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## **National, Post-National or Trans-National?**

### **The Contested Nature of EU Citizenship**

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(Preliminary version: comments are welcome; please do not quote)

#### **1. Introduction**

Since its official formulation in the Treaty of Maastricht, European Union citizenship has been the focus of wide debates in the academic literature. The liveliness of these debates can be easily explained by considering the multiplicity of features defining citizenship at the state level and the consequent complexity of their translation at the supranational one. In particular, the *legal dimension*<sup>1</sup> of the concept, referring to definition of the status of citizen, in terms of membership criteria and attributed rights, has been widely analysed by the juridical literature. On the other hand, politico-sociological accounts have focused more on its *socio-cultural dimension*, more specifically referring to the definition of citizenship in terms of identity and belonging. The *political dimension*, has been instead mainly explored by those scholars who have analysed the relationship between individuals and the political community. The literature on EU citizenship has particularly focused on the role played – or supposed to be played - by the creation of this new status as a way to build this relationship at the European level, in order to contain the democratic deficit of the Union. Participation to the political process, in particular, has been seen as the major political novelty of the definition of an EU citizenship. The political dimension, however, has proved much more complex than simply referring to participation. In fact, it not only complements but also includes the other two dimensions.

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<sup>1</sup> The choice of describing the constitutive elements of citizenship along three dimensions is aimed at stressing the same elements which are elsewhere presented along slightly different schema. Von Beyme (2001) enlists legal status, identity, democratic citizenship and welfare; Weiler (1996) refers to rights, legitimization of authority and identity; Jenson (2007) defines citizenship regimes as characterized by responsibility mix (the role of the state), rights and duties, governance arrangements and definition of membership.

Moreover, it entails the crucial role played by the definition of citizenship rights in the process of polity-building and in the construction of a direct link between individuals and authority, on the one hand, and among individuals, on the other. In other words, the political dimension of citizenship involves both the individual meaning of citizenship, as a status connected with rights and duties, and its collective meaning, as a channel of creation of the community and of legitimization of the authority (Weiler 1996a; Giesen and Eder 2003; Olsen 2006).

The existing literature shows, however, a series of weaknesses. First, there is an evident tendency to deal separately with each dimension. If this can be partly explained as a sort of division of labour among social sciences, the result is the lack of comprehensive accounts and the risk of partial interpretations. Second, the study of EU citizenship is also hampered by the difficulty of finding a suitable frame of analysis, because of the lack of comparable experiences and models. Two have been the ways in which most of the scholars have tried to escape from this limitation. On the one hand, some have simply adopted one of the several definitions of citizenship developed by the literature in the analysis of national citizenship as a model for the analysis of its supra-national equivalent. As a result, in most of the cases EU citizenship has been presented as a weak version of citizenship, whose evolution, promoted by the Union but ultimately guided by the member states, cannot undermine the centrality of national politics. On the other hand, some studies have avoided this comparison, by claiming the *sui generis* nature of EU citizenship and presenting it as a new, post-national development in the evolution of European politics. In both cases, however, scholars have generally escaped more careful considerations regarding the suitability and explaining power of the models adopted and the actual correspondence of their conclusions with the current development of EU citizenship. The favoured way-out has generally been the choice of a normative approach. Therefore, the studies adopting the “national model” as term of comparison have tended to underline what EU citizenship should but cannot be. Analyses adopting a “post-national model” have instead mainly focused on the transformative potential of EU citizenship and on its possible future evolutions (Wiener 1998, Kostakopoulou 2001, 2008).

This paper aims at providing an account of EU citizenship able to overcome these limitations. Our analysis, therefore, takes into consideration all the three dimensions of citizenship, examining their actual translation in the legislative disposition on EU citizenship and in their implementing practices. The aim is three-fold. First, we want to assess if a national or post-national model can be considered as a coherent frame of analysis for EU

citizenship. Second, focusing on what the EU citizenship is, at its current point of development, we wonder if it can be considered, as claimed by “inter-governmental” readings, as a weak mainly rhetorical instrument unable to impinge the existing national political systems and their centrality in the European political life, or if, on the contrary, as claimed by post-nationalist interpretations, it has disruptive effects on the existing order. Third, considering the collective political meaning of citizenship and its potential in terms of polity building, we want to examine, for each aspect characterising EU citizenship, the link it creates with state authority and national community on the one hand, and with supra-national authority and community on the other. The goal is to assess if EU citizenship is actually contributing to any process of polity-building and to understand toward which level of polity this contribution is directed.

The paper is organized as follows. In the next section we will provide an overview of the existing interpretations of EU citizenship. Subsequently, we will synthetically describe its historical evolution and its substantial content. On this basis, we will carry out our analysis, by considering the aspects characterising the legal, socio-cultural and political dimension of citizenship and the actual dispositions and practices in which these aspects are translated. This analysis will lead us to highlight the centrality of the trans-national character of EU citizenship, which will be the focus of the following section. Finally, we will conclude by summarising our findings and sketching out their analytical and methodological implications for further research.

## **2. Interpretations of EU citizenship**

Our analysis opens with an inevitably incomplete literature review, in which we present the main perspectives through which EU citizenship has been studied and the main interpretations that have been suggested. The aim is not to classify the existing literature along exhaustive and mutually exclusive categories, neither to present in details the most renowned works on the topic, but to provide a schema of reference for our analysis. Therefore, this overview of the literature is organised along the same analytical frame, based on the three constitutive dimensions of citizenship above presented. For each dimension we outline the interpretations provided by those authors who adopt national citizenship as a model, on the one hand, and by those authors who adopt a “post-national” frame, on the other.

