

From *Special* to *Specialized* Rights: The Politics of Citizenship and Identity in the European Union

Antje Wiener

When citizenship in the European Union (EU) was established with Article 8 of the treaty establishing the European Community (EC Treaty), two decades of citizenship policy making had contributed to defining very little in legal terms. Minimalist legal observers have criticized the citizenship article as not adding much to the rights that Union citizens already enjoyed and creating a "pie in the sky."¹ According to these comments, Union citizenship does not change much. Yet, the years between the intergovernmental conferences (IGCs) of Maastricht (1991) and Amsterdam (1997) suggest a different interpretation. Indeed, the high degree of mobilization among Union citizens, interest groups, and so-called third-country nationals suggests that Union citizenship had a politically stimulating impact. Why did people mobilize around the newly created legal institution of Union citizenship? Was their interest or concern caused by the contents of Article 8 of the EC Treaty, which after all is pretty much limited to granting political rights? How does this political interest fit in with the early intentions of the makers of EU citizenship policy?

This chapter takes on the task of elaborating on these questions. To that end, it will situate the rising visible notion of citizen mobilization within the larger context of EU citizenship policy. The decision to bring citizenship policy onto the EC's agenda was originally made in the early 1970s, when the EC was in desperate need of being acknowledged as an actor on the world stage. Since then, citizenship policy has been shaped by the influence of a whole variety of different actors within the emerging Euro-polity. In the process, what I will call "citizenship practice" (i.e., citizenship policy and politics) helped institutionalize the specifically "European" terms of citizenship, thus contributing to building the Euro-polity. The following account of European citizenship practice begins with the strong impact on policy in the early 1970s and then follows the process of shaping citizenship policy throughout the 1980s and 1990s to demonstrate the critical shift from policy to politics of citizenship.

To understand the content and changed meaning of citizenship, this chapter takes a sociohistorical perspective on citizenship, focusing on the societal context—the input of ideas, normative considerations, and values—and on the institutionalized terms of citizenship as the output of citizenship practice. A constructive approach to the institution of the *acquis communautaire*, the common principles and legal properties of the European Union, helps to evaluate these terms. If Union citizenship exists alongside national citizenship of the EU member states, and if it is true that the meaning of citizenship is greater than the sum of its parts, then EU citizenship requires a perspective that leaves theoretical space for construction. On this premise I argue that the case of Union citizenship contributes to an eventual reconceptualization of citizenship as fragmented and deterritorialized.

The chapter has four sections. The first section provides a brief introduction to the sociohistorical context of citizenship; the second section introduces an analytical approach to the institution of *acquis communautaire*; the third encompasses the case study of citizenship practice over four stages; and the fourth section summarizes the findings of the case study with a view to answering the questions about Union citizenship raised above.

Citizenship: The Sociohistorical Context and Content of a Concept

The academic community and European institutions as well as a number of interest groups voice concern and curiosity about the meaning of Union citizenship, its political potential, and its organizational feasibility. They draw attention to the fact that this type of citizenship seems to lack crucial characteristics of modern liberal concepts of citizenship. Indeed, Union citizenship does not grant full rights to democratic participation or representation,² and it is granted on the basis of member state nationality not European nationality. That is, specific European political and sociocultural dimensions seem to be lacking. Beyond the political and organizational aspects, these observations raise questions about the community of belonging and, more specifically, about how to define borders of belonging. Who has a legitimate right to belong legally to this Union has become a much debated issue.³ Legal approaches characterize Union citizenship as a compilation of previously existing rights, and it seems indeed “difficult to understand which meaning this new element of the EC Treaty may have for the process of European integration, and which stamp it might imprint on the character of the emergent European Union.”⁴

The European case represents a dramatic deviation from modern concepts

of citizenship. The constructive perspective of this paper is, however, based on another observation that suggests that Union citizenship is not the only challenge to the concept; rather the explosion of interest in citizenship has been building for some time. Processes of decolonization and migration as well as social movement mobilization around questions of ethnicity, race, and gender have pointed to the existence of other than nation-state boundaries and mobilized other than national identities to change exclusive definitions of citizenship. They represent a second challenge to the concept of citizenship, suggesting that the "language of citizenship" is becoming outdated.⁵ More radical contributions demand that "democratic citizenship ought to be disentangled from citizenship as state membership" altogether.⁶ At any rate, as the borders of citizenship are challenged both internally and externally, central aspects of citizenship such as belonging and identity have moved onto shaky ground. An analysis of Union citizenship within the context of a "postmodern" polity is assumed to shed fresh light on the contested boundaries of belonging and the related citizenship identities.⁷

The most striking difference between Union citizenship and modern citizenship is the lacking dimension of nationality. Union citizenship calls into question the link between the concept of nationality and that of citizenship and hence problematizes the myth of national identity that was crucial for erecting borders around national states.⁸ How has the concept of nationality so far been methodologically linked with the concept of citizenship? And how does this affect the evolving concept of Union citizenship? These are crucial questions that challenge national conceptions of citizenship. While national identity was—and often still is—considered important for the representation of states in the international state system, its conceptualization as nationality needs to be clearly distinguished from the concept of citizenship.⁹

Social movements emphasize the importance of collective identities that do not depend on nationality but develop in relation with internal boundaries that mark class, gender, race, age, and other cleavages.¹⁰ Such collective identities produce, and are the product of, boundaries within national states. As such they represent both inequalities and differences. They may lead to citizens' claims and may inversely be mobilized to enforce citizenship identity. However, identities are never generated by the institutions of the state but are created through practice.¹¹ As an increasing number of individuals (citizens and noncitizens) share economic, social, and cultural spaces, tensions emerge that are not rooted in conflicts over national-state boundaries but over boundaries within states. This specific situatedness challenges the familiar modern geography of citizenship with its external borders and policies to erect and protect these borders.¹² The citizenship model presented in figure 9.1 is thus called into question.

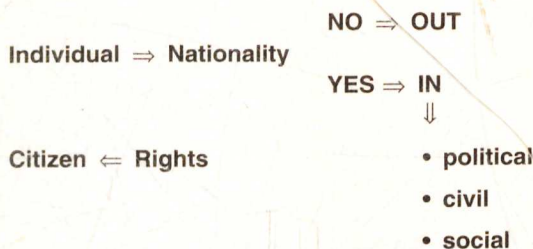


Fig. 9.1. *The Modern Geography of Citizenship*

They suggest that borders appear not only as visible but also as invisible means of inclusion and exclusion. For example, they may be considered on the one hand as physical borders defined by rules of entry to a country (one crosses the border upon entering a country by land, air, or sea; one has to pass border posts, show one's passport). On the other hand, they also exist as informal boundaries specified by a feeling of belonging to a collectivity that is defined according to structural (i.e., racial, gender, class, ethnic, sexual preference, age, or physical ability) or interest (e.g., environment, consumption) factors. This chapter argues that as these borders become more and more visible, the necessity of incorporating this new geography of citizenship into citizenship theory has become an issue of political power that reaches beyond social movement activities. The post-Maastricht citizenship debates, for example, have acquired the character of constitutional politics. They advance a notion of citizenship as constitutive for a community.¹³ Understood in this way, Union citizenship includes a constructive dimension.

This possibility has been explored on two grounds. One approach relies on the concept of additionality. In concurring with the European Commission, it finds that Union citizenship "adds to the first group of nationality rights enjoyed within a Member State a second circle of new rights enjoyed in any Member State."¹⁴ The other approach draws on the concept of historicity. It is based on the assumption that citizenship does not have an objective meaning and must therefore be deconstructed in order to explain how "real historical participants use it in historical contexts."¹⁵ Hence, a reconstruction of citizenship in different contexts allows for an understanding of "the meanings of citizenship over time."¹⁶ Given the observed gap between the language and the history of citizenship, I propose to address the puzzle of Union citizenship by confronting the *language* of citizenship (as in theory) with the new developing *discourse* of citizenship (as in practice) in the EC/EU. Central to this analysis is a sociohistorical approach that assumes that the practice of citizenship is historically variable and is interrelated with



Fig. 9.2. *The Constitutive Elements of Citizenship*

the establishment of state institutional arrangements.¹⁷ This approach draws on the notion of citizenship as a relational concept.¹⁸ I elaborate on this notion of practice and propose a way of incorporating it into traditional conceptions of citizenship. To that end, I first characterize the constitutive elements and subsequently the historical elements of citizenship and argue that both facilitate an analytical context for an appreciation of changing geographies of citizenship.

In the broadest terms, citizenship defines a relation between the individual and the political community. It concerns the entitlement to belong to a political community, which has the right and the duty to represent community interests as a sovereign vis-à-vis other communities and vis-à-vis the citizens. This model of a relationship between two entities, namely, the individual on one side and the representative of a larger community on the other, has provided modern history with a basic pattern of citizenship.¹⁹ It follows from these observations that at least three elements need to be considered in the conceptualization of citizenship: the individual, the community, and the relation between the two.²⁰ Since all studies of citizenship have so far referred to these three elements in one way or other, they may be termed the three *constitutive elements of citizenship* (see figure 9.2).

