

## European Union citizenship in retrospect and prospect

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‘Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.’ Thus declares the treaty signed in Maastricht, the Netherlands, on 7 February 1992 by the then twelve member states of the European Community, which became the European Union upon the treaty’s entry into force on 1 November 1993. The Maastricht Treaty’s formal insertion of citizenship into the legal documents governing the institutions of European integration consolidated decades of legal and political development leading to a common citizenship status for citizens of EU member states. Facing opposition in some member states, however, the negotiators of the next treaty, the Amsterdam Treaty, added the qualifier that ‘Citizenship of the Union shall complement and not replace national citizenship’. This chapter explains the evolution of European citizenship, from its genesis in the aftermath of World War II to the present. Rather than an easy and linear development, EU citizenship’s growth mirrors the vicissitudes of the integration project more broadly. Focusing on the contested nature of the supranational or, perhaps more accurately, transnational (Olsen, 2012) rights embodied in the concept of a common citizenship for all Europeans, the chapter closes by examining its future prospects.

In the context of the global focus of this *Handbook*, it should be emphasized that no other continent has anything even remotely resembling a continental citizenship: the very limited additional rights that citizens of the United States, Canada, and Mexico have as a result of the North American Free Trade Agreement (NAFTA) or those granted to citizens of member states of Mercosur or the African Union, for example, pale in comparison with the extensive equality promised by a European Union citizenship that removes EU member governments’ authority to privilege their own citizens over those from other EU member states. Though substantively focused on the right to live and work anywhere in the EU, and remaining dependent on the nationality of the member states, EU citizenship has come to resemble a form of multilevel or federal citizenship (Maas, 2013a), with a scope and scale which exists on no other continent. This distinctiveness reflects the ‘unique experiment’ (Kostakopoulou, 2007) of creating a supra-national political community on a continental scale. All political communities face the tension between the promise of citizenship to deliver equality and the particularistic drive to maintain diversity; Europe is an exciting case of common citizenship superseding old divisions (Maas, 2013b).

The idea of a common European citizenship has many precursors but received strong impetus from the antipathy to nationalism provoked by World War II. In Italy in 1943, for example, the Movimento Federalista Europeo promoted creating a European ‘continental’ citizenship alongside national citizenship, consisting of direct political and legal relationships with a European federation; it advocated the legal equality of the citizens of all European states and the ‘option to take out European citizenship in addition to national citizenship’ (Maas, 2005, p. 1012). Similarly, the Dutch ‘European Action’ group called for a European citizenship to supplement national citizenship, and the 1948 Hague Congress – presided over by Winston Churchill and gathering some 750 delegates from across the political spectrum including Churchill, three former French prime ministers, François Mitterrand, Konrad Adenauer, Harold Macmillan, Altiero Spinelli and his wife Ursula Hirschmann, Walter Hallstein, Salvador de Madariaga, Raymond Aron, and other political leaders, professors, businesspeople, religious leaders, journalists and others – resolved that an essential ingredient of European union was direct access for citizens to redress before a European court of any violation of their rights under a common charter (*ibid.*).

Capturing the supranationalist spirit in a speech preceding the Congress, Churchill said:

We hope to reach again a Europe ... in which men will be proud to say ‘I am a European’. We hope to see a Europe where men of every country will think as much of being a European as of belonging to their native land. And wherever they go in this wide domain they will truly feel ‘Here I am at home’.

(*Maas, 2007, p. 12*)

The following year he called for ‘a sense of enlarged patriotism and common citizenship’ (Maas, 2007, p. 12). The Hague Congress also proposed ‘a European passport, to supersede national passports and to bear the title “European” for use by the owner when travelling to other continents’. This type of thinking persisted in subsequent years, as the Hague Congress led to the founding of the European Movement, the College of Europe, and institutions established by the European Coal and Steel Community treaty (Treaty of Paris) and the European Economic Community treaty (Treaty of Rome). Europe’s political leaders arguably viewed the common market and other forms of economic integration as simply interim measures towards a genuine European political community with a common citizenship:

Full well did they measure the importance of the economic transformations they had just decided, but in their minds, those transformations, for all their greatness, were merely accessory to, or, at the very least, the first stage of a yet greater political revolution.

