European Union Politics

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Citizenship

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Introduction

Citizenship is about rights, access, and belonging to a particular community. As a legal institution (that is, a system of rules and norms) based within the constitution of a state, citizenship defines who has a right to belong inside and who does not qualify (see Figure 25.1). While citizenship always entails universally defined rights and obligations of membership, each community's definition and interpretation of citizenship differs according to its particular historical trajectory, that is, according to the social practices that define the meaning of citizenship within and for that particular polity. The politics and policy that contribute to that particular meaning of citizenship are defined as citizenship practice, whereas the meaning endowed in citizenship is defined as the citizenship ideal. From citizenship practice, different rights, terms of access to participation, and identities emerge. The question for EU Citizenship is thus whether we can identify rights, terms of access to participation, and identity that are specific to European citizens.

This chapter begins by establishing the facts of...
Union Citizenship. It considers what Union Citizenship means in formal terms: that is, its legal definition, and the political rights it confers. The chapter also examines the role of citizenship in the history of modern state building; and the meaning we attach to the concept of citizenship. The chapter then moves on to offer a brief introduction to the history of Citizenship in more general terms, and in the next section reviews the emergence of Citizenship of the Union from this perspective. This section accounts for the dynamics and the context in which Union Citizenship was created, and explores the relevant legal texts, policy proposals, and documents that were produced in the process. It asks how this citizenship took shape to acquire substance and how it adds to national citizenship. The final section offers an assessment of the possible impact of Union Citizenship on the day-to-day practice of individuals (residents, citizens, and visitors) on the courts and in EU politics, and questions how it may affect our understanding of citizenship in general. It is argued that Union Citizenship represents an innovative step towards changing the concept of citizenship as we know it within the contexts of modern nation states.

Three questions will need to be elaborated more fully by future research in this area. First, the potential political impact of Union Citizenship will need to be explored. Second, the role of Union Citizenship in the EU enlargement process deserves further attention. And, finally, the implications of citizenship as an organizing principle in the international system needs to be considered, given that Union Citizenship contributes to the fragmentation of citizenship rights in an entirely novel way.

Citizenship of the Union

Dealing with citizenship is a multidisciplinary endeavour. Legal scholars, political scientists, sociologists, historians, and philosophers all engage in the debate. Though coming at the topic from a political science perspective, this chapter will therefore cast light on different views and interpretations of this new citizenship. While there are now increasing efforts to engage in interdisciplinary work on citizenship, it is helpful to distinguish between the distinctive and leading questions that lie at the heart of the respective work of lawyers, on the one hand, and political scientists, on the other. Lawyers are, for example, especially interested in how particular legal conditions paved the way for the expansion of Community law. Typically, they ask the following questions:

- How do these rulings contribute to the legalization of the Europality; and what was their impact on changes in national law?

In turn, political scientists are interested in the politics and policy which brought this citizenship on to the political agenda, which contributed to its constitutionalization in the 1993 Maastricht Treaty, and which follow on from it. Their questions are the following:

- What triggered the institutionalization of citizenship at the supranational level?
- Which actors and political interests led to the inclusion citizenship in the Treaty?
- What forms did the relevant agenda setting, bargaining, and process take?
- What are the political implications of this citizenship for the EU, for the member states, and for the accession countries?
- What political innovations, with regard to the direction and quality of European integration, are likely to follow?
• What type of institutional adaptation can be observed in current and future member states?

Citizenship of the Union was established by the Maastricht Treaty in 1991 (Article 8, EC Treaty). Since its ratification in November 1993, citizens of the EU have enjoyed a number of rights that are directly conveyed by and enforceable through the Union. They include the right of residence and the right to free movement; the right to vote and stand as a candidate at municipal elections in the member state of residence; the right to vote and stand as a candidate in elections to the European Parliament (EP) in the member state of residence; diplomatic protection while in third countries; and the right to petition the EP. Achieving the status of Citizen of the Union is the exclusive right of ‘every person holding the nationality of a Member State’ (Article 8, EC Treaty).

After the Treaty revisions in the 1997 Amsterdam Treaty, the content of the Citizenship Article was slightly revised and renumbered (see Box 25.1). More importantly, a clarification of the relationship between national and Union Citizenship was added at Amsterdam. Thus, while the Maastricht Treaty stipulates that ‘Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby’ (Article 8, EC Treaty), the Amsterdam Treaty adds a distinctive line on the complementarity of European and national citizenship. It 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. Citizenship of the Union shall complement and not replace national citizenship’ (Article 17, EC Treaty). As Shaw (2000: 373) points out:

[The reference to the nationalities of the Member States is important. It states clearly the limited nature of EU citizenship. It links back directly to one of the framework ‘constitutional’ provisions of the TEU itself, Article 6(3) TEU: ‘The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy’.

Further to these provisions, there are a number of other articles in the Treaties that relate either directly or indirectly to the citizens of the EU (see Box 25.2).

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**Box 25.1 The facts**

**Citizenship of the Union**

Citizenship of the Union means the following for all citizens of the Union:

• the right to move freely and to reside on the territory of the member states (Article 18 of the EC Treaty);

• the right to vote and to stand as a candidate in elections to the European Parliament (EP) and in municipal elections in the member state in which he or she resides, under the same conditions as nationals of that state (Article 19 of the EC Treaty);

• the right, in the territory of a third country in which a national is not represented, to protection by the diplomatic or consular authorities of another member state, on the same conditions as the nationals of that state (Article 20 of the EC Treaty);

• the right to petition the EP (Article 21 of the EC Treaty) and the right to apply to the ombudsman (Article 21 of the EC Treaty) in order to bring to his or her attention any cases of poor administration by the Community institutions and bodies, with the exception of legal bodies.

