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Enlightening the Debate on Good Governance

Rethinking European Citizenship

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European Essay No.24

A Definition of Federalism

Federalism is defined as ‘a system of government in which central and regional authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the regional units. In theory, a federal system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing regional and local units of government at will.’

(New Fontana Dictionary of Modern Thought)

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Introduction

This European Essay is an overview and a *plaidoyer* at the same time. It offers an assessment of the position of rights at the heart of the evolving European constitution, followed by six experts' arguments in favour of serious consideration of citizenship in a European context.

The draft constitution recently made public by Valéry Giscard d'Estaing argues in favour of a European citizenship held in parallel with that of each nation state: citizens of Europe as well as citizens of each nation. The contributors to this Essay get to the fundamental arguments that underlie this assertion, exploring the rationale and the implications of putting citizens and citizenship at the heart of the European construction.

Martyn Bond
Director of the Federal Trust
November 2002

A Project of the European Citizen Action Service (ECAS)

Recognising the urgent need to impress the importance of a debate on European citizenship upon the delegates of the Convention, ECAS has proposed that leading scholars in the field come together to express their vision of how European citizenship should be conceived and framed in a future Constitution or revision to the Treaty. Although European citizenship was formerly created at Maastricht in 1992 and further shaped by the Treaty of Amsterdam, the occasion of the European Convention provides an opportune moment for a meaningful *rethinking of European citizenship*.

The following contributions offer brief assessments of the shortcomings of European citizenship as currently organised and suggest ways in which European citizenship can be enhanced. A clear, innovative statement of European citizenship has the power to improve the lives of individual Europeans and the ways in which the EU functions at institutional levels. Specialists in the field have stepped forward to suggest how the Convention delegates should proceed and how European citizenship is linked to the bigger picture of Europe's place in the global society.

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Rethinking European Citizenship

The Citizen and the Convention

Andrew Duff*

The European Citizen is never far from the Convention on the Future of Europe. Not only is the historic event wide open to the media and beamed on the web, but one of the main motives of Valéry Giscard d'Estaing and his *conventionnels* is to be publicly comprehensible. If the Convention's proposals for the legal, political and institutional reform of the Union are readily *lisible*, they are likely to acquire the identity of a constitution, attracting general loyalty. To fail on clarity and meaning will be to have failed comprehensively.

The other key measure of the constitutionalisation of the Union is the salience given to fundamental rights. If what the Convention proposes entrenches a Bill of Rights it will feel like a constitution. On the contrary, if the United Kingdom succeeds in its efforts to stop the installation of a superior fundamental rights regime at the heart of the integration process, there will not be a constitution. It is surely unthinkable that a modern constitution could be written without a Bill of Rights.

Fortunately, the Convention already has at its disposal the Charter of Fundamental Rights of the European Union which was drafted in the first ever Convention and afterwards solemnly proclaimed by the Council, Commission and Parliament in December 2000. The heads of government at Nice and then again at Laeken have invited the Convention to review the status and force of the Charter.

The Charter embraces the classical human rights of the ECHR as developed by the jurisprudence of the European Court of Human Rights in Strasbourg. It has a much wider scope, however, because it also draws from EU competence as laid down in the Treaties and as developed by the case law of the European Court of Justice. The Charter also reaffirms the rights and principles resulting from the constitutional traditions and international treaty obligations common to member states. It responds to new scientific and technological challenges and it reflects and sustains the social rights characteristic of the European social model.

Like most Bills of Rights, the Charter draws together in a single text a comprehensive catalogue not only of specific rights but also general freedoms, values and principles. In style, form and precision it is a familiar document. While the Charter was not intended to create new rights, it succeeds in making existing rights more visible. In

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building a fresh, large consensus around a new formulation of rights, the Charter brings greater clarity and salience to them. It reflects contemporary European norms of good governance with respect to equality and anti-discrimination, social policy, ecology, civic rights, administration and justice. The rights are indivisible: in Europe, liberty, equality and solidarity hang together.

The Charter is a dynamic document, seeking to assist the Union in its task of further developing common values while respecting the diversity of national identities. Its formulation allows for the future development of the *acquis communautaire*. The Charter, therefore, has a durable quality. The Charter does not attribute competence to the Union. On the contrary, it has the effect of limiting the exercise of power by the EU institutions because of their obligation to respect the Charter. The institutions also have the duty within their competence to promote respect for the provisions of the Charter.

The Charter limits the powers of national governments but not the competences of member states. It is not a substitute for the fundamental rights regimes of member states, but a complement to them. It is addressed to the institutions, bodies and agencies of the European Union and the member states when and in so far as they implement Union law and policy. In so far as the Charter postulates a direct relationship between the citizen on the one hand and supranational authority on the other, it will help the Union respect the principle of subsidiarity. The Charter should set the tone for the whole constitutional settlement.

Although the Charter is not directly justiciable, its status as a solemn proclamation means that it has already become an important reference document. It is respected by the EU institutions and is invoked by both member states and citizens. Both the Commission and the Parliament regard the Charter as binding upon them and they try to ensure compliance with its provisions. Although the Council has not yet chosen to regard the Charter as mandatory, it has agreed to refer expressly to the Charter in several acts.

The Ombudsman and the Petitions Committee of the Parliament receive very many approaches from citizens citing the Charter, although there are numerous misunderstandings of its precise scope or level of protection. The Ombudsman has been in the forefront of those who have actively deployed the Charter in the interests of the citizen. There have also been several attempts to call the Charter in aid of litigation in the European Courts. The Court of First Instance has decided that the Charter confirms a right to judicial review as a general principle of Community law. The same Court, citing the Charter, has sought to widen the access to effective judicial remedy of a party directly but not individually concerned.

The Court of Human Rights has also begun to make positive references to the Charter. Fears the Charter would pose a threat to the credibility of the ECHR have not been realised. The jurisdiction of the Strasbourg court provides an external monitoring of and the assertion of minimum standards upon the human rights performance of the

44 states of the Council of Europe. The jurisdiction of the Luxembourg court provides an internal control on and an insistence on a high level of respect for human rights within the European Union's legal space. The significance of the Charter is that it provides for a more extensive rights-based regime within the European Union than is found in some other states of the Council of Europe.

The best means of ensuring coherence between the ECHR and EU human rights law would be for the Union to accede to the former. It is important to remove the anomaly whereby the EU, which enjoys competences attributed by its member states, is not a high contracting party to the ECHR alongside those same member states. The EU should be subject to the same external control in respect of human rights as that of its member states. After EU accession to the ECHR, the Court of Justice would enjoy a similar relationship with the Court of Human Rights as that of national courts who recognise Strasbourg's role in verifying consistency and compatibility with pan-European human rights norms. The European Union would be represented directly at the Court of Human Rights, thereby strengthening the authority and autonomy of both courts.

Giving citizens binding assurance about rights would be one of the main achievements of the Convention. It would help to develop a sense of responsible community among the peoples of the Union and to bring to life the wider sense of citizenship that is the subject of many of the following contributions. *Rethinking European Citizenship* is a most timely and welcome addition to the study of these matters. The Convention will be helped and stimulated by the ideas and arguments advanced in this European Essay.

Reshaping Existing Rights and Duties: Insufficiencies in the Status Quo

*John Handoll**

Introduction

I start from a fundamental starting point. Whatever the polity, be it member state or European Union, the *essential* constituent is, or should be, the individual human being as an 'empowered' citizen as well as the subject of individual rights and duties.

Viewed in this context, Union citizenship as currently conceived in the Union treaties is manifestly insufficient. The member states have failed to recognise that democratic legitimacy in the Union can be assured only where *citizens* are constitutionally recognised as the fount of political power. They have created a limited citizenship - a 'bread and circuses' citizenship - which makes the Union citizen a somewhat passive subject of limited rights and duties rather than a creative actor in the political arena.

