EU citizenship

Citizenship and identity beyond national borders

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Photo: Passports of the then 12 member states of the European Economic Community (now the European Union), each bearing the words "European Community" in their respective languages on the top. © European Union, 1991.

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Abstract

The 1992 Maastricht Treaty introduced the concept of European Union citizenship. All citizens of the 28 EU member states are also EU citizens through the very fact that their countries are members of the EU. Acquired EU citizenship gives them the right to free movement, settlement and employment across the EU, the right to vote in European elections, and also on paper the right to consular protection from other EU states' embassies when abroad.

The concept of citizenship in Europe – and indeed anywhere in the world – has been evolving over the years, and continues to evolve. Against this time scale, the concept of modern citizenship as attached to the nation-state would seem ephemeral. The idea of EU citizenship therefore does not need to be regarded as a revolutionary phenomenon that is bound to mitigate against the natural inclination of European citizens towards national identities, especially in times of economic and financial crises. In fact, the idea of EU citizenship has even been criticised by some scholars as being of little substantive value in addition to whatever rights and freedoms European citizens already have. Nonetheless the 'constitutional moment' that the Maastricht Treaty achieved for the idea of EU citizenship has served more than just symbolic value – the EU's Charter of Fundamental Rights is now legally binding, for instance. The idea of EU citizenship also put pressure on the Union and its leaders to address the perceived democratic deficit that the EU is often accused of. In attempts to cement the political rights of EU citizens, the citizens' initiative was included in Lisbon Treaty allowing citizens to directly lobby the European Commission for new policy initiatives or changes.

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EU citizenship:
Citizenship and identity beyond national borders

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A brief history of citizenship in Europe

"The nature of citizenship is a question which is often disputed: there is no general agreement on a single definition".
- Aristotle, *Politics*

Scholars generally point to the ancient Greek city states as the birthplace of the concept of citizenship, as with the idea of democracy. For some, the idea of citizenship is an inherent part of Western civilisation – Max Weber wrote that "the notion of citizens of the state is unknown to the world of Islam, and to India and China".[2] Of course, citizenship as it was practised in the ancient Greek city states would not be recognisable as such today. The Greek citizen participated actively in the civic affairs of the *polis* (city). That required him – and indeed, women were excluded from citizenship – to be well educated. A large portion of the population – slaves and 'barbarians', besides women – were denied citizenship, which was necessarily restricted to an elite group of men who held offices of government or were involved in the judicial processes.

In the intervening centuries until the modern era, people were either subjects of a monarch or were citizens of a city or town. With the age of nationalism in the 19th century and the consolidation of modern states, the idea of citizenship and its concomitant set of rights began to develop. Given the scale of the modern state, citizenship nonetheless became a more passive undertaking compared to the ancient Greek version, since political representation had to be delegated.

[2] Weber, Max. 1927. *General Economic History* (trans Frank Knight). Greenberg. New York. p. 316.

But the democratisation of citizenship and its rights were far from immediate, even in Europe. Women were not granted the right to vote until 1893, when New Zealand – far away from the heart of Europe – became the first country in the world to do so. As late as 1971, women in Switzerland were still not permitted to vote at the federal level.

Indeed the concept of citizenship has been constantly evolving throughout history, and continues to do so.

Theoretical underpinnings of modern citizenship

Social contract theory

Since citizenship essentially refers to the relationship between an individual and the state, social contract theory has been an important contribution to the development of modern citizenship.

In Thomas Hobbes's *Leviathan* (1651), the state is formed when a social contract is agreed between individuals to cede some of their individual rights to create laws that regulate their interactions. This social contract – essentially an 'agreement' among the individuals – resulted in the formation of the sovereign entity of the state. This takes the individuals out of the anarchic state of nature, in which life would otherwise be, as Hobbes put it, "solitary, poor, nasty, brutish and short".

John Locke's conception of classical liberalism in his *Second Treatise of Government* (1689) provided for government to be the neutral arbiter that protects lives, liberty and property, so that people would not live in fear.

Jean-Jacques Rousseau's *Du contrat social* (1762) laid the foundations of political rights based on popular sovereignty. He described the social contract as the situation in which "each of us puts his person and all his power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole".

Together, these three different takes on social contract theory has informed many aspects of modern citizenship from the freedom of religion to military service to adherence to the Penal Code. The idea of the

social contract is relevant here in the case of the emerging concept of an EU citizenship, in how it developed through the EU treaties and the negotiation processes that led to them. This occurred from the establishment of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC) in the 1950s, through to the establishment of the notion of EU citizenship in the Maastricht Treaty of 1992.

