The Embedded Acquis Communautaire: Transmission Belt and Prism of New Governance

Antje Wiener*

Abstract: *The European Union offers crucial insights into the gradual shift from a Weberian form of modern 'government' towards the institutionalisation of post-Weberian 'governance'. The article argues that the emerging 'polity of polities' context, not only threatens the constitutional basis of democratic rule but also raises the questions of what exactly the new institutions of governance beyond the nation-state are, and what they imply for the functioning (rules of the game) and legitimacy (democratic processes) of the political order. In an effort to elaborate on these questions, the article develops two themes. First, it raises critical questions about the conceptual boundedness of 'governance' in the discussion of constitutional and policy studies within the field of European integration. Secondly, it advances a methodological access point for the study of the institutionalisation of governance in the Euro-polity. It suggests situating the legal concept of acquis communautaire at the boundary of legal studies and politics. The concept is then applied to a case study of citizenship policy in the EU to demonstrate how the acquis communautaire—more precisely, the 'embedded acquis communautaire'—facilitates methodological access to the study of the institutionalisation of governance beyond the state and despite states.*

I Introduction

Currently, liberal democracies are undergoing major changes which are causing much debate about the appropriate political procedures and conceptual frameworks for the organisation of a polity. The legitimate authority of governments is increasingly being undermined by the 'debordernisation' of politics and policy[1] to the effect of a thinning

---

[1] The term 'debordernisation' has been introduced to international relations theories to characterise processes of politics and policy-making across national borders. It challenges core realist assumptions, such as states being the sole sovereign actors in global politics, as well as the concepts of power and territory being firmly based on Weberian state systems. Cf, M. Albert and L. Brock, 'Entgrenzung der Staatenwett,' (1995) 2 *Zeitschrift fuer Internationale Beziehungen*. J. Neyer, 'Globaler Markt und territorialer Staat. Konturen eines wachsenden Antagonismus,' (1995) 2 *Zeitschrift für Internationale Beziehungen*.

out of the mechanisms of majoritarian rule.[2] These changes have been met in two ways. The first, is a conceptual struggle amongst social scientists on the heritage of experience with, and expectations of, modern state politics. The other is much more closely linked with practices on the ground, involving the day-to-day processes of policy-making such as agenda-setting, deliberation and conflict solving. Both approaches, however, address the central question of how to maintain a democratically-legitimised political order in a context which has been dubbed as governance without government?[3] Equally, in this effort, 'governance' has come to be widely accepted as a term which includes practices of governing which are not exclusively performed by state-actors.[4]

However, despite the broad application of the term, the meaning of governance still appears to be based on state-centric assumptions about the organisation of democratic politics. This conceptual *caveat* has been highly troublesome in the most interesting case of 'governance beyond the nation-state',[5] namely, the incremental construction of the Euro-polity. This article argues that the European Union (EU) offers crucial insights into the gradual shift from a Weberian form of modern government towards the institutionalisation of post-Weberian 'governance.' In contrast to the discussion of governance within international relations—more specifically, within regime analysis, which has continued to work with the assumption that state-action be democratically legitimated—the process of European integration has profoundly challenged this core idea. Indeed, in the case of the EU, it has been suggested that the process of governance beyond the nation-state, has produced a degree of institutionalisation which reaches a certain degree of statehood.[6]

However, this article further argues that the emerging 'polity of polities' context, not only threatens the constitutional basis of democratic rule as the German Constitutional Courts Maastricht judgment has suggested, but also raises the questions of what exactly the new institutions of governance beyond the nation-state are, and what they imply for the functioning (rules of the game) and legitimacy (democratic processes) of the political order. In an effort to elaborate on these questions, the article develops two themes. First, it raises critical questions about the conceptual boundedness of 'governance' in the discussion of constitutional and policy studies within the field of European integration. Secondly, it advances a methodological access point for the study of the institutionalisation of governance in the Euro-polity. It suggests situating the legal concept of *acquis communautaire* at the boundary of legal studies and politics. The concept is then applied to a case study of citizenship policy in the EU to demonstrate how the *acquis communautaire*—more precisely, the 'embedded *acquis communautaire*'—facilitates methodological access to the study of the institutionalisation of governance beyond the state and despite states.

The article is organised in three sections. The first, discusses the term 'governance' in the context of European integration. The second, elaborates on the concept of the 'embedded *acquis communautaire*'. The third, provides a summary of citizenship

---

[2] Held, 'Democracy: From City-states to a Cosmopolitan Order?' (1992) XL *Political Studies* 10–39.

[3] J. Rosenau and O. Czempiel (eds) *Governance without Government: Order and Change in World Politics* (1992 CUP).

[4] Schmitter, 'A Few Very condensed, Pages of Reflection on the Impact of the EU on Domestic Democracy,' Paper presented at the *Europeanisation Workshop*, EUI, Florence 1998.

[5] Jachtenfuchs, 'Theoretical Perspectives on European Governance,' (1995) 1 *ELJ* 115, at 133.

[6] Hobe, 'Die Unionsbürgerschaft nach dem Vertrag von Maastricht: Auf dem Weg zum Europäischen Bundesstaat?' (1993) *Der Staat* 245–268.

policy as a social practice since the early 1970s, taking the European Summit meetings at Paris, Fontainebleau, Maastricht and Amsterdam as major turning points in a continuing story. The conclusion summarises the major changes in the citizenship *acquis communautaire* and the interrelated transformation of EU governance.

II   New Governance beyond the State and despite States

The increasing institutional density beyond the territory, level and/or scope of national government and policy procedure, has led many contributors to European integration theory to use the term 'governance' when writing about the framework of policy-making and politics in the EU.[7] Much of this literature displays an interest in the substance of European integration and thus moves beyond a simple debate on the likely outcomes of the integration process. It has therefore introduced a shift from a theoretically-informed debate about the arguable merits of grand theory and, more specifically, neo-functionalist vs intergovernmentalist approaches in explaining integration, towards an examination of the details of the policy process in the light of negotiation, agenda-setting, and implementation problems.[8] The focus on policy substance has thus helped to highlight an emerging 'pattern of rule' which had largely been overlooked by theoretical debates in the 1960s and 70s. This pattern has been pragmatically labelled 'governance.'[9]

By bringing this pattern of rule to the fore, governance literature has been crucial for the evolution of an understanding of the Euro-polity as 'a polity in-the-making,' as well as a 'polity beyond the nation state'. A study of the complexity of 'policy substance'—*i.e.* as entailing administrative procedures and policy contents—has led to the identification of institutional changes which have enabled market actors to improve policy implementation. Governance in this sense, accordingly encompasses sharing an acknowledged set of rules and procedures of social interaction for market purposes, or

> 'the establishment and operation of social institutions—or, in other words, sets of rules, decision-making procedures, and programmatic activities that serve to define social practices and to guide the interaction of those participating in these practices.'[10]

Certainly, it has thus long been argued that polity-formation in the EU is market-driven and leads, first and foremost, to market-making not state-building.[11] Yet, "while markets must be 'insulated' from social 'policy', they should never be seen in isolation from social/ethical regulation and political processes";[12] and it is thus the latter

---

[7]   Bulmer, 'New Institutionalism, The Single Market and EU Governance,' (1997) *ARENA Working Paper*; M. Jachtenfuchs and B. Kohler-Koch (eds), *Regieren in der Europäischen Union*, (1996 Beckscher Verlag): Wallace, 'Politics and Policy in the EU: The Challenge of Governance,' in H. Wallace and W. Wallace (eds), *Policy-Making in the European Union* (1996 OUP).

[8]   J. Richardson (ed), *European Union. Power and Policy-making* (1996 OUP); H.Wallace *et al* (eds), *Policy-Making in the European Community* (1983 Wiley); H. Wallace and W. Wallace (eds), *Policy-making in the European Union, op cit* n 7.

[9]   Bulmer, *loc cit*, n 7.

[10]   O. Young, *Global Governance. Drawing Insights from the Environmental Experience* (1997 MIT Press).