It also means, following the entry into force of the Amsterdam Treaty in 1999:

• the right to apply to the European institutions in one of the official languages and to receive a reply in that language (Article 22 of the EC Treaty);

• the right to have access to EP, Council, and Commission documents under certain conditions (Article 255 of the EC Treaty).

The last three rights also apply to natural or legal persons, such as companies, that have their residence or headquarters in one of the member states of the EU.

Source:

Box 25.2 The facts

Citizens’ rights elsewhere in the Treaties

- Article 1 TEU (ever closer Union, decision taking close to citizens)
- Article 2 TEU (identity on international level, acquies communautaire)
- Article 6(1) TEU (principles of freedom, democracy, human rights, basic freedoms, rule of law)
- Article 6(2) TEU (fundamental rights, European Convention on Human Rights (ECHR), member state constitutions)
- Article 6(3) TEU (national identity of member states)
- Article 12 TEC (no discrimination on grounds of nationality)
- Article 14 TEC (creating a market without internal frontiers)
- Article 39 TEC (free movement of workers)
- Article 141 TEC (equal pay for men and women)

The inclusion of Citizenship of the Union in the Maastricht Treaty triggered a wide range of reactions from lawyers and social scientists, as well as from political actors and other social forces. Amongst others, non-governmental organizations (NGOs) debated what this citizenship meant. While all these responses took a critical line on the new citizenship, maintaining that it had left substantial gaps, especially when compared to the more familiar national citizenship rights and duties, it is possible to distinguish two discrete approaches. Lawyers tended to discuss Union Citizenship from the perspective of what it was, whereas NGOs, lobby groups, and philosophers discussed what it should become or ought to be. The formal legal components of European citizenship were often compared to the experience of citizenship in national states, or to the needs of those affected by it, that is, citizens and residents of the EU. Alternatively, it was viewed as a concept of modern political philosophy.

To understand and deal with Union Citizenship, therefore, means identifying the perspectives and interests of those who address this concept. Thus, some stress the limitations of Union Citizenship, comparing its legal trajectory and potential to national citizenship. They conclude that Union Citizenship is comparatively ‘thin’, in that it has less to offer than national citizenship rights. Others assess Union Citizenship as a social concept that develops over time. This reflects a view of citizenship as ‘thick’ and ‘under construction’. It could, for example, be extended to include ‘place-orientated’ citizenship rights, so that third-country nationals (TCNs) who are long-term residents in the EU might obtain Union Citizenship. According to Meehan (1993), these two different—thin and thick—approaches to citizenship can be distinguished as minimalist and dynamic approaches. Whereas the minimalists pursue a formal approach focusing on the evaluation of legal rights in the EU, the dynamic approach has been endorsed by social scientists keen to consider new policy options and opportunities and to discuss ways of rethinking citizenship.

As an evolving concept, ‘European’ citizenship has now been part of European integration for three decades. However, awareness of this citizenship has had a much shorter lifespan. The big debates were only sparked relatively recently by its constitution- alization within the Maastricht Treaty. Before then, and since the late 1960s, European citizenship was largely hidden from academic and public view, with a few notable exceptions (such as Meehan 1993; Evans 1984; Magiera 1991; and Closa 1992).

This first supranational citizenship has wider implications for our understanding of the changing nature of citizenship, both as a concept in the social sciences and as a legal institution. The key to understanding just how innovative this new citizenship is reflects the fact that it was put on a par with national citizenship. In other words, Citizenship of the Union creates an additional citizenship for the nationals of EU member states. At the same time, however, residents of the EU who do not hold a member state passport, for example Turkish residents in Germany,
or Moroccan residents in France, are distinguished from EU citizens and labelled as third-country nationals (TCNs) (see Chapter 19). Thus, while one group gained new rights, another was explicitly excluded—the political consequences of which this chapter will return to later.

**Key points**

- Lawyers and political scientists both study Union Citizenship, though the questions they pose may differ.
- Union Citizenship was introduced in 1991 by the Maastricht Treaty, which came into force in 1993.
- Understanding Union Citizenship means identifying the interests and perspectives of those who address the concept.
- There are two main understandings of Union Citizenship—a ‘thick’ and a ‘thin’ version.

**A brief history of citizenship**

This section looks at the constitutive and historical elements of citizenship in order to explore what citizenship is, and how its meaning has evolved over time.

**The constitutive elements of citizenship**

In the broadest sense, the role of citizenship in a constitutional context can be defined as follows: citizenship establishes institutionalized links between citizens and their political community. The rules and norms which regulate the practice of citizenship include principles of justice, formal political and legal procedures, norms, and values. All contribute to establishing the procedures of political participation and day-to-day practices of citizen participation within a particular politically defined community. Nationality entails the entitlement to belong to that community (see Figure 25.1).

The **community** has the right and indeed the obligation to represent community interests **vis-à-vis** other communities and the citizens as well. This relationship then links two types of entities, the individual citizen on the one side, and the representative of a sovereign community (Queen/estate/nation state, or in generic terms, a polity) on the other. This relationship represents the basic pattern

![Diagram](image)

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**Fig. 25.1 Modern citizenship**

of citizenship. To study citizenship, then, three elements need to be considered: the individual, the polity, and the relationship between the two. These elements are called the three constitutive elements of citizenship (see Figure 25.2).