Whereas the first two elements, the individual and the community, have been stressed by contractarian approaches to citizenship in particular, so far the third—relational—element has not received much attention.²¹ Yet, there is an increasing awareness of the fact that citizenship cannot be dealt with on the basis of formal criteria alone. Instead, citizenship always represents more, and at the same time less, than the sum of its parts.²² That is, citizens contribute to the creation of a community, yet not all persons who reside within the same geographical spaces enjoy the same citizenship privileges. This is where the tension lies; the current mobilization of (non)citizens in the European Union is a case in point. To assess these underlying dynamics, the focus shifts to the dynamic aspect of citizenship that develops from the interplay of the constitutive elements across time and space and contributes layers of historically derived meaning to the concept. Both citizens' action, expressed as

political struggles, and state policies have contributed to changes in political organization within and among communities.

Three *historical elements* of citizenship allow for a conceptualization of citizenship that takes account of historical variability and thus avoids presupposing a specific situatedness of the constitutive elements. These historical elements are rights, access to participation, and belonging. *Rights* refers to the legal entitlements of an individual from the community. This element comprises various types of rights, civil, political, and social. The perspective of citizenship as the incremental addition of rights has been most prominently associated with T. H. Marshall. Civil rights include the rights to liberty of the person; freedom of speech, thought; and faith, ownership of property; and the freedom to make valid contracts. Political rights include the right to participate in the exercise of political power. Social rights amount to the right to receive a modicum of social welfare and security, to share in social heritage, and to live the life of a civilized being.²³

Access, the second element of citizenship, is about the conditions for practicing the relationship between citizen and community and may be understood as access to political participation. Conditions of access are set by regulative policies including social policy, market policy, and visa policy, for example. They are crucial determinants as to whether or not 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 proper education, communication, or transportation, may not have been sufficiently established.

The third historical element encompasses two modes of *belonging* to a community. One is identity based, the other hinges upon legal linkages to an entity that are currently based on either the law of soil or of blood (*jus solis* and *jus sanguinis*, respectively), or, as in the European Union, on nationality of one of the member states. Every person residing within a particular area potentially has the opportunity to participate in the creation of collective identities. These identities may be created through participation at the workplace, in cultural matters, or in other spaces of the community. Accordingly, residence is the crucial aspect for participation. Apart from the residence criterion, a person's legal status defines whether or not he or she is considered a full citizen. This status has always been exclusive, mostly according to the criteria of gender, age, and nationality. This dimension of belonging is therefore 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 a previous process of "drawing boundaries" around terrains designated for those citizens who belong.²⁴

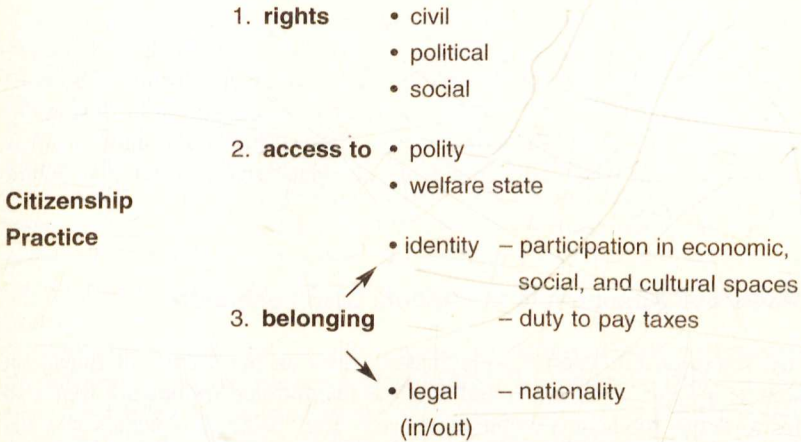


Fig. 9.3. *Citizenship Practice: Rights, Access, Belonging*

While it is possible to single out the three historical elements, it is important to keep in mind that they are always interrelated. The three aspects bear a process-oriented or dynamic notion of citizenship. They add contextualized meaning to the concept of ideal citizenship, defining citizenship as stipulating rights, providing access, and creating a feeling of belonging and identity. Beyond the creation of a concrete citizenship that is particular to each community, they contribute to the crafting of distinct institutional networks. They are thus important factors for successful governance within and among communities. Figure 9.3 provides a schema for such a constructive approach to citizenship practice.

In sum, I propose a concept that understands citizenship as the practice that leads to the establishment of rights, access, and belonging as three interrelated historical elements of citizenship. In principle this concept does not follow either a state-centric (top-down) or a society-centric (bottom-up) perspective. It encompasses both policymaking and politics with respect to the establishment or change of citizenship.²⁵ The prevalence of one mode of action over the other varies according to context. Both modes of citizenship practice are always possible.

If the establishment of access to rights contributes to the mobilization of identities that enhance the creation of a feeling of belonging, then an analysis of the process through which access to rights has been established in the EC/EU will provide insights into the creation of belonging. Based on the concept of citizenship practice, this analysis of Union citizenship does not begin from an approach that defines citizenship legally according to citizenship

rights, nor does it seek to assess the potential of European citizenship to develop a European *national* identity. Instead it aims at an understanding of characteristic features of European citizenship and assumes citizenship to be constructed in practice particular to time, place, actors, and institutions. It seeks to identify Union citizenship in its own context. Citizenship is thus understood as more than a status based on rights. It is conceptualized as a dynamic rather than a static concept.

A Reflective Approach to the *Acquis Communautaire*

In the fractured Euro-polity policymaking rests on the Treaty on European Union as a quasi constitution and tangible institutional framework that also helps to define the *acquis communautaire*.²⁶ The "accession" *acquis* was the oldest concept of *acquis* that defined "the whole body of rules, political principles and judicial decisions which new Member States must adhere to, in their entirety and from the beginning, when they become members of the Communities."²⁷ According to the European Commission the *acquis communautaire* is understood as "the contents, principles and political objectives of the Treaties, including the Maastricht Treaty; the legislation adopted in implementation of the Treaties, and the jurisprudence of the Court; the declarations and resolutions adopted in the Community framework; the international agreements, and the agreements between member states "connected with the Community's activities."²⁸ It therefore is an important institution of the Euro-polity that any analysis of EC/EU politics cannot avoid considering. While member states might "deplore certain aspects of Community policy, there is no question that all find themselves locked into a system which narrows down the areas for possible change and obliges them to think of incremental revision of existing arrangements."²⁹

However, the substance of the *acquis* is often difficult to pin down. It is like "something that everybody has heard about it, but nobody knows what it looks like."³⁰ There is something else beyond the formal rules, regulations, and procedures of the Euro-polity. Even though the *acquis* is often known by the participating actors in the Euro-polity, this knowledge about shared principles and norms does not necessarily mean visibility. It can therefore be assumed that the processes of constructing meaning that contribute to the construction of knowledge add another dimension to the *acquis*. To make such processes visible, I propose to include informal resources and the routinization of citizenship policy in the assessment of the citizenship *acquis*.

According to figure 9.1, the *acquis* potentially comprises informal resources such as constructed meaning and practices, on the one hand, and for-

mal resources such as rules, regulations, and procedures, on the other. The informal resources often are the part of a proposal that has been debated for some time, such as the right to vote, which has not been codified, pending final adoption by the European Council. In contrast, the formal resources include the regulations, directives, and decisions that have been adopted by the Council. While the *acquis* entails both informal and formal resources, it is important to note that not all informal resources immediately form part of the *acquis*. This model suggests that they are only considered part of the *acquis* once they have acquired a degree of routinization that structures the policy process.

While the formal resources of the *acquis* are largely subject to a consensus, the informal resources are much more likely to be contested. They will therefore most often be debated in the appropriate forums of the Euro-polity depending on the policy's link with the EU's pillar structure and the respective approach (Community or intergovernmental) that applies.³¹ The *acquis* changes over time. These changes are expressed in the debates in between "history-making" Council decisions or "snapshots."³² The dynamic of these debates is most likely based on the often contradictory interests between two largely differing approaches to the process of European integration, most clearly distinguished as integrationists, who will more often push for the adoption of a proposal, and the intergovernmentalists, who will attempt to keep the status quo.

The resources contribute crucial information for policymakers because the formal resources may be mobilized, on the one hand, and the informal resources may be transformed into legally established principles or share norms, on the other, once the opportunity is right. Providing opportunities and constraints, they thus invisibly structure policymaking. It follows that a change of the *acquis* potentially involves two processes. One includes the expansion of formal resources (changes in the treaty provisions, directives, regulations); the other involves the routinization of practices or the constitutionalization of informal resources (ideas, shared principles, practices as suggested by European Parliament resolutions and Commission proposals or other documents). In general, the change of the *acquis* depends on changes in the political opportunity structure that facilitate the mobilization of resources for the establishment of a policy or its components. The analysis of the multidimensional jigsaw puzzle of EU citizenship policy therefore hinges on the systematic assessment of changes of the *acquis communautaire*. Historical institutionalism thus offers an important methodological access point for a sociohistorical account of citizenship policy by providing a way to assess the immediate institutional context on the basis of the formal and informal resources that compose the *acquis communautaire*.

Four Stages of "European" Citizenship Practice

Since the early 1970s, policymaking with respect to Union citizenship has unfolded on the basis of two policy packages whose objectives were "special rights" for Community citizens and "passport union."³³ Both policy packages touch 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). They have been central to the debates over citizenship, European identity, and political union that took place over two decades in the Euro-polity.³⁴ The step-by-step development and application of the two policy packages not only provides insight into how citizenship eventually turned into Article 8 of the EC Treaty twenty years later but also suggests that Union citizenship acquires a specific meaning once it is put into context.³⁵

While citizenship practice in the EC/EU remained largely invisible until it was spelled out as citizenship of the Union and legally grounded in the 1993 Treaty of the European Union, the roots of citizenship policy and actual citizenship practice can be traced over a period of about two decades. From the analytical framework laid out in this chapter, it follows that we need to focus on the development of citizenship policy in order to reconstruct the making of Union citizenship as a practice. The following section summarizes the story of unfolding citizenship practice based on the expanding citizenship *acquis communautaire* since the early 1970s. It focuses on the gradual fragmentation of rights, access, and belonging as special rights and passport policy emerged as ideas or practices and were eventually turned into rules and procedures that added to the substantial basis of Union citizenship.

