

**SOCIAL POLICY AND CITIZENSHIP IN THE
EUROPEAN UNION**

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I Introduction*

This paper undertakes a preliminary analysis of the relationship between social policy in the European Union and the gradual emergence of concepts of 'citizenship' or 'membership' at EU level. To this end it tests the extent to which three dimensions of a concept of social citizenship are represented in visible outputs from law-making and policy-making processes in relation to the specific 'social' goals of the EC/EU (market citizenship, industrial citizenship, and welfare citizenship). These goals can be summarised most succinctly by reference to Article 2 EC which provides that the Community shall have the task, *inter alia*

'to promote throughout the Community ... a high level of employment and of social protection, the raising of the standard of living and equality of life, and economic and social cohesion and solidarity among Member States.'

Both the deeply uncertain character and, to many, profoundly disappointing range and efficacy of EU social policy measures persist despite rather than because of this statement of constitutional intent in terms of the underlying direction of the EC/EU. The search continues to explicate the ambivalent status of social policy. It is common to point, with varying degrees of emphasis, to the economic contingencies of EU social policy, to the relative weakness of the available law-making powers and competences, and to the tendency amongst some Member States to equate intervention in any fields which are not strictly economic with an incursion into sovereignty and the realm of 'reserved' national powers. This paper will not engage directly with these well-rehearsed debates, but instead will approach the issue through the medium of a different sort of constitutional conundrum which the EU currently faces. This is the challenge of identifying and locating the 'Euro-citizen' in the emerging 'Euro-polity',¹ a broad project

* This paper draws heavily upon a larger project entitled 'Citizenship of the Union: Towards Post-National Membership', *Collected Courses of the Academy of European Law 1995*, Vol. VI, no. 1, The Hague: Kluwer Law International, 1997, forthcoming; fuller empirical exposition of the range of EU citizenship rights and duties can be found in that paper. Permission to republish material is acknowledged with thanks.

with economic, social and political dimensions. It involves specifying the nature of the individual 'member' of the Euro-polity as legal subject and sovereign holder of rights, as well as identifying the collective nature of the community which both sustains and feeds upon the individual legal subject.

This paper concentrates upon one dimension only of this challenge, namely the search for a form of inclusionary social citizenship which can contribute to both the identity and rights-holding aspects of the constitution of the citizen of the EU.² The political dimension is largely left aside, even though one underlying assumption of the paper is that a gradual transformation of the EU into something more than an international regime, namely a form of (as yet unspecified) multi-level polity, is underway, even though neither the nature of that transformation in political or constitutional terms nor indeed the possible 'end-point' of the transformation (if indeed there is one) have yet to be fully explored. Consequently, the paper does not set out to discuss the issues raised by problems of governance, democracy and political participation in the EU, even though these are essential components of any citizenship-driven analysis.

Furthermore, the focus on the subject of 'citizenship' does not take as its starting point the formalistic reference point provided by the EC Treaty, namely Article 8 EC which declares the establishment of a 'citizenship of the Union'. This article has been extensively analysed,³ and it

¹ This terminology has been borrowed from P. Schmitter, 'Is It Really Possible to Democratize the Euro-Polity? And if so, what role might Euro-Citizens play in it?', ms. Stanford, January 1996.

² See I. Ward, '(Pre)conceptions in European Law', (1996) 23 *Journal of Law and Society* 198, esp. at p210.

³ See for a discussion of this concept A. Rosas and E. Antola (eds.), *A Citizens' Europe. In Search of a New Order*, London: Sage, 1995; C. Closa, 'The concept of citizenship in the Treaty on European Union', (1992) 29 *Common Market Law Review* 1137; *ibid*, 'Citizenship of the Union and Nationality of Member States', 32 *Common Market Law Review* 487; J. d'Oliveira, 'European Citizenship: Its Meaning, Its Potential', in Dehousse (ed.), *Europe after Maastricht. An Ever Closer Union?*, Munich: Law Books in Europe, 1994; D. O'Keefe, 'Union Citizenship', and C. Closa, 'Citizenship of the Union and Nationality of Member States', in D. O'Keefe and P. Twomey (eds.), *Legal Issues of the Maastricht Treaty*, London: Chancery/Wiley, 1994; S.

offers a strictly limited prism of analysis as well as a very great capacity to disappoint.⁴ Instead the focus of the paper turns towards the broad question of how an individual lives as a

O'Leary, 'Nationality Law and Community Citizenship: a tale of two uneasy bedfellows', (1992) 12 *Yearbook of European Law* 353; *ibid*, 'The Relationship between Community Citizenship and the Protection of Fundamental Rights in Community Law', (1995) 32 *Common Market Law Review* 519; *ibid*, *The Evolving Concept of Community Citizenship*, London: Graham and Trotman, 1995; E. Marias (ed.), *European Citizenship*, Maastricht: European Institute of Public Administration, 1994; *inter alia* A. Rosas and E. Antola (eds.), *A Citizens' Europe. In Search of a New Order*, London: Sage, 1995. See also C. Closa, 'The concept of citizenship in the Treaty on European Union', (1992) 29 *Common Market Law Review* 1137; *ibid*, 'Citizenship of the Union and Nationality of Member States', 32 *Common Market Law Review* 487; J. d'Oliveira, 'European Citizenship: Its Meaning, Its Potential', in Dehousse (ed.), *Europe after Maastricht. An Ever Closer Union?*, Munich: Law Books in Europe, 1994; D. O'Keeffe, 'Union Citizenship', and C. Closa, 'Citizenship of the Union and Nationality of Member States', in D. O'Keeffe and P. Twomey (eds.), *Legal Issues of the Maastricht Treaty*, London: Chancery/Wiley, 1994; S. O'Leary, 'Nationality Law and Community Citizenship: a tale of two uneasy bedfellows', (1992) 12 *Yearbook of European Law* 353; *ibid*, 'The Relationship between Community Citizenship and the Protection of Fundamental Rights in Community Law', (1995) 32 *Common Market Law Review* 519; *ibid*, *The Evolving Concept of Community Citizenship*, London: Graham and Trotman, 1995; E. Marias (ed.), *European Citizenship*, Maastricht: European Institute of Public Administration, 1994; C. Lyons, 'Citizenship in the Constitution of the European Union: rhetoric or reality?', in R. Bellamy (ed.), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, Aldershot: Avebury, 1996.

⁴ See for example the trenchant criticisms of Joseph Weiler of Article 8 *et seq* for 'trivializing' the concept of citizenship to the point of 'embarrassment': 'European Citizenship and Human Rights', in J. Winter, D. Curtin, A. Kellermann and B. de Witte (eds.), *Reforming the Treaty on European Union. The Legal Debate*, The Hague: Kluwer Law International/TMC Asser Instituut, 1996 esp. p65. See also C. Lyons, 'Citizenship in the Constitution of the European Union: rhetoric or reality?', in R. Bellamy (ed.), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, Aldershot: Avebury, 1996.

respected and fully participating member of any given socio-economic system, in particular the type of mixed economy/social market system which is - in very broad generalizing terms - to be found in the EU and its Member States.⁵ The approach to citizenship taken can be summarised by reference to the terminology of 'thickness' and 'thinness' used by Michael Walzer.⁶ The bare statements in Articles 8 (establishment of citizenship; citizenship as a 'rights' status) are 'thin', 'minimal' statements, which require contextualisation within a 'thicker', 'maximal' vision of what it is to be a 'member' of the EU under the legal, political, and socio-economic orders of the EU. This is not to suggest that 'thickness', comprising *inter alia* higher values of loyalty and beneficence, is to be found in the futile search for an identity-investing 'European nation', since none exists. At one level, however, these values may in the future be found in some civic version of European identity based on a political concept of the constitution. Equally, in an order such as the EU, where the transformatory purchase of the project has so often been found in its ability to change the legal status of those who are subject to its normative order, a rights discourse in itself may suggest a gradual integrative shift in perspective.⁷

In sum, therefore, if the 'citizenship' question can be seen to offer a prism or lens through which the contradictions and varied meanings of the 'European condition' may be observed, this paper is only a very limited attempt to use that prism or lens as an interpretative tool and to that end is restricted to the examination of aspects of the EU as a socio-economic system in

⁵ In that context see E. Meehan, *Citizenship and the European Community*, London: Sage, 1993; P. Close, *Citizenship, Europe and Change*, London: Macmillan, 1995.

⁶ M. Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame: University of Notre Dame Press, 1994, as used in the EU political theory context by Bellamy and Castiglione: R. Bellamy and D. Castiglione, 'Between Cosmopolis and Community: Three Models of Rights and Democracy within the European Union', in D. Archbugi, D. Held and M. Köhler (eds.), *Citizenship, Sovereignty and Cosmopolitanism*, Cambridge: Polity, forthcoming; *ibid.*, 'The Normative Challenge of a European Polity: Cosmopolitan and Communitarian Models Compared, Criticised and Combined', in A. Føllerdal and P. Koslowski (eds.), *Democracy and the EU*, Berlin: Springer Verlag, forthcoming.