The relationship between citizens and the polity has, for a long time, been intrinsically linked to modern state building: that is, the way that individuals saw themselves as linked to the central institutions of political authority, together with the struggles over citizenship rights, tended to support the emergence of a particular type of state, political institutions, and constitutional framework. Indeed, it is possible to state that citizenship, or the discourse surrounding it, defines the 'borders of order' (Kratochwil 1994). It sets the rules of who belongs to a community and who does not. While there are exceptions to this, such as dual citizenship (Koslowsky 1998; Joppke 1998), by and large, citizenship is an exclusive concept. It is about entitlements and duties for a chosen few, with a view to binding and grounding them within one particular community. As such, it forms the core of the politically organized modern community.

However, citizenship is not restricted to top-down institution building. Historical studies have demonstrated that political struggles over the expansion of citizenship rights have contributed to the formation of new communities. For example, the British sociologist, T. H. Marshall, observed that in the UK, civil, political, and social rights developed over the course of two centuries. His studies suggest an incremental extension of rights from civil rights, that is, the right to liberty of the person, freedom of speech, thought, and faith, to own property, to conclude valid contracts, to political rights, the right to participate in the exercise of political power, and ultimately social rights, that is, the right to basic social welfare and security, to share in social heritage and live the life of a civilized being (Marshall 1950: 10–11; see also Figure 25.3). Bottom-up mobilization is another important factor in the emergence of citizenship (Tilly 1975; Bendix 1964; Jenson 1992; Turner 1990).

In sum, talking about citizenship invariably involves a notion of 'stateness' (Barbalet 1988; Brubaker 1989; Turner 1990; Hobe 1993). Since citizenship of the Union was introduced in the constitutional framework of the EU, which is not a state, this citizenship challenges assumptions about the link between citizenship and stateness. Apart from being a new supranational institution, as a new transnational practice it also calls into question the role of national citizenship. Yet, as Curtin points out, 'the unique sui generis nature of the Community, its true world-historical significance [is constituted by its character] as a cohesive legal unit which confers rights on individuals' (Curtin 1993: 67; Shaw 2001: 381).

The historical elements of citizenship

The development of modern citizenship has involved the gradual expansion of citizenship rights through the political interaction of nationals (including both the governors and the governed) within a polity. It is characterized along two dimensions which are central to the construction of borders—both political borders between states, and sociocultural boundaries between classes and other sociocultural groups. The first dimension
concerns rights, including the right to free movement, the political right to vote, and the social right of access to education and the distribution of welfare. The second dimension is about identity, that is, belonging to a particular national community. Both dimensions are linked to the establishment of modern states and the fixing of their territorial borders.

In political philosophy, these dimensions are represented by liberal and republican approaches to citizenship. The liberal assumption is that citizenship is about individual rights vis-à-vis the state and other citizens. These rights are universally derived and locally established. For example, they are often written down in a constitution or in legal statutes. In the republican approach, by contrast, citizenship is about the process of governing and being governed. This places a stronger focus on political participation within a community, a practice which ultimately contributes to the establishment of a particular identity which, in turn, makes communities distinguishable from each other.

Historical studies of citizenship reveal the key role of three historical elements of citizenship. The first element is rights which establish how the individual is legally related to the polity. Access, as the second element of citizenship, concerns the conditions for practising the relationship between citizen and community. This is best understood as access to political participation. Conditions of access are set by regulatory policies, such as social policy and visa policy. They are crucial determinants of whether individuals are fit to participate politically. Access therefore hinges on sociocultural, economic, and political mechanisms of inclusion and exclusion: that is, while rights may have been stipulated, access may be denied because the means to use citizenship rights, such as education, communication, transportation, have not been sufficiently established.

The third historical element encompasses two modes of belonging to a community. One is identity based and evolves through social practices within a community. The other is based on the legal stipulation of nationality and hinges upon legal linkages to an entity. These are currently based either on the law of soil (ius solis) or of blood (ius sanguinis), or, as in the EU, on the nationality of one of the member states. Potentially, every person residing within a particular area has the opportunity to participate in the creation of collective identities, which may evolve through, for example, participation in the work place, in cultural matters, or in other areas of social life. Residence is therefore a key requirement for participation. This importance of sociocultural practices notwithstanding, it is the legal status—nationality ‘yes’ or ‘no’ (see Figure 25.1)—that confirms whether an individual is considered as a citizen who has the potential to achieve full membership rights within a community. As T. H. Marshall (1950: 28) writes:

[There is no universal principle that determines what those rights and duties shall be, but societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed. The urge forward along the path thus plotted is an urge towards a fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed.

There is, therefore, an important distinction to be made between nationality as a status that defines a citizen’s legal belonging to a polity, on the one hand, and citizenship in the meaning of full membership of a community, on the other. Full membership means that citizens enjoy the rights and opportunities of full participation within a community. In reality, however, full membership has always remained exclusive. For example, women have been excluded from suffrage (the vote), and are still excluded from military service in many countries (see also Jenson and Papillon 2000: 2). Therefore, in order to investigate the degree of membership that citizens enjoy within a particular community, it is necessary to consider the three historical elements of citizenship.

To understand the meaning of citizenship, then—that is, how universal citizenship rights are realized within a particular community at a particular time—the interplay between citizenship, in terms of both practice and theory, is useful. From this perspective it is possible to identify how citizenship is continuously contested and reconstructed over time. It offers a methodology for examining historical differences based on the three historical elements of rights, access, and belonging (see Figure 25.3).
Belonging is not restricted to the legal status of citizenship. It is also about borders, as citizens derive certain rights and opportunities of access based on their belonging to a bounded sphere. More specifically this feeling of belonging depends on an earlier process of ‘drawing boundaries’ around the terrains designed for those citizens who belong.

