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**BUILDING INSTITUTIONS:
THE DEVELOPING PRACTICE OF EUROPEAN CITIZENSHIP**

by

Antje Wiener, Dipl. Pol

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

Doctor of Philosophy

Department of Political Science

Carleton University
Ottawa, Ontario

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EUROPEAN CITIZENSHIP: PRACTICE AND PARAMETERS OF A NEW POLICY

submitted by

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in partial fulfilment of the requirements
for the degree of Doctor of Philosophy

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ABSTRACT

Citizenship practice is related to state-building. This is the lesson to be learned from the history of most of the Western European nation-states which are now Member States of the European Union. Their respective experiences of citizenship practice suggest that citizenship does not drop from the sky. Instead it evolves over time and its meaning differs across time and place. The implication is that it is always historical experience that defines the meaning of citizenship.

This dissertation explores two things. First, what do these observations imply for an understanding of the emerging citizenship practice in the European Community, and now Union? Second, what do the findings about this citizenship then indicate for our understanding of citizenship on a more general theoretical level? To answer these questions this study applies two perspectives. One is *conceptual* and includes the development of an ideal-type model of citizenship which would be applicable to the analysis of different contexts while leaving space for historical particularities. The other is *methodological* and entails a systematized approach within a historical institutionalist framework. This framework is refined by proposing a focus on the changing universe of political discourse and political opportunity structure.

The thesis finds that the emergent model of supranational citizenship in the EC/U conforms to the ideal-type in that it includes rights, access, and belonging. In this way it shares the central historical elements of modern citizenship practice that contributed to nation/state-building during the nineteenth and early twentieth centuries. I argue that in order to discern the emergence of this ideal-type it is necessary to employ the concept of citizenship practice. The concept identifies large processes of transformation, and tensions over inclusion and exclusion. The analysis of citizenship practice in relation to new borders, new boundaries and new politics of belonging provides one way of assessing the political organization of collectivity in supranational socio-economic and political spaces.

The thesis is organized in 7 chapters. Following the introductory chapter 1, chapters 2 and 3 map out a theoretical and methodological framework. Given the precedence of policymaking over politics in the European case, the methodological framework for the study is the new historical institutionalist approach. This approach is extended towards the analysis of discourse and informal institutions by studying the political opportunity structure and the *acquis communautaire* as a set of institutions that reflect the shared properties of the EC/U at any time. Chapters 4 to 6 contain a case study which reconstructs the development of citizenship practice in the EC/U. Each chapter examines special rights and passport policies as two packages of citizenship practice which emerged over three periods. These cluster around the path-breaking European Council meetings of Paris (1974), Fontainebleau (1984) and Maastricht (1991). Chapter 7 provides a brief view on the unfolding debate post-Maastricht which suggest a shift in EC/U citizenship practice towards action from below.

This thesis is dedicated in memoriam to my
grandmother Frieda Kuhn in thankfulness for
her endless good humour and strength
and to my niece Marie Schierenbeck
with great hope for the future.

With special thanks to my parents
Winfriede and Christian Wiener -
who have always been there
while I explored strange places.

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Glossary

ARNE	Antiracist Network for Equality in Europe
CDU	Christlich-Demokratische Union
CELAD	Comité Européen de la Lutte Anti-Drogue
COREPER	Comité de Représentatives Permanentes
DG	Directorate General
EC	European Community
EC U	European Community, and now, Union
ECJ	European Court of Justice
EEC	European Economic Community
EFTA	European Free Trade Area
EHRC	European Human Rights Convention
EMU	European Monetary Union
EP	European Parliament
EPC	European Political Cooperation
EPU	European Political Union
ERASMUS	European Community Action Scheme for the Mobility of University Students
ESC	European Social Committee
EU	European Union
FRG	Federal Republic of Germany
GCN	Groupe Central de Negociation
IGC	Intergovernmental Conference
IGC-EMU	Intergovernmental Conference on European Monetary Union
IGC-EPU	Intergovernmental Conference on European Political Union
MEP	Member of European Parliament
NL	The Netherlands
POS	Political Opportunity Structure
SEA	Single European Act
SIS	Security Information System
SOC	Socialists
SPD	Sozialdemokratische Partei Deutschlands
TEU	Treaty of European Union
TREVI	Terrorism, Radicalism, Extremism and International Violence
UCLAF	Unité de la Coordination de la Lutte Anti-Fraude
UPD	Universe of Political Discourse
YES	Young Workers' Exchange Scheme

CHAPTER I

INTRODUCTION: CITIZENSHIP POLICY IN A NON-STATE?

In attempting to fix certain distinguishing features there is a danger of failing to give expression to the dynamic nature of supranationalism. The Community experience has not been a static one, neither in the substantive activities nor [...] in the internal principles of its operation be they in the institutional framework, the location and exercise of decision-making power, and, generally, the relationships between the Community as a whole and its constituent parts (Weiler, 1986:344)

[C]itizenship is the legal institution via which the individual member of a nation takes part as an active agent in the concrete nexus of state actions (Grawert 1987:684, c.f. Habermas 1994:25)

Context: Citizenship, Non-State

Citizenship means different things in different contexts. Indeed the concept has remained a much contested one, particularly today, and a "complete or elaborate theory of citizenship" does not exist (Turner, 1993:viii). For some, the most basic aspect of citizenship includes the notion of membership in a community or in a nation-state (Barbalet, 1988:2; Brubaker, 1989:3; Vogel, 1991:62; Kymlicka and Norman, 1994:352). For others, citizenship comprises an understanding of intersubjectively shared practices that contribute to democratic changes of and within a community (Habermas, 1994; Kratochwil, 1994). Two general statements about citizenship can be made, however, despite conceptual differences along the contractarian/communitarian divide.¹ First, it is possible to state that citizenship is about rights, access, and belonging, wherein rights include the Marshallian triad of civil, political, and social rights; access indicates access to political participation; and belonging means rootedness in a community.² Second, most scholars agree both from a conceptual and a historical perspective that analyses of

¹ For two excellent texts that provide an informed insight into both traditions see Habermas (1994) and Kratochwil (1994). I refer to these traditions more explicitly later in this chapter.

² These three aspects are usually not considered together though. It is more common to find work on citizenship that considers two of the three aspects as focal points. For examples see Kymlicka and Norman (1994:353 and *passim*) who stress identity and--not access to but--the necessity of participation on the one hand, and Kratochwil (1994:491 and *passim*) who considers status as "the right to have rights" and belonging.

citizenship are in one way or another linked to the state or the nation-state (Barbalet, 1988 109, Turner, 1990 193)

These common understandings of citizenship were challenged when the concept of Union citizenship was stipulated by the Maastricht Treaty of European Union. The Union is not a nation-state. Nonetheless citizenship policymaking has been part of European Community and now Union³ politics for over 20 years and "citizenship of the Union" has been defined in the 1993 Treaty of European Union according to Article 8 EC Treaty.⁴ Since the ratification of the Maastricht Treaty in November 1993 citizens of the Union enjoy a series of rights, such as the right of residence, free movement (Article 8a EC Treaty), diplomatic protection while in third countries (Article 8c), the right to petition (Article 8d, Article 138d) and the right to vote and stand as a candidate at municipal elections in the Member State of residence (Article 8b(1)), as well as the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence (Article 8b(2)). Achieving the status of citizen of the Union depends on being a citizen of one Member State of the EU, that is, "every person holding the nationality of a Member State" (Article 8).

As an N = 1 case, the institutional arrangements of the EU differ from those of nation-states as well as from those of international organizations. It differs from the concept of international organization because Member States cannot always rely on their veto power but may be overruled by qualified majority voting (Peters, 1992 83).⁵ The

³ Hereafter this dissertation refers to the European Community as 'EC' and the European Union as 'EU'. When referring to a time that encompasses both, the acronym EC/U is used.

⁴ The naming "Article 8 EC Treaty" indicates that this Article is part of the Treaty establishing the European Community signed in Rome on 25 March 1957 as it was amended by Article G(1) Treaty on European Union signed in Maastricht on 7 February 1992. That is, the citizenship Article has been included in the EC Treaty. Before Maastricht, the Treaty is referred to as the Treaty of the European Community, or EEC Treaty.

⁵ As Juliet Lodge notes, over the years the debate over the character of the EC has shifted from discussing it as "unique among international organizations" until the 1980s to, whether it was "transforming itself into something that is recognizable as a federal state" (Lodge, 1989 26). The uniqueness of the EC consisted primarily in its particular decisionmaking process "whose outputs were both binding upon its members and took precedence over national legislation where EC and national legislation were in

EC/U is also distinguishable from nation-states because policymaking is not based on the legitimate monopoly of force over a population within a bounded territory.⁶ EC/U policies are developed within a continuously changing context, a political arena which has been labeled a "would-be polity" by some (Lindberg and Scheingold, 1970). The institutional boundaries of this polity are constantly remodeled. Therefore, this polity is best characterized as one that is in a continuous state of construction that is well characterized by the determination of the TEU's 12 signatories "to maintain the *acquis communautaire* and build on it" (Article B(5) TEU) as well as to create "an ever closer union among peoples of Europe" (Article A TEU). While the EC/U comprises aspects of central institutions that are characteristic of modern nation-states (constitution, executive, legislative, judicative) these institutions remain incomplete, as measured against the ideal-type of the modern nation-state. The necessary legal framework that would enable the EC to act as a sovereign entity is not established by either

conflict". furthermore "it had accepted the legitimacy of a supranational authority to legislate with the active consent of the member states on behalf of the Community as a whole" (Ibid.).

For a definition of international organizations, see for example Clive Archer who writes. "[o]ne form of the organization of international relations can be seen in institutions - the collective forms or basic structures of social organizations as established by law or by human tradition - whether these be trade, commerce, diplomacy, conferences or international organizations. An international organization in this context represents a form of institution that refers to a formal system of rules and objectives, a rationalized administrative instrument which has a formal technical and material organization: constitutions, local chapters, physical equipment, machines, emblems, letterhead, stationery, a staff, an administrative hierarchy and so forth" (Archer, 1993:2).

See also LeRoy Bennett who summarizes "[m]odern international organizations may be classified as intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs, or INGOs, to distinguish international private agencies from those limited to a single country)" (Bennett, 1994:2).

⁶ Thus, Weber's ideal-type definition of the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (Weber, 1946:78) is reflected in many recent perceptions of the state. All of them generally assume that the state comprises a set of institutional arrangements, a concentration of power and the ability to exercise force.

See for example, Tilly's definition of a state "as an organization, controlling the principal means of coercion within a given territory, which is differentiated from other organizations operating in the same territory, autonomous, centralized and formally coordinated" (Tilly, 1975b:638) See also Skocpol who cites this definition and adds that the "core organizations that make up a state include the administrative, judicial, and policing organizations that collect and dispense revenues, enforce the constitutive rules of the state and society, and maintain some modicum of domestic order, especially to protect the state's own claims and activities" (Skocpol, 1992:43)

parliamentary sovereignty (UK), sovereignty of the people (Switzerland, France), or constitutional sovereignty (Federal Republic of Germany) ⁷

In sum, while comprising a supranational bureaucratic apparatus and a highly sophisticated system of economic integration, the European Union is not a state (Meehan, 1993a:xi; Sbragia, 1993:24; Scharpf, 1994:227, Streeck, 1992:11). In the most general idiosyncratic terms it is a supranational community which some think will at best develop into a federation (Habermas, 1994:29, Wildenmann, 1991). Yet, the EU offers "citizenship rights," despite the fact that a national state is not the end goal of the "construction of Europe." The questions at hand are: if EC/U citizenship⁸ differs from traditional citizenship, what does it entail? How have these citizenship rights been established? Is the EU proposing rights, access and belonging as national states do?