Recent events in Ireland, and in other member states, confirm the view that democratic citizenship has a primordial political aspect, which the developing European constitution should unambiguously endorse.

Citizenship *should* be central to the debate on the future of Europe and the work of the Convention. Yet, mention of the idea of citizenship - whether as a source of democratic legitimacy or as the basic for individual participation in the European venture - has hardly figured in this debate.

As matters stand, it is the member states and their 'peoples' who really count. The Union citizen has not yet come of age, his growth has been stunted and his potential undervalued.

Union Citizenship: A Current Treaty Perspective

Union citizenship is, as it stands, a creation of the Treaty on European Union signed in Maastricht in February 1992. What are its essential features?

As a status conferred by the Union treaties, Union citizenship is seen as a citizenship common to nationals of the EU member states. The status, which is seen as *complementing* and *not replacing* national citizenship, was introduced specifically in order to strengthen the protection of the rights and interests of nationals of the member states.

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Union citizenship, as seen in Part Two of the EC Treaty, is thus characterised in the EC Treaty as a bundle of rights and, to a less obvious extent, obligations covering free movement and residence, local elections, elections to the European Parliament, diplomatic and consular protection, petitioning the European Parliament, applying to the Ombudsman, language use, administration and access to documents. This bundle should not be undervalued, though certain of these rights – in particular that of free movement and residence – remain under-developed.

The Union citizen has – very much in the guise of the national citizen – been the object of a sustained campaign to convert him or her to the European project. His or her apparent reluctance to be converted is not a bad thing. Since the shock of the Danish first referendum rejection of the Maastricht Treaty, more attention has been paid to the means of harnessing popular support, through increased transparency, the enhanced role of national parliaments and the application of the subsidiarity principle.

The latest ‘shock’ – that of the June 2001 Irish rejection of the Nice Treaty – has not yet played out and the holding of a second referendum in Autumn 2002 is anxiously awaited. Again it has alerted us to the need at least to ensure that the individual is more closely, and knowledgeably, engaged in the process. Dare one suggest that the *real* issue is not one of Irish neutrality (although the Seville Declarations may fix matters) but whether the individual Irish/Union voter feels that he or she has a real and effective voice in the future of Europe?

Issue 1: Who is the Union Citizen?

Only nationals of the member states are Union citizens. Third-country nationals resident in the Union can accede to this status only by obtaining the nationality of a member state. The introduction of Union citizenship was seen by many as an inconsiderate blow to the aspirations of long-term resident third-country nationals.

With the introduction of a coherent Community immigration policy – including the proposal for a Directive on the status of long-term resident migrants – it is appropriate to revisit the issue. To grant Union citizenship status to long-term resident migrants would not diminish the right of the member state to safeguard the hard core of reserved powers from non-national intrusion – for example, the limitation of national level political rights to nationals and the grant of nationality. That right is secure as against other Union citizens anyway.

Is the time right for such an innovation? The impact of the events of 11 September 2001 and the escalation of anti-immigration sentiment in many member states augur ill. The imminent enlargement of the Union and the need to ‘bed down’ institutional changes may provide another excuse to maintain the status quo for Union citizenship. Yet, it is precisely such developments which require a rethinking of fundamental issues like citizenship. Member state citizenship can co-exist with a ‘supranational’ Union

citizenship identified *outside* the confines of the national state. This need not inevitably lead to a 'post-national' state.

Issue 2: The Relationship between Union and National Citizenships?

Concerns that Union citizenship might compete with national citizenship for the hearts and minds of national citizens are reflected in the statement, now enshrined in the EC Treaty, that citizenship of the Union 'shall complement and not replace national citizenship'.

Underlying this statement is the fundamental attitude that the member states and their peoples form the fount of power in the Community. Union citizenship is an ascribed and limiting status, constrained by the member state's rights to its own citizens and to preserve areas of jealously guarded (if receding) reserved powers. Indeed, the statement may be seen as a part of the Maastricht constitutional settlement, running with the introduction of the principles of limited attribution of Community powers and subsidiarity.

Even where national citizenship is seen as retaining a core value, the statement seems unduly rigid, denying Union citizenship the opportunity to grow and flourish as a creative citizenship. A better division and definition of competence in the European Union should lead to a recasting of the relationship between national and Union citizenships. The underlying idea should be one of a fruitful and evolving co-existence of two creative and complementary citizenships, rather than of a Union citizenship stunted from birth.

Issue 3: Democracy and Citizenship in the Union Context

A number of member state constitutions state that the power of the State emanates from the 'people' or 'nation'. There is thus a clear link between the individual (as part of that grouping) and state power.

In the case of the Union, focus is on the *peoples* of the member States. Constitutive power is principally expressed indirectly through member state governments. The role of the European Parliament remains constitutionally unclear: its members represent 'the peoples of the states brought together in the Community' (Article 189 of the EC Treaty) with a different and far more radical approach underlying the statement that 'political parties at European level [...] contribute to forming a European awareness and to expressing the political will of the citizens of the Union' (Article 191 of the EC Treaty).

Since Amsterdam, 'democracy' has been projected as a core principle on which the Union is founded and it is part of the 'community of values' to which Community institutions and the member states subscribe. *If* the Union is to move forward on the basis of shared values in a co-operative way (and away from a model of more or less

enlightened self-interest) and *if* the Union citizen is to be truly at the heart of the Union's activities (as the Preamble to the Charter of Fundamental Rights suggests), there is one clear way of starting to fill the democratic crater. The Treaty on European Union should make it clear that the citizen is at the base of power in the Union, whether exercised by the state or by the Community. The Union citizen should be identified as part of a Union *people*, and not just as a member of a national constituency with successes and failures judged from the national perspective.

Current suggestions for filling this crater – including increasing the powers of national parliaments, the direct election of the Commission President and the greater engagement of 'civil society' – are, however important in themselves, not substitutes for this critical step.

Issue 4: Free Movement and Residence

I turn, finally, to one of the key rights of Union citizens, that of free movement and residence.

This has developed from being a tool for achieving greater labour mobility to being a right which can be enjoyed by a broad range of Union citizens. Yet, as it stands, the right in Article 17(1) of the EC Treaty is made 'subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'. This means that:

- save in relation to non-discrimination on grounds of residence, the Union citizen's present or past economic status is critical for asserting rights of free movement;
- since a general right of residence requires a person to show that he can support himself, the poor and excluded are effectively denied rights of free movement;
- 'undesirables' can still be excluded on public policy, public security and public health grounds, albeit within a tight Community law framework; and
- posts in protected areas of a member state's public service can be denied to non-nationals.

Union citizenship is a status to be enjoyed by all nationals of member states, irrespective of sex, age, health and economic or social status. Yet, not all citizens are entitled to free movement. This is a direct and intended result of the principle of the limited attribution of Community powers and the natural reluctance of member states to harmonise national provisions in sensitive areas. The concern to safeguard states' rights and the continuing (and well-documented) reluctance fully to comply with the Community rules of free movement have undermined the creative potential of free movement. If the Union is to develop into a federal-type polity, these essentially national barriers to movement and residence should be lowered, even removed. Greater attention needs to be paid to the areas 'flanking' free movement – removing national barriers to free movement in areas such as social welfare and assuring the full application of the rules that are

already there - so that these rights can be fully enjoyed on the basis of a common inclusive citizenship.

On a more practical note, there is a long-standing need for greater clarity in, and consolidation of, the rules applying to free movement. Such reforms would not only help the citizen in understanding and exercising these rights. They should also enhance the effective and uniform protection of rights by the courts and generally secure greater compliance by the member state.