(*Belgian prime minister Paul-Henri Spaak, cited in Maas, 2007, p. 9*)

On 9 May 1950 – the tenth anniversary of the German invasion of France, the Netherlands, Belgium, and Luxembourg – French foreign minister Robert Schuman announced plans for a European coal and steel community. Representatives from France, Germany, Italy, and the Benelux countries negotiated rapidly. British representatives observed the proceedings, but the UK ultimately decided not to participate. Potential treaty provisions were discussed during the summer and autumn, and a draft treaty was ready by December. After final negotiations, the treaty establishing the ECSC was signed in Paris on 18 April 1951, entering into force on 25 July 1952. The Paris Treaty established freedom of movement for workers in the coal and steel industries, which was later heralded as the first steps towards a common citizenship. For example, the Italian Commissioner Lionello Levi Sandri later said: ‘Free movement of workers is the

first aspect of a European citizenship. All citizens of our member states are equal in each of our member states' (Maas, 2007, p. 21). Despite the rhetoric, free movement for workers was implemented only sluggishly, proving a constant irritant particularly for political leaders from Italy, which had insisted on including free movement in the treaty (Maas, 2005). Delayed introduction of free movement provoked such ire that it was the *only* policy issue included in the proposals for revising the ECSC treaty in light of the negotiations that would result in the Treaty of Rome (signed 25 March 1957; entry into force 1 January 1958) establishing the European Economic Community.

Having experienced the delays caused by leaving member states responsible for drafting and implementing free movement, proponents of free movement and European citizenship ensured that the Treaty of Rome set firm deadlines and empowered the European Commission, a newly created supranational civil service, to enforce them. It also recast employment provisions as individual rights and established the principle of non-discrimination between citizens of member states: 'determined to establish the foundations of an ever closer union among the European peoples' and having 'decided to ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,' the original six member states (France, West Germany, Italy, the Netherlands, Belgium, and Luxembourg) promised to abolish obstacles to the free movement of persons, services, capital, and goods and to prohibit 'any discrimination on the grounds of nationality'.

The next quarter-century can be summarized as the gradual implementation of these principles, promoted not only by the European Commission and Parliament but also by the European Court established in Luxembourg. On the basis of the treaties and the dual principles it established of the supremacy of European law over member state law and of direct effect (meaning not only states but also individual citizens could use European law), the Court helped transform the European Economic Community into an area of freedom and mobility for European workers and their families, professionals, service providers, and ultimately all other citizens (Maas, 2007). As European Commissioner – and later Commission Vice-President – Viscount Étienne Davignon noted in 1979, 'the status of "Community citizen" [was] officially recognized from the moment when the Treaties granted rights to individuals and the opportunity of enforcing them by recourse to a national or Community court' (Maas, 2007, p. 4).

The transformation of free movement rights from being defined and promoted in economic terms to being placed at the core of a new European citizenship was gradual. Free movement rights for workers were first justified in terms of enabling the free movement of labour and then as a measure to complete the single market. But they were extended and expanded even after worker movement sufficient to support the common market had been achieved. This broadening of individual rights coincided with the introduction of EU citizenship, which took many decades to reach fruition – from discussions during and after WWII to the Maastricht Treaty. Despite substantial support in the 1970s for introducing European citizenship, the Community's first enlargement (the UK, Ireland, and Denmark in 1973) stymied the process, leading to gridlock in the Council. But the two subsequent enlargements (Greece in 1981 and Spain and Portugal in 1986) reinvigorated it. The eventual adoption of EU citizenship resulted not from Commission pressure but rather from bargaining among member states – including the three new Mediterranean members – and between member states and the European Parliament. With the Single European Act (SEA) in 1987, Parliament had gained the power of co-decision, which helps explain why the member states could afford to ignore Parliament's citizenship proposals before the SEA but accepted them in the discussions preceding Maastricht.