This dissertation explores the conceptual paradox of citizenship policymaking in a non-state. Given the insufficient support from traditional categories, one major task of the following case study is to "situate" the emergence of EC/U citizenship. This is done by focusing on the 'what' and the 'how'. That is, what is considered part of citizenship policy and how it has been established are central questions. I argue that through the collection of various policies which are part of EC/U citizenship policymaking and the reconstruction of their links we may be able to begin to understand not only the development but also the meaning of EC/U citizenship.

⁷ For these distinctions among various models of sovereignty, see Heidrun Abromet's comparative study of three cases (Abromet, 1995).

⁸ Throughout this thesis I use the terms EC/U citizenship, Community citizenship and/or Union citizenship depending on the official definition of the entity citizenship refers to. I do not endorse using the term 'European citizenship' for it suggests that Europe means Western Europe only. Therefore, the appropriate choice of term is a descriptive one. The conceptual meaning of this new type of citizenship remains to be fully explored. This thesis is intended to develop insights which may on the long run contribute to such conceptual clarification.

The Argument

This dissertation contributes to answering these questions. I argue that as an example of supranational citizenship the EU provides the possibility for insights into an aspect of citizenship that has gone largely untheorized in the citizenship debates over national citizenship: it brings the question of belonging to the fore. So far, belonging has commonly been deduced on the basis of a political or an ideological community (Brubaker, 1992, Soysal, 1994b, Kaplan, 1992, Turner, 1990). Moreover, the modern nation-state is assumed to be the community of belonging. The EU obviously does not conform to these conditions. Investigating the EU permits an analysis of citizenship policy that differs from traditional analyses in that it does not refer to the nation-state or to the citizen in the first instance, but concentrates on two aspects of belonging that characterize the link between the two. The first aspect refers to the political link between citizen and community, that is, it is about political rights (who belongs legally?). The second aspect is the identity-based link between citizen and community. It is constructed around a feeling of belonging. A case study of citizenship policy in the EC/U highlights the process that contributes to the construction of both legal and identity-based belonging as central aspects of citizenship in a non-state.

Citizenship has rarely been discussed in contexts other than the nation-state and has not been considered as part of supranational organizations thus far. Instead it has proved to be a crucial element for state formation in modern western Europe (Tilly, 1975; Bendix, 1964, Brubaker, 1992, Marshall, 1950, Hammar, 1990; Rokkan, 1975). If citizenship as it is known to students of the social sciences has always been related to a state (city-state, nation-state) then, how can its construction within a non-state such as the European Union be understood? It is suggested here that, beyond the task of describing the emergence of EC/U citizenship, this case promotes a way of looking at citizenship useful for reconstructing the policy in this supranational context. The second objective of this dissertation is then a contribution to the study of citizenship policy in a supranational

institutional context. If citizenship did not drop from the sky, then it must be possible to identify the policy, or policies, which underlie its emergence, as well as the actors involved in this process. If there is such a thing as EC/U citizenship policy, where has it come from?

Thus far, studies of Community citizenship have focused on a variety of aspects of citizenship policy. For example, they explore legal problems or political aspects based on legal innovations that mostly became apparent in the pre- and post-Maastricht debates. In turn, analyses of citizenship often comprise a perspective on the integrative function of citizenship within a federation.⁹ More recently, definitions of an ideal European citizenship have been developed.¹⁰ While research often includes partial aspects and/or consequences of citizenship policy such as migration, labour, health, education, family policy, the constructive force of this citizenship has rarely been explored.¹¹ If it is true that the definition of citizenship of the Union is a "radical innovation", going beyond purely "socio-economic goals" and introducing political rights (Closa, 1995: 494), it is worthwhile exploring its character. What are the political implications and political promises of this citizenship?

EC/U citizenship may be distinguished from national citizenship. Every citizen of the Union enjoys a first circle of nationality rights enjoyed within a Member State and a second circle of new rights enjoyed in any Member State of the EU (Closa, 1995: 493). Yet the reference to rights alone does not say enough about the character of this new supranational citizenship.¹² Given that citizenship politics in modern times has made

⁹ For the former see for example Closa (1992, 1995), Degen (1993), Evans (1985), Hobe (1993), Kovar and Simon (1994), Magiera (1990), O'Keefe and Twomey (1994), O'Leary (1995), Taschner (1994), for an exception see Van den Berghe (1982). For the latter see for example Mazzaferro (1993) and Wildenmann (1991).

¹⁰ See for example Garcia (1992, 1993), Lenoble and Dewandre (1992).

¹¹ For an exception regarding the constructiveness of EC policymaking and the European Court of Justice's rulings in particular, see Joseph Weiler's work (1986, 1991, 1993, 1994). Thus Weiler characterizes the construction of the "Community" as a type of dialectical process of action and reaction among the various forces shaping it (Weiler 1986: 344).

¹² The "caractère novateur" of this new citizenship has been acknowledged by many. See for example Kovar and Simon who claim that it needs to be studied outside a "passionately" led political debate and therefore suggest that only legal studies are fit to capture the new character (Kovar and Simon 1994: 288).

contributions to state- and/or nation-building (Tilly, 1975; Marshall, 1950; Bendix, 1964) one might similarly ask whether citizenship practice in the EC/U will make such contributions

Time is also important here. Elizabeth Meehan found that European citizenship existed before the actual stipulation of political rights in the Maastricht Treaty (Meehan, 1993a). Indeed Meehan's work provides an important contribution to the task of contextualizing European citizenship. She demonstrates how a careful reading of ideas and experiences of citizenship that have developed and materialized in other contexts allows for an appreciation and understanding of the existence of social citizenship rights in the EC/U. This follows Jean Leca's observation that the concept of citizenship does not have an objective meaning and must therefore be deconstructed in order to then explain how "real historical participants use it in historical contexts" (Leca 1990, c.f. Meehan, 1993a xiii). Meehan reconstructs citizenship by summarizing "the meanings of citizenship over time" and compares these with the type of citizenship she finds in the EC. She comes to the conclusion, "that it is not meaningless to speak of European citizenship or, at least, the coexistence of national and European citizenship" (Meehan, 1993a:xii). Meehan's comprehensive and extensive study found expressions of social citizenship in Community politics thus challenging Raymond Aron's statement that there are no such animals as European citizens (Aron, 1974, c.f. Meehan, 1993a.1). The approach of this dissertation is different from that chosen by Meehan however. This dissertation recounts the story of citizenship as it has been constructed by the participants in the particular story of EC/U citizenship practice which is, in turn, a story about institution-building. Thus it draws directly on EC/U history and compares it against an ideal-type citizenship model.

Meehan's discovery of social citizenship in the EC antedating the Maastricht Treaty is supported by Siofra O'Leary's finding that "despite the establishment of Union citizenship in Article 8 EC, the Union Treaty has, on the whole, simply constitutionalized certain rights which previously existed in Community law, introduced a few new ones and

provided a legal basis, as yet untested, for the enlargement of the content of Union citizenship in the future" (O'Leary, 1995 519). If social citizenship and certain other citizenship rights existed in the EC before the "judicial and legislative development of citizenship-like rights" led to the final establishment of Community citizenship in constitutional form (O'Leary, 1995 521-22), and the central question is about the contribution of citizenship rights to an understanding of the EU as a whole, then it seems feasible to put the puzzle of citizenship policy together according to its situatedness. Only thus can we link the various parts of citizenship policy with the legal stipulation of political citizenship rights in the Maastricht Treaty. Kovar and Simon provide a hint as to where to search for these parts, when they note that "[l]a substance des droits qui s'attachent à la citoyenneté de l'Union peut être vue comme étant dans une large mesure une consécration d'un certain acquis communautaire" (Kovar and Simon, 1994 287).

In sum, these observations suggest the emergence of a type of citizenship that surpasses the functional aspect of market integration by introducing normative elements that contribute to community building. While we now know several aspects of this citizenship--such as its legal grounding and its socio-economic embeddedness--we can only speculate about the full extent to which European citizenship has unfolded and what promises it might bear for the future.

Towards that end two observations are crucial. One is *methodological* the other *conceptual*. First, the meaning of citizenship policy needs to be clarified. Citizenship policy was not named a policy area until 1993 when it first appeared as such in the Bulletin of the European Communities. Rather, bits and pieces of citizenship related policies--such as for example education, culture, electoral policies, passport, movement, establishment--need to be identified and then put together in the same way one works on a jigsaw puzzle. Putting the jigsaw puzzle together facilitates the systematization of an otherwise confusing cornucopia of policies and concepts. Second, on a conceptual level it is important to clarify the type of approach to citizenship that meets the challenge posed by this

citizenship. Most of the literature on citizenship suggests that in order to understand citizenship, we need to go beyond a rights approach towards one based on the notions of responsibility and identity. In other words, we need to explore the ties of belonging that construct the relatedness between citizen and community which eventually makes this community.¹³ If it is true that "when we stress the aspect of belonging, we mean considerably more and at the same time less than participation in political affairs" (Kratochwil, 1994:488), then we need to understand how rights and identity contribute to generate a notion of belonging.

Method and Organization of the Study

Despite citizenship policy being a jigsaw puzzle, a method to analyze EC/U citizenship is at hand. It consists of theoretical and methodological considerations which include contributions to the theoretical debate on citizenship as well as new historical institutionalist analysis of public policy. With reference to the former, this dissertation draws on the current debate that analyses the challenges posed to citizenship by most recent global changes. Many contributions to this debate point to and explore the link between citizens and a community. They point for example to the need to study civic virtues, identity, and/or culture in order to explain the relationship between citizens and a community (Brubaker, 1992:21, Kymlicka and Norman, 1994; Kratochwil, 1994; Walzer, 1992). These studies stress that the normative aspect of citizenship possibly described as a

¹³ In a recent review of approaches to citizenship Will Kymlicka and Wayne Norman observe that many ask that citizenship be conceptualized as more than the "right to have rights." Instead, the "active exercise of citizenship responsibilities and virtues" and "cultural pluralism of societies" (Kymlicka and Norman, 1994:355) needs to be considered for the analysis of citizenship. Finding that citizenship is "not just a certain status, defined by a set of rights and responsibilities," Kymlicka and Norman write, "it is also an identity, an expression of one's membership in a political community" (Kymlicka and Norman, 1994:369). One way of including identities in the concept of citizenship is to pursue a "cultural pluralist" approach based on the concept of "differentiated citizenship" (Young, 1989:258; cf. Kymlicka and Norman, 1994:370). Yet, this concept rests on the assumption of group membership in a community. With the community in question not being politically defined as in the case of the EC that approach is not a helpful basis however.

notion of "belonging", does matter for analyses of citizenship and consequently push analyses beyond a purely functional meaning of citizenship. For example, speaking about citizenship in general, Friedrich Kratochwil argues that in order to understand a specific case, it is not enough to collect formal criteria. That is, without a sense of the case's "situatedness" we may risk falling into the traps of universalist logic (Kratochwil, 1994:495).

With reference to the policy aspect of citizenship this dissertation shows how a contextual analysis of citizenship may be assessed via institutional policy analysis. To that end it draws on the approach of "new historical institutionalism" (Thelen and Steinmo, 1992). This approach is extended towards discourse analysis so as to be able to include institutions that are part of the *acquis communautaire*¹⁴ in the analysis and thus focus on the historical elements of citizenship. This innovation stems from the observation that, as global politics face new patterns of community organization which are stimulated by state-fragmentation and/or reconstitution, migration and new types of supranational organization, the formal or contractual categories of citizenship practice such as the individual and the state are often not in--historical--place. They therefore become imprecise analytical categories. Informal or historical elements of citizenship practice gain increasing importance.