Conclusion

How should 'citizenship in the Union' be defined in the new constitutional order? Some suggestions are as follows.

- What is needed is not a Constitution *for* European citizens, but one *of* the citizens. The essential basis for power in the Union should be redefined to embrace the individual citizen in the Union. It can then be determined whether that power is to be expressed through the member state (as national state citizenship) or directly (as Union citizenship proper).
- The idea that Union citizenship complements, rather than replaces, national citizenship is ultimately sterile. Union citizenship is not a functional 'bolt-on' to national citizenship, but a 'creative' citizenship which - in a federal-type structure - should interface in a more dynamic way with national citizenship allowing a fruitful and evolving coexistence.
- Since the core of national 'sovereignty' can be protected, Union citizenship should be conferred on all long-term third-country national residents in the Union.
- All of the existing rights and obligations of Union citizenship should be critically reviewed. In particular, the right of free movement and residence is long due an overhaul. The poor and excluded should not be left out in the cold. In developing the Union human and fundamental rights system, the idea of an essential equality of citizens as a basis for rights and obligations needs to be developed.
- Finally, and this is critical, the new constituent European citizen should not be presented with a *fait accompli*, with a constitutional settlement which only the member states as 'Masters of the Treaties' can seek to alter. This is at the core of the 'democratic deficit', which can only be addressed by a fundamental change in the understanding of democracy in the Union. Failure to address this issue at this critical stage could result in the Union's decline and fall.

Residence as a basis for European citizenship: third-country nationals? Marisol Garcia *

Introduction

The Amsterdam Treaty has created the scope for reflecting about access to EU rights for third country nationals (Favell and Geddes, 2000, 407). After the proclamation of the Charter of Fundamental Rights at the Nice European Council, the claim to include third-country nationals in the principle of European citizenship appears more coherent than ever before. The Charter includes a set of civil and political rights for the peoples of Europe that can easily be extended to those who while being long-standing residents in the Union lack political rights. Article 10 'freedom of thought, conscience and religion', article 12, 'freedom of assembly and association', and article 21, 'non-discrimination' would logically lead to the reformulation of 'The right to vote in local and European parliament elections for non-nationals from other EU countries in the member state where they are resident' by adding 'and long-standing residents'. The fact is, however, that so far this proposition has not been taken on board seriously. The following reflection shows some of the elements that support the positive reasons for implementing a more inclusive citizenship of the Union; it also indicates some of the negative consequences of not doing so based on concrete experiences in European societies. Further it aims to present the complexity of the challenge and the urgent need for a serious debate at a high political level.

The following argument is based on four premises: (1) Third-country nationals are a valuable economic resource, even if in recent years high unemployment rates may have contributed to doubts about this. (2) In order to grasp the context of emerging ideas and practices of xenophobia in European societies, social structures, with their examples of recurrent discrimination, exploitation and oppression, need to be examined. (3) 'As long as there is a distinction between full citizens and denizens, the denizens represented a potential target for attack' (Rex, 2000, 70). Denizens must have the means to protect themselves through opportunities for taking political action. (4) Given the different traditions within European nation-states in providing citizenship rights according to *jus soli* and *jus sanguinis* systems, European citizenship can only become inclusive towards third-country nationals by moving beyond these two systems and establishing a new system based on long-term residence.

Social structures in European societies have been experiencing transformations, some of which have affected negatively the life chances of many third-country nationals' families. One has been the dramatic reduction of low skilled industrial jobs; as a result many workers have become unemployed. The other has been a restructuring of the

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welfare state. Discrimination has become more likely within the labour market, but this is also related to formal education systems. For example, courses directed to the special needs of migrants, such as language support, are less justified within a frame of cutting resources for education in general. This has strongly affected second generation migrants, many of whom have not acquired the necessary skills to compete in the service economy. Moreover, third-country nationals find restricted access to labour markets, such as the public sector. Exploitation of these members of societies is particularly feasible in the absence of protected rights (economic but also political).

Life chances for specific social groups have diminished not only because *options* in the labour market are restricted, but also because opportunities for social integration in cities and localities are subjected to conflictual competition for scarce public resources. For example, differential provisions of public programmes in training and access to housing and neighbourhood facilities affects negatively life chances of the population, in general, and of those who are not citizens, in particular, by restricting the possibility for social integration.

Populist anti-migrant parties argue that many third-country nationals are idle (usually referring to the young) and cost far too much to society, but they do not take into account the economic input that most members of these groups have provided and still provide to European societies. Oppression is enforced, among other ways, by the obligation to pay taxes while being politically marginalised. In the following section it is argued that by granting political rights to these groups, mainly at the local level, they will be more able to participate in the societies in which they live.

Why grant political rights?

To have established rights and obligations of the individual in the Union without defining the political status of around fifteen million members of the population of European societies could be seen as an inconsistency as well as a recipe for conflict. In fact, there have been an increasing number of situations in which xenophobic manifestations have occurred with no political capability for defence or reaction from the victims themselves given their weak position in the societies in which they live. In some European societies, conflicts have also existed between those granted citizenship on the basis of *jus soli* because they were born in a European country and those who became naturalised. Thus, there is not an automatic guarantee that by granting citizenship rights to third-country nationals those members are going to be fully integrated, mainly because of the difficulties in integrating many of them in the labour markets. Good examples are the French and Dutch experiences, where assimilationist policies have been coexisting with populist racism. It is not a coincidence that in the localities where populist parties have been more successful, levels of unemployment among the cultural minorities are high. Danish citizens have clearly formulated their perception of immigrants and cultural minority members as abusing their generous welfare system. All three

societies in our example praised themselves for having achieved high levels of equality. These experiences, however, pose the question of enforcing obligations to citizens *and* residents as the counterpart of granting rights. They also show that for many there 'is a problem of recognising cultural diversity without undermining a shared idea of equality' (Rex, 2000, 60).

A factor that needs to be fully discussed is that European societies have created a social equality culture closely related to their national identities and based on inter-generational solidarity mediated by the state that favours 'insiders' and sees 'outsiders' as a threat to the maintenance of community identity and welfare rights. This pattern is, of course, stronger in the Northern countries than in the Southern countries of Europe. It may be argued that in comparison to the United States, immigrants are more costly to integrate because the state plays a stronger role both in economic regulation and redistribution in Europe. Thus we face the paradox in Europe that immigrants are economically needed but socially rejected (Entzinger, 2002).

It will be worthwhile to explore the advantages of extending European Union citizenship and the rights of free movement that it includes to third-country nationals to help their integration into labour markets and into societies as a whole.

Bridging the gap between 'insiders' and 'outsiders'

Can a more inclusive European citizenship do the job of relaxing the negative forces of xenophobia by reassuring current citizens that there is more to gain than to lose from it? How? It will by facilitating the integration of long-standing residents into parties and party debates of the societies to which they currently belong. By incorporating their points of view as well as their social and political input, residents will generate stronger loyalties among their family and community members towards the host societies as European societies. Concrete policies, such as educational training and job activation, could become easier to implement at the local level. In this way higher levels of shared values between citizens and residents could be expected. By granting political rights to residents at the local (and also at the European) level, moreover, it could be expected that political parties will turn seriously towards them not only in hunting for votes, but also in search of ideas. Thus current European citizens are most likely to benefit from a social atmosphere in which cultural tensions are diffused by the cultivation of shared civic values among the existing diverse cultural communities. This will be better achieved if local politicians take into account the views of third-country nationals and incorporate them into local politics.