As for the legal dimension, two are the main elements stressed by those studies that analyse EU citizenship through the lenses of national citizenship. The first is the derived nature of EU citizenship *vis à vis* national citizenship, as explicitly affirmed in the Treaty of Amsterdam. What these studies underline is that if an individual can be an EU citizen if and only if she is a citizen of a member state, then the definition of the criteria of belonging to the (EU) political community is not controlled by that very political community. Therefore, that political community cannot claim the same relationship between citizens and authority that the member states can boast. The second element that these studies stress refers to the nature of rights attributed to individuals by virtue of their EU citizen-status. Not only the set of rights recognised by EU legislation is criticized for its modesty, but their very implementation, left to the national authorities, is seen as calling into question even their “EU nature” (Weiler 1998; Prentoulis 2001). On the contrary, those analyses focusing on the peculiar nature of EU citizenship underline how the same elements, far from being, *per se*, elements of weakness, constitute exactly the characteristics defining citizenship at the supranational level. The relationship between EU and national citizenship is not seen in terms of dependence. In fact, if it is true that the former is attributed only in presence of the latter, it is also true that, through this formulation, EU politics has attached another connotation to national citizenship, compromising the exclusive competence of the member states in defining the criteria of membership to their political community. In fact, states control the attribution of citizenship, but this status is charged with meanings that are no more completely controlled by them. Moreover, that same status allows aliens to overcome the national boundaries, both allowing them to enter their territory and to enjoy certain benefits recognised to the members of the national political community. And, although lacking the possibility to define who can be a “European citizen”, through the insertion of EU citizenship supranational legislation has undermined one of the hallmarks of sovereignty, i.e. member governments’ authority to privilege their own citizens (Maas, 2009). From this perspective, therefore, the conclusion is that no dependency relation exists (Maas 2005).

Taking into consideration the socio-cultural dimension, the major challenge for the analysis of EU citizenship is represented by the difficulty of finding a “functional equivalent” of national identity, which can similarly act as a “glue”, a feeling of belonging going beyond the mere recognition of a legal status (Shaw 1998). The nature of this “glue” has been widely debated, taking into consideration the different paths through which the “nation” or the

“people” has been shaped as a community in the history of nation-states<sup>2</sup>. Among them, the ethno-nationalistic model, exemplified by the German case, bases its conception of citizenship on a common culture and historical tradition (Bruter 2003). The republican model, which finds its roots in Aristotle and Rousseau’s thought, underlines instead the importance of civic self-ruling as the key element in the definition of citizenship, as opposed to “subjection”. The liberal model, based on the Roman tradition, considers citizenship as a status that allows the enjoyment of specific rights, without an implied participation of the citizens to the “common good” in public arenas. In the same stream, the Rawlsian definition is based on a contractual conception of citizenship, considered as the product of the mutual agreement of the citizens which refer to the same political order (Rawls 1996). The adoption of the ethno-centric model in the analysis of EU citizenship would easily lead to the complete rejection of any possibility to define a “European people”. The multi-ethnic, multi-cultural and multi-linguistic character of the Union would be indeed perceived as an insurmountable obstacle for the development of a European identity. The other models, and in particular the republican and liberal ones, seem to provide better terms of comparison. What is underlined, in this case, is the possibility to define a European *demos*, despite the absence of a European *ethos*. On this line, several are the proposals put forward in the literature, from Habermas’ “constitutional patriotism” (Habermas 1998) to Weiler’s “supranationalism”. What they stress is the necessity to root EU citizenship on a “social contract” on the basis of common values and goals. These interpretations, however, do specify neither the institutional setting nor the relationship between European and national citizenship that this definition entails. A similar critique can be addressed to post-national accounts that present the process of development of an EU citizenship in terms of discontinuity as to national experiences (Soysal 1994; Shaw 1997; Closa 1998; Delanty 2000; Gerstenberg 2001). In their perspective, the construction of an EU *demos* is therefore seen more as the overcoming of national divisions and the dismantling of existing structures. Still, the dynamics of this only potential process still need to be defined.

As for the political dimension, the study of the relationship between national and EU citizenship is, inevitably, even more complex. This can be explained, firstly, by the fact that the political dimension of citizenship is not only complementary to the legal and socio-cultural dimensions but it also encompasses them. Therefore, an account of the political relationship between national and EU citizenship needs to take into consideration legal and

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<sup>2</sup> For an overview see Bader (1997).

socio-cultural aspects together. Moreover, while literature on EU citizenship tends to see the political dimension as mainly related to participation and democracy, another, even more crucial phenomenon needs to be considered when dealing with the political meaning of citizenship, namely its potential in terms of polity-building. In fact, the definition of constitutionally defined criteria of membership to a political community is the first step in the definition of the boundaries of any polity. Moreover, the recognition of rights attached to this status, as shown by Marshall, represents the way in which ties among citizens are reinforced and the link between the members of the community and the political authority (the state) is created (Marshall 1950). In the history of nation-state-building, while civil rights were affirmed as a way to protect citizens from an intrusive and illegitimate conduct of the state, and political rights stated the role of citizens in ruling the *res publica*, the attribution of social rights made explicit the role of the state in guaranteeing its citizens' wellbeing. The "compensation" for the state for this (onerous) involvement was the creation of a mutual link between the fate of the nation and the fate of each citizen and, therefore, a strengthening of the national identity, the sense of belonging to a polity and, finally, the legitimization of that polity. The formation of a modern citizenship has, therefore, both an individual and a collective meaning: it not only creates an individual status, but it also establishes a mutual and exclusive link between individuals and state (Weiler 1996a; Giesen and Eder 2003; Olsen 2006).