Before I elaborate the concept of citizenship practice and the methodological framework in order to study it, I will briefly lay out the thesis organization. The dissertation proceeds in three steps. Chapters 2 and 3 focus on theory and methodology, mapping out a theoretical and methodological framework. If we want to analyse citizenship policy in an unknown context, we need to be able to refer to a theory that provides clues of where to search in order to figure out what has been done. I suggest

¹⁴ *Acquis communautaire* is commonly applied once reference to the shared Community properties such as rules, norms and regulations is made. I elaborate on the *acquis* as a set of formal and informal institutions in chapter 3.

doing this with reference to a new concept of "citizenship practice". The methodological framework for the study is the new historical institutionalist approach. This approach is extended towards the analysis of discourse by introducing the concepts of "political opportunity structure" (Tarrow, 1989, 1994) and "universe of political discourse" (Jenson, 1986, 1988) from new social movement theory, on the one hand, and the institution of the *acquis communautaire*, on the other hand.

Chapters 4 to 6 provide a case study which reconstructs the development of citizenship practice in the EC/U. That is, they collect the pieces of the jigsaw puzzle of citizenship policymaking. Each chapter examines special rights and passport policies as two packages of citizenship policymaking which emerged over three periods. These cluster around the path-breaking European Council meetings of Paris (1974), Fontainebleau (1984) and Maastricht (1991). Chapter 6 also provides a brief view on the unfolding debate post-Maastricht and the possible promises of citizenship politics resulting from the explicit definition of citizenship. As the third concluding step chapter 7 summarizes the characteristics of Union citizenship and looks to the future.

CHAPTER 2

CITIZENSHIP PRACTICE - RIGHTS, ACCESS, BELONGING

The attempt to arrive at concrete material conclusions on the basis of purely formal criteria is tempting, but it cannot be done in a straightforward, logical, and impersonal fashion. Again and again we have to assume the existence of well institutionalized practices and functioning societies that offer themselves as objects of evaluation, but *which cannot be constructed out of the specified formal criteria* (Kratochwil, 1994: 495)

Citizenship: Constitutive and Historical Elements

In the broadest terms citizenship defines a relation between the individual and the political community. It concerns the entitlement to belong to a political community, the latter having the right and the duty to represent community interests as a sovereign vis-à-vis other communities and vis-à-vis the citizens. This model of a relationship between two entities, namely the individual subject or citizen on one side, and the representative of a sovereign entity (Queen/estate/nation-state) on the other, has provided modern history with a basic pattern of citizenship.¹⁵

It follows from these observations that at least three elements need to be considered in the conceptualisation of citizenship. These are the individual, the nation-state/community, and the relation between the two.¹⁶ Since any study of citizenship needs to refer to these three elements in one way or other, they may be termed the three *constitutive elements of citizenship*. Whereas the first two elements, namely the citizen

¹⁵ As Evans and Oliveira point out, citizenship is "a concept denoting the legal consequences which attach to the existence of a special connection between a defined category of individuals and a state" and thus essentially "a provision which is made for participation by a defined category of individuals in the life of a state" (Evans and Jessurun d'Oliveira, 1989:2)

See also Turner who finds that "[t]here are [...] two parallel movements whereby a state is transformed into a nation at the same time that subjects are transformed into citizens" (Turner 1990: 208)

¹⁶ Similar elements have been identified by Charles Tilly as basic criteria for state-making. He writes, "[i]n its simplest version the problem [of state-making] has only three elements. First, there is the *population* which carries on some collective political life--if only by virtue of being nominally subject to the same central authority. Second, there is a *governmental organization* which exercises control over the principal concentrated means of coercion within the population. Third, there are *routinized relations* between the governmental organization and the population" (Tilly, 1975a: 32)

and the nation-state/community, have been stressed by contractarian approaches to citizenship in particular, so far the third--relational--element has not received much attention. It has moreover been observed that citizenship theory does not contain tools for scrutinizing citizenship as practice.¹⁷ There is also an increasing awareness of the fact that citizenship cannot be dealt with on the basis of formal criteria alone.¹⁸ Thus, the missing link between the citizen and the state remains an unsolved problem for many of those who study citizenship.

I theorize this link by developing the concept of "citizenship practice," understood as the action that contributes to the establishment of citizenship rights, access and belonging in a community. Such practice implies both politics (expressed as struggles among social forces about access and rights) and policymaking (expressed as the rules about citizenship which are established within the institutional arrangements of the state). The former is defined as citizenship practice from below, the latter as citizenship practice from above. The prevalence of one mode of action over the other varies according to different contexts. While both modes of citizenship practice are always potentially possible, we might hypothesize that often one might prevail over the other at particular times and places. In this case we see the precedence of policymaking over struggle.

While it is crucial to define these constitutive elements of citizenship, it is as important to recognize the fact that citizenship is not a static concept. It comprises dynamic aspects that contribute different layers of historically derived meaning to the concept. This dynamic aspect is based on the interplay of the constitutive elements over time and spaces. The formation of the nation-state/community has changed in shape and organization as the setting of state institutions has changed; the definition of citizens entitled to citizenship rights has changed as struggles over citizenship rights have been

¹⁷ This fact that has been acknowledged as unfortunate in the works of Held (1991), Kymlicka and Norman (1994), and Turner (1993).

¹⁸ Thus Kratochwil argues that in order to solve questions about obligations to our fellow citizens and our country, the Kantian categorical imperative is not helpful (Kratochwil, 1994:495).

successfully carried out and hence new citizens were included while others were excluded, political, economic, and social changes involved the establishment of new institutions and thus often reshaped the frame of reference for citizenship practice. Thus, both citizens' action expressed as political struggles and state policies have contributed to changes in political organization within and among communities.

Indeed we observe daily that citizenship policy is a target of state institutions again. For example the Clinton administration ordered a "White Paper on Citizenship" (Boyte et al., 1992), the Canadian secretary of multiculturalism and citizenship demanded a redefinition of Canadian citizenship (Le Devoir, 3/1994), and Germany faces pressure to introduce double-citizenship rights in the light of increasing right-wing political mobilization against non-citizen-residents.

Historical studies of citizenship practice reveal that debates often turned on three elements of citizenship. One is *rights* and refers to how the individual is legally related to the nation-state/community.¹⁹ It comprises various types of rights, for example civil, political, and social. The perspective of citizenship as the incremental addition of rights has been most prominently associated with T.H. Marshall, who divided "citizenship into three parts [...] civil, political and social" (T.H. Marshall, 1950:10). Civil rights comprised the right to liberty of the person, freedom of speech, thought and faith, to own property, to conclude valid contracts. Political rights included the right to participate in the exercise of political power. Social rights amounted to the right to a modicum of social welfare and security, to share in social heritage and live the life of a civilized being (T.H. Marshall, 1950:10-11).

The second element of citizenship is *access*. It comprises information about the conditions for practising the relationship between citizen and community. This perspective

¹⁹ David Held develops this perspective of citizenship stating that "[c]itizenship rights are entitlements. Such entitlements are public and social [...] They are 'of right' and can only be abrogated by the state under clearly delimited circumstances" (Held, 1991:20).

of citizenship may be understood as access to political territory based on membership²⁰ This type of access hinges on mechanisms of political inclusion and exclusion.²¹ Another notion of access based on socio-cultural and economic inclusion and exclusion has been notably developed by critical feminist and anti-racist work that stresses the exclusive character of political citizenship rights. That is, while rights may have been stipulated, access might be denied because the means to use citizenship rights, such as proper education, communication, transportation may not be sufficiently established.

The third element is about belonging to a community. It is composed of the legal linkages of belonging to a sovereign entity which are currently based on either the law of soil or of blood (*ius solis* and *ius sanguinis* respectively), on one hand, and of identity-based linkages of belonging to a community which are expressed through a particular identity, on the other hand.²²

Since the element of belonging has different connotations, it is worthwhile to elaborate on them briefly. Texts on citizenship often point out that citizenship is about membership in a political community and membership in a nation. That is, citizenship is about nationality.²³ This notion specifies a way of *belonging*, either by law or by identity. Studies on citizenship have mostly referred to citizen identity by using the terms of 'national identity' or 'nationality', that is, by simply adding either an adjective or replacing it with a noun to clarify its meaning. Both are derived from the term 'nation' which is a

²⁰ This perspective is highlighted by Brubaker who finds, "[i]ndeed political territory as we know it today--bounded territory to which access is controlled by the state--presupposes membership. It presupposes some way of distinguishing those who have free access to the territory from those who do not, those who belong to the state from those who do not" (Brubaker, 1992: 22).

²¹ As Jenson summarizes for example, "any definition of citizenship establishes the boundaries of social inclusion and exclusion. Citizenship, in other words, is in its most fundamental sense about access" (Jenson, 1991: 3).

²² Contractarian perspectives on identity as one element of citizenship include Young's concept of "differentiated citizenship" in particular (Young, 1990), as well as Kymlicka and Norman's perspective on identity within the larger citizenship debate (Kymlicka and Norman, 1994). For a holist approach to identity and citizenship see especially Habermas's contributions (1991, 1994).

²³ Yasemin Soysal argues for example that the two components of citizenship which she identifies as "ideology and institutional practice", "have always been part of the concept of 'national citizenship'". (Soysal, 1994b: 2). See also William Kaplan (1993) for a nationality based approach.

construct itself²⁴ Whether or not this attachment to a nation is reflected in 'citizenship identity' does not go without saying. It needs to be shown. If the terms national identity and/or nationality are to be used in a meaningful way, they should reflect citizens' identity at a particular time and place, that is, express actual allegiances of citizens. As such they would make an historically specific statement. However, over time these expressions have gradually replaced the notion of identity, and nationality is now often used synonymously with citizenship. This interchangeable use of nationality and citizenship leads scholars who

²⁴ For an a characterization of this process of construction of the nation see Leah Greenfeld, who observes that "[t]he successive changes in meaning combine into a pattern which, for the sake of formality, we shall call '*the zigzag pattern of semantic change*'. At each stage of this development, the meaning of the word, which comes with a certain semantic baggage, evolves out of usage in a particular situation. The available conventional concept is applied within new circumstances to certain aspects of which it corresponds. However, aspects of the new situation, which were absent in the situation in which the conventional concept evolved, become cognitively associated with it, resulting in a duality of meaning. The meaning of the original concept is gradually obscured, and the new one emerges as conventional. When the word is used again in a new situation, it is likely to be used in this new meaning, and so on and so forth" (Greenfeld, 1992:5)

See Greenfeld's introduction for an overview into the construction of the term 'nation' from the 'roman natio' via student communities in France to the English nation. As she explains, "[t]he origin of the word is to be found in the Latin natio--something born. The initial concept was derogatory: in Rome the name natio was reserved for groups of foreigners coming from the same geographical region, whose status--because they were foreigners--was below that of the Roman citizens. This concept was thus similar in meaning to the Greek *ta ethnē*, also used to designate foreigners and, specifically, heathens, and to the Hebrew *amamim*, which referred to those who did not belong to the chosen monotheistic people. The word had other meanings as well, but they were less common, and this one--a group of foreigners united by place of origin--for a long time remained its primary implication. . . . "In this sense of a group of foreigners united by place of origin, the word "nation" was applied to the communities of students coming to several universities shared by Western Christendom from loosely--geographically or linguistically--related regions. For example, there were four nations in the University of Paris, the great center of theological learning: "l'honorable nation de France," "la fidèle nation de Picardie," "la vénérable nation de Normandie," and "la constante nation de Germanie." The "nation de France" included all students coming from France, Italy, and Spain; that of "Germanie," those from England and Germany; the Picard "nation" was reserved for the Dutch, and the Norman, for those from the Northeast. It is important to note that the students had a national identity only in their status as students (that is, in most cases while residing abroad); this identity was immediately shed when their studies were completed and they returned home" (Greenfeld, 1993:4)

For a definition of the concept of nation, see Benedict Anderson's definition that draws on Seton Watson's work: "it is an imagined political community - and imagined as both inherently limited and sovereign. It is *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion" (Anderson, 1993:6).

aim at problematizing identity in relation with citizenship to fall into the trap of taking the construct for real ²⁵

According to the concept of citizenship as defined above, the term 'citizen' stands for one constitutive element, while the term 'national' includes the notion of the historical element of belonging to the modern nation-state. It is then important to note that the term national identity often wrongly appears as a condition sine qua non for the establishment of citizenship. Nationality thus becomes all too easily reified, if the distinction between constitutive and historical elements is not respected. Accordingly, the decline (or increase) of national identity has led to assumptions of citizenship which may lead to wrong conclusions. Such assumptions are part of the powerful construct of "nationality" itself.²⁶ Comparative studies that analyze citizenship in contexts other than the nation-state may hence prove helpful to projects that aim at dismantling this reification ²⁷

²⁵ For a good example of this kind of observation see François Borella, who reasons that this often synonymous use of the two terms is of linguistic origin. He states that "[p]eu de travaux juridiques sont consacrés à la citoyenneté alors qu'il existe une considérable littérature sur la nationalité. La raison en est d'abord linguistique, nous l'avons vu, le mot citoyen est fréquemment synonyme de national" (Borella, 1991:220-21).