More importantly the participation of third-country nationals in the political process of local and European social integration will show that the cultural communities of which they strongly feel members mislabelled traditional and unchanging. This essentialist view has often been exhibited as the 'progressive' argument for negating minorities' individual political rights as well as for favouring repatriation. The fact is,

however, that cultural minorities are experiencing internal cultural conflicts; that this needs to be taken into account and perhaps highlighted in order to support the individual dignity of their most vulnerable members.

Enhancing European democratic values: a struggle against xenophobia

The argument that immigrant communities are mainly loyal to their country of origin – with which they maintain solid kinship networks and consequently do not want to replace their national citizenship – is often used as a further argument to encourage repatriation instead of further integration into host societies. It is argued that their values and religions constitute an impediment to subscribing to European values and that without this adherence, political citizenship rights should not be granted. However, there are some pitfalls to this argument. By emphasising their community membership on the basis of ethnicity and religion instead of their status as individual members of societies, critics of inclusive citizenship are indirectly weakening the liberal tradition on which European civic culture is based. In the liberal perception, the resident non-citizen should be treated as an individual settler and the public institutions (whether local, national or European) are in charge of facilitating this approach (Entzinger, 2000, 106). On the other hand, adaptation to liberal European values will be more effective by inserting long-standing residents into host societies' political institutions. In fact, some European countries have already modified their legislation to enable foreign residents to vote in local elections. The Netherlands is a good example. The generalisation of this practice in all member states at the level of European legislation could be the first step in making European citizenship more inclusive.

Political and detailed technical decisions will be required in order to overcome the existing difficulties in extending the rights of third-country nationals within the EU. One step would be to discuss the extent to which the rights of third-country nationals should mainly be associated with the logic of free movement of people in relation to market-building. Or whether in any case the existence of millions of residents in European territories, - permanently powerless to affect decision-making processes and excluded from formal politics (especially at the local level) - is a source of recurrent ethnic conflict (see Allen and Eade, 1999). Other steps will necessarily follow. In the end, by giving recognition to the basic rights included in different EU legal documents, the relevant decision-making bodies could elaborate a formal proposal for extending voting rights to third-country nationals at the local and European level. The number of years of residence required and the procedures to follow will need to be established institutionally.

In order to differentiate European citizenship from national citizenship and hence avoid endless debates concerning different national requirements for granting national citizenship, European citizenship extended to third-country nationals could require a period of minimum five years residence, a basic knowledge of the language of the country of residence and a commitment to respect the civic values that correspond to

democratic societies, including the respect for diverse cultural values. Any European citizen, whether national or third country national, should assume that citizenship means living with difference. However, the added value of European citizenship should be to offer a method of inclusion and participation that do not entail national identity. There is much to gain by moving away from nationalist feelings and a lot to lose by remaining enclosed to the hegemony of national corsets. That is, if we want to be Europeans?

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European enlargement: What could European citizenship mean for individuals in the candidate countries?

*Pavel Kelly-Tychtl**

On a bitterly cold day in February 1989, a friend and I sat on a bench in the centre of Vienna and tried to read Kundera's *Unbearable Lightness of Being*. We had stopped in many bookshops on the way to ask if they had the book and rejoiced in the positive replies everywhere. This was still nine months before the democratic revolutions took place in Budapest, Berlin, Warsaw, Prague and other central European countries. It was the first time we had travelled to Western Europe, having been granted the special permission required for the citizens of the Czechoslovak Socialist Republic to travel beyond the 'Iron Curtain'. Kundera's books were forbidden back home, nor was it allowed to mention his name, as with the names of many other 'forbidden' writers and artists.

On the way to Vienna our train was searched at the last Czech railway station before passing through the barbed wire barrier into the countryside of Lower Austria. We were finally in Western Europe experiencing democracy and freedom at last after spending 21 years in the Communist bloc. We were very excited to travel abroad, and imagined being greeted in the 'west' as long-lost relatives. It was somewhat disappointing to be met not with interest and a warm welcome but with a lukewarm attitude bordering on ignorance. After all, we had grown up in the firm conviction that we were an integral part of Western Europe, which happened to have been dominated by a foreign power due to unfortunate historical events. However, we were soon to realise that this was a misconception and that we were indeed at the brink of a deep mental gap that divided Europe. We were to realise that the process of European unification or integration would not be easy and that it would take many more years than we ever expected. We had expected flowers and were given a shrug.

From the early 1990s, new democratic governments all over Central Europe centred their programmes for the rehabilitation of democratic institutions and national economies on the slogan 'Back to Europe'. Politicians argued that Central Europeans had always belonged to the Western European cultural and political scene and naturally deserved to be accepted back where they belonged. Hungarians, Czechs and Poles competed to prove who was more western, using historical and geographical arguments. In almost all promotional materials of the Czech Republic it was proudly stated that Prague is located west of Vienna.

More than 10 years of transition devastated many of the expectations and illusions that existed at the beginning of the 1990s. The first illusion was that the countries of Central Europe would be quickly accepted and integrated into Western Europe as part of the European Union. In reality, it will have taken 15 years after the democratic revolutions in Central Europe for the most successful Central European countries to enter the European Union. Countries such as Bulgaria and Romania will wait even longer.

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Another shattering experience was the war in former Yugoslavia that led to bloody break-up of a country which was once viewed by many Central Europeans as a shining example of a Central European country which retained its independence and kept its ties with Western Europe, allowing its citizens to travel more or less freely to the rest of the world. While Yugoslavia was disappearing in bloodshed, Czechoslovakia gave way to two new independent states: the Czech Republic and the Slovak Republic - without a public referendum. Two political leaders met and decided on the fate of a country.

Nationalism prevailed all over Central and Eastern Europe. The Hungarian minority was brutally attacked in Romania. The Hungarian Smallholders' Party was on the rise. This was a bitter disappointment to those in Central Europe who believed that civil virtue would prevail in the new democracies. It was clear that the majority of Central European states would follow the ethnically exclusive idea of citizenship, unable to learn from past mistakes. This was reflected in many of the constitutions of the new democracies. For example, the draft of the Polish Constitution by the Sejm (Polish Parliament) and the Bulgarian Constitution determine the *ius sanguinis* as the basic origin of citizenship (Poland art. 23; Bulgaria art. 25).¹ Article 3 of the Bulgarian Constitution stipulates that: 'Bulgarian shall be the language of the Republic'. Article 36, paragraph 1, determines that the 'study and use of the Bulgarian language shall be a right and obligation of every Bulgarian citizen'. Romanian is determined as the official language of the Republic of Romania in article 13 of the Constitution. Central European countries and their citizens are still very much afraid that ethnic identity is severely threatened by the process of modernisation. Central European politicians continuously reassure their constituencies that integration into the European Union does not mean giving up their current identity. Whether they believe this is another matter but they are certain that saying otherwise would close the door to European integration, as the citizens would vote against it in the national referenda.

It is to be noted that the majority of the candidate countries are relatively small with countries such as Estonia, the entire population of which is 1.370 million or Slovenia with a population of just under 2 million.² In the case of Estonia there is a striking 13 per cent of stateless citizens according to a population census in 2000. These are ethnic Russians, former Soviet citizens who have neither citizenship of the successor Commonwealth of Independent States nor of the newly independent Estonia. A prerequisite for acquiring citizenship of the new Estonia is a command of the Estonian language. In the case of the Czech Republic there were a considerable number of stateless persons, the vast majority of Roma origin, previously citizens of the federal Czechoslovakia who found it very difficult to ascend to the new Czech citizenship after the split of the federal state in 1992. It was only due to the long-term effort of various international institutions, especially the United Nations High Commission for Refugees (UNHCR), that most of the stateless Roma were awarded Czech citizenship and thus re-gained access to health care and the welfare system.