⁷ G. De Búrca, 'The Language of Rights and European Integration', in J. Shaw and G. More (eds.), *New Legal Dynamics of European Union*, Oxford: Oxford University Press, 1995.

which the individual is constituted as a core actor and as a subject of law. Within the discussion, the theme of 'social rights' will form a central strand of the argument. However, the extent to which these social rights are embedded in a pervasive 'market logic' will be the main object of critique and enquiry. To that end, in examining the conjunction of concepts of citizenship and social policy in the EU, it is important to acknowledge the powerful challenge to the slowly and painfully evolving social dimension of the European Union posed by the possibility of the creation, within the medium term, of an Economic and Monetary Union, with the consequential knock-on impact for national social and welfare systems, and the inevitable question marks which may arise about the sustainability and affordability of current levels of welfare provision for an ever-ageing population. Moreover, even if EMU were not to be attained, there remain substantial and important debates about the relationship between the EU and the social rights of those who fall under its (legal) jurisdiction, that is issues about the scope and content of social policy, about the competence of the institutions to make social policy legislation, and about the social dimensions of both the single internal market and the EU's external trade relations with third countries. What is at issue here is the contribution - if any - that the EU can make to the continuing attempts (revisited in slightly different terms *post* the emergence of the new right and the end of the Cold War with the break-up of the USSR-based 'communist empire') to reduce the 'intolerable moral contradiction' between the 'promise of citizenship' (in terms of equality) and the 'reality of a market economy' (in terms of inequalities).⁸ How can one ensure the best possible combination of 'freedom to' and 'freedom from' in the conditions of the 'post-modern' welfare state? The urgency inherent in such debates about the EU social dimension, which is generated by the challenge of EMU and other significant economic developments (in other words, the 'market' dimension of EU-level integration), thus sets the scene for the analysis put forward here regarding the significance of social citizenship. However, the focus will not simply be upon the identity-generating potentialities of rights, but will consider where appropriate also the more collectivist aspects of EU social policy.

The paper will precede in two main parts. First, I shall develop some of the main dimensions of what I shall term 'social citizenship under post-national conditions'. The use of the term 'post-national' is used here to emphasise that whatever challenges in terms of the formation of polities and/or institutions, the creation of notions of identity, the development of civil society,

⁸ M. Ignatieff, 'The Myth of Citizenship', in R. Beiner (ed.), *Theorizing Citizenship*, Albany: State University of New York Press, 1995 at p66.

or the constitution of democracy are faced by the EU, they are encountered in conditions which are crucially different to those faced by the nation state.⁹ Thus for example the notion of 'EU Citizenship' is likely to evolve in ways which do not replicate the models offered of state-based national citizenship - regardless of whether citizenship is being scrutinized within a political, a sociological or even a legal frame (Section II).

Second, in the light of the themes developed in Section II, I shall develop a series of brief case studies examining the scope and nature of EU social citizenship at the present time, focusing upon the contrasting aspects of 'market citizenship', 'industrial citizenship' and 'welfare citizenship' (Section III). From these case studies it may be possible to determine to what extent the EU can lay claim to a plausible notion of non-exclusionary social citizenship at the present time, as well as assessing the claim that the development of a conception of social citizenship is at least one of the appropriate responses to the evolving socio-economic regime constituted by the EU. In other words, it will consider whether a frame of analysis which uses 'citizenship' as a central methodological reference point offers a useful and fresh approach to the problems of evaluating social policy-making in the EU.

II Dimensions of social citizenship under 'post-national' conditions

Any discussion of social citizenship, or of social rights attaching to citizenship, cannot proceed without reference to the triad of citizenship rights developed by TH Marshall, which has come closest, in the complex and highly contested intellectual world of citizenship thinking, to creating something approaching an orthodoxy (at least in the Anglo-American literature, on which this paper largely concentrates).¹⁰ Marshall¹¹ defines citizenship as *full* membership of a community, and argues that full membership has been gradually achieved through a process of

⁹ Cf. Y. Soysal, *Limits of Citizenship. Migrants and Postnational Membership in Europe*, Chicago/London: University of Chicago Press, 1994 for a rather different use of 'postnationalism' as entailing a process of 'universalisation' and 'denationalisation' of personal rights, coupled with a localisation of many aspects of citizen identity.

¹⁰ See W. Kymlicka and W. Norman, 'Return of the Citizen: A Survey of Recent Work on Citizenship Theory', (1994) 104 *Ethics* 352.

¹¹ T.H. Marshall, *Citizenship and Social Class*, Cambridge: Cambridge University Press, 1950 esp. pp28-29.

historical development of individual rights, matching the acquisition of those rights to a process of *English* historical development through three centuries:¹²

- civil rights (basic freedoms from state interference), which arose in the eighteenth century;
- political rights (electoral rights, etc.), arising in the nineteenth century; and
- social rights, including rights to health care, unemployment insurance, old age pensions, characteristic of the (mid)-twentieth century evolution of the welfare state.

More specifically, the social element of citizenship means, according to Marshall, ‘...the whole range from a right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society’.¹³ Thus, underlying the characterisation of citizenship in these terms is the fundamental value of equality: everyone is entitled to be treated as a full and equal member of society, and to be given the means to enjoy that equality.¹⁴ According to Marshall, ‘social rights imply an absolute right to a certain standard of civilization which is conditional only on the discharge of the general duties of citizenship.’¹⁵ Under this view of citizenship and its evolution, the welfare state of the postwar era appears to represent a final stage of achievement of citizenship rights, a culmination of a process in which not only the range of citizenship rights has been greatly extended, but also the class of citizens has gradually expanded beyond a class of white property-owning Protestant men to include women, the working class, Jews and Catholics, blacks and other previously excluded groups. This is essentially a sociological not a political concept of citizenship. It explicitly develops the links between citizenship and social class, and links the development of citizenship to the development of capitalism in the modern nation state.¹⁶

¹² An English *male* perspective, it could be added, for many of the rights in question were only acquired much later by women; see U. Vogel, ‘Is Citizenship Gender-Specific’, in U. Vogel and M. Moran (eds.), *The Frontiers of Citizenship*, Basingstoke: Macmillan, 1991.

¹³ Marshall, *op. cit. supra* n.11 at p11.

¹⁴ Marshall, *op. cit. supra* n.11 at pp28-29.

¹⁵ Marshall, *op. cit. supra* n.11 at p29.

¹⁶ J. Barbalet, *Citizenship. Rights, Struggle and Class Inequality*, Milton Keynes: Open University Press, 1988, at p8.

It is helpful, before going on to focus specifically on dimensions of social citizenship, to highlight briefly some of the limitations of this approach. For example, it projects a picture of 'passive' citizenship, in which citizenship rights are given to citizens, rather than achieved through constructive participation in government or even through 'struggle' against the status quo.¹⁷ It is an unrealistic view of citizenship even in the advanced capitalist or post-capitalist countries where the demands of an ageing population in an era of slow economic growth and increasing environmental degradation are proving unsustainable, and where the 'practice of citizenship'¹⁸ is ever more frequently being played through in the competing claims of new social movements.¹⁹ It is also a view which manifestly fails to offer a model of analysis appropriate to the situation of the majority of the world's population to be found in so-called third world countries, or in newly industrialising countries.

Above all, from the perspective of the 'European' character of EU citizenship, the Marshallian orthodoxy offers little insight into the links between citizenship and nationalism and national identity, or the possibilities and challenges of multiculturalism.²⁰ Marshall has often been criticised for being too British,²¹ and for his failure to offer a concept of citizenship operating within a broader frame than the nation. Yet, despite all of the criticisms which have been levelled at Marshall's work, and its self-evident inability to provide a complete set of

¹⁷ B. Turner, *Citizenship and Capitalism: the Debate over Reformism*, London: Allen and Unwin, 1986.

¹⁸ A term developed in detail by Wiener: A. Wiener, *Building Institutions: The Developing Practice of 'European' Citizenship*, Boulder, Col.: Westview, 1997 (forthcoming).

¹⁹ See in the North American context the work of Didi Herman on conflicts between gay rights discourse, and the discourse of the anti-gay Christian Right, especially '(Il)legitimate Minorities: The American Christian Right's Anti-Gay-Rights Discourse', (1996) 23 *Journal of Law and Society* 346 and *Rights of Passage: Struggles for lesbian and gay equality*, Toronto: University of Toronto Press, 1994.

²⁰ Barbalet, op. cit. *supra* n.16 at p93.

²¹ Or perhaps better, too *English*; see S. Haseler, *The English Tribe. Identity, Nation and Europe*, Basingstoke: Macmillan, 1996, who describes the relationship between Englishness and Britishness. For a systematic critique of Marshall from this perspective see M. Mann, 'Ruling Class Strategies and Citizenship', (1987) 21 *Sociology* 339.

explanatory tools for understanding citizenship in the contemporary world, his work remains a vital starting point and building block for a very substantial proportion of more recent work which is self-consciously preoccupied by problems such as economic decline, globalisation of economic forces, social disintegration, multiculturalism and environmental degradation. It is, however, generally acknowledged that social citizenship in the national context cannot be regarded as a 'final' stage in the development of citizenship, and that the benefits which it confers cannot be assumed to be in any way irreversible.²²

Social citizenship has become a somewhat unfashionable term in recent years, in contrast to the revival of a strong discourse of contractarian notions of citizenship under the influence of what Kelsey terms 'economic fundamentalism',²³ and the emergence of the 'new managerialist' agenda especially in the arena of public services. For example, Nancy Fraser and Linda Gordon state that 'the expression 'social citizenship' is almost never heard in public debate in the United States today'.²⁴ While there may be good pragmatic reasons in many political fora for the divorce of 'welfare' (a negative term) and 'citizenship' (a positive term), the separation is not absolute. For example, scholarship emanating from Scandinavia (or out of similar or parallel traditions of social democratic thinking) continues to struggle to formulate conceptions of citizenship predicated on models of substantive equality. However, since much of that scholarship also seeks to incorporate elements of a feminist conception of citizenship which stresses the need for a differentiated perspective and the need to avoid universalizing 'manhood' into a conception of 'personhood', a certain amount of care has to be taken in the use of the term equality.

As we noted above, the analysis of social citizenship by Marshall resulted in a close link being drawn between the development of postwar welfare state capitalism and the moral entitlements of equality and egalitarianism in a liberal democratic society. Since the mid-1970s, however, the tenor of the debate has changed, with New Right ideologies and the re-emergence of the

²² For a contemporary analysis of citizenship in Europe which continues to draw strongly on issues of social class and equality/inequality see P. Close, *Citizenship, Europe and Change*, London: Macmillan, 1995.

²³ J. Kelsey, *Economic Fundamentalism*, London: Pluto, 1996.

²⁴ 'Civil Citizenship against Social Citizenship? On the Ideology of Contract-versus-Charity', in B. van Steenberg (ed.), *The Condition of Citizenship*, London, etc.: Sage, 1994 at p91.