²⁶ For differences on how national identity and state-building are related see for example on the one hand, the findings of Tilly's research group, which maintains that the nation-state is only "one of several possible outcomes of state-building" (Tilly, 1975:71). Tilly's group states that nation-building occurs "after the formation of strong states" (Tilly, 1975:70).

Grawert in turn, points out that it is entirely possible that the state and nationality (or belonging to the state) have emerged within the same time span (Grawert, 1973:21).

²⁷ As Anthony Smith points out, these studies often work with the concept of the nation-state while aiming to supersede it. "Herein lies the paradox of any project for a global culture: it must work with materials destined for the very projects which it seeks to supersede--the national identities which are ultimately to be eradicated" (A.D. Smith, 1992:67). That is, while it is suggested that such studies may be based on a comparison against the nation-state, they do not rest on the assumption of the nation-state as a universal concept.

Such new assessments of citizen identity have been initiated in the light of a series of innovations in citizen-state-relations such as (1) de-colonization that brought citizens of former colonial states back to the "mother country", (2) guest-worker migration; (3) processes of supra-national state-building as in the ECU. These may set a new focus on different types of identity which are also possibly crucial for citizenship identity but have remained hidden under the thick layer of nationality discourse. A fourth form of citizen-state-relation that differs from the modern European citizen-nation-state relation is that of immigration countries (Canada, New Zealand, Australia, and to a certain extent the US). The story of identity construction in these countries provides an interesting and hence helpful contradiction to that which is linked to the nation-state.

To summarize, it is possible to state that the essence of citizenship is based on an understanding of the elements of rights, access and belonging. While it is possible to single out these different elements, it is important to keep in mind that they always remain interrelated. The three aspects bear a process-oriented or dynamic notion of citizenship and are therefore considered as the *historical elements* of citizenship. They add contextualized meaning to the concept of ideal citizenship, defining citizenship as stipulating rights, providing access, and creating a feeling of belonging and identity. Beyond the creation of a concrete citizenship that is particular to each state, these historical essentials contribute to the crafting of distinct institutional networks. They are hence important factors for a successful performance of governance within and among nation-states/communities. In the following section I elaborate on the analytical potential of the concept of citizenship practice.

Citizenship Practice

Historical studies have revealed the need for empirical grounding of the philosophical deductions that have often followed universal conceptions of citizenship.²⁸ These contextual dimensions have been highlighted by scholars who aim to provide an understanding and explanatory tools for the development and functioning of modern societies and the organization of politics in the context of industrialization.²⁹ In this context we can see that two broad conceptions of citizenship practice prevail in this literature. One considers citizenship practice as a top-down affair, the other stresses the

²⁸ For insights into such different contexts and the consequent impact on the understanding of citizenship as a concept see for example Rolf Grawert's work that compares the development of citizenship in different Western European nation-states from a legal historical perspective (Grawert, 1973). For work that similarly stresses the impact of historical contexts on the formation of citizenship and its meaning for politics from the perspective of social science, see for example Bös (1993), Brubaker (1989), Hammar (1990), Jenson (1991) and Turner (1990).

²⁹ For such studies, see for example most prominently T.H. Marshall's work on the institutionalization of citizenship over time in Great Britain (Marshall, 1950) and Tilly's studies on collective struggle and state-making that are more closely linked with a notion of citizenship that is rooted in the French revolution's struggle and values (Tilly, 1975).

central notion of social forces' struggle for citizenship rights. The first approach is exemplified by a Bismarckian style of politics, designed to integrate citizens into a community by providing them with citizenship rights.³⁰ The second conception of citizenship is one of struggle for citizens' rights by citizens. The French revolution provides the classic example here.³¹ Both practices are well captured by Prussian reformist Hardenberg's words "we must do from above what the French have done from below" (cf Brubaker, 1992:10). Whereas the first approach focuses on policymaking, the second approach usually begins from various aspects of social struggle bringing in the notion of collectivities, collective identities, inclusion and exclusion.

An overview of these different approaches is provided by Turner's study of citizenship from above versus citizenship from below (Turner, 1990).³² Yet, it appears from his work as if we were to distinguish between active and passive citizenship policymaking. This perspective changes, once we move away from Turner's society-

³⁰ As Brubaker notes, "[a]wed by the French triumph and the Prussian collapse, they [the Prussian reformers] wished to create a Prussian nation to regenerate the Prussian state" (Brubaker, 1992:10). Similarly, Bendix recalls this process by stressing the political power of Prussian Chancellor Otto von Bismarck. Accordingly, "universal manhood suffrage" had been agreed upon in the German National Assembly in Frankfurt in 1848-49. It took however another "17 years until Bismarck was able to make it the basis for the organization of the Reichstag of the North German Federation" (Bendix, 1964:97). Meehan also refers to Bismarck's use of citizenship policy from above as nation-building (Meehan, 1993a:29).

For the application of top-down citizenship practice, see Leslie Pal's analysis of the creation of the Canadian nation-state (Pal, 1993).

³¹ For accounts of the historical meaning of this process see for example Michael Mann (1993:207-208 and *passim*) and Tilly (1975 and 1990).

³² Turner has tried to conceptualize the notion of different perspectives on the problem by considering the citizen (acting from below) and the state (acting from above). Based on such case studies, he distinguishes between the most extreme cases of a "conservative view of citizenship (as passive and private)" and "a more revolutionary idea of active and public citizenship" (Turner, 1990:189). He links the former with the German tradition, arguing that in that context "citizenship stands in a passive relationship to the state because it is primarily an effect of state action" (Turner, 1990:207). The French conception of citizenship is seen as the strongest contrast to this tradition, given that it "was the consequence of a long historical struggle to break the legal and political monopoly of a court society" (Ibid.:208). Turner finds that "the very violence of this social transformation resulted in a highly articulate conception of active citizenship" (Turner, 1990:208). Overall, he distinguishes four cases that range on a scale from a conception of citizenship that has developed from below and in public as in the French case to the German case as most passive (from above) and private. In between range the American (below/private) and English (above/public) cases (Turner, 1990:209).

centered approach and consider a state-society relation as the motor of social and political change, even if under certain economic conditions³³ From such a perspective, his conception of--French--'active' versus--German--'passive' citizenship must be revised Now the German type of citizenship also appears as a result of action, namely, state action expressed through policymaking French citizenship, in turn, is the result of collective action of various groups of the population, that is social struggle towards the establishment of citizenship. It is suggested here that in order to understand citizenship as practice, it is necessary to appreciate that **both** patterns constitute citizenship practice

Among the most promising new contributions to the citizenship debate are those that point to the often intangible link between citizens and the state How is the individual linked to the whole, who is responsible for citizens' obligations to the community and why, ask the contractarian theorists (Kymlicka and Norman, 1994)? How would one citizen recognize another, ask the communitarians (Kratowil, 1994)? While this is not the place to engage in a debate about both schools which are derived from Lockian and Aristotelian political thought respectively, it is important to note that such contributions to the new citizenship all pose a similar query, as they problematize the citizen-state relation Most importantly then, the new debate on citizenship aims at an assessment of a theoretical problem that has been lingering in citizenship debates for some time, namely the question of how intangible aspects of citizenship rather than formal criteria may be included in citizenship analysis.

³³ To go beyond a society- or state-centric logic. Fuat Keyman has suggested theorizing the state not according to an either/or but to a both/and logic thus forwarding an understanding of the state as always in a constructive relation with society (Keyman, 1994). As Keyman observes both society and the state are "constructs". Their relationship must hence be studied based on "an understanding of society as a relational totality" (Keyman, 1994:153, 180 respectively) That perspective involves struggles over power and is not independent from structural conditions In sum, "[t]he either/or logic leads to a false dichotomy between the state and society, as in the case of the state-centric model However, the 'both/and' logic makes it possible to think of the state and society in relational terms without reducing one to the other Consequently, the both/and logic brings about a conception of the state not only as a complex institutional ensemble with its own spatial and temporal specificity, but also as a site where condensation of political forces takes place" (Keyman, 1994:154).

As I have pointed out, these criteria are central to the analysis of supranational citizenship practice. They are well captured within the notion of "intersubjectivity" that is inherent to a perception of a community as holist rather than organizational. More explicitly, according to the latter the link between citizen and the state is based on contract, whereas the former considers a link between citizen and community that is formed by "intersubjectively shared praxis" (Habermas, 1994:26)³⁴ Such an intersubjective perspective allows for an assessment of the dialectical aspects of citizenship practice. Via citizenship it casts a light on political integration of a community as one aspect of social integration (Habermas, 1994:28). It provides a window then on the political character of citizenship whether the result of struggles from below or policymaking. Indeed, I argue that citizenship practice as the central focus for any research on citizenship provides us with the advantage of avoiding state-centric or society-centric analyses. By not assuming a particular notion of the state or a particular notion of society, it is possible to capture the constructive moment of citizenship according to its situatedness in different historical contexts. Being situated implies having a "geography", a map as well as a name (Jenson, 1995b). Therefore, belonging also implies borders

Border Policies

Citizenship practice is about *borders* as citizens derive certain rights and opportunities of access based on their belonging to a bounded sphere. More specifically this feeling of belonging depends on a previous process of "drawing boundaries" around the terrains which are designed for those citizens who belong.³⁵ That process has been

³⁴ As Jurgen Habermas explains "the holist model of a polity in which each citizen is completely bound up [] has an advantage over the organization model, for the latter sets isolated individuals against a state apparatus, the two being linked only via a relation of membership that regulates an exchange of benefits for functionally specific contributions" (Habermas, 1994:26).

Kratochwil and Ruggie have applied the concept of intersubjectivity to the study of international regimes (Kratochwil and Ruggie, 1986).

³⁵ As Kratochwil notes "[i]t is perhaps best to conceive of citizenship as a space within a discourse on politics that institutionalized identities and differences by drawing boundaries, both in terms of

identified as relying on a discourse of 'them' and 'us'. It is considered as crucial for processes of national identification that brought with it the construction of boundaries within and around (nation-)states.³⁶ Borders are related to the concept of belonging. They appear as both borders between (nation-)states as well as borders within (nation-)states. As central aspects of citizenship both borders and belonging are social constructions. However border politics and the politics of belonging often follow different strategic patterns as policies. This is important for the analysis of citizenship practice because it poses the problem of locating the relevant policy areas that constitute the bases for creating borders and belonging.