[11]   Streeck, 'From Market-Making to State-Building? Reflections on the Political Economy of European Social Policy,' in S. Leibfried and P. Pierson (eds), *Prospects for Social Europe: The European Community's Social Dimension in Comparative Perspective* (1995 Brookings Institution).

[12]   Everson, 'Administering Europe?' (1998) 36:2 *JCMS* 196.

processes which distinguish the political and potentially conflictive process of governance from mere functional co-operative administration.[13] Further, however, it has also been convincingly argued that the 'political' aspect of (market) governance is particularly complex once post-national models of governance are the subject of inquiry.[14] While ultimately the important questions for such a transformation of governance are about *who* gets to influence institutional terms of the political in the Euro-polity and *how*, this article tackles the questions of *what* the institutional basis for political intervention is, and *how* it was constituted.

The former issue, thus involves the definition of a 'legitimate third party' to solve conflicts within this polity, as well as the political values transmitted by it. The so-called 'Comitology Decision'[15] presents only one example of such political queries underlying a form of EU governance which seeks to govern a new polity in which there is no politically-acknowledged centre akin to the nation-state polities' unitary administrative structure, traditionally preserving of the influence of national states. The effort to accommodate the political interests of the EU Member States within the otherwise 'highly administrative' committee task of overseeing policy implementation, has accordingly turned the committees into 'mini-councils',[16] representing an attempt to avoid clear shifts of power and authority. This form of political involvement by national actors in the process of governance beyond the nation-state, is an interim solution which demonstrates modern political actors' continuing struggle for survival in an increasingly post-modern, or for that matter, medieval political environment.[17]

The latter institutional and constitutive issue, however, seeks to open up a perspective on actors other than state actors. It is of particular importance in the case of the EU, that this political struggle is taking place over and on the emergent turf of a new polity. Crucially, post-Maastricht, this political space has been invaded by new actors and, in particular, interest groups who have demanded access to equal rights for residents and citizens.[18] The case of citizenship policy, for example, suggests that the process of policy implementation is indeed highly political. Beyond 'administration', it involves ethical/social concerns. It concerns the 'civilisation' of what was once perceived as a market polity.[19] It is therefore not devoid of ethical concerns and historical experiences which, in turn, inform normative expectations and subsequently influence policy objectives. It accordingly follows that the process of policy-making

---

[13] Alec Stone's distinction between 'dyadic' and 'triadic' models of interaction make a similar point, cf, Stone Sweet, 'Judicialization and the Construction of Governance.' *EUI, RSC* Working Paper 1996.

[14] Everson, *loc cit* n 12.

[15] 'Comitology Decision,' Council Decision, 87/373/EC OJ L197/87. Joerges and Neyer point out that this decision (13 July 1987) on the implementation of the White Paper on the Single Market stands for rejecting the idea of a supranational central implementation machinery headed by the Commission, and thus indirectly forces national governments into a co-operative venture, cf, Joerges and Neyer, 'From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology,' (1997) 3:2 *ELJ* 273–299.

[16] Everson, *loc cit* n 12.

[17] Ferguson and Mansbach, 'Political Space and Westphalian States in a World of Polities,' (1996) 2 *Global Governance* 261–287. Ruggie, 'Territoriality and Beyond: Problematising Modernity in International Relations,' (1993) 47 *International Organization* 139–174.

[18] For example, hearings which were organised in Brussels by the institutional committee of the European Parliament (EP) 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, at 4) were attended by 'dozens of NGOs' while 'over 300 NGOs had asked to take part,' cf, Agence Europe 18.10.95, at 4 and AE 19.10.95, at 4.

[19] Everson, *loc cit* n 12.

has become the key locus for establishing the patterns of EU governance, since it is in fact the deliberations over policy objectives, agenda-setting and policy implementation which substantiate and structure that governance.[20] A reference to governance in this sense, accordingly entails 'thick' governance.[21]

To summarise, however, the implications of applying the notion of governance without problematising its state-centric roots are 'twofold: first, market-management, a political process, is not a matter for classic administration and administrative law; and secondly, national polities—and not isolated European citizens—remain the legitimate source of European ethical/social values.'[22] In other words, while administrative discourse has sought to move beyond state-centric terms, in practice, the political remains attached to 'state' politics.[23] Equally, it follows that, if we are to assess governance beyond the nation-state, changes in policy substance have a greater indicative power than do the preferences of state actors. After all, this is a period when 'the state' is losing power, the political centre has become weaker, and other actors such as policy networks, for example, have gained an important influence upon politics.[24] Following the insight that governance is a process which thrives on conflict,[25] we therefore need both to deconstruct core modern concepts, and to identify key sets of practices to act as markers in the effort to reassemble them. As the next section suggests, this method is particularly valuable given the constitutional implications of the *acquis communautaire*.

Conceptual remnants are state-centric and all too often misleading when applied as tools in the debates over politics and policy-making in polities other than modern nation-states.[26] In the light of these changes to and within modern political entities, the concept of governance has become a fashionable term throughout the social sciences. However, while the popularity of the term indicates an inclination among scholars to move away from state-centric assumptions about modern government, so far its inflationary use has been detrimental to its precision.[27] Recently, it has been observed that the discursive shift from the term 'government' to that of 'governance' represents an effort to 'distance modern *governance* from traditional *government*'.[28] However, a *discursive* shift from 'government' to 'governance' must remain superficial unless it is matched by a *conceptual* shift. It has been pointed out that as long as this

---

[20] Richardson, 'Policy-making in the EU: Interests, Ideas and Garbage Cans of Primeval Soup,' in Richardson (ed) *European Union. Power and Policy-making* (1996 Routledge).

[21] Legal perspectives in particular have sought 'to identify practices within the decision-making process which challenge the analytical and normative assumptions upon which the majority of integration research rests', Joerges and Neyer, *loc cit* n 15, at 274.

[22] Everson, *loc cit* n 12, at 17 and 18.

[23] Not surprisingly, then, that so far, the term 'governance' has been predominantly applied with reference to the regulatory state, cf, Majone, 'The Rise of the Regulatory State in Europe.' (1994) 17 *West European Politics* 77–101; *idem*, 'From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance', (1997) 17 *Journal of Public Policy* 139–167.

[24] By contrast: actor-oriented approaches to European integration often assume particular characteristics of actors which were true in a particular period of time, but not in another. This neglect of time is expressed by the emphasis on actor preferences instead of substantive policy change (*i.e.*, institution building).

[25] Stone-Sweet, *loc cit* n 13.

[26] Ferguson and Mansbach, *loc cit* n 17; Ladeur, 'Towards a Legal Theory of Supranationality: The Viability of the Network Concept,' (1997) 3 *ELJ*, 33–54.

[27] Rhodes, 'The New Governance: Governing Without Government,' (1996) 4 *Political Studies* 652–667.

[28] K. Armstrong and S. Bulmer, *The Governance of the Single European Market* (1998 Manchester University Press), at 25.

conceptual shift remains pending, governance remains a concept with a 'rigid adherence to traditional notions of the national polity'.[29] Subsequently, analyses of governance beyond the nation-state that operate with a discursively altered, yet conceptually steady, concept of governance are open to precisely those conceptual pitfalls of modernity which they seek to overcome.[30] The political scope of the discursive shift from 'government' to 'governance' therefore requires much closer perusal.

To avoid the pitfalls of the conceptually limited discursive shift towards the term 'governance', I propose to focus on the underlying practices of new governance beyond the nation-state which themselves contribute to building the resources of governance. As I seek to demonstrate, such a middle range perspective provides an avenue for assessing the process of institutionalisation which allows for a contextualised and hence historically specific assessment of the terms of governance without presupposing the final product of the process. Empirically, this type of analysis explores policy-making as a practice. The empirical part of the article highlights the citizenship debates in the EU. It reflects the conceptual problems which arise if the underlying sets of practices which contribute to the construction of meaning are neglected. By applying the methodology of 'embedded *acquis communautaire*' to study the institutionalisation of governance in the field of citizenship policy, the article shows that once the informal resources which inform processes of policy-making and which are, in turn, altered by the same process, are taken into account, the impact of citizenship policy reaches far beyond the legal provisions of the Treaty.