The European Parliament had made several recommendations concerning citizenship in its 1984 Draft Treaty establishing the European Union (DTEU), largely the work of Altiero Spinelli. The DTEU announced that

citizens of the Member States shall *ipso facto* be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a Member State; it may not be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by the Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws.

While only Belgium and Italy called for the DTEU to be ratified, there was widespread interest in European citizenship among other European leaders. The June 1984 Fontainebleau European Council established two ad hoc committees, placing European Union ('Institutional Affairs') and citizenship ('People's Europe') on the agenda. The Fontainebleau presidency conclusions specified that the Community should 'respond to the expectations of the people of Europe by adopting measures to strengthen and promote its identity and its image both for its citizens and for the rest of the world' – significant because it referred to a single people (instead of multiple peoples) of Europe and to the Community's citizens (rather than those of the member states).

In January 1985, the first European-format passports were issued, and a new Commission led by former French finance minister Jacques Delors took office. Delors was a dynamic leader and the Commission immediately launched an ambitious project to revitalize integration. That March, the Institutional Affairs committee called for a homogeneous internal market, replacing unanimous voting with qualified majority voting in the Council, and greater powers for the Commission and Parliament. Not all member states supported these ambitious aims. The UK, Denmark, and Greece disagreed with the report's central recommendation: that the member states should negotiate a treaty on European union based on the DTEU. The accession treaties of Spain and Portugal, which would come into effect on 1 January 1986, were signed in June, two days before the Commission issued a White Paper on Completing the Internal Market. It devoted a section to free movement, subtitled 'A new initiative in favour of Community citizens', arguing that it was 'crucial that the obstacles which still exist within the Community to free movement for the self-employed and employees be removed by 1992'. Citing the preliminary findings of the People's Europe report, it continued that 'measures to ensure the free movement of individuals must not be restricted to the workforce only'. The White Paper's aim of ensuring free movement for all individuals, regardless of their position in the economy, would form the core of European citizenship.

On the same day as the White Paper appeared, representatives of West Germany, France, the Netherlands, Belgium, and Luxembourg, signed an agreement to eliminate border controls; the ceremony took place near the Luxembourg town of Schengen on a ship in the river, where the borders of Luxembourg, France, and Germany meet. Faced with resistance on the part of three newer member states (Denmark, the UK, and Greece), five of the original six member states nevertheless pushed ahead with plans to eliminate border controls. Italy was not invited to join Schengen because of inadequate policing along its coastline, while Ireland preferred to stay in the Common Travel Area that it shared with the UK. Luxembourg's minister of foreign affairs called the Schengen agreement 'a major step forward on the road toward European unity', directly benefiting signatory state citizens and 'moving them a step closer to what is sometimes referred to as 'European citizenship' (cited in Maas, 2007, p. 37).

The People's Europe committee submitted its final report six days later, recommending the right to vote in local elections, fostering student mobility, a common policy on third-country

nationals, and the mutual recognition of qualifications for professionals. Stressing the value of symbols, the committee proposed a European flag and the adoption of the Ode to Joy from Beethoven's ninth symphony as a European anthem. It also proposed a general right of residence for all Community citizens, the creation of a European Ombudsman, consular assistance outside the Community, and the recognition of voting rights in local and European elections – proposals that would later be enacted almost verbatim in the Maastricht Treaty.

The impetus for enacting these changes, however, had to come from national political leaders, who met the following week at the Milan meeting of the European Council (28–29 June 1985). Given their opposition, it was unclear whether the UK, Denmark, and Greece would participate in an intergovernmental conference that would result in a new treaty. The deadlock at Milan was broken by the unprecedented action of calling a vote: the proposal to convene a conference was adopted seven to three and the incoming Luxembourg presidency duly proposed revising the treaty on the basis of the Institutional Affairs and People's Europe reports and the Commission's proposals on the free movement of persons.

