out, what Clossa (1992: 1160) has called the “additionality” of the status was underlined in Article 8(1): “Every person holding the nationality of a Member State shall be a citizen of the Union.” Thus, it was stated from the outset that this would not entail a free-standing European citizenship status. It was rather based on prior inclusion and membership in one of the Member States. As if this was not enough, in a separate declaration of the treaty<sup>96</sup>, it was emphasised that whenever nationals of Member States were the subject of treaty provisions, “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.” Through this declaration, the newly founded Union thus pre-empted itself from direct political integration with regard to citizenship institutions and the possibility of subsequent harmonisation regarding the membership norms inherent in them. Thus, on two separate occasions, the treaty sought to make clear that there was no independent *European* citizenship at stake here. The membership of individuals was to be built on the foundations of deep-rooted citizenship politics on the national level.

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<sup>94</sup> TEU, Title I, Common Provisions, Article B, OJ C 191, 29 July 1992.

<sup>95</sup> TEU, Title II, Part Two, Citizenship of the Union, OJ C 191, 29 July 1992.

<sup>96</sup> TEU, Final Act, Declaration on nationality of a Member State, OJ C 191, 29 July 1992.

Through this now treaty-based nationality principle, the pre-eminence of rights issues as the core of citizenship on the supranational level becomes even clearer. In earlier periods, individual rights were scattered throughout the treaties as well as within pieces of secondary legislation. With the Maastricht Treaty, the rights issue became more pronounced by linking certain rights directly to the status of Union citizenship. Substantively, the rights attached to Union citizenship were the following:

- Rights of free movement and residence (Article 8a)
- Voting rights and the right to stand as candidate in municipal elections in country of residence (Article 8b(1))
- Voting rights and the right to stand as candidate in European elections in country of residence (Article 8b(2))
- The right of diplomatic protection and assistance in third countries where the citizen's own country is not represented (Article 8c)
- The right of petition to a European Ombudsman (Article 8d)

As should be evident from the analysis of earlier periods, several of the entitlements in this short catalogue of rights were already in place *prior* to the institutionalisation of Union citizenship. Rights of free movement had been pervasive throughout the history of European integration, whilst the issue of explicit residence rights was of more recent origin through secondary legislation in the beginning of the 1990s. Voting rights on the European level had been in place since 1976. Thus, the new elements here were political rights on the local level in second countries, as well as the rights of diplomatic protection and forwarding petitions to the European Ombudsman.

These rights, then, by no means provided a revolution in European citizenship politics. Some commentators have argued that Union citizenship did not amount to much, if anything, as the status basically built on previously settled rights and added new rights of meagre importance to conceiving citizenship. It has for instance been deemed as trivial (Weiler 1999: 332) and a misnomer (d'Oliveira 1995: 84). So, was the turn towards *explicit* citizenship largely a symbolic act without real effects on the status of individuals within European integration? If this was not the case, in what ways did, to cite Shore's (2000: 74) words, "the idea become a reality"? Interpreting the concept of citizenship within the Maastricht Treaty in isolation will perhaps lead to negative characteristics as those

mentioned above or dismissing it at the outset as unfeasible or unattractive. Analysing it as a part of an ongoing process with links to the past does, however, bring about a different perspective. Against the backdrop of previous developments, how did the Maastricht Treaty contribute to conceptions of European citizenship?

The establishment of an explicit citizenship status on the supranational level did not engender a European citizenship independent of other levels of government. The nationality principle was not only consolidated, but also strengthened within the Maastricht Treaty. This strengthening of the secondary nature of individual membership – its additionality – was not only linked to the very institutionalisation of citizenship, but also to the pronouncement of the relation between the European and Member State levels in *decisions* on membership. Yes, the analysis of policy practices thus far has shown that the nationality principle was increasingly cemented as the basis on which European citizenship was granted to individuals. In the founding treaty the focus was not primarily on nationality as such, but more on the particular status of (potential) worker or consumer in the founding treaties. In the final pieces of legislation on residence prior to the Maastricht Treaty the access to rights was grounded primarily on nationality. But, these “versions” of the nationality principle did not say anything explicit about the eventual role of European institutions in decisions on who could gain access to membership in any Member State and as a corollary, rights attached to a citizenship status on the European level. Of course, the prevailing practice of international law has been to grant this right exclusively to each sovereign state.<sup>97</sup> Yet, as the EU has developed into a multi-level political system with direct political and legal effects on the Member States (see Hooghe and Marks 2001), one cannot *a priori* pre-empt the possibility of infringements on this domain of sovereignty. However, empirical research shows that this potential of direct europeanisation has not been fulfilled (see Checkel 2001; Vink 2001). In the annexed declaration on nationality in the treaty, it was clearly stated that for *all purposes*, the issue of individual membership was to be settled *solely* at the national level.

Not only that, despite the declaration that the EU had reached the stage of integration which required the establishment of citizenship for Member State nationals, there was no clear notion of what held these citizens together apart from the rights emanating from the treaty and their newly institutionalised citizenship status. In the same vein as the

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<sup>97</sup> See European Convention on Nationality, Council of Europe, 6 November 1997.

Copenhagen Declaration of twenty years earlier, identity was an issue of high politics; it was used to signify the relationship of the EU with third parties and in international relations more generally. Thus, it is clear that membership and the corollary of rights prevailed as the core of conceiving the place of individuals within the European polity.

In addition to strengthening the “national tilt” of individual membership, the conception of citizenship within the Maastricht Treaty also linked up with previous conceptions with regard to rights. Free movement prevailed as the core right of European citizenship, and the tendencies in the last pieces of legislation prior to Maastricht of emphasising *persons* and not only workers were strengthened with Union citizenship. In addition, by linking the right of residence to such a status, *personhood* became even more amplified as a partial foundation for the attainment of an individual status in relation to the European polity. Yet, in contrast to arguments emphasising of a shift from nationality towards personhood in post-war rights discourses (see Soysal 1994), personhood in the EU was clearly linked to the nationality principle.

The novelty of Union citizenship was, then, linked to *political* rights and more *privately* oriented rights of diplomatic protection and petitions to a European Ombudsman. The granting of political rights on the local and European levels underlined the transnational features of European citizenship. Not only did it create specific rights on the supranational level, it also privileged European citizens within the political community of other Member States. As has been shown earlier in the chapter, on the political level, this privileged denizenship was at the core of the discourse in the 1970s, but was not implemented with the exception for voting rights in the elections to the EP. Part of the *real* influence of Union citizenship, then, was that the *idea* of such a privileged status cross-cutting boundaries between national citizenship institutions became more of a reality when citizenship was made an *explicit* element of European integration.

Such an emphasis on the political element of rights, as well as the right of petition, further signified that the dimension of participation was increasingly at the center of the citizenship discourse. It was seemingly not conceivable to explicate the concept of citizenship within European integration without a broader participatory element. The corollary of participation through work which had been increasingly less pivotal to locating significant individuals within European integration was not included in the direct

provisions on citizenship in the Maastricht Treaty. Political participation, personal security and private interests took its place. To be sure, the worker traversing the national borders of Europe was still the main individual actor “on the ground” of European integration. The major change was that this was not the sole basis for her status as an individual within that system. Other dimensions gained momentum as citizenship became a more pronounced and in the end explicit category of European integration.

As this analysis has shown, the Maastricht Treaty not so much revolutionised as it continued and amplified elements critical to earlier conceptions of European citizenship. Political elements were strengthened, albeit in a transnational sense more than a uniquely supranational way. This is most visible in the continued pre-emption of the national level with regard to the political rights of European citizenship. The political communities of the Member States opened up on the local (and European) level while the politics on national level remained closed also to European citizens. Thus, the *transnational political* conception inherent in Union citizenship and the Maastricht Treaty retained a prominent place of “the national”, both in terms of membership decisions and the very limits in the extension of rights under such a citizenship.

### *5.5.3. Post-Maastricht Politics and The Treaty of Amsterdam: Confirming Complementary and Derivative Citizenship*

Establishing an explicit citizenship on the European level was not uncontroversial in political terms. In Denmark, for instance, it was cited as one of the main reasons for the widespread scepticism of the Union and the treaty’s subsequent failure in ratification. According to Kostakopoulou (2001a: 67), Union citizenship was seen as a potentially “dangerous supplement”, not only in Denmark, but also among national elites and populations: “If European citizenship impacts upon traditional conceptions of citizenship and community, then arguably national fears that it may lead to a parallel Euro-nationality and/or question the very foundations of national citizenship are not misguided.” This issue was brought up already at the two European Councils of Edinburgh and Birmingham subsequent to the signing of the Maastricht Treaty. Further, at the Amsterdam IGC, the EU amended the Maastricht Treaty. Some of these amendments partly provided answers to the fears of a European citizenship having an impact on national institutions.

The issue of membership and its dependence on nationality was especially important in these post-Maastricht elaborations on European citizenship. Already in the so-called Birmingham Declaration issued by the European Council<sup>98</sup>, the EU sought to resolve the problems caused by popular resistance to the Maastricht Treaty and its perceived threat to European nation-states. Firstly, the declaration re-iterated the “unity in diversity” slogan of the EU by claiming the need to “respect the history, culture and traditions of individual nations.” Secondly, it sought to “make clear that citizenship of the Union brings our citizens additional rights and protection without in any way taking the place of their national citizenship.” The subsequent European Council in Edinburgh<sup>99</sup>, re-affirmed this view in its so-called Edinburgh Decision.<sup>100</sup> In fact, it was expressly stated that the EU had taken note of the unilateral declarations of Denmark<sup>101</sup> regarding several aspects of the treaty, among them Union citizenship. This was, according to the Danish position “(...) a political and legal concept which is entirely different from the concept of citizenship within the meaning of the Constitution of... Denmark.” What is interesting here is not the Danish position in itself, but rather that this was taken at face value by the other Member States and EU institutions. At this critical juncture of comprehending what Union citizenship could potentially mean for the European polity, a “European” conception was not raised as an alternative to the historically entrenched conceptual understanding of citizenship as tied to the nation-state. In a sense, the often professed “dynamism” of European citizenship was partly forestalled by the vigorous assertion of its derivative character vis-à-vis national citizenship institutions. Conceptions that could change the conceptual path, for instance, in a postnational direction with weaker links between the access to European rights and primary membership in a Member State, were less achievable with these developments. One can only speculate on the reason for why Member States and EU institutions alike chose this path. Of course it is highly likely that it was mainly linked to the aim of salvaging the ratification process. Yet, the premise of the Danish position of European citizenship being entirely different from national citizenship resonated with the increasing emphasis on the secondary nature of such a status on the European level.

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<sup>98</sup> Birmingham European Council, Conclusions of the Presidency, Bull. EC, 10-1992, p. 7ff.

<sup>99</sup> Edinburgh European Council, Conclusions of the Presidency, Bull. EC, 12-1992, I.

<sup>100</sup> Ibid., Annex 1 to Part B.

<sup>101</sup> Ibid., Annex 3 to Part B.

In Article 17 of the Treaty of Amsterdam<sup>102</sup> the additionality of the concept was upheld and finally treaty-based: “Citizenship of the Union shall complement and not replace national citizenship.” Besides this addendum to the direct treaty provisions on citizenship, the Treaty of Amsterdam did not add much to the already existing framework from the Maastricht Treaty, except for adjusting Article 18(2) (ex 8a) by involving the co-decision procedure in possible facilitations regarding the exercise of rights and a right of citizens to write to European institutions and receive answers in one of the official languages of the EU (Article 21 – ex 8d). The declarations of the preamble stayed more or less the same, without any substantial changes, say, to the notion of European identity which remained externalised and on the level of high politics.

Issues pertaining to membership figured almost exclusively in both the political statements in the immediate aftermath of Union citizenship and the treaty-amending Amsterdam IGC. The issue was not so much “who are members?” in terms of access to rights, but rather the relation between national citizenship institutions and the European status. The question of “who decides and why?” was left with only one answer in the immediate post-Maastricht developments of declaratory statements and treaty amendments: the single nation-state. Thus, the dependent and additional facet of European citizenship was upheld as its defining feature seen in relation to national citizenship institutions and the Member States. Individual membership was wholly dependent on prior national citizenship and the EU was perceived not to have any say in the determination of who possesses nationality in the Member States and hence also European citizenship.

#### *5.5.4. ECJ Jurisprudence and Secondary Legislation: Citizenship-As-Nationality and Citizenship-As-Rights*

In the period immediately before and in the aftermath of the Maastricht Treaty, the ECJ explicitly took on board the question of the meaning and scope of European citizenship (see Carrera 2005: 710; Kostakopoulou 2005: 233ff.).<sup>103</sup> In its first seminal case in this period, the ECJ brought up issues both of nationality and the scope of rights following

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<sup>102</sup> Treaty of Amsterdam, OJ C 340, 10.11.1997.

<sup>103</sup> See for instance the Opinion of Advocate General Leger on the *Boukhalfa* case (Case C-214/94 *Boukhalfa* [1996] ECR, p. I-2253): “[I]t is for the Court to ensure that it’s [Union citizenship] full scope is attained. If all the conclusions in the concept are drawn, every citizen must, whatever his nationality, enjoy exactly the same rights and be subject to the same obligations.”

from Union citizenship. This case was *Micheletti*<sup>104</sup> where the ECJ restated the principle of individual membership as an internal issue of each Member State. But, this did not mean that the Member States had full discretion in deciding when non-citizens were to be granted rights (see e.g. De Groot 1998). The ECJ ruled that for purposes of granting rights based on Union citizenship, a Member State could not invoke the citizenship of a non-member country for persons also holding a Member State citizenship through dual nationality. In such cases, the status of Union citizenship and general principles of Community law<sup>105</sup> should trump Member States' competence in decisions on acquisition and loss of nationality.

This privileged character of European citizenship in terms of access to rights was strengthened in the *Boukhalfa*<sup>106</sup> case where the ECJ ruled that the scope of rights can exceed the territorial boundaries of the EU. According to the Court, Union citizens working for an official body of a second country within the borders of a third country cannot automatically be deprived of the rights that follow from their European status. This signifies that through the principle of non-discrimination based on nationality, a kind of equalisation of European citizens fell under the ambit of EU law. Their rights were to be seen as fundamental, not only in a *territorial* sense, but also in a *personal* sense.

Still, this ruling did not prevent the ECJ from invoking the territorial character of Union citizenship in its adjudication on the link between free movement and the access to rights. In *Uecker/Jacquet*<sup>107</sup>, *Martinez Sala*<sup>108</sup> and *Avello*<sup>109</sup> the ECJ strengthened free *movement* as the core of a European rights status. In these cases it simply stated that rights linked to Union citizenship were to have an effect for individuals only *after* having exercised the primary right of free movement across national borders (see Castro Oliveira 2002; Mather 2005; Nic Shuibhne 2002). The ruling of *Uecker/Jacquet*, for instance, argued that “(...) citizenship of the Union... is not intended to extend the *scope ratione materiae* of the Treaty also to internal situations which have no link with Community law.”<sup>110</sup> Shaw (1997b: 557)

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<sup>104</sup> Case C-369/90 *Micheletti and others vs Delegacion del Gobierno en Catabria* [1992], ECR I-4329.

<sup>105</sup> De Groot (1998: 123ff.) argues that these three principles are relevant here: 1) the obligation of solidarity, 2) the right of free movement, and 3) rules regarding the acquisition or loss of nationality cannot violate public international law, especially fundamental rights.

<sup>106</sup> Case C-214/94 *Boukhalfa v Federal Republic of Germany* [1996] ECR I-2253.

<sup>107</sup> Cases C-64 & 65/96 *Land Nordrhein-Westfalen v Uecker & Jacquet* [1997] ECR I-3171.

<sup>108</sup> Case C-85/96 *Martinez Sala v Freistaat Bayern* [1998] ECR I-2691

<sup>109</sup> Case 148/02 *Avello vs Etát Belge* [2003] ECR I-11613.

<sup>110</sup> *Uecker/Jacquet*, op.cit., para. 23.

argues that through this assertion, a narrow and formal concept of citizenship as membership was strengthened. Citizenship “beyond the nation-state” was perceived as truly *outside* in terms of how it could render rights for individual citizens.

The *extension* of rights – and not only the issue of *who* are members *when* – was also at stake in *Martinez Sala*. Here, the ECJ moved in the direction of elevating the rights of European citizens on a par with those of host state citizens by strengthening the prohibition on discrimination based on nationality.<sup>111</sup> This case also signified an element in the shift towards a more general right to free movement as it ruled that benefits previously accorded to workers could be granted to a person other than a worker (Castro Oliveira 2002: 80). This was done by ruling that European citizens could not be expected to adhere to additional measures to those of “incumbent” nationals when applying for benefits they are entitled to through their rights of residence following from the provisions of Union citizenship as well as EU law more generally.

In principle, the ECJ has never ruled against the nationality prerogative in decisions on individual membership (Mather 2005: 741). Yet, as shown above, in the *Micheletti* and *Boukhalfa* cases there were some tendencies towards asserting the primacy of individual rights over nationality especially in cases where individuals enjoy dual citizenship. This was also the case in *Avello* where the ECJ ruled that European citizenship and its rights can be invoked by citizens who have dual nationality, even when the state towards which the rights claim was directed prohibits dual nationality or prioritises one citizenship over another. This was further linked to a rather sweeping assertion of Union citizenship as “(...) *destined* to be the *fundamental status* of nationals of Member States who find themselves in the same situation to enjoy... the same treatment in law irrespective of their nationality.”<sup>112</sup> By giving precedence to individual rights and the principle of non-discrimination, a certain development towards supranational competence in deciding “who are members?” in the European polity can be detected. This competence is, however, *indirect* through the acknowledgement of dual nationality as effective for enjoying rights that follow from European citizenship, rather than a direct assertion of how Member States are to include and exclude citizens from enjoying membership within their sphere of responsibility.

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<sup>111</sup> For a comprehensive discussion on the import of the principle of non-discrimination in the post-Maastricht case-law of the ECJ, see Reich (2005).

In *Collins*<sup>113</sup> – one of its latest rulings – the ECJ, notwithstanding the propensity to assert individual rights as fundamental and in terms of *personhood*, asserted that the concept of the worker is still significant for attaining European citizenship and ensuing rights. Thus, the very core of the embryonic conception of citizenship in the ECSC Treaty – that of the (potentially) participating worker – is still activated in a transformed European polity with an explicit, institutionalised and treaty-based citizenship status to its name. To summarise, the cases dealt with here demonstrate that, notwithstanding some moves towards a more person-oriented rights status, the ECJ upheld basic tenets such as the nationality principle and border-crossing that were visible in conceptions of European citizenship prior to Union citizenship. Nic Shuibhne (2002: 732) argues that this has created a status where the transnational is taken too literally and reverse discrimination abounds. In light of previous findings in this chapter this only serves to highlight the continued relevance of national membership in a legal sense, also within the remit of citizenship “beyond the nation-state.”

In addition to the case law of the ECJ, a major overhaul of secondary legislation on free movement has contributed to the politics of citizenship and individual rights within European integration. With the so-called Citizenship Directive,<sup>114</sup> the Council and the EP sought to amend and consolidate the existing sector-by-sector and piecemeal approach to free movement rights evident in the analysis of the last pieces of legislation that were passed on these issues prior to the institutionalisation of Union citizenship. In contrast to previous legislative acts, this directive linked the issues of free movement and residence rights directly to Union citizenship as a fundamental status of Member State nationals. Further, the directive also emphasised that such rights should be strengthened not only for the typical focal points of European integration such as workers or self-employed persons, but for *all* Union citizens. And, the directive established a right of *permanent* residence for Union citizens with a view to “strengthen the feeling of Union citizenship.”<sup>115</sup> In addition, the scope of rights was not limited to Union citizens only, non-EU citizens such as family members are rendered such rights under certain circumstances. The rationale behind this inclusive measure in terms of rights provisions was linked by the “preamble” of the directive to the values of “freedom and dignity.”

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<sup>112</sup> *Avello*, para. 1. My emphases.

<sup>113</sup> Case C-138/02, *Collins vs Secretary of State for Work and Pensions* [2004], ECR I-02703.

<sup>114</sup> Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004.

These provisions and aims cannot, however, be seen as conducive to a rights development where the EU pools the sovereignty of the Member States in issues of territorial residence and movement across national borders. The reason for this is that the qualifying and potentially restricting measures such as socio-economic conditions or issues of public policy, public security or public health on the part of the Member States were retained in the directive.

In terms of raising issues regarding citizenship, both ECJ jurisprudence and the consolidating directive on free movement and residence rights contributed to the European citizenship discourse, through concretisations regarding the state of citizenship and rights post-Maastricht. What is most striking about these efforts of clarification and concretisation is that they focused almost solely on issues pertaining to rights and to some extent membership as dimensions of citizenship. Issues of identity and participation figured to no or very small degrees; the latter mainly in terms of discussions on the relation between work/non-work as a corollary to the attainment of rights, rather than as the nucleus of a European rights status.

In principle, ECJ jurisprudence restated the nationality prerogative with regard to decisions on “who are members” for the purposes of enjoying European citizenship and its rights. Still, there were some elements of the case law after Maastricht that speak to some modest and indirect developments in favour of personhood as opposed to nationhood as criteria for the European status and the subsequent bestowal of rights. This was most clearly visible in the cases where the Court held that in situations of dual nationality, the Member States did not have an exclusive discretion in decisions on which citizenship of the person in question to take into account. Here, the Court granted the individual rights-holder autonomy in invoking the status of her choice. This was clearly not a case of impacting directly on the power of Member States to decide who *their* citizens are/should be. Nevertheless, it shows on closer account that the creation of a European citizenship status that renders rights in second countries through a kind of privileged denizenship has shifted some of the power to decide on rights issues to both the European and individual levels.

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<sup>115</sup> Council Directive 2004/38/EC, point 22 of “preamble”.

In terms of the *types* of rights that were emphasised after Maastricht, free movement and to some extent residence were at the core of the conception of citizenship. This was visible within several of the judgements from the ECJ; often upholding free movement as the very *basis* for invoking European citizenship. The *transnationalism* of European citizenship thus became more pronounced through ECJ case law. Additionally, the directive on free movement and residence conceived of such a transnational status as fundamental for citizens which make use of the principle of movement across the internal borders of the EU. In fact, the import of citizenship for the individuals in question was deemed to be of such a character that non-citizen family members should be granted such rights without strict requirements on their part. Further, it was seen as fundamental not only for individuals as such, but also for the “feeling” of Union citizenship. Thus, the fundamental rights status was seen as a possible vehicle for belonging between European citizens and identification with the status they attain from the European polity. Still, this thin and implicit identity marker was clearly “built” on the *priority* of rights, rather than antecedent notions of identity or belonging.

#### *5.5.5. The Charter on Fundamental Rights: Citizenship-As-Rights Consolidated*

The latest major development of European integration with regard to conceptions of citizenship prior to the Convention on the Future of Europe, was the Charter of Fundamental Rights (hereafter the Charter) (2000).<sup>116</sup> A sizeable literature emerged in the aftermath of the Charter, often focusing on its import for European integration writ large.<sup>117</sup> In terms of conceptions of citizenship, the Charter did not add much, however, when assessed against the developments that have been traced previously in this chapter. Its most vigorous assertion figured already in the preamble where it was stated that the individual is at the centre of the EU’s activities through the establishment of citizenship. In addition, the typical elements of previous policies and treaties such as free movement and the foundation of the EU on universal values were declared in the preamble. The assertion of the place of the individual within the integration project was in fact unprecedented. Still, the substantial rights provisions of the Charter did not build on such a novel assertion in expanding significantly on the already established catalogue of rights evident from fifty odd years of integration and citizenship discourse.

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<sup>116</sup> Charter on Fundamental Rights of the European Union, OJ C 364/1, 18 December 2000.