In sum, a sociohistorical perspective sheds light on relational aspects of citizenship. It highlights the tension between the universal assumption of the equality of all citizens, and the reality of persisting inequality. It allows us to see citizenship practice as a way of dealing with this tension and of accommodating diversity. Importantly, perceptions of ideal citizenship are rooted in society. They evolve over time in relation to citizenship practice. If we are to understand the meaning of citizenship within a particular context, that is, if we are, in Marshall’s words, looking for the source of the citizenship ideal, we need to focus our attention more on source practices.

Two insights about the role of citizenship in the formation of political communities may be gleaned from history. First, citizenship is a product of an ongoing process which involves debates about the terms of citizenship and struggles for access to participation. This process contributes to the creation of shared values and norms, forging feelings of belonging to specific groups or communities. Second, the three key types of modern citizenship rights have been shaped and established over two centuries. Importantly, Marshall’s study points to the often-overlooked fact that citizenship rights are rarely introduced all at once; nor does their institutionalization mean that all citizens will benefit from them in an equal and fair way. Indeed, modern citizenship rights were bundled together only relatively recently in modern welfare states in the second half of the twentieth century. It follows that citizenship consists of different elements which might be bundled into one set at some times and stay fragmented at different levels and with different implications for the involved citizens at other times.
Indeed, they had been fragmented for about two hundred years, before they were bundled in the post-1945 period. Since the 1980s, there has been evidence of renewed fragmentation, however. Therefore, social scientists might legitimately ask whether the current period of fragmentation will lead to another phase of ‘bundled’ citizenship. And if so, what, if not the nation state, will be the new reference point for citizenship?

The perception of citizenship as an evolving institution provides a helpful point of departure for understanding the changing conditions of citizenship in the EU. If, as Marshall suggests, citizenship ideals are formed within societies, it follows that blurred geographical boundaries and pooled sovereignties challenge that nationally constructed type of bundled citizenship. In turn, the lack of what we might call an updated citizenship ideal, reflecting the new transnational context of citizenship practice, poses a threat to the organizing capacity of citizenship. This threat is well reflected in the debate over the ‘democratic deficit’ in the EU, which is based on the lack of a shared identity (ethnos) and the absence of a ‘European’ political community (demos) (see Chapter 23).

Key points

- The constitutive elements of citizenship are the individual, the polity, and the relationship between the two, i.e. citizenship practice.
- Citizenship has generally involved the notion of ‘stateness’. Citizenship of the Union, therefore, challenges conventional understandings of citizenship (as the EU is not a state).
- There are three historic elements of citizenship: rights, access, and belonging.

The evolving institutions and practice of European citizenship

The literature on citizenship tells at least two stories about the emergence of European citizenship, each following a distinctive trajectory. The first story takes a legal perspective, focusing on the expansion of rights, based on freedom of movement, as pushed by the case law of the European Court of Justice (ECJ). The second story is based on a series of discussions and deliberations among policy makers and politicians about the EU as a political entity. A distinction is made here between the term ‘Union Citizenship’, which is used when indicating exclusive reference to the formal rules and norms entrenched in the EC Treaty (Articles 7 to 22) and the wider concept (in other Articles and provisions elsewhere in the Treaty as well as the socio-culturally constructed meanings of citizenship) which will be referred to by the term ‘European citizenship’.

Evolving legal institutions and practice

The legal perspective on Union Citizenship focuses on the gradual enhancing of citizens’ rights from ‘market citizenship’ towards ‘political citizenship’, through legal integration. In other words, cases brought to the ECJ by EU citizens are the main empirical material for lawyers. Legal scholars are also interested in how citizenship rights and citizens, as the subjects of law, figure within the emerging trans- and supranational legal order. For example, they are interested in how legal practice and new institutions impact on the strict distinction between national or constitutional law, on the one hand, and international law, on the other; and the implications for
the practice of national law within each member state of the EU.

International law, European law, and the national legal contexts of the 15-plus current member states, all have an impact on perceptions of the role and meaning of Union Citizenship. For example, each member state has to adapt its legal procedures and legislation in line with new European directives. Is it, for example, legitimate to speak of a particular European citizenship law in the making? The direct link between citizens and the EU seems to suggest such an interpretation. There are doubts, however, as to whether or not the substance of Union Citizenship is comparable to ‘nationality’ or ‘national citizenship’. Are there possibilities of further developing this institution legally? What are the likely legal practices involved? Which rules guide this process? And which institution has the competence to define the rules?

To answer these questions, lawyers recall the evolution of European citizenship, which began in the 1950s with the introduction of ‘market citizenship’ (Kadelbach 2002: 2; Marias 1994: 1). They point to the fact that it was in the late 1950s that European integration began to push beyond the narrow confines of a freedom of movement principle that was originally related exclusively to the market. They show that what were originally conceived of as the rights of ‘market citizens’, were gradually expanded. As Kostakopoulou states, for example, ‘workers are not seen as mere factors of economic production, but as human beings’ (2001: 40). Subsequent rulings on labour and social rights also followed this line. For example, as early as 1958, two regulations on the social security of migrant workers were passed in the Council, one of which characterized the right to freedom of movement as a fundamental right of workers to improve their standard of living, which must be exercised in ‘freedom and dignity’.

Overall it is important to understand that the process of negative integration, that is, the removal of obstacles to free trade across internal borders within the Community, guided the first steps towards the construction of a European citizenship. It set the framework for positive integration which focused on more explicit policy steps towards creating European citizenship that were developed from the 1970s onwards. The market-based logic suggests that the Treaties already entailed an ‘incipient form of European citizenship’ in 1958, if only for certain groups, such as workers, professionals, service providers, and their families (Plender 1978; Kostakopoulou 2001: 41). The four freedoms (see Chapter 3: 30), among them the freedom of movement, are not generally seen as contributing in any strict legal sense to Union Citizenship. Yet, as Shaw notes, ‘it is out of the field of free movement that the concept of citizenship in the EU context largely emerged’ (2000: 377).