Examples of such policy areas are migration policy and security policy. Thus, some consider citizenship as an "instrument of social closure" between and within states (Brubaker, 1992:x). By applying particular policies, states are thus assumed to practise control over belonging through the politics of closure and disclosure. This control over borders has recently been challenged. As studies on migratory flows explain, states now often lack control over social closure as social policy is increasingly directed towards those who do not belong to a community with regard to political rights but who nevertheless have been granted access based on social rights (Bos and Wenzel, 1995, Soysal, 1994). Other works point to the importance of belonging and identity for security

membership and in terms of the actual political practices that are connected with this membership. An explication of the concept, therefore, is not governed by the atemporal criteria of adequacy or correspondence. It necessarily becomes historical, requiring an examination of the genealogy of the concept and its temporary reconciliations" (Kratochwil, 1994:486).

³⁶ For the distinction among nation-states within the international realm see for example Karl Deutsch's observation that the "choice of national alignments and national identity is related to the decision to choose a common enemy" (Deutsch, 1963:11). Stein Rokkan's work on the basis of the 'Easton-Hirschman model' that includes the steps of (1) administrative unification, (2) national identity-building (3) active participation of masses, (4) growth of agencies of redistribution stresses the process of nation-building (Rokkan, 1975:597-78).

For processes of exclusion within nation-states, yet with a considerable impact on international relations as well, see Cristina Rojas de Ferro's work on the nation state and violence (Rojas de Ferro, 1995). Rojas stresses the generation of violence within communities as processes of in- and exclusion are legitimized on the grounds of an "A" versus "non-A" scheme. That is, while for instance the "A" group includes whites, males, occidentals, colonizers and civilizers, the "non-A" group excludes women, blacks, orientals, aboriginals, colonized, gay and lesbians from the first.

politics stressing for example the "relationship between institutional and normative European integration and their combined relationship to societal security" (Wæver and Kelstrup, 1993 61)

Borders appear as visible or invisible means of inclusion and exclusion. For example, on the one hand, borders are considered with reference to their materialized appearance in the form of rules of entry to a country (one crosses the border upon entering a country by land, air or sea, one has to pass border posts, show one's passport). On the other hand, they also exist as intangible boundaries, which are specified by a feeling of belonging to a country or, for that matter, a particular group that is defined by racial, gender, ethnic, and/or age boundaries. As numerous studies have stressed, these boundaries often impede full membership even from a position within a community.³⁷ The former type of borders is defined with reference to a community within a bounded territory. It is defined by political citizenship rights and/or access to political participation. The latter type of boundary is based on much more subtle mechanisms of inclusion and exclusion that are better described by a feeling of belonging to a community. This feeling is often based on actual inclusion via social or civil rights that have been established as consequences of processes of disclosure such as for example the expansion of social policy that created access to social rights for migrants in many western countries, notwithstanding the ongoing exclusion with regard to political rights. The boundaries of the political sphere which find material expression for example in restricted access to participation in elections then are not necessarily congruent with the boundaries of the socio-economic sphere or, for that matter the cultural sphere. Belonging then takes different forms of expression as it is limited by different types of boundaries. They

³⁷ For this point see for example (1) studies on the welfare state (Balbo, 1992). (T.H. Marshall, 1950). (Hernes, 1987); (2) liberal feminist work (Okin, 1992). (Pateman, 1988); (3) critical feminist work that questions this liberal approach to full membership in a community (Jenson, 1992). (4) anti-racist studies (Anthias and Yuval-Davis, 1992)

For an effort to theorize this boundaries based on varying identities, see the concept of "differentiated citizenship" as it has been suggested by Iris Young (1990).

contribute to the creation of multiple identities of citizens and non-citizens alike as they often cross-cut territorially defined boundaries as well as each other ³⁸

These processes of (socio-economic) inclusion and (political) exclusion which are both aspects of citizenship practice contribute to building social and political tensions. They are hence potentially conflictive. As the state tries to keep control over political membership and is inclined to grant more access to social rights, the gap between legal and identity-based patterns of belonging continues to exist. EC/U citizenship policy stands for an attempt to narrow that gap. Among other things this is due to the fact that new political citizenship rights are stipulated on the supranational and on the local levels and accordingly, geographical borders that mark the line between nation-states are likely to lose significance.³⁹ Instead, other boundaries that are marked by the criteria of access (to the welfare state), belonging (to a nation or group) or (cultural, economic, social) rights come increasingly to the fore. These boundaries are historically specific and often lead beyond the explanatory potential of formal criteria of citizenship.

Conclusion

The basic theoretical assumptions that underlie the concept of citizenship practice can now be summarized as follows. Citizenship practice has been identified as a constitutive element of citizenship. It provides insight into the historical elements of rights, access and belonging which in turn express the meaning that has been attached to the state and citizen by their interplay over time and at different places. These historical elements tie

³⁸ An increasing awareness of such boundaries is documented in a number of recent studies on migration, multiculturalism and citizenship. See for example Anthias and Yuval-Davis (1992), Bakan and Stasulis (1994), Bös (1993), Jenson (1995a), Kymlicka and Norman (1994), Wiener (1995), Young (1990), Yuval-Davis (1993).

³⁹ For discussions of citizenship in relation to supranational or global processes see Habermas's overview on the two grand traditions of citizenship theory--liberalism and republicanism--and their possible repercussion on new contexts of citizenship policymaking toward the turn of the millennium (Habermas, 1991). See also Elizabeth Meehan's work on the European citizenship (Meehan, 1993a and 1993b) and Soysal's work on "post-national" citizenship (Soysal, 1994a and 1994b).

individuals to the state by law and identity. And finally, borders are not fixed. They may also be understood as boundaries which are continuously redrawn. The EC/U represents a case in which new boundaries of belonging are created, by shifting tangible and intangible borders. As the following case study elaborates, on the one hand these borders are constructed as based on "special rights policy" with a view to the stipulation of the political right to vote for European citizens. On the other hand, they are constructed via "passport policy" which aims at the introduction of a common passport for European citizens. During the process of its application, this policy spilled over to the policy areas of education, labor, social policy and justice and home affairs. In the next chapter I provide a guideline for the follow-up of citizenship policy by mapping out the organs of the EC/U and specifying the methodological framework.

CHAPTER 3

POLICY ANALYSIS: A FOCUS ON INSTITUTIONS

La substance de la citoyenneté de l'Union est hétérogène. Pour partie en effet, elle est constituée de droits qui appartiennent à l'acquis communautaire, pour une autre partie, elle représente un apport qui va au-delà des droits déjà reconnus aux ressortissants communautaires (Kovar and Simon, 1994: 295)

Information on union citizenship is widely scattered within the Commission (Jorna, 1994).¹

What we see coming over the horizon depends very much on the theories we have used to grind our lenses (Schmitter, 1992: 2).²

Citizenship practice in the EC/U remained largely invisible until citizenship of the Union was spelled out and legally grounded in the 1993 Treaty of the Union. Nevertheless, the roots of citizenship policy and actual citizenship practice can be traced over a period of about two decades. During this time various policy packages belonging to different policy areas (for example internal market policy, electoral policy, education policy, visa policy and policing) contributed to the eventual embedding of citizenship in the Treaty. Community institutions, including Commission portfolios, parliamentary committees and Councils were involved in the process.

Even if the way they worked varied, I argue that it is possible to systematize this process. Towards that end, this chapter elaborates a methodology for the analysis of citizenship practice. It first provides a brief introduction to the institutional network of the EC/Us organs; secondly, it maps out an expanded historical institutionalist framework of analysis that can capture the often intangible nature of the institutions that are part of citizenship practice, and thirdly, it concludes with a model that allows for a

¹ Interview with Kerstin Jorna at DG XV, Directorate A 3 of the European Commission, Brussels 13 June 1994 [my translation]

² The use of the metaphor of a lens that is between the researcher and reality has been particularly crucial for many suggestions of critical/feminist and post-structural analyses that emerged in international relations theory's "third debate" (George, 1989; Keyman 1992; Neufeld 1995). See, in particular, Peterson and Runyan (1993) and Weber (1994).

systematization of the changing political opportunity to mobilize resources within the policy process

Community Institutions

As Emile Noël stresses, the "institutional system of the European Communities is difficult to classify. The Community is much more than an intergovernmental organization: it has its own special legal status and extensive powers of its own. But the Community is not a true federation to which national parliaments and governments are subordinate in the areas reserved to it" (Noël, 1991:5). Indeed, the institutional compromise--the *acquis communautaire*--according to which EC/U politics are handled often includes different approaches for different policies. In order to understand the big picture, it is helpful to identify major Community organs and policy approaches. Central institutions are the Council of Ministers (hereafter: the Council), the European Commission (hereafter: the Commission), the European Parliament (hereafter: the Parliament) and the European Court of Justice (ECJ). There are also two distinguishable policy approaches, namely, the community approach and the intergovernmental approach.

Complementary to the Council's legislative role, the Commission is the executive organ of the EC/U. It is considered as the guardian of the Treaties. Its 21 Commissioners are appointed by their national governments. They do therefore reflect a limited national interest. Nevertheless they also take an oath of loyalty to the European Community and pledge to accept no national instructions on policy (Peters, 1992:85). Thus they are supposed to act in independence from national interests and focus on a "common interest" of the EC/U instead (Lodge, 1989:37). Before they take office, the Commissioners have to present themselves to the Parliament, which then has the right to reject the Commission as a whole. While the Commission writes recommendations and opinions and executes Council acts, it most importantly has the power to initiate

Community policy by writing proposals. It therefore has been dubbed the "motor of European integration" (Lodge, 1989:37)

Broadly, the Commission functions according to a division of tasks between political work that is carried out by the Commissioners and their cabinets on the one hand, and administrative and technical responsibilities that are taken care of by the General Directorates³ and the administrative departments attached to them. Important for the style of decision-making within the Commission is that decisions are adopted corporately (Guéguen, 1992:20). That is, they involve a process of discussion that is supposed to lead to a consensus. Some describe the Commission as a "college" in which each member is equal in principle (Ross, 1995:26, Peterson, 1995:73). Each Commissioner presides over a specific portfolio and has thus a position comparable to a minister in a national government. "Unlike ministers, however, each commissioner is individually responsible for contributing to a collective and officially egalitarian decision-making process of informed argument among colleagues endowed with equal power" (Ross, 1995:26, Lodge, 1989:38)

Originally conceptualized as the motor of European politics, the Commission did not have much influence during the regime of the "Luxembourg compromise"⁴ when national interest was often invoked and the threat of one Member State's veto ruled

³ In "Brussels-speak," these are known as 'DGs' according to the French acronym.

⁴ In December 1986 in the wake of signing the Single European Act Emile Noel--then Secretary General of the Commission--commented on the Luxembourg compromise's blocking role to European politics. He characterized the function and emergence of the "compromise" like this: "[w]ithout any text being modified, a major distortion was introduced into the entire Community system when France worked toward rendering this last clause [qualified majority voting within the Council of Ministers] null and void just when it was going to take full effect (in 1966) at the start of the third phase of the EEC's transitional period). France demanded that the council not vote when one State voices a "very important" interest. Its five partners in Luxembourg (January 1966) refused any such commitment and the so-called "Luxembourg compromise" is simply an observance of disagreement. However, while the "Five" avoided putting France in a minority position in the following years so as not to re-open the crisis, the French delegation was prepared, even if it went against its own interests, to support any State strongly contesting a decision in order to prevent reaching a qualified majority. After the first enlargement, Great Britain and Denmark took on the French interpretation of the Luxembourg "compromise" and they with France formed a minority block in any voting situation" (Noel, 1986:2)

overall EC policymaking. This situation changed in the 1980s when the Single European Act (SEA) reconstituted and enlarged the procedure of qualified majority voting, thus re-opening in principle a window of opportunity for Commission ideas (Ross, 1995:27, Engel and Wessels, 1992, Louis, 1992). Now Commission proposals can be written again without an underlying calculation of formulating a compromise that could be adopted with unanimity. While the Commission proposals are subject to the ultimate responsibility of the Commissioner in charge of a particular portfolio, it should be noted that these proposals "represent the culmination of an extensive process of consultation"; this process often involves "representatives of Euro-level interest groups, national experts, senior civil servants and politicians" (Lodge, 1989:38).