In fact, many of the provisions were not linked to a notion of citizenship in the first place. These were what one can call typical “bill of rights” provisions such as civil rights in terms of personal freedoms and liberties as well as protective rights within criminal proceedings.<sup>118</sup> Within chapter III on “Equality”, a general prohibition on an array of subjects was stated. Further, the fundamental principle of EU law of non-discrimination on the basis of nationality was re-iterated<sup>119</sup>, however without adding to previous legislation and jurisprudence. As regards the provisions on “Solidarity”, some articles<sup>120</sup> anchored certain social issues regarding families, professional life, social security and health care to a notion of the fundamental rights status of individuals (see e.g. Menéndez 2002). Lastly, in the articles connected to an explicit notion of European citizenship, the rights stipulated did not add much, except for a right to good administration, to previously asserted citizenship rights.<sup>121</sup>

The Charter clearly *consolidated* already existing facets of European citizenship – explicitly in terms of *rights* – as these have developed over time through different practices of the EU system. There were no radical alterations concerning notions of membership, identity or participation. Its symbolic value and political import can, however, not be dismissed at face value. As a corollary to this, a few words can be said regarding some aspects concerning our understanding of what citizenship has grown to mean within European integration – which in this chapter has been done through appraising the location of individuals inside relevant practices. From the vantage point of citizenship discourse, the declaration of individuals as being at the heart of the EU’s activities is interesting. Through this declaration the EU clearly acknowledged that the individual citizen is part and parcel of its development and self-understanding as a polity. This is a far cry from the almost exclusive “high politics” orientation of the founding treaties. In these, the individual hardly figured at all, and when she did it was in the very specific role as a potentially participating worker. So, through this assertion alone, the Charter serves as a compelling representation of the trajectory of conceptions within treaties and ensuing policy practices: from virtually nothing – a mere embryo limited in scope – to being at the

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<sup>117</sup> There were comments on legal, constitutional and policy traits, see e.g. De Burca and Aschenbrenner (2003), Eriksen (2003), Eriksen et al (2003), and Menéndez (2002).

<sup>118</sup> Charter, Articles 1-20, 47-50.

<sup>119</sup> Charter, Article 21.

<sup>120</sup> Charter, Articles 33-36.

<sup>121</sup> Charter, Articles 39-46.

forefront of EU integration in terms of its catalogue of rights and the rationale for its existence.

#### 5.5.6. *Summarising Remarks*

With the advent of the Maastricht Treaty and a *European Union*, citizenship was at long last “out in the open.” The institutionalisation of an explicit citizenship status “beyond the nation-state” did not, however, engender a new idea of European citizenship opposed to previous conceptions and developments. The period beginning with the Maastricht Treaty was one of consolidation and clarification in terms of the status of individuals against the institutions of European integration. The consolidating traits of the period after Union citizenship were first and foremost visible in the unequivocal link between membership as part of a European citizenship status with the principle of nationality. As the analyses of preceding periods have shown, membership had increasingly been linked in explicit terms to prior citizenship in one of the Member States. By bringing the idea of a European citizenship into reality also in institutional terms, it seems clear that the definitional issue of “what kind” of citizenship this was became more pertinent. The “dangerous supplement” became perhaps a mere supplement by inserting the character of membership into the Amsterdam Treaty.

The rights that follow from this secondary and supplementary citizenship thus came even more clearly to the fore in conceptions of European citizenship than had previously been the case. The catalogue of rights remained, however, much the same as pre-Maastricht with the exception of inserting local voting rights into the treaty framework. Thus, free movement and (to a lesser extent) residence retained the position as the core rights granted to European citizens. Yet, it seems clear that the scope of these rights was more settled within this period than before. Especially ECJ jurisprudence underlined that European citizenship is inherently *transnational*. The rights following from the status are in fact *activated* first when citizens make use of the fundamental right of moving across the internal – and national – borders of the EU; no movement, no rights.

Rights as a corollary to the fundamental principle of free movement also had an import for the notion of participation. The original aim of European integration of dismantling previously pervasive borders between national markets and communities was retained under the ambit of the Maastricht Treaty. Thus, participation was still clearly linked to the

exercise of free movement. This was not only the case for work, but also for the local voting rights of Union citizenship which clearly aimed at rendering Europeans the right to participate in the political systems of second countries, albeit *excluding* national elections. Even political rights in European elections were geared towards facilitating participation for resident non-citizens, albeit those with a privileged transnational status, that is, those holding Union citizenship. Thus, the national level retained control of systemic features regarding political participation, while the European level was consolidated as a facilitator for citizens moving across the borders of these political systems.

The emphasis on the facilitation of individuals' rights and participation in second countries is also visible in what Union citizenship *did not* bring about in terms of conceptions of citizenship. Identity was still not an explicit theme of European citizenship discourse, in terms of answering the basic questions of “who we are?” and “what kind of community is citizenship linked to?” for the European level. Such identity issues were very much pre-empted by the vigorous emphasis on the Member States as the *sole* site for citizenship politics in terms of decisions on membership and thus ultimately on who belongs and why. In this light, postnational prospects for European citizenship looked dim indeed. The Member States had intervened and “protected” – to the extent that it was possible – citizenship as one of the remaining hallmarks of sovereign nation-states. The Danish position portraying European citizenship as a politico-legal concept without import for its national understanding of citizenship was affirmed by the other Member States and the very treaty framework of the EU. Rights were settled as the core of the conception of citizenship following this admission – and could easily develop as such without further practical considerations of its import for the EU as a polity in the making. Yet, as nationality was upheld through the efforts of Member States, ECJ jurisprudence did indeed push European citizenship towards a conception which – in exceptional circumstances – also hinges on fundamental rights of persons, and not only nationals.

*Table 5.4. Conceptions of Citizenship in European Integration, 1991-2004*

	<i>Significance of event – logic of integration</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
Union citizenship (1992)	Established European Union and institutionalised citizenship.	Membership more clearly linked to nationality. Abstention of EU in domestic membership decisions. Rights linked directly to	<u>Transnational political citizenship</u>

		<p>citizen status.  Emphasis on free movement, residence and political rights.  Participation not addressed besides political rights  Identity as a corollary to rights.</p>	
<p>Post-Maastricht politics and the Amsterdam Treaty (1992-97)</p>	<p>Clarify Union citizenship and amend TEU.</p>	<p>Exclusive focus on membership.  Clarified the absence of direct political integration: Membership decisions by Member States</p>	<p><u>Complementary</u> and secondary citizenship</p>
<p>ECJ Case Law and Secondary Legislation (1990s)</p>	<p>Adjudicate rights issues and update free movement legislation</p>	<p>Emphasis on rights of free movement and non-discrimination.  Free movement as a fundamental <i>transnational</i> right.  Membership through residence rights, to some extent also for non-EU citizens.  Participation through work after the exercise of free movement.</p>	<p><u>Transnational</u> citizenship-as-<u>rights</u></p>
<p>The Charter on Fundamental Rights (2000)</p>	<p>Provide the EU with a “Bill of Rights”</p>	<p>Consolidation of already existing rights.  Membership based on nationality, yet some rights extended universally.  Identity through the symbolism of European rights.</p>	<p><u>Consolidated</u> citizenship-as-<u>rights</u></p>

## 5.6. Concluding Remarks

This chapter has consisted in an empirically grounded investigation of how the development of policy practices in the EU political system has affected the status of individuals within the *longue duree* of European integration. The process tracing exercise of the chapter has produced an array of empirical observations and preliminary conclusions with regard to different junctures within the EU system. From the embryonic and minuscule conceptions in the founding treaties based on market rights and free movement, European citizenship gradually evolved towards conceptions focused also on political elements, participation and personhood. Yet, the empirical investigation of different crucial junctures throughout the history of European integration has highlighted that, notwithstanding these later conceptual developments, the core of European citizenship was evident already in the founding treaties. Thus, later conceptions, for

instance during the period of explicit citizenship politics in the 1970s and the *institutionalisation* of citizenship post-Maastricht clearly built on free movement, non-discrimination and work as the main components of citizenship evident in the ECSC and Rome Treaties.

Hence, rights retained a pivotal position within conceptions of citizenship throughout the period, with more types of rights being added as practices of European integration developed. Even so, the special rights discourse of the 1970s, which also linked up with the political rights of Union citizenship, was established as an effect of the prior right of free movement across the borders of the Member States. The designation of membership also followed from this “first” *individual* principle of European integration: European citizens were first members through work within second countries. Subsequently this membership norm was augmented by the nationality principle which states that only Member State citizens can enjoy the whole range of rights conferred through European citizenship. To the limited extent that identity was activated within policy practices, it was as part of the *external* relations of the EU as a community, and not linked primarily to notions of what kind of community citizenship was linked to. Even after introducing Union citizenship, identity was not a pronounced element of European citizenship discourse. The belonging of citizens to the EU was not based on some idea of a pre-existing identity, but rather on the very rights which emanated from the secondary, additional status of citizenship in the EU. Finally, the notion of participation clearly became more explicitly pronounced in later developments. From being linked exclusively to work in the early phase of integration, it was raised as pivotal in political terms for the purported European Union from the 1970s onwards.

These broad, concluding remarks on the development with regard to the four dimensions, cannot, however, be taken as evidence of a linear development regarding European citizenship. Conceptions have not developed from, say, a minimalist market citizenship, to a full-fledged political citizenship on the European level. Indeed, as the status of individuals has been affected by emerging practices within the EU system, more elements have been added to conceptions of citizenship. Yet, the transnational core of European citizenship has been ever present, and elements that supplemented early market citizenship was not based on an alternative conception where an independent European status followed. The transnational conception that prevailed throughout this period was

underscored by ECJ jurisprudence. The main argument which reinforced this conception was that the status which emanated from Union citizenship was a *fundamental* rights status which could – in special cases – surpass the nationality principle. Yet, it is important to note that this development towards personhood as a more prominent element of European citizenship did not contribute to a free-standing citizenship on the European level. The ECJ emphasised that rights and citizenship in the EU was unequivocally linked to border-crossing. Thus, if the conception in this period entailed a somewhat stronger focus on personhood, it was based on transnationalism, and not cosmopolitan ideals.

The lack of a pronounced “Europeanness” was further visible in the political dimension of European citizenship. Notwithstanding voting rights in European elections (which are plagued by low turnout to this date), even the political element of European citizenship depended on the traversal of borders. And, this did not yield political rights on *all* levels of government. This *privileged denizenship* of European citizens gave voting rights on the local level, but not in general elections on the national level. Hence, even though such rights were raised from the 1980s onwards as a corollary to discussions regarding the democratic legitimacy of European institutions, they seemed to have been more closely linked to the facilitation of the internal market, than the building of a genuine EU democracy. Aspects pointing towards alternative conceptions moving European citizenship in a more postnational or cosmopolitan direction were raised by the EP with regard to voting rights, by the Commission concerning the issue of special rights, and in the basic ideas of underpinning the Schengen Agreement. In the end, however, the strong linkage of a European citizenship status to the nation-state level was retained also in this period. To finally conclude, then, European citizenship emerged gradually within policy practices as a status of individuals with strong transnational traits, due mainly to the core principles of free movement and non-discrimination within the market, and supplemented in its latest developments by a limited political element where “the European” is more a denizen, than a citizen.

# Chapter 6. Conceptions of Citizenship in EU Constitution-Making

## 6.1. Introduction

Throughout the European integration process – from the sectoral ECSC to the Charter on Fundamental Rights – the status of individuals figured more or less explicitly. Against the backdrop of the practices of treaties, institutions and policies that emerged within this period, conceptions of European citizenship developed. The main conclusion of the preceding chapter was that a quite distinct conception of European citizenship as primarily rights-based, transnational and complementary emerged. These traits did not, however, mean that conceptions of citizenship remained identical over time. Through principles, policies and practices linked to free movement, for instance, there was a gradual shift from an exclusive emphasis on the market citizen to personhood as the marker for access to membership and rights.

In this chapter the analysis turns to the location of individuals and their status related to the European polity within constitution-making instances. As constitution-making entails discussion and debate on the basic values, principles and institutions of a polity, the question of citizenship can be expected to figure within occasions where such issues are at stake. It is common within the literature to perceive of constitution-making within democratic polities to involve the citizens both as *authors* and *addressees* of the professed constitution (see e.g. Ackerman 1991; Arendt 1965; Habermas 1996). Of course, deliberations on the basic “building blocks” of modern and democratic political entities ensue also after the enactment of their constitutional basis, in fact this is a pre-requisite for most political theories on democracy and the rule of law (see e.g. Habermas 1996; Rawls 1993). For the purposes of this study, the focus is on processes where profound change has been the aim, or the perceived outcome of discussion on the constitutional character of rules and institutions. Thus, both instances of explicit and implicit constitution-making are of interest when adding an integrative level to the study of European citizenship. Consequently, the three following instances are analysed in this chapter: the Spinelli Project on a Draft Treaty on European Union in the EP, the Maastricht Process and the Convention on the Future of Europe. All these processes culminated in different kinds of “constitutional moments” (see Ackerman 1991), where profound change of the European polity was either perceived or anticipated. Even though

two of them more or less failed in constitutional terms, the very idea of offering a distilled moment of constitution-*making* renders interesting the question of how issues pertaining to citizenship were located within them. And further, the upshot of this is that we gain an additional and different perspective on European citizenship to that which emerged in the preceding analysis of policy practices.

Indeed, the shift in empirical focus has highlighted that whereas rights were always at the centre of policy practices, these constitution-making instances brought forward more participation-oriented conceptions of citizenship. In this sense, they clearly adhered to the expectation from theories of constitution-making regarding a focus on individuals in terms of their role as *actors* within the political community. Yet, participation was not a new subject within the European citizenship discourse. More novel developments within EU constitution-making were, for instance, rights for European citizens in third countries through consular protection and so-called petition rights, and nothing radically new such as an *independent* European basis for individual membership based on personhood and residence, notwithstanding several proposals in this direction. Thus, within the concreteness of constitution-making, the shift towards personhood was not taken up to any significant extent. A main argument of the chapter, therefore, is that in the nitty-gritty business of final stages – the drafting and discussion on constitutional or Treaty texts; conceptual developments were not radically new when compared to those that emerged within policy practices.

Based on these remarks, the chapter will proceed as follows. First, the three constitution-making instances will be discussed and analysed separately. Within each of them, the focus will be on tracing the processes from their initiation, through preparatory work, to the final versions of key documents and treaties that emanated from them. Second, these pieces of empirical evidence are utilised to ascertain the conceptions of citizenship that developed within different constitution-making efforts. Third, in providing concluding remarks, these analytically derived conceptions will be compared with a view to preparing the ground for the following chapter 7 where the development of citizenship on two levels of European integration will be summarised in empirical terms, as well as in terms of their relevance for theoretical and normative debates on European citizenship.

## 6.2. The Draft Treaty on European Union: The EP as a Self-Professed Constituent Assembly

### 6.2.1. Introduction

When a Popular Assembly, which later re-baptised itself as a European Parliament, was made part of the institutional nexus of the ECSC as the founding community of European integration, for sure, the intention was not that such an assembly would have other aspirations than to monitor the decision-making process of intergovernmental institutions (see Rittberger 2005: 73). After the EP was elected by universal suffrage for the first time in 1979, however, a group which originally consisted of relatively dedicated Euro-federalists and later involved MEPs across the political spectrum sought to influence the integration process by far stronger measures than at best “co-deciding” legislative acts from the more powerful Council.<sup>122</sup> This group, which named itself rather strangely “the Crocodile Club”<sup>123</sup>, initially discussed solutions to the widely perceived “eurosclerosis” of the European integration process. Soon, however, it embarked on a venture not merely content with discussion on small changes in the EU’s institutional setup. It aspired to provide a *constitutional* blueprint for the European *Union* declared as an aim at the Paris Summit of 1972. As such, this was the first *explicit* constitution-making effort within European integration<sup>124</sup> in the sense of invoking the need for constituting the European institutions anew through embedding its guiding norms and values, basic principles and institutional procedures in a constitutional document safeguarded from the myopic and self-interested concerns of political actors within the system.

### 6.2.2. Initiative: “The Crocodile Club”

The initiative to launch a debate within the EP on the future of European integration began in June 1980 when the Italian MEP Altiero Spinelli urged his fellow MEPs to join in an effort to revive political and economic integration.<sup>125</sup> The work of the “Crocodile Club” commenced with a series of interventions and newsletters sent to all MEPs in order

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<sup>122</sup> For a historically informed analysis regarding the development of the institutional and legislative powers of the EP, see Rittberger (2005).

<sup>123</sup> The group took its name after the restaurant in Strasbourg where it first met in July 1980 (Capotorti et al 1984: 11).

<sup>124</sup> Indeed, the efforts to forge a European Political Community (EPC) in the 1950s had some constitution-making traits (Eriksen et al 2004: 8). But, it clearly the work on the EPC did not purport to be about writing a constitution for Europe, but rather to enact a more comprehensive political union than the then existing community within the restricted sectors of coal and steel (Griffiths 2000).

<sup>125</sup> Brief vom Altiero Spinelli an seine Kollegen in Europäischen Parlament, 25 June 1980, Historical Archives, European University Institute.

to take stock of the issues and problems that one could perceive to take on board within the project.

In the initiative letter of Spinelli to his colleagues in the EP, the impetus was clearly on issues regarding the institutional setup of the EC and difficulties of policy-making. Issues pertaining to the status of individuals or dimensions of citizenship were not dealt with at this early juncture of the process. Following up on the letter, however, the “Crocodile Club” presented a motion for a resolution in the EP.<sup>126</sup> The practical suggestion of this resolution was to set up a committee within the EP that would deal with the possibility of wide-ranged reform of the Community institutions. The resolution derived legitimacy for this from the fact that the EP had recently – and for the first time – been chosen through “(...) direct elections by the people of the Community.” Thus, already in this early, initiative phase, individual citizens were rendered significant, albeit indirectly by being perceived to give *democratic legitimacy* to such an endeavour. In the further efforts by the Crocodile Club, this point was re-iterated several times.<sup>127</sup> Moreover, in its newsletter, the role of citizens within the European integration project was perceived to be one mainly of participation: “[the Community] needs the people to participate in its activities.”<sup>128</sup> Indeed, the emphasis on citizenly participation was not only linked to talk of legitimation, but also to the favouring of a *political* union that would surpass the hitherto predominant economic mode of market integration in Europe.<sup>129</sup>

In addition to an increasing focus on citizens as *participants* within the Community process, these early documents of the Spinelli Project started to declare a self-understanding of its *constitutional* character.<sup>130</sup> This self-understanding was further visible in that the group asserted that ultimately European integration would need to make a choice between what could be called a “Federal Europe” and an intergovernmental “Europe of the Nation-States.”<sup>131</sup> Clearly, such a “grand” choice speaks to the constitution-making impetus of the process that had been set in motion within the EP. That constitution-making involves a question on the basic institutional and power-sharing structure that *constitutes* a polity is

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<sup>126</sup> Motion for a resolution on the setting up of an ad hoc committee to draw up proposals concerning the progress and development of the Community, EP Working Documents, Doc 1-889/80.

<sup>127</sup> See e.g. *Crocodile – Letter to members of the European Parliament*, no. 3 (January 1981), no. 5 (June 1981) and no. 7 (December 1981), Historical Archives, European University Institute.

<sup>128</sup> *Ibid.*, *Crocodile*, no. 5.

<sup>129</sup> *Ibid.*, *Crocodile*, no. 7.

<sup>130</sup> *Ibid.*

<sup>131</sup> Working Report no 1 for the Crocodile Club, Historical Archives, European University Institute.

widely held within the literature (see e.g. Ackerman 1991: 6-7; Goodin 1996: 226-229). Following this, and the passing of the resolution in the EP<sup>132</sup> on setting up a Committee on Institutional Affairs, the Crocodile Club repeated the perception regarding the constitutional character of the project by seeing the EP as a constituent assembly drawing up what they called a “Constitution-Treaty” to finally achieve a European Union.<sup>133</sup>

The immediate background of Spinelli’s letter to his fellow MEPs which launched the constitution-making efforts of the EP was a perceived political and policy-making stalemate due to the extensive use of veto in the Council of Ministers. In terms of conceptualising the status of individuals, the direct election of the EP through universal suffrage was at the forefront of the initiative period of the Spinelli Project. In indirect terms, citizenly *participation* was perceived to be critical for instigating constitution-making within the EC. Participation provided it with the necessary prior “input” legitimacy comparable to historical cases of constitution-making where a constituent assembly elected by the citizens forged a constitutional framework for the polity, such as in the US (1783), Norway (1814), Switzerland (1847) and the Federal Republic of Germany (1949).<sup>134</sup> In this enacting sense, the role of citizens in constitution-making is tied up to what Arendt (1965) referred to as the “constitutio libertatis.” Focusing on individuals as participants then addressed their status in public terms, rather than primarily in private terms – as worker or consumer – as had been a persistent mode of conceptualising citizenship within policy practices of European integration. Yet, the invocation of the dimension of participation was as far as the Crocodile Club went in establishing a notion of the status of individuals within the nexus of the EC and its institutions, laws and policies. Issues pertaining to membership, rights and identity were not raised in the work of the Crocodile Club. Further, participation was appealed to for purposes of legitimacy much more than to provide the nucleus of a pronounced conception of citizenship within a constitutionalised European polity. All this said, in this initiative period there was not much discussion on broader issues of treaty transformation and constitution-making. The

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<sup>132</sup> Cited in *Crocodile – Letter to members of the European Parliament, no. 6 (September 1981)*, Historical Archives, European University Institute.

<sup>133</sup> Ibid.

<sup>134</sup> In fact, in *Crocodile no. 5*, these examples (except for Norway) were brought forward as comparable cases of constitution-making to that of the Spinelli Project. Surely, in hindsight this seems overtly lofty, but still it does tell us something significant about an unprecedented phenomenon within an EC which only 30 years earlier had been established through integration and co-operation within two narrowly defined sectors of production and commerce.

impetus was to lay the ground for the subsequent work of a committee that would deal with the preparations of a draft treaty to be debated by the EP.

### 6.2.3. Preparation: *The Committee on Institutional Affairs and the EP*

On the basis of the initiative taken by the Spinelli Project and the resolution setting up the Committee on Institutional Affairs, one embarked on the preparatory work for the overhaul of the treaty framework of the European institutions. Already at the outset of the committee's work, the concept of constitution was raised as relevant for its mandate.<sup>135</sup> This did, not, however instill an approach to completely *changing* the course of European integration. The early discussions and working documents within the committee rather emphasised that issues of decision-making and institutional setup was at the heart of its subject matter. In a working document by Altiero Spinelli that laid out the contemporary background for the work of the committee, these issues were further linked to an approach that did not advocate the abolishment of nation-states, but rather a multi-tiered system marked by “unity in diversity” based on respect for democratic freedoms and individual rights.<sup>136</sup> This was visible for instance in a plea for clarification of the political objectives of the EC as well as settlement with regard to the issue of which level of government ought to be in charge of which policy competences.

The narrow remark on individuals in terms of their rights and democratic freedoms as the basis for a Union built on “unity in diversity” was not followed up by the first more comprehensive draft report<sup>137</sup> of the committee. It merely re-iterated the legitimacy basis provided by direct elections and underlined that the tasks of the Union should be linked to a perceived increase in the political and economic solidarity between the *peoples* both internally and externally vis-à-vis “the rest of the world.” This report laid the groundwork for a resolution to be presented to the plenary of the EP at a later stage in the process. Thus, it seems clear that more concrete issues pertaining to the status of individuals and citizenship were not seen as relevant at this stage of the process for reforming the institutions and laying the ground for a European Union. At the next juncture of the work

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<sup>135</sup> Minutes, Committee on Institutional Affairs (27/28 January 1982), Historical Archives, European University Institute (in Italian as *Processo Verbale*).

<sup>136</sup> Committee on Institutional Affairs, Documento di lavoro sugli orientamento del Parlamento europeo per la riforma dei Trattati, Historical Archives, European University Institute.

<sup>137</sup> Committee on Institutional Affairs, Draft report on the guidelines for the European Parliament concerning the reform of the Treaties, 3 March 1982, Historical Archives, European University Institute.

on this motion for resolution<sup>138</sup>, such issues were still not at the forefront. In this later draft, there was, however, a stronger emphasis on issues of social justice and rights. The tasks of the Union were to be formulated with solidarity between the peoples, respect for human rights and democratic liberties, progress of social justice and full employment as its backdrop. In the debate on these draft reports and resolutions, the Committee focused mainly on institutional issues and aspects of the preamble and less on formulations of more substantive import in terms of policy and political principles that would underpin a constitutional document for a European Union.<sup>139</sup>

This first phase of the preparatory work culminated with the submission of a report to the EP containing a motion for a resolution on the committee's work.<sup>140</sup> In laying out the explanatory statement of the report,<sup>141</sup> the status of individuals emerged somewhat more clearly than in the previously mentioned working documents. This was not so, however, through a direct use of the concept of citizenship. Again, the status of individuals was treated in indirect terms through the "legitimacy argument" concerning direct elections in the EP. On the basis of this perceived legitimacy, the committee elucidated the basic tenets of its work on treaty reform. It claimed that a *Union* had always been the ultimate aim of European integration. In addition to this it asserted that the current structure was undemocratic due to the sidestepping of the elected body in legislative matters. And lastly, it concluded that what it called a "European approach" to policy-making was needed. Notwithstanding the lack of a pronounced understanding of the location of individuals within such a system and their relational status to its political institutions, this does point to a notion of such a community as built on the commonality of "Europeanness". A polity with clearly independent features could be foreseen which clearly surpassed the intergovernmental model of a community of nation-states.