The concept of EU citizenship and its development

Treaty provisions on EU citizenship

The concept of EU citizenship was officially introduced by the Maastricht Treaty of 1992. Also known as the Treaty on European Union (TEU), Article 8 (1) states that:

> *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.*[3]

In other words, the EU and its institutions have no legal authority to confer EU citizenship; it can only be acquired through an EU member state and through the provisions they have prescribed by law. Rostek and Davies describe EU citizenship as being "parasitic" upon national citizenship.[4]

This did not quell the anxiety of some member states on the idea that EU citizenship was threatening their authority in granting national citizenship. In response, the Amsterdam Treaty of 1997 added the following clarification to the original clause on EU citizenship:

> *Citizenship of the Union shall complement and not replace national citizenship.*

The consolidated version of the Treaty on the Functioning of the EU now contains two key provisions

for EU citizenship – the freedom of movement and political rights:

> *20 (1). Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States […]*
>
> *21 (1). Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. […]*

The freedom of movement

For Maas, the freedom of movement is a core right of EU citizenship, whether to seek work or simply to reside in a different EU member state.[5] It serves to realise the EU's Single Market in full, for which the mobility of workers is essential as a concept and in practice. EU member states are however allowed to impose restrictions to the freedom of movement of all persons, EU citizens included, on the grounds of public policy, public security or public health.

Tied to this is a whole set of rights, such as the right to equal treatment as EU citizens. Any discrimination on grounds of national citizenship is prohibited, so as to "make the freedom of movement meaningful and useful".[6] This includes the entitlement to most benefits – such as social and tax advantages – that are granted by the host EU member state, subjected to some exceptions – the host EU country can decide not to grant entitlement to social assistance during the first three months of residence, and can decide not to grant aid for students like grants or loans.

With the Schengen Agreement of 1985 and the subsequent Schengen Convention of 1990, border controls between participating European countries were abolished. The resultant "Schengen area", which now includes most EU member states as well as some non-EU countries like Switzerland, Iceland and Norway, has become a symbol of European integration, and further helped to establish the concept of the freedom of movement. The UK and Ireland, however, have

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[3] Note: this article is numbered as 17 in the revised version of the treaty. The original 1992 text: http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html . The consolidated version, after the amendments of the Amsterdam Treaty: http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html

[4] Davies, Gareth and Rostek, Karolina. 2006. 'The Impact of Union Citizenship on National Citizenship Policies'. European Integration online Papers (EIOP), 10: 5.

[5] Maas, Willem. 2005. 'The Evolution of EU Citizenship'. Memo for Princeton workshop on *The State of the European Union, Volume 8*, p. 14.

[6] European Commission. 2010. *Freedom to move and live in Europe: A guide to your rights as an EU citizen*, p 30

opted out of the Schengen Agreement, so EU and non-EU travellers still have to clear immigration controls when entering these countries.

It was not that European free movement rights did not exist before the Maastricht Treaty of 1992, or even before the Schengen initiatives. The freedom of movement could have been instituted by bilateral or multilateral agreements between the EU member states. For instance, the UK and Ireland have operated a Common Travel Area – within which there are no immigration controls – in various forms since Irish independence in 1922. The Benelux Economic Union – a union consisting of Belgium, Netherlands and Luxembourg which preceded the European Coal and Steel Community – has also operated a borderless arrangement for some time.

But the concept of European free movement rights back then categorised individuals by personal attributes and economic activity – indeed, it was originally conceived to satisfy the economic dimension of European integration – the free movement of "labour" rather than "people". For instance, students, retirees, and professionals were covered by separate legislation if they wished to relocate within the EU. In this sense, a former European Commissioner was right to observe that "the status of 'Community citizen' [as the idea of the EU citizen was known before 1992] had been officially recognized from the moment when the Treaties granted rights to individuals and the opportunity of enforcing them by recourse to a national or Community court".[7]

What the Maastricht Treaty of 1992 did was to "[alter] the political environment and generated demands for extending and expanding the content of the original free movement rights".[8]