III   The Embedded *Acquis Communautaire*: Resources and Routinised Practices

This section seeks to point out alternative routes for approaching governance beyond the nation-state, in other words, new governance. It argues that the concept of *acquis communautaire*—or the shared legal and institutional properties of the EU—offers an invaluable access point for this enterprise. As the institution which contains the governance resources which have been created over decades of European integration, the *acquis communautaire* in fact mirrors the result of legislative, policy and political practices over time. It is crucial to note, however, that beyond its role as a legal concept, and hence a guiding set of rules for European governance at any one time—including its yardstick function for the entry of new candidates for EU membership—the *acquis* also represents the continuously changing institutional terms which result from the constructive process of 'integration through law.' This article stresses the importance of this link between the practices which underlie the ongoing process of construction and the related changes in the *acquis*. I argue that, for analytical reasons, this link is best conceptualised by distinguishing between formal resources and informal resources; both of which are influential in the construction of the *acquis*.

---

[29] Everson, *loc cit* n 12, at 17

[30] Armstrong and Bulmer's (*loc cit* n 28, at 255), distinction between '*modern* governance' and '*traditional* government' suggests that the 'modern' represents progress compared to the 'traditional.' This is particularly confusing with reference to other work on European Integration (EI) which has begun to refer to new types of governance as 'post-modern,' cf, Caporaso, 'The European Union and Forms of the State: Westphalian, Regulatory or Post-Modern?' (1996) 34 *JCMS*, 29–52; Ladeur 1997, *loc cit* n 26; Ruggie, *loc cit* n 17.

While both sets of resources are clearly not comparable on either legal or political terms, both do contribute to the substance of governance. They aid in setting 'the rules of the game' in the Euro-polity. Equally, this article proposes a new manner to conceptualise the *acquis* which allows for the acknowledgement of both types of resources. In other words, the legal body of the *acquis communautaire* is perceived of as being linked to social practices. It is therefore best conceptualised as the 'embedded *acquis communautaire*'.

The argument builds on the insight that 'routinised practices'[31] are constitutive towards the meaning of the European Union's *acquis communautaire*.[32] The argument further builds on research which has begun to consider the *acquis communautaire* to be an increasingly important and increasingly institutionalised reference point within the constitutional framework of the Treaties, as well as within political practice.[33] Indeed, the Treaty requires its addressees 'to maintain the *acquis communautaire* and build on it', so as to 'create an ever closer Union among the peoples of Europe.'[34] Accordingly, the *acquis communautaire* amounts to a key institution of governance within the Euro-polity. In its efforts to assess the resources entailed in the *acquis*, this section entails three nested steps. The first, raises the critical question of state-centred concepts and principles, *i.e.*, sovereignty, citizenship, democracy, underlying the European intergration literature on governance. The second, suggests deconstructing the concepts involved, according to their constitutive elements and sets of practices. The third, involves the analysis of policy-making as a process which includes making practices routine on the one hand, and the impact of these routinised practices on the institutionalisation of new terms of governance on the other. In a nutshell, the article demonstrates that the practice of policy-making is not only conducive towards the institutionalisation of legal provisions, but also contributes to the institutionalisation of socially constructed norms. The example of the practice of citizenship policy-making exemplifies this socially constructive understanding of the *acquis* and how it contributes to the re-configuring of the resources of the *acquis communautaire*, to the extent that it influences the substance and structure of 'thick' governance.

The *acquis communautaire* is understood as an institutional framework which is embedded in socially constructed meaning.[35] As such, it works as a prism on the substantive dimension of governance. Following this approach, the conditions and meanings of the *acquis* are not fixed, but flexible, being dependent on constitutive

---

[31] Ch. Tilly (ed), *The Formation of National States in Western Europe* (1975 Princeton University Press); Koslowski and Kratochwil, 'Understanding Change in International Politics: The Soviet Empires Demise and the International System,' (1994) 48 *International Organization*, 215–247.

[32] 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, cf, A. Michalski and H. Wallace, *The European Community: The Challenge of Enlargement* (1992 Royal Institute of International Affairs).

[33] Gialdino, 'Some Reflections on the *Acquis Communautaire*' (1995) 32 *CMLRev*, 1089–1121; Joergensen, 'The Social Construction of the *Acquis Communautaire*: A Cornerstone of the European Edifice' Paper presented at the *International Studies Association Meeting*, (1998 Minneapolis 17–21 March); Michalski and Wallace, *op cit* n 32.

[34] See Article B(5) TEU and Article A TEU, respectively.

[35] Kratochwil and Ruggie, 'International organization: A state of the art on the art of the state,' (1986) *International Organization* 40, 4; Kratochwil *loc cit* n 36; O. Young, *International Cooperation: Building Regimes for Natural Resources and the Environment* (1989 Cornell UP).

practices.[36] To date, European integration literature has not completely overlooked the impact of constitutive practices. Instead, the *acquis* has been applied in either a descriptive or a normative fashion. The descriptive use of the *acquis* is commonly applied in the event of enlargement, and more recently, in the event of 'opting-out' from the *acquis* at intergovernmental conferences (IGC). In the event of enlargement, new Member States of the EU are expected to accept the political, procedural and institutional conditions entailed in the *acquis communautaire* at the moment of accession. The 'accession' *acquis* was the oldest concept of *acquis* which 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.'[37] Yet, while constitutive incrementalism is undoubtedly a part of the *acquis communautaire*, the Maastricht Treaty nonetheless provides reason for caution, given that a 'number of protocols to the Union Treaty [. . .] damage the *acquis communautaire*'.[38] Equally, the procedure of 'opting out' is a more recent phenomenon which allows Member States to opt out of specific obligations, duties and/or entitlements of the *acquis communautaire* at the time of treaty revisions which usually occur at IGCs.

The normative application of the *acquis* has been identified as a constructive 'push factor' in constitution-making.[39] The concept of 'integration through law' for example shows how the integration process was driven by institutionalised norms and the European Court of Justice's application of these norms.[40] However, not only is the substance of the *acquis* often difficult to pin down, since it is like 'something that everybody has heard about it, but nobody knows what it looks like',[41] it is also not immediately obvious how the *acquis* came about. Why does the *acquis* entail what it does? Viewed from a historical perspective the *acquis* is an institution which forms part of an ongoing process of constructing meaning and applying knowledge. This process may be informed by past experience and future expectations based upon world views and/or ideas.[42] The *acquis* is therefore best perceived of as being embedded in structures of governance while, at the same time, contributing to its substance. This embedded structure is distinguishable according to informal resources such as shared values, ideas and world views on the one hand, and the routinisation of practices which lead to the agreement on policy objectives on the other. The *acquis*' formal resources thus depend on the preceding processes.

---

[36] Kratochwil, 'Regimes, Interpretation and the 'Science' of Politics,' (1988) 17 *Millennium*, 2, 263–284.

[37] Gialdino, *loc cit* n 32.

[38] Curtin, 'The Constitutional Structure of the Union: A Europe of Bits and Pieces,' (1993) 27 *CMLRev*, 709–739.
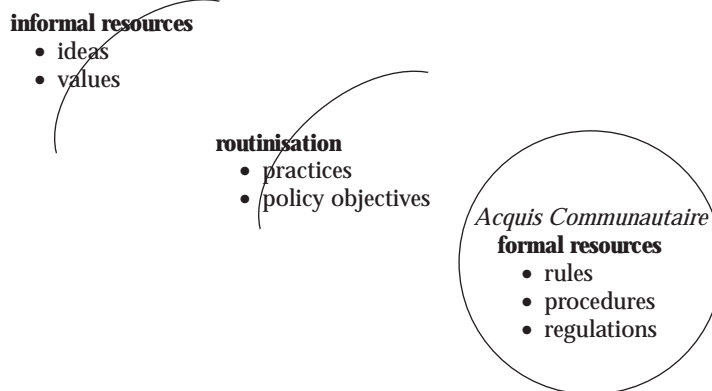
[39] Weiler, 'Journey to an unknown destination: A retrospective and prospective of the European Court of Justice in the arena of political integration,' (1993) 31 *JCMS*, 4.