The Council of Ministers comprises government representatives of the 15 Member States. It adopts or amends proposals from the Commission to whom it delegates the implementation of its decisions and is considered to be the major legislative organ of the EC/U. Usually one representative minister is sent to the Council meetings on particular issues such as social policy, foreign policy, justice and home affairs and so forth. The meetings are called according to political necessity. Important for the decision-making procedures within the EC/U is the nature of the Council of Ministers. It is one Community organ that represents national, not Community interests. However the Council members do not have an unrestricted right to veto Council decisions. In particular with regard to decisions towards the completion of the single market without internal frontiers, according to Article 7a EC Treaty and for decisions of a technical nature voting on a qualified majority constitutes the rule (Guéguen, 1992:40).⁵ For the

⁵ Once the White Paper on the completion of the internal market adopted in 1985 and the SEA was in force in 1987, the Commission assumed new powers vis-à-vis the Member States based on Article 7a EC Treaty (then Article 8a EEC Treaty). As Deirdre Curtin explains, "[w]hile hitherto the Commission in its political statements had been stressing the need to make the new decision-making mechanism set up by the Single Act fully credible, it is now endeavouring to make the Member States aware of the need to give effect, within the time limits set, to the directives, decisions and regulations adopted to establish the single market" (Curtin, 1990:709).

process of citizenship policymaking this measure proved central, as many decisions towards the establishment of special rights and passport union were based on Commission proposals that referred to Articles 7a and 7b EC Treaty⁶

Two further institutions are central to the contribution of the Council to Community politics. One is the European Council that is the biannual meeting of the heads of state and/or government. The other less visible yet politically quite influential institution is the Committee of Permanent Representatives (COREPER)⁷ which prepares Council meetings. The Commission is represented in both meetings. The first type of meeting often marks the culmination of previously elaborated strategies. At European Councils usually proposals that have been discussed for a long time beforehand are adopted. That type of meeting was termed 'summit' when it began to meet regularly after the 1974 European Council at Paris.⁸ The latter type of meeting takes place in order to prepare meetings of the Council of Ministers. It "constitutes a place of dialogue", and

⁶ Article 7a EC Treaty (formerly Article 8a EEC Treaty) stipulates: "The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 7b, 7c, 28, 57(2), 59, 70(1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty. The internal market shall comprise an area without frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

Article 7b EC Treaty (formerly Article 8b EEC Treaty) stipulates: "The Commission shall report to the Council before 31 December 1988 and again before 31 December 1990 on the progress made towards achieving the internal market within the time-limit fixed in Article 7a. The Council, *acting by a qualified majority on a proposal from the Commission*, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned." [emphasis added]

This type of qualified majority voting has been reestablished by the 1987 Single European Act: it applies among other areas to the completion of the single market, safety and health of workers, research, environment, strengthening of economic and social integration (Guéguen, 1992: 41).

⁷ According to Articles 151 EEC Treaty and 121 Euratom COREPER is a "committee of representatives of the Member States" (Hayes-Renshaw et al., 1989: 121). Its work is defined by the Council of Ministers: "At the beginning of 1962, the committee was divided into two parts which have continued to co-exist—the Permanent Representatives/Ambassadors (COREPER II) and the Deputies (COREPER I). The distribution of dossiers between the two parts is decided by the President of COREPER II with the help of the Council Secretariat" (Hayes-Renshaw et al., 1989: 126, see also Lodge, 1989: 45ff).

⁸ European Council meetings are usually scheduled one every six months and hosted by the Member State that holds the Council Presidency at the time. The Council Presidency rotates accordingly.

some would characterize it as "a melting pot where ideas are exchanged and Community compromises are worked out" (Gueguen, 1992:42) ⁹

The Parliament which has been elected by universal suffrage since 1979 has evolved from a mere consultative assembly in the 1950s to a Community instrument of cooperation (after the SEA) and of co-decision after the 1993 Treaty of European Union (TEU). Its structure comprises political groups, parliamentary committees, one bureau and one administration. The Parliament has overall been the Community organ that has most consistently worked towards the goal of European Union (Lodge 1994:73). Over the decades its members have become increasingly European, and the "basic organization is partisan and supranational" instead of national (Peters, 1992:90). It has again and again insisted on the need to increase its legislative powers so as to contribute to the establishment of more democratic legitimacy in the policymaking process. The fact that this demand has only very hesitantly been acknowledged contributed to the Parliament's role as the "most disruptive of EC institutions as it is most dissatisfied with the distribution of authority" (Lodge, 1989:58). At times Parliament's views expressed in the reports of the centrally involved committees in this process, namely the Committee on Legal Affairs and Citizen's Rights, the Committee on Social Affairs, Employment and the Working Environment, and the Committee on Institutional Affairs often resembled something akin to an institutionalized opposition within the Euro-polity. Indeed, it is fair to characterize Parliament as "the chief advocate of democracy, efficiency, accountability, and openness in the EC" (Lodge, 1994:69). As this thesis shows, this position--which clearly differs from that of national parliaments--has often sparked

⁹ For this observation see also Peterson who writes, "[p]ower to set policy clearly is shared between institutions. The Council of Ministers is often a dominant actor, owing to its formal legislative power. However, a general rule of thumb is that decisions, including many which 'set' policy, are taken as often as possible by the Committee of Permanent Representatives (COREPER) which groups together national ambassadors of the EU" (Peterson, 1995:73).

controversial debates within the Euro-polity and thus contributed much to the conceptualization of strategies

The European Court of Justice is the supreme judicial authority of the Community. It is consulted by national courts on questions of interpretation of Community law and validity of decisions of the Council of Ministers and the Commission (Guéguen, 1992:82). Throughout the process of European integration it has contributed in a constitutive way to the construction of the Euro-polity. Some even maintain that "in a sense, it created the present-day Community" (Shapiro, 1992:123). Clearly its role in declaring the Treaty of Rome as constitutional has had a sweeping impact on the extension of the European judicial space as well as the creation of "normative supranationalism" (Weiler, 1986:350).¹⁰ As Weiler summarizes, this contribution of the ECJ "was the first major step in the constitutionalization of the Treaty of Rome - its transformation by adopting a constitutional interpretation method into a quasi-constitution of the supranational entity."¹¹ Overall the ECJ's role in the policymaking process is to define particular aspects of the process legally. The ECJ often decides how to interpret the often ambiguous letter of the law, but it does not have a major say in the generation of proposals, directives and resolutions. In order to understand the meaning of a policy based on its discursive emergence the ECJ's rulings do therefore not contain important first hand information.

¹⁰ For interestingly different insights into the ECJ's contribution to EC/EU policy-making see for example, Alter and Meunier-Aitsahalia (1994), Burley and Mattli (1993), Garrett and Weingast (1993), Garrett (1992) and Weiler (1993, 1994). This dissertation shares the latter's constructive approach to ECJ policy.

¹¹ This decision included the fact that the "individual was put, in certain respects, on a par with the State, a feature which usually appears only in municipal law [...] Thus, Member States, *vis-a-vis* individuals could no longer break their international treaty obligations relying on the weakness of traditional public international law [...]. The Court's ruling [...] gave a new vigilant and efficient guardian to international obligations - the individual" (Weiler, 1986:350-51).

Methods of Policymaking

Once this basic institutional framework is understood, the next logical step is to discern which institutions are responsible for which policy areas. Commonly, EC/U policies are distinguished as following either the "Community approach" or the "intergovernmental approach". This division is based on the perception of Community policies as being organized in the form of three pillars.¹² The first pillar comprises the three original Communities (EEC and now EC, ECSC and EURATOM), the second pillar includes Common Foreign and Security Policy (CFSP), and the third pillar comprises Cooperation in the Fields of Justice and Home Affairs (CJHA).¹³ According to this model, the policies that are part of the first pillar are handled according to the Community method, that is, they are largely influenced by European policy style including Commission proposals and qualified majority decisionmaking within the Council. In turn, the second and third pillar involve an intergovernmental approach, and are subject to unanimity voting procedures and hence potentially involve national vetoes.¹⁴ These three pillars are kept together by the TEU.¹⁵

¹² As Laffan observes "[t]he imagery was that of a Greek temple rather than a tree. Each pillar has its own policy scope with different decision rules" (Laffan, 1993:40). For an explanation of the pillar structure, see also Lodge (1994:77ff).

¹³ The first pillar includes Titles II, III, and IV of the TEU; the second pillar refers to Title V, and the third pillar refers to Title VI. Title I stands for the fourth element, that is the common provisions of the Union.

Thus, "[p]olicymaking in the Community pillar rests on the so-called Community method, a form of policymaking that gives an important role to supranational institutions, notably the Commission, the Parliament and the Court. Cooperation in the other two pillars would be largely intergovernmental in character with some involvement by the Commission and the Parliament" (Laffan, 1993:40).

For an overview over the "non-unitary character of the Union construction" see Curtin (1993:22ff) and Demaret (1993). For an analysis of the third pillar of justice and home affairs see Müller-Graff (1994).

¹⁴ As Deidre Curtin points out, it is however important to note a slight difference in approach between the second and third pillar: "in CFSP it is a *common policy of the Union and its Member States* and in CJHA it is *cooperation between the Member States as such*" (Curtin, 1993:25). [emphasis of the author]

¹⁵ The role of the Treaty has been expressed with different metaphors, thus Müller-Graff considers it as the "clasp of the Union" (1994:495) whereas Curtin sees it as a "tarpaulin-like structure under the heading of an undefined European Union" (1993:23).

As Peter-Christian Müller-Graff explains, there are four elements in the construction of the European Union they comprise "the three European Communities as the first pillar, the Common Foreign and Security Policy as the second pillar, the Cooperation in the Fields of Justice and Home Affairs as the third pillar, the Cooperation in the Fields of Justice and Home Affairs as the third pillar and finally the clasp

Two provisions of the Treaty's Title I are worthwhile singling out because they define the character of this Union. First, Article A lays down the incremental character of the Union and it points to the unique character of this Union that not only refers to Member States but also to citizens. As it says:

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

Second, Article C specifies what is meant by incremental growth and where to look for it when it stipulates:

The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.

The *acquis communautaire* indicates "what the Community has achieved" until a certain point in time.¹⁶ It defines the "additional dimension of the EC", it is not to be changed and is to be accepted by new Community Members. Thus, a commitment is shown by new members towards the community project (Michalski and Wallace, 1992:36).¹⁷ The *acquis* therefore amounts to one important political institution in EC/U politics that any analysis of EC/U politics cannot avoid considering. It has come to be

of the Union as the basis and roof and thus as the fourth and interlocking element of the temple-like edifice" (Müller-Graff, 1994:495).

¹⁶ European Documents, No. 1000, 25 April 1978, p. 4 [Commission communication to the Council on "The problems of enlargement"].