The building of nation states in all Central European countries (with the exception of Poland) was based on ethnic rather than territorial concepts. This still prevails in public opinion but also found its reflection in the process of building democratic institutions

and practices. The debate on the future of the European Union in the majority of the candidate countries thus focuses on how they will be able to best represent and defend their 'national interests'. No debate is taking place on common European interests. Moreover, the unique challenge in Central Europe is that it is simultaneously undergoing several processes that can be reflected in three levels of the political universe. At the most fundamental level a 'decision' must be made as to who 'we' are, that is, a decision on identity, citizenship and the territorial, as well as social and cultural boundaries of the nation state. At the second level, rules, procedures and rights must be established which together make up the constitution, or the institutional framework of the 'regime'. It is only at the highest level, that is, within the parameters of those two previous premises, that processes and decisions occur which are sometimes mistaken for the essence of politics, namely the decisions on 'who gets what, when and how' - both in terms of political power and economic resources.³

Unlike in Western Europe where the processes of development from nation state to capitalism and thence to democracy took centuries, it has to be mastered simultaneously over a very short time-span in the Central European countries. The citizens of Central European countries thus have to cope with the immense challenge of re-designing and re-living what used to be the fundamentals of their identity. This leads to a blow to the third illusion, probably the hardest one, i.e. that Central Europeans will be accepted in the European Union as they are, with their predominantly middle-class, white, male-dominated, conservative concept of Europe.

In most candidate countries a conservative view of women's rights and minority rights prevails. This is also reflected in the very restrictive immigration and asylum policies. Furthermore, citizens in the candidate countries are still to realise the potential of participative citizenship from which they were actively discouraged. Very illustrative is the view of the former Czech foreign minister and current member of the Senate (the upper chamber of the Czech Parliament) at the Convention on the Future of Europe:

*'I can advise one of my fellow citizens, who complains about a political decision, to invest his own talent, energy and time, to enter directly politics. If he is able to convince a majority of his fellow citizens, he will be empowered to change the very thing that originally inspired his complaint. We cannot advise a European citizen this banal but fascinating principle of democratic politics, which works at local, regional or national level, but not at the European level. European decision-making based on intergovernmental bargaining makes its own decisions nearly irreversible. And as long as it is so, we can pile up 'White papers on Governance' and organise more and more discussion forums.'*⁴

He is not the only politician in the candidate countries who shares this very narrow view of civil life and disregards citizen participation in other forms than direct involvement in party politics.

The Czech Government used the recent floods as an excuse to push through Parliament an amendment that severely limits the rights of citizens and civil initiatives to influence the urban planning process. Government representatives argued that citizens'

initiatives slow down and complicate the decision-making process. Not that citizens in the candidate countries are the most active. A public survey undertaken by the Latvian Ministry of Environmental Protection and Regional Development on public participation in environmental decision-making has shown very clear results. When asked whether public participation in the environmental decision-making process is important, 80 per cent of respondents answered positively but at the same time only 6 per cent responded that they had actively participated in the past and only 4 per cent were of the opinion that their participation made some difference. This is potentially a serious problem as the citizens of the candidate countries will not exercise their rights and will not manage to enlarge the civil space in their own countries and the enlarged European Union.

The current enlargement process is serving to further deepen the current prevailing passivity in the candidate countries, due to the more or less passive process of accepting the legal regulations which already exist in the current European Union. The majority of the citizens of the candidate countries do not know much about the 80,000 pages of *acquis communautaire* which are currently becoming part of their legal system. Nor do they have much choice on whether they like it because the candidate countries were presented with a 'take it or leave it' alternative. This does not encourage active citizenship in the candidate countries, as their citizens simply cannot keep up with all the ongoing legislative changes. Very often the government officials and politicians declare that they do not agree with certain policies but simply need to implement them if the country is to be admitted into the European Union.

It will be difficult to convince citizens of the candidate countries of the advantages of joining the European Union unless they see that it gives them equal access to free movement within the enlarged European Union. There is a fear, though unjustified, among existing European Union citizens of a mass exodus from the candidate countries, which is pandered to by many politicians. As a result, the right of free movement of persons will be seriously limited for the citizens of candidate countries after the accession. As mentioned the populations of the candidate countries are quite small with the exception of Poland and Romania and it is simply out of the question that one million Estonians would leave their homes for Germany or Finland immediately after the accession. They will soon realise that their right to freedom of movement is curbed by many administrative obstacles in the host countries. Restricted freedom of movement of the workforce is unjustified and will have a profound psycho-sociological impact, especially on young and educated citizens in the candidate countries who are the most willing to relocate given their linguistic skills and high level of education. Paradoxically these probably constitute the most pro-European segment of society in the candidate countries.

The younger generation in the candidate countries might see the replacement of national citizenship with the citizenship of the European Union as a favourable option to the corset of ethnically defined national identity. Of course, this can only happen if they are given the choice.

At present, the future of European citizenship within the enlarged European Union seems rather bleak. There is reluctance on the side of the political leadership and large parts of the populations in the candidate countries, to open up to a new more inclusive identity, and there is a rather reserved attitude to the new compatriots on the side of the citizens of the current member states. Even though it is almost certain that the enlargement of the European Union will take place in the near future, it is much less certain whether it will be a civil undertaking rather than a technocratic project administered from Brussels. Enlargement itself does not guarantee that the historical and geographical reconciliation of Europe will be achieved. It is indeed possible that the future European Union will have an 'inner circle' of mighty member states that will make the most important decisions without consulting their own citizens and the other smaller and less powerful member states. This is a real danger which European Union citizenship could resolve, as it could bind the Europeans with a common interest and could take power from the strong nation-states and their political elites and shift it to the European citizens.

As a more optimistic conclusion to my reflection on the future of Europe, its identity and the expectations of the candidate countries' nationals (or at least those of them who will spend most of their lives in the enlarged European Union), it is clear that the Convention on the Future of the European Union can make a difference if it places more emphasis on the freedom of movement for the nationals of the new member states, provides a political message that the enlarged European Union should be and will be shaped by participation of interest groups and civil initiatives, promotes more frequent exchange programmes for young people from the candidate countries and the current member states and calls for European Union citizenship to apply immediately after enlargement takes place.

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Notes:

- ¹ Ulrich K. Preuss (1995), pp. 95-126.
- ² The population of Bulgaria is 8 million, Czech Republic 10.3 million, Estonia 1.370 million, Hungary 10 million, Latvia 2.370 million, Lithuania 3.7 million, Poland 38.654 million, Romania 22.4 million, Slovak Republic 5.4 million, Slovenia just under 2 million.
- ³ Claus Offe (1996), p. 33.
- ⁴ Josef Zieleniec, Speech at the second session of the Convention.

European citizenship and civil society: Some sceptical remarks *Professor Paul Magnette* *

'Civil society' has become a very fashionable concept in the recent past. First rediscovered in national politics, where different kinds of diffuse interests which did not feel represented by political parties decided to organise themselves and to act on their own in the public sphere, it then became one of the keywords of the discussions on European governance.

Beyond the semantic effect, is this an indication that European methods are changing, and if so should such an evolution be encouraged in order to root European citizenship in the 'real world'?

The rebirth of 'civil society' is, in large part, an exercise in retrieval. The consultation of organised groups has indeed been one of the key features of the so-called Community method since the origins. The Common Agricultural Policy, long seen as the typical pattern of European decision-making processes, has been based, from its inception, on a permanent negotiation between the organisations of the farmers, the national governments and the European institutions. This corresponded to the classic post-war 'corporatist' decision, imported in the Community by Jean Monnet and his colleagues. The implication of the 'stakeholders' within the decision-making process of the Community was supposed to enhance the quality and the legitimacy of the policy: better informed, thanks to the constant dialogue with the 'concerned interests', policy-makers would make more efficient policies; involved in the process, these interests would accept its result more easily.