As was expected, accession negotiations between the EU and candidate countries on the issue of the freedom of movement proved to be highly contested affairs. Transitional arrangements were worked out, in which the free movement rights of citizens from new EU member states were recognised in phases, rather than immediately on the date of EU accession. This was to assuage the fears of some existing EU member states which predicted a mass immigration from the new member states. Such transitional arrangements were not new with the 2004 round of enlargement for the EU. Already back in 1986, the UK proposed the creation of the Ad Hoc group on Immigration to examine how the EEC could prevent unauthorised migration, very soon after the accession of Spain and Portugal to the EEC and the signing of the Schengen Agreement. For Chou, this has constituted the evolution of European cooperation on migration, on the basis of the "agreement to disagree".[9]

Political rights

Participation in political life in a democracy is a fundamental right of citizenship. Under the Maastricht Treaty, every EU citizen is entitled to vote and stand for elections to the European Parliament. An EU citizen may vote or stand for European Parliament elections in their country of residence that is not their country of national citizenship – ultimately, however, they are subjected to the same criteria as nationals of that country of residence, which may differ throughout the EU.[10]

Additionally, EU citizens are entitled to vote in municipal and local elections in different EU countries of residence. They are not entitled by the treaty to vote in elections in national parliaments or for the office of head-of-state, other than those of their own.

EU citizens are given the right to petition the European Parliament and to lodge a complaint with the European Ombudsman - an office that investigates public complaints about maladministration in the EU institutions and bodies. All these moves were a response to the democratic deficit that the EU is often alleged to suffer from.

More broadly, the EU Charter of Fundamental Rights enshrines a range of political, economic and social rights for EU citizens. Sometimes compared to the Bills

[7] European Commissioner (later Commission Vice-President from 1981-1985) Viscount Étienne
Davignon in European Parliament (1979: 25). European Parliament 1977, Resolution on the granting of special rights to the citizens of the European Community (16 November). OJ C 299, 12 December.
[8] Maas. 2005, p 14.

[9] Chou, Meng-Hsuan. 2010. 'The Free Movement of Sex Workers in the European Union' in *Migrants and Minorities: the European Response* (A Luedtke, ed.). Newcastle upon Tyne, Cambridge Scholars Press, p. 98-123.
[10] EUR-Lex (website). Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

of Rights in the United States, the EU Charter was drafted and adopted by the EU institutions in 2000. But it remained an "aspirational document",[11] because the United Kingdom objected to inserting the Charter into the treaty amendment that year. That changed in 2009 with the Lisbon Treaty, and the Charter is now legally binding in all member states throughout the EU.

The Charter of Fundamental Rights of the EU[12]

The charter brings together in a single document rights previously found in a variety of legislative instruments, such as in national and EU laws, as well as in international conventions from the Council of Europe, the United Nations (UN) and the International Labour Organisation (ILO). By making fundamental rights clearer and more visible, it creates legal certainty within the EU.

The Charter of Fundamental Rights contains a preamble and 54 Articles, grouped in seven chapters:

Chapter I: **dignity** (human dignity, the right to life, the right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour);

Chapter II: **freedoms** (the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition);

Chapter III: **equality** (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities);

Chapter IV: **solidarity** (workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection);

Chapter V: **citizens' rights** (the right to vote and stand as a candidate at elections to the European Parliament and at municipal elections, the right to good administration, the right of access to documents, European Ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection);

Chapter VI: **justice** (the right to an effective remedy and a fair trial, presumption of innocence and the right of defence, principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence);

Chapter VII: **general provisions**.

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[11] Guild, Elspeth. 2010. The European Union after the Treaty of Lisbon: Fundamental Rights and EU Citizenship. Global Jean Monnet/ European Community Studies Association, World Conference 25-26 May 2010. Centre for European Policy Studies (CEPS), p 2.

[12] Reproduced through fair use from the website of Europa, Summaries of EU legislation, available online at: http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/l33501_en.htm

Consular protection

EU citizens are entitled to seek consular assistance or protection from the embassy of any EU member state when abroad. This is particularly helpful if an EU citizen comes from an EU member state which does not maintain diplomatic and consular representation in every country in the world. In fact, there are only three countries in which all 28 EU member states maintain an embassy – the US, China and Russia.[13]

The European Commission's 2011 Green Paper on consular protection for EU citizens abroad cited international crisis events such as the uprisings in the Middle East and North Africa and the earthquake and nuclear disaster in Japan, which affected many EU citizens.[14]

However many EU citizens are not aware of this right provided for them in Article 20 of the Treaty establishing the European Community (TEC). Ideas to better inform EU citizens of these rights to consular protection from any EU member state embassy have been officially mooted, such as printing the text of Article 20 of the treaty in their passports.