'Enterprise Society' dominating the debate about welfare and social policy.²⁵ This leads to the argument that the 'able-bodied poor have become locked into a culture of dependency' and this can only be changed by restricting benefits or access to benefits.²⁶ In similar terms Adriaansens argues that the welfare state became too strongly associated with a passive form of citizenship.²⁷ He declares that

'a more active implementation of citizenship by way of creating a participatory structure (instead of concentrating merely on the moral level of individual and 'passive' social security rights) will form the ticket under which the welfare state can embark on a new future.....The task for the 'new' welfare state is therefore to arrange the safety net in such a way that it acts for most citizens not as a snare but as a trampoline providing them with a soft landing and a fresh chance of establishing a place in society'.

This will avoid, or eradicate, the primary impact of the reduction of entitlements characteristic of the 1980s, which has been the production of a so-called 'underclass'.²⁸ The increased marketisation of social entitlements sees the majority obtaining what they need through consumption processes marked by contract, with the minority remaining dependent upon increasingly inadequate and underfunded public services, which carry the flavour of charity.²⁹ To respond to the challenges, Adriaansens proposes

'a new link between work and welfare, a link that takes account of changes in the economy on the one hand and in household formation on the other. The most important element in this new link consists in a higher and better labour force participation.'³⁰

²⁵ See R. Plant, 'Welfare and the Enterprise Society', in T. Wilson and D. Wilson (eds.), *The State and Social Welfare*, London/New York: Longman, 1991.

²⁶ Plant, op. cit. *supra* n.25 at p86.

²⁷ H. Adriaansens, 'Citizenship, Work and Welfare', in van Steenberg, op. cit. *supra* n.24 at p67.

²⁸ See the analysis by R. Dahrendorf, 'The Changing Quality of Citizenship', in van Steenberg, op. cit. *supra* n.24 esp. pp14-16 and J. Wilson, 'Citizenship and the Inner-City Ghetto Poor', in the same volume.

²⁹ See also Fraser and Gordon, op. cit. *supra* n.24.

³⁰ Adriaansens, op. cit. *supra* n.27 at p71.

To that end he suggests measures in relation to the labour force participation of older members of society, including the chance for second careers with less exacting productivity requirements, changes to the education system which take account of the qualitative demands of the labour market, active labour market policies, the individualisation of tax arrangements, which would be particularly beneficial for women, and the individualisation of wage structures combined with the eradication of the idea of a family minimum wage.

At a conceptual, as opposed to a policy level, Turner has argued that those who defend welfare need to offer explanations as to why it should continue to exist or be developed which derive from an intellectual understanding of the nature of social membership and political participation.³¹ That is why citizenship is relevant to issues of social policy, for it offers a normative frame to the claim that treatment on the basis of egalitarianism for those in need is morally superior to a *laissez faire* attitude. One notion, more familiar in the social policies of Member States such as France and Germany where Catholic social teaching has had an input, which may be of assistance is that of solidarity. As Spicker puts it, solidarity is about

‘seeing welfare as a form of collective activity and so the responsibility of the wider society rather than of individuals.’³²

Perhaps the most constructive suggestions at the conceptual, as opposed to the policy level for taking forward the conception of social citizenship come out of a feminist critique which shows how the liberal postwar orthodoxy was implicitly predicated on a set of male norms: a male breadwinner model for social security and for conceptions of basic minimum incomes; a masking of women’s role within the private sphere through caregiving and in the public sphere through marginal employment; a failure to take into account women’s role in negotiating with welfare state institutions.³³ As Lister points out,³⁴ it is particularly in Scandinavian feminist

³¹ ‘Outline of a Theory of Citizenship’, in C. Mouffe (ed.), *Dimensions of Radical Democracy*, London: Verso, 1992.

³² P. Spicker, *Social Policy. Themes and Approaches*, London, etc.: Prentice Hall/Harvester Wheatsheaf, 1995, at p60.

³³ See for an early example of a critique of Titmuss’s ‘seminal’ exposition of Marshallian social citizenship and social policies (‘The social division of welfare’, in R. Titmuss,

writings that attempts to synthesise the 'rights' (passive) and 'participatory' (active) strands of thinking about citizenship have been seen most clearly. She cites the example of Hernes:

'The welfare state literature, to the extent that it deals with individual citizens, deals with those aspects of citizenship that are related to social policy entitlements. Democratic theories and empirical studies of democratic politics emphasise the participatory aspects of citizenship. Any adequate account of contemporary citizenship in Scandinavia must include all these dimensions if the interplay between material rights, multi-level participation, and political identities is to be grasped.³⁵

Case studies derived from the history of welfare state formation in Sweden, for example, have shown the role of the agency of women's collectivities in the struggle for social rights in crucial periods such as the 1930s.³⁶ The model of power resources and consequential policy regimes developed from the Marshallian paradigm focused on working class power primarily expressed through the politics of left wing parties which failed to take account of a gender perspective. One response to works such as Esping-Andersen's *The Three Worlds of Welfare Capitalism*³⁷ - seen as innovative in approach in creating a typology of welfare states, but ultimately gender-blind in so far as they fail to take account of women's specific situation in relation to welfare - has been a proliferation of work examining welfare states from a self-consciously gendered

Essays on 'the welfare state', London: Allen & Unwin, 1963), H. Rose, 'Rereading Titmuss: the sexual division of welfare', (1981) 10 *Journal of Social Policy* 47.

³⁴ 'Citizenship: towards a feminist synthesis', Paper presented at the Women and Citizenship Conference, University of Greenwich, July 1996.

³⁵ H. Hernes, *Welfare State and Woman Power*, Oslo: Norwegian University Press, 1987, at p138; see also H. Hernes, 'The Welfare State Citizenship of Scandinavian Women', and Siim, 'Towards a Feminist Rethinking of the Welfare State', both in K. Jones and A. Jónasdóttir (eds.), *The Political Interests of Gender*, London: Sage, 1988; B. Siim, 'New Dilemmas in the Theory and Practice of Women's Citizenship', Paper presented at the Second European Sociological Association Conference, Budapest, August 1995.

³⁶ See for example B. Hobson and K. Lindhom, 'Collective Identities, Women's Power resources, and the Construction of Citizenship Rights in Welfare States', forthcoming *Theory and Society*, special issue on Citizenship.

³⁷ New Jersey: Princeton University Press, 1990.

perspective.³⁸ These accounts incorporate the role of women in the formation and evolution of welfare states, but also provide a gender sensitive analysis of the impact of policy. In that analysis, women are not seen as a unitary category, but differences amongst women - in particular migrant women and women of colour - are brought into the framework. The universalising tendencies of citizenship's rhetoric of equality, therefore, are treated with a certain degree of scepticism.³⁹ Moreover, such accounts adopt a critical perspective *vis-à-vis* the classical Nordic conception of the woman-friendly state, where additional collective responsibilities in relation to family-based activities such as care-giving are incorporated (more fully than in most other states) into public policy. Although such policies may be helpful at the practical level, they also display weaknesses in so far as they may lead to excessive state intervention in the private sphere, and to a loosening of the individual element of citizenship and identity.⁴⁰

Returning to the starting point of this paper, there is clearly scope for a more detailed investigation into the contribution of social citizenship and social rights to the broader project of the constitution of citizenship within the European Union in the light of these normative comments. In particular, this may contribute to the development of certain limited forms of European 'identity' through collective empowerment as the corollary of individual rights. Identity does not, on this argument, need to be generated from a sense of nationalism, ethnicity or regional belonging. It can be mediated through positive social institutions which empower

³⁸ E.g. D. Sainsbury (ed.), *Gendering Welfare States*, London: Sage, 1994; J. O'Connor, 'From Women in the Welfare State to Gendering Welfare Regimes', Trend Report (1996) 44(2) *Current Sociology*.

³⁹ For other broader based feminist critiques of citizenship see C. Mouffe, 'Feminism, Citizenship and Radical Democratic Politics', in J. Butler and J. Scott (eds.), *Feminists Theorize the Political*, New York/London: Routledge, 1992; R. Lister, 'Dilemmas in engendering citizenship', (1995) 24 *Economy and Society* 1; K. Bubeck, 'A Feminist Approach to Citizenship', EUI Working Paper EUF No. 95/1; S. Walby, 'Is Citizenship Gendered?', (1994) 28 *Sociology* 379.

⁴⁰ See M. Everson, 'Women and Citizenship of the European Union', in T. Hervey and D. O'Keeffe (eds.), *Sex Equality Law in the European Union*, Chichester: Chancery Wiley, 1996; B. Siim, 'Welfare State, Gender Policies and Equality Policies: Women's Citizenship in the Scandinavian Welfare States', in E. Meehan and S. Sevenhuijsen (eds.), *Equality Policies and Gender*, London, etc.: Sage, 1991, esp. pp188-9.

individuals and collectivities through both participation and entitlements. Furthermore these positive social institutions may lie both in the public and private spheres, may cut across the worlds of work, family and politics, and may operate at a variety of levels including the local, the regional, the national and the supranational within a multi-tiered governance structure such as the EU.⁴¹ As will already be clear from the discussion presented, the view defended in this paper is that the form of citizenship appropriate to the EU must, in view of the polity within which it is based, as well as the types of nation states which comprise its Member States, be a form of social citizenship. It should be a form of social citizenship which instantiates both an institutional dimension within which values of empowerment and equality are central parts of a political agenda capable of commanding citizen loyalty, and a rights dimension which passes key liberal 'rule-of-law' standards. Above all, however, it must be one which resists the effects of social exclusion as one of the by-products to which the enhancement of the market 'ideal' as a potentially self-contained goal or paradigm of integration since the mid-1980s as well the emergence of the single market project as a normative frame of analysis for the integration process might potentially give rise.