[40] Weiler, 'Supranationalism revisited: a retrospective: The European Communities after 30 Years,' in W. Maihofer (ed) *Noi si mura. Selected Working Articles of the European University Institute*. (1986 Florence); E. Meehan, *Citizenship and the European Community* (1993 Sage); D. Wincott, 'The Court of Justice and the European policy process,' in Richardson (ed) *European Union. Power and Policymaking* (1996 Routledge). On the importance of regulative and constitutive norms for international regimes, cf, in particular, Kratochwil, *loc cit* n 36. For the concept of embedded *acquis communautaire*, the ECJ's informal or formal adherence to the concept of binding precedent which has a particular importance for common law legal cultures, is another dimension which requires further theoretical elaboration which would lead beyond the limits of this article, however. (I thank Jo Shaw for sharing this important observation).

[41] Michalski and Wallace, *op cit* n 32.

[42] P. Hall, *The Political Power of Economic Ideas* (1989 Princeton University Press); Jachtenfuchs, *loc cit* n. 5

Figure 1: The Embedded Acquis Communautaire

informal resources
- ideas
- values

routinisation
- practices
- policy objectives

Acquis Communautaire
formal resources
- rules
- procedures
- regulations

    In order to make these resources visible, I suggest including informal resources and the routinisation of policy in the assessment of the *acquis*. According to *Figure 1*, the *acquis* builds on informal resources such as ideas and values, routinised practices and policy objectives, as well as formal resources such as rules, regulations and procedures. Informal resources entail ideas and world views which inform debates over policy substance and agenda-setting. They may, but do not necessarily need to, become a formal resource. Indeed, more often than not, they form that part of a proposal which has been deliberated for a relatively long time. While certain aspects of such a proposal may be routinised as a policy objective through frequently discussed and rewritten proposals, they are not necessarily formalised according to a fixed mechanism, procedure or time frame. For example, the proposal to establish the right to vote for community 'foreigners,' *i.e.*, citizens of a Member State with residence in another Member State[43] had not been formalised in regulations or directives for a long time. However, the underlying ideas have continued to be a push factor for a certain form of policy over an extended period of time. During this time, the ongoing policy negotiations contributed to the routinisation of the approach to voting rights. Thus, for example, in the case of citizenship policy, the underlying idea for putting citizenship on the agenda in the early 1970s was that citizenship would lead to the creation of a 'European' identity, and the routinisation of the approach involved step-by-step policy-making, dusting off or, for that matter, revising proposals on long standing policy objectives.[44] As the following case study shows, these informal resources do influence the formal resources of the *acquis* on the one hand, and the expectations of a variety of political actors on the other.

---

[43] Crucial documents in the policy-making process which led up to drafting Article 8b EC Treaty were: the Commission's report on special rights (Bull. EC, Supplement 7, 1975); the Scelba Report of the European Parliament on the 'Granting of Special Rights to Citizens of the Community' (European Parliament 1979); the Commission's report on 'Voting Rights in Local Elections for Community Nationals' (Bull. EC, Supplement 7, 1986); Commission proposal for a council directive on the right to vote and stand for election in European and municipal elections at one's place of residence (COM(88) 371 fin.; see also: Official Journal, EC, No. C246, 20 September 1988; Commission proposals for voting rights in European Parliament elections (SEC(93) 1021 fin., 23 June 1993) and for voting rights in municipal elections (COM(94) 38, 23 February 1994.

[44] A. Wiener, *'European' Citizenship Practice: Building Institutions of a Non-State* (1998 Westview Press).

By identifying three sets of resources, this model seeks to take account of the 'unintended consequences' of a policy.[45] That is, it does not presuppose a policy process which develops on a straight line from point A (informal resource, *i.e.*, idea) to point B (formal resources, *i.e.*, treaty change). Instead, it allows for a systematised perspective on the development of the policy process by offering a way of identifying different layers and at varying speeds. While the embedded *acquis* entails both informal and formal resources, it is important to note that not all informal resources such as ideas and practices immediately form part of the *acquis*. This model suggests that they are only considered to be a part of the *acquis* once they have acquired a degree of routinisation which produces a structuring effect on the policy process. The formal resources of the *acquis* have been voted upon by the Council, but control over their enactment lies with the Court of Justice and the Commission. In turn, the informal resources are likely to be contested. They are therefore often debated in the formal and informal fora of the Euro-polity such as committees and working groups, or networks and interest groups, the particular fora depending on the policy's link with one of the three Community pillars. By debating such issues, these groups contribute to the process of contesting and possibly changing the meaning of the informal resources.

Changes in the *acquis* occur over time and are expressed in the debates which take place in between 'history-making' Council decisions.[46] The dynamic of these debates flows from the often contradictory interests between two largely differing approaches to the process of European integration. That is, the distinction between integrationists, who will mostly push for the adoption of a proposal, and intergovernmentalists who will attempt to maintain the status quo. Equally, the resources contribute crucial information for policy-makers because they may be mobilised (*i.e.*, the formal resources) or changed (*i.e.*, informal resources) once the opportunity is right. Providing opportunities and constraints, they thus 'invisibly' structure governance. It follows that a change in the *acquis* potentially involves two processes. One includes the expansion of formal resources (changes in the treaty, directives, regulations), the other encompasses a formalisation based on routinised practice or the constitutionalisation of informal resources (ideas, shared principles, practices as suggested by EP resolutions and Commission proposals or other documents). It is important to emphasise, however, that the three aspects of the *acquis* are not linked in any linear fashion. Instead, the model's attempt to encompass the constitutive nature of political conflict, is based upon the conceptualisation of the *embedded acquis* as a form of 'transmission belt' between political processes and constitution making.[47]

IV   Institutionalising New Governance: The Case of Citizenship Policy

This section provides an insight into the story of 'European' citizenship practice. To that end it disentangles the citizenship package and brings its individual parts—'special rights' and 'passport' policy—to the fore. It specifically seeks to point out the policy-makers' use of informal resources, the routinisation of practices and their

---

[45] Pierson, 'The Path to European Integration: A Historical Institutionalist Analysis,' (1996) 29 *Comparative Political Studies*, 123–163.

[46] Peterson, 'Decision-Making in the European Union: Towards a Framework of Analysis,' (1995) 2 *JEPP*, 69–93.

[47] I thank Karin Fierke for alerting me to the importance of non-linearity for this particular model of the policy process.

303

impact on the changes in the formal resources of the citizenship *acquis*.[48] The case study suggests that shared values, normative ideals and functional perspectives, were all crucial factors affecting the policy objectives which, in turn, shape the legal framework and rights, and hence impact upon everyday policy-making. Such elements changed according to four stages at four 'history-making' European Summit meetings in Paris (1974), Fontainebleau (1984), Maastricht (1991) and Amsterdam (1997).

Within European integration studies, citizenship policy has not received much attention as a practice, notwithstanding its acknowledged contribution in contexts of state-building.[49] Instead, the literature has predominantly focused upon legal assessments of Union citizenship thus correctly shedding light on the limitations of supranational citizenship.[50] In contrast, policy-oriented studies of Community citizenship have focused upon a wide variety of aspects of citizenship policy. They have explored the legal problems and political aspects—associated with legal innovations— which were most evident in the pre- and post-Maastricht debates. Thus, for example, while Union citizenship may be distinguished from national citizenship with reference to the rights it entails, the reference to rights alone does not say enough about the character of this new supranational citizenship.[51] Instead, Union citizenship bears innovative potential, not only in EU polity formation but also as a non-state model for citizenship in general.[52] How does this finding, however, relate to the problem of state-centric approaches of governance?