Some EU member states have quibbled about the scope and substance of this right of EU citizens. This hinges on whether EU member state embassies are required to offer diplomatic protection – in which the state proactively intervenes to seek remedies for individuals in judicial proceedings – and/or consular assistance – in which individuals request for help when in difficulties as a preventive measure. For a small member state with a small embassy, offering diplomatic protection to all EU citizens could be beyond their capacity.

The European Commission's 2011 Green Paper has proposed that EU member states work towards agreeing on a set of common standards of consular protection, and to devolve some of these responsibilities to EU delegations – the EU's embassies around the world. EU delegations do not currently handle consular work.

The politics behind EU citizenship: 1950s to Maastricht

The principle of the freedom of movement is not new to the EU. Already at the negotiations for the 1952 treaty establishing the European Coal and Steel Community (ECSC) – the precursor of the EU – Italy insisted on including the free movement of labour in the document. Paolo Taviani, the Italian negotiator in the ECSC negotiations, regarded free movement rights for workers as a fundamental principle of the ECSC, and made it a key condition for Italy's participation. Taviani even went as far as proposing a European ministry of labour. The Italian negotiators were keen to promote the free movement of its nationals around Europe, especially its coal workers and miners.

Although Italy's wish was granted, it faced the opposition of some ECSC member states, especially Belgium which already had many foreign coal miners. As a result, progress in implementing free movement for workers was slow in the ensuing years.

At the negotiations for the Treaty of Rome establishing the European Economic Community (EEC) – the next phase of deeper European integration – Italy pushed even harder for their proposals. The resultant treaty gave workers the right to move freely throughout the Community to take up employment, to reside in any member state for employment, and to remain there after accepting employment. The European Parliamentary Assembly moved a resolution, in which it was said that "delaying free movement of labour risks provoking a dangerous disequilibrium between the economic and the social measures being undertaken by the EEC, which would harm the move to speed up economic recovery".[15]

In 1972, the then President of the European Commission Sicco Mansholt argued that "the Community, which has achieved the opening of frontiers for trade in industrial and agricultural goods, must now open the frontiers which still keep its citizens apart from one another". [16] He envisioned for Europeans to be "progressively integrated into the social, administrative and political fabric of their host

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[13] Geyer, Florian. 2007. 'The external dimension of EU citizenship: Arguing for effective protection of citizens abroad'. Centre for European Policy Studies (CEPS) Policy Brief. No. 134. July 2007, p 3.
[14] European Commission. 2011. Proposal for a Council Directive on consular protection for citizens of the Union abroad. COM(2011) 881 final.

[15] Assemblée parlementaire européenne 1960, Rapport sur le règlement relatif aux premières mesures pour la réalisation de la libre circulation des travailleurs dans la Communauté, Document 67. Luxembourg: Assemblée parlementaire européenne, p. 9.
[16] *Bulletin of the European Communities.* 11-1972, 58-59.

countries, with the aim of gradually conferring upon them 'European civic rights".[17]

A key 1975 European Commission report entitled "Towards European Citizenship" looked into establishing a passport union for EEC member states, as well as some preliminary ideas for political rights for citizens at the Community level. Crucially, the report established the principle of European citizenship that citizens of any member state should be automatically treated in the same way in another member state as if they were citizens there too.

Working alongside the European Commission was the Belgian Prime Minister Leo Tindemans, who produced a report[18] on the issue that emphasised the values of the European Social Charter,[19] warning of a Europe that was perceived by its citizens as undemocratic and elitist.

Resistance grew in the following years, due to stalled economic growth, high unemployment and inflation in Europe which made it unpopular to push for new rights for Community citizenship. The enlargement of the Community to include Greece in 1981 and the launch of accession negotiations with Spain and Portugal prompted the existing member states to reconsider Community citizenship. Resistance also came from the eurosceptic British Prime Minister Margaret Thatcher, who took office in 1979.

It was the precipitous changes accompanying the fall of the Berlin Wall in 1989 that spurred on the drive towards Community citizenship through its final lap. On the eve of the negotiation for the Maastricht Treaty, France and Germany were seriously urging that EU citizenship be implemented. They were met with roadblocks from the British and Danish negotiators. The other EU member states favoured a wider conception of EU citizenship rights, but watered down their proposals to win the acceptance of the UK and Denmark.