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<sup>138</sup> Committee on Institutional Affairs, Motion for a resolution on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union, 22 March 1982, Historical Archives, European University Institute.

<sup>139</sup> Minutes (Processo Verbale), Committee on Institutional Affairs, meetings 28-29 April 1982 and 24-26 May 1982, Historical Archives, European University Institute.

<sup>140</sup> European Parliament, Document 1-305/82/A, Report drawn up on behalf of the Committee on Institutional Affairs on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union. Motion for a resolution, 21 June 1982.

<sup>141</sup> European Parliament, Document 1-305/82/B, Report drawn up on behalf of the Committee on Institutional Affairs on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union. Explanatory statement, 21 June 1982.

In the motion for resolution that was presented to the plenary of the EP at this juncture, it was emphasised that the treaties ought to be modified in accordance with the EC's fundamental values which, however, remained unspecified in terms of more substantive content. The emphasis on grounding the tasks of the Union on solidarity between the peoples, social justice and human rights was retained from earlier versions. Further, the motion added a clause on respect for ethnic and cultural diversity, and emphasised human rights, not only in individual, but also in collective terms. In addition, it was underlined that the tasks of the Union should also contribute to peace and security while respecting the rights of the peoples. In terms of the institutional set-up of the purported Union the already existing system of a bureaucratically led executive, a Council of nation-state representation and a directly elected EP was retained. But, through the emphasis that the institutional nexus of the Union was to ensure democratic legitimacy, the motion proposed to shift the legislative balance in favour of the EP which was perceived to be deriving its mandate from "the Citizens of the Union."<sup>142</sup> So, put shortly, individuals were significant in terms of rights and legitimacy. But, in addition, by focusing on rights of collectives and respect for the inherent diversity of a community which consisted of previously demarcated states, the "Europe of nation-states" model somehow retained a position within the debate – in clear contrast to the specifically "European" approach to policy-making in the explanatory statement of the report. Thus, already at this early stage of the preparatory work – before the work of drafting actual treaty provisions – issues of the relationship between levels and the degree of "distinctness" for the European level were already at the core of the process. In the final resolution of the EP<sup>143</sup> this tension within the Spinelli project was not resolved. The final resolution remained more or less as proposed by the Committee, and thus lent support to the further work of drafting a comprehensive treaty text reforming the EC and constitutionalising a Union.

The next phase of the preparatory work set out to prepare a Draft Treaty that could be presented at the plenary of the EP for scrutiny and debate with a view to facilitate the work on a final version of the treaty. In this period, the committee thus debated the very substance of a constitutional treaty, down to each and every article. In these debates, issues of the institutional set-up of a Union, the division of competences between levels of government and more substantive issues under the heading "Policy for society" were

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<sup>142</sup> European Parliament, Document 1-305/82/A, op.cit., p. 9.

clearly at the forefront. There is not much evidence of a prominent place within the committee for deliberations pertaining to the status of individuals within such a system. There were scattered debates about rights,<sup>144</sup> as well as discussion on the link between citizens and the perceived democratisation of European integration through a new treaty.<sup>145</sup>

Significantly, in this period, it was proposed for the first time to include the phrase “citizen of the Union” to Article 5 of the treaty text.<sup>146</sup> In connection to this proposal on the insertion of the concept of citizenship to the work on the treaty, there was also extensive discussion on whether to signify individual rights as fundamental or human rights. Thus, at this juncture of the preparatory work, issues regarding the location of individuals and “the status of their status”, so to say, became more prominent. Clearly, the legal status of introducing the concept of citizenship into the project was not clear at the time. For instance, the concept was merely proposed to be part of an article which stipulated that individuals would have certain (fundamental or human) rights under the treaty. Curiously then, the pivotal issue regarding the status of such a citizenship vis-à-vis national citizenship institutions was not brought into the debate at this time in the preparatory work. The reasons for this are not possible to discern from the sources. One speculation could be that the concept of citizenship was merely introduced to give the treaty text more of a “constitutional aura” than had hitherto been visible in the committee’s deliberations.

The issue regarding the relationship between different levels of institutionalised citizenship was, however, more settled in the work on the next motion for resolution on the Draft Treaty.<sup>147</sup> In this document, it was stated that “[t]he citizens of the Member States are also citizens of the Union.” Thus, citizenship on the European level was considered as an auxiliary status to be attached to the already existing national citizenship institutions of the Member States. This legal aspect of Union citizenship was, however,

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<sup>143</sup> Resolution on the European Parliament’s position on the reform of the treaties and the achievement of European Union, 6 July 1982, OJ C 238, 13 September 1982.

<sup>144</sup> Minutes (Processo Verbale), Committee on Institutional Affairs, 2-4 November 1982, Historical Archives, European University Institute.

<sup>145</sup> Minutes (Processo Verbale), Committee on Institutional Affairs, 1-3 December 1982, Historical Archives, European University Institute.

<sup>146</sup> Minutes (Processo Verbale), Committee on Institutional Affairs, 25-27 January 1983, Historical Archives, European University Institute.

<sup>147</sup> Committee on Institutional Affairs, Motion for a resolution concerning the substance of the draft Treaty establishing the European Union, 26 April 1983, Historical Archives, European University Institute.

not the only designation of what citizenship would mean under Article 5 of the proposed Draft Treaty. The article also stated that these citizens were to “(...) take part in the political life of the Union..., enjoy the rights granted by the Union and be subject to its laws as to their own laws.” Thus, though clearly a complementary concept built on prior national citizenship, it was also vested with certain features speaking to a free-standing quality of citizenship on the European level.

In addition to the acknowledgement of the political character of citizenship also on the European level, the draft motion for resolution furthermore invoked the concept of citizenship by stating that further developments of European integration “will be based on the consent of its citizens and the Member States.” In this sense, then, citizenship was perceived to be a matter not only for individuals as “addressees” of rights, but also as ultimate “authors” of the treaty basis on which such rights become a reality. Civil, economic and social rights were, in fact, highlighted as part of the underlying principles of the Union besides pluralist democracy, the rule of law and freedom. These rights were, however, not linked directly to a citizenship status, but rather to the more broadly defined principles of the Union. Further, still in the “preamble” of the proposed resolution, it was stated that the Union was to “(...) protect the dignity of the individual and respect and grant to any person coming within their jurisdiction the rights and freedoms contained in this Treaty.” In this sense, then, the proposed resolution envisaged rights issues as significant universally, and not only linked to “its own citizens.”

In the explanatory statement<sup>148</sup> and preparatory documents<sup>149</sup> of the final proposed resolution at this juncture in the process, the committee emphasised more than previously the place of individual citizens within the European integration project. Democratic human rights and social justice was re-iterated as the fundamental basis of the Union, and European citizenship was acknowledged as one of the new competences to be taken on by a Union.<sup>150</sup> In the report on “the law of the Union”, it was underlined that the protection of fundamental rights in addition to democracy would provide the necessary

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<sup>148</sup> European Parliament, Document 1-575/83/B, Report drawn up on behalf of the Committee on Institutional Affairs concerning the substance of the preliminary draft Treaty establishing the European Union, Explanatory Statement.

<sup>149</sup> European Parliament, Document 1-575/83/C, Report drawn up on behalf of the Committee on Institutional Affairs concerning the substance of the preliminary draft Treaty establishing the European Union, Preparatory Documents.

<sup>150</sup> European Parliament, Document 1-575/83/B, op.cit., p. 5.

legitimacy for the Union.<sup>151</sup> In the stipulation of which rights were to be considered within the Union's remit, the report went further than at earlier junctures and laid out on the one hand civil and political rights, and on the other hand economic, social and cultural rights. Again, these types of rights were conceptualised in universal terms and not attached explicitly to the existence of a European citizenship status. Not only rights in this "traditional" language were invoked by this part of the preparatory documents. Free movement (laid out as a key civil right) and non-discrimination on the basis of nationality were also upheld as vital for the status of individuals connected to a European polity.<sup>152</sup> These rights, although pivotal to the citizenship discourse of policy-making had hitherto remained largely "silent" within the Spinelli Project. Free movement was further linked to a more substantive notion of social policy as important for European citizens. In doing so, this part of the report also advocated that a right of residence for Union citizens should be a corollary to full Union citizenship and not wholly dependent on work or employment.<sup>153</sup>

In the debates of the EP<sup>154</sup> on the resolution and the content of these reports, the work of the Committee received broad support, amidst some voices of discontent mainly among already Eurosceptic MEPs from Denmark and the UK. Among the supporters, issues of the overall importance, institutional set-up as well as rights figured prominently in the debate. The strong support was further visible in the resolution that was finally passed by the EP.<sup>155</sup> The resolution remained largely as proposed by the committee, which included an identical provision on citizenship. Yet, on other counts, the status of individuals was more pronounced than in the proposed resolution, for instance by highlighting free movement and non-discrimination as additional rights of European citizens.<sup>156</sup>

In the final deliberations on a comprehensive draft for submission to the EP, the Committee did not introduce many new aspects compared to the resolution that was passed in September 1983. The paragraph on citizenship, for instance, remained

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<sup>151</sup> European Parliament, Document 1-575/83/C, p. 5-18.

<sup>152</sup> *Ibid.*, p. 19.

<sup>153</sup> *Ibid.*, pp. 71-72.

<sup>154</sup> Debates of the European Parliament, Report of Proceedings from 12 to 16 September 1983, OJ C 1-303, Annex.

<sup>155</sup> European Parliament, Resolution concerning the substance of the preliminary draft Treaty establishing the European Union, OJ C 277/95, 17 October 1983.

<sup>156</sup> *Ibid.*, para. 12 and 30.

unchanged. In a revised draft<sup>157</sup>, mainly changes in terms of introducing more “lofty” assertions in the preamble were visible, in addition to some changes of the sequencing of the text.

As this section has highlighted, the preparatory work of the committee was one of long gestation. A whole score of issues dominated its deliberations, several of which connected directly or indirectly to the question of the status of individuals within the new treaty framework for a European Union. In the first phase of preparatory work, issues pertaining to the status of individuals and citizenship were largely left out of the debates. To the degree that such issues were raised, it was done indirectly by invoking that the Union should be based on democratic freedoms and individual rights. The individual citizen is clearly at the core of such considerations. This did, however, not engender more specific notions on what would tie the individual more directly to the European institutions. To the extent that a dimension was invoked in the early part of the preparatory work, *rights* were at the core of this first, indirect conception of citizenship within the Spinelli Project.

Yet, as the preparatory work moved on and a more comprehensive draft Treaty developed, issues of citizenship became more pronounced. The inclusion of the phrase “citizen of the union” into the preliminary Treaty text further rendered a more direct conception of citizenship within the project. Initially, the legal status of such a citizenship was not entirely clear. When it finally emerged, the answer to who were to be seen as members and on what basis was found by looking to the Member State level. Thus, the nationality principle which was so pivotal to the citizenship discourse of policy-making and ensuing practices was taken up also by the Spinelli Project. Still, if the *membership* element was “in tune” with previous developments “on the ground”, the dimension of *participation* was clearly emphasised more vigorously within the preparatory work of the committee. European citizens were seen to be primarily political actors within the political system of the Union. Participation was, however, not only linked to “voluntary” participation on the part of the citizens themselves. More prominently, it was brought into play by a link between the citizenly participation in the first direct elections of the EP to what can be called the “legitimacy argument” of the constitution-making project.

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<sup>157</sup> Committee on Institutional Affairs, Progetto di relazione sul progetto preliminare di trattato che istituisce l'unione europea, 8 November 1983, Historical Archives, European University Institute.

Nevertheless, this is interesting as the conceptions of citizenship that had emerged and been consolidated within policy practices clearly crystallised around a more privately oriented notion of the citizen as a market actor than an actor in the public affairs of the community.<sup>158</sup>

In addition to the focus on the participatory element, these European citizens were also to be granted some independent *rights* courtesy of the Union. Further, it was held that they should be subject to its laws in comparable terms to national laws. Through such assertions, a rather independent conception of citizenship appeared where it was *not only* derivative of prior membership on the nation-state level. But, this was as far as rights were deemed of importance for the concept of citizenship as such. As participation was perceived to be so pivotal for a European citizenship, one could have expected a somewhat more direct connection between political rights and the concept of citizenship. As was shown earlier, this was not the case. Rights were mainly invoked when the committee set out the underlying principles of the purported Union, and much less attached to a clear conception of citizenship – of what such rights would mean for the relation between citizen and polity. In fact, to the extent that rights “surpassed” the declaratory level of principles, they were conceptualised in universal terms rather than linked to an exclusive European citizenship status.

Lastly, issues and questions concerning *identity* were completely absent from the preparatory work on a new European Treaty. There was no notion of the citizen community that would be linked to the Union created by such a Treaty. Thus, taking into account the complete absence of discussion on how identity would figure in all this, I argue that what emerges from the preparatory period of the committee’s work is a conception of citizenship where *political participation* was clearly at the core. Indeed, this was the case primarily in relation to issues regarding the legitimacy of the project. However, it is also clear that participation was invoked as citizens were perceived to have an *obligation* to partake in the political life of the purported Union. Membership and rights were also brought into the discourse at this juncture, but clearly remained rather less developed in terms of explicit citizenship than the element of political participation.

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<sup>158</sup> Of course, as was shown in the preceding chapter, at this juncture in European integration, a political aspect of citizenship had emerged also within the policy practices. But, the enduring “legacy” of conceptions of citizenship until the mid-1980s was unequivocally one where a market-oriented citizenship prevailed over other conceptions.

#### 6.2.4. *The Draft Treaty on European Union: Analysing the Text*

On 14 February 1984, the Draft Treaty Establishing the European Union<sup>159</sup> was finally passed by the plenary of the EP. In the preceding section, it was pointed out that issues of identity did not figure at all in the preparatory phase of the Spinelli Project. Individuals and citizenship were not conceptualised against the backdrop of a specific notion of what brought them together in the first place. Curiously, then, the concept of identity was brought forward in the very beginning of the preamble of the finalised Treaty. It was held that it was time for Europe to “(...) assert its identity.” The identity concept was thus more on the level of high politics and the relations to other political entities than on the level of asserting the particularity of the community that the Treaty would constitute. There was, however, one more indirect statement on identity in relation to the location of individuals within the Treaty framework for a Union. In Article 46, it was asserted that further efforts at harmonisation and integration of laws and policies were to be sought in order to “(...) reinforce the feeling of individual citizens that they are citizens of the Union.” Apart from this, the final Treaty did not depart radically from the draft versions that had been discussed and passed by the EP towards the end of the preparatory phase. For instance, pluralist democracy and respect for human rights were retained as basic principles for the Union’s existence and political actions.

In Article 3 of the Treaty, citizenship of the Union was established: “The citizens of the Member States shall *ipso facto* be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a Member State: may not be independently acquired or forfeited.” Thus, in the final Treaty, the additionality of citizenship on the European level was more pronounced than what had been the case in the preparatory work on the Treaty. The article left no doubt as to the status of individual membership in relation to the European polity. It was to be unequivocally linked to prior membership and citizenship in one of the Member States. Notwithstanding this auxiliary status, the article also emphasised the element of citizenly participation in the “political life of the Union.” Thus, it also invoked an image of an independent political basis for European citizenship to be played out on the European level as such and not only on the nation-state level. This was further linked to Article 14 where it was asserted that the primary site for such political participation would be the election of the EP by direct universal suffrage.

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<sup>159</sup> Draft Treaty Establishing the European Union, OJ C 77/33, 14 February 1984.

Notwithstanding the focus on political rights, there was no conception of an independent rights catalogue except for those conferred directly by the Treaty to those holding the status of Union citizenship. In Article 4, the Union rather pledged to maintain and develop rights attained from *other* sources such as the ECHR and the constitutions of the Member States. A “bill of rights” had been under consideration, but the Treaty merely postponed the decision on this for the political institutions of the Union.

In terms of the status of individuals within the system, the so-called objectives of the Union give some further clues. For instance, in Article 9 the Treaty laid down that full employment and a free market were to be key objectives of the Union. Such objectives were further to be attained against the backdrop of a principle of non-discrimination on the basis of nationality. Free movement of persons was also put forward as a key objective, albeit not through a link to the status of individuals within an EU explicitly, but rather to the promotion of security and peace within international relations. In the outline of the more concrete policies of the Union, however, free movement was in Article 47 linked unequivocally to a market notion of community within European integration. As a corollary to this market orientation, in Article 56 to 62 the Treaty further focused on particular policy fields that the Union should engage in. Among these, issues of social security and welfare figured most prominently in addition to questions of consumers, regional policy and environmental policy.

From the outset, it is apparent that the image of the individual citizen was rather important in the final Draft Treaty passed by the EP. How so? For the first time within European integration, one of the major institutions envisaged the integration process which included a citizenship status linked directly to the European level of governance. It is also clear that in the final draft, the citizen was more at the forefront than what was shown to be the case in the initiative and preparatory phases of the Spinelli Project. Yet, Union citizenship was established as a complementary *membership* status, dependent on prior citizenship in one of the Member States. In fact, the Draft Treaty did not even envisage a notion of a “free-standing” citizenship in terms of the formal membership status. It was seen as what was called *ipso facto* evident that citizens of the Member States would also be Union citizens. This status was, then, not “established” in the same manner as, say, in the Maastricht Treaty, but rather seemed to follow “naturally” from the fact the

purported Union would be comprised of already existing states or political communities with settled citizenship institutions.

If membership was conceived as an auxiliary status, the dimension of *participation* was activated in a more pronounced fashion within the Draft Treaty. Through the emphasis on the link between the status of citizen and participation in what was called “the political life” of the Union, the drafters laid a heavy emphasis on a notion of their role as political citizens. This was not only connected to a potential of participation as a corollary to certain rights. The wording “shall take part in the political life of the Union” in a sense stipulated something of a *duty* to participate. This is interesting as duties of citizenship were not articulated to any extent within the policy practices that were analysed in the preceding chapter.

That the core of the conception within the Draft Treaty was participation is further evident when turning to *rights*. As was clear from the empirical appraisal, the notion of rights was linked more to universal human rights than territorially, politically and legally circumscribed citizenship rights. For instance, the treaty promised – on the part of the Union – the protection of “the dignity of individuals” and to grant *every* person within its jurisdiction fundamental rights and freedoms as derived from national constitutional traditions and the ECHR. In fact, the only right attached *exclusively* to Union citizenship was voting rights in elections to the EP. Taking into account the key position granted to political participation both regarding the legitimation of the constitution-making project and in terms of the location of individuals within the ostensible Union at the centre of the project, the core of its conception of citizenship emerges within this framework. Both the rights of and duties to participation served to delimit the community of European citizens from the potential universe of citizens that were rendered significant for the Union’s protection of human rights. Hence, through the notions of political rights and participation, a modest and informal basis for membership and belonging emerged. In addition, then, to nationality which established a rights status that ultimately could be enjoyed to a considerable degree also by non-citizens, a political conception of citizenship came into view, which served as a marker between insiders and outsiders.

The focus on participation did, however, not create an *exclusively* political conception of citizenship. The basic principles of non-discrimination based on nationality and free

movement were retained in the Draft Treaty. It is interesting that these principles were inserted in the section on “the objectives” of the Union. As these objectives were linked mainly to economic development through an internal market, notwithstanding the *political* impetus of citizenship, two enduring principles of European integration in terms of the status of individuals connected directly to the hitherto prevailing vision of market integration in Europe.

To the extent that *identity* as linked to a notion of individuals and their commonality within an entity was taken up by the Draft Treaty, it was mainly within concrete provisions. There was no conceptual import to declaring the need for Europe to assert its own identity as this was devoid of any further clues as to what this identity would consist of. Further, the assertion of respect for the historical identities, dignity and freedom of the peoples of Europe, was clearly steeped in the view of a European status as ultimately based on prior citizenship in one of the Member States. Yet, more concretely, the treaty also stated that the harmonisation of European policies could potentially “reinforce” the *feeling* of Member State citizens as Union citizens. The interface between the belonging felt on the part of each citizen as such and the kind of community that issues of citizenship was linked to on the part of the political entity, then, was concrete measures of policy-making. Thus, in the sense that identity issues were addressed more explicitly, they were linked to law-making and “the production” of common Union policies. This, then, points to a conception of citizenship as rights- and law-based rather than based on some notion of an underlying sense of “pre-political” identity or belonging.

To conclude, then, the analysis of the final phase of the Spinelli Project has illuminated the way in which the status of individuals was linked explicitly to the concept of citizenship within the Draft Treaty on European Union. But, more specifically, what kind of citizenship was conceived through this explicit constitution-making effort within the EP? The analysis has demonstrated that a conception of citizenship built mainly on four aspects emerged within the Draft Treaty. Firstly, it was unequivocally based on prior nationality in one of the Member States, and as such, on a par with a prevailing aspect of the European citizenship discourse ever since its minuscule and nascent character under the founding treaties. Secondly, this “federalist” understanding of citizenship further prioritised rights and political participation as the core, both of the active “citizen role” and the institutional interface between the single citizen and the political institutions on

the European level. In fact, in the outline of the properties regarding the participatory dimension of citizenship, this was not only perceived as a right, but also as a specific duty to take part in the political life of the Union. Thirdly, this was, however, not linked to a notion of a *thick* pre-political identity bringing European citizens together. Identity issues were rather raised as a corollary to measures of harmonisation and law-making. Fourthly, and not surprisingly then, the Draft Treaty did perceive of the market citizen enjoying rights of free movement and non-discrimination as core features of the continued integrative effort to be attained through not only European integration, but also a Union. Hence, the constitution-making project of the EP brought forward a conception of a rights and duty-based *limited political citizenship* within a market entity.

#### 6.2.5. Summarising Remarks

The Spinelli Project started out with a self-understanding as a constitution-making process aimed at profound change in the treaty framework of European integration. Against such a background, a link was immediately made between the participation of citizens in the elections of the EP and the legitimacy of making a new constitution for a European Union. In fact, the analysis has highlighted that the dimension of participation remained at the core of conceptions of citizenship throughout the entire process. This political conception of citizenship was grounded in nationality in terms of membership, a notion that was settled relatively early in the process and remained uncontested. Indeed, the issue of nationality perhaps moderated the federalist views of several MEPs. Some Eurosceptics were negative of bringing the very concept of constitution in play in the European setting, as this was understood unequivocally as a national issue. Even though Euro-federalists and other supporters of European integration pushed the constitutional project forward, in the end, it did not amount to a far-reaching break with the conceptual path of citizenship discourse which had been consolidated in the 1970s.

The political import of citizenship was also visible in the fact that political rights were the only ones linked exclusively to *European* citizenship constituted through the abovementioned notion of membership. Other rights were attached to a notion of *universal* human rights, both in terms of their specific scope and in assertions of the purported Union's responsibility on a more declaratory level. As the concept of individual citizenship became increasingly important as the process moved on, I argue that rights could have been expected to figure more prominently with regard to the status of

individuals. It is furthermore interesting that there was a lack of a pronounced rights catalogue linked to the European level as such, given the prominence of rights in much of the citizenship discourse which emerged within policy practices. As such, this draws attention to a difference between policy-making relevant for the status of individuals and the more concrete and focused orientation of a constitution-making project like the one initiated by the EP. Within the former, conceptions of citizenship emerged mainly as a corollary to the facilitation of an internal market relevant for individuals through rights of free movement, residence and work, while in the latter, the political character of the endeavour was highlighted at the outset, as the aim was to create a new impetus for the integration process, in constitutional as well as institutional terms.

Indeed, rights of free movement and residence did figure within the Spinelli Project, rendering a conception of citizenship that was not only political. Yet, the political core of the conception of citizenship was underlined if we take a closer look at the trajectory regarding the dimension of participation. Through the process, the focus shifted from a perception of participation as a precursor to legitimacy, via a notion of participation as such mediated by specific political rights, to a notion of an individual *duty* to participate in the political life of the polity. Interestingly, this broadened emphasis on participation which ended in the inclusion of duties into the discourse on citizenship, was not emulated by any vigorous assertions of identity related to the citizen partaking in the life of the polity of which he or she is a member.

Through its focus on political participation in this way, both in terms of legitimacy and active citizenship in everyday politics, the Spinelli Project clearly conceived of citizenship as a dynamic and evolving phenomenon embedded in the development of the policies and institutions of the Union itself. In this sense, the constitution-making effort of the EP emulated a core feature of citizenship discourse until then, that is, the unequivocal development of citizenship in conjunction with evolving political and legal practices of European institutions. Lastly, therefore, this highlights that the Spinelli Project, within the frame of understanding itself as a constitution-making endeavour, refrained from constructing both the institutions and individual status of its “end-product” as grounded in a static notion of the composite (political) community of citizens.