Paris

In the early 1970s, European politicians and practitioners expressed the need to develop a stronger European presence on the global stage. To that end, they proposed to work towards a stronger European identity. The Community documents of that period demonstrate that the debate over how to achieve a European identity received central attention. Out of these debates were generated the policy objectives of special rights for European citizens and a passport union, both aimed at creating a feeling of belonging and identity. The adoption of the 1976 Council decision to implement direct universal suffrage³⁶ and the first European elections in 1979 and the adoption of a Council resolution on the creation of a single European passport in 1981³⁷ were crucial first steps that expanded the institutionalized *acquis*. Besides these institutional changes, the *acquis* was expanded on a discursive level as the idea of "Europeanness" that had been introduced with the document on European identity in 1973.

Thus, both political union and the creation of a European identity were put on the agenda as new overarching goals in Community policymaking.³⁸ During the turbulence that followed the breakdown of the Bretton Woods system, EC policymakers stressed the necessity to establish a European voice in the global realm. Commission President Xavier Ortoli stated after the 1972 Paris summit that "the economic crisis and the changes in international relations, far from strengthening Community solidarity and leading to an assertion of *Europe's identity vis-à-vis the rest of the world*, have marked a further check, and perhaps a retreat, in the process of European construction."³⁹ According to Commissioner Davignon, the crisis was largely rooted in the EC's lack of organic political growth, which was also reflected in meager support from European citizens.⁴⁰ His discourse regarding the problem stressed the theme of *belongingness* when he stated that "we don't feel that we belong to a new entity. *Europe should be personalized*. . . . Another dimension should be added to Europe, the new Europe must be *more human*."⁴¹ In a similar vein Belgian Foreign Minister Van Elslande pointed to the missing link between citizens and the Community as one reason for the crisis. In order to establish that link, he recommended that the Belgian presidency aim at creating the "first concrete stage towards establishing *European citizenship*," which would include mobility for students, exchanges of teachers, and harmonization of diplomas, with a view to giving "young people . . . the chance of feeling truly part of a vast network covering the whole of the Community."⁴² Italy's Altiero Spinelli demanded "a constitutional procedure for European identity," which could be based on the nine leaders' expression of "their Governments' political obligation to bring forward the deadline for preparing the European political Union and to specify the form of such preparation."⁴³

These contributions set out ideas for a twofold approach to the creation of belonging. One was based on the experience of national states and understood belongingness as evolving from the making of a nation-state-like entity. Accordingly, policymaking was geared towards the goal of a supposedly federal political union. The other understood belongingness as emerging from participation in Community affairs. That approach was not necessarily based on the vision of a federal union. Both lines were reflected in the subsequent changes in the resources of the citizenship acquis. For example, as a first step towards the creation of a sense of belonging, a paper on European identity was issued at the 1973 Copenhagen summit.⁴⁴ It broadly defined European identity as based on a "common heritage" and "acting together in relation to the rest of the world," while the "dynamic nature of European unification" was to be respected.⁴⁵ This general modern idea of Community development was to be carried out through a citizenship practice that included the adoption of the two policy objectives of special rights for European citizens and a passport union.

Special working groups were assigned the task of producing draft reports for the development of the passport union, special rights, universal suffrage, and a concept of European union.⁴⁶ Importantly, in the Council's final document, citizens were for the first time considered participants in the process of European integration, not as consumers, but as citizens.⁴⁷ The notion of citizen thus turned into a new informal resource of the *acquis communautaire*.

The Commission's report on special rights pointed out that "special rights of a political nature are essentially the rights to vote, to stand for election and to hold public office."⁴⁸ They were defined as the "political rights traditionally withheld from foreigners."⁴⁹ The report suggested that European citizenship should not be achieved on the basis of the process of "naturalization," since this process would involve the loss of the previous nationality by substituting a new European nationality. Instead, citizens' rights should be defined according to the principle of equality, thus providing the citizens with the possibility of adding "rights relating to the original nationality . . . to the rights in the host State." It is important to note that at this stage of citizenship practice, it remained to be decided whether foreigners should be granted special rights "on the foreigner's status as a worker . . . [or] as a citizen of another Member State."⁵⁰ The Commission did, however, point out that equal treatment for foreigners would not be easily accepted by the public, and thus the Commission favored a step-by-step approach.⁵¹ In turn, the Tindemans Report brought to the fore the interrelation between member state nationality and a new European dimension. It proposed to overcome the idea of the national as predominant and to break "intellectual barriers" by constantly including a "European dimension" in daily politics.⁵² The European Parliament's perception of special rights was clearly grounded in a federal vision. As defined by the Bayerl Report, "[s]pecial rights are 'subjective' public rights, in other words rights which the citizen possesses as a legal subject vis-à-vis the State and which may be asserted at any time."⁵³

These conceptually crucial discussions remained as ideas among the informal resources of the *acquis* until they were dusted off more than a decade later. In the meantime, citizenship practice included the creation of further resources for the establishment of voting rights. On 8 October 1976, the Council adopted an "Act concerning the election of the representatives of the Assembly by direct universal suffrage."⁵⁴ The Parliament adopted a resolution on a "draft uniform electoral procedure for the election of Members of the European Parliament" on 10 March 1982.⁵⁵ And in 1983 the European Parliament's Legal Affairs Committee prepared the "Report on the right of citizens of a Member State residing in a Member State other than their own to stand for and vote in local elections."⁵⁶

In addition to policymaking within the special rights package, the passport

package was developed. A uniform passport was assumed to contribute in a twofold way to the construction of ties between the Community and its citizens. It was not only aimed at increasing awareness of Europe as a new political actor on the international stage, but it was also expected to create a feeling among European citizens of belonging to the Community. The final communiqué of the 1974 Paris summit clearly stated, first, that "the fact remains that the introduction of such a passport would have a psychological effect, one which would emphasize the feeling of nationals of the nine Member States of belonging to the Community";⁵⁷ and second, "that such a passport might be equally justified by the desire of the nine Member States to affirm vis-à-vis non-member countries the existence of the Community as an entity, and eventually to obtain from each of them identical treatment for citizens of the Community."⁵⁸

However, the practice of carrying common passports within this new community involved, among other things, the reduction of border controls and the introduction of spot checks at internal Community borders. When the European passport was created in 1981, it turned out that the creation of the passport and its actual use were two different matters. The peculiarity of the policy situation was rooted in the Janus-faced characteristics of this enterprise. On the one hand, successful foreign and economic policy performance depended on the acknowledgment of Europe as an actor in the global arena. On the other hand, the creation of this feeling of belonging—as one aspect of creating a European identity—depended among other things on the practice of border crossing. That is, it was part of a third pillar, justice and domestic policy, which was an essentially diplomatic matter. Yet, by carrying burgundy-colored passports at intra-Community borders, citizens of EC member states were crucial to the creation of this type of belonging. As the story of citizenship practice in the 1980s will show, this approach to the creation of belonging remained a seemingly insurmountable hurdle for member states' security concerns.

Fontainebleau

Citizenship practice during the next stage of Community development in the 1980s included a changed policy paradigm. A decade of economic uncertainty, widespread concerns over "ungovernability" in the member states, and an increasing fear of "Euro-sclerosis" as EC policymaking remained largely blocked by unsolved budgetary problems had contributed to an overall feeling of "Euro-pessimism"⁵⁹ and put market-making on top of the Community agenda in the 1980s.⁶⁰ The new policy paradigm involved a focus on negative integration (i.e., eliminating obstacles to the project of creating a market without

frontiers) stressing movement of worker-citizens as one basic condition for economic flexibility. Positive integration, which would involve, for example, access to the polity (i.e., the political right to vote) lagged behind access to participation in socioeconomic terms or, for that matter, access to an emergent European social space, which became a major aspect of citizenship practice during this period of market-making. The slogan that contributed to the dynamic of this process was Jacques Delors's "Europe without Frontiers by 1992."⁶¹ Apart from abolishing internal Community frontiers, the Europe '92 program included new strategies to make the best use of Europe's human resources in the creation of European identity.⁶²

This access was extended group by group as a new mobility policy targeted groups other than workers, such as young people, academics, and students.⁶³ Three new directives established the right of residence for workers and their families and students.⁶⁴ Two types of special rights were now negotiated by Community policymakers and the member states' politicians. First, a series of social rights such as health care, the right to establishment, old-age pensions, and the recognition of diplomas were defined with the Social Charter. These rights were the economic and social requirements to prevent social dumping (i.e., circumventing social costs of production by transferring the productive process to another member state). However, crossing borders to work in another member state meant that so-called foreigners (i.e., Community citizens who worked in a member state of which they were not nationals) and nationals shared the work spaces but remained divided in the polity. This situation evoked an increasing public awareness of a "democratic deficit" in the European Community. The Commission identified the impact of economic integration as being a loss of status. That is, once citizens moved, they lost access to political participation. To overcome this dilemma, the Commission negotiated the second type of special right and proposed the establishment of voting rights for "foreigners" in municipal elections.⁶⁵ This proposal for a Council directive on the right to vote and stand for election in municipal elections suggested closing the gap between foreigners and nationals by reviving an informal resource of the *acquis*, namely, the shared principle of equal political rights for European citizens.