In sum, the case law of the ECJ laid the early foundation of a ‘rights-based’ approach to freedom of movement. That ‘market citizens’ were moving across borders and residing in member states other than that of their own nationality raised all sorts of practical issues, including social insurance, fundamental rights, non-discrimination on the grounds of nationality, and so forth. Two larger issues had an impact on the evolving concept of European citizenship (O’Leary 1996), namely the protection of social rights, and the question of political inequality. The first was largely dealt with by the case law of the ECJ; the second was taken up by political actors such as the EU institutions and interest groups. This chapter first recalls the first issue and then turns to the second issue in the following section.

A notable case was Martinez Sala v Freistaat Bayern. The Martinez Sala case is important as it offers an account of the link between legal practice and the evolving concept of Union Citizenship. In this case an unemployed Spanish citizen had moved as a ‘market citizen’ to Germany and had been living there since 1964. However, while she had not had a residence permit since 1984, she put in a request for family (child-raising) allowance in 1993. Her application was rejected on the ground that she did not have German nationality, a residence entitlement, or a residence permit. The key question put to the Court was whether, as an unemployed person, Ms Martinez Sala had the right to freedom of movement and residence according to Article 18 EC and whether she could put her case forward as a Union citizen. Martinez Sala finally won her case. The ECJ ruled that:

for the purposes of recognition of the right of residence, a residence permit could only have declaratory and probative
force. Consequently for a member state to require a national of another member state who wished to receive a benefit such as the allowance at issue in the main proceedings to produce a document which was constitutive of the right to the benefit and which was issued by its own authorities, when its own nationals were not required to produce any such document, amounted to unequal treatment which, in the absence of any justification, constituted discrimination prohibited by art 6 of the EC Treaty. It followed that Community law precluded a member state from requiring nationals of other member states authorized to reside in its territory to produce a formal residence permit issued by the national authorities in order to receive a child-raising allowance, when the member state’s own nationals were only required to be permanently or ordinarily resident in that member state (ECJ 1998).

The legal reasoning in the judgment makes explicit reference to Martinez Sala’s right to non-discrimination on the grounds of nationality (as in Article 12, EC Treaty). However, it does not make the case on the basis of Union citizenship.

Other important cases that demonstrate the fragmented quality of citizens’ rights in the EU, that is, cases that involve demands that are not necessarily or exclusively based on the citizenship clauses in the Treaty but which are situated elsewhere in the Treaties (see Box 25.2), include the application of the right to equal pay for men and women (Article 141, EC Treaty), a right that generated from French labour law. This stipulates that ‘Each member state shall ... ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work’. The expanded Equal Treatment Directive (76/207/EEC) included access to employment, vocational training and promotion, and working conditions. A good example of the application of this European right was the Tanja Kreil case.

In this case, a German woman complained about her exclusion from the German military exclusively on the grounds of sex (Case C–285/98 Tanja Kreil v Bundesrepublik). Kreil sued the German armed forces, claiming that the rejection of her application on grounds based solely on her sex was contrary to European law. She stated that Article 12a of the Basic Law of the Federal Republic of Germany ‘constitutes direct discrimination’ (C–285/98, Judgment, 11 January 2000: No. 11). The ECJ ruled in her favour (Wobbe 2002: 15–16). Case law thus offers important information about how Union Citizenship affects the lives of citizens, and the development of legal and political institutions and procedures, both in the member states and at EU level. The second issue of political inequality was taken up by political actors, triggering deeper questions about equality and citizenship, as the following section shows.

Evolving political institutions and practice

From the early 1970s policy making on Union Citizenship unfolded on the basis of two policy packages including the objectives of: ‘special rights’ for Community citizens; and a ‘passport union’. These policy objectives were adopted in the Final Communiqué of the 1974 Paris Summit. Both touch on crucial aspects of modern citizenship, such as borders and how to cross them (passport union), and citizens’ right to vote and stand for elections (special rights). These have been central to the debates about citizenship, European identity, and political union that have been evolving since the early 1970s and received a strong push after the Maastricht IGC. This section demonstrates that the step-by-step development and application of these two policy packages provides an insight into how citizenship was eventually included in the Maastricht Treaty twenty years later. It also suggests that over time Union Citizenship acquired a specific meaning, forging a European citizenship ideal which was both fragmented and transnational. It is important to note, however, that those who identified the goals and policy objectives of citizenship practice in the early 1970s had not envisaged this outcome. The story of European citizenship practice (see Box 25.3) thus reveals a case of institution building which had unintended consequences (North 1990; Pierson 1995; Wiener 2001).

In the early 1970s EC politicians and practitioners expressed their desire to enhance the ‘European’ presence on the global stage. To that end, it was suggested that the Community should work towards a stronger European identity. The adoption of the 1976 Council Decision implementing direct universal suffrage, the first European elections in 1979, and the adoption of a Council Resolution on the
creation of a single European passport in 1981, were crucial first steps. Besides these institutional changes, the citizenship discourse had also been expanded to incorporate the idea of ‘Europeanness’, introduced in a document on ‘European Identity’ in 1973. Thus, from early on, citizenship practice was linked to the project of building a European Union, based on the project of creating a stronger sense of identity in the European Community.