The relationship between the development of citizenship and the process of polity-building represents a major challenge in the study of EU citizenship. Even in this case, however, the comparison with the national experiences shows the weakness of any EU process of polity-building. First, the EU does not have the control of its membership, led to the discretion of member states' legislation. Second, the absence of a "European people" inhibits the creation of solidarity ties among citizens and of a direct relationship with the political authority. Finally, rights, even when affirmed at the EU level, are left to the implementation of the member states. The polity with which citizens build their relationship is, therefore, the state. Accordingly, EU citizenship is seen, by those adopting this perspective, as an assonating concept, whose introduction was aimed at dimly mirroring the relationship citizens have with the state, without in any way compromising it. Then, it is only through the legitimating chain passing through the state that the weak link between citizens and Union can be maintained. Adopting the national model(s) of citizenship as a frame for the analysis of EU citizenship, therefore, analyses sharing this perspective tend to reach the conclusion that the

political meaning of EU citizenship depends on and cannot be separated from state authority. These studies see, therefore, the process of development of EU citizenship in intergovernmental terms, as a development ultimately controlled by the member states. The political meaning of EU citizenship is mainly explained as an attempt at presenting the Union as “closer to the citizens”, though a series of intervention, some of which merely symbolical (a flag, an anthem), others linked with preexisting rights (a common passport favouring freedom of movement) or with new limited rights (voting rights in European and local elections). Weiler Called therefore Union citizenship “a cynical exercise in public relations” (Weiler, 1996b).

In other studies the analysis is carried out without comparing the European experience with the national ones. Starting from the recognition of the *sui generis* nature of the Union, these analyses frame EU citizenship in the process of overcoming of the nation-state as the ultimate unit of political development. Building their argument on the literature on cosmopolitan citizenship, on the one hand, and on post-national politics on the other, they present the development of EU citizenship as one of the most promising front along which the Union can develop its own polity. This process would involve a progressive erosion of the authority of the state but, even more importantly, it would not lead to its substitution with another state-polity. On the contrary, the strength of EU citizenship would rest exactly in its capacity to shape a new kind of political community, able to overcome the weaknesses of the nation-state in facing current challenges (Delanty 1997; O’Leary 1996; Kostakopoulou 2001). Intermediate positions are assumed by those authors who see in the combination of national and European citizenship, and in the creation of a multi-level governance the best solution in order to deal with the challenges of multi-cultural society and globalization. The model they share is therefore that of a nested or multi-level citizenship (Faist 2001, Bauböck 2007; Maas 2008).

In order to proof the validity of their argument, scholars adopting national citizenship as term of comparison for the study of EU citizenship tend to focus more on the intentions behind its official formulation. In their perspective, the introduction of the status of EU citizen was decided in order to bring the Union closer to people, generating a sense of belonging and opening some weak channel of participation for citizens. On the contrary, studies underlining the innovative role played by the introduction of EU citizenship in the process of polity-building at the EU level, tend to focus more specifically on the potential evolution of the phenomenon. Consequently, they underline the role played by EU institutions – the

Commission and the European Parliament in particular – acting as “purposeful opportunists” in promoting this development in order to strengthen their own political role (Warleigh 2001). In both the cases, the analyses assume a quite normative approach. Citizenship is either presented for what it is supposed to be or for what it could be, rarely on what it is. In fact, both the approaches underline interesting elements and cast a light on important features of the phenomenon. However, the two contrasting accounts they provide of the relationship between national politics and EU citizenship are still waiting for an evaluation on the basis of the actual developments of the latter. In the following section we will provide an account of the history and content of the provisions and practices defining EU citizenship, from its very origins till the most recent developments. This will represent the basis for our analysis.

### **3. History and content of EU citizenship**

An historical reconstruction of the process of development of EU citizenship needs to take into consideration two crucial elements: first, that this process dates back long before the official recognition of the status of EU citizen in the Treaty of Maastricht; second, that the process is not limited to the evolution of the official provisions in the EU primary legislation, and can only be explained by considering EU politics in a broader perspective (Wiener 2007; Kostakopoulou 2008). In fact, it is widely recognized that EU citizenship finds its roots in the negotiations on freedom of movement, limited to coal and steel workers in the Treaty of Paris and extended to all workers in the EEC Treaty in Rome. While defining a mere “market citizenship”, the enjoyment of this freedom was, since the beginning, presented in terms of a fundamental right, creating a first, embryonic link between individuals and Community. This link was then officially translated into an EU citizenship only by the Treaty of Maastricht in 1992. Subsequently, no further substantial advances has been included in the Treaties. However, this absence of initiatives at the intergovernmental level has not stopped the evolution. In particular, the activism of the European Court of Justice in the application of EU citizenship on the one hand, and the efforts of the Commission in promoting the introduction of important innovations in secondary legislation, on the other, have produced not negligible incremental changes. All these aspects need therefore to be carefully considered.

The introduction of freedom of movement for workers in the ECSC Treaty before, and in the EEC Treaty later “was not much more than the product of a political compromise” (Van der Mei, 2003: 25) between the Italian government, strong promoter of this provision, and the