In the recent past, two evolutions have transformed this corporatist pattern. First, as the range of policies made at EU level expanded, the range and variety of 'concerned interests' broadened: environmentalists, women, migrants, consumers... are now part of a process long limited to classic professional organisations. Second, the gradual transformation of the decision-making rules, giving the EP a more important role, has extended the range of places and moments where consultation takes place. The concept of 'civil society' refers to a pattern of interaction with organised groups which is more 'pluralist' than 'corporatist'.

This conception of 'open decision' is supposed to have, at least, four virtues:

1. Like the corporatist model, the implication of civil society should improve the knowledge of decision-makers and generate more adapted and more imaginative solutions, based on the practical experience and 'utopian capital' of civil organisations;
2. This, in turn, should improve the legitimacy of the policies and the compliance of those for whom they are made;

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3. The consultation of civil organisations should, moreover, make European institutions more accountable, since their action can be made public and criticised by an active and well-informed set of organised groups;
4. Participation of organised groups may, finally, be seen as a value in itself: it echoes the 'republican' values of participation and autonomy; moreover, the process is said to be a virtuous circle: citizens who participate learn politics and improve their capacity to act as citizens.

Though the actual effects of these mechanisms are certainly more limited than expected by most advocates of civil society, they can often be confirmed by empirical analysis. The process, however, also faces some crucial difficulties and limits.

1. Civil society is not 'representative'. Even when, as is the case in the EU, the institutions try to encourage the mobilisation of the weakest, the less organised and the most diffuse interests, the participation of civil groups always tends to favour those who benefit from the largest financial and cognitive resources; it is therefore difficult to guarantee that the institutions will not be captured by some interests, at the expense of others;
2. Consultation and participation are time-consuming practices, which can slow the decision-making process, or even paralyse it;
3. When it becomes institutionalised (formally or not), the participation of civil groups can undermine their autonomy and their vitality; internal conflicts of legitimacy between an 'organised civil society' and more spontaneous and critical movements can undermine the legitimacy of the process;
4. The 'educational' function of participation is limited to already well informed citizens; as it further complicates the decision-making process, and tends to focus on segmented single issues, it makes it even more difficult to understand for the general public.

These problems, generally identified by the organised groups and the institutions themselves, cannot be given simple solutions. But some general principles can help preserve the virtues of participation while limiting its vices.

1. The participation of civil society should remain a 'consultative' process. As it is not representative, it should not usurp the role of elected officials. This implies that 'co-regulation' by the actors concerned should remain limited in scope and controlled by elected European institutions. The only exception being the social dialogue corresponding to a long-standing European tradition, and offering guarantees of representativity and accountability of the actors.
2. The process of consultation should be translated into clear procedures. A 'Charter of consultation' might define the conditions of representativity, internal organisation, accountability and respect of the EU values (as defined in the Charter of Fundamental Rights) imposed on the actors consulted. It would also generalise the principle of the publicity of the process, and, when necessary, set up clear deadlines. Publicity implies that the rules of organisation and the finances of each group should be accessible, and that each institution should hold a register indicating which groups were consulted on what issues.
3. As it is impossible to establish objective criteria to decide which interests should be consulted, the only solution to this dilemma is to give the power to take this decision to those who are themselves representative. The European Parliament should be given the

power to refuse the consultation of some groups or to require the consultation of others. This decision could be prepared by its committee of petitions, which is supposed to be in contact with civil societies. This would limit the cacophony that would result from the introduction of a 'right to be consulted', and would avoid the paralysing effect of establishing a permanent list of 'accredited organisations'.

4. The moments of consultation should be defined more clearly. Each institution involved in the decision-making process (Commission, Committee of the regions and Economic and Social Committee, EP and Council) should state at what stage of the process it intends to consult private groups, and on which issues.

Under this kind of conditions, the participation of civil society can improve the effectiveness and legitimacy of European governance. But it should not be forgotten that this can only be a complement to more universal forms of citizenship. Since direct participation of all citizens is not possible, institutional reforms discussed in the Convention which would simplify the decision-making procedures, clarify the competencies of the different levels of powers and the prerogatives of the institutions, so as to improve the understanding of the EU by its citizens, will be its most important contribution to the definition of a more equal and more active European citizenship. The promotion of 'generalist' actors, like parties and trade unions which, unlike most groups of civil society, defend broad, long-term and contrasted visions of the future of the EU, would also be a crucial contribution.

Rights Policy and Institution Building beyond the State

Antje Wiener *

Introduction

It is far from obvious even to the most well informed academic and political observers, let alone the average citizen, what Union citizenship actually means. Despite formal institutional changes in the Treaty and in the constitutions of the EU member states, for example, with reference to procedures in local elections, the introduction of the burgundy coloured passport for all EU citizens, and changes in the legal relationship between citizens as legal subjects of member states *and* the EU, *Union Citizenship* remains contested regarding its substance. In particular, lawyers and political scientists differ in their assessment on what this citizenship has in store, as it stands now, as well as with regard to what might be its future potential. As this chapter argues, the *contestedness* of this citizenship, i.e. the widely differing expectations and demands put to the fore by public and academic assessments of Union citizenship, are a *key asset* in the debate over the constructive potential of this citizenship. Conflict and debates over European citizenship bring the controversial and diverging positions to the fore. They contribute to refine not only the meaning and potential of European citizenship but they also address the larger issue of civilised and democratic organisation in an increasingly globalised world.

Citizenship Practice

The politics and policy that contribute to the institutionalised terms of citizenship are defined as *citizenship practice* (Wiener 1998). Set in a context they forge a particular meaning of citizenship – one community's 'citizenship ideal' (Marshall 1950). From citizenship practice different rights, terms of access to participation and identities emerge in relation to their particular context. This is one of the key issues about citizenship, while the principle has been universally defined and is agreed among representatives of the civilised modern world, the practice always remains particular, thus coining varying citizenship ideals. For the European polity this raises the issue of adapting different particularities towards one shared ideal. The question for the European Union's citizenship ideal is thus whether we can identify rights, terms of access to participation and identity that are specific to European citizens. As the story of about 30 years of 'European' citizenship practice (Wiener 1998 and Wiener forthcoming 2003) in the EC and now EU demonstrates, such an ideal is, if gradually, emerging. Thus, the understanding of European citizenship as a new fragmented type of right that Union citizens enjoy in addition to national citizenship rights is taking shape. A growing

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number of court cases, exchange between students and expectations towards open borders within Europe are some expressions of this change. As a new supranational institution and a transnational practice, citizenship of the Union has brought together shared expectations. Yet, the important point when analysing Union citizenship is that the formal institutionalised aspects, i.e. Articles 17-22 EC Treaty remain 'thin' compared to national citizenship while, in turn, its informal practice aspects, i.e. moving across community internal borders; working, residing, studying and voting in a different member state, making EC law work for oneself, realising the shared cultural and civil background, e.g. condemning the death penalty, keeping with fundamental rights e.g. in the discussion about the terrorist attacks of 11 September 2001, or the impending US military move on Iraq, have not yet been brought to the fore as citizenship indicators in a debate that tends to stress the formal issues of rights and duties over the civic issues of access and belonging.