In the 1980s, the bold political ‘kick-off’ for citizenship practice that had occurred during the previous decade was slowed down. Economic uncertainty, widespread concerns over unemployability in the member states, an increasing fear of Eurosclerosis, unsolved budgetary problems, and a general feeling of pessimism, all led to a stronger focus on market making or economic integration. Instead of the aspirations of positive integration (building the European Union, creating citizenship), negative integration (removing obstacles within the free market) was prioritized, with the freedom of movement of workers as a key condition for economic flexibility. In other words, it was not access to the polity (the political right to vote) but access to participation in a socio-economic sense, that became the major concern of citizenship practice during this period. The call of the then president of the European Commission, Jacques Delors, for a ‘Europe without frontiers by 1992’ guided this effort. Thus, aside from abolishing internal Community borders, the related Single Market Programme included new strategies for the creation of a European identity. As a European Commission White Paper explained:

Recognition as a ‘Community centre of excellence’ for establishments giving additional training or conducting very advanced research in specialized areas would help towards the increased mobility of students and research scientists within the Community. The European Council should express its support for these types of activity, which will promote the European identity in the eyes of the economic and social decision-makers of the future of the Community (European Commission 1985).

This involved the extension of access to the market on a group-by-group basis. For example, a new mobility policy targeted groups such as young people, teachers, and students. Among these programmes were the European Community Action Scheme for the Mobility of University Students (ERASMUS), and the Young Workers’ Exchange Scheme (YES). The European Parliament (EP) stressed the importance of programmes such as these in the building of an ever closer union, when it observed that ‘[c]ooperation among the Member States of the Community in the field of education and culture is inherent to the process of the construction of Europe, and reflects the spirit of the Treaties, since there is no doubt that it promotes closer relations between peoples’ (Laffan 1996).

Three new directives established the right of residence for workers and their families and for students. Two types of ‘special rights’ were also negotiated. First, a series of social rights, including health care, the right to establishment, an old-age pension, and the recognition of diplomas, were defined with the Social Charter. These rights were the economic and social conditions that would prevent social dumping. Importantly, for the development of ‘European’ citizenship, crossing borders to work in another member state meant that so-called ‘foreigners’ (in this case, Community citizens working in a member state of which they were not nationals) and nationals shared day-to-day economic life, yet remained divided when it came to their political rights. Second, this situation evoked awareness of a ‘democratic deficit’ in the EC. For example, the Commission identified that the impact of economic integration at times implied a loss of political status. Citizens who moved across internal
community borders faced a loss of access to political participation. To overcome this dilemma the Commission proposed the establishment of voting rights for 'foreigners' in municipal elections. This proposal for a Council directive was drafted with a view to closing the gap between foreigners and nationals. Bringing the political right to vote back on to the policy agenda was largely facilitated by the possibility of 'dusting off' a previously created informal resource of the acquis, namely equal political rights for European citizens.

Demands for greater access to participation, both in political and socio-economic terms, were renewed in the 1990s. With the Maastricht Treaty and the end of the Cold War, the political project of building the Union was back on the political agenda. Critical perspectives on European identity as part of citizenship practice were brought to the fore. '[F]rom the outset, the Community had considered itself as synonymous with “Europe.” With the Cold War over, [the question became] could the Community foster a sense of pan-European solidarity and genuinely pan-European integration?' (Dinan 1994: 158). These questions challenged the discourse on 'European' identity which had been so crucial for the emergence of citizenship practice in the early 1970s. At that time, 'European' identity had meant West Europeans only. Now, the end of the Cold War cast a new light on the term, emphasizing that some Europeans had been left out all along. Also significant for citizenship practice was the instability of the Paris-Bonn axis, which had proved a solid foundation for European integration thus far, as the German chancellor, Helmut Kohl, pushed for fast German unification while the French president, François Mitterrand, was 'torn between instinctive antipathy toward German unification ... and an equally instinctive affinity for European integration' (Dinan 1994: 163). One way of addressing this tension was to forge a link between German unification and European integration. This solution contributed to a renewed emphasis on political integration. It created an opportunity for those actors interested in establishing a European citizenship. In particular, a number of Spanish proposals pushed the process of citizenship practice in the period immediately before the Maastricht IGCs (see Box 25.4).

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**Box 25.4 Core ideas The Spanish proposals on citizenship**

The Spanish contribution to the 1990 IGC proposed a 'concept of Community citizenship [which] was different from the notion of the Europe of citizens that had been introduced at the Fontainebleau summit' in that it would include political, economic, and social citizenship rights.


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Until that point two types of policy resource had been mobilized by citizenship practice since the early 1970s. First, citizenship was to grant rights that were specific to the EC as a polity and as a social space. Second, the visible sign of Union Citizenship, when travelling outside the Community, was to be the uniform burgundy-coloured passport. Both of these resources were formalized at Maastricht in Article 8 (EC Treaty).

To summarize, while the end of the Cold War in 1989 and the renewed emphasis on political integration in Europe had created an opportunity to establish political citizenship rights, the larger history of citizenship practice since the 1970s reveals that the meaning of Union Citizenship is not derived from the sum of the member states' national citizenship rights and practices; nor can its substance be deduced from the concept of modern citizenship. Instead, citizenship of the Union was constructed anew, albeit with its own characteristic features. The 1990s saw the institutionalization of political and legal citizenship rights. Although the historical element of belonging had been addressed in the previous two periods, now the focus was set on establishing legal ties. Not only were these important for redefining the link between citizens and the Community, they also raised questions about the political content of nationality. (See Box 25.5). This third period of the developing practice of European citizenship also meant a shift away from 'modern' citizenship by making nationality of an EU member state the precondition for Union Citizenship.