other five member states. With this request, Italy wanted to favour the migration of its own unemployed workers toward the other members' labour market, which would have gradually soaked up the Italian labour surplus. In Paris, the "Five" agreed to include freedom of movement for workers in the Treaty only when the Italian government used the bogeyman of strongest requests, such as the introduction of a High Authority in charge of the definition of wage levels. In Rome, however, in a context of already accelerating economic growth, the agreement was more easily reached. A transitional period, ending in 1970, was fixed for the implementation of Art. 48 on freedom of movement for workers. For a decade, governments tried to preserve their control over the access to their labour market by citizens from other member states. However, the limitations introduced in the first implementing pieces of secondary legislation were gradually eliminated. Thanks to the fortunate economic situation and, even more, to the action of the Commission, the full implementation of freedom of movement was completed in 1968, with the approval of Regulation 1612/68 and Directive 68/360. The Regulation stated the principle of equal treatment for workers from other member states, extending its material scope to matters not specifically related to employment (public housing, fiscal advantages, and social advantages) and its personal scope to family members. The Directive defined the right to reside for workers and their family. Subsequent legislative interventions gradually extended the application to these dispositions. In particular, Regulation 1251/70 stated the right to remain in the territory of a state after having been employed in that state. Directive 73/148 allowed the implementation of Article 52 of the EC Treaty, stating the right of establishment for self-employed. However, indispensable for the full implementation of freedom of movement was also the creation of a coordination system able to prevent the loss of social security rights for workers moving across member states. A seminal mechanism was introduced by Regulation No 3 and 4 in 1958, and then replaced by Regulation No 1408/71 and Regulation 574/72 (Maas 2005).

This first evolution has often been defined as a marginal disposition, mainly aimed at promoting economic integration and not at granting individual rights to citizens. If a form of citizenship could have built on this base, it was therefore a mere mercantile citizenship, enjoyed solely by active people. However, in its connection with art. 6, rejecting any form of discrimination of the basis of nationality, freedom of movement progressively translated into an individual right. In fact, since the very beginning of this evolution, it has been conceived, especially by the European Commission, as much more than "a functional prerequisite of the common market" (Kostakopoulou, 2001: 40). Walter Hallstein, first president of the European

Commission, defined the achievement of free movement for workers as one of the “most spectacular points in the programme which is to lead to the integration of Europe” and affirmed that “on the basis of this success alone, the Community could claim the right to call itself the “European Economic and Social Community” (quoted in Maas, 2005: 4). The preamble of Regulation 1408/71 presented freedom of movement as a personal freedom and, shortly after the adoption of that disposition, the President of the Commission, Jean Rey, defined the free movement of workers an “embryonic form of European citizenship” (Van der Mei, 2003: 27). The successive interventions of the Commission before and the European Parliament after have maintained this approach, defining freedom of movement as a fundamental individual right and refusing to consider it as a mere tool for macroeconomic policy (Kostakopoulou, 2001). This position has also been often stressed by ECJ’s rulings in its interpretation of the related legislation.

However, the economic boom of the 60s and the stability, if not the decline, of migration flows decreased the political salience of freedom of movement and citizenship. Moreover, the deadlock created by the “empty chair crisis” inhibited stronger initiatives. It was only in the 70s that citizenship started to become a recurrent topic in the EC discourse, in the context of a renovation of the Community as a political entity. The Paris Summit held in October 1972 launched an ambitious programme for the establishment of a “people’s Europe”. In particular, voting rights were considered as the next necessary step for the construction of a European identity. The Copenhagen Summit in 1973 agreed on a Declaration on European Identity. In 1974, the heads of state and government established two working groups, one charged of evaluating the conditions for the attribution of special rights to members of the Community, and one investigating the possibility of establishing a passport union. The conclusions of these working groups were then included in the report drawn up by the Belgian Prime Minister, Leo Tindemans. The Tindemans Report clearly adopted, as a model of citizenship, the classical notion developed at the national level, focusing especially on the creation of a “European identity” (Wiener 2007). Claiming the necessity of making Europe closer to its citizens, in order to guarantee democracy and legitimacy, the report asked for new rights of participation for EC citizens. In 1976 the Council agreed on the direct election of the EP. However, no further initiatives from the Commission and the EP found the agreement of the Council. When, in 1979, the Commission issued a draft Directive on a right of residence for nationals of member states in the territory of other member states, the opposition of the UK, new

## **Box 1. Part 2 of the EC Treaty, as consolidated by the Treaty of Amsterdam**

### **CITIZENSHIP OF THE UNION**

#### *Article 17*

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

#### *Article 18*

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.
2. If action by the Community should prove necessary to attain this objective and this Treaty has not provided the necessary powers, the Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1. The Council shall act in accordance with the procedure referred to in Article 251.
3. Paragraph 2 shall not apply to provisions on passports, identity cards, residence permits or any other such document or to provisions on social security or social protection.

#### *Article 19*

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.
2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

#### *Article 20*

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

#### *Article 21*

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.

#### *Article 22*

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this part. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to strengthen or to add to the rights laid down in this part, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

member of the Community, blocked the proposal. The only agreement reached in this phase was therefore the adoption of a uniform format for passports.

The issue of citizenship was then re-launched by the EP in its Draft Treaty on the European Union, published in 1983 and, in 1984, by the Fontainebleau Council, which established a committee for a new evaluation of the issue. The committee, guided by Mr Adonnino, did not reject *in toto* the “identity approach” adopted in the Tindemans Report, but focused more specifically on citizenship rights (Wiener, 2007). Similarly, in 1986, in its White Paper on Completing the Internal Market, the Commission urged the elimination of the obstacles to free movement as “a new initiative in favor of Community citizens” (Maas, 2005: 8)<sup>3</sup>. The fall of the Berlin Wall and the subsequent revitalization of the integration project favoured the call of an intergovernmental conference on political union, parallel to the economic and monetary IGC, in preparation of the Maastricht Treaty. However, the final proposal to include a chapter on EU citizenship was put forward at the last minute by Felipe Gonzales, Spanish Prime Minister, as a counterbalance of economic integration (Weiler 1997; Maas 2005). The Spanish government was then backed by France and Germany and an agreement was finally reached. The establishment of a European citizenship was seen, in that context, as an instrument “towards the realization of the major objectives of the Treaty: it enshrined the political character of the Community and strengthen its democratic legitimacy”, through “measures designed to elicit popular support by making the Community a visible reality in [citizens’] lives” (Kostakopoulou, 2001: 54). Three years later, France and Germany acted again as the promoters of further steps in the evolution of EU citizenship, during the negotiation of the Treaty of Amsterdam. However, the rejection of the Maastricht Treaty by the Danes had already put into question citizens’ support for these initiatives. This, together with the explicit opposition of the British government for further evolution, led to only marginal changes in the chapter on citizenship. In particular, it was made explicit what in Maastricht was included in an added declaration, i.e. that EU citizenship “shall be additional to national citizenship; it shall not replace it” (art.17) (Von Beyme, 2001). The content of Part 2 of the EC Treaty (“Citizenship of the Union”), as consolidated by the Amsterdam Treaty, is described in Box 1.