The final decisions on the text that would become the Single European Act (SEA) were left to the Luxembourg meetings of December 1985, where the internal market was the dominant issue. The European Parliament called for specific deadlines for free movement: the treaties of Paris and Rome had prioritized the free movement of goods over that of persons, but Parliament gave equal importance to goods and persons (a proposed implementation deadline of two years), ahead of services (five years) and capital (ten years). Meanwhile, the Commission proposed a single deadline of 31 December 1992 for establishing an area without borders, in which persons, goods, services, and capital would move freely. The Commission further proposed that free movement questions should be decided by qualified majority voting, not unanimity, and that the Commission's implemented measures should be adopted unless the Council unanimously adopted its own ones. But the member states wished to retain their veto powers over free movement and also failed to agree on Denmark's proposals for voting rights for EC citizens. In the final stages of negotiations, despite extensive parliamentary lobbying, the DTEU's citizenship proposals and the idea of including a treaty article on fundamental rights were scuttled. The member states agreed only to mention in the treaty's preamble the promotion of democracy, human rights, and the European Social Charter, so that citizenship rights were excluded from the Court's competence. Though the SEA turned into law much of the Commission's 1985 White Paper, European citizenship policies had proceeded far enough for some member states.

Despite the SEA's preference for the internal market rather than citizenship, the Commission undertook a series of initiatives to facilitate mobility and add a social dimension to integration. Priorities included mutual recognition of academic and professional qualifications and removing discriminatory practices as ways to improve free movement. It also advocated promoting social cohesion through anti-poverty programmes and reforming the structural funds, intended to reduce socio-economic disparities among the member states. Other priorities were employment and retraining programmes, improving living and working conditions through occupational health and safety measures, standardized contracts, and rights for part-time and temporary workers. British Prime Minister Margaret Thatcher asserted that these proposals would introduce 'socialism by the back door'. Despite her opposition, the other member states doubled the structural funds to one-quarter of the Community's budget and they became an increasingly important means of redistributing resources, adding to a sense of common purpose and the view that Community membership implied a commitment to advancing common rights. The growing sense of common purpose also motivated action on student mobility. In 1987, the Council enacted the European Community Action Scheme for the Mobility of University Students, better known under the acronym Erasmus, fostering student exchanges and mobility within

Europe by funding study elsewhere in Europe. Erasmus and a parallel programme entitled *Lingua* (expanded foreign language training in primary and secondary schools) would become key means of fostering a sense of European identity, thus helping to promote and entrench the shift from market rights to individual rights and common citizenship (Maas 2007, §5.4).

The end of Communism and the projected reunification of Germany provoked intense efforts to advance European integration, ultimately resulting in the Maastricht Treaty. Proposals to expand the focus of the treaty discussions beyond economic affairs to include a political component quickly gained support from the Delors Commission and several member states. Proponents of adding political elements to European integration advocated returning to the notion of citizenship that had been discussed in the past but never entrenched in Community law. German Chancellor Helmut Kohl and French President François Mitterrand favoured integrating and extending the notion of a Community citizenship. They and other leaders suggested that European citizenship should signify respect for human rights, social and political rights, and complete free movement. The bargaining resulted in four sets of rights: free movement, the right to vote and stand as a candidate in local and European elections, the right to common diplomatic protection abroad, and the right to petition Parliament and appeal to a European Ombudsman.

Acting in a way that was consistent with their traditional role as the 'motors of integration', the French and German delegations provided support key to passing the citizenship provisions. The proposed right of EU citizens to vote in municipal and European elections in their state of residence rather than state of origin posed constitutional problems for France and would become a major focus of its ratification debate, but Mitterrand had a strong political stake in supporting it: besides being committed to the European idea, he had long backed extending suffrage. Though Mitterrand realized that the citizenship provisions would require amending the French constitution, he also calculated that they would force the opposition to choose between relaxing French sovereignty or appearing anti-European. Dividing his political opponents was a powerful reason for Mitterrand to support European citizenship, but doing so also furthered what he called his grand project, which was to 'turn the whole of Europe into one space' (cited in Maas, 2007, p. 50). As the French example shows, EU citizenship represents not only a process of supranational institution-building and integration but also the outcome of national politics of the member states and the intergovernmental conflicts and bargaining among them.