The interrelation between the free movement of worker-citizens and the political right to vote and stand for election represented a decisive discursive shift in EC citizenship practice. By linking normative ideas to the politics of market-making, citizenship practice highlighted two different expressions of belonging. One was the modern type of belonging based on legal ties between citizens and a community defined by political citizenship rights and nationality. The other type of belonging is more subtle. It rests on a feeling of belonging that emerges from participation. European citizenship practice suggests

that the two types of belonging stand in tension with each other, as participation in another member state created identity-based ties with a Community to which worker-citizens were not legally entitled to belong. The functionalist policy of negative (economic) integration thus created a link to the arguments for positive integration based on citizenship as they had been introduced to the citizenship *acquis* in the early 1970s.

The passport policy package was also significantly changed in the context of the new policy paradigm when the Commission decided to put the responsibility for difficult and unpopular decisions on the shoulders of the member states. In light of the member states' security concerns about borders, the bulk of border politics as one aspect of the passport package was passed on to inter-governmental bargaining among the member states that participated in the Schengen agreements.⁶⁶ Despite this move, Community citizenship practice still involved passport policy as it worked on implementing freedom of movement for workers, thus making clear the Commission's duty to come forward with policy proposals on the matter.⁶⁷ Indeed, the profoundly modern security concerns of the member states contributed to an unintended emphasis on the creation of belonging through worker-citizens' participation in the creation of a common market. In this context the Community Charter of Fundamental Rights for Workers was adopted.⁶⁸ The Commission's white paper had established a timetable for economic policy making by setting the 1992 time limit for creating an internal market without frontiers.⁶⁹ Beyond that, by means of an intergovernmental conference it had elaborated a plausible reason for a treaty reform.

Maastricht

The demands for greater access to participation in both political and socio-economic terms were renewed in the changed political opportunity structure of the 1990s. With the finalized Maastricht Treaty and the end of cold war politics, Union building reemerged on the agenda of the Euro-polity. The 1990s resulted in the adoption of political citizenship rights as well as the stipulation of the rights of free movement and residence not only for the employed and their families but also for other persons, such as pensioners, job seekers, or students, so long as they are nationals of a member state.

Together the three periods of citizenship practice reveal that the meaning of Union citizenship cannot be identified as the sum of the member states' national citizenship rights and practices, nor can it be deduced from modern citizenship alone. Instead, it is necessary to understand Union citizenship as constructed anew and with its own characteristic features. While the 1990s clearly contributed to the final steps towards the institutionalization of political

citizenship rights, this third period of the developing practice of European citizenship also meant another step away from modern citizenship.

The contested aspect of nationality in Union citizenship was brought to the fore by the Community's suddenly changed geopolitical position.⁷⁰ "From 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?"⁷¹ This was a serious question that also problematized the discourse on a "European" identity that had been so crucial for the emergence of citizenship practice in the early 1970s. At that time European identity meant Western Europeans (including the citizens of potential Western European new member states). Now the fall of the Berlin Wall clearly challenged the use of that term, and, more important, it suggested that some Europeans had been left out all along, as non-Community nationals had been excluded from the special rights policy for years.⁷² Now it was "no longer possible to talk of Western Europe as a clearly defined region in world politics."⁷³ With the meaning of "European" thus challenged, the Community's future was as uncertain as ever.⁷⁴ Also significant for further citizenship practice was the shaking of the Paris-Bonn axis—which had proved quite successful for EC politics thus far—as Germany's Chancellor Kohl pushed for fast German unification, while President Mitterrand of France was "torn between an instinctive antipathy toward German unification, . . . and an equally instinctive affinity for European integration."⁷⁵ One way of facing this tension was to forge a link between German unification and European integration. This solution seemed feasible to the majority of the member states and led to a renewed interest in political integration.⁷⁶ The policy paradigm was then determined by concerns about legitimacy and political integration.

Citizenship practice during this period was strongly influenced by a series of Spanish letters and proposals. These documents suggested a "concept of Community citizenship [that] 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.⁷⁷ They contributed to a debate over Community citizenship that could draw on the resources that had become part of the *acquis communautaire* since the early 1970s. Two types of resources were mobilized during these citizenship negotiations preceding Maastricht. First, citizenship was to grant rights that were special to the different levels of the Community as a polity and as a social space (rights to free movement, residence, and establishment, and the right to vote and stand for municipal and European elections at one's place of residence). Second, the visible sign of citizenship while traveling outside the Community was the uniform passport (which offered reduced border checking and diplomatic protec-

tion while abroad). Some of these resources were formalized with the establishment of Article 8 of the EC Treaty.

The debate unfolded over four stages. It was triggered by a letter from Prime Minister Felipe Gonzalez of Spain written on 4 May 1990 for an interinstitutional conference to prepare the IGC on political union.⁷⁸ Then a "Foreign Ministers' Note for Reflection" included the idea of citizenship in its recommendations for the Dublin II Council on 25–26 June 1990. This note stated that the upcoming IGC had to deal with the "transformation of the Community from an entity mainly based on economic integration and political cooperation into a union of a political nature, including a common foreign and security policy." Three main aspects were considered important for this goal: (1) the transfer of competencies, (2) Community citizenship, and (3) the free circulation of persons.⁷⁹ The second stage included the time between the Dublin II Council and the first meeting of the IGC on 14–15 December 1990. In this period, the concept of European citizenship became part of the Community discourse as policymakers reacted to the Spanish proposal (see table 9.1). The third stage lasted until the Maastricht European Council in December 1991 and was mostly dedicated to developing a legal definition of citizenship to be included in the treaties. The fourth stage began after Maastricht and ended with the first citizenship report of the Commission in 1993. During this stage, the practical aspects of citizenship policy, such as voting rights, were refined. The four stages represent the negotiation of a number of documents leading to the final wording of the Maastricht Treaty.

In time for the IGC on political union on 28 February, the Spanish delegation came forward with a second proposal on citizenship. It proposed to embed citizenship in the treaty by way of a new title to provide a framework for a dynamic concept of citizenship. The rights mentioned in the title included, first, the social right of a citizen to "enjoy equal opportunities and to develop his abilities to the full in his customary environment"; second, the civil rights to movement and residence "without limitation of duration in the territory of the Union"; third, the political rights to "take part in the political life of the place where he lives, and in particular the right to belong to political associations or groupings and the rights to vote in and stand for local elections and elections to the European Parliament"; and, finally, the right to "enjoy the protection of the Union and that of each member State" while in third countries.⁸⁰

The discourse on citizenship practice in the early 1990s showed that although the historical element of belonging was continuously addressed, the focus shifted from creating a *feeling* of belonging to establishing the *legal ties* of belonging. Not only were these legal ties important for defining anew the relation between citizens and the Community, but they also raised questions about the political content of nationality. Along the lines of the Spanish

Table 9.1. Central Documents of Citizenship Policy in the 1990s

Date	Document
20 Feb. 1991	Second Spanish proposal for citizenship ¹
30 March 1991	Commission contribution on citizenship to the IGC on political union ²
12 April 1991	Non-paper "with a view to achieving political action" drafted by the Luxembourg Presidency ³
23 May 1991	Interim report on "Union citizenship" by the EP Committee on Institutional Affairs ⁴
20 June 1991	Draft treaty on "the Union," used as a reference document until Maastricht ⁵
15 July 1991	EP resolution on "Union citizenship" ⁶
3 Oct. 1991	Dutch draft treaty "towards European Union" ⁷
6 Nov. 1991	Final report on "Union citizenship" by the EP (Bindi Report) ⁸
11 Dec. 1991	Maastricht Council conclusions ⁹
13 Dec. 1991	Final Dutch draft of the Treaty on Political Union as modified by the Maastricht summit ¹⁰

¹CONF-UP 1731/91, 20 Feb. 1991.²SEC(91) 500, 30 March 1991; and Bull. EC, supp. 2, 1991, 85–88³Written 12 April 1991. For full text, see *Europe Documents*, no. 1709/1710, 3 May 1991.⁴PE 150.034/fin, 23 May 1991. Rapporteur: Mrs. Rosamaria Bindi⁵*Europe Documents*, no. 1722/1723, 15 July 1991⁶*OJ EC*, C 183, 15 July 1991, 473–76⁷*Europe Documents*, no. 1733/1734, 3 Oct. 1991⁸PE 153.099/fin, 6 Nov. 1991⁹*European Report*, doc. no. 1728, 11 Dec. 1991¹⁰*Europe Documents*, no. 1750/1751, 13 Dec. 1991

proposal, Parliament demanded that Union citizenship be included in the treaty as a separate title comprising the following central aspects: "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."⁸¹ Importantly, the report repeatedly emphasized the necessity 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.”⁸² Once individuals enjoyed different types of rights in this new world that reflected flexibility and mobility, it became increasingly difficult to define citizenship practice on the basis of nationality.⁸³

Amsterdam

The institutionalization of “thin” citizenship meant an institutionalized fragmentation of citizenship. The fourth period shows a growing mobilization around, and a rising confusion over, the consequences of this fragmentation. The European Parliament had, for example, organized hearings in Brussels during which nongovernmental organizations (NGOs) could express their demands to the IGC. While NGOs were not formally entitled to participate in the IGC process, nor were there formally established democratic channels for participation, these hearings nevertheless provided space for discussion.⁸⁴ After 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 so-called third-country citizens, or individuals who did not have legal ties with the Union but who might have developed a feeling of belonging. The debate was pushed by interest groups and the European Parliament in particular.