After Amsterdam, only minor changes were introduced in the EC Treaty. The Treaty of Nice extended qualified majority voting to the issues related to freedom of movement,

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<sup>3</sup> In 1990, after more than 10 years of negotiation, a series of directives were also approved, extending the right of residence to students (Dir. 90/366/EEC, then replaced by Dir. 93/96/EEC), pensioners (Dir. 90/365/EEC) and non active people (Dir. 90/364/EEC).

without introducing any substantial change in the content of citizenship rights. The major contribution of the draft of the Constitutional Treaty was the inclusion of the Charter of Fundamental Rights, adopted in Nice, together with the introduction of majority voting for social security provisions for migrants. These innovations were maintained, after the rejection of the Treaty, in the Lisbon Treaty. Although the Charter makes explicit reference to specific rights only recognized to EU citizens (see Box 2), it does not contain substantial innovations.

As seen above, however, the analysis of the evolution of EU citizenship needs to take into consideration not only its developments in the Treaty. In fact, the *acquis* related to European citizenship implies much more than the articles included in the EC Treaty (Wiener, 2007). Moreover, the whole secondary legislation related to freedom of movement, applying no more exclusively to workers, is now part of this *acquis*. After having been amended 28 times between 1971 and 2002, Regulation 1408/71 was replaced in 2004 by Regulation 883/2004. This process parallels the development of the directives on the rights to move and reside, which, after a piecemeal evolution, found coherent formulation in the Directive 2004/38, extending the provisions of Regulation 1612/68 on rights to move and reside in the territory of a member state to “citizens of the Union”. Recent developments are also represented by the initiatives promoted by the Commission in order to enhance the awareness of EU citizens on their rights. Among them, particularly interesting and promising are the adoption of the Community action programme to promote active citizenship and the “Europe for citizens” programme for the period 2007-2013 (Kostakopoulou 2008).

Furthermore, the role of the ECJ needs to be considered. In fact, the Court has always played a key role not only in the implementation of the dispositions related to EU citizenship, but also in the creation of the prerequisites for the creation of a direct link between citizens and Community. With the ruling *Van Gend en Loos* in 1963, the ECJ stated that Community legislation creates rights for citizens that national courts must enforce. These rights have therefore direct effect, and establish a direct link between the authority which has affirmed them (the EC/EU) and the individuals. Subsequently, in the case *Costa vs. ENEL* in 1964, the Court affirmed the primacy of Community law over national legislations (Maas 2002; Olsen 2006). In so doing, the ECJ created the preconditions for the construction of a European citizenship. In fact, in the absence of such prerequisites, the impossibility of establishing a direct link between individuals and European collectivity and authority would have made EU citizenship void of any meaning. Besides preparing the constitutional setting in which this status could be applied, the action of the Court was also crucial in defining the margins of its

implementation, as widely shown by the juridical literature. In particular, in deciding on the applications related to freedom of movement and equal treatment, the ECJ provided wide interpretations of the rights deriving from the status of EU citizen, overcoming its connection with any economic activity<sup>4</sup>. Moreover, it gradually recognized this status as an autonomous source of rights (Hatzopoulos 20007). As stated by O’Leary (1999), it was exactly this action which put flash on bones of EU citizenship, disproving those who have underestimated the transformative potential of EU citizenship (Kostakopoulou 2005).

## **Box 2. Dispositions of the Charter of Fundamental Rights referring to EU citizenship**

### Article 12

#### *Freedom of assembly and of association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

### Article 15

#### *Freedom to choose an occupation and right to engage in work*

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

## **CHAPTER V - CITIZENS' RIGHTS**

### Article 39

#### *Right to vote and to stand as a candidate at elections to the European Parliament*

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

### Article 40

#### *Right to vote and to stand as a candidate at municipal elections*

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

### Article 41

#### *Right to good administration*

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes: the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

<sup>4</sup> For a detailed assessment of the relevant rulings see Mather (2005).

Article 42

*Right of access to documents*

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

*Ombudsman*

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

*Right to petition*

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

*Freedom of movement and of residence*

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

*Diplomatic and consular protection*

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

#### 4. The nature of EU citizenship

The reconstruction of the process of evolution and of the material scope of EU citizenship allows us to carry out a deeper analysis of its content. This analysis will follow the schema outlined above and will take into consideration the three dimensions defining citizenship. For the assessment of the legal dimension we will consider the criteria of attribution of membership and the relevant civil, social and political rights, considered here as building blocks of the relationship between individuals and the polity. As for the cultural dimension, we will evaluate if and how the “citizenship *acquis*” entails any effort in the construction of a common identity and on which basis this identity is defined. For each element we will therefore examine which model of citizenship, between the national and the post-national, can best explain EU citizenship at its present stage of development (1). The analysis of the political dimension will consider, on the one hand, the political rights attached to EU citizenship. On the other, it will be carried out by focusing, in the analysis of each of the elements characterising EU citizenship, on their disruptive power as regards national citizenship and polity (2) and on the relationship it creates between citizens and either the

national or the supra-national polity (3). What we will try to show for each aspect of EU citizenship is, therefore: 1) which model of citizenship it approaches; 2) if it represents a source of de-structuring of the system of power and identification based on nation-states; 3) to which polity it addresses the relationship between citizens and authority and among citizens, in other words the collective meaning of citizenship.