Of the four sets of citizenship rights enshrined in the Maastricht Treaty, voting rights (the right to vote and stand as a candidate in one's place of residence) was most controversial. Strong majorities of the public in Denmark, France, Greece, Luxembourg, and the UK were opposed. There was less strident opposition in Germany, Belgium, and Portugal. Only in Ireland, the Netherlands, Spain, and Italy did a majority of the public support these voting rights. The extensive popular opposition to EU citizenship's political rights helps explain the politics of ratification within many member states. Those who criticized the political leaders for not strengthening the notion of Union citizenship should recall this popular opposition and the difficulties encountered in implementing the Treaty.

An example illustrates this point: Denmark was the first member state to attempt ratification, and its initial failure to do so, despite support from most of its political parties, came as a shock. In the June 1992 referendum, Danish voters rejected the treaty by 50.7 per cent to 49.3 per cent. When the eleven other member states decided to continue the ratification process while leaving open the possibility of Danish participation, the Danish opposition parties and the government joined to draft a 'national compromise', which asked the other member states for special provisions in four areas: defence policy, a common currency, justice and police affairs, and citizenship. The section on citizenship specified that Denmark would 'have no obligations in connection with citizenship of the Union', though it would allow Union citizens to vote and stand for office

in European and municipal elections. After a flurry of diplomatic negotiations, the European Council meeting in Edinburgh in December 1992 confirmed that Denmark could opt out of EMU, that it would not be required to participate in joint defence, and that justice and police affairs decisions would be taken intergovernmentally. The Council also clarified that Maastricht's citizenship provisions 'give nationals of the Member States additional rights and protection', that they 'do not in any way take the place of national citizenship', and that the 'question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned' (cited in Maas, 2007, p. 53). Secure in the knowledge that they were saying no to common defence, justice and police affairs, currency, and European citizenship, 56.7 per cent of Danish voters approved the Maastricht Treaty, with the Edinburgh declarations, in a second referendum. Ratification also proceeded in the other member states, with the citizenship provisions sometimes leading to controversy, as in France (as has been discussed above). With ideals of legal or political theory in mind, it is perhaps tempting to castigate the leaders who enthusiastically promoted European citizenship for not giving it more content, but such assessments miss the political realities they faced. Though Maastricht ultimately passed with relative ease in most member states, the introduction of some aspects of EU citizenship aroused deeply negative sentiments.

EU citizenship's enactment at Maastricht also renewed debates about European social rights and possible supranational welfare provision. This discussion was not new: as early as the 1950s there had been a conscious drive to add 'thick' social rights to the 'thin' rights of free movement. The Treaty of Rome negotiations on social policy were more difficult than those on free movement, but the new Community in 1958 adopted detailed social security provisions for migrant workers. Five years later, there followed regulations on social security for frontier workers, temporary and other non-resident workers, and health and maternity benefits and family allowances for family members residing in a member state other than the one in which the worker was employed. Intended to foster mobility within the Community, these regulations also influenced the bilateral accords between member states and worker recruitment countries such as Spain, Portugal, Greece, and Turkey. Though the early provisions covered only some employment rights, the number and scope of social policy decisions continued to increase, which led former Commission President Walter Hallstein to describe the growth of European social policy as an irresistible flow: 'the European ground-swell, slowly but irresistibly, washes over the national sandbanks' (cited in Maas, 2007, p. 65).