In the event, Denmark held a national referendum on the Maastricht Treaty, where it was narrowly defeated with 50.7% of the vote. In order for Denmark to ratify the treaty, and in order for the treaty to be ratified unanimously by all EU member states as was the requirement, four exceptions to the treaty provisions

were granted to Denmark at a subsequent EU summit. One of these exceptions was on EU citizenship, although it was more of a clarification on the principle that EU citizenship was additional to national citizenship and does not replace it. This principle was written into the 1997 Amsterdam Treaty which amended the Treaty on European Union.

European Court of Justice (ECJ): impact of its cases on EU citizenship law

The European Court of Justice (ECJ), as the highest court in matters of EU law, has had a role in shaping the form and substance of EU citizenship. Most cases involve clarification of overlapping provisions of national and EU law on citizenship and, in the process, harmonising them. For some, such as the Chen case discussed below, the ECJ's judgment had the effect of spurring constitutional changes within member states (in this case, Ireland).

Decisions on nationality no longer have an exclusively domestic meaning – the Micheletti case, 1992[20]

Mario Vicente Micheletti held Italian and Argentinean citizenships, and lived in Argentina. When he arrived in Spain, he was denied the rights ascribed to EU citizens; this was because Spanish law took one's country of residence – Argentina, in Micheletti's case – into account in the case of dual citizenship. When the case was brought before the ECJ, it ruled that anyone holding a citizenship in an EU member state must be accorded the same rights in any other member state, regardless of any other non-EU citizenships they also hold, and regardless of their country of residence.

Besides clarifying EU law on the specific technicality, the ECJ ruling also established that the regulation of citizenship laws should be in line with EU interests. The ruling stated that "under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality".

Addressing overlapping national citizenship laws – the Chen case, 2004[21]

Catherine Chen was born in 2000 in Belfast, Northern Ireland, to Chinese citizens. Catherine's parents were

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[17] Ibid.

[18] Tindemans, Leo. 1976. *Report to the European Council* [Tindemans Report]. Bulletin EC 1/76.

[19] Drafted by the Council of Europe, a European institution that is and remains separate from the EU structures.

[20] Micheletti v Delegación del Gobierno en Cantabria.

[21] Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department.

working in the UK in Wales, but her mother Mrs Man Lavette Chen travelled to Belfast just before Catherine was delivered. Even though Northern Ireland is part of the UK, Catherine became a citizen of the Republic of Ireland – this was due to Irish nationality laws in place since 1956, which stated that anyone born in the island of Ireland would be entitled to Irish citizenship.

Given EU law, Irish nationality meant that Catherine was also an EU citizen, with the right to reside in any EU member state. Unlike Ireland however, UK laws since 1981 do not grant automatic citizenship to anyone born on its territory. With her daughter, Mrs Chen returned to Wales to apply for permanent residency in the UK.

The UK Home Office rejected Mr and Mrs Chen's application, saying that "Mrs Chen's conduct in travelling to Belfast constitutes an attempted abuse in that it was a scheme by which a national of a non-member state wishing to reside within [the UK] organises her affairs so as to give birth to a child in part of [the UK] to which [Ireland] applies nationality rules".[22] Catherine's parents appealed to the Immigration Appellate Authority, which referred the case to the European Court of Justice.

The ECJ ruling however reaffirmed Catherine's right as an EU citizen to reside anywhere in the EU. And because Catherine was only an infant, the ECJ also ruled that denying Catherine's parents residency in the UK was a challenge to the exercise of Catherine's basic rights as an EU citizen.

The government of Ireland not only realised that its nationality laws were open to easy abuse, but would also "cause difficulties in Ireland's relations with other [EU] member states".[23] There was never a formal request from the EU or its member states for Ireland to change Irish nationality laws; nonetheless the Irish government reacted to these concerns. It proposed changing the laws, and put it through a referendum on the Twenty-seventh Amendment of the Constitution of Ireland in 2004. This was passed, making it legally possible for Ireland to refuse citizenship to individuals who did not have an Irish parent.

Criticisms of the concept of EU citizenship

"No substantive value"

Paradoxically, the concept of EU citizenship has also been criticised for adding "little substantially new value".[24] Scholars such as Dell'Olio hold that replacing the notion of 'worker' or 'privileged alien' with that of an EU citizen held more symbolic than practical meaning.[25]

On the one hand, the symbolic meaning of EU citizenship certainly has substantive value for fostering a sense of a European or EU identity. But the concept of EU citizenship as introduced by the Maastricht Treaty also has practical value in securing those rights. By decoupling the right to free movement from purely economic activity, EU citizens have a stronger recourse to enforcing their rights, such those laid out in the EU Charter of Fundamental Rights, through the European Court of Justice.