III Social citizenship in the European Union

A Preliminary comments

Taking forward these comments as a framework for a closer examination of the *status quo* of social citizenship in the European Union, two preliminary points should be made. In the first place, following from the final part of the previous section, it is vital to re-emphasise the market dimension of the European Union as an integration project. It would be true to say that one of the strengths of the European Union has been its capacity to draw upon what Ignatieff calls the 'enormous moral prestige of markets'.⁴² Generally speaking, it has been the 'market aspect' of the EU (i.e. its claim to create a 'rational' economic space within the continent of

⁴¹ But note the cautionary words of W. Streeck, *Citizenship under Regime Competition. The Case of the "European Works Councils"*, ARENA Working Paper, No. 6, February 1997 at pp6-8; also published in (1997) 1 *European Integration online Papers (EIoP)* (<http://eiop.or.at/eiop/texte/1997-005a.htm>) who argues that hard fought gains in the citizenship domain at national level may dissipate in the context of regime competition brought about through the market paradigm which frames the EU. This is discussed further *infra* at n.74.

⁴² Ignatieff, *op. cit. supra* n.8 at p71.

Europe) which is regarded as legitimate, whereas the bureaucratic and regulatory aspects (i.e. some of the means for achieving this end, and for ensuring that it is effectively policed in a transnational context which involves the interaction of a plurality of legal orders) lack the same degree of authenticity and the same claim to being worthwhile and deserving of citizen (or Member State) loyalty. Problems generally only begin to arise when markets respond in a way which is unacceptable to certain sectors of a national political elite (e.g. the fall in consumer demand for beef throughout the EU in the wake of the BSE crisis in the United Kingdom), but significantly it is bureaucratic intermeddling in so-called 'natural' market forces which tends to be blamed for such 'failures' at the level of popular politics, not the markets themselves.

Reviewing the role of the market aspect of the EU, and its importance in both practical and symbolic terms, highlights the need to view citizenship in the context not only of the wider sociological and political literature about rights, identity and political participation, but also in the light of how EU integration processes themselves are understood: is a conception of citizenship viewed as an aberration in a market-based system or is it to be seen as a logical consequence of established political and socio-economic developments? As Streeck comments,

‘A free European market, if that is all it is to be, does not “require” a “Europe of the citizen”; in fact, citizenship makes markets less “free”.’⁴³

In particular, we shall see in what follows the dominance of market citizenship within the overall frame of social citizenship; in contrast, most aspects of welfare citizenship remain rather subsidiary (and likely to remain so because of the largely national frameworks within which the welfare states in the EU continue to operate), and industrial citizenship - an important area of future development - is so far underdeveloped.

The second comment concerns the dynamic which persists between the passive and active sides of citizenship, and between the individualist and collectivist dimensions of social citizenship sketched in the previous section. Although, on one view, EU citizenship could be seen, at this stage of its development, as instantiating above all rights of participation in 'the

⁴³ ‘From Market Making to State Building? Reflections on the Political Economy of European Social Policy,’ in S. Leibfried and P. Pierson (eds.), *European Social Policy. Between Fragmentation and Integration*, Washington, D.C.: The Brookings Institution, 1995 at p413.

institutionalisation of a nascent form of European civil society',⁴⁴ that dimension of the EU is still notably under-formed. For example, Laffan comments that 'the European Union does not represent a shared public realm in any meaningful sense of the term'.⁴⁵ In contrast, one area in which the EU has been relatively 'successful' has been in relation to the 'conferring' of rights. While 'rights' within the EU context may still represent a rather ambiguous discourse and indeed offer a variety of alternative meanings,⁴⁶ one clear consequence, at least at a formal level, of the development of an EU legal order has been a quantum increase in the rights enjoyed by those who are subject to EC law. The limitations of this approach are not difficult to identify. For example, Bellamy, has argued for a preliminary focus on problems of democracy in the EU and in EU constitution-building, rather than a preoccupation with rights which, he maintains will always

'prove too indeterminate and subject to conflicting interpretations to provide a constitutional basis for a European polity.'⁴⁷

More specifically he argues that

'since rights are subject to utilitarian considerations and reflect the traditions and understandings of the community, then our freedom will be best guaranteed, and our rights rendered legitimate, through democracy.'⁴⁸

⁴⁴ Everson, *op. cit. supra* n.40 at p205.

⁴⁵ B. Laffan, 'The Politics of Identity and Political Order in Europe', (1996) 34 *Journal of Common Market Studies* 81 at p93. See also Meehan, *Citizenship and the European Community*, London: Sage, 1993 who attaches considerable importance to the development of citizenship in tandem with the development of civil society.

⁴⁶ See G. de Búrca, 'The Language of Rights and European Integration', in J. Shaw and G. More (eds.), *New Legal Dynamics of European Union*, Oxford: Oxford University Press, 1995.

⁴⁷ R. Bellamy, 'The Constitution of Europe: Rights or Democracy?', in R. Bellamy, V. Bufacchi and D. Castiglione (eds.), *Democracy and Constitutional Culture in the Union of Europe*, London: Lothian Foundation Press, 1995 at p153.

⁴⁸ Bellamy, *op. cit. supra* n.47 at p162.

De Lange makes the point even more sharply; he calls for a form of EU citizenship based on democracy, rather than the 'rule of law' or the *Rechtsstaat* in a formalist sense.⁴⁹ For too long, the idea of a 'Community of law' has offered a straightforward and rather unchallenging basis for legitimating the activities of the EC/EU.⁵⁰ De Lange comments critically upon an approach which accepts the rules on free movement as the unproblematic basis for citizenship:

'the suggestion that citizenship is a homogenous, non-contested concept is in fact part of an EC rule-of-law ideology: as long as we talk about citizenship, we won't have to talk about democracy.'⁵¹

Taking all of these points on board, a rights-audit nonetheless represents an important preliminary stepping stone towards an assessment of the citizenship *acquis*, even if not a complete analysis in itself. This is so in particular because there has been a notable 'subjectivisation' of individual rights within an EU context from a 'negative' towards a more 'positive' orientation. As we shall see in the section which follows, 'rights' represent a vital dimension of EU social citizenship; however, other aspects are gradually emerging such as, for example, the concept of 'partnership' in the context of EU regional policy, as well as a new focus on employment policy contained in the 'Dublin' proposals to the IGC. The balance between 'rights' and 'redistribution' through the mediating role of institutions is likely to remain a major theme within EU social policy for many years to come. However, in the concluding section of the paper (Section IV), the focus will shift from rights solely as 'substance', to rights as 'process' with a brief assessment of proposals to create a charter of fundamental social rights for EU citizens.

B Locating social citizenship in the EU context

In Section II we examined briefly the normative foundations of social citizenship. It was identified as requiring particular attention to be paid to the search for an active, participatory conception of citizenship which gives the *individual* the full membership rights which citizenship, as an ideal, constantly seeks, as well as providing an adequate level of focus on the

⁴⁹ R. de Lange, 'Paradoxes of European Citizenship', in P. Fitzpatrick (ed.), *Nationalism, Racism and the Rule of Law*, Aldershot: Dartmouth, 1995.

⁵⁰ Cf. D. Obradovic, 'Policy Legitimacy and the European Union', (1996) 34 *JCMS* 191 at pp196-198.

⁵¹ De Lange, *op. cit. supra* n.49 at p111.

collective security rights of any given community within a framework within which *solidarity* and *equality* are important values. A number of constructive suggestions which successfully combined these individual and collective elements were highlighted, in particular some of the contributions put forward by feminist analysis. That said, the complex role of the state in the context of the constitution of social citizenship has been highlighted by many analyses of social citizenship. A simple *laissez-faire* position guided by neo-liberal economics or a philosophy of new managerialism is unlikely to deliver the objectives stated above, but nor should the state take over the role of all institutions which mediate between individual and collective freedom and security.

Moving to the level of the EU, the idea of a *European* social citizenship may seem profoundly misguided for a number of reasons, however desirable it might seem in theory from the perspective of providing a means of giving expression to *full membership* of a 'community'. One formalistic reason concerns the limited competence of the European Union to legislate and regulate in the broad domain of 'social policy'. Another reason is because the fissures appearing in the (national) social fabric, with the breakdown of the post World War Two social democratic consensus and the increased polarization of society, cannot hope to be sealed at the EU level given the difficult ratification process which the Treaty of Maastricht underwent, and the scepticism concerning a form of identity for 'Europe'. On the other hand, social citizenship concerns not just the welfare state aspects where the EU does indeed lack comprehensive regulatory competence, but it also covers broader questions about how an individual lives as a respected and full-participating member of any given socio-economic system, in particular the type of mixed economy/social market system which is - in very broad generalising terms - to be found in the European Union and its Member States.

Thus EU social citizenship has to be read against a broader canvas of (socio-)economic citizenship. Taking this as a starting point, three broad and linked types of socio-economic citizenship can be distinguished, comprising market citizenship, industrial citizenship, and welfare citizenship. It will quickly become apparent that framing 'social citizenship' in these terms invites an assessment of substantially the full range of EC social and economic law in so far as this constructs the scope of individual rights or the collective situation of EU citizens, an endeavour well beyond the scope of a single paper. Consequently, the approach taken in this section will be essentially schematic and exemplary, and is limited to an enquiry into the extent to which social citizenship can already be observed as a phenomenon within the EU in relation to each aspect of social citizenship so defined.

a) *Market citizenship*

Market citizenship directly links the individuals who are the beneficiaries of Treaty-based free movement rights, as construed by the Court of Justice, to the process of building a single market without internal frontiers. In terms of individual rights, it is the enforceability of these rights in national courts (their so-called 'direct effect') which represents the bridge between a Treaty-based freedom and a justiciable individual right. At one level, these rights have been constructed as civil rights rather than solely as economic or market rights. It is certainly the case that the impetus of the free movement rights (goods, services, labour, capital, enterprise) was the construction of the market citizen or *Marktbürger* as the first figure of EC law (and the primary actor in the new European market)⁵² - those 'acting as participants in or as beneficiaries of the common market'.⁵³ Arguably, however, legislative⁵⁴ and judicial⁵⁵ developments which have generalised the right of free movement (of persons) and given it a broader 'citizen-focused' character, followed by the constitutionalisation of a general right of free movement in Article 8A EC, have moved at least that element of the range of free movement rights into the sphere of civil rights for citizenship purposes. This version of free movement rights as civil rights is stated most eloquently (but not authoritatively, as the point

⁵² See generally M. Everson, 'The Legacy of the Market Citizen', in Shaw and More, op. cit. *supra* n.46.