Yet the growth of European social rights was sporadic and contested. Even as early as the 1960s, the Commission attempted to advance European social rights in order to make member state citizens 'actually feel that they are citizens of the one Community' and 'be aware that their common fortune is attributable to the Community'. But the tension between this goal and the wishes of member states to retain competence erupted at a Council meeting in 1964: the national ministers responsible for social affairs stated unanimously that social security fell solely within the jurisdiction of national governments and that Community institutions therefore had no competence. There followed a complete breakdown in communications and, for two years, social affairs ministers simply did not meet as a Council. When they finally did meet again, they agreed that Community social policy rules would not be passed except by unanimous support of the member states. This was not only an institutional defeat for the Commission, but also the end of the Community's efforts to increase benefits for workers, which were replaced by the goal of controlling social security costs. The emphasis would long remain not on the citizens but on the market, as European social rights were justified in terms of facilitating mobility: coordinating social security systems, mutual recognition of qualifications, a European role in family policy, ensuring equal access to social benefits, and even EU efforts to combat poverty were all intended

to reduce or eliminate barriers to free movement. This dynamic places in question the meaning of a 'social Europe' and the relationship between European integration and market-oriented economic policies (Preece, 2009). The content of EU citizenship remains meagre compared with national citizenship (Maas, 2009), and social welfare provision entails a direct relationship between individuals and member states rather than the European Union, with which individuals have little or no direct contact (Schall, 2012). Yet arguably what is needed for identification with the European Union is that the EU should become a meaningful presence for its citizens (Cram, 2012), a political reality that has remained unchanged since the postwar efforts to create European citizens.

Far from being a final constitutional settlement, the insertion of EU citizenship into the treaties at Maastricht unleashed a flurry of further debates and decisions in the ongoing process of creating European citizens. Since then, the EU has also grown, from 12 member states to 28: Austria, Sweden, and Finland in 1995; Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia in 2004; Bulgaria and Romania in 2007; and Croatia in 2013. These enlargements have led to large movements of workers from central and eastern European states westward (Johns, 2013). Various treaty amendments further consolidated European rights, and this led the European Parliament to describe EU citizenship as 'a dynamic institution, a key to the process of European integration' that was 'expected gradually to supplement and extend the rights' of national citizenship (cited in Maas, 2007, p. 62). Meanwhile the European Court in Luxembourg has also been active, affirming in various rulings that 'Union citizenship is destined to be the fundamental status of nationals of the Member States, conferring on them, in the fields covered by Community law, equality under the law irrespective of their nationality' (cited in Maas, 2007, p. 65). This stance and subsequent rulings led some legal scholars to claim that the Court is finally creating a real European citizenship (Kochenov, 2011).

Assessing the success of European citizenship requires considering the relationship between it and Europeanism or the European idea (McCormick, 2010, pp. 78–81). Holding EU citizenship up to the standard of national citizenship highlights its shortcomings (Maas, 2011). For example, while some 'undesirable' migrants do benefit from EU citizenship's rights of free movement (Aradau, Huysmans, and Squire, 2010), the free movement of groups such as the Roma faces challenges by states seeking to admit only individuals deemed desirable, while maintaining or establishing barriers for others: such discrimination against European citizens represents a failure of the EU and its member states to achieve equal treatment for all citizens (Johns, 2013). Similarly, third-country nationals (individuals who do not hold citizenship of one of the member states, even though they may have resided for many years or even been born in Europe) remain largely excluded from the benefits of EU citizenship: immigrants migrate to national polities and become European only by virtue of incorporation into national states, which means that EU citizenship's transformative potential remains unfulfilled (Maas, 2008). Furthermore, the treaty language (revised in the Lisbon treaty from the Amsterdam formulation discussed in the first paragraph of this chapter) that 'Citizenship of the Union shall be additional to and not replace national citizenship' limits its legal development. But perhaps this is expecting too much too soon. The greatest achievement of European integration is that, seventy years after the horrors of World War II, armed conflict between EU member states is inconceivable. There will always be new challenges, such as those caused by allowing the political project of a common currency (the euro) to move faster than the economic reality, and current high unemployment. It seems likely, however, that these European problems will find European solutions. In the final analysis, the 1951 Treaty of Paris aim of creating 'real solidarity' among Europeans through the 'fusion of their essential interests' and recognition of their 'common destiny' has succeeded in creating a new political community superimposed upon the old ones.



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