As discussed earlier, certain EU member states have been resistant to the idea of EU citizenship, regarding it as threatening their sovereign right of granting citizenships. There are also criticisms that the free movement of people threatens many workers who fear competition from other EU citizens for jobs, particularly during the most recent financial and economic crisis in the euro zone. Indeed some would say that the freedom of movement does not benefit the majority of Europeans, but only a minority of unrooted ones. Therefore, rather than to say EU citizenship has no substantive value, it is fairer to characterise the development of EU citizenship as being modestly incremental.

Deepening division between EU citizens and third country nationals

According to O'Leary and Tiilikainen, the "distinction between citizens of the Union and third country nationals has become sharper […] since Union citizenship has acquired the form of a discriminating landmark for the purpose of difference in treatment".[26]

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[22] Rozenberg, Joshua. 2004. 'EU backing for Chinese mother's right to live in Britain'. *Telegraph*, 20 October 2004.
[23] Ryan, Barry. 2004. 'The Celtic Cubs'. *European Journal of Law and Migration*, 6, p. 188.

[24] Rostek and Davies. p. 6.
[25] Dell'Olio, Fiorella. 2002. 'The Redefinition of the Concept of Nationality in the UK: Between Historical Response and Normative Challenges'. *Politics*, 22: 1, p. 14.
[26] O'Leary, Síofra. 1998. 'The Options for the Reform of European Union Citizenship', in O'Leary, Síofra and

Of course, the idea of EU citizenship has been to foster deeper European integration, which by implication undermines the status of non-EU citizens working and living within the EU.

The case of Germany, however, highlights some problems that are the result of its strict nationality laws. Immigrants constitute 10% of the population in Germany, of which 75% come from non-EU countries. Many of them are second- or third-generation migrants whose forbears came to Germany under the *Gastarbeiterprogramm* – the guest worker program – with the majority having come from Turkey. Due to Germany's strict *jus sanguinis* nationality laws that specifically exclude the descendants of the original guest workers, the subsequent generations of immigrants have grown up without any citizenship. They may have obtained a unlimited residency permit in Germany, lived there all their lives, and may have never set foot on Turkey or the country of origin of their parents, let alone obtain Turkish or other citizenship.

The introduction of EU citizenship in 1992 had therefore put these second and third generation immigrants in a worse position than more recent immigrants from other EU member states. This has had the effect of shutting them out from full membership in society, and creating enclaves of disaffected communities.

In 2000, a new nationality law was introduced in Germany after much debate, which softened the conditions for naturalisation. Children of foreign nationals who have themselves obtained an unlimited residency permit and have resided in Germany for at least 8 years would automatically become German citizens at birth. Transitional arrangements towards citizenship were rolled out for these third generation immigrants who were born before the new law was introduced.

These legal developments in Germany have proceeded in tandem with developments at the EU level. A 2003 Council Directive [27] stated that EU countries must recognise a third country national's long-term resident status after five years of continuous legal residence.

These long term third country nationals who are resident in the EU are protected against expulsion, and would enjoy equal treatment with EU citizens in terms of access to employment and social assistance.

Another example of 'citizenship beyond borders': Commonwealth citizenship

The concept of Commonwealth citizenship is probably the only other example of an existing supranational citizenship aside from EU citizenship. The Commonwealth of Nations is an intergovernmental organisation, the members of which are predominantly former colonies or territories of the British Empire.[28]

Commonwealth citizens are entitled to vote in local, national and European Parliament elections in the UK, if they are resident there. In some other Commonwealth countries like Jamaica, any Commonwealth citizen residing there is also entitled to vote in elections. Commonwealth citizens are also entitled to stand for election to both Houses of the British Parliament, subjected to some restrictions relating to their immigration status. They may also hold public office, such as serving in the judiciary, civil service or the armed forces, except for sensitive vocations in the intelligence services.

On consular issues, Commonwealth citizens are entitled to seek consular assistance from British embassies in countries where their own countries are not diplomatically represented. In Commonwealth countries, Commonwealth citizens should look to the host government for consular assistance rather than the British High Commission. However, some countries like Singapore have chosen not to permit its citizens to receive consular assistance from British embassies abroad, even if they are not diplomatically represented in the country concerned.

Nonetheless the idea behind Commonwealth citizenship is rather different from that of EU citizenship – it served as a means of redefining a British subject throughout the British Empire, starting from the era of decolonization in the late 1940s. The general trend therefore has been to curtail rather than to

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Tiilikainen Teija. *Citizenship and Nationality Status in the New Europe*. Sweet & Maxwell, London. pp.84-86.