With respect to the new dynamic in the debate over third-country nationals, it is important to recall that with the fall of the Berlin Wall, the Community had to face a new challenge in the area of border politics; namely, the question of visa and asylum policy, which now involved the question of East-West migration, and how it was to be dealt with by the upcoming Schengen renegotiations.⁸⁵ One way of approaching this potential political problem was to establish place-oriented citizenship. It was brought to the fore by social movements’ demand to change the citizenship legislation of the treaty. For example, instead of granting citizenship of the Union to “[e]very person holding the nationality of a Member State” (Article 8[1]), the ARNE (Antiracist Network for Equality in Europe) group requested citizenship for “[e]very person holding the nationality of a Member State *and every person residing within the territory of the European Union.*”⁸⁶

The Amsterdam draft treaty of 19 June 1997 did not, however, reflect these demands. On the contrary, the nationality component of citizenship was reinforced with the changed Article F(4) of the Treaty on European Union, which states that the national identities of the member states will be respected. The potential flexibility of the citizenship article (Article 8 of the EC Treaty) has not been used by the practitioners. While the formal institutional aspects of the citizenship *acquis* thus remained largely the same, the Amsterdam stage

of citizenship practice produced more changes with regard to the routinization of informal resources, as Brussels institutions began to work with national representatives, national parliaments, and NGOs on the citizens' demands in order to fight the rising discontent that had begun to replace the "permissive consensus" of earlier decades. Such reactions include campaigns, such as Citizens First, which have been initiated by the European Parliament and transferred by the Commission to the member states to bring Europe closer to the citizens.

The citizens' mistrust is, however, not only a reaction to the distance between Brussels and the citizens but also a reflection of a new way of practicing citizenship. The EU has brought a new model of fragmented citizenship to the fore. As the Second Report from the Commission on Citizenship of the Union states: "this diverse set of rights (entailed in Union Citizenship) is subject to different conditions. Generally speaking the rights stemming from citizenship of the Union cannot, for instance, be invoked in domestic situations which are purely internal to a Member State. Some of the entitlements such as the electoral rights can only be exercised in a Member State other than that of origin, whilst others such as access to the Ombudsman or to petition the European Parliament are extended to all natural and legal persons residing or having their registered office in a Member State."⁸⁷

While early European citizenship policy did not aim at this institutional setting, the 1990s brought an institutional fragmentation to the fore that is yet to be matched by day-to-day experiences on the ground. The EU's new decentralized institutional framework thus contributes to increasing an already "challenged confidence in the progressive and unifying force of democratic politics and value."⁸⁸ Indeed, Union citizenship contributes to the dissolution of centered (citizenship) politics. At the same time, and "despite certain limitations, in practice the introduction of a citizenship of the Union has raised citizens' expectations as to the rights that they expect to see conferred and protected especially when they move to another Member State."⁸⁹ The expectations of citizenship have now been raised, the genie is out of the bottle, and the EU institutions feel the pressure to act. As the Commission's second report on citizenship stresses, "(P)enalty for failure [to apply citizens' rights in practice] is that citizenship of the Union may appear to be a distant concept for citizens engendering confusion as to its means and objectives *even fueling anti-EU feelings*."⁹⁰

From *Special* to *Specialized* Rights

Clearly, the EU is not the only polity that has to confront a new style of policy and politics with a fading center. Even if it is a *sui generis* case so far, it is the most dramatic example of this deviating form, as the story of citizenship prac-

tice has shown. It raises the question of how to conceptualize decentered, fragmented, and transnational citizenship practice in the long run without losing sight of its moral and ethical underpinnings. First and foremost, this story of making citizenship implies that Union citizenship means much more than a simple compilation of rights; it also turns out to be a story about identities. While both types of belonging (legal and identity-based) have been the target of EC/EU policy, it was the question of belonging in the meaning of identity that was first mobilized by policymakers. This identity was, however, not applied to replace national identity with a European one. Citizenship practice also suggests that the phenomenon of belongingness to the EC/EU was based on what individuals did or might aspire to do with reference to economic and political participation. Crossing national borders as economically active citizens, waving closed passports at internal Community borders as travelers, exchanging knowledge as scholars and students, voting in common for the European Parliament, and sharing municipal governance as Union citizens were aspects of this process of creating belongingness as it was generated step by step and area by area. The comparison of EC/EU citizenship to the characteristic pattern of citizenship in modern European nation-states reveals both similarities and differences.

To recall briefly: Modern citizenship practice was embedded in a centralized institutional organization of the nation-state. Both citizenship policy and citizenship politics led to the establishment of civil, political, and social *rights*, to a shared understanding of legal and identity-based *belonging* to a community, and to the ongoing struggle for *access* to participation. Characteristic of this type of national citizenship practice was that demands were directed towards the state⁹¹ and policy was directed to citizens who were nationals of the state.⁹² As a whole, this process of interaction between state and societal forces forged the institutions of modern national states. In the European Union, no central union with "state" institutions was established. The Union is not a centrally organized state, nor does it follow state-centric types of policymaking.⁹³ It may be identified as a union-state (as opposed to city-state or nation-state) with its own characteristic features. The citizenship practice related to this union generated a fragmented type of citizenship: Union citizens direct demands to the member states and to the Union as well; they also may belong to a local community of one member state (in terms of their social, cultural, economic, and political activities) and at the same time to a national community of another member state (legal/national ties and political activity). Figure 9.4 shows the fragmented citizenship practice in the EU.

One of the particularities of this story of the developing practice of European citizenship is that citizenship rights were understood as special rights in the sense that they were meant for Europeans only. Over time and through practice,

**Fragmented
Citizenship
Practice**

1. **rights**
 - vote
 - move
 - reside
 - establish
 - petition
 - protection
2. **access to**
 - Euro-polity
 - welfare provisions
 - identity – participation as:
 - residents
 - migrants
 - taxpayers
3. **belonging**
 - legal – nationality
(in/out) – *potentially, place*

Fig. 9.4. *Fragmented Citizenship Practice in the European Union*

however, special rights acquired the meaning of being accessible only to special groups of Community citizens. That is, they became literally *specialized*. Citizenship rights were now defined according to what individuals did or what they were (workers, old, young, unemployed) rather than according to the fact that they were human beings.⁹⁴ The fragmented character of Union citizenship is underscored by another phenomenon. Both types of citizenship—national and EC/EU—are linked with, and embedded in, large processes of transformation.⁹⁵ However, while the citizenship practice of nation-states developed historical characteristics closely related to the societal changes during the industrial revolution and an emerging world system of interacting nation-states, citizenship practice of the EC/EU acquired characteristic meaning during a time of increasing globalization of the economy. This process indicated that both “the concepts of ‘union’ and ‘citizenship’ are undergoing wholesale and simultaneous changes in Community Europe. . . . the actual attribution of the status of Community citizen to citizens of the member States becomes a central element of the reforms and a reference point in determining the level of integration achieved by the Union which is being established.”⁹⁶ In other words, both the type of citizenship practice and the institutions that are created in relation to it bear the historical imprint of their times.

This case study has not only located the historical elements of rights, access, and belonging in their Euro-specific appearances, but it has also facilitated a view of tensions that evolved during the process of citizenship practice. In a nutshell, the establishment of special rights of movement for European citizens and the desired establishment of an area without internal frontiers did two things. First, it guaranteed the civil right of free movement; and, second, it created political and social inequalities between those who moved to another member state and those who were citizens of that state. This tension led initially to the establishment of social rights and, in the long run, to the establishment of the political right to vote. Subsequently, those who could not move freely because they did not belong to the group of wage earners or were not related to them also requested freedom of movement. Prior to Maastricht, the difference between so-called Community foreigners (i.e., nationals living in a member state with which they had no legal ties of loyalty but to which they might have developed a feeling of belonging) and nationals, (i.e., those who possessed legal ties to that particular member state) was at stake. It was addressed by guaranteeing to these foreigners the right to vote and stand for election in European and municipal elections. Foreigners thus acquired equal, albeit limited, access to political rights based on their status as nationals of a member state. This change of status shifts the emphasis of political tension towards the struggle of third-country nationals—often longtime residents of a member state—for access to political participation.

Notes

An earlier version of this chapter was previously published in *Theory and Society* 26, no. 4 (1997): 529–60, under the title “Making Sense of the New Geography of Citizenship: Fragmented Citizenship in the European Union.”

1. This view on creating a legally unsustained hope is presented, e.g., in Siofrà O’Leary, “The Relationship between Community Citizenship and the Protection Of Fundamental Rights in Community Law,” *Common Market Law Review* 32 (1995): 519–54. For the latter citation, see Hans Ulrich Jessurun d’Oliveira, “Union Citizenship: Pie in the Sky?” in *A Citizens’ Europe: In Search of a New Order*, ed. Allan Rosas and Esko Antola (London: Sage, 1995), 58–84.