Critical theorists have suggested deconstructing core concepts in the modern international state system such as sovereignty and citizenship by desegregating them according to their social dimensions. This method builds on the observation that social practices are constitutive for the political meaning of such concepts.[53] In other words, if we are to establish the dynamics which characterise Union citizenship as a newly emergent type of citizenship, analyses need to allow for a manner of appreciating the historical variability of the context and contents of citizenship. Case studies then need to explore the resources of citizenship. It remains to demonstrate that normative and functional perspectives have been crucial push factors in the process of creating Union citizenship. To that end, the article deviates from the

---

[48] For the detailed case cf, Wiener, *op cit* n 44, chs 4–12.

[49] R. Bendix, *Nation building and citizenship* (1964 John Wiley); T.H. Marshall, *Citizenship and social class* (1950 CUP); B.S. Turner, 'Outline of a theory of citizenship,' (1990) *Sociology* 24, 2; Tilly, *op cit* n 31.

[50] Closa, 'Citizenship of the Union and Nationality of Member States,' (1995) 32 *CMLRev*, 487–518; Lyons, 'Citizenship in the Constitution of the European Union: Rhetoric or Reality?,' in R. Bellamy (ed), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, (1996 Avebury); O'Leary, 'The Relationship Between Community Citizenship and the Protection of Fundamental Rights in Community Law,' (1995) 32 *CMLRev*, 519–554; d' Oliveira, 'Union Citizenship: Pie in the Sky?' in, A. and E. Rosas, *A Citizens' Europe: In Search of a New Order* (1995 Sage); Weiler, 'To be a European Citizen,' (1997) 4 *European Journal of Public Policy*, 495–519.

[51] Wiener and Della Sala, 'Constitution-Making and Citizenship Practice: Bridging the Democracy Gap in the EU?,' (1997) 35 *JCMS*, 595–614.

[52] Benhabib, 'Fortress Europe or The United Colors of Benetton?' Paper presented at the *American Political Science Association Meetings* (1997 Washington D.C.); Wiener, *op cit* n 44; Shaw 'Citizenship of the Union: Towards post-national membership?' *Collected Courses of the Academy of European Law* VI, 1 (1997 Kluwer).

[53] Benhabib, *loc cit* n 52; Th. Biersteker and C. Weber (eds), *State Sovereignty as Social Construct*. (1996 Cambridge University Press).

familiar conceptual approach to citizenship based on the dualism of identity and rights,[54] and takes a broader historical perspective upon citizenship as a relational and historically contingent practice.[55]

The broader interest underlying the case study is focused on institution-building as an evolutionary and potentially contested process. Understood in a sociohistorical sense, the process of institution building encompasses the making of routine of practices, norms, rules and procedures which aid in establishing a discernible form of citizenship practice. The focus is thus upon the resources created through citizenship practice. It is important to note, however, that this focus on citizenship practice does not necessarily mean that civil society actors are involved. In fact, as historical analyses of state-building processes suggest, more often than not, it is *either* the state *or* civil society groups which dominate the conflictive process of establishing the institutional terms of citizenship, *i.e.*, citizenship practice. The concept of *embedded acquis* establishes a link between the mutually reinforcing practices of the policy process on the one hand, and institution building on the other. The constitutional role of the *acquis* thus acquires social meaning by its embeddedness in the social context. The case study illuminates this process.

Paris 1974:
During the first historical stage, the lack of a clear political conception of Community development was, according to Belgian Commissioner Etienne Davignon, a yawning gap. This was particularly problematic because the EC was required to act and speak with one voice at that relatively early stage in the development of its polity. As he explained:

> 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 international level before having completed the phase of its internal development.[56]

Institutional changes were necessary in order to provide the proper means for achieving this end. Referring to the lack of support from European citizens, Davignon used a discourse of identity, stressing belonging. He stated that:

> [p]eople should not be able to say: all we know of Europe is the VAT and the increase in the price of vegetables, but we don't feel that we belong to a new entity. *Europe should be personalised.*[57] (emphasis added)

The Belgian Foreign Minister, Van Elslande, pointed to the missing link between citizens and the Community as one reason for the crisis at this time. His discourse was also one of identity, this time emphasising access and rights. As he observed:

> [t]he priority being given to setting up the customs union, the difficulties of political union, the weariness that is caused by so many marathons and vague decisions, have gradually eroded away public opinion; the building of Europe is liable to cease being a common ideal, but rather

---

[54] Kymlicka and Norman, 'Return of the Citizen: A Survey of Recent Work on Citizenship Theory,' (1994) *Ethics*, 352–381; Y. Soysal, *The Limits of Citizenship. Migrants and Postnational Membership in France*, (1994 University of Chicago Press).

[55] Somers, 'Rights, relationality, and membership: Rethinking the making and meaning of citizenship,' (1994) *Law and Social Inquiry* 19; Tilly (ed), *Citizenship, Identity and Social History* (1995 CUP).

[56] AE, No. 713, 5 January 1973, at 7.

[57] AE, No. 713, at 3–4.

an objective sought after by those who will profit directly from it. In other words, Europe cannot be monopolised by economic and technological achievements and neglect, under penalty of losing essential support, the aspirations of its citizens.

European citizens, therefore, needed to be better linked to the project. The search was on for a policy which would aid in establishing this link by creating a sense of belonging. Van Elslande continued to stress that the Belgian presidency should aim at creating the 'first concrete stage towards establishing European citizenship.' This first stage would include mobility for students, exchanges of teachers and harmonisation 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.' His primary emphasis, however, was the crucial importance of establishing an identity-based link among citizens and the Community since, in his view '[t]hese targets cannot be set on a technical basis. The political commitment must be a real one and each citizen must be able to grasp the significance of what has been decided.'[58] Italian Commissioner Altiero Spinelli demanded that the upcoming Paris Summit focus on the central question of:

> what must be done to equip Europe at last with personality, identity, or, in short, that European Government of which it stands in need?

At this time, the normative ideal consisted of the EC's need to act and speak as one political actor on the international stage. The policy objectives of special rights and passport policy aimed at the creation of a political Union, beyond functionalist economic organisation. Citizenship practice hence consisted of promoting a 'European identity' among citizens of Member States, based on common heritage and common external action. Passport policy, special rights for citizens of Member States, and voting rights to the European Parliament were framed as aspects of citizenship-building. In the early 1970s, the formal resources of the *acquis* thus included no legal provisions in the EEC Treaty to act on political citizenship rights, though Article 235 EEC Treaty provided the possibility for constitutional change based on an IGC. At the same time, the informal citizenship resources involved the idea of a European citizenship as an identity-generating concept, and the routinised resources entailed the policy objectives of special rights and passport policy according to the conclusions of the 1974 Paris communiqué. The policy objectives of special rights were partially transformed into formal resources with the introduction of universal suffrage in European elections with the Councils decision on universal suffrage.[59] The passport policy objectives were turned into a resolution on the introduction of a common passport.[60] In the 1970s, EC policy-makers were interested in maintaining the *acquis communautaire* of the time. As some suggested, this could only be achieved on the basis of the EC improving its image in global politics, and thus presenting a united position in the face of the then global crisis. As Henry Kissinger's query in the middle of the crisis ("who speaks for Europe?")[61] made clear, the EC lacked representation on

---

[58] Europe Documents, No. 752, 17 July 1973, pp. 1–2 (speech of Foreign Minister R. van Elslande on 27 June 1972 before the House of Representatives, made at the end of Belgiums six-month rotation at the presidency of the Council of Ministers).

[59] OJ EC, No. L 278, 8 October 1977, at 1–11.

[60] OJ EC; No. C 241, 19 September 1981, p. 1 [Council Resolution of 23 June 1981].