¹⁷ They note "the *acquis communautaire* is composed of the treaties of the EC and the regulations, directives, decisions, recommendations derived from them, as well as the case law from the European Court of Justice (ECJ). It comprises policies, the legal framework and the institutional structure which a country must accept when it aims at membership in the Community" (Michalski and Wallace, 1992:36). Yet, while being incremental is part of the *acquis communautaire* itself, some dispute its perseverance, given that a "number of protocols to the Union Treaty [...] damage the *acquis communautaire*" (Curtin, 1993:18).

interpreted (though rarely translated into English)¹⁸ as the shared institutional properties such as the organizational aspects as well as the ideational foundation of the EC/U.

According to the European Commission the *acquis communautaire* is understood as

the contents, principles and political objectives of the Treaties, including the Maastricht Treaty, the legislation adopted in implementation of the Treaties, and the jurisprudence of the Court; the declarations and resolutions adopted in the Community framework, the international agreements, and the agreements between member states connected with the Community's activities (European Commission, cf Michalski and Wallace, 1992:38)

With this Union structure as framework for ground rules of policymaking, it is now possible to situate citizenship policy according to the two citizenship policy packages of special rights and passport policy. Both were handled within different institutional frameworks due to the incremental character of Community policies (its constitutional framework has developed over time) on the one hand, and the constructive nature of citizenship policy (its scope has expanded over time) on the other hand. Thus, special rights were to be dealt with as a matter of the "Community pillar" that was dealt with according to "Community-method" and "Community approach" (Curtin, 1993:25), on the one hand, and passport union was mostly a matter of the "second" and "third pillar" which referred to common foreign and security policy and justice and home affairs policy, respectively, and were "almost entirely intergovernmental in nature" (Curtin, 1993:25), on the other hand.¹⁹ It was, however, also partly defined by the Community approach of the first pillar

That is, special rights policy was mostly influenced and developed by such Community institutions as the Commission and the European Parliament. In turn, passport policy with its clear relation to borders on the one hand, and education and social policy

¹⁸ "There have been attempts to translate it into English, but the result thus far is only the unsatisfactory 'Community patrimony' or 'Community heritage'. The French term has prevailed and become increasingly embedded" (Michalski and Wallace, 1992:36-7). See also Müller-Graff on this observation (Müller-Graff, 1994:496).

¹⁹ See also Demaret (1993:39-40 and *passim*) for a.a. explanation of the various policy methods that are part of the EC/U's institutionalized compromise.

on the other, has been influenced by both, the Community and the intergovernmental approach. Indeed, it represented a material intersection between Community and Member State competences (Curtin, 1993.24) as it was partially influenced by Commission policy and partially by the intergovernmental approach. In a word, the responsibility for handling citizenship policy was divided among various political organs of the Community depending on the policy areas involved. As the case study will further illuminate, these divided responsibilities and split approaches to citizenship policy contributed to the policy being scattered across the Euro-polity, hence the metaphor of jigsaw-puzzle.

To summarize then, the Euro-polity's policymaking rests on a quasi-constitution (TEU) as tangible institutional framework.²⁰ This process has three particular features: it is constructive over time (Weiler, 1993); it is active compared to the often reactive policymaking of Member States (H. Wallace, 1983.46); and its success is dependent on how the Treaty is applied (Weiler, 1993.133). Over time as the process unfolds, new institutions emerge. The analysis of citizenship policy can be understood as following the construction of policies via an "interaction of interests, institutions and ideas" (Hall, 1986.5). These new institutions are often intangible insofar as practices (such as step-by-step policymaking), ideas (such as citizenship) or ways of handling a policy (such as linking special rights to market policies when it seems politically feasible) are not immediately turned into directives or regulations. In fact, sometimes proposals, reports or opinions may spend years in a drawer until they are retrieved and dusted off once the opportunity is right. In the following I elaborate a framework to study this phenomenon.

²⁰ As Helen Wallace notes, the role of the Treaties is of "paramount importance" as "[b]oth their provisions on specific areas of policy and their allocation of institutional responsibilities distinguish the EC from other international organizations by providing the promoters of common policies with constitutional authority and the level of legal enforcement" (Wallace, 1983.49).

For a similar emphasis on the Treaty's role as quasi-constitution and hence a factor that distinguishes the EC politically from international organizations, see Geoffrey Garrett who states that "the EC's legal system operates as if the 1958 Treaty of Rome and the 1987 SEA comprise something akin to an EC constitution. This contrasts sharply with the interpretation of most international treaties in which each signatory determines the extent of its own obligations" (Garrett, 1992.535-36).

Expanding the Acquis Communautaire

As Michael Shackleton writes "[h]owever much Member States might deplore certain aspects of Community policy, there is no question that all find themselves locked into a system which narrows down the areas for possible change and obliges them to think of incremental revision of existing arrangements" (Shackleton, 1993:20; Pierson, 1995:16-17). These existing arrangements are often referred to as the *acquis communautaire* (Woolcock, 1994:199; Wessels, 1992; Kovar and Simon, 1994; Nicoll, 1993:22; Lodge, 1994:77; Rack, 1990:135). Given this character of the policy process, it is strange that an institution so central to EC/U politics as the *acquis communautaire* should remain so untheorized.²¹ Perhaps this is due to rather dubious definitional grounds. Michalski and Wallace observe for example the *acquis communautaire* appears like "something that everybody has heard about it, but nobody knows what it looks like" (Michalski and Wallace, 1992:35). Whether or not this was intended, they thus implicitly shed light on the fact that the *acquis communautaire* not only comprises tangible *but also* intangible institutions. It then may be best defined as a set of formal and informal rules, practices and meanings that structure Community politics.

Such institutions have been the focus of studies that attempted a more accurate assessment of institutional politics, for example in the fields of comparative politics and international relations theory. These studies not only raise questions about the analytical potential of this institution but they also provide ways of assessing them. One example is provided by works of historical institutionalists whose work reflects a concern with the formulation of state policies (Hall, 1986:5). These scholars speak of the "autonomy of the state" (Skocpol, 1986). That concept provides an insight into the process of policymaking from within the institutional arrangements of the state. Focusing on

²¹ This lack of theory or systematic approach to the *acquis* does however not prevent the application of the term in the meaning of "the story so far". For such a use of the *acquis* see for example (Clapham, 1991:29).

institutions that structure individual behaviour in state politics. Peter Hall has for example defined institutions as "formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity" (Hall, 1986:19) ²²

In turn, Kratochwil and Ruggie have considered the role of institutions in the field of international relations, and more specifically, international regime analysis. They stress the need to push analysis beyond international organizations and their formal attributes such as charters, voting procedures, committee structures, and the like (Kratochwil and Ruggie, 1986:755). Instead, they stress that there is another category, namely that of understanding, which may shed light on the analysis of international organization and which therefore deserves more analytical attention. This new focus is based on the observation that "we *know* regimes by their principled and shared understanding of desirable and acceptable forms of social behaviour. Hence, the ontology of regimes rests upon a strong element of intersubjectivity" (Kratochwil and Ruggie, 1986:764).²³ There is then something else than the rules and forms of institutions. There are also processes of meaning construction. Such an approach to the study of institutions adds a new dimension to the picture.

²² Indeed this perception of institutions has strongly influenced many Europeanists' understanding of the European institutions and the relation between Member State governments and the Commission in particular. As Leon Lindberg stresses for example, "[i]nstitutionalists talk about the role of institutions in determining interests, in influencing the process of interest perception in the formation of interest when it comes to the analysis of national economic policy-making. This is true in Peter Hall's work." And he then stresses the link between this approach to institutions and the analysis of the Euro-polity when he adds, "[s]imilarly, I think the Commission has some ability to play the same game, in a sense *you can talk about the relative autonomy of the Commission*. The Commission obviously depends upon the governments' positions. However, I am not so sure that governments' interest perceptions are so autonomous of the Commission, which is playing with some of those same factors" (Lindberg, 1994:83) [emphasis added]

²³ [emphasis of the authors] See also Stephen Krasner's definition of regimes as a "set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner, 1983:2) which is similar even though Krasner's work clearly does not share the ontological innovation suggested by Kratochwil and Ruggie.

An application of the insights from state studies and international relations, to citizenship practice implies that a reconstruction of the policymaking process is not simply the challenge of a jigsaw-puzzle. The puzzle needs to be approached as a multi-dimensional one including the dimension of meaning. How may this dimension then be addressed? In the following I recall the assumptions of the main approaches to institutional analysis in recent EC/U studies in order to examine their potential feasibility to assess the dimension of meaning

A line was originally drawn between North-American and British work, on the one hand, and continental European work, on the other hand. This is now gradually turning into differences among sub-fields of political science. It can be identified once one attempts to summarize approaches to the field of European studies. Paul Pierson refers to two basically different approaches, one coming from the theories of international relations and the other grounded in comparative and European studies. Whereas the former supports an "intergovernmentalist" perspective, the latter "depicted the EC as a more complex and pluralistic political structure" (Pierson, 1995: 1). Regarding institutional analysis, two approaches can broadly be distinguished: neoliberal institutionalism and new (historical) institutionalism. Both rely to varying degrees on game-theoretic assumptions. Whereas the neoliberal approach stems from an interest in theorizing the institutionalization of global politics, new institutionalism has been proffered to resolve a profound discontent with policy analysis. Both approaches then share an uneasiness with states as unitary actors and suggest focusing on other factors that contribute to the policymaking process.

The neoliberal institutionalist approach underpins much of the intergovernmentalist variety of analyses (Keohane, 1989; Keohane and Hoffmann, 1991; Moravcsik, 1991 and 1993). The basic assumption that guides this approach is that institutions facilitate cooperation for state actors, given that two assumptions are true: first, there are mutual interests in potential gains from cooperation, second, there is a variation in the degree of

institutionalization, that is, the institutions are flexible (Keohane, 1989 2-3) ²⁴ Institutions are accordingly defined as "persistent and connected sets of rules (formal and informal) that prescribe behavioral rules, constrain activity, and shape expectations." They appear as formal intergovernmental or cross-national nongovernmental organizations, regimes or conventions (Keohane, 1989 3-4). In sum, according to this approach international institutions are understood as providing information for states' actions, as mediating or monitoring factors. They facilitate action but do not act on their own behalf ²⁵

Second, the new historical institutionalisms Paul Pierson summarizes, are "*historical* because [they] stress that political development must be understood as a process that unfolds over time. It is *institutionalist* because many of the contemporary implications of these temporal processes are imbedded in institutions -- whether these be formal rules, policy structures or norms" (Pierson, 1995 4). Most importantly this approach opens a perspective on the process of policy formation within and among institutions (such as the Community organs and their subcommittees) and the institutions created by this process (such as the expanded *acquis*) over time ²⁶

This approach dates back to theoretical challenges derived from the "state debates" of the late 1970s and 1980s ²⁷ At that time Peter Katzenstein summarized the

²⁴ As Robert Keohane writes "states are at the center of our interpretation of world politics, as they are for realists, but formal and informal rules play a much larger role in the neoliberal than in the realist account" (Keohane, 1989:2)

²⁵ Andrew Moravcsik has built on these basic assumptions for the analysis of EC/U policymaking by elaborating the aspect of "interstate bargaining" towards the Single European Act (SEA) (Moravcsik 1991:46 and *passim*).

For a critical approach to institutions as "informational clearinghouses" see for example Garrett who stresses "[i]t would be wrong [...] to characterize the institutions supporting the internal market as just the apolitical providers of information. While national vetoes obtain in most international regimes, a qualified majority voting of states in the Council of Ministers may impose its will on other members of the EC" (Garrett, 1992:535)

Historical institutional approaches share this critique of the neoliberal perception of largely inactive institutions. However they pay more attention to the history of the institution itself than the rational choice approaches would allow for.