2. See Philippe C. Schmitter, “Is It Really Possible to Democratize the Euro-Polity?” (paper presented at the European Forum workshop “Social and Political Citizenship in a World of Migration,” European University Institute, Florence, 22–24 February 1996); and Svein S. Anderson and Kjell A. Eliassen, “Introduction: Dilemmas, Contradictions, and the Future of European Democracy,” in *The European Union: How Democratic Is It?* ed. Svein S. Andersen and Kjell A. Eliassen (London: Sage, 1996), 1–12.

3. The debate over exclusion and inclusion and Union citizenship has developed most visibly over the issue of the exclusion of "third-country nationals" (i.e., individuals who live within the territory of the Union but are not nationals of a member state). Debate has, however, also occurred over exclusion along the lines of gender, sexual preference, and economic participation. See, e.g., the European Parliament's Bindi Reports of 1991 and 1993 (PE 207.047/fin.), as well as the Imbeni Report of 1993 (PE 206.762), and the Banotti Report of 1993 (PE 206.769/fin.).

4. See Michelle C. Everson and Ulrich K. Preuss, *Concepts, Foundations, and Limits of European Citizenship*, ZERP-Diskussionspapier 2, Bremen, 1995, 8. Legal attempts to grapple with Union citizenship do, however, often point to the important dimension of a possible evolution of Union citizenship based on Article 8e of the EC Treaty. See David O'Keeffe, "Union Citizenship," in *Legal Issues of the Maastricht Treaty*, ed. David O'Keeffe and Patrick M. Twomey (London: Wiley Chancery Law, 1994), 106.

5. David Held points to this important gap between the language (as in theory) and the practice of citizenship when he writes: "[T]o what political entity does the democratic citizen belong? Everywhere the sovereignty of the nation state itself—the entity to which the *language of citizenship* refers, and within which the claims of citizenship, community and *participation* are made—is being eroded and challenged." David Held, "Between State and Civil Society: Citizenship," in *Citizenship*, ed. Geoff Andrews (London: Lawrence & Wishart, 1991), 24.

6. See Veit Bader, "Citizenship and Exclusion: Radical Democracy, Community, and Justice. Or, What's Wrong with Communitarianism?" *Political Theory* 23, no. 2 (1995): 224.

7. I apply the term "postmodern" similarly to Ruggie (1993) and Caporaso (1996) as a means of expressing newly emergent models of political organization that build on modern ones but cannot be fully understood in modern terms only. See John G. Ruggie, "Territoriality and Beyond: Problematising Modernity in International Relations," *International Organization* 47, no. 1 (1993): 139–74; and James Caporaso, "The European Union and Forms of State: Westphalian, Regulatory, or Post-Modern?" *Journal of Common Market Studies* 34, no. 1 (1996): 29–52.

8. Indeed, the inverse situation has been recently stated with regard to the "debordernization" of states and global politics as a process that renders the notion of citizenship equally problematic. See Lothar Brock and Mathias Albert, "Entgrenzung der Staatenwelt: Zur Analyse weltgesellschaftlicher Entwicklungstendenzen," *Zeitschrift für Internationale Beziehungen* 2 (1995): 269.

9. Recent work on European citizenship has emphasized the conceptual importance of this distinction. See, e.g., Ulrich K. Preuss, "Citizenship and Identity: Aspects of a Political Theory of Citizenship," in *Democracy and Constitutional Culture in the Union of Europe*, ed. Richard Bellamy, Vittorio Bufacchi, and Dario Castiglione (London: Lothian FP, 1995), 109. On the importance of the identity of states, see Alexander Wendt, "Identity and Structural Change in International Politics," in *The Return of Culture and Identity in IR Theory*, ed. Yosef Lapid and Friedrich Kratochwil (Boulder, Colo.: Lynne Rienner, 1996), 47–64.

10. Feminist and antiracist contributions to the citizenship debate have also emphasized the problematic equalization of nationality and citizenship, pointing to the fact that this conceptualization hides boundaries of inclusion and exclusion within nations—a blind spot with serious consequences for theory, politics, and policy of citizenship. Elizabeth Meehan, *Citizenship and the European Community* (London: Sage, 1993), 22; and Nira Yuval-Davis, "Gender and Nation," *Ethnic and Racial Studies* 16, no. 4 (1993): 621–32.

11. According to Jane Jenson and Susan D. Phillips, "[S]tate institutions never have the power to establish identities"; they may "choose to recognize some claims, and thereby to shore up some identities." In other words, "identity remains the property of the claimant, a creation of collective action." Jane Jenson and Susan D. Phillips, "Redesigning the Citizenship Regime: The Roots of the Current Reconfiguration in Canada" (paper presented as "Répresentation sociale et citoyenneté au Canada" at the Colloque International, Intégration Continentale, Recomposition Territoriale, et Protection Sociale, Université de Montréal, 25–27 October 1995), 15.

12. Examples of such policies are migration policy and security policy. Thus, some consider citizenship an "instrument of social closure" between and within states. See William Rogers Brubaker, ed., *Immigration and the Politics of Citizenship in Europe and North America* (Lanham, Md.: University Press of America, 1989). On citizenship as the "border of order," see Friedrich Kratochwil, "Citizenship: The Border of Order," *Alternatives* 19 (1994): 485–506.

13. Constitution making in the EU has become the subject of a number of analyses. See, e.g., Renaud Dehousse, "Constitutional Reform in the European Community: Are There Alternatives to the Majoritarian Avenue?" *West European Politics* 18, no. 2 (1995): 118–36; Dieter Grimm, "Does Europe Need a Constitution?" *European Law Journal* 1, no. 3 (1995): 282–302; and J. H. H. Weiler, "Journey to an Unknown Destination: A Retrospective and Prospective of the European Court of Justice in the Arena of Political Integration," in *Economic and Political Integration in Europe*, ed. S. Bulmer and A. Scott (Oxford: Blackwell, 1995), 131–60. The question at hand is whether it is possible to think about citizenship as constitutive for a community. See Preuss, "Citizenship and Identity," 108.

14. Carlos Closa, "Citizenship of the Union and Nationality of Member States," *Common Market Law Review* 32 (1995): 493.

15. See Jean Leca, "Immigration, Nationality, and Citizenship in Western Europe (paper presented at the Conference on Social Justice, Democratic Citizenship, and Public Policy in the New Europe, ECPR/Erasmus University, Rotterdam, 1991); and Meehan, *Citizenship and the European Community*, xiii.

16. Meehan, *Citizenship and the European Community*, xiii.

17. Reinhard Bendix, *Nation Building and Citizenship* (New York: John Wiley, 1964); Jenson and Phillips, "Redesigning the Citizenship Regime"; T. H. Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1950); Margaret Somers, "Rights, Relationality, and Membership: Rethinking the Marking and Meaning of Citizenship," *Law and Social Inquiry* 19 (1994): 63–112; Charles Tilly, ed., *The*

Formation of National States in Europe (Princeton: Princeton University Press, 1975); and Meehan, *Citizenship and the European Community*.

18. For an approach to citizenship practice that aims at encompassing the complex set of relations that underlies citizenship, see, e.g., Somers, "Rights, Relationality, and Membership."

19. As Evans and Oliveira point out, citizenship is "a concept denoting the legal consequences which attach to the existence of a special connection between a defined category of individuals and a state" and thus essentially "a provision which is made for participation by a defined category of individuals in the life of a state." See A. C. Evans and H. U. Jessurun d'Oliveira. *Nationality and Citizenship. Rapport réalisé dans le cadre d'une recherche effectuée à la demande de la Communauté européenne*, Strasbourg, 20–21 November 1989, 2.

20. Similar elements have been identified by Tilly as basic criteria for state making. He writes, "[i]n its simplest version the problem [of state making] has only three elements. First, there is the *population* which carries on some collective political life—if only by virtue of being nominally subject to the same central authority. Second, there is a *governmental organization* which exercises control over the principal concentrated means of coercion within the population. Third, there are *routinized relations* between the governmental organization and the population." Tilly, *Formation of National States*, 32.

21. More recent contributions to the citizenship debate point to this informal link between citizens and the state as a problem for the study of citizenship. Accordingly, much of the new debate on citizenship aims at an assessment of this theoretical problem that focuses on the question of how informal aspects of citizenship rather than formal criteria may be included in citizenship analysis. See Will Kymlicka and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," *Ethics* 56, no. 1 (January 1994): 352–81; Jürgen Habermas, "Staatsbürgerschaft und nationale Identität," in *Faktizität und Geltung*, ed. Jürgen Habermas (Frankfurt am Main: Suhrkamp, 1991), 632–60; Meehan, *Citizenship and the European Community*; Somers, "Rights, Relationality, and Membership"; and Iris M. Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *Feminism and Political Theory*, ed. Cass Sunstein (Chicago: Chicago University Press, 1990), 117–42. While this is not the place to engage in a debate about different schools of thought, it is important to note an overall concern about problematic citizen-state relations.

22. As Kratochwil argues, e.g., in order to solve questions about obligations to our fellow citizens and our country, the Kantian categorical imperative is not helpful. See Kratochwil, "Citizenship: The Border of Order," 495.

23. See Marshall, *Citizenship and Social Class*, 10–11.

24. Kratochwil notes that "[i]t is perhaps best to conceive of citizenship as a space within a discourse on politics that institutionalized identities and differences by drawing boundaries, both in terms of membership and in terms of the actual political practices that are connected with this membership. An explication of the concept, therefore, is not governed by the atemporal criteria of adequacy or correspondence. It necessarily

becomes historical, requiring an examination of the genealogy of the concept and its temporary reconciliations." Kratochwil, "Citizenship: The Border of Order," 486.