⁵³ M. Ipsen, *Europäisches Gemeinschaftsrecht*, Tübingen: JCB Mohr, 1972, quoted in Everson, op. cit. *supra* n.52 at p71.

⁵⁴ E.g. Council Directive 90/365 on the right of residence for employees and self-employed persons who have ceased their occupational activity OJ 1990 L180/28; Council Directive 93/96 on the right of residence for students OJ 1993 L317/59; Council Directive 90/364 on the right of residence OJ 1990 L180/26.

⁵⁵ E.g. Case 186/87 *Cowan v. Le Trésor public* [1989] ECR 195 (right of a UK tourist attacked on the Paris underground to French criminal injuries compensation payments by virtue of his status as a recipient of services and entitlement to freedom of movement, coupled with the right to non-discrimination on grounds of nationality) and Case 293/83 *Gravier v. City of Liège* [1985] ECR 593 (right of a French student to non-discriminatory treatment by a Belgian university, as migrant students come within the scope of protection of the EC Treaty).

was not taken up by the Court of Justice) by AG Jacobs in the case of *Konstantinides*.⁵⁶ He stated that

‘a Community national who goes to another Member State as a worker or self-employed person under Articles 48, 52 or 59 of the Treaty is entitled not just to pursue his trade or profession and to enjoy the same living and working conditions as nationals of the host State; he is in addition entitled to assume that, wherever he goes to earn his living in the European Community, he will be treated in accordance with a common code of fundamental values, in particular those laid down in the European Convention on Human Rights. In other words, he is entitled to say ‘*civis europeus sum*’ and to invoke that status in order to oppose any violation of his fundamental rights’.

The point is perhaps buttressed also by the paucity of exemptions which Member States can use to deny individuals the right of free movement, and the controls over those rules which EC law operates. On the other hand, the Court has done little in the service of this argument in recent years. Its line in the *Konstantinides* case was that the applicant masseur’s right to have his Greek name transliterated into German as he wished it to be, not according to certain German rules, was based on the need to avoid confusion on the part of his clients, not on a fundamental rights foundation. Since the coming into force of the Treaty of Maastricht, including Article 8A, the Court has already held that this provision is residual, and should not be invoked so long as other more specific free movement rights apply.⁵⁷ But even if one follows broadly the line of reasoning espoused by Jacobs, for example, the search for the citizen through the medium of the ‘market citizen’ is a problematic one. Everson has critiqued the concept of the market citizen, suggesting that⁵⁸

‘the highly productive character of the market citizen has also endowed Europe with a troublesome legacy. Having been so strongly instrumentalized with regard to the completion of the internal market, the market citizen had no choice but to become instrumentalist. In that self-interest alone drove the European market citizen in his or

⁵⁶ Case C-168/91 *Konstantinides v. Stadt Altensteig* [1993] ECR I-1191 at p1211.

⁵⁷ Case C-193/94 *Sknavi and Chryssanthakopoulos* [1996] 2 CMLR 372; [1996] ECR I-929.

⁵⁸ Everson, *op. cit. supra* n.52 at p85.

her dealings with Europe, a general allegiance to the Communities was not established.’

This suggests that there are strict limits to seeking to establish the sovereignty of the EU citizen, and the legitimacy of the polity in which the EU citizen is to be sovereign, by working through this troublesome legacy. It suggests uncertainty as to whether to be a ‘market’ citizen is ultimately empowering or disempowering for the individual, a similar ideological problem to that which confronts any market participation. The right to choose implies the ability to choose and the context in which ‘choice’ is meaningful. Furthermore, an impasse will ultimately be reached if it is sought to reconcile the individually beneficial outcomes of market transactions with a broader general interest idea that it is ‘good’ for market citizens to participate in the Community market. This leads in turn to a realisation that the construction of the rights of citizenship is only one half of an equation: the sovereignty of the citizen stems also from her willingness - free consent - to be subject also to duties (i.e. to be governor and governed, owing allegiance as well as making claims).

Consequently, this discussion is limited to a narrower internal critique of the extent of ‘market citizenship’ rights. Overall, it is the ‘market citizen’ dimension of the EU citizen which has been most highly developed, both in terms of the range of rights made available (as consumer, worker, professional, employer, trader, etc.), which comprise passive and active market access rights (i.e. including the right to receive services or goods from other Member States, as well as information about such goods and services), and in terms of the legal sophistication of those rights.

An examination of free movement rights reveals the ever intensifying construction of the individual as a subject of EC law through, for example, a shift from ‘non-discrimination’ understood as a negative protective principle to a situation in which individuals are seen as having directly enforceable rights. The evolution comprises a number of different facets:

- the development of a broader concept of ‘discrimination’ to encompass not only ‘direct’, but also ‘indirect’ discrimination; this looks at the effects of a measure, rather than its ‘facial’ appearance, and has been applied particularly in the field of free movement of persons;⁵⁹

⁵⁹ E.g. Case 379/87 *Groener v. Minister for Education* [1989] ECR 3967; Case 152/73 *Sotgiu v. Deutsche Bundespost* [1974] ECR 153.

- the development of a concept of 'restriction' to govern many fields of market access, opening up greater possibilities for the free movement of goods and services with Member States frequently required to justify national market access rules which (directly or indirectly) restrain interstate trade;⁶⁰
- the articulation of administrative and judicial 'access' rights, opening up the effective enforcement of substantive EU rights; examples include the *Heylens* and *Vlassopoulou* cases.⁶¹ These principles require national authorities to scrutinize qualifications held by a person seeking access to the market on a case-by-case basis, and to give a right of judicial review against adverse decisions denying market access.

In the citizenship context, specific attention should be paid to the development of the range of rights associated with the status of 'migrant worker' as part of the process of market building through free movement rights. Judicial developments continue to be extremely important for the range and reach of non-discrimination rights: the Court of Justice has recently held that a Belgian national employed on the local staff of the German embassy in Algiers enjoyed the benefit of the prohibition on non-discrimination on grounds of nationality laid down in Article 6 EC.⁶² In this field the legislature has played a substantial role from an earlier stage in the evolution of the EC/EU, particularly in the field of social security for migrant workers, through the construction of a system of coordination intended to ensure that migrant workers do not lose entitlements to benefits as a result of exercising the right of free movement. In terms of the preparation of individuals for the status of market citizenship, the coverage given to education and vocational training - most particularly for the children of migrant workers, but also in relation to students who are encouraged to take advantage of mobility opportunities - has both a specifically economic dimension aimed at the competitiveness of the European workforce, but also a cultural dimension relating to the development of 'European' consciousnesses and some

⁶⁰ Case 8/74 *Procureur du Roi v. Dassonville* [1974] ECR 837; Case C-384/93 *Alpine Investments BV v Minister van Financiën* [1995] ECR I-1141. See now also in the context of the free movement of workers Case C-415/93 *Union Royale belge des Sociétés de football association ASBL v. Bosman* [1995] ECR I-4921.

⁶¹ Case 222/86 *UNECTEF v. Heylens* [1987] ECR 4097; Case C-340/89 *Vlassopoulou v. Bundesministerium für Justiz, Baden-Württemberg* [1991] ECR I-2357.

⁶² Case C-214/94 *Boukhalfa* [1996] ECR I-2253.

efforts to ensure the preservation of cultural heritages of migrant workers and their families.⁶³ In this context, 'market' citizenship slides close to a notion of 'cultural' citizenship. Likewise, it should not be thought that the construction of market citizenship is normatively neutral in terms of gender. Ackers has argued for greater attention to be paid to the gender implications of the free movement of persons provisions, and of their application and enjoyment in practice,⁶⁴ Scheiwe has questioned the differential treatment of notions of the 'family' across EC law on sex discrimination and national discrimination,⁶⁵ and some analyses have concentrated on a broader critique of the gendered nature of the internal market project itself.⁶⁶ Finally, Hervey has highlighted the role of the 'market' in the construction of the free movement rules as exclusionary, in particular *vis-à-vis* third country nationals who may be lawfully established, in an economic and cultural sense, within the Member States.⁶⁷

The overall conclusion must be that the principle of free movement has essentially remained a liberal market-based concept lending strength to an argument that the EU 'social citizen' bears many of the features of the 'market citizen'. To this end, in a discussion of the utility of a

⁶³ H. Cullen, 'From Migrants to Citizens? European Community Policy on Intercultural Education', (1996) 45 *ICLQ* 109; see generally on the development of EU education and vocational training policies: J. Shaw, 'Education and the Law in the European Community', (1992) 21 *Journal of Law and Education* 415 and K. Lenaerts, 'Education in European Community Law after Maastricht', (1994) 31 *CMLRev.* 7.

⁶⁴ L. Ackers, 'Women, Citizenship and European Community Law: The Gender Implications of the Free Movement Provisions', [1994] *Journal of Social Welfare and Family Law* 391; *ibid.*, 'Citizenship, Gender and Dependency in the European Union: Women and Internal Migration', in Hervey and O'Keeffe, *op. cit. supra* n.40.

⁶⁵ K. Schweie, 'EC Law's Unequal Treatment of the Family: The Case Law of the European Court of Justice on Rules prohibiting Discrimination on Grounds of Sex and Nationality', (1994) 3 *Social and Legal Studies* 243.

⁶⁶ L. Flynn, 'The Internal Market and the European Union: Some Feminist Notes', in A. Bottomley (ed.), *Feminist Perspectives on the Foundational Subjects of Law*, London: Cavendish, 1996; J. Shaw, 'Law, Gender and the Internal Market', in T. Hervey and D. O'Keeffe (eds.), *Sex Equality Law in the European Union*, Chichester: Wiley, 1996.