Table 6.1. *Conceptions of Citizenship within the Spinelli Project*

	<i>Location within constitution-making process</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
Initiative	Launching of the idea and gathering of support for the project within the EP.	Almost exclusive focus on participation, yet implicitly through the “legitimacy argument” for the whole project.	No clear conception
Preparation	Working groups and plenary meetings in Committee on Institutional Affairs.	Participation highlighted through link to the legitimacy of the project Membership based on nationality. Rights mainly discussed on a “meta-level” as underpinning the values of the Union. Identity not activated	<u>Political</u> citizenship
Draft Treaty	The final text of the project.	Participation at the core, both in terms of rights and duties. “Classic” European rights invoked. Membership as in previous phase. Identity linked to the creation of belonging through policies and law-making.	<u>Political, participatory</u> citizenship

### 6.3. The Maastricht Process: Constituting a European Union and Instituting Citizenship

#### 6.3.1. Introduction

As was highlighted in the analysis of the contribution of the treaty-based provisions on Union citizenship – what I called “the fundamentals of explicit citizenship” in the preceding chapter, the Maastricht Treaty did not amount to any significant break or revolution within the European citizenship discourse. The thrust of the status in Articles 8-8d of the original treaty rather (re-)emphasized and clarified certain issues that had already been visible at earlier juncture in the integration process. If this is so, why then, focus on Maastricht also as a constitution-making instance?

When the preparations for the Maastricht IGC were initiated, its significance within the history of European integration was not evident (Gillingham 2003: 278ff.). After the treaty was finalised and put into force, the view of the process as a “regular”, treaty-amending IGC, made way for interpretations of it as one of the founding moments of the emerging European polity (see e.g. Chrysochoou 2001; Eriksen and Fossum 2000; Wind 2001). The insertion of citizenship into the treaty was intimately linked with this

assessment (see e.g. Closa 1992; Habermas 1992; Kostakopoulou 2001a; La Torre 1998; Meehan 1993; Preuss 1998a; Shaw 1997a). But, what happened between the initiation of work on the IGC and this purported “constitutional moment” of the integration process? What kind of conceptions of citizenship figured within the discussions on a significant deepening of European integration when the stage of a (Political) Union was reached? I argue that these questions are pertinent for our broader understanding of how the status of individuals and the concept of citizenship have figured within the European integration process.

### *6.3.2. Initiative and Preparation: From Amending the SEA to Achieving Political Union*

On the back of the SEA, the EC soon turned to the idea of forging a broader economic and monetary union (see Moravcsik 1998: 379). At the Strasbourg European Council<sup>160</sup> in December 1989, the Heads of Governments emphasised that there had been a long-standing aim within the integration process of achieving a European Union. This was seen as continuation of the SEA and linked mainly to the completion of an internal market, or in the words of the Presidency Conclusions: “an area without internal frontiers.” Yet, not only issues of import for the development of market integration were brought forward at the Strasbourg European Council. It was underlined that one should adopt measures within policies in the economic and social spheres which were thought to enable citizens to recognise their belonging to the European entity. At this juncture, it was thus perceived that something lacked in terms of the link between the European institutions that “produced” integrative policies and the citizens that “enjoyed” the benefits of them.

In the EP, the so-called Martin I Report<sup>161</sup> argued that progress towards a citizen’s Europe had been “(..) extremely limited, notably due to the lack of provisions of the treaties enabling progress to be made in this field.”<sup>162</sup> As a remedy for this perceived problem, the report advocated that the forthcoming IGC ought to go further than issues of EMU, by forging a “European Union of a federal type.” In doing so, it also explicitly underlined the constitution-making import of such an endeavour. And finally, the EP called for a Declaration on fundamental rights to be included into the treaties. Clearly, then, the EP

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<sup>160</sup> European Council, Strasbourg, 8-9 December 1989, Conclusions of the Presidency, SN 441/2/89.

<sup>161</sup> European Parliament, Resolution on the Intergovernmental Conference in the context of Parliament’s strategy for European Union, OJ C 96/115, 17 April 1990.

<sup>162</sup> Ibid, p. 116.

raised the ante on the *political* dimension of a process that initially was to be about the final stage of achieving an internal market within Europe.

The initiative to elevate the political dimension of the IGC was followed up by several other actors within the EC. Some governments provided memoranda<sup>163</sup> on the IGC where they advocated the need for a political union that would complement the EMU. They further brought forward several issues pertaining to the status of individuals such as free movement rights, voting rights on the local level of second countries and accession to the ECHR.

Yet, these measures could be brought forward without raising the issue of citizenship more explicitly. In fact, the concept of citizenship was introduced into the IGC debates by the Spanish Prime Minister Felipe Gonzalez. In a letter<sup>164</sup> to the Irish presidency, Gonzalez argued that a European citizenship ought to be one of the three pillars upon which a European Union were to be built. More concretely, the proposal was to base such a European citizenship on unlimited freedom of movement, establishment and access to employment, as well as voting rights on the local level. As we will see, after this initiative on the part of the Spanish government, issues related to the concept of citizenship became “sticky” within the IGC discussions. It is, for instance, interesting to note that in the Belgian memorandum which preceded the Gonzalez letter, the concept of citizenship was not raised, while in the Greek memorandum which followed in its immediate aftermath, it was argued that the concept of the European citizen should be brought in to the treaty framework. Moreover, this assertion was raised as a corollary to the issue of identity: “(...) to strengthen [the] citizen’s feelings of belonging”<sup>165</sup> to the EC.

When the final decision was made to convene an additional IGC on the issue of political union at the Dublin European Council,<sup>166</sup> the status of individuals and the concept of citizenship were put to the forefront of significant issues for the future of the European integration process. Indeed, the Reflection Group comprised of the EC’s Foreign Ministers argued at this juncture that the IGC should discuss how the purported Union

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<sup>163</sup> See for instance Belgian Memorandum, 19 March 1990 and Greek Memorandum – Contribution to the Discussions on the Progress Towards Political Union, 15 May 1990, both reprinted in F. Laursen and S. Vanhoonacker (eds.) (1992): *The Intergovernmental Conference on Political Union. Institutional Reforms, New Policies and International Identity of the European Community*. Maastricht: EIPA.

<sup>164</sup> See Europe Documents, no. 5252, 11 May 1990, p. 3.

<sup>165</sup> Greek Memorandum, reprinted in Laursen and Vanhoonacker (eds.) (1992), p. 280.

would include and extend the notion of what they called Community citizenship.<sup>167</sup> In doing so, the reflections underlined that such an extended citizenship on the European level first and foremost might carry with it specific human, social and political rights, as well as the right of free movement and residence. The rights focus was also evident at the Dublin European Council, where it was emphasised that a fundamental objective of European integration was “(...) the promotion of the rights, freedoms and welfare of the individual citizen.”<sup>168</sup> This rights focus was further linked directly to a notion of belonging to the Community and the benefits that citizens could derive from this relationship. Thus, the issue of citizenship stuck to the reform agenda of the EC, and gave rise first and foremost to issues of rights and identity at this juncture.

The EP intervened further at this juncture through the Martin II Report.<sup>169</sup> In this report, the EP argued again for changes to the treaty framework through a “constitution.” Within this new constitutional framework for a European Union, citizenship was deemed to be of central importance through voting rights in second countries as well as the adoption of a “bill of rights” for the European entity. It was also argued that the rights focus within European integration ought to be widened considerably, through the institutionalisation of a “social citizenship” based on wider, transnational access to an array of social rights for European citizens. The call for turning the treaty framework into an EU constitution was also raised by the so-called Colombo Report.<sup>170</sup> Here, the issue of democratic legitimacy of the EC was also raised as a pivotal issue. Moreover, the participatory element evident in the Martin reports as a corollary of European voting rights, was raised further in this report through a perception of the requirement for the political participation of citizens for the democratic legitimacy of the system.

In the most concrete intervention in the phase preceding the actual negotiations of the IGC, rights were again the focal point regarding the concept of citizenship. This intervention was provided by the Spanish government which presented a specific

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<sup>166</sup> European Council, Dublin, 25-26 June 1990, Conclusions of the Presidency, SN 60/1/90.

<sup>167</sup> Subjects for reflection submitted to the European Council in Dublin, 25-26 June 1990, Europe Documents, no. 1628, 23 June 1990, p. 2.

<sup>168</sup> European Council, Dublin, 25-26 June 1990, op.cit., p. 6.

<sup>169</sup> European Parliament, Resolution on the Intergovernmental Conference in the context of Parliament’s strategy for European Union, OJ C 231/97, 17 September 1990.

<sup>170</sup> European Parliament, Resolution in the European Parliament’s guidelines for a draft constitution for the European Union, Europe Documents, no. 1639/1640, 19 July 1990.

proposal on European citizenship.<sup>171</sup> The appraisal of citizenship issues in this document started out with the note that integration had until then had limited effect on citizens as such, due to the predominant economic mode of integration. Within the frame of economic integration, it was stated, European citizens were at best “privileged aliens.”<sup>172</sup> Consequently, it was argued that if European integration was to reach the stage of a political union, it required the establishment of a European citizenship for the nationals of the Member States. This citizenship was at the outset perceived to be both internal and external with respect to the boundaries of the European entity. Internally, it was held to yield *special* rights and duties that would be specific to the nature of the Union as a dynamic and evolving process of integration. Externally, it was suggested that such a European citizenship status could possibly be articulated through a right to diplomatic and consular assistance also by the Union via other Member States. More concretely, European citizenship was thought to bring about elements and rights that to a large degree had in fact been raised earlier in the integration process, such as rights of free movement and residence and voting rights.

What was significantly new, then, in the Spanish proposal? Firstly, it perceived of a European citizenship as something more than the mere corollary of prior citizenship on the national level. It was held to be an evolving concept and institution that one could not conceptualise or develop further without taking the development of integration as such into account. In this sense, European citizenship was perceived as special, albeit not necessarily due to the level of institutionalised politics, but to developments of the polity in itself. Secondly, this dynamism was linked to an “(...) ultimate aim of the right to political participation [that] would have to be full electoral participation by the European citizen at his place of residence.”<sup>173</sup> Accordingly, in this conception, European citizenship would render political rights also on the national level, in addition to municipal and European elections. This would be a novel development and a profound change to political space as we know it, as political rights in general elections on the national level have been held – both in theory and practice – to be linked *exclusively* to the possession of national citizenship.<sup>174</sup>

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<sup>171</sup> Permanent Representation of Spain to the European Communities, The Road to European Citizenship, 24 September 1990, reprinted in Laursen and Vanhoonacker (eds.) (1992), p. 328-332.

<sup>172</sup> Ibid, p. 329.

<sup>173</sup> Ibid, p. 331.

<sup>174</sup> For the most comprehensive theoretical and empirical discussion on the multi-level nexus of political citizenship on the local, national and European levels to this date, see Shaw (2007).

In the last phase of preparation before the IGC, what mainly stuck was not this idea of a full European citizenship in political terms, notwithstanding the support of the Commission on the Spanish proposal,<sup>175</sup> but rather the broader understanding of the concept of citizenship as conducive to the achievement of a political union. At the Rome European Council in October 1990,<sup>176</sup> for instance, the focus was turned more exclusively to how the institutionalisation of a European citizenship would provide the necessary democratic legitimacy of the Union. In the Danish memorandum which sought to intervene in the debates at this stage, the concept of citizenship was in fact not raised explicitly. Yet, in terms of political rights, it suggested that one should retain a focus on local and European voting rights. The issue of democratic legitimacy was, however, of greater importance also in the Danish intervention, with a special emphasis on the role of the EP as well as national parliaments. Thus, the focus on political participation and democratic legitimacy on the European level was here more of an intergovernmental matter, in clear contrast to the supranational and individualist approach of the Spanish proposal on citizenship.

As this section has shown, when the political ante of the purported treaty revisions through an IGC was raised, issues regarding the status of individuals entered the frame of discussions. More concretely, the issue was first raised explicitly by the Martin I Report of the EP, which lamented the lack of progress with regard to the link between citizens and European institutions. As the process of treaty revision turned to political issues in an institutional and constitutional sense, then, what kinds of conceptions of citizenship emerged from such discussions?

In the first, preparatory phase, issues related to the dimensions of rights and identity were primarily at the forefront of the discussions. In fact, already under the guise of a singular IGC on EMU, it was held that European integration ought to be geared more towards the facilitation of citizens to recognise their belonging to the EC. Thus, there was a perception of the EC as a type of entity that created a link to individual citizens, albeit mainly through the production of policies and not in terms of a pre-political identity.

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<sup>175</sup> The European Commission, Political Union: Commission opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, Intergovernmental Conferences: Contributions by the Commission, Bull. EC, Supplement 2/91, p. 79.

<sup>176</sup> European Council, Rome, 27-28 October 1990, Conclusions of the Presidency, SN 304/2/90.

Rights issues were mainly linked to “classic” individual rights on the European level, such as rights of free movement and residence, as well as the more recent issue of voting rights on the local and European levels in second countries. In fact, these specific rights would stay more or less at the core of the conception of citizenship for the remainder of the preparatory phase which preceded the IGC on political union. Thus, through the project of “politicising” European integration through a broader supranational treaty framework, a *political* conception of citizenship emerged quite clearly. Yet, this remained *transnational* in terms of privileging European citizens in local and European elections in second countries of residence. The Spanish idea of granting such rights also in general elections on the national level was not taken up by subsequent interventions in the preparatory phase. The vision of a more free-standing, supranational conception of citizenship that the Spaniards proposed – with the support of the Commission – was not followed up in the end. In all, however, this does not diminish the importance of the first Spanish proposal on citizenship, as it raised the consciousness of the status of individuals and the concept of citizenship within the treaty framework of European integration. The EP for its part also pushed the case for a stronger social rights component of European citizenship. The conception that finally emanated from this phase was, however, not centred on such rights to any significant extent. Hence, the potential for a conception taking in more concrete elements in terms of rights failed. Also in this early phase of the Maastricht process, conceptions did not diverge radically from previous conceptions, notwithstanding the stronger focus on a political dimension of citizenship.

With regard to the rights of free movement and residence, it is interesting to note that these rights – and, in the case of free movement, a founding principle of European integration – lacked their typical corollaries visible in the policy practices that were studied in the preceding chapter: market participation and work. They were clearly conceived of as more general rights that were to be accorded to citizens, regardless of their occupational status. A more basic notion of personhood as the basis for enjoying rights thus gained resonance within the early Maastricht debates. In terms of (re-)making the European polity by *constituting* a Union in political terms, then, the status of individuals was conceived as personal in terms of its scope and political in terms of its content.

This was further visible in the link that was subsequently made between the purported institutionalisation of a European citizenship where political rights were at the core and

the notion of the democratic legitimacy of the European institutions. Within this phase the focus was, however, more on the *formal* political rights enshrined in a treaty framework for political integration and the legitimising promise of such rights for the system, than on actual political *participation*, as was very much the case within the Spinelli Project.

Lastly, the dimension of membership was only activated explicitly as the preparatory phase moved on and the issue of citizenship was concretised within the framework of treaty provisions. With the pivotal Spanish proposal, what had previously been generally assumed, it was asserted *directly*, rather than merely assumed as in most previous proposals, that European citizenship should be granted only to the nationals of Member States. Thus, also within the preparatory phase of the Maastricht Process, the nationality principle prevailed as the frame through which members and non-members were to be differentiated. Yet, there were some indications that this membership status could be understood not only in transnational, border-crossing terms – that is, as being activated only upon travelling across the borders between Member States – but also as an *independent* status on the European level, bound to develop in conjunction with the developments of the European polity in itself. To conclude, then, a *rights-based (political) and transnational* conception of citizenship emerged in the preparatory phase of the Maastricht Process. Yet, there were clearly divergent views on what a European citizenship would entail, not the least in terms of its degree of independence or complementarity with regard to national citizenship institutions. In addition, the issue of democratic legitimacy in itself and as a corollary of citizenship gained momentum as the launch of the IGC negotiations came closer.

### *6.3.3. Negotiations of the IGC on Political Union: Democratic Legitimacy and the Concept of Citizenship*

At the Rome European Council in December 1990,<sup>177</sup> the preparatory work was taken into account in the decision-making on the main issues to be dealt with by the IGC on Political Union. The Heads of Governments first noted the consensus among the Member States regarding the examination and inclusion of the concept of citizenship into the main issues to be dealt with by the IGC. More concretely, with regard to the status of

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<sup>177</sup> European Council, Rome, 14-15 December 1990, Conclusions of the Presidency, Bull. EC 12-1990.

individuals, the explicit issues of democratic legitimacy<sup>178</sup> and European citizenship were deemed important.<sup>179</sup> Democratic legitimacy was linked mainly to issues regarding the institutional interface of the EP, the Commission and the Council with regard to appointments of political offices and the broader decision-making process. More acutely, concerning citizenship it was proposed that the IGC ought to consider civil rights (voting rights, political participation, etc.), social and economic rights (general right to freedom of movement and residence, equality of opportunity, etc.), and protection beyond the borders as the most important corollaries of European citizenship. Thus, at the beginning of the negotiations, the European Council re-iterated features that had been raised earlier, but still with a certain emphasis on rights in the outline of the key issues regarding the institutionalisation of citizenship linked to the European level.

The juxtaposition of democratic legitimacy and citizenship was restated in the second Spanish proposal on citizenship<sup>180</sup> which followed the Rome European Council. In fact, they were not only juxtaposed. An evolving, common citizenship was envisaged where the citizen “(...) would be the very source of democratic legitimacy and a fundamental pillar of the Union”<sup>181</sup> and be granted treaty-specific rights and obligations. Further, on a general level, the importance and independent stature of citizenship in relation to the institutions of European integration was underlined in Article 3 of the Spanish proposal. This article stated that the development of the rights and obligations of citizens were to be taken into account by the Union when carrying out its activities. In terms of specifying the particulars of such a citizenship, the nationality principle remained the basic criterion for membership. The rights to be granted to citizens as a corollary of this membership were, however, conceived as additional to the rights that European citizens would enjoy as citizens of a Member State. Rights that had already been prevalent in the debates, such as rights of free movement, residence and consular protection as well as political rights were explicated in the second Spanish proposal. The formal perspective on political rights

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<sup>178</sup> In fact, the issue of democratic legitimacy was brought up already before the decision to convene an IGC, through a joint letter to the Irish Presidency from the German Chancellor Helmut Kohl and the French President Francois Mitterand, reprinted in Laursen and Vanhoonacker (eds.) (1992), p. 276. The issue was, however, not taken up again explicitly and in relation to citizenship until the initiation of the negotiating phase.

<sup>179</sup> In addition, the following themes were drawn up: a common foreign and security policy, extension and strengthening of Community action and effectiveness, and effectiveness and efficiency of the Union.

<sup>180</sup> Permanent Representation of Spain to the European Communities, Intergovernmental Conference on Political Union, European Citizenship, 21 February 1991, reprinted in Laursen and Vanhoonacker (eds.) (1992), p. 325-328.

<sup>181</sup> *Ibid.*, p. 325.

that prevailed in the preparatory phase was thus less conspicuous at this juncture. In fact, the Spanish delegation proposed that political rights would give European citizens “(...) the right to take part in the political life where he lives.”<sup>182</sup> This was related, not only to voting rights, but also to political associations. Thus, a broader and more dynamic view of political rights emerged, which brought with it a notion of participation that was not limited to elections. With regard to electoral rights, the second Spanish proposal did not re-iterate its idea of a potential transnationalisation of political citizenship on *all* levels of government in Member States; it only advocated such rights in local and European elections. Finally, the proposal brought a notion of *duties* into the picture. It did so as a corollary of the right of residence: European citizens were thought to have a corresponding duty to comply with the laws of the country of residence. In addition, it was held that the European status could not be invoked in such a manner as to evade duties within the citizen’s state of origin or any other Member State.

Also the Commission intervened in the negotiating phase with a comprehensive and substantive draft of provisions on European citizenship.<sup>183</sup> In this intervention, the focus was on the specific rights that would follow from a European citizenship status. Taking its cue from previous developments and endorsements regarding European citizenship,<sup>184</sup> the Commission added rights of cultural expression and environmental rights to those rights that had become prevalent through earlier initiatives. It also included the principle of non-discrimination based on nationality as a citizenship right. In addition, it advocated the gradual development of social rights, also partly for third country nationals resident within the boundaries of the European polity. The Commission also linked European citizenship to a notion of the strengthening of democratic legitimacy on the European level, both as a supplement to national citizenship and as a separate European concept.

This more general assertion of the link between citizenship and the basic tenets of modern democratic constitutionalism was also underlined in the Bindi I Report from the EP, where citizenship was deemed an essential aspect of European integration.<sup>185</sup> Besides

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<sup>182</sup> Ibid., p. 327.

<sup>183</sup> European Commission, Contributions by the Commission to the Intergovernmental Conference, Union Citizenship, 30 March 1991, Intergovernmental Conferences: Contributions by the Commission, Bull. EC, Supplement 2/91.

<sup>184</sup> Ibid., Explanatory memorandum, p. 86.

<sup>185</sup> European Parliament, Interim Report of the Committee on Institutional Affairs on Union Citizenship, 23 May 1991, PE 150.034/fin. It should be noted here that the Bindi Report did not emulate the Spinelli Project in terms of the scope and aim of their respective work. The Bindi Report is a typical example of the

its adherence to the typical European rights catalogue, the report in fact argued, that there was a need at the time, to facilitate the effective participation of citizens in decision-making processes – in clear contrast to the market orientation regarding participation in earlier periods of integration. In the sense that issues regarding work or the position of a market citizen were raised, it was accompanied by a plea for making social rights more central for the status of individuals within European integration. In addition to the focus on the political (and social) aspects of rights and participation, the report also brought up the question of identity. It perceived of citizens as belonging to a specific community that nevertheless was comprised of different cultures. The diverse cultural and political entities were then seen as brought together and safeguarded within the institutional framework of European integration, based on common *values* and *interests* shared by European citizens. This multilayered status was further emphasised as “genuine” and a concrete concept in itself. Hence, also in this intervention by the EP, European citizenship was perceived as “something more” than just a complementary and minuscule status based on national citizenship.

On the back of the preparatory work, settled objectives for the IGC and the inter-institutional dialogue, the Luxembourg Presidency outlined a Draft Treaty.<sup>186</sup> The Luxembourg Draft started out with the announcement that the treaty marked a new stage in the creation of a Union with a *federal* goal. It also asserted that a basic aim of the treaty was to reinforce the protection of the rights and interests of citizenship through the insertion of a section on Union citizenship. Yet, the insertion of a separate title did not follow up the quite broad aims asserted earlier in the Maastricht debates. The proposed provisions on citizenship were clearly “watered down” in comparison to many previous interventions and suggestions. The emphasis was laid on the additionality of such as status as well as rights being derived from the treaties, rather than separately connected to a free-standing European citizenship.

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way in which the EP deals with many issues. Before addressing these in the Plenary, they rely on the preparatory work of different committees which propose resolutions or legislative amendments where applicable. Hence, the Bindi Report dealt exclusively with issues of citizenship in the context of the Maastricht IGC, while the Spinelli Project was much broader, both in terms of the issues it took up and the time frame in which it worked.

<sup>186</sup> Draft Treaty on the Union from the Luxembourg Presidency, 18 June 1991, reprinted in Laursen and Vanhoonacker (eds.) (1992), p. 358-406.

Not surprisingly, then, this was lamented by the Bindi II Report from the EP,<sup>187</sup> which more or less re-iterated the main points of its first report. The lack of convergence with the views of the IGC negotiators did not, however, deter the EP from advocating even more measures that would render European citizenship a more independent status than the merely dependent one that emerged from the Luxembourg Draft Treaty. In fact, the report concretely proposed a “Union membership policy”<sup>188</sup> that would render the nationality principle less pervasive in the determination of “who the Europeans are” in terms of the access to membership and rights related to the European polity. Union competence in this field was then perceived to be an encroachment on the sovereignty of Member States in decisions regarding their “body politic”, as well as the creation of an independent citizenship status on the European level. Not only that, it was advocated that the Union ought to have competence in decisions on a notion of persons resident within its boundaries, including non-citizens and their relation to European institutions. These issues were clearly linked to the further assertion that an essential element of citizenship was the creation of a genuine political relationship with the relevant institutions of an EU.