[61] Henry Kissinger asked this question when a Danish representative of the EC spoke in the name of the Community in Washington in September 1973, cf, D. Dinan, *Ever Closer Union? An Introduction to the European Community.*(1994 Lynne Rienner), at 85.

the global stage. The discourse of the time reveals that politicians saw this void as being in part due to the lack of a European identity. While drawing on its quasi-constitution, EC politics were legally legitimised, but the EC still did not speak in one voice; its speech remained 'fairly scanty' as Davignon had rightly noted.[62]

Fontaineblau 1984:

During the second stage, the normative ideal which structured governance was the creation of an internal market without frontiers. The policy objectives of that time were the rights of free movement and voting for economically active citizens. Citizenship practice encompassed the extension of voting rights to provide belonging as a means of integrating European foreigners (Member State passport holders who were resident in another Member State). The enhanced market-oriented integration and the increasing possibilities for workers' movements had created a potentially conflictual situation. As the Commission put it:

> [T]his situation, seemingly incompatible with the idea of European Union, has given rise to two conflicting positions. [One is that] foreign residents are campaigning for voting rights in the municipality or residence since they have the same duties and obligations as national residents [. The other is that] Member States are refusing to drop nationality as the essential criterion for granting the right to vote.[63]

One way of catching up with the pace of economic integration was to redefine the right to vote to include those citizens whose status had been reduced to one of market citizen. According to the Commission, the establishment of voting rights in the country of residence was 'consistent with the logic of a People's Europe.'[64] Indeed, it reiterated that this political dimension of the debate needed to be placed in sharper focus if the tension between integration on European level and marginalisation on individual level were to be resolved. Not only democracy, but also belonging to a Community, was at stake. The Commission raised the question whether:

> [I]n a democratic society, does the fact that people are disenfranchised, even at local level, marginalise them still further when the aim should be to integrate them? Or to put it in another way, could the grant of voting rights contribute to the integration of foreigners?

The concept of community that dominated EC discourse at that time was, according to the Commission, too closely drawn from the 'purely economic [concept defined] in the Treaties.' It was therefore time to take on 'a new dimension in the context of a People's Europe [because] the concept of community which is purely economic in the Treaties, raises the question of whether or not a People's Europe necessarily involves the granting of political rights, at least at local level.'[65]

This normative perspective facilitated a fresh view of the factual exclusion—instead of integration—of mobile (border crossing) Community citizens from enjoying political rights in their communities of residence. The Council had been wary to address this question, stressing that the granting of special rights 'posed a number of

---

[62] The full citation reads, 'I have at times compared Europe with Tarzan. It has a relatively advanced morphology but its speech is still fairly scanty,' cf, AE, No. 713, 5 January 1973, at 7 (interview in *La Libre Belgique*,' 28 December 1972).

[63] Bull. EC Supplement 7, 1986, at 6

[64] Bull. EC, Supplement 7, 1986, at 5.

[65] Bull. EC, Supplement 7, 1986, at 7.

legal, political and social problems', and hence, from the point of view of the Council, special rights could only be achieved through a 'gradual approach [. . .] starting with those rights which posed the least problems'.[66] As problems existed in abundance, it had practically declared the topic of voting rights a taboo, the matter had been abandoned and not been discussed by the Council since 1979.[67]

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 because it linked normative values to the politics of market-making. The discourse thus highlighted two different expressions of belonging in particular. The first type indicates belonging to a specific community within a bounded territory. It is defined by political citizenship rights and access to political participation. It hence defines the legal relation between the individual and a political community. This type of discourse on belonging, had been invoked by the Commission's report on the right to vote. The second type of belonging is subtler. It builds on subjective feelings of inclusion and exclusion which are based on the perception of participation. Experience and expectation hence have a strong input on perceived belonging. It may, for example, be based on access to social rights, *i.e.*, participation in the social space of a community.

The tension which arises from this sort of belonging by means of social policy or, for that matter, market involvement, is based on the partial disclosure of one type of rights (*i.e.*, social rights) and the ongoing closure of other rights (*i.e.*, political rights).[68] The Commission's proposal on local voting rights for 'foreigners' contributed to a newly invoked discourse on democracy as one resource in the development of citizenship. Crucial for this period, and for growing political tensions later on in the process, was the decision to pursue the realisation of the four freedoms stipulated by the Treaty of Rome (EEC Treaty)—free movement of goods, services, capital and persons—outside the Community's policy framework. While this decision emerged first as a Franco-German agreement on the abolition of border controls on Franco-German borders in 1984, it soon turned into the Schengen Agreement on the Abolition of Border Controls among five signatory states in 1985.[69]

Maastricht 1991:
During the preparations for the treaty revisions at the European Council at Maastricht, a sudden shift occurred from what may overall be considered a balanced continuity of market-making towards the management of political turbulence. Not the

---

[66] As v. Dohnanyi, President-in-Office of the Council, had stressed at the Florence Round Table in 1978 (European Parliament 1979)

[67] Bull. EC, Supplement 7, 1986, at 11–12.

[68] W.R., Brubaker, *Citizenship and Nationhood in France and Germany* (1992 Harvard University Press); Linklater, 'Citizenship and Sovereignty in the Post-Westphalian State' (1996) 2 *European Journal of International Relations* 77–103; a. Linklater, *The Transformation of Political Community*, (1998 University of South Carolina Press).

[69] After often heated debates among the involved politicians, the Schengen Agreement came to be considered the 'out-of-community' approach to back a step-by-step realisation of the four freedoms, when harmonisation seemed impossible to achieve: Wiener, *op cit* n 44; Gehring, 'Organizing the Free Movement of People and Controlling its Adverse Effects,' Ms Firenze/Berlin; Weber-Panariello, 'The Integration of Matters of Justice and Home Affairs into Title IV of the Treaty of European Union. A Step Towards Democracy?' *EUI Working Paper RSC* 95.

least amongst these new shifts was the sudden change in the Community's geopolitical position.[70] Dinan notes one aspect of this change, when he writes '[f]rom the outset, the Community had considered itself as synonymous with 'Europe.' With the Cold War over, could the Community foster a sense of pan-European solidarity and genuinely pan-European integration?'[71] While 'European' identity, as then applied, meant western Europeans (including the potential western European citizens of new Member States), the fall of the Berlin Wall now challenged the use of that term. Some Europeans had been left out all along, as non-Community nationals had been excluded from the special-rights policy for years.[72] This fact became much more obvious in the border debates which dominated passport policy in the 1990s.[73]

The overall reaction of European politicians at the time was an attempt to strengthen political union.[74] For example, the Martin report which had been adopted by the European Parliament on 27 February 1990 emphasised the urgent need to transform the EC into a federalised European union.[75] It was followed by a Belgian memorandum drawn up to 'suggest that the European Community be given a new stimulus towards political union'[76] and singled out two major tasks on the Community's political agenda. The first was to clarify the 'Community's political purpose' in the light of the international political transformation and the second was to deal with the 'growing democratic deficit' that had developed along with the growth of the single market. Similar to the Martin report, the Belgian document stressed the necessity of including provisions that created a stronger link between the Community and its citizens, for example, on the basis of a uniform electoral procedure and the right for Community citizens to vote in local elections.[77] Shortly afterwards, Chancellor Kohl and President Mitterrand addressed the now famous letter of 19 April 1990 to the Irish Council presidency,[78] wherein they stressed that the political situation required a second conference on political union.

In sum, the third stage led to a shift of the normative ideal underlying EU governance towards legitimacy and democracy as challenged principles in a multi-level polity. The policy objectives attached to these ideals focused once again on political union, responding to challenges of democratic deficit and citizens' expectations raised

---

[70] Bolten, 'From Schengen to Dublin: The new frontiers of refugee law,' in, J.D.M. Steenbergen, *Schengen: Internationalisation of central chapters of the law on aliens, refugees, privacy, security and the police*, (1992 Stichting NJCM); S. Garcia (ed) *Europe's Fragmented Identities and the Frontiers of Citizenship* (1993 Royal Institute of International Affairs).

[71] Dinan, *op cit* n 61, at 158.

[72] Hoogenboom, 'Free Movement of Non-EC Nationals, Schengen and Beyond,' in J.D.M. Steenbergen (ed), *op cit* n 70.

[73] One possible result of the inclusion/exclusion mechanism this process brought forth was seen in a new economic divide between Western and Eastern Europe, cf, Saryusz-Wolski, 'The Reintegration of the 'Old Continent': Avoiding the Costs of Half-Europe,' in S. Bulmer and A. Scott (eds), *Economic and Political Integration in Europe: Internal Dynamics and Global Context* (1994 Blackwells), at 19.