⁶⁷ T. Hervey, 'Migrant workers and their families in the European Union: the pervasive market ideology of Community law', in Shaw and More, *op. cit. supra* n.46.

'social contract' grounding for EU citizenship, Closa has argued that what remains an essentially negative formulation of non-discrimination constitutes an inadequate foundation for a principle of equality providing a basis for egalitarian citizenship.⁶⁸ Thus, the market citizenship concept is itself a limited one, unless the concept of the single market itself can be given a wider meaning, perhaps comprising also the so-called 'flanking policies', for example, on environmental or consumer protection.⁶⁹

b) *Industrial citizenship*

Grahl and Teague suggest that there are two principal institutional dimensions to economic citizenship: collective bargaining, allied to the institutional structures of employment and labour markets, and the welfare state.⁷⁰ The welfare aspects of citizenship are examined below, but the discussion here concentrates, like the Grahl and Teague paper, specifically on the issues raised by trade unions and collective bargaining. In this sphere of socio-economic citizenship it is arguable that the impact of European integration has been greater than it has been upon the institutions of the welfare state, where (individual) redistributive mechanisms remain primarily in the control of the Member States. While Grahl and Teague suggest that the scope for the 'industrial citizenship' aspect to be developed at a European level, at least partly in response to the difficulties at national level such as tensions between corporatism and flexibility in relation to labour market regulation and high unemployment is limited, they would nonetheless wish to see it explored further. Their model (which is explicitly portrayed as based on an optimistic (and probably unrealistic) reading of the development of the EU and its capacity for policy-making, and therefore must be understood as prescriptive, rather than descriptive)

⁶⁸ C. Closa, *A New Social Contract? EU Citizenship as the institutional basis of a new social contract: some sceptical remarks*, EUI Working Paper RSC No. 96/48 at p6.

⁶⁹ I am grateful to Kenneth Armstrong for this insight; the fact that consumer protection and environmental policy are singled out as needing a degree of strengthening in the Irish Presidency draft of December 1996 put before the IGC for debate suggests that the concept of the single market is becoming increasingly broad: see *The European Union Today and Tomorrow. Adapting the European Union for the benefit of its peoples and preparing it for the future*, Dublin II, Conf. 2500/96, December 5 1996.

⁷⁰ J. Grahl and P. Teague, 'Economic Citizenship in the New Europe', (1994) 65 *Political Quarterly* 379.

‘responds to the important contemporary trend towards productive decentralisation, while preserving social integration. Our citizens are protected by regulation from the worst dangers of decentralised employment contracts and they are linked to their fellows by two key forms of association - professional organisations and the small-scale (and hence accessible) institutions of regional and local economies which together constrain individual behaviour to avoid opportunism and to respect some general social priorities. While our citizens bear the risks associated with the decentralised economic agency they are assured against economic and social exclusion by the fact that public authorities are ready and able to finance employment in the last resort.’⁷¹

Feeding into this wish list, in their view, are policies in the four fields: labour market regulation; training, education and professional qualifications; regional policy to combat damaging spatial realignments within the European economy; and the promotion of employment. A full restatement of policies in these fields, including the contribution which each makes to the practice of citizenship within the EU, lies beyond the scope of this paper. Two specific developments could, however, usefully be mentioned. The first is the adoption - under the Social Policy Agreement and consequently without formal binding effect in law for the United Kingdom - of the Works Councils Directive.⁷² Using a frame of analysis drawn from stakeholder theory, Wheeler⁷³ has argued the case for Works Councils to be taken seriously as mechanisms for enhancing the ‘citizenship’ of the employee within the business enterprise, albeit her conclusion is one of scepticism about the practical ability of these mechanisms to deliver upon their promise. The advent of Works Councils in all EU multinationals as a result of the Directive represents an important incursion by the EU as a legislator into the field of industrial relations. Significantly, however, the development is not one read positively by all commentators. The approach taken here - following Grahl and Teague - has been notably optimistic about the enhancement of industrial citizenship in conditions of EU-level integration

⁷¹ Grahl and Teague, *op. cit. supra* n. 70 at p395.

⁷² Council Directive 94/45 of September 22 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ 1994 L254/64. For reviews see M. Hall *et al*, *European Works Councils - Planning for the Directive*, London: Eclipse Group, 1995; C. McGlynn, ‘European Works Councils: Towards Industrial Democracy?’, (1995) 24 *Industrial Law Journal* 79.

⁷³ ‘Works Councils: Towards Stakeholding?’ (1997) 24 *Journal of Law and Society* 44.

and the development of new fields of competence. In contrast the contrary perspective of ‘weak supranational rights weakening strong national rights of social and industrial citizenship’ under conditions of open borders and competing, fragmented sovereignties, which is presented in detail by Streeck, likewise using the case of the Works Councils Directive.⁷⁴ This stems from an analysis of regime competition involving the Member States, in circumstances where industrial citizenship is becoming ‘less public in character, and more private, less status-like and more contractual, and overall less like institutions of citizenship and more like arrangements of the market.’

The second development of note is the adoption of the so-called Delors White Paper of 1993⁷⁵ which specifically linked the evolution of an enhanced EU-level concern about employment and unemployment with the desirability and feasibility of enhanced labour market flexibility.⁷⁶ Grahl and Teague warned that

‘if it does not prove possible to define an effective EU employment programme then the prospects for citizenship must be bleak. Frictional or even cyclical unemployment may be compatible with a sense of shared economic status if there are adequate systems of social protection, but long-term unemployment, often appropriately described as a form of *exclusion* from economic life, necessarily corrodes any perception of a common relationship to political and economic structures.’⁷⁷

The message of the White Paper must be, therefore, that so far as the EU may adopt proactive labour market policies, they will embed within them at least some elements of the deregulatory neo-liberalism pursued in some Member States. That perspective on industrial citizenship leads back once again to the ‘moral prestige of markets’ which lies at the heart of the European Union. Since the White Paper, however, unemployment has remained on the EU agenda, and the preoccupation has continued to intensify as Economic and Monetary Union and a single currency - at least for a limited core of Member States - have become ever more imminent

⁷⁴ Streeck, *op. cit. supra* n.41.

⁷⁵ EC Commission, *Growth, Competitiveness, Employment: the Challenges and Ways Forward into the 21st Century*, Bull. EC, Supp. 6/93; COM(93) 700.

⁷⁶ See generally G. More, ‘The Acquired Rights Directive: Frustrating or Facilitating Labour Market Flexibility?’, in Shaw and More, *op. cit. supra* n.46.

⁷⁷ *Op. cit. supra* n.70 at p393.

prospects. The reduction in the macro-economic autonomy of the Member States will mean they have less ability to resist or offset the shifts in production patterns or changes within the labour market which must be expected to result from EMU. Moreover, unemployment is seen already, in advance of that stage of integration, as the single most important destructive socio-economic factor, undermining policies to enhance social cohesion both within and between the Member States. In view of that insight the proposals before the 1996/97 Intergovernmental Conference have specifically proposed making the coordination of Member State employment policies a *specified activity* of the Community (Article 3 EC) 'with a view to enhancing their effectiveness by developing a common strategy for employment', and to insert a *new title* on employment into the EC Treaty.⁷⁸

The fight against unemployment, and the need to create new employment whilst enhancing Europe's competitiveness in the global economy, has been Commission President Jacques Santer's '*grand projet mobilisateur*'. Underlying his strategy is a tripartite Confidence Pact between business, unions and government, endorsed by the Florence European Council in June 1996 which covers three areas of activity: the coordination of macro-economic policies in manners which are favourable to employment; research and development programmes aimed at stimulating employment particularly in small and medium-sized enterprises; and the reorientation of the EU's structural funds specifically to enhance employment initiatives. The Council has already approved the creation of a new Employment Committee, even in advance of Treaty changes. Sadly, in terms of the profound feminist critiques of social citizenship, there remains little in the formal framework of EU policy which directly addresses the gendered division of both employment and unemployment.

c) *Welfare citizenship*

As Spicker notes,

'part of the aim of 'welfare states' has been to invest citizens equally with a status entitling them to draw on the resources of the society.'⁷⁹

This is not part of the mission of the European Union. 'Solidarity', as Closa notes, is often invoked in EU rhetoric, and it receives a mention in Article A TEU as well as Article 2 EC.⁸⁰

⁷⁸ See *supra* n.69.

⁷⁹ *Op. cit. supra* n.32 at pp29-30.

However, since policies promoting solidarity are not listed amongst the Union's objectives in Article B TEU, he doubts whether or not the promotion of solidarity, 'although a declarative principle, is...an objective for EU policies.'⁸¹ The absence of solidarity, he concludes, is a barrier to the creation of both redistributive policies and social rights, upon which EU citizenship might then rest in the sense of being a 'social contract'. Notwithstanding that scepticism, it should not be thought that there is no welfare dimension to EU citizenship or to EU policies, in the sense of a range of impacts upon redistributive mechanisms or policies, either through autonomous EU institutional action, or through the placing of constraints upon, or the reshaping of the goals of, national action. Part of the reason for the impact of the EU in this field lies in the close interrelationship between welfare and work, and the particular questions which this raises within a framework which presupposes the existence and regulation (or better, deregulation) of migration (here intra-EU migration). In other words, we need in this section once again to revisit the free movement dimension of EU social citizenship. The point is well made by Rea:

'Denizens and foreigners acquired their legitimate social positions because of their status as workers. With massive unemployment and in countries where the process of naturalisation is difficult, their legitimacy is called into question: if denizens and foreigners work, they are taking jobs from nationals, and if they are unemployed, they are taking advantage of the hospitality they are offered. But the absence of full employment puts the question in broader terms: does citizenship have any meaning without work?'⁸²

Without attempting to set out the full range of EU social policies, it is important to summarise and highlight the key elements of the so-called 'social dimension' of the EU, with particular emphasis upon those which betray a specific welfare element in promoting individual and collective security for EU citizens. A good starting point is the Commission's 1994 (Flynn)

⁸⁰ The task of the Union 'shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples' (Article A TEU, para. 3).