In the final Draft Treaty<sup>189</sup> that was presented for the Maastricht Summit (with only minor changes with regard to the Luxembourg Draft), however, these ideas with regard to the institutionalisation of a citizenship status were not taken up. On a broad treaty level, this was, for instance, visible in the avoidance of the assertion of the European Union as a stage in the creation of a federal Europe was, in favour of the less demanding (at least in institutional terms) “ever closer union among the peoples of Europe.”<sup>190</sup> With regard to the concrete provisions on citizenship, the Draft Treaty and the finalised Maastricht Treaty<sup>191</sup> were identical and leaned on the draft provisions that had emerged through the Maastricht debates. This meant the institutionalisation of a citizenship status that was wholly dependent on national citizenship in terms of membership, with no recourse for the EU level in terms of decision power with regard to matters of inclusion and exclusion of citizens. The nationality principle thus prevailed, notwithstanding the efforts, especially of the EP, but also some Member States in the construction of a more *independent* European citizenship. Clearly, the impetus of moving from a predominantly transnational

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<sup>187</sup> European Parliament, Report of the Committee on Institutional Affairs on Union Citizenship, 6 November 1991, PE 153.099/fin.

<sup>188</sup> *Ibid.*, p. 5.

<sup>189</sup> Treaty on Political Union, Final Draft by the Dutch Presidency as modified by the Maastricht Summit, 13 December 1991, Europe Documents, no. 1750/1751.

<sup>190</sup> *Ibid.*, Article A, p. 3.

citizenship to a more free-standing European status would have been an important element in a postnational transformation of modern citizenship.

That such efforts did not win support in the end is also visible with regard to political rights. These were linked to a transnational status in local and European elections within second countries, but were ruled out with regard to general elections within the nation-states. Further rights that were instituted were rights of free movement and residence, consular protection in third countries, petitions to the EP, and finally the right of application to a European Ombudsman. Several of these rights had recurring resonance throughout the Maastricht debates. Yet, most importantly for the status of individuals, I would argue, the rights of free movement and residence were not “generalised.” They were, within the final treaty provisions, not deemed as linked to a notion of persons as such. Rather, they were made subject to relevant limitations and conditions stipulated by other provisions of the Treaty. Thus, these rights could clearly still be linked to the corollary of work or market participation, notwithstanding the fact that these were not directly imposed through the provisions on Union citizenship.

What this discussion thus highlights, I argue, is that in the end, a modest conception of citizenship prevailed through the Maastricht debates, in clear opposition to some of the more radical approaches to what kind of citizenship could be foreseen in relation to a European Union. But, in more concrete terms, what were the specific traits of such a conception? At the outset of the negotiating phase, the juxtaposition of citizenship with the issue of the democratic legitimacy was clearly at the forefront. More specifically, this was linked directly to rights in terms of the different dimensions of citizenship, in addition to a broader notion of citizenship as such having an import for legitimisation of the polity, without reference to specific dimensions. With regard to the emphasis on rights as conducive to legitimacy, the emphasis was on political rights. Thus, rights linked to the “public” character of citizenship in terms of the space for action created by a certain right, was seen as an integral and unequivocal element of the Union in the making.

While the dimension of rights was very much at the core of all interventions and discussions of the Maastricht debates, membership was introduced rather late. In most documents, it was merely stated that European citizenship would be a status granted to

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<sup>191</sup> Treaty on European Union, OJ C 191, 29 July 1992.

the nationals of the Member States. This seems to have been taken for granted, as there was little or no discussion on the import of this complementarity of the status. Yet, this was not quite as clear cut as within policy practices or the Spinelli Project. The suggestion of the EP on Union competence in membership decisions would have rendered the EU an independent role in the differentiation between its own members and non-members. Again, a proposal that would have caused a rupture in European citizenship discourse did not win through in the end. Nationality remained the core criterion for membership. Yet, notwithstanding the lack of support for a strong supranational component in the decision on “who the Europeans are”, the very fact that it was brought into the debates shows that the concept of citizenship was related to one of the hallmarks of constitution-making: the demarcation of the citizenry belonging to the polity in question (see e.g. Grimm 1995: 286). Prior to this, such awareness with regard to the relation between a European polity and “its” citizens had not been visible.

In terms of rights as such – that is, not linked directly to the notion of democratic legitimacy – there was for the most part a clear consensus within the latter phase of the Maastricht process. The catalogue of rights that was finally enshrined in the Maastricht Treaty built on rights that had been a part of the whole process since the outset, in addition to some new rights. Here, it is important to note that the case made by the EP and the Commission for a more explicit place for *social* rights in the citizenship provisions of the Treaty did not succeed. Again, then, it seems clear that already existing elements were difficult to bypass in order to forge conceptions of citizenship that would include, not only a stronger supranational element in terms of membership, but also a wider catalogue of *concrete* citizenship rights.

Instead, the rights that followed from Union citizenship centred on classic European rights such as free movement and residence. Through the addition of the above mentioned political rights, as well as civil rights such as the right of petition the EP or a European Ombudsman, and finally to consular protection in third countries, the rights template was clearly broadened. Some of these rights had been on the agenda already in the 1970s through the discussion on “special rights”; in the Maastricht Treaty they were finally directly linked to an individual status on the European level. Yet, some of the rights, such as rights of free movement and residence, as well as voting rights in second countries, were clearly linked to transnationalism – passing borders – and as such

reinforced the “privileged quasi-citizenship” that came out of policy practices in the 1970s. Despite some proposals, this transnationalism was not widened to encompass *concrete* social rights linked to the concept of citizenship. Hence, the status of individuals was, in the end, very much linked to a thin conception of citizenship based on the core European rights of free movement and residence, notwithstanding the addition of some political and civil rights.

The participatory dimension of citizenship that emerged within the negotiations of IGC, was clearly linked to the notion of political rights that had been part of the process as a corollary to the question of democratic legitimacy. In fact, participation as a *duty* and not only a right, was raised as important for European citizenship in this phase. This was possibly a reflection of the heightened momentum with regard to the concept of citizenship that appeared after it was agreed to elevate the re-making of a Union to the decision-making level of European integration. This specific focus on participation in a sense underlined that the relationship between the European institutions and citizens was not only top-down. As was shown in the preceding chapter, participation was perceived almost exclusively as an issue of facilitation on the part of the institutions in order to bolster workers’ free movement and occupation within the European market. The specification of a duty to participate *politically*, on the other hand, showed that there was also a perception of the opposite relationship in the debates: that of citizens as responsible for the political life of the polity of which they are members. But, the *legal* effect of such a general duty would not have been far-reaching, as it did not stipulate any concrete duties to, say, participate in elections, as is the case in some European countries. In the final instance, such a duty was not written into the final treaty. Thus, notwithstanding the efforts to broaden the conception of European citizenship, it remained centred on rights. To the extent that participation was part of the provisions on Union citizenship, then, it was indirectly as an effect of other elements of citizenship.

As the notion of duty and its relation to the political life of the community was raised in the process, one could perhaps expect a heightened attention to identity issues when as well the constitution of a Union and an explicit conception of citizenship was at stake. But, identity was, in fact, not raised to any significant extent as an *explicit* issue of import for European citizenship within the negotiations on the forging of a European Union. To the extent that issues of identity entered the Maastricht process at this juncture it was

through the assertion of the Union as an entity based on a diversity of already established political communities. The EU as an entity based on “unity in diversity” and an “ever increasing union among peoples” was not constituted through, as it were, a pre-political identity based on common ethnicity, culture, or language. The specific community that citizenship was linked to was rather based on certain common values and interests that were perceived to cross-cut the typical “signifiers” of national identities and citizenship institutions. In the sense that identity figured as a part of the Maastricht Process and the discussions on Union citizenship, then, it was as an effect of the immediate historical backdrop of the IGC on Political Union and the perception of citizenship as linked to the welfare and interests of the individual citizen as well as being a means for the enhancement of the democratic legitimacy of the European integration process. Identity issues, therefore, were rather a precursor to, than an important element of, the conception of citizenship that emerged through the negotiations of the IGC and ended in the institutionalisation of Union citizenship in the Maastricht Treaty.

This section has highlighted that the *final* phase of debates on a Union produced a conception of citizenship based on *rights* at its core, wholly dependent on the nationality principle in terms of *membership* and with an emphasis on *participation*, albeit as an effect of *transnational* rights of free movement and voting. To conclude, in the negotiations and final treaty of the Maastricht debates, a conception of citizenship as partially *political* and *transnational* prevailed. In the end, then, the process of negotiations regarding a Union in general and a citizenship more specifically adhered to a “minimalist” solution where the focal point of citizenship was elements already established within political and legal practices. The new developments in this process can be found in the fact that a concept as citizenship, which had until then been so heavily imbued with the language of the nation-state was in fact institutionalised in an entity which lacked the precursor of a well-defined *demos*. Paradoxically, then, this highlights the constitution-making import of the process which led to a Union. Through the focus on pivotal issues regarding institutional competences, levels of decision-making power, policy domains, and the status of individuals, the European integration process engaged with questions of the utmost importance for the life of a political community. Yet, by refraining from the emulation of the nation-state template through, say, an “official” notion of the identity which underpins the citizenship that draws individuals into the community, the Union debated and finally created a peculiar and dynamic form of citizenship dependent, more on the

potential transnational acts of citizens, than their belonging to and identification with a specified community.

#### 6.3.4. *Summarising Remarks*

In a process that originated from an IGC on economic and monetary issues, but which took on the explicit issue of an additional Political Union, European citizenship gradually emerged as one of the pillars upon which such a Union was constructed. Initially, issues of citizenship were raised as a corollary to a perception of the lack of belonging among Member State citizens in relation to the policies and institutions of European integration. As the concept of citizenship was brought up explicitly in the debates, other dimensions of citizenship were elevated as relevant for the status of individuals as well as the relationship between them and the European polity “in the making.”

More specifically, the conceptions of citizenship that emerged throughout debates restated classic European rights, such as free movement and residence. These remained at the core of the institutionalised status of the Maastricht Treaty, and as such, clearly contributed to the consolidation of citizenship elements that had been evident since the founding treaties. In addition, however, to this *internal* aspect of European citizenship in terms of the territorial scope of rights, during the process, an *external* aspect also emerged. By granting European citizens the right to consular protection by *any* Member State in third countries, an individual status was conceived, which had an import, not only for border-crossing in order to participate in the internal market, but also for the well-being of citizens in more general terms.

This external aspect of European citizenship was emulated by a focus on rights as based on personhood, rather than a more restricted notion of potential participation in the market through work and establishment in second countries. This perception of free movement and residence as rights linked to a *personal* status was, however, more pronounced early on in the process. As the political momentum was raised in the negotiations of the IGC, personhood became less clear as a basis for the extension of rights, that is, the notion of *who* are given *which* rights. Yet, in the final treaty, this was not unequivocally linked to, say, market participation as had previously been the case within policy practices. Rather, through the addition of the clause that the rights of citizens were not finally settled through those listed in the citizenship provisions of the treaty – they

were also subject to policy amendments – it was made clear that the basis for European citizenship could not be taken for granted. Hence, the dynamic character of European citizenship was retained also under the remit of explicit citizenship, leaving open a space for potential changes in the policies of the EU.

If the basis of rights was somewhat ambiguous, membership, notwithstanding the efforts by the EP and the first Spanish proposal on citizenship to forge a Union competence on decisions regarding members and non-members, was based on nationality in one of the Member States. The Maastricht Process thus, again, consolidated a principle that had been prevalent throughout the integration process. In this sense, then, the effort of establishing a new treaty framework for a Political Union did not create a radically new approach to the status of individuals within such a political construction. This is further visible with regard to democratic legitimacy which, as in the Spinelli Project, was raised as an issue that the European institutions had to engage with. Except for some scattered remarks on participation as such, as well as a focus on political rights, this concern did not elevate participation as an important element in the relationship between individual citizens and the EU. Rights, therefore, clearly remained at the core of the conceptions of citizenship throughout the process. By refraining from following up proposals made especially by the EP, and Member States in the preparatory phase, as well as the Commission, the conception that prevailed in the Maastricht Process did not depart fundamentally from earlier conceptions of European citizenship. Ideas for a citizenship increasingly detached from the national level through strengthening its supranational and postnational traits in terms of an independent Union membership policy, residence rights and political rights on *all* levels of government in second countries, did not succeed when ideas were concretised in terms of Treaty provisions.

More concretely, the Maastricht Process brought about a conception that on the whole was *transnational* and “*policy-dependent*”. The latter phrase concerns the propensity to link issues regarding the status of individuals to ongoing policy developments – the “unfinished business” of European integration – and not only to provisions enshrined in a treaty. In terms of the former, the transnational character of European citizenship was visible in the renewed focus on rights that are activated upon the crossing of borders, that is, which do not have an import in a European citizen’s “country of origin.”

Seen against this transnational core of the Maastricht conception of citizenship, it is perhaps not so surprising that issues of identity only figured in the process by way of some brief comments on the need to strengthen the feeling of belonging on the part of the citizens. Identity as a more profound underpinning of the community to which citizenship is attached was not activated within the Maastricht Process. It created a citizenship “beyond the nation-state” that did not rely on a notion of identity as a conceptual pre-requisite.

Contrary to the argument that a transnational European citizenship emanated from the Maastricht Process, it could be argued that it created an equally important *European* status *internally* through specific rights that highlight the direct relationship between the EU and its citizens, such as petition rights, the right of complaint to an Ombudsman and voting rights in elections to the EP. Indeed, this should not be overlooked. Still, I will stick with the initial highlighting of the transnational character of European citizenship, rather than its “Europeanness.” Issues of citizenship were deeply ingrained with a transnational element throughout the Maastricht Process. The Maastricht debates were largely silent on the abovementioned internal aspects of citizenship, with the exception for political rights. Indeed, the transnational element would have been even stronger if the Spanish proposal of granting political rights also on the national level of second countries had been realised. Yet, the transnational right catalogue was clearly broadened within the Maastricht Process, in terms of a clearer focus on personhood, as well as the addition of political and civil rights to market-oriented rights in the direct provisions on citizenship. Here, we also find the constitution-making import of the process that culminated in a Treaty-based Union: after an inter-institutional dialogue that brought in different viewpoints and proposals, the Member States decided, finally, to insert a substantive conception of citizenship into the political, legal and institutional framework of European integration. Indeed, this conception of citizenship did not differ substantially from those that had, until then, emerged within policy practices or the Spinelli Project. Rather, it built on these conceptions, while adding some novel aspects that expanded the status of individuals within European integration. The Maastricht Process did so, both in terms of direct rights provisions of the treaty and by raising the stature of the concept of citizenship *in itself* as a part of the constantly evolving processes of European integration.

Table 6.2. *Conceptions of Citizenship within the Maastricht Process*

	<i>Location within constitution-making process</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
Initiative and preparation	Raising the momentum for the creation of a Political Union and preparations for the IGC.	Political rights were raised. “European” rights (free movement and residence in a general sense) were also perceived as pivotal for a Union. Identity important, yet not in itself, but seen as a potential “product” of citizenship issues. Membership based on nationality, yet also seen as independently “European”.	<u>Rights-based, transnational</u> citizenship
Negotiations of the IGC	Drafting and debating Treaty texts.	Participation important as an effect of rights, and not a duty. Membership based on nationality. Political rights important in terms of legitimacy Classic “European” rights important, in addition to “new” civil rights. Identity not central, discussed in relation to “unity in diversity”.	<u>Thin, political and transnational</u> citizenship

## 6.4. The Convention on the Future of Europe: A Deliberate “Constitutional Moment”

### 6.4.1. Introduction

In constitution-making terms, the evolving process of European integration reached its peak with the Convention on the Future of Europe (2002-2003) (hereafter the Convention). The work of the Convention was initiated through the Laeken Declaration<sup>192</sup> in 2001 and ended in the final Constitutional Treaty passed by the Heads of Governments in Rome, December 2004. In the Laeken Declaration, one took the cue from the call by the then German Foreign Minister Joschka Fischer for a discussion on a federalisation of Europe, and linked this to broader questions of democratic legitimacy and institutional effectiveness against the backdrop of the eastern enlargement of the EU. Within the interests of this thesis, it is the *deliberate* constitution-making debates of the Convention that are of peculiar interest. In a *wider* debate on the stature and future of

<sup>192</sup> European Council, Laeken Declaration on the Future of the European Union, SN 273/01, Laeken, 15 December, 2001.

European integration, the recent stalemate on the Constitutional Treaty following the rejections of the Dutch and French electorates, and the debate on ratification of the scaled down “mini-Treaty” can of course not be bracketed out. Yet, for the purposes of this thesis, putting the Convention under scrutiny with regard to the status of individuals will provide further evidence of the place of citizenship within the European architecture. This is not the least the case given that the Convention was a mixed body which included representatives of Member State governments, national and European parliamentarians, members of the Commission, as well as representatives of the then candidate countries for accession to the EU. In analysing how this diverse body conceived of issues regarding citizenship, the section will take its cue from the Praesidium’s<sup>193</sup> organisation of its work in three distinct phases: a “listening” phase, a “deliberating” phase and a “drafting” phase.<sup>194</sup>

#### *6.4.2. The “Listening” Phase: Preparatory Discussions and a Preliminary Focus on Rights*

The Convention embarked on its work on the back of a rather open mandate, linked to a list of vague questions, but with the explicit opportunity to establish a draft Treaty (see Magnette 2004: 213). The concept of citizenship was raised already at the very initiation of the Convention, albeit not directly in terms of a concrete definition of what such a concept would mean within a constitutionalised European polity. Rather, it was linked to the perceived need to bring “the EU closer to its citizens.”<sup>195</sup>

Not long after, however, the status of individuals was somewhat more pronounced within different Plenary Sessions of the Convention. For instance, free movement was lauded as one of the major achievements of European integration.<sup>196</sup> Thus, also the Convention upheld free movement within the single market as one of the core principles that create a link between individual citizens and European institutions. Further, it was held among the members that there was a lack of accountability within the EU system, notwithstanding the legitimacy inherent in direct elections to the EP. More concretely related to this broad issue of democratic legitimacy, many members of the Convention asserted that there was a need for making “(...) Europe’s citizens... directly able to choose and remove those at

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<sup>193</sup> The Praesidium directed the work of the Convention and was led by Valéry Giscard d’Estaing.

<sup>194</sup> CONV 4/02, Speeches delivered at the inaugural meeting of the Convention on 28 February 2002, Brussels, 5 March.

<sup>195</sup> CONV 7/02, Note on the inaugural meeting – 28 February 2002, Brussels, 11 March, p. 3.

<sup>196</sup> CONV 14/02, Note on the plenary meeting – Brussels, 21 and 22 March 2002, Brussels, 25 March, p. 2.

the helm of its affairs.”<sup>197</sup> This concrete participatory dimension of citizenship was supplemented by early consensus on core values of the EU such as *inter alia*, democracy, the rule of law, and human rights.<sup>198</sup> Indeed, the import of human rights for the status of individuals on the one hand, and the very existence of European institutions on the other hand was underlined at the subsequent Plenary Session where many members advocated accession to the ECHR on the part of the EU as such, and not only indirectly through the Member State level.<sup>199</sup>

The range of citizenship issues was somewhat broadened in the contributions of civil society organisations to the Convention’s proceedings.<sup>200</sup> In addition to the obvious concern for a more elevated role for civil society organisations in the workings of the EU, the diverse contributions revolved around certain broad themes. For instance, there was a widespread plea for the Union to operate more closely to the “recipients” of its policy-making. In addition to this “instrumentalist”<sup>201</sup> focus on citizens related to the EU’s operation and functioning, rights and participation were raised as pivotal issues. Regarding rights, this was visible in the appeal for respect for fundamental rights within the EU through the incorporation of the Charter, as well as the proposed extension of the rights catalogue through provisions on, for instance, gender equality and children’s rights. In addition, there were assertions of the need to provide for a more clear recognition of social rights. In the case of participation, there were widespread calls for the promotion of a greater number of citizens to partake in the political life of the EU through for instance a single referendum at the EU level on the issue of the Constitutional Treaty.

At a subsequent Plenary Session,<sup>202</sup> the Convention members debated these issues with representatives of organisations and the European Ombudsman. Several of the issues found widespread support among the members, such as a stronger focus on social rights and participatory democracy. Within this debate, the concept of European citizenship was also brought directly in<sup>203</sup>, but without a specific definition of its content and relations between dimensions.

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<sup>197</sup> Ibid., p. 2.

<sup>198</sup> Ibid., p. 3.

<sup>199</sup> CONV 40/02, Note on the plenary meeting – Brussels, 15 and 16 April 2002, Brussels, 25 April, p. 3.

<sup>200</sup> CONV 112/02, Digest of contributions to the Forum, Brussels, 17 June.

<sup>201</sup> For an original and more institutionally oriented interpretation of such a framing of citizenship issues within European integration, see Maas (2007).

<sup>202</sup> CONV 167/02, Note on the plenary meeting – Brussels, 24 and 25 June 2002, Brussels, 4 July.

<sup>203</sup> Ibid., pp. 4, 8.

In analytical terms, during the so-called “listening phase”, the dimension of rights was clearly at the center of attention with regard to how the work on a Constitution for Europe would relate to the status of individuals. On a general level, the accession to the ECHR and the insertion of the Charter into the Constitutional Treaty was supported. More concretely, the principle and rights of free movement was highlighted at this early juncture of the Convention’s work. In addition, the import of rights was clearly underlined throughout this early phase, by calls for extending the rights catalogue of to include social, children’s and gender rights. Yet, this broad focus on rights was not followed up by a further concentration on political rights. Rather, the issue of such rights was raised implicitly as a corollary to the advocacy of a greater participatory role for citizens in the policy-making process of the EU, as well as in the designation of its political leadership. The emphasis on rights was further observable by the *absence* of explicit discussion on the dimensions of membership and identity. To the extent that such issues were raised, it was only as a corollary to an often stated declaratory aim of the EU, that of bringing it closer to its citizens. This notion of belonging between citizens and European institutions was, however, not couched in an explicit identity language, but was rather posed as a precursor to the very task that the Convention had been granted by the European Council. In all, then, the preliminary conception that emerged within the first, very much preparatory phase of the Convention was a rights-based one, albeit geared more towards declarations of intent, than the creation of a specific conception of citizenship for a constitutionalised EU.

#### 6.4.3. *The “Deliberating” Phase: Rights, Identity and Values*

The second phase of the Convention commenced with discussions on the work of several Working Groups that had dealt with specific areas of importance<sup>204</sup> for the re-drafting of the Treaty framework of European integration. For the most part, these Working Groups did not deal explicitly with issues linked to the concept of citizenship. They were mostly concerned with minute legal details or institutional issues. To the small extent that issues of citizenship were raised, what emerged was mainly a further focus on rights. For

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<sup>204</sup> There were working groups within the following areas: subsidiarity, the Charter of Fundamental Rights/European Charter of Human Rights, legal personality, national parliaments, complementary competencies, economic governance, external action, defence, simplification, freedom, security and justice, and social Europe.

instance, fundamental rights were perceived to be a core “building block” of European integration that ought to be central to the EU’s constitutional framework.<sup>205</sup>

As a precursor to the concretisation of the Convention’s work that was to follow the “listening phase”, the Praesidium presented a preliminary draft Constitutional Treaty.<sup>206</sup> This text was to serve as a possible articulation of a Treaty and thus focused on its most important components, such as definition of general objectives for the Union, specific policies and its institutional setup. Through this distilled version of issues that had also been addressed in the previous phase of its work, the concept of citizenship became somewhat more pronounced. The broader setting within which issues of citizenship also figured, was the recognition of the inherent diversity of the Union and the national identities of its composite units, the Member States.<sup>207</sup> The commonality that could emerge from this notion of diversity was *values*, such as for instance, fundamental rights, democracy and the rule of law. Indeed, the protection of common values was deemed to be one of the general objectives of the EU.<sup>208</sup> In addition, and more geared towards the status of individuals, Union citizenship<sup>209</sup> was also included in the draft Treaty. The proposed provisions were clearly based on previous conceptions of citizenship, with a focus on its dependence on nationality, as well as typical European rights. Yet, it also perceived of a European citizenship status as a *dual citizenship*, with national and European citizenship equally important, and thus a status which would render every citizen “(...) free to use either, as he or she chooses, with the rights and duties attaching to each.”<sup>210</sup>

Not only such radical proposals pertaining to membership were focused, however, the draft also addressed the so-called “democratic life of the Union” by arguing for a principle of “participatory democracy” as pivotal for the EU.<sup>211</sup> The notion of participation which was brought forward focused on the need for openness and access of citizens and their eventual organisations to the decision-making process. Lastly, there was a call for the enactment of a uniform procedure in elections to the EP, which would bring out the Europeanness of political rights more clearly.