This contribution argues that the focus on the *developing potential* of this citizenship offers an assessment of its possible impact in the day-to-day practice of individuals (residents, citizens and visitors), the courts, as well as in EU politics, on the one hand, and its impact on our understanding of citizenship in general. As a new supranational institution and transnational practice, this new citizenship has repercussions on the relation between citizens and 'their' community along three core dimensions. They include, first, the *identity* of citizens (who does belong where and why?), second, the type and range of *rights* citizens can evoke (which rights can be evoked with which institution on which level?), and thirdly, the channels of access to participation in the wider political and social community of 'European' citizens (who can participate on what grounds and where, i.e. socially, economically, culturally, politically?). These three dimensions have a wider meaning for the type of community the EU might become. Elaborating on them bears some key answers to the much debated character of the EU itself, or, for that matter, the recently much talked about 'political finality.'

Three Questions on Citizenship

- What is the potential political impact of Union Citizenship in the context of the constitutional process (European integration)?
- What is the role of Union citizenship in the enlargement process (institutional adaptation)?
- Union citizenship contributes to the fragmentation of citizenship rights, what are the implications for citizenship as an organising principle in modern nation states?

The questions reflect a view of citizenship as 'thick' and 'under construction.' Thus, citizenship could, for example, be extended towards including place-oriented citizenship rights, so that third country nationals who are long-term residents in the EU could obtain Union citizenship. Studying citizenship as a developing institution that evolved in relation with political struggles during the process of modern state-building led social scientists to speak about the *dynamic* role of citizenship. It brings the tension between the

universal assumption of the equality of all citizens and the particular reality of the persisting inequality among individuals that reside within one community to the fore. It allows us to examine citizenship practice as the politics and policy that deal with this tension and its impact on the organisational and philosophical task of accommodating diversity. Importantly, perceptions of ideal citizenship are *societally* rooted.

Two insights about the role of citizenship in the formation of political communities can be gleaned from history. First, the terms of citizenship are the product of an ongoing process, involving debates about the terms of citizenship and struggles for access to participation. This process has contributed to create shared values and norms among the participants, forging a feeling of belonging to a specific group or community. Here programmes on student exchange, academic networks, cross-border development in the fields of transport, traffic, environmental policy to name but a few areas have proved important. A remaining issue for citizenship policy as a complimentary to the expanding group of Union citizens who 'move' across internal EU borders lies in the institutionalisation of so-called rights policy stations where citizens who practice the basic right of freedom of movement may turn to for consultation about work issues, pensions, health insurance and other day-to-day issues that are often still regulated according to national – not European – regulations. Secondly, the three key types of modern citizenship rights have been shaped and established in distinguishable processes over two centuries. T.H. Marshall's study importantly points to the – often overlooked – fact that citizenship rights are not necessarily all introduced at the same time, nor does their institutionalisation mean that all citizens will benefit from them in an equal and fair way. Indeed, modern citizenship rights were bundled only relatively recently when they were crystallised in modern welfare states in the second half of the twentieth century. It follows that citizenship consists of different elements which might be bundled into one set at some times and stay fragmented at different levels and with different implications for the involved citizens at other times. From the long-term perspective, they were fragmented for about 200 years, then they were bundled in the post-war decades and now, since the 1980s, their fragmentation has begun yet again. Social scientists might therefore legitimately raise the question of whether the current period of fragmentation will lead towards another stage of bundled citizenship. And if so, what if not the nation state will be the entity or the entities of reference for citizenship? While the change from 'bundled' national citizenship towards 'fragmented' post-national citizenship (see also Shaw in this volume) is currently in full swing, it is fair to predict that human rights and minority rights concerns will contribute to put a stronger emphasis on supranational institutions which exert an influence on the defence of individual rights in addition to national states. Here the European Union – as the most advanced type of a proto-constitutional setting beyond the state certainly has a leading role.

The perception of citizenship as a *developing institution* facilitates a helpful access point for the changing conditions of citizenship in the European Union. The lack of what we might call an updated citizenship ideal reflecting the new transnational context

of citizenship practice in the European Union poses a threat to the organising capacity of citizenship. This threat is well reflected, for example, in the debate over a 'democracy deficit' in the EU which is based on the lack of a shared identity (ethnos) and the absence of a 'European' political community (demos) as a challenge to the principle of democratic majoritarianism. Questions which remain to be further explored as citizenship develops, and as European integration proceeds, are whether and how this fragmented concept of citizenship, the specialised identities and pluralist institutional setting brought to the fore by citizenship practice will have an impact on the type of polity the EU will turn into. That is, what is the role of citizenship (and citizens) in the ongoing constitutional debate? Furthermore, the introduction of citizenship with Maastricht as an institution in the EC Treaty has had a number of implications for institutional adaptation in the member states and will, in a similar way lead to changes in the candidate countries.

Bundling and Fragmenting Citizenship Rights

The key question to be further developed is whether and if so how, the change from domestic rights policy (i.e. national citizenship rights) to global rights policy (i.e. human rights, minority rights, gender rights guarded by international law, international institutions and increasingly transnational NGO politics) has an impact on the type and role of states in world politics. In other words, do changing patterns of citizenship practice lead to a change in the political organisation of authority worldwide? Global rights policy differs in substance and dynamics from domestic rights policy. The distinctness of the emerging pattern of global rights policy lies in crossing state boundaries and hence involving an increasingly fragmented set of institutions when enforcing citizens' rights. The result is a diversification in level and type of authority addressed by rights demands as well as a changing substance of rights. In sum, the emerging pattern of global rights policy is threefold. It assumes a new diversity in type, it is more fragmented regarding the political and policy processes, and it is more expansive with a view to the political territory to which rights apply and on which they are practised. If substance and process of rights policy change, and rights do have an influence on forging political institutions, what are the implications for the European Union?

Can the current fragmentation of rights and institutions be identified as forming a pattern which is distinct from the modern context? Relatedly, it raises the question of whether or not a shift from domestically defined rights to global rights policy will potentially lead to what might be best expressed as a 'rebundling' of rights, i.e. a new institutionalised link between core rights? If so, which rights will be at the core of the bundle, and why? Given the thinning out of citizenship rights in the domestic (national) context and the strengthening of human rights in world politics, it is, for example, plausible to assume that human rights policy is added as a new dimension to a concept of rights policy that is fragmented and broader than the familiar national citizenship rights. If this were the case, what would be the consequences for political order and authority

patterns in world politics? How are familiar institutional arrangements, such as the nation state and global institutions, which play a key role in enforcing rights challenged or even changed by the fragmentation of rights policy? Union citizenship offers a first cut on actually practicing citizenship in a fragmented style. It sets the framework for an emerging post-national rights policy.

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European Citizenship: for a triumph of ambition over conservatism? *Jo Shaw**

European citizenship: dynamism and promise

Perhaps one of the most eloquent descriptions abroad of the paradox of Union citizenship in the EU Treaties is that it is an *'odd mix of assertion and caution: an expression of both European ambition and Member State conservatism'* (Barber, 2002: 241). Everyone knows that Union citizenship in the Treaty is linked to nationality of the member states and that it is only intended to 'complement' national citizenship – and not to stand-alone. But at the same time, from the time of Maastricht onwards citizenship was recognised as having *the dynamic capacity to contribute positively to the process of polity-building in Europe*. This is not by providing a compulsory template of belonging or membership which is supposed to ape national citizenship at the European level, but by offering a range of constructive strategies through which citizens could express elements of their Europeanness, however limited in scope that might be at the present time. An obvious example is granting of local and European Parliamentary electoral rights on the basis of residence, not nationality. Free movement for Union citizens must not lead, in other words, to disenfranchisement.

This point nicely reminds us that citizenship, especially for the EU, *is more like a project and less like a thing or a simple state of being*. It comprises not just a body of legal rights or claims, but also elements of access (e.g. to law or to politics) and belonging (i.e. to a community or a polity) (Wiener, 1998). Each element interacts with the others to build a framework of membership which simultaneously empowers the individual citizen, but also lends legitimacy to the polity of which he or she is a member.