25. Turner suggests an approach that includes active (society-centered) and passive (state-centered) citizenship. According to his model, the French Revolution is considered the prime example of active citizenship politics, whereas the Bismarckian citizenship policy would be considered passive. See Bryan S. Turner, "Outline of a Theory of Citizenship," *Sociology* 24, 2 (1990): 189–217.

26. This section is taken from Antje Wiener, "Accessing the Constructive Potential of Union Citizenship," *European Integration online Papers (EIoP)*, <http://eiop.or.at/eiop/texte/1997-017a.htm>.

27. Michalski and Wallace note that "the *acquis communautaire* is composed of the treaties of the EC and the regulations, directives, decisions, recommendations derived from them, as well as the case law from the European Court of Justice (ECJ). It comprises policies, the legal framework and the institutional structure which a country must accept when it aims at membership in the Community." See Anna Michalski and Helen Wallace, *The European Community: The Challenge of Enlargement* (London: Royal Institute of International Affairs, 1992), 36. Yet, while being incremental is part of the *acquis communautaire*, the Maastricht Treaty provides reason for caution, because a "number of protocols of the Union Treaty . . . damage the *acquis communautaire*"; see Deirdre Curtin, "The Constitutional Structure of the Union: A Europe of Bits and Pieces," *Common Market Law Review* 27 (1993): 18. On the concept of *acquis communautaire*, see Carlo Curti Gialdino, "Some Reflections on the *Acquis Communautaire*," *Common Market Law Review* 32 (1995): 1090. Knud Erik Jørgensen, "The Social Construction of the *Acquis Communautaire*: A Cornerstone of the European Edifice" (paper presented at the International Studies Association Meeting, Minneapolis, Minn., 17–21 March 1998); and Antje Wiener, "The Embedded *Acquis Communautaire*: Transmission Belt and Prism of New Governance," *European Law Journal* 4, no. 3 (1998): 294–315.

28. European Commission, cf. Michalski and Wallace, *European Community*, 38.

29. See Michael Shackleton, "The Community Budget after Maastricht," in *The State of the European Community*, vol. 2, *The Maastricht Debates and Beyond*, ed. Alan W. Cafruny and Glenda G. Rosenthal (Boulder, Colo.: Lynne Rienner, 1993), 2:20. See also Paul Pierson, "The Path to European Integration: A Historical Institutional Perspective," *Comparative Politics* 29, no. 2 (1996): 144, on the emergence of a "restrictive" *acquis* that grows with the enactment of new policies.

30. See Michalski and Wallace, *European Community*, 35.

31. The pillar structure of the EU was introduced by the Maastricht Treaty on European Union (TEU). It involves (1) the three communities, i.e., the European Coal and Steel Community, the European Community (formerly the European Economic Community), and the European Atomic Energy Community; (2) Common Foreign and Security Policy; and (3) Cooperation on Justice and Home Affairs. See Jo Shaw, *Law of the European Union* (London: Macmillan, 1996), 7.

32. See John Peterson, "Decision-Making in the European Union: Towards a

Framework for Analysis," *Journal of European Public Policy* 2, no. 1 (1995): 69–93; and Pierson, "Path to Integration," 123–63, respectively.

33. These policy objectives were adopted within the final communiqué of the 1974 Paris summit meeting. See *Bulletin of the European Communities* [hereafter *Bull. EC*] 12 (1974): 8–9.

34. For the term "Euro-polity," see Gary Marks et al., eds., *Governance in the European Union* (London: Sage, 1996).

35. For elaborations on contextualized citizenship practices and their effect on the meaning of citizenship in different contexts, see Marshall, *Citizenship and Social Class*, for the British context; and, for the EU context, Meehan, *Citizenship and the European Community*.

36. On 8 October 1976, the Council adopted an "Act concerning the election of the representatives of the Assembly by direct universal suffrage." See *Official Journal of the European Communities* [hereafter: *OJ EC*] no. L 278, 8.10.76, 1–11.

37. *OJ EC*, no. C 241, 19.9.81, Council resolution.

38. As the final communiqué of the 1972 Paris summit stated, "The member states of the Community, the driving force of European construction, affirm their intention before the end of the present decade to transform the whole complex of their relations into a European Union." Commission, 1972, General Report, point 5(16) cf. Desmond Dinan, *Ever Closer Union? An Introduction to the European Community*. (Boulder, Colo.: Lynne Rienner, 1994), 81.

39. *Bull. EC*, Supp. 5, 1975, 5, Report on European Union (emphasis added).

40. As Davignon observed: "One of the difficulties of European construction is that historical stages have to be missed out. It is necessary to behave as if Europe already existed, as a political entity. In history, all countries passed through a phase of exclusively national development. Yet in this instance Europe has to act and intervene at the international level before having completed the phase of its internal development." See *Agence Europe (AE)*, no. 713, 5 January 1973, 7.

41. *AE*, no. 713, 3–4 (emphasis added).

42. *Europe Documents*, no. 752, 17 July 1973, 1–2.

43. *Europe Documents*, no. 775, 3–5.

44. *Europe Documents*, no. 779, for the document on European identity. Clapham also stresses the link between the document on European identity and setting the policy objectives for the creation of Community citizenship. See Andrew Clapham, *Human Rights and the European Community: A Critical Overview*. (Baden-Baden: Nomos, 1991), 66.

45. *Europe Documents*, no. 779, 1.

46. The Commission's report "Towards European Citizenship" specified policy-related problems regarding the granting of special rights and the introduction of passport union. See *Bull. EC*, supp. 7, 1975. Another report, prepared by Prime Minister Leo Tindemans of Belgium, proposed guidelines for policymaking on European Union. See *Bull. EC*, supp. 1, 1976.

47. The Commission's report stressed the importance of the political nature of the special rights objective, stating that "granting special rights to the citizens of Member

States [was] an allusion to the citizen—basically a political concept which was substituted for the term national, which is always used in Community texts—[and provided] a first clue to the civil and political nature of the special rights.” See *Bull. EC*, supp. 7, 1975, 26; see also Guido Van den Berghe, *Political Rights for European Citizens* (Aldershot, England: Gower, 1982), 31.

48. With respect to policies regarding special rights, it is important to note that, from the Commission’s perspective, special rights included only those rights of member states’ nationals that had not yet been acquired by foreigners. See *Bull. EC*, supp. 7, 1975, 28. It is important to note that at that time, the term “foreigner” was used in Community documents to designate nationals of EC countries who lived in a member state where they were not passport holders. For example a Belgian passport holder living in France would be a foreigner in France; the French Member State was considered the “host country.”

49. *Bull. EC*, supp. 7, 1975, 27

50. *Bull. EC*, supp. 7, 1975, 32

51. In its report “Towards European Citizenship” the Commission reasoned “that European citizenship, which does not exist at the present, will take the first step towards becoming a reality only with the election of the European Parliament on the basis of universal suffrage and the implementation of point 11 on special rights.” This cautious step-by-step approach was based on the observation that “[e]qual treatment for foreigners in the economic and social fields is accepted by public opinion, since this has long been a subject for frequent negotiation between States [but t]he same does not apply to equal treatment for foreigners in the political field. *This is a new idea* and the public will have been given an opportunity to get used to it.” See *Bull. EC*, supps. 7, 16, and 30, respectively. (Emphasis added.)

52. *Bull. EC*, supp. 1, 1976, 26–27

53. See Bayerl Report; cf. European Parliament, *Proceedings of the Round Table on Special Rights and a Charter of the Rights of the Citizens of the European Community and Related Documents*. Florence, 26–28, October 1978 (Luxembourg: European Parliament, 1979). According to this report, special rights policy meant that “all the constitutional rights on which the legitimacy of a democratic State depends are conferred upon the citizens of the European Community vis-à-vis the European Community and, secondly, to include those rights which citizens of a particular Member State possess but which have not hitherto been granted to other citizens of the Community.” European Parliament, *Special Rights*, 86–87. The Legal Affairs Committee of the European Parliament later specified that migrant workers “should as far as possible be placed on an equal footing with the citizens of the host country; in particular, they should have the means of influencing, through their vote, the running of public affairs in the place in which they have opted (or have been obliged) to establish their residence.” See European Parliament, PE 81.688/fin, 9. This idea was to become an important informal resource for the making of Union citizenship and was to be taken up again by a Commission proposal on voting rights. See *Bull. EC*, supp. 7, 1986.

54. *OJ EC*, no. L 278, 8.10.76, 1–11.

55. *OJ EC*, no. C 87, 5.4.82, 64; for the text of the draft act, see 61–62.

56. European Parliament, 29 April 1983, PE 81.699 final [Rapporteur: Mrs. M.-A. Macciocchi].

57. *Bull. EC*, no. 12, 1974, 8–9.

58. *Bull. EC*, Supp. 7, 1975, 7.

59. See George Ross, "The European Community and Social Policy: Regional Blocs and a Humane Social Order," *Studies in Political Economy*, 40 (1993): 44–45; Loukas Tsoukalis, *The New European Economy*. (Oxford: Oxford University Press, 1993); and William Wallace, "Rescue or Retreat? The Nation State in Western Europe, 1945–93," *Political Studies* 42, special issue (1994): 64–65.

60. For the term "market-making," see Wolfgang Streeck, "European Social Policy: Between Market-Making and State-Building," in *European Social Policy: Between Fragmentation and Integration*, ed. Stephan Leibfried and Paul Pierson (Washington, D.C.: Brookings Institution, 1995), 389–431.