Starting from the legal dimension, we firstly consider the criteria of attribution of EU citizenship. It is not difficult to recognize their distinct character in comparison with any national model of citizenship. In any national state, in fact, even in the federal ones, it is the central authority which defines the criteria of attribution of citizenship. In the EU case, on the contrary, the criteria are defined at the national level and the supranational authority only attaches to the nationally conferred status another supranational meaning. Apparently, a similar situation can be found in Switzerland, where, citizenship is three-layered. In fact, a person can be a Swiss citizen if she is citizen of a Swiss municipality and a Swiss canton. Therefore, Swiss citizenship is granted as a derived status. However, in the Swiss case the confederal government has the authority to state the minimum requirements for the acquisition (and the loss) of citizenship, through a central national citizenship law. The Union, on the contrary, has not any voice in the definition of the criteria of attribution and can only require that the citizenship status granted by one member state is recognised by the others. As for the relationship that the attribution of citizenship creates with the polity, the wording and history of Art. 17 make clear that the direct link is created first with the national polity and only secondly with the supranational one.

As for the rights enjoyed in consequence of the attribution of EU citizenship, a first remark needs to be made. In fact, since its very origins, EU legislation recognizes a series of rights, affirmed both in the treaty and in secondary legislation. However, our analysis needs to focus on those rights which are enjoyed exclusively by those who can boast the status of EU citizens. The set of rights is therefore necessarily limited. As for civil rights, freedom of movement and equal treatment are certainly the major attributes of EU citizenship. The model, in this case, is undoubtedly the national one: the elimination of internal boundaries is in fact a crucial element in the creation of the nation (De Mestral and Winter 2001). But, exactly for the same reason, the attribution of these rights inevitably weakens the boundaries of the member states, generating de-structuring effects on the internal divisions. It must be stressed, however, that these rights, while attributed by a supra-national polity, do not create a

direct link with it. On the contrary, they open the access to another national polity, by which, ultimately, they have to be guaranteed.

A similar discourse can be done considering social rights. Here again, we need to focus on the social rights which are guaranteed only to EU citizens. We have therefore to leave aside the however important rights recognised by the EU legislation and, even more, the involvement of the Union in the process of coordination of social policy, which does not translate in the definition of “rights”. After this selection, the remaining rights happen to relate only to social rights linked with freedom of movement. Art. 15 of the Charter of Fundamental Rights states the right to seek for employment and work in any Member State. Regulation 883/2004 defined the social rights that must be guaranteed to EU citizens residing in a member state. The model is, once again, the process of evolution of national citizenship, in which the recognition of social rights represented a crucial step in the creation of the community and in the linkages between individuals and nation. However, in the national cases, this link is mainly created by redistributive social rights, while the rights affirmed by EU legislation do not entail any redistribution at the European level, not even as a last resort intervention. Therefore, on the one hand, the granting of social rights to non-nationals has a disruptive effect on the nation state authority, since the member states are no more free to define the criteria of attribution of those rights (Ferrera, 2005). But, once again, the relationship these rights ultimately create is not between citizens and European polity, but between a EU citizen and the polity of another member states in which she resides: its political authority, which controls the grant of those rights, and its community, which participates in the sharing of the resources distributed on the basis of those rights.

A more detailed analysis needs to be done when dealing with political rights. Two are, in fact, the major aspects that we have to consider: on the one hand, the right to stand and vote for the European Parliament, together with the right to present petitions to the European Parliament and to apply to the European Ombudsman, the right to apply to the Community institutions and the right to transparency and good administration; on the other hand, the right to stand and vote in local election in the municipality of residence outside the country of origin. For the first group of rights, we can easily demonstrate that the underlining model is certainly the national one, which consider voting rights as the first source of democracy and legitimacy. In the EU this chain of legitimization is more complex, since only the European Parliament can be considered as legitimated directly by EU citizens while the other electoral bodies are the expression of nationally defined electorates. Moreover, the election of the EP

and the formation of the assembly can hardly be considered expression of the European people. However, these rights represent the first source of participation to the EU politics and an important step in the process of democratization of the Union. Their importance is indeed often stressed in the long history of EU citizenship, as a remedy for the democratic deficit. Here, the disruptive effects on the national polities can be seen only if we consider the potential that this participation can have in promoting the formation of a supra-national polity. But, *per se*, these political rights do not impinge the national political process and the chain of legitimization of the nation states. What they do is, however, to create a link between people and the supra-national polity. Different conclusions can be reached, on the contrary, when considering the right to vote and stand in local elections in the member state of residence. In this case, the model is no more the national one. In fact, if this was the case, we should expect that voting rights were extended to all the levels of politics. On the contrary, only the local and European levels are involved. The disruptive effects are therefore limited by this only partial involvement. And the link created, once again, is not with the supra-national polity, but with another national polity.