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<sup>205</sup> CONV 354/02, Final report of Working Group II – “Incorporation of the Charter/accession to the ECHR”, Brussels, 22 October, p. 2.

<sup>206</sup> CONV 369/02, Preliminary draft Constitutional Treaty, Brussels, 28 October 2002.

<sup>207</sup> Ibid, p. 8.

<sup>208</sup> Ibid, p. 8.

<sup>209</sup> Ibid., pp. 9-10.

<sup>210</sup> Ibid., p. 9.

<sup>211</sup> Ibid., p. 15.

In the ensuing debates of the Plenary sessions following these first interventions of the “deliberating phase”, issues of citizenship were brought in. The assertion of individual rights as crucial for a constitutionalised European polity received widespread support among the Convention members.<sup>212</sup> In fact, it was held in the debates that the incorporation of the Charter “(...) would follow the logic of the evolution from an economic Community to a political Union of common values.”<sup>213</sup> Hence, in the view of the majority of Convention members, rights were seen as an essential element in the very value basis of the EU.

Further, and in a broader sense, there was a widespread perception that the preliminary draft Treaty was conducive to giving the citizens sense of belonging to a political union, and not only a single market.<sup>214</sup> In fact, at this juncture it was also argued that there ought to be a direct link between the concept of citizenship and values, whereby it would be stated that, not only the Member States, but also European citizens share the same values. Related to this, some members wanted to include a statement in the preamble which defined the EU not only as a Union of states, but also of citizens.<sup>215</sup> In all, then, within the debate on the preliminary draft Treaty, issues of citizenship were raised as increasingly important for the EU, with a special emphasis on rights and identity.

The attention to elements of individual membership on the European level that were advanced in the preliminary draft Treaty, were followed up by some modest suggestions to pursue an explicit legal basis to facilitate a uniform and settled status for long-term residents holding third-country citizenship.<sup>216</sup> As has been pointed out at several places in this thesis, the designation of individual membership within a polity is not only visible in the definition of its insiders. Equally important is the scope of the status rendered to non-citizens resident within its territory (Walzer 1983: 61ff.). Thus, with discussion on such issues, the Convention seemingly sought to determine the *boundaries* of the EU as a community of equal, rights-holding citizens.

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<sup>212</sup> CONV 378/02, Summary report of the plenary session – Brussels, 28 and 29 October, Brussels, 31 October, p. 9.

<sup>213</sup> Ibid., p. 9.

<sup>214</sup> Ibid., p. 13.

<sup>215</sup> CONV 400/02, Summary report of the plenary session – Brussels, 7 and 8 November, Brussels, 13 November, p. 8.

<sup>216</sup> CONV 449/02, Summary report of the plenary session – Brussels, 5 and 6 December 2002, Brussels, 13 December.

At this stage of the Convention, the issue of democratic legitimacy was re-iterated as one of the core issues to be addressed through its work.<sup>217</sup> As a corollary to this, the debates towards the end of the “deliberating phase” focused among other issues on the equality of citizens and the need to make European institutions more directly relevant to Europe’s citizens.<sup>218</sup> Further, some members advocated that one should broaden the nexus of participation and political rights by granting citizens the right to elect the President of the European Council.<sup>219</sup>

Not only political rights were raised at this juncture, however. After the strong advocacy of several Convention members<sup>220</sup>, a Working Group on Social Europe was set up as this had not been in the initial plan of the Praesidium. In its report, social justice, solidarity and equality was proposed as additional values that ought to be included in the statement on the core values of the EU.<sup>221</sup> In addition to these declaratory measures, there was also a focus on more concrete policy objectives in this report. These ranged from for instance full employment and social justice, to a broad notion of non-discrimination, children’s rights and health rights.<sup>222</sup> Besides the latter two points, this did not, however, create a more focused approach to social rights as a central element to European citizenship. The most specific suggestion was to extend the scope of action in Article 42 TEC to all citizens and residents, which would mean that social rights linked to free movement would not be tied exclusively to individual membership through nationality, but rather to the status of worker as such. In the Plenary debates on Social Europe, both the widening of values and the more concrete policy objectives were supported by many of the members.<sup>223</sup>

Within the “deliberating” phase, the mandate of the Convention was somewhat broadened to encompass questions which related to the structure and content for constituting a new Treaty framework for the EU. In this period, the constitutional

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<sup>217</sup> CONV 477/03, The Functioning of the Institutions, Brussels, 10 January, p. 2.

<sup>218</sup> CONV 508/03, Summary report on the plenary session – Brussels, 20 and 21 January 2003, Brussels, 27 January, p. 2.

<sup>219</sup> *Ibid.*, p. 6.

<sup>220</sup> CONV 331/02, Summary report on the plenary session – Brussels, 3 and 4 October 2002, Brussels, 11 October, p. 5.

<sup>221</sup> CONV 516/1/03/ REV 1, Final Report of Working Group XI on Social Europe, Brussels, 4 February, p. 2.

<sup>222</sup> *Ibid.*, pp. 11-12.

<sup>223</sup> CONV 548/03, Summary report of the plenary session – Brussels, 6 and 7 February 2003, Brussels, 13 October.

mandate that was given by the European Council through the Laeken Declaration was clearly taken up by the Convention. This clearly had some ramifications for the location of the concept of citizenship within its deliberations. Not only did citizenship become an essential element of the Convention's work, there were also some important reform proposals – seen against the conceptual path highlighted in the preceding chapter – and alternative conceptions at stake in this specific phase. In addition to these aspects of the phase, certain issues were consolidated and strengthened with regard to citizenship, while at the same time being linked to new aspects of how to conceptualise a constitutionalised EU in polity terms.

More concretely, rights were clearly consolidated as the core dimension of European citizenship as it was framed and conceptualised within the Convention. Yet, this consolidation did not mean that previous rights issues were merely re-iterated. In its focus on rights, the Convention broadened the scope of rights to include not only political and social rights in generic terms, but also more specific, or *special* rights linked to a notion of the EU as having broad ramifications for individuals, which clearly surpassed market integration. This was further visible in the Convention's explicit linkage between rights and the declaration of the basic values that one perceived to underpin the integration project and its specific institutions and policies. Thus, more so than in the previous phase of the Convention's work, the concept of citizenship – and rights as its main element within the European context, was seen as an integral part of the foundation for a constitutionalised EU.

In fact, this aspect was not only linked to the issue of rights, but was also highlighted with regard to a notion of belonging that was also discussed in this period. In its emphasis on this issue, the Convention further focused on a type of *political* identity, where European citizens were understood to be drawn together in a community that was increasingly perceived as a political union, and not only as an internal market. Clearly, then, the Convention conceived of citizens as linked to the EU, through a primary status built on certain individual rights, which in turn stipulate a notion of community and identity *specific* to the European polity.

Further, this politically oriented conception of citizenship was further concretised through the re-statement of a dimension that was shown to be important within the two

previously analysed constitution-making instances, that of participation. In fact, at this juncture of the Convention, citizenly participation was framed as a corollary to a perceived deficit in terms of democracy and legitimacy. Thus, participation was not perceived mainly as an effect of previously established political rights. It was also seen as crucial to the state of the institutional system enacted through a Constitutional Treaty. In this sense, rights and participation was dynamically linked to the purported belonging on the part of citizens to the institutions of European integration.

Finally, this orientation towards a citizenship that – notwithstanding its dependence on nationality in one of the Member States – was European in the sense of creating an independent political space for individual citizens, was also visible in the notion of membership that was put forward in the “deliberating phase” of the Convention. Specifically, at this juncture, membership was conceived, as the most radical idea of the Convention thus far, as a free-standing status on the European level, co-existing with national citizenship in a dual status where citizens would be free to choose the activated status on a voluntary basis. In this sense, European citizenship was seen as being on a par with the prior national membership. To conclude, the conception of citizenship that emerged in this phase of the Convention’s work was clearly rights-based, partly political and ultimately free-standing on the European level, in terms of the potential scope of individual action based on citizenship.

#### *6.4.4. The “Drafting” Phase: Consolidating Conceptions of European Citizenship*

Based on the debate following the preliminary draft Treaty, the Convention initiated the “drafting phase” of extensive deliberations in the Plenary, with more fleshed out drafts of different parts of the purported Constitutional Treaty. At this early juncture in the crucial drafting process, the focus was rather on the need to clarify certain issues and take into account the diverse views that emanated from the first two phases of the Convention’s work. In doing so, the focus was first on the introductory articles which laid out the fundamentals of a European constitution.<sup>224</sup> Again, values were held to be at the centre of the basis for a Union. In fact, the value focus was somewhat broadened through the inclusion of the concepts of justice and solidarity. Not only that, in addition to the promotion of peace and the well-being of its peoples, values were held to be a core

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<sup>224</sup> CONV 528/03, Draft of Articles 1 to 16 of the Constitutional Treaty, Brussels, 6 February.

objective of the Union.<sup>225</sup> This value-basis was not only retained on a declaratory level like here, later in the process, it was also held that the criteria for EU membership ought to be that candidate countries share and adhere to these common values.<sup>226</sup>

The uncontroversial matter of fundamental rights as important through the incorporation of the Charter into the Treaty framework was retained in the draft. The proposed provisions on Union citizenship were, however, changed quite drastically, most significantly in terms of the membership dimension. In the new draft, one had adopted the Maastricht provisions on citizenship, as well as the Amsterdam “supplement” regarding the link between nationality and individual membership on the European level. Hence, the conception of European citizenship as a dual status of equal citizenships on different levels was *rejected* at this juncture of the process.

Compared to the preliminary draft Treaty, this proposal was far more controversial among the Convention members. More issues were contentious and made subject to extensive debate in the Plenary. For instance, several amendments were proposed with regard to the values of the Union. Issues such as cultural and linguistic diversity, cultural diversity, national and regional identities and respect for national minorities were raised. The most divisive issue was the question regarding the inclusion of a religious reference in the fundamental values of the EU.<sup>227</sup> Subsequently, this issue was fiercely debated by the Plenary, without any consensus visible on the horizon.<sup>228</sup>

With regard to the concept of citizenship, there were some calls for the replacement of the notion of “peoples” in the proposed Article 3 with “citizens.” The adoption of such a measure would surely have raised the symbolic import of citizenship. Regarding the concrete articles on citizenship, the most radical changes proposed were to grant the EU an independent right to decide on individual membership through the possibility of access to European citizenship after five years residence, an extension of the status to refugees

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<sup>225</sup> Ibid., p. 3.

<sup>226</sup> CONV 648/03, Title X: Union membership, Brussels, 2 April. In a discussion on draft articles considering the Union and its immediate environment, values such as basic democratic principles, respect for human rights and the rule of law, was suggested by several Convention members as providing the gist of such a relationship, see CONV 696/03, Summary report of the plenary session – Brussels, 24 and 25 April 2003, Brussels, 30 April 2003, p. 9.

<sup>227</sup> CONV 574/1/03 REV 1, Reactions to draft Articles 1 to 16 of the Constitutional Treaty – Analysis, Brussels 26 February, p. 17-18.

<sup>228</sup> CONV 601/03, Summary report on the plenary session – Brussels, 27 and 28 February 2003, Brussels, 11 March, p. 5.

and stateless persons, and finally some new rights, for instance popular legislative initiative or the right to good administration.<sup>229</sup> These changes were, however, only proposed by a few members of the Convention. Not surprisingly, then, these issues were on the whole not taken up in the subsequent debate regarding the specific provisions on fundamental rights and citizenship in the Plenary.<sup>230</sup>

The diversity of the Convention was also visible in the debate on other aspects of the introductory articles in the draft Constitution. For instance, there was widespread opposition to the term “federal” as conducive to the European integration project, and related to that, many members wanted the emphasis focused on the Union as set up through the will of the Member States, which related to the notion of “Treaty” as pivotal for the meaning of the text.<sup>231</sup> Yet, others wanted a stronger focus on “citizens” in the proposed Article 1.<sup>232</sup> There was, thus, an inherent tension in the Convention between a focus on individual citizens as crucial for the EU’s self-understanding and the need for a stronger European citizenship, and the intergovernmental view of the Member States as the primary units of consideration within such an integrated political system.<sup>233</sup>

The lack of democratic legitimacy and transparency that had been acknowledged at the outset of the constitution-making process was taken up explicitly in the draft Constitution. Through a focus on the so-called “democratic life of the Union”,<sup>234</sup> it was first proposed to include an article on the equality of citizens before the EU’s institutions.<sup>235</sup> On the basis of this equality in terms of citizenship status, the rights catalogue on the EU level was broadened. This was done as a corollary to the insertion of an article on “participatory democracy.”<sup>236</sup> More specifically, it was proposed to include a specific *right* of citizenship to participate in the democratic life of the EU. Clearly, the intention of this proposal was to go beyond the more circumscribed political rights attached to elections on the municipal and European levels. In fact, it was linked, not only to the potential participation of individuals as such, but also to the involvement of

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<sup>229</sup> CONV 574/1/03 REV 1, op.cit., p. 64.

<sup>230</sup> CONV 601/03, op.cit., p. 9.

<sup>231</sup> Ibid., p. 1-2.

<sup>232</sup> Ibid., p. 1.

<sup>233</sup> The schism between what can crudely be called the supranational and intergovernmental positions regarding the impetus for and institutions of the Union was also acknowledged by Valéry Giscard d’Estaing, the President of the Convention, see CONV 696/03, op.cit., p. 1.

<sup>234</sup> CONV 650/03, The democratic life of the Union, Brussels, 2 April.

<sup>235</sup> Ibid., p. 2, 5.

<sup>236</sup> Ibid., p. 5.

associations which represent citizens in the political processes of the EU. In the ensuing proposals for amendments and debate within the Plenary regarding this title, there was a relatively low degree of divergence within the Convention. Most amendments involved linguistic changes, in addition to some calls for a more concrete catalogue regarding modes of participation.<sup>237</sup> The most radical measure proposed was the insertion of a so-called “citizen’s initiative” with regard to making decisions on contentious issues through referenda.<sup>238</sup> The rights orientation of democratic, political participation was followed up by the debates of the Plenary on these issues. There were, for instance, arguments for widening participatory rights to include voting rights in EU-wide referenda.<sup>239</sup> It is also worth noting that a number of members wanted to specify that these rights were to be granted to *European* citizens, and not only citizens as such.

The theme of rights generally, and more specifically political rights and participation as central to the status of individuals continued to be at the forefront of the work and debates of the Convention. Regarding rights and its link to the notion of membership, the Convention was clearly split. This was most visible in the discussion on a proposal to grant access to the labour market to groups such as immigrants and asylum seekers, where some wanted this incorporated, while others advocated a strong link between formal citizenship and such rights.<sup>240</sup>

In the case of political rights and political participation, there were an increasing number of proposals that were geared towards enhancing a notion of political citizenship at the European level. One example is the proposal to institute a directly elected president of the European Council through uniform, Europe-wide elections. In fact, this proposal was stated as a possibility to “(...) strengthen or create a genuine European demos.”<sup>241</sup> This was further linked to a perceived lack of democratic legitimacy if the president of the European Council was to be elected only by his peers.<sup>242</sup>

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<sup>237</sup> CONV 670/03, Summary sheet of the proposal for amendments relating to the democratic life of the Union, Brussels, 15 April.

<sup>238</sup> Ibid., p. 3, 12.

<sup>239</sup> CONV 696/03, op.cit., p. 5.

<sup>240</sup> CONV 644/1/03 REV 1, Summary of proposed amendments regarding the area of freedom, security and justice, Brussels, 7 May 2003, p. 3.

<sup>241</sup> CONV 748/03, Summary report of the plenary session – Brussels, 15 and 16 May 2003, Brussels, 27 May, p. 5.

<sup>242</sup> Ibid., p. 5

On the back of all these preliminary proposals and debates in the Plenary, an even more comprehensive and revised draft Constitution was presented.<sup>243</sup> In the introductory article, the notion of “citizens” was included as a part of the *foundation* for an EU, which provided one part of a notion of dual legitimacy, where the “States of Europe” was the other.<sup>244</sup> The idea and principle of free movement was also highlighted anew, in ways that had not been prevalent within the Convention’s deliberations: it was pointed out that a Community without frontiers benefited European citizens, and an article was added where free movement of persons was included.<sup>245</sup> Thus, the constitutional and political principle of free movement was augmented in this draft, notwithstanding the fact that it had not really figured within the previous debates.

While free movement had not been prominent on the agenda as such, citizenship had been more to the forefront of the Convention’s debates, both in explicit and implicit terms. Except for the omission of equality between men and women, the citizenship provisions remained intact and clearly consolidated within the revised draft Constitution.<sup>246</sup> There had, however, been some discussion regarding the status of rights provisions as a part of the articles on citizenship, as these would to some extent overlap with the Charter. Notwithstanding this, rights were retained as a pivotal part of the explicit concept of European citizenship. In fact, it was argued that the reason for this was that “(...) these rights are essential to the very concept of Union citizenship and must therefore appear in the [part]... which defines the concept.”<sup>247</sup> Hence, within the Convention, rights were seen as unequivocally linked to the existence of a viable concept and institution of European citizenship.

In the policy-oriented parts of the draft Constitution, principles related to the status of individuals that has been prevalent since the incipient conceptions of citizenship in the founding treaties, such as non-discrimination based on nationality and a strong right to free movement,<sup>248</sup> were highlighted. In fact, these articles were part of a broader set of

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<sup>243</sup> CONV 724/03, Draft Constitution, Volume I – Revised Text of Part One, Brussels, 26 May; CONV 725/03, Draft Constitution, Volume II – Draft text of Parts Two, Three and Four, Brussels 27 May; CONV 726/03, Draft text of Part II with comments, Brussels, 26 May.

<sup>244</sup> CONV 724/03, op.cit., p. 2.

<sup>245</sup> Ibid., pp. 51, 55 and CONV 725/03, op.cit., p. 25.

<sup>246</sup> CONV 724/03, op.cit., pp. 5-6.

<sup>247</sup> Ibid., p. 60.

<sup>248</sup> CONV 725/03, op.cit., pp. 24-25.

provisions<sup>249</sup> that specified concrete policy measures in order to attain the broad objectives linked to the rights attached specifically to the concept of citizenship in the first part of the draft Constitution. Yet, in the case of free movement related to the internal market, the citizen as a worker was placed forefront with regard to the status of individuals: “Workers shall have the right to reside freely within the Union.”<sup>250</sup> This is not surprising in itself, as it was part of an article under the heading of the “Internal market.” It does, however, indicate that when it came down to concrete aspects of the relation between citizens and the European polity, the former were conceived in a more constrained fashion than in the declaratory and symbolic setting of a preamble and the presentation of the broader aims and perspectives of a Constitutional Treaty.

Throughout the Convention, there had been several calls for a more pronounced focus on *social* rights as a basic building block for a European citizenship. This did not, however, create any *direct* provisions on social rights in the manner of, say, free movement or political rights.<sup>251</sup> The only direct mention of social rights was that two former declarations on rights ought to be taken into consideration for the definition of the social policy objectives in the EU.<sup>252</sup> To the extent that the issue of social policy brought forward issues pertaining to the concept of citizenship, this was mainly in terms of more broad policy objectives.<sup>253</sup> Again, it is interesting to observe that, proposals which would move the conception of citizenship in the direction of a more comprehensive European status, committed for instance to a broader array of concrete citizenship rights than that had been prevalent thus far, was not followed up in the very Treaty. A stronger focus on social rights would not necessarily have meant that the conceptual path of transnational citizenship would have been broken. After all, social rights in the European setting have mostly been activated in second countries as a result of the exercise of free movement. Yet, enshrining social rights on a par with free movement rights and voting rights would surely have been a forceful signifier of the establishment of a thick European citizenship

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<sup>249</sup> Ibid., pp. 24-26.

<sup>250</sup> Ibid., p. 28.

<sup>251</sup> Ibid., pp. 66-71.

<sup>252</sup> Ibid., pp. 66. See also the declarations in question: Council of Europe, The European Social Charter, 18 October 1961; European Commission, The Community Charter of the Fundamental Social Rights of Workers, European File 6/90, May 1990.

<sup>253</sup> CONV 725/03, op.cit., pp. 66-67.

surpassing the market core of integration or the largely symbolic legitimacy of European elections which take place in strongly institutionalised national settings.<sup>254</sup>

Finally, free movement was augmented by a principle of absence of internal border controls with regard to an area of freedom, security and justice.<sup>255</sup> This area did not, however, relate only to the rights of free movement, but also to the delineation of the European citizenry. There was also a professed notion of *solidarity* between Member States with regard to issues of asylum and immigration. Thus, not only the rights of the *individual* were at stake, but also the boundaries of the community of citizens and Member States as such.

With the work on this draft Constitution, the Convention had reached a higher degree of agreement than at earlier stages in its work.<sup>256</sup> At this juncture, amendments that were proposed, dealt mainly with minor changes to the section on the democratic life of the Union, with some members who requested an even stronger emphasis on participatory democracy and a citizen's initiative. The latter aspect of a citizen's initiative was finally included in the draft<sup>257</sup> on which the Convention reached consensus in terms of the preamble and the first two parts of the text. The only contentious issue of substantial import that remained on the agenda was that of the need or not for a reference to Christianity or Christian values to be included in the preamble.<sup>258</sup> In the final instance, these issues pertaining to the question of the basis for a European identity<sup>259</sup> were not included in the draft Constitution.

Finally, after some more minor amendments as well as technical and linguistic changes<sup>260</sup> to the whole text, and the absence of contentious issues with regard to the concept of citizenship and its dimensions, the Convention reached consensus on a draft Treaty<sup>261</sup> that

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<sup>254</sup> For more on the "second-order" character of elections to the EP, see Reif and Schmitt (1980), cited in Judge and Earnshaw (2003: 71).

<sup>255</sup> CONV 725/03, *op.cit.*, p. 92.

<sup>256</sup> See CONV 798/03, Summary report of the plenary session – Brussels, 5 June 2003, Brussels, 17 June.

<sup>257</sup> CONV 814/03, Summary report of the plenary session – Brussels, 11 and 13 June 2003, Brussels, 19 June, p. 1.

<sup>258</sup> *Ibid.*, p. 3.

<sup>259</sup> For two different views, that still share the view that this issue is of import for the discussion on European identity, see Menéndez (2005a) and Weiler (2003).

<sup>260</sup> See CONV 847/03, Draft Constitution, Volume II, Brussels, 9 July; CONV 849/03, Summary report of the plenary session – Brussels, 4 July 2003, Brussels, 14 July; CONV 853/03, Summary report of the plenary session – Brussels, 9 and 10 July 2003, Brussels, 23 July.

<sup>261</sup> CONV 850/03, Draft Treaty establishing a Constitution for Europe, Brussels, 18 July.

was presented to the Greek presidency of the European Council.<sup>262</sup> As stated above, the Convention had previously reached a high degree of consensus on most aspects of the purported European Constitution. Hence, the final draft looked more or less like the immediately preceding drafts that had been scrutinised, debated and amended by the Plenary. With regard to citizenship, for instance, this was the case for all the provisions that had import for its conceptualisation within the Convention, including the direct provisions on Union citizenship. In the end, the last contentious issue of the Convention pertaining to citizenship, that of including an assertion of European identity in terms of faith and religion, was settled by a compromise in the preamble of the draft Treaty. Here, it was claimed that the values that were recognised as the basis for a European Constitution – of which several has an import for the status of individuals – drew on “inspiration from the cultural, religious and humanist inheritance of Europe.”<sup>263</sup> That this would be the final issue to be settled within the Convention is interesting, as it speaks to a basic assumption that constitution-making entails more than discussion on technical issues of, say, institutional design. It is understood to involve questions and issues pertaining to the very foundation of the polity that is being constituted. It involves the questions “who are we?” and “what are we?” as a community of citizens that have come together to establish a common legal and political order.

Indeed, compared to the previous two phases of the Convention, within the crucial “drafting” phase, issues of citizenship were linked to such questions of identity through a prior assertion of the basic, foundational values of the EU. In fact, such issues were not only raised more frequently, they were also more contentious, than what was visible in the earlier phases. This was further not only the case for the question of how to define the core values of the EU, but also with regard to membership where there were several proposals to create some independence for the EU in relation to the differentiation between insiders and outsiders. Yet, the contentiousness of such issues did not, in the end, produce any radical changes to the conception of citizenship compared to those of the “listening” and “deliberating” phases. Again, then, the path dependence regarding conceptions of European citizenship becomes visible. Further, this was clearly in line with a typical trait of the constitution-making instances that have been studied in this thesis: the scaling down of novel proposals over time. Within the “drafting” phase, the

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<sup>262</sup> Thessaloniki European Council, 19 and 20 June, Conclusions of the Presidency, Bull. EC 6-2003.