⁸¹ Closa, *op. cit. supra* n.68 at p12.

⁸² 'Social Citizenship and Ethnic Minorities in the European Union', in M. Martiniello, *Migration, Citizenship and Ethno-National Identities in the European Union*, Aldershot: Avebury, 1995 at pp191-192.

White Paper on social policy.⁸³ The general frame used by the Commission for its discussion of social policy is a not uncontroversial notion of a 'European social model', which is intended to suggest the essential elements of the 'sort of society' which Europeans 'want'.⁸⁴ The Commission's model is shaped around certain shared values it claims to have identified:

'These include democracy and individual rights, free collective bargaining, the market economy, equality of opportunity for all and social welfare and solidarity. These values....are held together by the conviction that economic and social progress must go hand in hand. Competitiveness and solidarity have both to be taken into account in building a successful Europe for the future.'⁸⁵

In line with this statement, the Commission then develops the 'guiding principles and objectives' for future Union action in the field of social policy, namely:

- employment, and especially employment generation, as the key to social and economic integration;
- recognising competitiveness and social progress as 'two sides of the same coin';
- promoting convergence within a framework which respects diversity;
- developing and enhancing a level playing field of common minimum standards.

The Commission took up this model once more in its submissions to the 1996-97 IGC, suggesting the European Social Model as a blueprint for developing the citizenship dimension of the EU,⁸⁶ and it was commented upon favourably by the so-called '*Comité des Sages*',

⁸³ *European Social Policy. A Way Forward for the Union*, COM(94) 333 of July 27 1994, itself building on an earlier Green Paper on the same topic: COM(93) 551 of November 17 1993.

⁸⁴ See further J. Shaw, 'The many pasts and futures of European Citizenship', Anglo-Spanish Workshop on The European Union: Polity Formation under Postnational Conditions, University of Sussex European Institute, Brighton, March 1997.

⁸⁵ *Ibid*, para. 3.

⁸⁶ Commission Report to the Reflection Group, May 1995, Luxembourg: OOPEC; Commission Opinion submitted to the IGC, *Reinforcing Political Union and Preparing for Enlargement*, Feb 1996, Luxembourg: OOPEC. See also Commission Work Programme for 1997: COM(96) 507 of October 16 1996.

established under the Commission's 1995 Social Action Programme⁸⁷ to examine what might become of the 1989 Community Social Charter of Fundamental Social Rights for Workers, in the context of the IGC.⁸⁸ Notably, one of the most significant suggestions made by the *Comité* concerned a participatory process to formulate a 'modern list of civic and social rights and duties' for EU citizens. The adoption of fundamental social rights would not be, first and foremost, a matter for the IGC (which remains intrinsically a private negotiation between states with the output of new treaties), but would involve a wide ranging consultation process involving 'Europe's citizens'. This recognizes that

'citizenship is not merely a collection of rights: it is also a way of living, of recognizing one's obligations to others, of participating in society through a multiplicity of relationships with its members. A simple list of rights does not properly reflect this dimension of citizenship, whereas a sufficiently lengthy process of collective formulation of rights would make it possible to give expression to citizenship and to arrive at a more balanced view of rights and duties.'⁸⁹

This type of evolution would treat rights-giving or rights-taking not merely as *substance*, but rights-making also as *process*, as an expression of the active dimension of social citizenship. We shall explore this idea a little further in the concluding section of this paper.

Absent such fundamental constitutional change, which remains very unlikely in the foreseeable future whatever its constitutive potential might be for the EU, the EU nonetheless possesses two proactive second-level instruments with which to achieve its objectives in the social policy and welfare spheres. These are the instruments of regulation and law-making (either through legislation, or through the promotion and/or facilitation and adoption of Union-level collective agreements between the social partners), and financial support and incentives. Also available to the EU, and especially to the Commission itself as a policy actor, as complementary mechanisms for policy-making, are the promotion of mobilisation and cooperation (reminding us once more of the significance of the bottom-up dimension of citizenship), the dissemination

⁸⁷ *Commission Communication on a Medium Term Social Action Programme (195-97)*, COM(95) 134 of April 14 1995.

⁸⁸ *For a Europe of civic and social rights*, Report by a Comité des Sages chaired by Maria de Lourdes Pintasilgo, Luxembourg: OOPEC, 1996.

⁸⁹ *Ibid*, at p53.

on a strategic basis of information, and a continuing process of 'collective reflection and coordinated action' with a view to analysing future trends.

Clearly, not all of these aspects either have been in the past, or will be in the future, equally developed by the EU and its institutions. There are a number of reasons for this, including the limited availability of relevant law-making powers within the EC Treaty and, more recently in the social policy sphere, within the Agreement on Social Policy from which the United Kingdom has 'opted out'. These law-making powers are not always consistent and coherent in the intensity or nature of the legal powers they give rise to. The existence of an enormously complex EC law on sex equality is a good example of an area where the EU has successfully adopted regulatory policies in the social sphere leading to a sum 'increase' in 'rights' - whatever the effectiveness, utility or even desirability of those rights might be. This body of law comprises many of the principles developing the concept of discrimination noted in relation to the example of market citizenship. This includes the concept of indirect discrimination,⁹⁰ a principle of effective remedies,⁹¹ and a notion of transparency which brings about a partial reversal of the burden of proof in respect of breaches of the equal pay principle.⁹² In contrast, there is no concept of race discrimination in EC law, even though its relevance to the EU integration processes is just as clear, if not clearer.⁹³ On the other hand, like many of the 'social principles' of the EU,⁹⁴ sex equality law, whatever its complexity, remains essentially hidebound by a liberal market orientation, and an especially clear division between issues of

⁹⁰ Case 170/84 *Bilka-Kaufhaus GmbH v. Karin Weber von Hartz* [1986] ECR 1607.

⁹¹ Case 222/84 *Johnston v. RUC* [1986] ECR 1651; Case 14/83 *Von Colson and Kamann v. Land Nordrhein Westfalen* [1984] ECR 1891; Case C-271/91 *Marshall v. Southampton and South West Hampshire AHA (No. 2)* [1993] ECR I-4367.

⁹² Case 109/88 *Danfoss* [1990] ECR I-3979.

⁹³ See E. Szyszczak, 'Race Discrimination: The Limits of Market Equality?', in B. Hepple and E. Szyszczak (eds.), *Discrimination: The Limits of Law*, London: Mansell, 1992.

⁹⁴ See C. Barnard and S. Deakin, 'Social Policy in Search of a Role: Integration, Cohesion and Citizenship', A. Caiger and D. Floudas, (eds.), *1996 Onwards: Lowering the Barriers Further*, Chichester: Wiley Chancery, 1996; S. Leibfried and P. Pierson, 'Social Policy', in H. Wallace and W. Wallace (eds.), *Policy-Making in the European Union*, Oxford: Oxford University Press, 1996, 3rd edition.

work and family, between public and private spaces.⁹⁵ Most famously, in the *Hoffmann* case which was concerned with an attempt to extend 'maternity' leave entitlements to fathers,⁹⁶ it declared that

'the (Equal Treatment) Directive is not designed to settle questions concerned with the organization of the family, or to alter the division of responsibility between parents.'

This reminds us that the organisation of the 'welfare state' remains substantially in the hands of the Member States, and outside the competence of the EU. The continuing sensitivity of this proposition, in the light of the prevailing distribution of competence between the Member States and the EU, is clearly visible, in particular to the Court of Justice which has, on a number of recent cases concerned with the scope and effect of the Social Security Directive, intended to enshrine a principle of sex equality into the provision of social security benefits, limited the effect of EC law by reference to the continuing discretion of Member States in the social policy sphere, allowing them, for example, the ability to reduce benefits across the board in the name of 'equality', because of financial pressures on the institutions of the welfare state.⁹⁷ This self-limiting ordinance needs to be viewed with a sense of irony, since it is precisely some of the processes of European integration (or perhaps, more accurately, some of the by-products of those processes) which generate pressures on national welfare states.⁹⁸ The possibility now exists that if the proposals on strengthen EU sex equality provisions contained in the Irish Presidency draft of December 1996 are taken up a space may be opened up within

⁹⁵ See generally G. More, 'Equality of Treatment in European Community Law: the Limits of Market Equality', in A. Bottomley, (ed.) *Feminist Perspectives on the Foundational Subjects of Law*, London: Cavendish, 1996; H. Fenwick and T. Hervey, 'Sex Equality Law in the Single Market: New Directions for the European Court of Justice', (1995) 32 *Common Market Law Review* 443; T. Hervey and J. Shaw, 'Women, work and care: women's dual role and double burden in EC sex equality law', (1997) *Journal of European Social Policy* forthcoming.

⁹⁶ Case 184/83 *Hofmann v. Barmer Ersatzkasse* [1984] ECR 3047.

⁹⁷ E.g. Case C-280/94 *Posthuma-van Damme* [1996] ECR I-179 and Case C-8/94 *Laperre* [1996] ECR I-273. See generally J. Sohrab, *Sexing the Benefit: Women, Social Security and Financial Independence in EC Sex Equality Law*, Aldershot: Dartmouth, 1996.

⁹⁸ Leibfried and Pierson, op. cit. *supra* n.94 at p200-202.

which the underlying meaning of 'equality' and 'inequality' may be debated, in a way which challenges the primacy of a limited economic or marketplace orientation in which public and private spheres are segmented.