But European citizenship is *'postnational'* – it is not constructed according to the various patterns and schemes of national citizenships. It is the creature of a unique 'supranational' entity, which builds upon the prescient words of the Preamble to the recently expired ECSC Treaty: the High Contracting Parties were *'laying the foundations for institutions which will give direction to a destiny henceforward shared.'* Union citizenship *is* limited in scope and effect, but it was given a developmental character by the Treaty of Maastricht which means that its final character is as yet undetermined. The Convention on the Future of the Union has the unique opportunity to take up this dynamic side of Union citizenship and to build upon an early realisation about citizenship which can be traced right back to the 1990-1991 IGC on political union: that European citizenship is *a key element in the credibility of political union*.

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Ways forward

This suggests that it is time to revisit European citizenship in a number of different ways, but each time looking for positive elements to develop all three dimensions of membership, namely rights, access and belonging.

1. We will look to see *which of the existing citizenship rights in the Treaty it would be timely to enhance*, in ways which would add value for the Union citizen, without unnecessarily challenging national sovereignty. For this reason, it is probably still too early to envisage the Union's constitutional document conferring on citizens of the Union *the right to vote in national elections in the member states* although this possibility should undoubtedly be brought back onto the political agenda.
2. We need to *revisit the balance between the scope of citizenship and the scope of the Union's own activities* which have hardly stayed static since the Treaty of Maastricht. Citizenship of the *Union* is, paradoxically, limited to Pillar One only, i.e. to the European Community Treaty. Developments – sometimes quite dramatic – in relation to Justice and Home Affairs and Foreign, Security and Defence Policy demand a reconsideration of what that means for citizenship. This takes up one of the original challenges of the Spanish proposal: that the dynamic character should develop in conjunction with the development of the policies of the Union.

Pushing forward the Treaty rights

Three principles must guide a review of Part Two of the EC Treaty, which contains the framework of Union citizenship.

1. The review must be *systematic* and *comprehensive*, covering the full range of citizenship type provisions underpinned by EU law. For example, the rules on transparency and access to documents (Article 255 EC) could be more explicitly linked to citizenship than they are at present – although it is acknowledged that these rights, like others mentioned in the citizenship chapter (complaints to the Ombudsman and petitioning the European Parliament) are available to legal persons and third country nationals as well as 'ordinary' Union citizens. Given the still impoverished public sphere which encircles the Union, which high levels of citizen disenchantment with what appears to be a remote realm of politics, all the *political aspects* of citizenship should be brought together, including, for example the provision on transnational political parties which should not be limited by its placement at present in the chapter on the European Parliament.
2. The review must be *imaginative* and must review possibilities relating to *access* and *belonging* as well as *rights*. This means looking at obligations which might be attendant upon entitlements acquired by citizens by virtue of their connection with the EU. This emphasises the reciprocal nature of the link between citizen and polity which the ideal type of *active citizenship* would promote. For example, access to documents is not just a bare right which citizens can claim through the Treaties and EU legislation which protects it, but is also an essential way in which citizens can claim a stake in what the EU is doing. The citizen is made *sovereign* because transparency allows them to determine the type of information they receive, rather than being the passive recipients

of an institution's or a government's communication strategy. Similarly the review can look at the electoral rights made available to citizens also as an aspect of a citizen's public duty to contribute positively to the locality in which he or she lives.

3. *Fluidity of scope*: At this stage the personal scope of citizenship should not be regarded as written in stone. One means of preserving national sovereignty has been to give the member states the right to determine – by means of the law of nationality – who benefits. Small steps in the Court of Justice to constrain that freedom (e.g. in relation to dual nationality) suggests that nationality law should not be treated as an untouchable Holy Grail. There are significant arguments of *equity* and *political stability* which speak in favour of reconsidering the exclusion of *third country nationals* from the scope of Union citizenship.

Matching citizenship to the Union's ambitions in the political field

In certain key respects Union citizenship 'Maastricht-style' no longer matches the Union's ambitions in the political field. This is true in respect of two key areas of development, namely the Area of Freedom, Security and Justice and the Common Foreign, Security and Defence Policy. Citizenship concerns need to be integrated into these fields – a task made more urgent because question marks hang over issues such as parliamentary and judicial scrutiny, transparency of decision-making, and accountability of implementation measures and budgetary decisions in respect of these policy fields where the member states have chosen, for all sorts of pragmatic reasons, to pursue often goals such as security, which are electorally popular at the national level, through action at the EU level. To that extent the citizenship question is intimately linked to the fusion and de-pillarisation debates which the Convention has engaged with. A single Union, not formally and artificially divided into so-called pillars, will provide a more fertile environment in which NGOs and civil society groups can promote arguments that citizenship issues should be urgently integrated into policies such as security and defence or justice and home affairs.

Citizenship is also a largely unstated dimension of the Union's wider 'governance' debate, reflected in part in the European Commission's Governance White Paper of 2001. Citizenship was devised and conceived for the early 1990s, as the Communities transformed themselves into the Union. This change in the focus and scope of European integration has had consequences not only for the *scope* of governance at the Union level (i.e. pillars two and three), but also for the *style* of governance. For example, the hopes invested in a more fluid form of goal setting and benchmarking of national policies at the EU level have been translated into a widespread commitment to policy improvements in many fields where citizen expectations of government delivery are high – such as labour market, welfare and social inclusion, education, immigration, economic policy – using the so-called Open Method of Co-ordination. In fact, thus far OMC has been as remote and elite-driven a form of policy-making as the traditional Community Method, based on interinstitutional negotiations and bargains with a minimum degree of linkage to citizen preferences expressed through the ballot box in

national parliament or European Parliament elections. At the national level, many member states, led by Thatcher's Britain in the 1980s, have encouraged citizens receiving public services to see themselves in a contract-based consumption relationship, rather than as passive beneficiaries of public largesse. This has had upsides and downsides especially for the universal service principle and for value for money. It is none the less a reality. The next stage is to transfer this into effective transnational citizen involvement in the benchmarking and 'market-testing' of government policies. What is needed, therefore, is the 'citizenisation' of the new governance so beloved of today's politicians.

Three priorities for development

Overall the issues raised in this contribution to debate probably represent too large an agenda for the Convention or indeed the IGC to contend with – especially given the fact that citizenship thus far has been conspicuously absent from the agenda. However, the general thrust of these comments can be captured in three priorities for development of citizenship through the Convention and the subsequent IGC:

1. Enhancement of the political element of citizenship, through citizen involvement in the election of the Commission President (e.g. by linking it to European Parliament elections and the campaigns of genuine transnational political parties) and the development of a transnational element of European Parliament elections, e.g. through reserved seats for transnational lists.
2. Reshaping the national taxation systems to allow 'Europeans' to opt to support specific EU level policies, e.g. to support environmental or sustainable development projects both inside and outside the Union.
3. Institutionalisation of the civil dialogue and the participation of civil society in the Open Method of Co-ordination, to enhance the cross-national transfer of policy best-practice through bottom up pressure as well as through top-down league table systems, which often make citizens feel like the passive subjects of analysis and make professional groups involved in the delivery of services feel like the scapegoats for inefficient regulatory systems or inadequate budgetary commitments.

The Convention's role is explicitly linked by the text of the Laeken Declaration to the challenge of framing a constitution for the Union – a challenge which many members have taken up with enthusiasm. Citizenship must reflect the constitutional principles of the Union – specifically the challenge of developing a responsible and inclusive constitutional framework to fulfil the Union's vital role in an increasingly geopolitically unstable global environment.

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