<sup>263</sup> CONV 850/03, op.cit., p. 3.

membership dimension was settled on a par with the previously strong frame of the Maastricht provisions on Union citizenship. Thus, in the final instance, also within the Convention, nationality was retained as the core of the conception of citizenship in terms of providing the primary norm for establishing who are members and who are not. Even in the event of “higher law-making” shielded from the nitty-gritty of “normal politics” (see Ackerman 1991), the conception of European citizenship as a harbinger for the dissociation of nationality from citizenship did not win sufficient support. The upshot of such an alternative conception of postnational citizenship on the European level, freed from its national “burden”, would have been a veritable transformation of the institution of citizenship, and not “just” a re-configuration of different elements as an effect of more porous borders within European integration.

Notwithstanding the lack of profound transformation within the Convention, that such issues were raised testify to a strengthened place of the concept of citizenship within the self-understanding of the EU as a polity. Not only that, the concepts of “citizens” and “citizenship” by themselves underwent increased debate within this phase. Thus, the import of citizenship was clearly raised when compared to the more modest role it played within the Spinelli Project, where its chief characteristics were settled relatively early in the process, and which lacked the more foundational questions addressed in the Convention relating to the abovementioned themes of values and identity.

As much as there were several calls for a more declaratory or symbolic role of the concept of citizenship in this sense, the concrete conceptions were still found in the framing of specific dimensions and the interplay between them. The increased attention paid to the very concept of citizenship did in the end not produce a widely differing conception. The rights orientation was clearly confirmed by the final emphasis on free movement. This previous focal point within conceptions of citizenship in the EU had largely been left undebated within the first two phases of the Convention. That it was left so late in the process, is perhaps a testament to it being taken for granted within the framework of European citizenship given its “paradigmatic” space within conceptions that emanated from both policy practices and constitution-making instances.

Further, rights issues were not only linked to general issues of citizenship, democracy or legitimacy, but also to specifics of policy-making issues. Thus, in addition to a focus on

issues of citizenship in terms of the basic self-understanding of the EU as a polity, the Convention also spoke to such issues as a corollary to the more practical aims of European integration. These were clearly tied up with the long-standing aim of European integration: the creation of an internal market for workers, producers and consumers. Hence, notwithstanding the advances that were made towards an acknowledgement of the *general* import of citizens for the EU within the Convention's work, in the final instance, market citizenship was indeed central to its overall conception of citizenship.

While there is clear evidence of consolidation with respect to previously "settled" conceptions, the issue of participation was even more pronounced within this last phase of the Convention. There was a shift here towards an increasing awareness of the import of participation *per se* for European citizen. It was perceived as central to European citizens, not only through (potential) participation in the market or elections, but also as a specific *right* of European citizenship. In this sense, participation was not only conceived in implicit terms as a corollary to other rights, but also as a pivotal part of citizenship in itself. Yet, this conception of political citizenship in the final instance fell short of a republican-type citizenship with individual public participation at its core. As Menéndez (2005b: 126-127) has highlighted, the potentially radical clout of political participation was tempered by an inclination to circumscribe it through levels of mediation, such as linking a "citizen's initiative" to the Commission as an arbiter of citizens' concerns. And further, many of the aspects of participation that were linked to "the democratic life of the Union" did in fact not focus on individual citizens. Rather, it proffered a kind of "group citizenship" where civil society organisations were foreseen a privileged role in the observation of Union policies. Hence, in the end, I argue that this did not strengthen a notion of a European *demos* to any significant extent. Participation was clearly an important component for the conception of citizenship, but the creation of a genuinely *free-standing* political citizenship in the EU was passed over in the final draft of the Constitution.

Ultimately, then, rights, and more specifically transnational ones that facilitate (and are activated by) boundary crossing, remained at the core of the conception of citizenship also when the Convention surpassed its "speculative" phases and engaged in the drafting of a complete European Constitution. Indeed, issues of identity, political rights and participation were more central to the status of individuals in this last phase, but

ultimately, these remained on a more declaratory level, and thus somewhat peripheral to the issue of the location of individual citizens within the constitutional framework of the EU. To conclude then, in the final instance, the Convention brought forward a conception of citizenship that was rights-based and dependent on nationality at its core, partly political in terms of participation (yet circumscribed somewhat through civil society organisations) and, finally, linked to the foundational values that were thought to underpin the very basis for a constitutionalised EU.

#### *6.4.5. Summarising Remarks*

As citizenship had been more or less explicitly on the agenda of European institutions from the 1970s onwards, and had finally been institutionalised through the Maastricht Treaty, it is no surprise that issues of citizenship also figured rather prominently within the work of the Convention. This attention did, in the end however, not create any significant or radical changes in the overall conception of citizenship that had been brought forward through Union citizenship, and which had previously been developed and consolidated through policy-making processes and instances of discussion on more basic questions of the institutional and political architecture of European integration.

In fact, in a constitution-making process that took its general cue from a perceived need to reform European institutions in order to attain higher degrees of democratic legitimacy as well as institutional effectiveness, the conception of citizenship was more or less tied to previous developments. *Rights* were held to be the core aspect which creates a link between individual citizens and European institutions already at the outset of the Convention. On the whole, rights issues were not particularly contentious. As the work went along, typical European rights, such as voting rights in sub- and supra-national elections as well as free movement and non-discrimination, were brought forward as core rights of European citizenship. A *social* citizenship based on rights was proposed, but did not in the end materialise as a significant element in discussions on issues of citizenship.

Yet, as the preceding empirical account has highlighted, this does not mean that the Convention refrained from discussion on issues that departed from previously consolidated conceptions. In fact, there was an inherent tension regarding citizenship within the last two phases of the Convention. When the work of the Convention turned towards widespread discussion on the broad range of issues that a re-drafting of the EU

through a Constitutional Treaty entailed, issues of citizenship emerged with a certain radical clout. This was especially the case with regard to *membership*. In contrast to the proverbial assertion that a European citizenship status depends on nationality in one of the Member States, the Convention seriously considered the establishment of a *dual* status of *equal* national and European citizenship institutions. If this had been kept by subsequent drafts of the constitution, it would have created a more independent European citizenship status marked by a *voluntary* membership on the part of the individual citizen. This purported *Europeanness* of the status was in the end, however, not picked up in the crucial “drafting” phase. Also within the Convention, one followed the conceptual path of citizenship in terms of the crucial differentiation between insiders and outsiders. Without much debate, the proposed dual status was scrapped, and membership was again based on the nationality principle that had been institutionalised through the “supplement clause” of the citizenship provisions of the Treaty of Amsterdam.

If membership ultimately followed the conceptual path, there were in fact some more significant changes with regard to *participation* and *identity*. Increasingly throughout the Convention’s work, participation was highlighted as an important element of the relationship between individual citizens and European institutions. In fact, it surpassed its prior “dependence” on political rights and market rights, and was also perceived as an element of belonging to the EU. In terms of the more minute details regarding participation, there were also here some tensions between the somewhat radical conception professed in the “drafting” phase and the aspects that were emphasised when the completion of a full draft Constitution was at stake. Indeed, participation remained at the centre of attention throughout the Convention. Ultimately, however, its import for *individual* citizens was circumscribed through the propensity to address the nexus of policy-making and participation in terms of technocracy and expertise.<sup>264</sup>

While the potential of participation in terms of the construction of genuine *individual* belonging to the European polity in *political* terms was diminished by such technocratic measures, the notion of *identity* that emerged in the Convention was clearly oriented towards the individual. And further, there was a clear move in the Convention towards a somewhat greater emphasis on issues pertaining to identity. There was an increasing

propensity to link *values* with the fundamental rights status of individuals that a European constitution would establish and support. Indeed, this clearly emphasises how rights that had been at the core of conceptions since the outset of European integration were dynamically interlinked, not only with membership or participation, but in the final instance also with identity.

More broadly speaking in terms of the EU's self-understanding, identity was in fact one of the contentious issues in the final moments of the "drafting" phase. Yet, in the end, this contentiousness did not feed into the final draft Constitution, but was rather couched in very broad language regarding the diversity of the humanist and religious legacies of Europe. Thus, the collective values/individual rights nexus yielded more concrete elements of the conception of citizenship. Within the Convention, then, European citizenship was much closer to a "community of rights" (Dobson 2007: 137) in the making, than a citizenship steeped in a predetermined understanding of the foundation for the community from which a given status of individuals is constructed. These points regarding identity also sum up the overall conception of citizenship that emerged from the constitution-making efforts of the Convention. Rights, based on prior nationality and linked to the crossing of the bounded community upon which these rights were activated, were consolidated as the core of European citizenship. Other dimensions were mainly activated as a knock on effect of this transnational rights status, and notwithstanding efforts to strengthen the participatory element of citizenship in political terms, in the final instance, the rights dimension was clearly the one that pieced together a viable status for individuals within the EU, not only in the perception of the Convention, but the European integration process as a whole.

*Table 6.3. Conceptions of Citizenship within the Convention on the Future of Europe*

	<i>Location within constitution-making process</i>	<i>Dimensions</i>	<i>Overall conception of citizenship</i>
"Listening" phase	Sounding out opinions on the issue of a Constitutional Treaty.	No strong focus on citizenship. Issues raised as a corollary to the legitimacy of the process. Main focus on rights, mainly as a core value of	No clear conception

<sup>264</sup> This technocratic tendency related to citizenship is reminiscent of the so-called Comitology system of the EU where experts exert considerable power on Union policies within often highly specialised committees, see e.g. Joerges and Vos (1999).

		the EU. Political participation. Membership and identity not activated.	
“Deliberating” phase	Topical discussions within working groups and the Plenary.	Consolidation of rights as core dimension. Political and social rights focused. Identity and belonging linked to the special European rights-status. Political participation as an effect of rights and linked to legitimacy issues. Dual membership – national and European.	<u>Rights-based, political and multiple</u> citizenship
“Drafting” phase	Work on the substantial text of the Constitutional Treaty.	Membership based on nationality. Value-based identity, yet not concretely, rather linked to a broad historical and political heritage. Emphasis on typical “European” rights and rights linked to policy-making. Political participation, however it was circumscribed through a group component.	<u>Rights- and value-based, complementary</u> citizenship

## 6.5. Concluding Remarks

This chapter has consisted of an investigation into how citizenship was conceptualised within three constitution-making instances of the European integration process. The main empirical argument for this chapter was that by adding a level of EU integrative politics to the study, one could reach a broader understanding of European citizenship. Indeed, I argue that the findings from the three limited case studies of EU constitution-making put the main conclusions of the preceding chapter in perspective. For instance, this chapter has shown that the core elements which remained “sticky” within policy practices were also pivotal to “constitutional” conceptions of European citizenship. Rights of free movement and the nationality principle were activated across all three constitution-making instances, notwithstanding the more frequent propensity to propose, for instance, a clearer European dimension with regard to social and political rights, and individual membership. Especially the EP, but also some Member States and the Commission, were supportive of the more radical perspectives of such alternative, but ultimately failed reform proposals.

The lack of rupture in terms of the forceful path dependency that has been observed in this thesis points to a “processual” aspect which was evident in all three constitution-making instances. As the work of drafting and writing the actual constitutional texts gained momentum, the radical character of some proposals and discussions was scaled down. In the final instance, therefore, the frame of European citizenship that was evident already in the founding treaties was emulated to a significant extent within the Treaty texts that emanated from EU constitution-making.

More concretely, participation was at the core of conceptions of citizenship within EU constitution-making, especially the Spinelli Project and the Maastricht Process. The notion of participation that was activated within these instances was further linked primarily to political elements of citizenship, and not to market participation through work. It is important to note here, that although the advocacy of the EP for supranational competence in individual membership decisions ultimately failed, it clearly had an impact on the highlighting of its political import. For sure, “constitutional” conceptions of European citizenship clearly had a stronger political element than was visible even in the latter stages of policy practices, such as within the post-Maastricht citizenship discourse. Related to this then, various political rights such as “conventional” voting rights and broader participatory rights were placed to the forefront of specifying the relation between individual citizens and European institutions in a constitutional sense. Finally, identity issues were not raised explicitly to any significant extent when the EU engaged in open debate over its future as a polity and the fundamentals of its institutional and policy-oriented setup. Rather, the communal element that emerged from these constitution-making instances was an effect of the crucial elements of free movement and multi-level status of individuals where citizens are granted rights (and duties) on different politico-institutional levels. This links to Maduro’s (2003: 82) argument that there is a possibility that the formation of a polity not necessarily requires a notion of the *demos* in the traditional national understanding of the concept. Hence, this chapter has highlighted that the distinction between *demos* or no *demos* was not at the forefront with regard to issues of citizenship. Rather, through concrete developments and discussions regarding membership, rights and participation, a notion of *multiple demoi* has been at play in the process. This means a conception of citizenship which is not centred on membership and allegiance to *one* politico-legal entity, but rather an understanding of citizenship as *dispersed* across different levels and polities.



# Chapter 7. Conclusions: The Trajectory of European Citizenship Discourse

## 7.1. Introduction

In this thesis, the development of conceptions of citizenship within European integration has been analysed through a two-level design focused empirically on policy practices and constitution-making instances. In chapter 2, the dictum that citizenship is an essentially contested, historically entrenched, and polity-specific concept was taken seriously. This was done by avoiding the *a priori* “model” approach to citizenship where there is a propensity to derive narrow *ex ante* expectations to the configuration of citizenship. Specifically, the thesis started out from a definition of citizenship as a status of individuals in relation to a political unit. But, at the outset, this generic definition does not tell us much about the *content* of citizenship. The theory was, therefore, concretised through a focus on membership, identity, rights, and participation as analytical *dimensions* around which particular conceptions of citizenship crystallise. The main methodological argument regarding this was that such a theoretical focus would be conducive to capturing *more* of the complexity with regard to European citizenship than is the case with approaches which rely on pre-defined theoretical or normative ideas, or fixed linkages between different elements of citizenship.

Through this approach, the discourse of European citizenship became observable. Given that the two preceding empirical chapters brought forward an array of different conceptions of citizenship as activated throughout the European integration process, the empirical findings should be summarised, concretised and last, but not least, be placed alongside against existing theoretical and normative debates on European citizenship and its import not only for individual citizens, but also for the EU as a polity.

Taking the cue from the theoretical argument of chapter 2, the thesis continued in chapter 3 with a broadly defined critique of the literature on European citizenship. To re-iterate briefly, this critique concluded that much of the literature had not advanced our knowledge of how citizenship is conceptualised in the EU, due to the uncritical employment of a nation-state template. More specifically, this meant that several studies – predominantly within what can be called the *no demos* view – scrutinised issues of citizenship on the European level based on the understanding of congruence between the

concepts of citizenship, national identity and the territorial state. Yet, further, within work that sought to overcome this “nation-state quandary” – on the whole represented by so-called *postnationalists* – there was a clear tendency towards claiming the inevitability of the often theorised dissociation of nationality and citizenship on the European level. In addition to these *conceptual* flaws, work within both theoretical camps also tended to rely on overtly *normative* backgrounds in their assessments of the *empirical* reality regarding the development of citizenship issues within European integration. Finally, while avoiding the abovementioned pitfalls, studies directed towards institutional and historical frameworks had a propensity to focus analytically on models where the relationship between elements of citizenship was *a priori* settled, or based on only one given dimension of citizenship, such as (social) rights or identity.

The idea of the thesis was not only to examine the flaws of the theoretical literature. In chapter 4 it also linked to a related empirical argument for grounding the study of European citizenship within the *process* of European integration. In this chapter, the aim is to juxtapose the main findings of each level of the empirical analysis, as evident in the two preceding chapters. This entails, firstly, answering the second research question of the thesis, which was to highlight the *trajectory* of the European citizenship discourse through a comparison of policy practices and constitution-making instances. The main argument is that the European citizenship discourse has created a conception of *transnational citizenship*, rather than *postnational membership*. It will be shown how this has been based on special rights that were evident already in the founding treaties of the EU, and which created a conceptual path upon which other dimensions later developed. This section will also highlight the degree to which instances of constitution-making did not cause significant ruptures when seen against the analysis of policy practices. Secondly, with these empirical insights as a backdrop, the following section will be devoted to drawing out theoretical lessons for the study of a phenomenon such as (European) citizenship. In doing so, the main focus will be on how the combination of a theoretical focus on *concepts* and their dimensions, and concrete *practices* yields more nuanced empirical insights than the continued propensity to study citizenship, regardless of the level of politics, from the vantage point of strict theoretical or normative models. Thirdly, these points will be contextualised in disciplinary terms by a brief discussion on how the approach of this thesis can serve as a “barometer” of recent developments within EU studies, such as the rejection of the *sui generis* approach and the so-called “normative turn.” Finally, in

providing conclusions to the issues raised in this chapter and in the thesis as a whole, prospects for future research on European citizenship will be addressed.

## **7.2. The Trajectory of European Citizenship in Policy Practices and Constitution-Making: Transnational Rights! Postnational Membership?**

### *7.2.1. Policy Practices*

The most enduring aspect of the policy-making process within which issues of citizenship were either raised explicitly or emerged implicitly as a result of different practices within the system, is that of its *inherent* transnationalism. Free movement rights, linked exclusively in the founding treaties to the worker-citizen and (potential) participation in the internal market, was at the core of conceptions of citizenship *throughout* the integration process. What these rights established, was not a citizenship on the European level parallel to that of national citizenship based on a notion of cultural membership or identity, but rather a *special* rights status of European citizens within the territory and jurisdiction of *other* Member States. In fact, this transnational status was from the outset based on individual membership in one of the Member States, a basis which was augmented and finally Treaty-based in later developments.

As the transnational character of citizenship was broadened later in the process through political rights and rights of residence, this nationality principle was in fact strengthened in terms of membership. From the 1970s, and especially in the period immediately before and after the Maastricht Process, there were certain developments towards a stronger focus on personhood – and not only market participation or work – as the basis for access to the benefits of membership on the European level. In one sense, this can be understood as an *additional* designation of membership in terms of European citizenship. In the final instance, however, free movement as a corollary to citizenship in one of the Member States remained the *primary* source for the attainment of European citizenship. To the extent that other dimensions gained prominence within such a conception of citizenship it was *primarily* as an effect of legal developments and evolving practices related to the principle of free movement.

### 7.2.2. Constitution-Making

As constitution-making involves concentrated and punctuated instances of discussion on the core issues regarding what *constitutes* a given polity, theoretically there was an expectation that issues such as identity, belonging and the foundation of the polity would be at the core of such processes. Indeed, identity issues were somewhat more pronounced within the three constitution-making processes that have been scrutinised in this thesis, than what was the case for policy practices. Typically, across the three instances, the question of what kind of community individuals are attached to through membership and rights, was raised primarily in the early phases of initiative and preparations. For the most part, the issue was more concretely raised as a corollary to the need for strengthening the feeling of *belonging to* European institutions on the part of citizens, rather than an explicit *self-understanding* of “commonalities” underpinning the community to be (re-)constituted. If there was anything by way of a more pronounced “vision” of identity, this transpired within the Convention where the perceived values of the EU polity were linked strongly to the issue of individual citizens’ fundamental rights. Importantly, the strong alternative conception that was brought forward through calls for an explicit Christian identity of the EU, did not receive significant support in the Convention. Notwithstanding this lack of a pronounced “identarian” aspect of European citizenship surpassing a “community of rights”, it is important to note that the concept of citizenship as such was indeed conceived within all three instances as a pivotal part of the constitutional and Treaty-based framework of European integration.

In terms of providing a more concrete overview of the issues that permeated EU constitution-making in terms of locating the individual within its constitutional nexus, what came into view was a concentration on *rights* and *participation* as the main elements of European citizenship. More concretely, “constitutional” conceptions were geared partly towards *political* citizenship, in the sense of a focus on rights and to a much lesser extent *duties* of political participation. Certainly, this was the case within all three instances in their preparatory and “deliberating” phases. In the final draft Treaties, political rights and participation were, however, less significant. Yet, they were advocated as important especially in the Spinelli Project also in terms of duties, but also in the Maastricht Treaty through a broadened Treaty-basis for voting rights and an article on participatory democracy in the Convention’s draft Constitutional Treaty. In addition to this political element, therefore, “classic” elements, such as grounding European citizenship on

nationality and framing it in terms of free movement and residence rights, were crucial to conceptions of citizenship, as they were concretised in the periods of drafting the final Treaty texts. Hence, in the end, EU constitution-making did not engender radical approaches to European citizenship, but rather built on already established and institutionalised elements courtesy of policy- and law-making within the EU.

### *7.2.3. Comparing Policy Practices and EU Constitution-Making*

Taking the main insights from two levels of integrative politics in Europe into account, what are the lasting *conceptual* imprints of European citizenship? That is, what is the conceptual path or *trajectory* of European citizenship discourse? The conceptualisation of citizenship within European integration started out incipiently and implicitly with certain rights provisions linked to the facilitation of a sectorally circumscribed, but internal market in the ECSC Treaty. As the integration process moved on and occupied a larger space, geographically as well as in terms of institutional developments and concrete policy-making, new issues were added to these already existing market rights.

The trajectory of European citizenship discourse is thus one where incipient conceptions of citizenship in the founding treaties created a conceptual space, based on core tenets such as free movement and the nationality principle, which had an effect on the explicit citizenship discourse which emerged from the 1970s, and culminated in the debates on citizenship after the Maastricht Treaty. In this sense, free movement rights and the nationality principle have therefore remained “sticky” as the basic dimensions upon which different conceptions of citizenship were conceived throughout the integration process. This does of course not mean that the conceptual path of European citizenship is one where new elements did not emerge and existing elements were not changed. Within policy practices, for instance, new elements were added along the way. For instance, there was a clear development over time towards a stronger focus on personhood as a basis for the granting of European rights, thus replacing the exclusive focus on the worker-citizen in the founding treaties. Within constitution-making instances, participation was held to be of pivotal importance for a workable European citizenship, not only in terms of increasing the engagement and belonging of individual citizens, but also by the perceived alleviation of the widely held deficits of democracy and legitimacy of European integration. What is striking, however, is that such new elements often developed as an effect of the core dimension of rights, and then more specifically free movement rights.

Hence, even though there were some moves towards a greater emphasis on citizens as persons and not only workers, European citizenship discourse did, in the end, not engender a radically new understanding of the relation between citizens and European institutions, by way of a genuinely *democratic* citizenship. This was most clearly the case for participation which on the whole emerged as a corollary to free movement and market rights, much more than an independently significant dimension. Against this, one could of course retort that the establishment of political rights in the 1970s and their expansion within constitution-making instances proffered an independent political status linked to a manifest “Europeanness” of citizenship on the supranational level. Indeed, a more “independent” European, if you will, *postnational* focus was evident within EU constitution-making. This was apparent, for the most part, in a more pronounced focus on *political* participation as the upshot of the frequently held quandary of the European project in terms of legitimacy and transparency. Yet, the empirical analysis has highlighted that what has united different types of rights and dimensions in their import for an enduring conception of European citizenship was that they were activated only upon the crossing of borders. This was not in the least the case for *social* rights which, against several proposals by the EP and the Commission for a supranationally charged social citizenship, were activated as an effect of free movement rights. More concretely, with the exception of voting rights in EP elections and more recent rights linked to a European Ombudsman, rights of European citizenship have only been triggered within the territory and jurisdiction of second countries. Ultimately, then, what emanated from the constitution-making instances were also conceptions of citizenship steeped heavily in a *transnational* conception of citizenship as “between the nation-states”, rather than a free-standing citizenship on the level “beyond” them. Thus, EU constitution-making did clearly not cause significant *ruptures* to the conceptions that had developed within policy practices, but rather took these as the frame for “constitutional” conceptions of citizenship. In this light, the decisive *constitutional moments* as far as citizenship is concerned appeared in the founding treaties, rather than within concrete and more or less deliberate instances of “higher law-making.” Later changes to conceptions of citizenship were in a way gradual changes and expansions of this *initial* framework.

Does this finding, then, diminish the heuristic value of the two-level empirical design of this thesis? I will argue that it does not. Clearly, the aspiration of explicit constitution-making – at least in the Spinelli Project and the Convention – was to “transcend” regular

policy-making processes in debating the basic constitutional and institutional principles for a European polity. By highlighting the *sequence* of how citizenship was debated in such processes – from “radical” proposals to “conservative” answers which followed the conceptual path – this thesis has illuminated an important aspect of European citizenship discourse and EU constitutional politics. When a concept like citizenship was at stake, the common distinctions between normal and constitutional politics derived from the nation-state experience collapsed. This is interesting in itself, as it showed that with regard to citizenship, moving such a foundational issue to the level of constitution-making did not yield new answers to old problems. Hence, the two-level design has been useful, not only in shedding light on European citizenship discourse, but also on the broader question regarding the effects of constitutional reform in the EU. Further research, focusing on other concepts and issue areas, will of course be needed in order to substantiate the extent to which this is particular to the issue of citizenship, or if it is a more general attribute of constitutional development in the EU.