61. *Bull. EC*, supp. 7, 1985, 9.

62. As a Commission program 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." See *Bull. EC*, 3, 1985, 101. (Emphasis added.)

63. Among these programs were, e.g., the European Community Action Scheme for the Mobility of University Students (ERASMUS), (Coimbra Report, PE, May 1986, Doc. A 2–22/86) and the Young Workers' Exchange Scheme (YES) (Fontaine Report, PE, November 1986, Doc. A 2–109/86). The European Parliament stressed the importance of such programmes towards building an ever closer union when it observed "[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." See European Parliament, Directorate General for Research, *Action Taken Series* 3, 11, 1988, 103; see also Brigid Laffan, "The Politics of Identity and Political Order in Europe," *Journal of Common Market Studies* 34, no. 1 (1996): 97.

64. *OJ EC*, no. L 180, 13.7.90. These directives were to survive the Maastricht Treaty. They were, however, later partially challenged by the European Parliament and came increasingly under attack once the TEU entered into force. See Official Communication Document (COM)(93) 702 final, 21 December 1993, 4; and the Opinion of the Committee on Women's Rights, PE 206.769/fin., 2 December 1993.

65. Another aspect of the "democratic deficit" was a question of democratic procedure. Both aspects are rooted in different contexts. Bulmer and Scott identify a *procedural deficit*, consisting of the "Community's decision-making procedures" and the lack of "democratic legitimacy" as regards the legislative process. See S. Bulmer and A. Scott, eds., *Economic and Political Integration in Europe* (Oxford: Blackwell, 1994), 7. From the passport policy process, it is evident that the lack of transparency after the split into a Schengen and a Community approach to border politics also con-

tributed to the notion of a democratic deficit. See, e.g., the European Parliament's Outrive Report I, PE 156.390. In turn, the Commission's demand for the political right to vote was based on historical experience of citizenship practice in nation-states, thus suggesting a *normative deficit*. For the Commission proposal, see *Bull. EC*, supp. 7, 1986, "Voting Rights in Local Elections for Community Nationals."

66. For observations of this process, see esp. Hans Claudius Taschner, "Die Abschaffung der Personenkontrollen an den Binnengrenzen der Europäischen Gemeinschaft und ihre Folgen," in *Das Europa der Bürger in einer Gemeinschaft ohne Binnengrenzen*, ed. Siegfried Magiera (Baden-Baden: Nomos, 1990), 229–235; and Hans Claudius Taschner, "Schengen oder die Abschaffung der Personenkontrollen an den Binnengrenzen der EG," Vortrag vor dem Europainstitut der Universität des Saarlandes, Saarbrücken 11 Dezember 1990; J. J. Bolten, "From Schengen to Dublin: The New Frontiers of Refugee Law," in *Schengen: Internationalization of Central Chapters of the Law on Aliens, Refugees, Privacy, Security, and the Police*, ed. J. D. M. Steenbergen (Leiden: Stichting NJCM, 1992); and H. Meijers, "Schengen: Introduction," In *Schengen*, 1–7; and Antje Wiener, *Building Institutions: The Developing Practice of "European" Citizenship* (Boulder, Colo.: Westview Press, 1998). The Schengen agreement on the gradual abolition of border controls was first signed by the governments of the Benelux economic union, the Federal Republic of Germany, and the Republic of France, on 14 June 1985 in the town of Schengen, Luxembourg.

67. According to Article 49 of the EEC Treaty, the Council was to issue directives or make regulations setting out the measures required to bring about, by progressive stages, freedom of movement for workers, on the basis of a proposal from the Commission and acting by a qualified majority.

68. COM(89) 568 final, which was adopted at the European Council meeting at Strasbourg, 8–9 December 1989.

69. The clear definition of the 279 directives prescribed by the Commission's 1992 white paper provided the point of departure for this type of policymaking, which led to a new era in Community politics that soon became known under the slogan of "Europe '92." While the white paper went beyond market policy making, it was nonetheless conceptualized to operate within a market paradigm. Behind a quite technical appearance, the white paper had in store for the member states a whole series of legal commitments that were part of the implementation of the directives. It therefore required basic agreement on the legal basis for resolving intra-Community disputes.

70. See Bolten, "From Schengen to Dublin," 11; and Soledad Garcia, ed., *European Identity and the Search for Legitimacy* (London: Royal Institute of International Affairs, Pinters, 1993), 2.

71. Dinan, *Ever Closer Union?* 158.

72. T. Hoogenboom, "Free Movement of Non-EC Nationals, Schengen and Beyond," in *Schengen*, 74–95.

73. Brigid Laffan, "The Treaty of Maastricht: Political Authority and Legitimacy," in *The State of the European Community*, vol. 2, *The Maastricht Debates and Beyond*, ed. Alan W. Cafruny and Glenda G. Rosenthal (Boulder, Colo.: Lynne Rienner, 1993), 35–52, 36.

74. Dinan, *Ever Closer Union?* 158.

75. Dinan, *Ever Closer Union?* 163.

76. The "[l]inkage between German unification and deeper political integration and between EMU [European Monetary Union] and European Political Union (EPU) emerged explicitly at the Strasbourg Summit in early December 1989." See Dinan, *Ever Closer Union?* 161n34. In 1990 a now famous letter signed by Chancellor Kohl and President Mitterrand addressed to the Irish Council Presidency of the Community suggested calling an IGC on political union. This letter reflected the policy paradigm of legitimacy and union building, saying that the goals for such an IGC would be "to strengthen the democratic legitimation of the union, to render its institutions more efficient, to ensure unity and coherence of the union's economic, monetary and political action and to define and implement a common foreign and security policy." See AE, no. 5238, 20 April 1990, 6.

77. SG(90) D/06001, 1-4.

78. For the letter see SEC(90) 1084 and AE, no. 5252, 11 May 1990, 3. This "interinstitutional" conference included the main Community institutions. It was thus different from the IGC format, which restricted the negotiation process to the member states.

79. *Europe Documents*, no. 1628, 2.

80. See Permanent Representation of Spain to the European Communities, "Economic and Social Cohesion in Political, Economic, and Monetary Union: The Spanish Viewpoint, 5 March 1991," in *The Intergovernmental Conference on Political Union: Institutional Reforms, New Policies, and International Identity of the European Economy*, ed. Finn Laursen and Sophie Vanhoonacker (Maastricht: European Institute of Public Administration, 1992), 326-27.

81. PE 150.034/fin., 6-10.

82. PE 150.034/fin., 9.

83. Meehan captured this fragmenting aspect of European citizenship noting that it is "neither national nor cosmopolitan" but that it is "multiple in the sense that the identities, rights and obligations associated . . . with citizenship are expressed through an increasingly complex configuration of common Community institutions, states, national and transnational voluntary associations, regions and alliances of regions." See Meehan, *Citizenship and the European Community*, 1.

84. The hearings were organized by the institutional committee of the European Parliament on 18-19 October 1995 "with a view to preparing the Dury and Maij-Weggen Reports on revision of the Maastricht Treaty" (AE, 18.10.95, 4). According to AE, the hearings were attended by "dozens of NGOs" while "over 300 NGOs had asked to take part" (AE 18.10.95, 4; and AE, 19.10.95, 4, respectively).

85. Bolten, "From Schengen to Dublin"; and Hoogenboom, "Free Movement."

86. See ARNE (Antiracist Network for Equality in Europe), "Modifications to the Maastricht Treaty in Sight of the 1996 Inter-Governmental Conference," Rome, 14-15 July 1995, 4. (Emphasis in original.)

87. COM(97) 230 final, Brussels 27.05.1997, 6.

88. See Michael Salter, "Habermas's New Contribution to Legal Scholarship," *Journal of Law and Society* 24, no. 2 (1997): 285.

89. COM(97) 230 final, 6.

90. COM(97) 230, 6. (Emphasis added.)

91. As Turner summarizes: "Citizenship is, as it were, pushed along by the development of social conflicts and social struggles within . . . a political and cultural arena, as social groups compete with each other over access to resources. Such a theory of citizenship also requires a notion of the state as that institution which is caught in the contradictions between property rights and political freedoms." See Turner, "Theory of Citizenship," 195.

92. Indeed, the distinctive features of a modern state included that it was "an organization which controls the population occupying a defined territory . . . in so far as (1) it is differentiated from other organizations operating in the same territory; (2) it is autonomous; (3) it is centralized; and (4) its divisions are formally coordinated with one another." See Tilly, *Formation of National States*, 70.

93. See Liesbet Hooghe and Gary Marks, "Theoretical Foundations of Multi-level Governance" (paper presented at the Annual Meeting of the American Political Science Association, Chicago, 31 August–4 September 1995).

94. As Meehan put it, they were "citizens-as-workers, not citizens-as-human-beings." See Meehan, *Citizenship and the European Community* 1993, 147.

95. Tilly characterizes political rights of citizens as "political rights in a large sense—political in that they constitute binding claims on the agents of government, rather than some other groups"; he continues that "that specification clarifies a large historical transformation. The European national revolutions of the last few centuries did not so much expand political rights as concentrate them in the state and reduce their investment in other sorts of governments. A large part of the process consisted in the state's abridging, destroying or absorbing rights previously lodged in other political units: manors, communities, provinces, estates." See Tilly, *Formation of National States*, 37.

96. PE 150.034/fin., 10.