[74] Some European politicians saw the beginning of a new era in politics. For example, the Italian government which was to assume the presidency of the Community Council from July 1st to December 31st 1990, stated that the external political changes led to the 'opening up [of] a constituent era of international relations in our Continent.' Europe Documents, No. 1611, 10 April 1990, at 1.

[75] PE 137. 068/fin., 27 February 1990, at 6.

[76] This Belgian memorandum was the first formal proposal towards political union, Dinan, *op cit* n 61, at 164.

[77] Permanent Representation of Belgium, (1990); see also: SI(90) 232, 26 March 1990.

[78] Indeed, the letter was termed a 'landmark in the history of EPU' which 'was rightly credited for getting the negotiations going,' Dinan, *op cit* n 61, at 165.

---

by talk of Union citizenship. At this time citizenship practice had led to the establishment of formal political ties between Union citizens and the Union on the basis of Union Citizenship. This dramatic change in the formal resources of the citizenship's *acquis communautaire* meant two things. On the one hand, it clearly turned third country nationals into second-class citizens. On the other hand, it established a new visible link between Union citizens and the Euro-polity. Both were decisive for motivating and informing post-Maastricht citizenship mobilisation.

The informal resources and the routinised practices of the citizenship *acquis* are thus driven by a the double-layered framework of economy and politics. They involve policy objectives which aim at the successful realisation of the internal market on the one hand, and questions of democratic participation on the other. Moving across borders to work and live in a different country has proven to be the cause of political tension. While residents in one municipality may share economic, social and cultural activities, they are divided over rights to political participation. It is not surprising then, that studies of European citizenship show that the practice of citizenship in the EU is *fragmented*: Union citizens may sometimes vote and stand for election, pay national health insurance, collect pay checks and receive social benefits in a municipality of one Member State while they vote and stand for regional and national elections, pay income tax in and have the nationality of another Member State. The outcome of this process was the much criticised institutionalisation of 'thin' citizenship, albeit on the basis of institutionalised fragmentation of citizenship.

Amsterdam 1997:
The fourth stage shows a growing mobilisation around and a rising confusion over the consequences of this fragmentation. It provides an insight into citizens' claims towards the Amsterdam IGC, stating the peculiar contradiction between citizens' expectations of the Euro-polity as a responsible governing body for their claims on the one hand, and the limited mandate of the Amsterdam intergovernmental conference on the other. The European Parliament had, for example, organised hearings in Brussels during which Non-governmental Organisations (NGOs) could forward their demands to the IGC. While NGO's were not formally entitled to participate in the IGC process, and there were no formally established democratic channels for participation, these hearings nevertheless provided space for discursive input.[79] Post-Maastricht, a new debate—promoted by interest groups and the European Parliament—unfolded over the gap among politically included and excluded residents: that is, on the one hand, citizens who had legal ties with the Union, and on the other, so-called 'third country citizens,' or individuals who did not possess legal ties with the union but might have developed a feeling of belonging.

For the emergent new dynamic in the debate over third-country nationals, it is important to recall that with the fall of the Berlin Wall, the Community faced 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 re-negotiations. One proposition to solve this potential political problem was the establishment of place-oriented citizenship. This demand was brought into the debate by the European Parliament (Outrive Report, Imbeni Report). It was enforced by advocacy groups' demands for a change in the citizenship legislation of the Treaty. For example, instead of granting citizenship of the Union to '[e]very

---

[79] Hearings organised by the European Parliament, *loc cit* n 18.

person holding the nationality of a Member State' (Article 8 (1)), the ARNE 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.'[80]

The Amsterdam Draft Treaty of 19 June 1997 did, however, not reflect these demands. (*Figure 2* shows the accumulated informal resources, routinised practices and formal resources now part of the embedded *acquis.*) On the contrary, the nationality component within citizenship was reinforced with the changed Article F(4) TEU which states that the national identities of the Member States will be respected. The potential flexibility of the citizenship article (8 EC Treaty) has not been used by the practitioners. While the formal institutional aspects of the citizenship *acquis* thus largely remained the same, the Amsterdam stage of citizenship practice produced more changes with regard to the routinisation of informal resources as Brussels institutions began to work with national representations, national parliaments and NGOs began to address the citizens' demands in order to fight the rising discontent which had begun to replace the 'permissive consensus' of earlier decades. Campaigns like 'Citizens First' which have been initiated by the EP and transferred by the Commission to the Member States in order to bring Europe closer to the citizens, are examples of such reactions. The citizens' mistrust is not only a reaction to the distance between Brussels and the citizen, it also reflects a new way of practising citizenship. The Second Report from the Commission on Citizenship of the Union sheds light on this new model of fragmented citizenship. It states that

> 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.[81]

While early 'European' citizenship policy did not seek to produce this institutional setting, the events of the 1990s brought an institutional fragmentation to the fore which yet remains to be matched by day-to-day experiences on the ground. The EU's new decentralised institutional framework thus aids in intensifying the already 'challenged confidence in the progressive and unifying force of democratic politics and value'.[82] Indeed, Union citizenship contributes to the process of dissolving centred (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.'[83] The expectations of citizenship have now been raised, the genie is out of the bottle and the EU institutions are feeling the pressure to act. Thus, for example, the Commission's second report on citizenship states:

---

[80] ARNE (Anti-racist Network For Equality in Europe). *Modifications to the Maastricht Treaty in Sight of the 1996 Inter-Governmental Conference*, Ms, Rome, 14–15 July 1995, at 4.

[81] COM(97) 230 final, Brussels 27.05.1997, at 6.

[82] Saryusz-Wolski, *loc cit* n 44, at 273 (updated); Salter, 'Habermas's New Contribution to Legal Scholarship,' (1997) *Journal of Law and Society* 24.

[83] COM(97) 230 final, Brussels 27.05.1997, at 6.

Figure 2: The Embedded Citizenship Acquis after Amsterdam[84]

Informal resources⇒	Routinised practices⇒	Formal resources
Idea	*Policy objectives*	*Institutional framework*
• EU citizenship as identity-generating	• special rights (move, work, vote) • passport union	• Articles 17–22 Amsterdam Treaty (8 TEU) • municipal and European voting rights; diplomatic protection
Idea	*Policy practice*	
• belonging created through day to day involvement in Community affairs	• step-by-step • stage-by-stage • area-oriented	
Value	*Council decision*	
• democracy • solidarity	• uniform passport • residence for workers	• directives on the right to residence for: insured and non-welfare dependent persons; employees and self-employed persons who have ceased their occupational activity
Shared goal	*Citizenship practice*	
• further integration towards political union • Europe 92	• participation in day-to-day Community matters (elections, work, economy) • group by group integration (workers, academics, young people) • interest group mobilisation	(Article 39 Amsterdam treaty (48 EC): free movement of workers • Principle 3c Amsterdam treaty: abolition of obstacles to free movement of goods, persons, services • Article 12 Amsterdam Treaty (5 EC): no discrimination on grounds of nationality • Article 14 Amsterdam Treaty (8a EC); area without internal frontiers. • Article 141 Amsterdam Treaty (119EC) equal pay
Shared concerns	*New approach*	
• democracy deficit • transparency deficit • legitimacy deficit	• communitarisation of Schengen and Third pillar issues	

[84] Source, Wiener, *op cit*, n at 273 (updated).