Carrying on the same analysis for the aspects of citizenship related to identity, culture and values would be certainly more complex, as the brief review of the relevant literature presented above has demonstrated. The main problem, in trying to understand which has been the model of citizenship inspiring the introduction of EU citizenship, is the fact that national experiences provide, in terms of identity-building, a set of different paths. As we have seen, several authors have tried to demonstrate the similarity of the European experience with the cases (or ideal-types) of republican or pluralist citizenship. Others have simply presented European identity as new form of multi-level identity. Finally, others have seen in it a first embryonic form of post-national identity, were no ascribed characteristics matter in the definition of membership. But not enough evidences can be found in order to prove or falsify any of these theses. Something can however be said if we consider that what identity, no matter which are its basis, is always aimed at creating, in the national cases, sense of “unity.” Therefore, national identity is conceived as a way to overcome all the differences – especially those that more strongly divide the community - not in the sense of eliminating, but of at least overcoming them. In the American melting-pot, every citizen is American *despite* her colour or her mother-tongue. In the republican France, every citizen is French, *no matter* her religion or race, as long as she respects the “everyday plebiscite based on universal human liberty, equality and reason” (Bader 1997: 779). What is different, in the European case, is the fact

that EU citizenship is not granted despite existing differences, but exactly *on the basis of* those differences. Diversity is, therefore, the very foundation of EU citizenship, at least at this stage of its development<sup>5</sup>. Both its disruptive potential and the link it creates with the supra-national polity are therefore still uncertain.

**Table 1. Components of EU citizenship**

	<b>Model of citizenship</b>	<b>De-structuring effects on national citizenship/polity</b>	<b>Primary link with polity</b>
<b>ATTRIBUTION</b>			
- Art. 20 TFEU	Post-national	No	Nation
<b>CIVIL RIGHTS</b>			
- Art. 18 TFEU Non discrimination	National	Yes	EU
- Art. 21 TFEU Freedom to move and reside - Directive 2004/38	National	Yes	(Another) nation
<b>SOCIAL RIGHTS</b>			
- Art. 15 CFR Freedom to seek employment in any Member State	National	Yes	(Another) nation
- Regulation No 883/2004 Coordination of Social Security Systems; Equal Treatment	Regulation: national Redistribution: post-national	Yes	(Another) nation
<b>POLITICAL RIGHTS</b>			
- Art. 22.2 TFEU Right to vote and stand for the EP - Art. 23 TFEU Diplomatic protection - Art. 24 TFEU Citizens' petitions and Ombudsman - Art. 42 CFR Access to documents	National	No	EU
- Art. 22.1 TFEU Right to vote and stand in local elections	Post-national	Limited	(Another) nation
<b>IDENTITY</b>			
	Post-national	Uncertain	Nation/EU

TFEU: Treaty on Functioning of the European Union  
CFR: Charter of Fundamental Rights of the European Union

Our analysis, summarized in Table 1, shows a mixed picture. In fact, we cannot define a coherent model inspiring the various characteristics of EU citizenship. It is similarly difficult to evaluate the actual effect that its recognition has on the national polities. If for some of the

<sup>5</sup> It is worth remembering that the EU slogan is "Unity in diversity".

aspects the intergovernmental logic of maintenance of the state prerogatives has been successful, for others more progressive developments have been realized. The most interesting finding is, however, that, looking at the link EU citizenship creates with the national or supra-national polity, what we find is that in most of the cases none of them is ultimately the case. In fact, what EU citizenship more often allows is the creation of a relationship between a citizen and a foreign national polity. The trans-national character of EU citizenship seems therefore to be crucial aspect. While having been widely recognised by the literature, this element has often been underestimated or simply used as a proof of the weakness of EU citizenship. On the contrary, its implications can be very important in determining future evolutions and their comprehension could cast a light on the process of integration itself.

#### **5. The implication of the trans-national character of EU citizenship**

One of the main characteristics of the status of EU citizen is that its whole meaning can be completely perceived only by taking into consideration the impact it produces on those people which leave their country of origin, moving to another member state (or in a third country, in the case of diplomatic protection). In fact, most of the rights implied in the status of EU citizen are activated only when a person moves across borders (Carrera, 2005). The ECJ has consistently reaffirmed the non applicability of the rights depending on freedom of movement – especially the principle of equal treatment – to merely national cases, not involving any trans-national character. It is not a case that Europeans rate right of free movement as the most important benefit of EU membership (Favell, 2008). The centrality of freedom of movement as an historical antecedent before and crucial element of citizenship later has attracted many scholars. As shown by Norbert Reich, “this close interrelationship between free movement of persons and citizenship is indeed one of the fundamentals of European Union/Community as an institution and of the bundle of rights (to a lesser extent: obligations) that its citizens (respectively the citizens of the Member States) are entitled to” (Reich 2005: 676). This centrality has however been widely interpreted. For some observers, it simply proves the substantial weakness of EU citizenship. Weiler defines free movement and right to residence as “the only significant measure [...], a measure which could connote a double sense of belonging”, but which “turned out to be a chimera” (Weiler 1996a: 14). On the contrary, for others the trans-national character of EU citizenship is a central element of its post-national nature. In Adrian Favell’s words, “European free-movement laws [...] undid the

nationalizing logic of nation-states as population containers just as the post-war settlement and the completion of European welfare states was cementing this national system firmly in place” (Favell 2008: 8).