One reason why, at least until very recently,⁹⁹ EC social law has remained the 'Cinderella'¹⁰⁰ or poor relation of other EU policies, has been that the general weakness of the law-making provisions (at least in comparison to those on the Single Market or other 'flanking policies' such as the environment) has meant the institutions have been unable to indulge their 'preference' for regulatory policies which shift the burden of enforcement onto the Member States, and even on to citizens, because of the judicial liability policies formulated by the Court of Justice.¹⁰¹ That regulatory phenomenon (the 'regulatory state' and 'regulatory federalism') has been interpreted by writers such as Majone as part of a wider trend, encompassing also the Member States themselves. He writes of a shift from the 'Keynesian welfare state' to the 'regulatory state'.¹⁰²

⁹⁹ There are signs that the adoption of the Working Time Directive, which gives rise to greater intrusions than hitherto by EC law into the contracts of employment of workers in the EU, and the interpretation by the Court of Justice of Article 118A EC (health and safety) as a legitimate legal basis for that Directive, may lead to (yet another) new dawn for EU social policy (Council Directive 93/104 OJ 1993 L307/18; Case C-84/94 *United Kingdom v. Council*, judgment of November 12 1996).

¹⁰⁰ A metaphor used frequently by writers, e.g. by E. Szyszczak, 'Social Policy' A Happy Ending or a Reworking of the Fairy Tale?', in D. O'Keeffe and P. Twomey (eds.), *Legal Issues of the Maastricht Treaty*, Chichester: Wiley, 1994.

¹⁰¹ See F. Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques', (1993) 55 *MLR* 690; but compare the comments on certain recent developments brought about by the Court, made in a 'citizenship' context by E. Szyszczak, 'Making Europe More Relevant to its Citizens: Effective Judicial Process', (1996) 21 *European Law Review* 351, esp. footnote 7.

¹⁰² For a summary statement of Majone's views see G. Majone, *Regulating Europe*, London/New York: Routledge, 1996, esp. pp54-56; for further details on social policy and social regulation see G. Majone, 'The European Community between social policy and social regulation', (1993) 31 *JCMS* 153.

Beyond the 'rights paradigm', we can turn to the second main instrument of EU action in the social sphere - financial support, particularly that focused on redistributive policies. This leads us to another area of EU social policy, understood in its widest sense, which is now, belatedly, becoming relatively well developed. That is the policy on economic and social cohesion.¹⁰³ 'Solidarity' between the Member States, and a policy comprising the 'strengthening of economic and social cohesion' has represented an increasingly high profile EC/EU objective since the adoption of the Single European Act in 1986. The greater financial disparities between the Member States, especially since the Mediterranean enlargements, as well as the structural changes mandated if the single market programme (and now the move to EMU) was to be a holistic (as opposed to a narrowly neo-liberal) success have contributed heavily to an ever-growing budget line for the EC. Structural policy funding is anticipated to be running at 30-40 per cent of the budget by the turn of the century, although there remains little firm evidence that these policies either have, or will, significantly contribute to the reduce of regional disparities or inequalities within the European Union.¹⁰⁴ It is worth commenting upon the level at which these policies operate, however. The reference is to solidarity *between* the *Member States* (not citizens, or peoples), and the policies are not 'tax-and-spend' policies in the classic sense since the taxes are 'levied' (as EU own-resources) on the Member States, not upon EU citizens directly. This will undoubtedly have an impact upon the extent to which such policies can generate citizen loyalty, or command a degree of legitimacy. Even so, anecdotal evidence indicates that the strong support given by the citizens of Ireland to the Treaty of Maastricht in 1992 referendum was not unrelated to 'promises' of additional funding, and 'threats' of loss of funding, through the medium of the EU's structural funds. Moreover, in terms of the development of a Europe of the regions, it is interesting to note some evidence that the operation and management of the funds may have led to a reduction in the autonomy of central governments, even in centralised states such as the United Kingdom, and an intensified relationship between the European Commission itself and sub-national governments and agencies,¹⁰⁵ often mediated through the concept of 'partnership'.¹⁰⁶ Perhaps these offer useful

¹⁰³ For a summary see D. Allen, 'Cohesion and Structural Adjustment', in Wallace and Wallace, *op. cit. supra* n.94.

¹⁰⁴ For a generally sceptical view see A. Amin and P. Tomaney (eds.), *Behind the myth of European Union. Prospects for Cohesion*, London/New York: Routledge, 1995.

¹⁰⁵ See M Pollack, 'Regional Actors in an Intergovernmental Play: The Making and Implementation of EC Structural Policy', in C. Rhodes and S. Mazey (eds.), *The State*

examples of how the 'active' institutional dimension of social citizenship might be developed in the future. However, a cautionary note must be sounded about the ability of 'citizens' and representative organisations to control some aspects of the management of the structural funds and the disbursement of monies by the EU, bearing in mind the very limited possibilities of access to justice, in the form of actions brought in the European Court of Justice, for 'non-privileged' applicants under Article 173 EC.

IV Conclusions

In this paper, it has emerged how important it remains that citizenship in the EU context should not be treated only a legal concept, but also as instantiating aspects of the expression of socio-economic community and socio-psychological identity. That said, legal rights, with their normative dimension and formal resistance to encroachment, are of considerable importance in that process of construction, and in that respect the EU with its relatively 'effective' legal order offers at least a good starting point for the development of a transnational, even a postnational, membership concept clustered around the 'rights' of social citizenship. They remain perhaps 'thin' concepts, but with a tendency towards 'thickness'. However, in each field of EU social citizenship reviewed we have seen clearly the limitations of both the policy *acquis* and the underlying normative and ideological foundations of EC law and policy in terms of the 'models' or 'ideals' of social citizenship articulated at the end of Section II. What is most important about the three strands of social citizenship articulated and explored in this paper is that they need to be viewed as the complementary parts of a greater whole, which remains as yet more promise than reality.

A number concluding observations are necessary. The first concerns the 'distance' between the social dimension and the so-called 'Euro-citizen'. Of course, regardless of the controversy which continues to surround it both in terms of its underlying legitimacy, and in terms of its

of the European Union. Building a European Polity?, Harlow/Boulder: Longman/Lynne Rienner, 1995.

¹⁰⁶ See generally on partnership J. Scott, 'Regionalism, Subsidiarity and Development', Paper delivered at a Workshop on *Law, Legitimacy and Governance*, Keele University, May 1996. This development can usefully be analysed in the light of communitarian conceptions of citizenship. For a more sceptical view see Allen, *op. cit. supra* n.103.

remaining goals and presently uncertain 'sense of direction', there is a level of *empirical* observation at which the EU must always be judged a 'success'. Characteristic of that success has been the extent to which the autonomy of the Member States has been constrained, whether voluntarily or not, as they have become ever more closely tied into a complex policy-making and institutional matrix. As the EU has developed, its 'progress' towards its stated goals can be seen to be a dynamic combination of impressive constitutional steps in the form of Treaties concluded or history-making decisions reached within the forum of the European Council, and the day-to-day policy-making activities of institutions such as the Commission and the Court of Justice. Perhaps more than any other field of EU policy-making, that of social policy cries out for a substantive and value-driven concept of subsidiarity to be deployed, both in order to generate sensitivity to the collective cultural contexts in which policies need to be applied and implemented, and also in order to empower individuals as the subjects of EU policies.

Second, we can observe the dual meaning of the market framework for EU social citizenship. It simultaneously empowers and constrains the EU citizen. The continuing influence of the (single) market concept, across the full range of citizenship rights - indeed, not only social citizenship, but also the civic and political rights of EU citizenship - needs to be emphasised. In so many ways, the market framework remains the *raison d'être* of European Union, and so long as it does it is imperative to see the multiplicity of points at which it is 'knitted into' the constitutional fabric. It is impossible to understand fully the citizenship figure in the European Union without recalling at every point that it is a figure developing in a transnational *market* context. Even the 'European Social Model' as a basis for citizenship operates in a manner which is to a very substantial degree derivative from the market concept.

A third observation concerns the need for consistent feminist critique of the social dimension and social policy-making, and the citizenship elements which contribute to that dimension. We have commented briefly upon the gendered nature of each of the forms of socio-economic citizenship analysed in this paper. This paper has self-consciously limited itself to laying groundwork for further analysis of a critical nature as to a 'thick' concept of EU social citizenship. In any such concept, a feminist critique of the core elements will be essential.

The final concluding observation concerns the need to step away from a static top-down view of citizenship as 'rights-conferred' and 'identity-generated' through formal structures imposed by instruments of governance. In an evolving polity, the regenerative function of citizenship lies in its ability to invest meaning in those instruments of governance, by offering avenues for

citizen participation. Through such means, the social dimension and social policy may cease to be simply an arena we observe, but become a more dynamic and interactive focus of conflict and interest intermediation (social rights may even come to be ‘struggled for’ in the future EU, rather than being divorced from everyday life and cultural, political and socio-economic experience).

A suggestion to this effect comes from the Report of the ‘*Comité des Sages*’ on a ‘Europe of civic and social rights’, discussed in Section III.¹⁰⁷ The most radical proposal contained in the report refers to the ‘need for a participatory process to formulate a modern list of civic and social rights and duties.’¹⁰⁸ As the report reminds us, citizenship ‘is a way of living’, and

‘A simple list of rights does not properly reflect this dimension of citizenship, whereas a sufficiently lengthy process of collective formulation of rights would make it possible to give expression to citizenship and to arrive at a more balanced view of rights and duties.’

Such a process would involve not only recognition of the role of the individual, but also incorporate the ‘traditional’ social partners and other non-governmental organisations which play such an important role with socio-economic development in all of the Member States.

This constitutional process is unlikely to take place in the short or even medium term. In the meantime, the involvement of many traditional and non-traditional social partners in even small ways in the IGC process between 1995 and 1997 represents a small step towards that type of constitutional forum. In particular, the Commission has been responsible for organising hearings based on the ‘*Comité des Sages*’ report, in the Member States.

The conclusion to be drawn from this paper, is that the application of a citizenship-based frame of analysis to the understanding of EU social policy suggests that in some ways this dimension is perhaps more fully developed than it is given credit for. There have been a number of attempts in recent years, mostly led by the Commission, to make social policy more central to the vocation of the EU, and this would undoubtedly lend support to efforts to provide some ‘glue’ for the affective dimension of EU integration through a form of inclusionary social

¹⁰⁷ See *supra* at n.87 *et seq.*

¹⁰⁸ At p53.

citizenship. In political terms, as well as in analytical terms, there remains much further work to be done.