[P]enalty for failure [to apply citizens' rights in practice, A.W.] is that citizenship of the Union may appear to be a distant concept for citizens engendering confusion as to its means and objectives even fuelling anti-EU feelings.[85]

To summarise, the case study depicted developing 'European' citizenship practice as the source of the routinising and institutionalising of the Euro-specific terms of citizenship. This began in the early 1970s, when practitioners discussed the identity-generating capacity of citizenship. This notion was derived from the modern concept of citizenship, but subsequently lost importance in relation to other elements within the development of citizenship policy. Two decades later, the breadth of Union citizenship appears as a pale reflection of a once powerful idea now diminished to a set of minimal political rights. And yet, a shared perception identifies Union citizenship as a 'developing concept.'[86] This expression indicates an assumption which is shared by a considerable variety of actors, governors and governed alike, such as non-governmental organisations, interest groups and social movements; namely, Union citizenship as stipulated by Article 8 TEU at Maastricht was not the end of the story. The demands, requests and policy proposals forwarded post-Maastricht suggest two things: first, they clearly demonstrate the intention to mobilise towards a change in the existing citizenship articles; for example, towards further 'place-oriented' citizenship rights.[87] Secondly, these groups' demands provide an insight as to whom citizen's claims are addressed; namely, not to national parliaments, but to the IGC which was to prepare the upcoming constitutional revision at Amsterdam. However, while citizenship practice thus enabled inclusion based on new institutions and, belatedly, new supranational practices, it also generated political tension. The normative demand for equal access to democratic participation based on the right to vote, clearly brought the problem of inclusion and exclusion among Member State nationals and 'other' European residents, namely the so-called third country nationals to the fore.

While top-down citizenship practice (*i.e.*, Bismarckian style policy-making) now has a history in the EU, bottom-up mobilisation (*i.e.*, social forces' struggle) has remained relatively scarce.[88] It was not until after the stipulation of Union citizenship in the Maastricht Treaty 1991 that a range of societal groups began to address institutions of the Euro-polity, and the IGC in particular, with claims for improved citizenship rights. The mobilisation of hundreds of non-governmental organisations and lobby groups in the years between Maastricht and Amsterdam has introduced a shift in citizenship practice from policy to politics. The stipulation of political citizenship rights on European level fits well with a globally ongoing process of decoupling nationality and citizenship. However, this article has emphasised that the significance of this shift lies in the 'how' of citizenship practice as constitutive for polity formation by focusing on

---

[85] *Ibid.*

[86] The term 'developing concept' is used by the European Commission, cf, European Commission, 'Report on the Operation of the Treaty on European Union,' Brussels, 10th May 1995, SEC(95) final, at 7; as well as by the European Parliament, Task-Force on the Intergovernmental Conference, No. 10, 'Briefing on European Citizenship'; PE 165.793, Luxembourg, 15 January 1996, at 5.

[87] Similar demands have been forwarded by the Euro Citizen Action Service (ECAS) ('Revision of part two of the Treaty' (draft 15/03/96), p. 1) The notion of a place-oriented conceptual approach to citizenship has been discussed by Jane Jenson within the Canadian context. Jenson calls that approach 'place-sensitive,' Jenson, 'Citizenship and Equity. Variations Across Time and Space,' in J. Hiebert (ed), *Political Ethics: A Canadian Perspective* (1992 Dundurn Press).

[88] For the distinction of different politics towards the implementation of citizenship, cf, Turner, 'Outline of a Theory of Citizenship' (1990) 24 *Sociology* 189–217.

new institutions and on changes in the way of making claims. Both bear potential for substantial changes of governance.

The post-Maastricht mobilisation potentially has two implications: one is a rethinking of citizenship, the other is the changing structure and substance of governance beyond the nation-state. This article has focused primarily on the latter. The argument built on the EU's use of a citizenship as a concept which is, on the one hand, intrinsically and crucially linked with the political project of state-building,[89] and which has been highly contested in theory and practice on the other. The fact that the EU is not a state thus pushes the conceptual contestation of citizenship even further. As this article has sought to demonstrate, the practitioners' application of the modern concept of citizenship as identity-generating by defining who is in and who is out, and the gradual emergence of a post-modern fragmented citizenship practice including various groups of citizens—instead of an either universally or pre-politically defined community as the respective liberal and communitarian approaches contend—have highlighted two substantial elements of governance. First, the case has further contested the meaning of citizenship. Second, and more specifically, based on the concept of embedded *acquis*, the case study has identified new resources, and routinised practices and institutions. This article has by no means sought to provide a comprehensive analysis, but introduced a way of tackling new dimensions of governance. The thrust of the argument is intended to take the discussion about governance in the Euro-polity further by bringing in constructive and historical perspectives on routinised practices and the interrelated institutionalised terms of governance.[90]

Suma sumarum: the post-Maastricht situation seems to be the consequence of sets of practices which deviate from the familiar routines of citizenship practice under national governance. Crossing the borders of one nation-state to work and settle in another—and keeping certain of the first state's citizenship rights while also acquiring politically-limited new rights in the other—has created confusion. The changes have an effect on governed and governors alike. Where to direct political claims? How to decide about rights, for whom and based on which principles? The case demonstrates the link between citizen mobilisation over claims and changing patterns of citizenship practice. It shows that citizenship practice has entered a new cycle characterised by a change in style, strategy and content of citizenship practice.

Conclusion

The article has pointed to the link between changes of the *acquis communautaire* which were caused by the practice of policy-making and substantive transformations of governance. I have argued that these entail information about the normative principles, shared practices, and rules which contribute to 'thick' governance in the Euro-polity. The transmission belt on which this link builds is the embedded *acquis communautaire*. That is, while the core of the *acquis* is formed by formal resources such as legal procedures, treaty provisions and directives, which are not independent

---

[89] R. Grawert, *Staat und Staatsangehoerigkeit* (1973 Duncker & Humblot);. Jenson, loc cit n 88; Held, 'Between State and Civil Society: Citizenship' in, G. Andrews (ed) *Citizenship* (1991 Lawrence & Wishart); Tilly, *op cit* n 31; Turner, 'Outline of a Theory of Citizenship' (1990) 24 *Sociology* 189–217.

[90] This intention was specifically spurred by Hix's recent efforts to identify 'rival approaches' to governance in European integration approaches, 'The Study of the European Union II: The 'New Governance' Agenda and Its Rival.' (1998) 5 *JEPP*, 38–65.

from previously established informal resources such as shared values and norms on the one hand, and routinised practices and policy objectives on the other. By showing both phenomena as linked to and constructive of the substance and structure of governance, this article has not considered governance to be a simple pattern of rule within the Euro-polity, but has instead stressed the importance of the social construction of sets of practices in constituting the leading concepts and principles of governance.

Based on the threefold set of resources—informal, routinised, and formal—the case study has sought to assess the apparent gap between the idea of citizenship as an identity-generating policy innovation, and the minimalist version of Union citizenship stipulated by the Maastricht Treaty. Indeed, the resources actually fill the gap. Instead of a skeleton of formal political rights, the case study on the practice of citizenship policy has shed light on the creation of a broad range of informal resources and routinised practices which provide the framework for interest group mobilisation in the 1990s. In examining the policy process as it unfolded step by step, it offers an insight into the policy practices including the discussion of ideas, the defining of policy objectives, strategies, procedures and eventually the institutionalisation of routinised new practices of governance, shaping a new model of citizenship which is specific to the Euro-polity in the process. The preparatory stage of the Amsterdam IGC was particularly interesting in this process because the conflictual discussions preceding the summit established a new political aspect of governance in the Euro-polity.

The case study suggests that post-Maastricht, the Euro-polity has entered into a new stage of polity formation beyond the nation-state. Citizen mobilisation showed how the informal resources of the citizenship *acquis*, such as shared values and norms (equal access to political participation), were mobilised by interest groups to enforce their demands. Further, the peculiar mix of fragmented institutionalisation of and mobilisation over the resources of the citizenship *acquis*, implies that the modern concept of citizenship will lose political clout and meaning. Once perceived of as a unifying concept which set the borders of order and defined who was inside or outside a political community, the concept now stretches across borders. While new forms of citizenship practice contribute to a rethinking of citizenship towards what might turn out to be a post-national political theory of citizenship,[91] for EU governance these new forms of citizenship practice mean a shift of focus with regard to political authority. This shift has sparked conflict, and has opened up a window to import the political into negotiations over the conditions of EU governance.

---

[91] Shaw, 'Constitutional Settlements and the Citizen After Amsterdam,' in K. Neunreither and A. Wiener (eds), *Institutional Dynamics and Prospects for Democracy* (1999 OUP).