The constitutionalization of 'thin' citizenship
Box 25.5 Issues and debates

European Parliament demands for Union Citizenship

Along the lines of the Spanish proposals, which had called for a concept of Community citizenship (see Box 25.4), the European Parliament demanded that Union Citizenship be included in the Maastricht Treaty as a separate title comprising the central aspects of 'social rights including a substantial widening of the proposals contained in the Social Charter; equal rights between men and women; the political right to vote and stand for election in local and EP elections at one's place of residence, as well as the political right to full political participation at one's place of residence; and the civil right to free movement and residence in all Member States'. Importantly, the Report repeatedly emphasized the need to rethink citizenship as it could no longer be reduced to the 'traditional dichotomy between citizen and foreigner or to the exclusive relationship between the state and the citizens as individuals' (European Parliament 1991).

Source: Bindi Report 1.

meant in practice an institutionalized fragmentation of citizenship. In other words, some rights of European citizens were identified by the Citizenship Articles (Articles 17-22, EC Treaty), whereas others were outlined elsewhere in the Treaties (see Box 25.2). As the Commission states in its Third Report on Union Citizenship:

under the terms of Article 17(2) of the EC Treaty, citizens of the Union are to enjoy the rights conferred by this treaty and are to be subject of the duties imposed thereby. The rights that feature in Part Two of the Treaty, under the heading Citizenship of the Union, thus form the core of the rights conferred by citizenship, but are not an exhaustive list. The EC Treaty confers on citizens of the Union other rights which appear elsewhere in the Treaties, such as protection from all forms of discrimination on grounds of nationality (Article 12). It is therefore legitimate for this Third Report on Citizenship of the Union to go beyond the specific rights featuring in the second part of the EC Treaty and to examine subjects that have an obvious connection with citizenship of the Union, such as the fight against all forms of discrimination and, more generally, the protection of fundamental rights in the Union (European Commission 2001d: 6).

A fourth period in the history of citizenship practice demonstrated a growing mobilization around and a rising confusion over the consequences of this fragmentation. The EP organized hearings in Brussels during which non-governmental organizations (NGOs) could express their demands to the IGC. While NGOs were not formally entitled to participate in the IGC process, and had no formal channels for participation, these hearings nevertheless offered space for discussion. Post-Maastricht a new debate unfolded over the gap between politically included and excluded residents, that is, between citizens who had legal ties with the Union, and TCNs, individuals who had no legal ties but are likely to have developed feelings of belonging nonetheless. This debate was pushed by interest groups and by the EP. (See Box 25.5.)

In the debate over TCNs it is important to recall that once the Berlin Wall came down, the EC had to face a new challenge in the area of border politics; namely visa and asylum policy, which involves the question of East-West migration (see Chapter 19). One idea that was promoted as a way of solving this potential political problem was the establishment of 'place-oriented citizenship' (Wiener 1996). This entered the EP debate (see the Outlive and Imbeni Reports) and has led to pressure from social movements to change citizenship legislation in the Treaty. For example, instead of granting citizenship of the Union to 'Every person holding the nationality of a Member State' (Article 8 (1)), as was the case after Maastricht, a number of advocacy groups such as the European Citizen Action Service (ECAS) or the ARNE Group (the Antiracist Network for Equality in Europe) requested citizenship for '[e]very person holding the nationality of a Member State and every person residing within the territory of the European Union' (ARNE 1995). However, the Amsterdam Treaty did not reflect these demands. On the contrary,
the nationality component of citizenship was reinforced, within revised Articles 6(3) TEU and 17 TEC which state that the national identities of the member states must be respected. The potential flexibility of the citizenship article (Article 8e EC Treaty) was thus left unexplored. Yet while the formal institutional aspects of Union Citizenship thus largely remained as they were, the informal aspects of ‘European’ citizenship witnessed further reform in the post-Amsterdam period, so that the European institutions began to work more with national representatives, national parliaments, and NGOs on citizens’ demands, in order to react to growing disaffection with the European integration process. ‘Citizens First’ and its successor programme, ‘Dialogues with Citizens and Business’, campaigns initiated by the EP and introduced to the member states by the Commission to bring Europe closer to its citizens, are examples of this change of emphasis.

Key points

- The case law of the ECJ allowed rights which originally applied to market citizens to be expanded.
- Union citizenship involves both past experiences with national citizenship in each member state and present experience with European citizenship practice.
- Four periods of European citizenship practice are identifiable in the history of European integration. While the first period stressed a unified European identity based on ‘special rights’ for European citizens, the fourth period has produced different types of identities. Instead of special rights for one particular type of European citizen, groups of citizens, for example workers or students, now enjoy specialized rights.

Challenges for the future

Despite formal institutional changes in the Treaty and in the constitutions of the EU member states, Union citizenship remains contested, that is, citizens are not really sure what this new citizenship actually means for them. As the European Commission correctly states in its Second Report on Citizenship of the Union:

The introduction of citizenship of the Union has raised citizens' expectations as to the rights they expect to see conferred and enforced. Citizens are entitled to be aware of these rights and to have them honoured in practice by the Member States. Otherwise citizens will regard EU citizenship as a vague and distant concept (European Commission 2001d: 26).

Lawyers and political scientists differ in their assessments of what this citizenship means, as it now stands, and regarding its future potential.

As both a new supranational institution and as a transnational practice, this new citizenship has repercussions for the relationship between citizens and ‘their’ community. This occurs along three core dimensions: first, the identity of citizens (who belongs where and why?); second, the type and range of rights citizens can evoke (which rights can be evoked within which institution and on what level?); and third, the channels of access to participation in the wider political and social community of ‘European’ citizens (who is allowed to participate, on what grounds and where?). It goes without saying that these three dimensions have wider implications for the type of community the EU might become. Elaborating on them provides some insights into the character of the EU. See Box 25.6.