[27] EUR-Lex (website). Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

[28] Some member states were never British colonies, such as Mozambique which was a Portuguese colony; they have nevertheless applied to join the Commonwealth and were accepted. Citizens of Ireland, despite their country not being a member of the Commonwealth, are accorded many of the rights enjoyed by Commonwealth citizens.

develop these associated citizenship rights, such as in proposals to disqualify Commonwealth citizens from voting in the UK.[29]

EU/European identity

"One does not fall in love with the Single Market".
- attributed to Jacques Delors

EU citizenship and identity necessarily straddles the nation-state and federal models of the European polity, as Olsen puts it.[30] It would be premature to speak of a post-national or post-modern form of citizenship, because as he reminds us, member state nationality is still a prerequisite for EU citizenship.

Nonetheless, Europe is undisputedly the most integrated region in the world; other regions like Southeast Asia do not come anywhere close, and are certainly far more diverse in character than Europe is. Given the depth in which European integration has proceeded over the past decades, policy-makers have grappled with ways to cultivate a stronger EU/European identity, sometimes in response to criticisms about the EU's democratic deficit.

For Smith,[31] the formation of European identity is not feasible, because Europe – more specifically the idea of European integration – "lacks emotional sustenance and historical depth". In practical terms, there is no European lingua franca or mass media, for instance. One of the Copenhagen criteria for EU membership states that "any European country" [32] may apply for EU membership, but what exactly constitutes a European country? Witness, for instance, some of the disagreement on the 'European-ness' of the long-time applicant Turkey, whatever the real reasons for intransigence on Turkish EU membership are.

Euro-nationalism

Particularly in the 1970s and 80s, the cultivation of European symbols approximated what the scholar Anthony Smith called ethno-symbolism or ethnic nationalism. The Community institutions chose the refrain from the last movement of Ludwig van Beethoven's Symphony No. 9, popularly known as 'The Ode to Joy', as the European Anthem. The circle of 12 gold stars on a blue background was established as the European Economic Community's (EEC) official flag – it was originally designed in the 1950s for the Council of Europe, an institution separate from the EEC/EU.

In other words, the same tools – flags, national anthems, shared myths about the origins of the community – used in national identity-building in the 19th and 20th centuries were employed for the EU. This led Kostakopoulou to term it Euro-nationalism.[33] Such a method of formulating a European identity has been described less flatteringly by Majone as a predictable solution typically used by policy-makers.[34] In this vein, the then nine member states of the EEC issued a 'Declaration on European identity' in 1973. This document, however, did go further beyond the issue of mere symbols, seeking to establish a political conception of European identity that revolved around the principles of the rule of law, human rights, democracy and social justice.[35]

The problem with tapping on Euro-nationalism to engender an EU identity is that it is still not able to match the emotional draw of 'national or state' nationalisms, at least in the present day. Between the two modes of 'nationalisms', Euro-nationalism is invariably the weaker one, because it is relatively nascent, and not necessarily fully embraced by national elites. .

Constitutional patriotism

The concept of constitutional patriotism (*Verfassungspatriotismus* in German) has been closely

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[29] Withnall, Adam. 2013. 'One million Commonwealth citizens "should lose the right to vote in UK"'. *The Independent*, 28 August 2013.

[30] Olsen, Espen. 2011. 'European citizenship: With a nation-state, federal, or cosmopolitan twist?' RECON Online Working Paper 2010/11.

[31] Smith, Anthony. 1992. 'National identity and the idea of European unity'. *International Affairs*, 68: 1, p. 62.

[32] Article 49, Treaty on European Union.

[33] Kostakopoulou, Theodora. 2001. *Citizenship, Identity, and Immigration in the European Union*. Manchester University Press, Manchester. p 47.

[34] Majone, Giandomenico. 1991. 'Cross-National Sources of Regulatory Policy making in Europe and the United States'. *Journal of Public Policy*, Vol. 11, 1991, p. 92.

[35] Bulletin of the European Communities. December 1973, No 12. Luxembourg: Office for official publications of the European Communities. "Declaration on European Identity", p. 118-122.

associated with the German philosopher Jürgen Habermas in the context of Germany and the EU, although it was first coined by the political scientist Dolf Sternberger. It refers to the idea that the citizen's sense of political attachment should be centred on the norms and values of a liberal democratic constitution of a polity, rather than on a nationalistic culture. It was also an idea that identity comes through participating in civic life and creating a future together, rather than a passive relationship between the nation and its citizens, built on a glorified past.