Furthermore, a chief empirical insight of the thesis is that, as free movement rights and the principle of non-discrimination based on nationality evidently were at the core of this transnational citizenship status, other dimensions were on the whole activated as a corollary to these rights. This does not mean, however, that the interplay between different dimensions was *frozen* in terms of the focus on citizenship at different junctures of the process. Rather, the *initial* notion of what would underpin the status of individuals in terms of their relation to the integration project generally, and European institutions specifically, had ramifications for subsequent developments. In this sense, the transnational citizenship which built on free movement and market rights that was observable already in the embryonic conception of the ECSC, created a certain path upon which more comprehensive conceptions of citizenship were later built.

This last point, then, brings forward a second, general insight that comes out of the broad empirical analysis of this thesis, namely that, European citizenship discourse has *not* produced a *postnational membership* on a par, so to say, with this predominantly transnational rights status. European citizenship has been and still is – with the exception of some scattered proposals within constitution-making – grounded on an increasingly salient nationality principle, which culminated in its insertion as a “supplementary” status in the Treaty of Amsterdam. There has been no *real* dissociation between nationality and the

concept of citizenship in the context of European integration. Rather, nationality has been reinforced in terms of membership and the *initial* access to rights.

Hence, this highlights that the abovementioned dynamic within conceptions of citizenship was also visible with regard to the dimension of membership. Already at the outset of the European integration process, membership was tied to nationality through the granting of special rights to Member State nationals only. As was highlighted above, through the addition of new and the widening of the scope of previously instituted rights, conceptions of citizenship were in fact increasingly rooted in prior national membership on the individual level.

Rather than being a contribution to the dissociation of nationality and citizenship, then, European citizenship discourse in a sense reinforced the link, in terms of the ultimate access to rights. What was new with the emergence of citizenship under the guise of European integration, however, was that this transpired on a different level than that of the nation-state. To put it directly, the national import of citizenship in conceptual terms was *strengthened*, albeit through the added supranational layer of granting rights to individual citizens. This was so, because the transnational rights status diminished the import of nationality within certain European countries through privileging certain denizens on their territories, while at the same time grounding such a status on prior membership for citizens of states belonging to the supranational level. This *externally* exclusionary European citizenship is then without a doubt based on nationality, and not on, say, a cosmopolitan notion of “universal” personhood.

The lack of a strong postnational component within the European citizenship discourse is further striking with regard to the issue of identity. The amplification of the dependence on nationality in the classification of who are members and who are not, did not give rise to an explicit agenda with regard to identity in concrete terms. European identity has for the most part been linked to an idea of the *external* identity of the polity itself in relation to other international organizations and countries. The *explicit* issue of what holds the community of citizens together *internally* in the EU was hardly raised. It was rather framed implicitly as a corollary to developments regarding other dimensions, such as rights and participation. As shown above, these developments, however, did not create a free-standing European citizenship *independent* of the nation-state level. It was rather linked to

the privileging of European citizens within second countries. In this sense, identity as a precursor to the institutionalisation of citizenship through norms of membership remained an issue for each nation-state – as was argued in the Danish position on Union citizenship – and European citizenship was at *the core* a truly individual, boundary crossing rights status, much more than a common signifier for the belonging of citizens to European institutions.

This comparison of policy practices and constitution-making instances has highlighted that some issues have remained rather stable throughout the European citizenship discourse. These issues have, thus, set their mark on conceptions of citizenship, across time and levels of integrative politics. In this sense, the overall conception of European citizenship that has emerged from the dual process of policy- and constitution-making is at the core a *multi-level* one. Within this multi-level conception, the *supranational* level has been, not so much an independent sphere of citizenship politics (with the exception of voting rights in elections to the EP), as a *facilitator* for a privileged *quasi-citizenship* or *denizenship* in favour of individuals that move across the internal borders of the European polity.

### **7.3. Researching European Citizenship: Dimensions of Citizenship, Empirical Research and Implications for Theory**

How does this conclusion on the trajectory of European citizenship discourse as a facilitated quasi-citizenship then square with existing research and theorisation on European citizenship? At the outset, I argue that the empirical analysis of this thesis highlights that much research on European citizenship has been weak in locating the peculiarities and specific elements of citizenship at given junctures of the integration process. In making good of this claim, this section will be devoted to an assessment of the implications for theory that emerge from the results achieved by the specific theoretical and analytical approach to the study on citizenship that has been utilised in this thesis. This approach was based on the reasoning that citizenship should be studied from the vantage point of analytically distinct, yet potentially inter-related dimensions. In doing so, the idea was that one could elucidate the relative importance of membership, rights, identity, and participation at given junctures within European citizenship discourse. A further purpose was that this could also yield information on the degree to which certain dimensions were at the core of conceptions, while the designation of other dimensions

followed as an effect of these key dimensions. Hence, such a research framework was deemed to be dynamic in conceptual terms, so as to be able to capture the specifics of how conceptions of citizenship developed over the course of European integration; from the initial market-oriented integration of the founding treaties to the political union of the Maastricht Treaty and the constitutional politics of the Convention.

In all, this study has highlighted two *main* aspects with regard to research on European citizenship. Firstly, it has contributed to highlighting the dimensions that have provided the *nucleus* of European citizenship politics upon which other elements were built. Secondly, it has illuminated which elements that has been activated only or for the most part as a *corollary* to other dimensions or that have been *omitted* at given junctures of the integration process. This is an important contribution of the thesis as it has elucidated the *specificity* of citizenship issues in terms of which elements have been central to conceptions at given points in time. Hence, the study has been able to trace the conceptual development of citizenship issues, without resorting to viability or desirability arguments at those points in time where conceptions have been, say, minuscule or have not fitted with paradigmatic models.

More concretely, what are the main theoretical lessons that can be drawn out of these empirical insights? Firstly, the focus on conceptions as they developed in terms of the articulation or omission of specific dimensions, has underlined that one should not *assume* theoretically at the outset that certain elements *must* be activated for citizenship to be relevant for individuals within a given political and institutional space. Or, conversely, it highlights that it is also problematic to assume that such a citizenship, given that it has been conceived within a process of market and political integration *above* the nation-state, necessarily must release the concept from its “classic” corollary of nationality.

Indeed, the observation that certain dimensions were *not* activated was just as informative for the understanding of what kind of conceptions emerged, as the observation of dimensions that were explicated. Thus, by highlighting the empirical development of citizenship on two different levels of EU politics in terms of dimensions, this thesis therefore disproves grandiose theoretical claims such as that of Aron (1974) on the impossibility regarding the concept of citizenship on another level than the nation-state. Rather than being “impossible”, lasting conceptual imprints have highlighted European

citizenship as a specific form of citizenship that at once has deconstructed *and* reinforced the link between citizenship and nationality. This link is not, however, one of congruence between the concepts of citizenship, identity and the nation-state, but rather one where the status of individuals has been made dependent on *multiple* levels providing different characteristics of citizenship.

By highlighting that there was a political space wherein a particular status of individuals emerged *already* at the outset of European integration, this thesis has therefore shown that issues of citizenship are not incompatible with institution-building and polity-formation “beyond the nation-state.” Yet, the main findings of this thesis underline that *both* no-demos theorists and postnationalists can learn lessons from the careful empirical tracing of concrete practices and a theoretical focus on the interplay between dimensions before precluding that issues of citizenship on the European level are even feasible or asserting the release of the idea of citizenship from the issue of nationality.

Secondly, through its empirical findings, the thesis has illuminated developments that do not necessarily fit with normative visions of (European) citizenship. The upshot of this is that while it is perfectly valid to subscribe to a specific view of citizenship on normative grounds, theoretically, one should not employ such a view to abstain from the acknowledgement that elements of citizenship have in fact developed outside the specific normative frame. This goes both for normative theories that oppose European citizenship on the ground that citizenship, political rights and participation, and national identity are unequivocally linked for the good of the community of citizens, and for theories which claim that citizenship above the nation-state is desirable because it is thought to relinquish such nationally oriented links.

There should, therefore, be a closer link between research questions and the subsequent research design within studies, not only of European citizenship, but citizenship in general. Given the highly contested character of citizenship, both in theoretical and normative terms, it is of crucial importance not to establish *empirical* research programmes on (normative) theories that do not take this into account. Rather, in order to flesh out the traits of conceptions and institutions with regard to citizenship, the employment of a framework that can illuminate specific practices is clearly rewarding. What I argue, is not that the normative dimension of citizenship is not important. It is rather, that to ground

efforts to understand “what has happened” on “what it should be” is faulty. For instance, work within diverse streams of research, such as claiming that it is conceptually impossible as “citizenship” (Shore 2004), a harbinger of a cosmopolitan political order (Linklater 1998a; 1998b), or the cornerstone of a European identity (Kostakopoulou 2001a), all overstated *specific* empirical elements of European citizenship from the vantage point of normative theories or projects. This thesis has, therefore, underscored the merit of basing empirical research – and this is especially the case within the study of the EU which is a politically contested phenomenon in itself – on indicators that can illuminate the specifics of political phenomena and not only their putative “fit” with a given normative vision.

Thirdly, the empirical analysis of the thesis has highlighted that citizenship is not a concept where different elements are statically linked to each other, that is, that they exist in a clearly defined and fixed relationship where, for instance, one element always necessarily precedes or presupposes other elements. Rather, empirically it was typically found that as conceptions of citizenship initially emerged around specific types of rights linked to the internal market and economic integration, other dimensions, such as participation and membership, often developed as a knock on effect of the conceptualisation of these rights.

Further, and this is related to a point that was brought up above, not all dimensions have been activated at *all* critical junctures of the process. This was most clearly the case with regard to identity, which at many junctures was hardly raised as an *explicit* issue of European citizenship politics. To the extent that it did figure, it was implicitly through the assertion of citizenship as a partial answer to the widely held problems of legitimacy and belonging within certain junctures of EU constitution-making.

Through the theoretical framework, conceptions became observable even though one dimension might not have been activated to the extent that models of citizenship such as the liberal, communitarian and republican ones would typically expect; where specific dimensions has to figure in a given relationship. It has further brought about a more historically grounded understanding of what citizenship entails within European integration *over time*, as different dimensions have figured more prominently at different junctures. This does not, however, support an understanding of European citizenship

practice as “fragmented” conceptually, as well as institutionally as argued in Wiener’s work (Wiener 1998).<sup>265</sup> To be sure, conceptions of citizenship have not been *coherent* over time. They have not included the *same* “mix” of elements throughout European citizenship discourse, notwithstanding the presence of some core elements diachronically. The conceptual *continuity* of European citizenship thus withstood its fragmented institutional basis. Hence, I argue, the conceptual focus on the variability of dimensions that has been employed in this thesis has highlighted that the institutional location of citizenship politics does not necessarily have lasting effects on its affect on the very status of individuals and their place within the broader integration project.

Finally, the thesis has also illuminated the dynamic interplay between dimensions. Indeed, this goes to the core of the above comparison of the two levels of analysis and the trajectory of European citizenship discourse. The interplay between dimensions, and especially the way in which certain dimensions wholly or partly developed as knock on effects of “ever-present” dimensions, elucidated how conceptions of citizenship was strongly linked with broader practices and policies of European integration. Even within constitution-making, which is often theorised as the vanguard of modern politics which overrides the “simple” questions of “normal politics”, these aspects were evident.

The overall point here is that, in order to understand a malleable and contested concept such as citizenship, one should employ a theoretical and analytical framework that is conducive to the discovery of specific realisations of the concept within concrete practices. The more rigid and theoretically presupposed the analytical framework, the less variation in conceptual terms can be accounted for. A focus, say, only on rights or identity respectively, will then not contribute to bringing to light the detailed and particular developments regarding a novel phenomenon such as European citizenship. Thus, in this thesis it has been possible to focus on citizenship situated within and against practices, and not only as an explicit political “idea” that was suddenly introduced in the EU in the 1970s and which only gained momentum with the Maastricht Treaty.

To sum up, through the approach of this thesis, one can avoid protracted disagreement between opponents of theoretical debates, the tendency to normative pre-emption

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<sup>265</sup> See also Hilson (2007) who has shown how different rights that have emerged within European integration, the three most prominent being Community, citizenship and fundamental rights, have been

regarding the validity of identifiable developments, and the failure to notice how a concept and phenomenon such as citizenship develops concretely within given political settings. By avoiding such pitfalls, one can rather illuminate the real influence of political projects on the status of individuals. In doing so, we also gain insights that not only have an import for our understanding of European integration and citizenship in historical and political terms, but which also relate to the ongoing process of bringing Europe ‘closer to its citizens’, not least in the aftermath of the insertion of Union citizenship in the Maastricht Treaty.

#### **7.4. The Study of European Citizenship as a Barometer on Recent Developments within EU Studies**

EU studies is an increasingly diverse field where the early propensity to study the EU from a specific theoretical frame such as neofunctionalism has given way to the application of more general theories and methodologies of international relations and comparative politics (Pollack 2005). What unites these “new” approaches to European studies is their by-passing of the frequently used *sui generis* argument within the field; that the EU is a unique experiment within modern politics, and that *n=1* warrants *specialised* theories and methodologies to understand this phenomenon (see e.g. Warleigh 2006: 32). In this thesis, the research questions were *not* answered through the creation of “polity-specific” models of European citizenship. It did not present, so to say, the equivalent of neo-functionalism in terms of citizenship theories. To the contrary, it was argued in chapter 2 that in order to capture the specificity of concrete developments with regard to European citizenship, a general theory of citizenship was more appropriate as a starting point.

Thus, this thesis has studied a fraction of EU politics by eschewing the *ex ante* assumption that it is a unique phenomenon requiring distinctive theoretical models (see e.g. Friese and Wagner 2002). In fact, the theoretical critique that the thesis was based on and the methodological lessons that were highlighted in the preceding section show that by employing this kind of framework, one could reach a more informed *ex post* understanding of the specific ways in which citizenship has been constructed and conceptualised within European integration. Indeed, it has highlighted the peculiar configuration and “real-world” practice of a key concept of modern politics within the

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developed within different institutional spheres.

EU. These remarks highlight how an approach that treats the EU as a political unit with binding institutions, policies and ties to citizens can indeed yield empirical findings which underscore the common observation that it has certain unique features. In terms of linking this to a broader debate on how European integration “writ large” has evolved, the results that stem from this thesis has underlined that initial conceptions created a specific “path dependence” (see Pierson 1998).

In addition to the shift towards a “normal science” of EU studies (Pollack 2005: 358) there has been a proliferation of work in the field from the vantage point of political theory and political philosophy, the so-called “normative turn.” (see e.g. Bellamy and Castiglione 2003; Chrysoschoou 2001; Friese and Wagner 2002). One strand within the political theory literature in EU studies has focused on the potential for European citizenship to rectify the purported “democratic deficit” of the EU.<sup>266</sup> For instance, Beetham and Lord (1998: 32, 58) argue that identity formation and shared civic values will require the democratisation of the EU. Others hold that by safeguarding individual citizenship rights based, not on a pre-political cultural identity, but universal values, the first stones of (deliberative) democracy have been laid down in the EU (Eriksen 2000; Gerstenberg 2001; Habermas 1992, 1996, 1998). Conversely, de Beus (2001) argues that a “quasi-national” European identity based on citizenship rights and participation is necessary for democracy to prosper in the EU. Yet another normative argument is found in Føllesdal (2001) who makes the case that the development of citizenship rights in the EU is justified in so far as they foster and maintain the *trust* required for democratic institutions on the supranational level. Writing from different normative angles, then, these are examples of the normative argument that European citizenship as it emerged from the Maastricht Treaty is to some extent a *pre-requisite* for the proper democratisation of the EU.

In light of such arguments, the lack of serious discussion regarding the issue of democracy in the empirical analyses of this study is interesting. Yet, this was not a conscious theoretical, analytical or normative choice. In laying out the theory of citizenship in chapter 2, issues pertaining to democratic politics clearly figured. It was for instance pointed out that political participation and membership decisions can hardly be

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<sup>266</sup> For a comprehensive bibliographic overview of seminal contributions in the scholarly debate on democratic legitimacy and citizenship in the EU, see Bellamy and Castiglione (2003).

understood without also taking into account their democratic import. But, in the empirical analyses, issues of democracy seldom came up with the exception of lofty assertions in preambles and declaratory statements, in addition to instituting certain political rights. Thus, at its conceptual core, I argue, transnational European citizenship was not geared to any significant extent towards solving the twin deficits of legitimacy and democracy as is so often asserted, not only in statements by Euro-politicians, but also within the scholarly literature. Hence, based on the examples addressed above, it seems clear that before they engage with normative solutions to such perceived problems, EU studies would do well to probe in more detail the concrete developments regarding concepts and institutions that are linked to the issue of democratic legitimacy. As mentioned earlier in this chapter, engaging in normative theorising is not faulty by itself and might render interesting conjectures about the direction in which the EU will or should develop in the future. Yet, I contend, the work provided in this thesis and some other empirically oriented studies on European citizenship such as Wiener's (1998) institutionally oriented study, Maas' (2007) focus on the ideas of national actors, and Bellamy et al's (2006) concentration on the active role of individual citizens and organisations, underscore the point made by Bauböck (2007) that normative theories will often be richer if they start off from empirical assessments of "real world" phenomena.

## **7.5. Concluding by Looking Forward: Final Remarks and Prospects for Further Research on (European) Citizenship**

Given the argument raised in this chapter that conceptions of European citizenship were not frozen at the outset, but rather developed against changing policies, practices, and broader notions of the EU's self-understanding, one would have to concur with the following: "(...) *right from the beginning*, member states have always hesitated or looked for a compromise between four conceptions of citizenship: to assert a common identity, and/or a single values system; to create specific rights for the citizen as producer; to extend rights to the citizen as a consumer; or to assert a more political citizenship, thus recognizing at last the new democratic legitimacy created by the Union" (Neveu 2000: 123).<sup>267</sup> Yet, what is missing in this comment, is the acknowledgement that individual market and free movement rights has been ever present within conceptions of citizenship, while other issues were raised much later in the integration process. Further, it misses an insight that follows from the close process tracing of this thesis: that in the *final* instances

of enacting policy or writing citizenship into a constitutional document, the other aspects mentioned were clearly diminished in favour of a transnational and rights-based conception of European citizenship.

In this concluding chapter, it has been argued that the trajectory of European citizenship discourse taking into account two levels of integrative politics has brought forward a conception of citizenship that is at its core transnational and rights-based. Additionally, this rights focus had not engendered a postnational membership on the European level, akin in conceptual terms to national citizenship institutions. Rather, the transnational rights status that was created already at the outset of European integration and was strengthened through subsequent developments and practices, was not at its core an *internal* conception of citizenship, but rather based on boundary crossing. Lastly, however, this did not mean that *only* rights have been activated with regard to European citizenship. Other dimensions were not missing. Yet, on the whole, they were peripheral to, and emerged as a corollary of, the initial grounding of an individual status on special rights of free movement and non-discrimination. Dimensions such as membership, identity, and participation tended to be “dependent” on the prior notion of rights in terms of their location within conceptions of citizenship.

With the main conclusions and theoretical lessons that have been raised in this chapter as a background, what are the foreseeable prospects for future research, specifically with regard to the issue of citizenship and the EU, but also more generally with regard to other levels, be it regional, national or even of cosmopolitan citizenship? The focus on *conceptual* aspects with regard to the development of European citizenship was a conscious choice, as much research within the field had focused on minute legal details or normative ideas. With the conceptual groundwork done in this thesis as a backdrop one could ask the further question of how and the extent to which the concept of citizenship has been utilised in institutional *struggles* within the EU, be it between European institutions, Member States, or between actors on these two levels of the European political order. Such a research focus would thus open up the study of a contested concept such as citizenship to more actor-oriented approaches than one normally encounters within political theory. Indeed, such an actor-focus could be developed against the background of citizenship practice in strict policy- or constitution-making terms, and thus provide a

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<sup>267</sup> My emphasis.

further *contextualisation* of important questions and issues such as transparency, accountability, democracy, and legitimacy, which have been raised within the “normative turn” of EU studies. This might further enhance our insights regarding the degree to which the raising of such issues stems from a benign agenda regarding the “goodness” of the European political order, or are rather used instrumentally to foster interests of the actors in question; and finally the degree to which they in fact have been beneficial to solving perceived problems of the European polity.<sup>268</sup>

Taking the empirical approach and the main findings of the thesis into account, there are further prospects for research on European citizenship. This thesis has found that conceptions of citizenship did not diverge between constitution-making instances and policy practices. This contradicts the truism within the constitution-making literature that such processes are bound to diverge from “normal politics” as they address profound issues linked to the future and finality of the polity, and crystallise in a deep constitutional moment. Thus, there is indeed a prospect for studies that focus on a significant issue or concept, and how this is conceptualised and reconciled on different levels of the system. Taking the cue from the widespread understanding of the EU as a multi-level political system (see Hooghe and Marks 2001) one could add more layers to the empirical argument, and thus come up with a richer research agenda with regard to how political concepts and policy issues are dealt with on different levels of European integration and how this in the end influences rule- and decision-making in the EU. To be more concrete with regard to European citizenship, a multilevel analysis of citizenship in the European setting could study the linkages and interactions between the Member State and EU levels. Hence, we could gain insights not only into the degree to which national citizenship institutions are Europeanised, but also the extent to which conceptions on the national and sub-national levels relate to and affect conceptions that emerge on the supranational level. What is, for instance, the impact of reform trends in nationality laws on European citizenship? These are interesting queries because the nationality principle was strengthened through Union citizenship and post-Maastricht developments. Thus, one could ascertain the degree to which ideas and interests of the Member States have an import, not only for, say, economic or foreign policy issues, but also for the ultimate

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<sup>268</sup> See e.g. Naurin (2007) who argues that the issue of transparency within the EU has largely been advanced as a type of “normative window-dressing” without the enhancement of the quality of decision-making through “publicising” the views of individual actors which is so often professed within the literature on deliberation and deliberative democracy.

“container” of the boundaries between states with regard to individuals, namely citizenship. Further, one ought also to probe the *multinational* character of citizenship – as a status of reciprocity between nationals of the Member States – and how this might affect further institution building in the European polity.

Not only the conceptual focus and empirical design of the thesis point to future avenues for research which can enrich our understanding of (European) citizenship. “European” is here put in brackets because the broad conclusions of this thesis links to possible further investigations, not *only* on the European level, but also on other levels. Indeed, the main conclusion of the study could be used as a heuristic starting point for closer scrutinising of the extent to which the proliferation of denizenship on the national level (see Hammar 1990) from the 1970s onwards in fact contributed to a “postnationalisation” of membership and rights within so-called receiving states with regard to migration (see Soysal 1994). Hence, one can study more closely in empirical terms whether the institution of citizenship has in fact been changed drastically on the national level, or whether it has rather been re-configured in the sense that certain elements remain “nationalised” while others are “let loose” from the nation-state.

These remarks also open up for a comparative approach to the study of citizenship across levels of government. Even though there are increasing calls for overcoming the *sui generis* approach to the study of the EU, the contextualisation of the EU as a “case” has often been done implicitly in comparative terms (Fossum 2006: 96). The general theory of citizenship that has been utilised in this study in terms of analytical dimensions is especially conducive to comparative research strategies. One could for instance conduct a comparative study on conceptions of citizenship between the European and nation-state levels. In doing this, one could assess more systematically the extent to which European citizenship as one facet of European integration does in fact diverge from its main frame of reference, that of citizenship within the nation-state template. Thus, based on the broad theoretical lessons and the link to the field of EU studies, the work done in this thesis opens up the further possibility of more systematic empirical research in a field permeated by theoretical conventions and dominant ideas in practice (see Isin 2002).

The possibilities for future research that I have sketched here underline that this study has focused on just one facet of the range of possibilities with regard to research on European

citizenship. Yet, the underlying idea of the study was that through a reasoned theoretical framework one could, in general terms, capture more of the complexity concerning the development of citizenship in the EU as the most elaborate form of political order “beyond the nation-state.” In light of this, the findings and conclusions that have been concretised in this chapter can serve as a reminder that citizenship – notwithstanding its ideational and normative core – should be scrutinised empirically like any important aspect of modern political order. Only through theoretically informed empirical research can we make appropriate sense of the issues that are at stake in a period of rapid change and widespread transformation of political order, be it on the national, European or global level – or just as importantly, at the junctures between them.

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