From Aristotle’s dictum ‘the citizen is the state’ (Koslowski 2001), to more recent observations about how the negotiation of citizens’ rights have contributed to the building of the modern state (Marshall 1950; Tilly 1975), the most significant aspect of citizenship has been how it has been defined vis-à-vis the state. Its political function seemed clear, namely that ‘in Western, liberal
democracies public authority requires legitimation through one principal source: The citizens of the polity’ (Weiler 1996: 6). Thus, much of the literature suggests that the explanatory potential of citizenship lies in the contribution it makes to the forging of a central authority in modern communities.

But Europeanization and globalization present significant challenges to modern state-citizenship relations. Thus, as is evident from the European context, ‘the processes which created and sustained sovereign territorial states in this region are being reversed’ (Linklater 1996: 77). While the merger of demos and ethnos contributed to construct the vision of overlapping political and national borders within ‘imagined communities’ (Anderson 1991), the fragmentation of identities and the diffusion of state sovereignty in the EU raise serious questions about the stability of this image. After all, once individuals began to enjoy different types of rights in a new world that reflected flexibility and mobility, it became increasingly difficult to define citizenship practice as based solely on nationality. Meehan captured this fragmented aspect of European citizenship noting that it is:

neither national nor cosmopolitan but ... multiple in the sense that the identities, rights and obligations associated ... with citizenship, are expressed through an increasingly com-
plex configuration of common Community institutions, states, national and transnational voluntary associations, regions and alliances of regions (Meehan 1993: 1).

Questions which remain to be further explored as citizenship develops, and as European integration proceeds, are whether and how this fragmented concept of citizenship, the specialized identities, and the pluralist institutional setting which arise as a consequence of citizenship practice will have an impact on the future of the polity. In other words, what is the role of citizenship (and citizens) in the ongoing constitutional debate about the future of Europe? Furthermore, the introduction of citizenship within the Treaty has a number of implications in the member states as well as for the candidate countries. For example, member states are responsible for reforming electoral laws and procedures in line with EU legislation. Furthermore, according to the transition rules agreed as part of the current round of enlargement, the freedom of movement of workers will remain restricted, if only for a limited period. As a consequence, new Union citizens may feel that they are being unfairly treated, a situation that could create some conflict in the Union. Here it will be interesting to observe whether the new Union citizens of the candidate countries will turn for support to the ECJ, demanding full and equal citizenship rights.

Key points

- The difference in the meaning of national and Union citizenship remains to be explained to European citizens.
- While access to Union Citizenship is based on nationality of a member state, European citizenship practice has been constitutive for our understanding of citizenship as a fragmented concept.
Conclusion

This chapter has explored the definition and meaning of the concept of Union Citizenship from legal and political perspectives. It identified the rights conferred on each citizen of the EU by the concept of Union Citizenship, and discussed the legal and political meaning of this new supranational form of citizenship. The chapter also considered the implications of Union Citizenship for European integration. By comparing the citizenship of the Union to citizenship as a universal concept, as well as a concept that lies at the core of modern state formation, the chapter also pointed to the ways in which this new citizenship differs in meaning and reach from earlier 'modern' understandings. As a universal concept, citizenship allocates fundamental rights and identities to individuals within a particular community. As a historical concept, citizenship sets the conditions for individuals to achieve full membership of a bounded political community, based on rights, access, and belonging. However, as the EU is not a state as such, Union citizenship challenges conventional understandings of citizenship and draws attention to the way in which citizenship has become an increasingly fragmented concept, not only in Europe but also throughout the world.

QUESTIONS

1. What is citizenship?

2. What is the relationship between a community's citizenship ideal and citizenship practice?

3. How do lawyers and political scientists differ in their approach to Union Citizenship?

4. To what extent was the issue of European citizenship raised prior to the Maastricht Treaty?

5. In what way did the Maastricht and Amsterdam Treaties constitutionalize Union Citizenship?

6. What are the constitutive elements of citizenship? And what are the historic elements of citizenship?

7. Why do academics believe that European citizenship is becoming increasingly fragmented?

8. What are the major challenges facing Union Citizenship?

GUIDE TO FURTHER READING

Kostakopoulou, D., Citizenship, Identity and Immigration in the European Union (Manchester: Manchester University Press, 2001). A helpful study which emphasises the theorizing of citizenship in a post-national and post-statist context, and considers possible alternative institutional designs. Works with theoretical approaches to citizenship, identity, and migration, respectively.
Marshall, T. H., *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1950). Deals with the prospect for social equality in post-war Britain and what has thus far been achieved. Offers a historical approach to institutional change and the construction of a citizenship ideal, pointing out the evolution of civic, political, and social citizenship rights in Britain in the nineteenth and twentieth centuries.

Meehan, E., *Citizenship and the European Community* (London: Sage, 1993). This is one of the first books dealing with the topic of European citizenship in a comprehensive way. It considers the link between civil, political, and social citizenship.


Wiener, A., ‘*European’ Citizenship Practice— Building Institutions of a Non-State* (Oxford: Westview, 1998). This book focuses on the constitutive role of citizenship practice for polity-formation. It develops the concept of citizenship practice as the process of policy making and/or politics that contributes to institutionalize the terms of citizenship. It draws both on a comparative-historical literature and on institutionalist theories of European integration.

**WEB LINKS**

http://europa.eu.int/abc/cit3_en.htm EU web page on European citizenship, with links to legal documents and practical information.

www.citizen.org.uk/speak_out.html The website of the Institute for Citizenship, which includes some material on European citizenship.

www.ecas.org The website of the European Citizen Action Service (ECAS), a non-governmental organization which focuses on information for European citizens.

**ENDNOTES**

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