Constitutional patriotism was also conceived as being distinct from cosmopolitanism or ideas about a 'worldwide community of human beings'.[36] This would seem too ideal for a polity like the EU which did not develop like nation-states did, but was built more like a legal entity through the treaties. The idea was also somewhat derived from the example of Switzerland – a country of four linguistic communities held together by its constitution – and the United States – essentially perceived as an immigrant country.

Nonetheless the idea of constitutional patriotism in the EU context has been criticised for being abstract, as well as for being too rooted in the context in which it was born – in the 1970s in the 'half-nation' that was West Germany. More crucially, the EU Constitutional Treaty that was put to the ballot box in 2005 was rejected by French and Dutch voters, suggesting little appetite or potential for constitutional patriotism.

Eurobarometer findings on Europeans' perception of identity/citizenship

In the latest Eurobarometer findings on the topic of EU citizenship (February 2013),[37] the vast majority of respondents (81%) said they were familiar with the term "citizenship of the European Union", and 78% were aware that EU citizenship is automatic upon getting national citizenship of an EU member state. However only 46% said they knew what the term actually means, suggesting that the rights and benefits of EU citizenship need to be made more widely known.

Interestingly, citizens of the new member states in Central and Eastern Europe which joined the EU in 2004

and 2007 were more familiar with the term "citizenship of the European Union" than citizens in the older 12 member states (89% compared to 79%). The differences are most stark when one looks at the figures for the individual member states. Between 90-95% of respondents in Romania, , Slovakia, Bulgaria and Poland were familiar with the term 'citizen of the European Union', but only 57% of German and 69% of Belgian respondents said the same. Moreover 43% of German respondents and 30% of Belgian respondents claimed they had never heard of the term.

Participatory citizenship – the European Year of Citizens

A report by Hoskins and Kerr titled 'Participatory Citizenship in the European Union', commissioned by the European Commission in 2012, sought to provide policy recommendations for bringing EU citizenship beyond its legal confines.[38] The report highlighted the need for participation in civil society, community and political life in the EU. Besides providing clarity and balance to the concept of citizenship beyond the legal realm, the report also recognised the role of participatory citizenship programmes in promoting values of democracy and human rights.

The EU designated 2013 as the European Year of Citizens, for a number of stated reasons – it seeks to encourage EU citizens to vote in the 2014 European Parliament elections; to celebrate the 20th anniversary of the concept of EU citizenship as launched by the Maastricht Treaty; and it seeks to "empower European citizens and to strengthen the citizen dimension" during the ongoing euro zone crisis.[39] Many of the initiatives of the European Year of Citizens have also been targeted at informing EU citizens of their rights, especially in practicable aspects such as regarding consular protection.

Conclusion

The concept of citizenship in Europe – and indeed anywhere in the world – has been evolving over the

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[36] Mueller, Jan-Werner. 2009. 'Seven Ways to Misunderstand Constitutional Patriotism'. *Notizie di POLITEIA*, XXV, 96, 2009. pp. 20-24.
[37] Eurobarometer. 2013. *Flash Eurobarometer 365: European Union Citizenship*.

[38] Hoskins, Bryony and David Kerr. 2012. Final Study Summary and Policy Recommendations: Participatory Citizenship in the European Union. Report 4, European Commission, Europe for Citizens Programme.
[39] Europa (website). 'Context: the European Year of Citizens 2013'. Available online at: http://europa.eu/citizens-2013/en/about/context

years, and continues to evolve. Against this time scale, the concept of modern citizenship as attached to the nation-state would seem ephemeral. The idea of EU citizenship therefore does not need to be regarded as a revolutionary phenomenon that is bound to mitigate against the natural inclination of European citizens towards national identities, especially in times of economic and financial crises. In fact, the idea of EU citizenship has even been criticised by some scholars as being of little substantive value in addition to whatever rights and freedoms European citizens already have. Nonetheless the 'constitutional moment' that the Maastricht Treaty achieved for the idea of EU citizenship has served more than just symbolic value – the EU's Charter of Fundamental Rights is now legally binding, for instance. EU citizenship has also sought to address the democratic deficit that the EU is often accused of, in cementing the political rights of EU citizens, and introducing citizens' initiative in Lisbon Treaty allowing citizens to directly lobby the European Commission for new policy initiatives or changes.

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