What cannot be denied is that freedom of movement and its ancillary provisions - right to residence, equal treatment and access to social security in a hosting member state - produce a disruptive effect on the national polity. By imposing to the member states to open not only their territorial border, but, more importantly, their boundaries of membership, the disposition on freedom of movement have deprived the states of their authority in defining the contours of the national community of solidarity. In fact, modern European states have for a long while enjoyed the exclusive control over their territorial borders, their membership boundaries and the definition of the content of the rights inscribed in the status of citizens. The increase of migration flows toward Europe has been the first source of trouble in this equilibrium since it has created a double level of enjoyment of social provisions, as rights for citizens, and as discretionary grants for non-citizens, compromising the relationship between national solidarity and welfare state (Soysal, 1994; Bommers and Geddes, 2000). Still, the states initially maintained the authority both to control the entrance into their territory and to discretionarily attribute rights and benefits to aliens. The frequent reference to criteria based on residence, more than citizenship, in the attribution of entitlements, and the development of the grey category of “denizens” (Brubaker, 1989; Hammar, 1990; Jacobson, 1996) represented forms of adjustment to the new challenge, which did not mine the competence of the state in defining its criteria of inclusion. Moreover, regulation of the access to welfare systems has often been used as a tool for the exclusion of unwanted social groups and non-citizens (Alesina and Gleaser, 2004; Mau and Burkhardt, 2009). But freedom of movement for EU citizens has highly restricted this authority and the political meaning of this shift of power is certainly higher than the financial burden produced by still limited migration flows.

Freedom of movement generates a partial de-territorialization of rights, inevitably putting into question the relation between state and rights and, therefore, between national community and national solidarity. Moreover, it generates a gap between the status of the trans-national polity of the “free movers” – which is defined at the EU level - and the definition of their rights, whose implementation is left to the hosting countries, where non national EU citizens can only marginally exercise their political rights. The Marshallian relation between civic, political and social citizenship is therefore broken, creating a mosaic of interests variously represented at different levels. This seem to be an interesting example of a process of de-

structuring and re-structuring, promoted by EU institutions but still contained by the resistance of the member states (Bartolini 2005). Far from being a generic and rhetorical effort to create a “European people”, this process involves the very foundations of the political structure of Europe. However, it is clear from our analysis that, till now, the outcome of this process of de-structuring and re-structuring is not in favour of the construction of a purely supra-national polity. On the contrary, it still requires the whole institutional structure of the states in order to allow the actual provision of the benefits and services that EU legislation guarantees.

The trans-national nature of the major characters of EU citizenship seems therefore to favour an explanation of the polity to which this status refers as a multi-level polity. In fact, every level is necessary for the activation of the status of EU citizen. This is true not only because national citizenships are necessary for the acquisition of EU citizenship, but also because it is still along national divisions that EU citizenship matters. The relationship between national and EU citizenship, as the one between national polities and EU-polity could therefore be read in terms of complementarity. That said, the question of how this relationship will evolve in the future is still open. As we have seen, the potential exists for further processes of de-structuring of the national basis of the current multi-level polity and for the formation of a post-national polity whose characteristics can only be vaguely foreseen. And being any forecasting beyond the purpose of this paper, we will not bet on any possible outcome. However, as far as the present evolution is concerned, we can synthetically describe EU citizenship, as it is now, as supra-nationally granted, nationally implemented and trans-nationally enjoyed.

## **6. Conclusions**

Through the analysis of its constitutive dimensions, we have examined 1) which model of citizenship seems to approach the most the features of EU citizenship; 2) if those features have any disruptive effect on the prerogatives of member states; 3) which kind of polity is directly connected to people thanks to the relationship created by EU citizenship. We have thus demonstrated that no coherent model of citizenship can be detected and that the disruptive character of EU citizenship *vis à vis* national polities only emerges for some of the aspects under analysis. We have also shown that the collective political meaning of citizenship, represented by the creation of a link between citizens and authority and among

citizens themselves, assumes, at the EU level, very peculiar characteristics. In fact, being freedom of movement the crucial component of EU citizenship, and being the activation of most of the other components dependent on the exercise of this freedom, EU citizenship tends to manifest a strong trans-national character. The rights proclaimed at the supra-national level are, in fact, implemented at the national one in the hosting country. This has a double, controversial implication: on the one hand it reduces state authority, since it deprives the state of the exclusive control of its territorial and membership boundaries; on the other, it reinforced the role of the state, which remains the ultimate actor with which citizens interacts, building in this way a link both with its institutional system and with its community. We have therefore concluded that EU citizenship seems to rest on a multi-level system of governance, in which each level of authority plays a crucial role.

Two are, in our opinion, the major implications of this analysis for further research. First, we have shown how the interpretations and accounts of EU citizenship can be extremely biased when the focus of attention is too narrow. In fact, the absence of a coherent model behind the formulation of EU citizenship allows for the presence of extremely different features, which, analysed in insulation, could show completely different pictures. Only considering the three constitutive dimensions of citizenship we can provide a reliable account. Second, the stress on the trans-national character of EU citizenship should invite both scholars to more carefully consider the importance of complementarity between national and supra-national citizenship. In fact, many analyses tend to present the relationship between them, and between national and supra-national authority, as a zero sum game. It is common, for example, to present the answers to questions on European identity included in the Eurobarometer by assuming that a strengthening of national identities represents a loss for the creation of an EU identity<sup>6</sup>. Considering the complementarity of the two sources of identification in a multi-level context should lead to a reconsideration of this assumption.

A further element, both substantial and methodological, needs then to be stressed. In analyzing citizenship rights we have focused our attention on the dispositions exclusively addressed to EU citizens. We have also tried to broaden our perspective, by considering their translation in secondary legislation and its interpretation by the ECJ. However, it is unquestionable that the impact of EU politics on EU citizens' lives goes beyond all these elements. In fact, the link with the supranational polity can also be created by initiatives which are not exclusively addresses to citizens, but which end up by significantly influence

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<sup>6</sup> On the incorrectness of this conclusion, see Carey (2002).

EU citizens' rights. Several examples could be proposed, from the impact produced by legislation on consumer or environmental protection to the importance of training programmes founded by the European Social Funds. If citizenship is built by the day-to-day relationship between individuals and polity, an attempt to systematically consider these elements should be made.

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