²⁶ As Pierson stresses correctly, "what one makes of the EC depends on whether one examines a photograph or a moving picture" (Pierson, 1995 6)

²⁷ The major point of this new debate on the state was to contextualize state policy either by "bringing the state back in" (Skocpol 1985) or by "putting the state into its place" (Jessop 1990). It was directed against

idea of this approach as taking "events" as the resources to generate a "reorientation in theoretical perspectives" (Katzenstein, 1978:4) Following this constructivist turn, case studies have generated new frameworks of analysis which focus primarily on the realization of ideas for policy making within the realm of new forms of societal associations.²⁸ In this vein Theda Skocpol has introduced the aspect of time to historical institutionalist analysis. She defined a mode of measuring success of policymaking by comparing policies at different times according to transformed state capacities and changes in social groups and their political goals and capabilities. Thus it is possible to understand how "policies, once enacted, restructure subsequent political processes" (Skocpol, 1992:58). Moreover, this approach maintains that policy analysis is to focus on at least the central aspects of "the overarching goals that guide policy in a particular

the pluralist and structure-functionalist approaches of the 1960s and 1970s and sought to bring in aspects of influence on state policymaking, on strategies, as well as opportunities for change into consideration. The rough line of argumentation went as follows: While pluralist approaches which predominated the North American debate within the framework of behavioralist and post-behavioralist thought, dedicated not much more of a political role to the state than that of a 'black box' (Dahl, Almond, Easton) or a 'cash register' (Krasner's critique), the Marxist concept of the state was criticized for being closed against change. Thus this debate claimed, the structure-functionalist approach to the state reduced the concept of the state to an institution which merely dealt with the transfer of inputs to outputs, whereas the Marxists were accused of being theoretically redundant for providing a concept which in the end was restricted to an analysis of the reproduction of the capitalist system.

While in this context it is not necessary to elaborate on the complexity of state theory and the debates that have been crucial in pushing the concept again and again beyond its limits, this summary of the state debates can only be made thanks to a large body of works on the state. Among them, a good overview on how the concept of the capitalist state was moved in and out of the social sciences at different times is: Mahon (1991). For a debate over the "Return of the State", see: *American Political Science Review* 82, 3, 1988. For central volumes on the state see for (1) a critical/Marxist perspective that assumes a relative autonomy of the state: Jessop (1990), Poulantzas (1973), (2) a new-institutionalist perspective which rests on the assumption of the state as autonomous from society: Evans and Skocpol (1985); (3) for a behavioralist perspective which conceptually leaves the state as largely a black box, see: Dahl (1961); Easton (1965).

²⁸ These approaches are well represented by the literature on "policy networks" (Katzenstein, 1978:297, 308 and *passim*) and the "political power of economic ideas" (Hall, 1989:362). Notions of "a disaggregated view of the state" and "strong and weak states" (Atkinson and Coleman, 1989:49 and *passim*), as well as the neo-Marxist notion of the "relative autonomy of the state" (Poulantzas, 1979), if coming from different epistemological backgrounds all reflected a concern with the formulation of state policies in interrelation with society.

field, the techniques or policy instruments used to attain these goals, and the precise settings of these instruments" (Hall, 1993 278) ²⁹

I argue that once we are able to project the institution of *acquis communautaire* on the existing layers of comparative and international analyses of EC/U institutions, we are equipped to capture the multiple dimension of the puzzle I suggest to do this with reference to the concepts of "political opportunity structure" (Tarrow, 1989) and "universe of political discourse" (Jenson, 1988) whereas the latter provides the terrain from which information originates and the former functions as a clearinghouse of the political resources available at any time Both concepts have been developed within new social movement theory Their analytical value for new historical institutionalist analysis is grounded in the latter's increasing focus on meaning and discourse Thus, many scholars have suggested analyzing the process of policymaking by relating to a context of discourse³⁰ reasoning that it is helpful to focus on the immediate context or the "realm of discourse" in particular (Anderson, 1978 23 cf Hall, 1993 279) Hall has pointed out that such a context may also be termed a "policy paradigm", that is a framework "embedded in the very terminology through which policymakers communicate about their work" (Hall, 1993:279) ³¹

Discourse and Resources As has been pointed out earlier, citizenship policy has not been identified as one coherent policy until post-Maastricht, the policy-related discourse needs to be reconstructed as a multi-dimensional jigsaw-puzzle To that end

²⁹ This concern has informed the background for a variety of historical analyses (Lenschow, 1995, Pierson, 1995; Leibfried and Pierson 1992; Ross, 1992, 1993 and 1995; Zito, 1995) often in combination with elements of rational choice theory (Cram, 1995, Pollack, 1994)

³⁰ For studies that point to the importance of 'discourse' for policy analysis see in particular Hall's and Jenson's work (Hall, 1986, 1989 and 1993, Jenson, 1986, 1988 and 1991) In his 1993 study on social learning Hall points in particular to Charles Anderson's observation that "the deliberation of public policy takes place within a realm of discourse" and proceeds to provide an overview of other scholars who have drawn on discourse for policy information (Anderson, 1978 23 cf Hall, 1993 279, 293)

³¹ Changes of policy paradigms may result from "social learning" of policymakers These changes occur either as first or second order changes within a paradigm, or, as third order changes of the paradigm itself (Hall, 1993:278-80) The concept of social learning usually applies in cases of policy experience over an extended period of time and in one area

we need a concept which encompasses the largest possible amount of information about the origin, purpose and mode of citizenship practice. The concept of "universe of political discourse" provides this type of access (Jenson, 1986; 1991). The universe of political discourse is the terrain in which "[p]olicy-makers' assumptions--along with those of other significant political actors--set limits on the alternatives considered feasible for policy implementation. Taken together these assumptions compose the universe of political discourse, which can be defined as a universe of meanings constituted out of political struggle" (Jenson, 1988: 156). This context includes actors who are jostling over positions and ideas and "where politics occurs" in the larger realm of the universe of political discourse (Jenson, 1991: 52, 1986, 1988).

This concept has been used within new institutionalist analysis in order to analyze new social movement mobilization, as a type of mobilization that was often situated outside the institutional arrangements of the state. The question addressed by this concept, namely how actors are represented and in what type of spaces--for example: local, national, global, 'of the state'--(Jenson, 1991: 52) reflects the challenge posed by changing politics. It may thus provide valid information for the polity puzzle of the EC/U. This approach then enables us to follow the discursive emergence of interests and ideas. At the same time it is possible to locate the actors within a terrain that is structured according to power relations. These often lead to favour the application of some ideas over that of others. It is therefore important to note that "policy initiatives are developed in a context of competition, in which actors struggle to impose their own understandings and preferences on others" (Jenson, 1988: 155). By following the development of discourse over time then, the competition over interests and ideas can be singled out.

The universe of political discourse is among other things structured by immediate institutional contexts as well as by larger global contexts. In the case of the EC/U the equivalents of these contexts are expressed as the *acquis communautaire* and the policy

paradigm. These contexts set the basic structural conditions for policymaking. They are hence called "political opportunity structure" (Tarrow, 1989 and 1994). The concept of political opportunity structure (POS) has originally been developed by social movement scholars. Sidney Tarrow has refined the concept in particular by characterizing aspects of the political opportunity structure for social movement action. To that end, he defined four major aspects that crucially contribute to the mobilization of resources: first, the extent to which political institutions are open or closed to participation of groups on the margins of the polity, conditioned by the presence or absence of repression; second, the stability or instability of political alignments, as indicated, for example, by electoral instability; third, the presence or absence of influential allies; and fourth, resources such as the media and political parties (Tarrow, 1989: 34-35).

George Ross suggests applying this concept to the study of the EC/U as a notion that "attempts to systematize the fluctuation of avenues available to agents of change" (Ross, 1995: 5). He finds that the "concept of political opportunity structure [...] is adaptable to the EC. The EC's institutional architects (Spaak, Monnet, and others), after all, consciously designed the Community to be evolutive, open to reconfiguration and endowed with the reflexive institutional capacities to reorder itself over time. The Community was thus explicitly constructed to have a more open opportunity setting than nation states, along a number of different dimensions" (Ross, 1995: 6). This thesis draws on this crucial new insight into the often quite confusing study of EC policymaking, and elaborates its application in a more systematic manner.

Applied to the framework of EC/U policymaking then the POS is caused by the interplay of the policy paradigm that rests on the larger context of global politics, on the one hand, and the *acquis communautaire* that indicates the shared properties of the EC/U at any moment, on the other hand. This interplay is facilitated by actors. Depending on the capacity of actors with ideas and the means to use them, the political opportunity structure defines "dimensions of opportunity" (Tarrow, 1994: 85). For policymaking this means that

it defines whether or not resources can be mobilized. The advantage of the concept is its capacity to simplify and name a broad range of factors that influence decisions about policymaking such as for example "openness/closure of formal institutions, stability/instability of political alignments, availability of alliance partners, and intra-elite consensus or conflict" (Kriesi 1991:2, cf. Ross, 1995:5). It thus enables students of EC/U policymaking to tackle the role of actors--such as the Commission--in the policymaking process.³² While Ross clearly attributes the use of opportunities to the Commission (1993:580, 1995:6) this dissertation stresses that the discourse of citizenship policymaking was pushed by other actors as well, who also struggled to "generate greater Europeanization" (Ross, 1995:6). Therefore I draw on Ross's suggestion, systematize it and expand its radius towards the inclusion of a broader set of actors.

In sum, to assess the set of institutions that are entailed by the *acquis communautaire* it is suggested here to reconstruct its content as it evolves over time within the universe of political discourse. This content provides the resources that may be mobilized by policymakers--as the decisive actors--according to political opportunities. The political opportunities are not always the same. Successful resource mobilization depends on the political opportunity structure. It is up to the actors to seize the opportunity and activate the resources by carefully weighing their interests against the political opportunity structure of the time. This process then may contribute to a changed setting.

³² As Ross points out, it also provides a possibility to acknowledge the difference between the EC/U and international organizations (Ross, 1993a:581-83). He writes "[c]ontrairement à d'autres organisations internationales, la CE devait comporter un organe supranational dont le rôle serait de pousser les États-membres et les intérêts importants vers une plus grande intégration. Les fondateurs de la CE ne voulaient pas que la Commission soit un simple instrument au service des États-membres. Leur intention était de créer un organe indépendant qui puisse donner un sens à l'intégration européenne" (Ross, 1993a:581).

How to Do the Multi-Dimensional Jigsaw-Puzzle

With reference to historical institutional policy analysis it is now possible to do three things (1) to theorize the larger context, by periodizing the policy progress according to *policy paradigm* shifts,³³ (2) to assess the immediate institutional context based on the set of intangible and tangible institutions which compose the *acquis communautaire*, (3) based on the knowledge about the two contexts of policy paradigm and *acquis communautaire* it is possible to systematize the *political opportunity structure* that provides information about the parameters of action. The analysis of the multi-dimensional jigsaw-puzzle then hinges on the systematic assessment of the political opportunity structure, the actors and the *acquis communautaire* which always provides information about the outcome and as it evolves over time, the process of politics. If a snapshot on policymaking allows for insights into how this policy has been done and where it leads to (Pierson, 1995), then the *acquis* provides a suitable focus. A systematic approach to the policy potential contained by different political opportunity structures over time is now at hand.

³³ Peter Hall distinguishes between three different types of policy paradigm changes. First and second order changes are seen as changes towards the adjustment of policy, third order changes indicate a "paradigm shift" that includes "radical changes in the overarching terms of policy discourse" (Hall, 1993:279).

In the case of the EC/U these are shifts between union and market politics as the overarching terms of policy generation. For example, in the 1970s policies have been established under a politics-oriented paradigm with the creation of political union as the overarching goal of EEC policymaking at the time. In the 1980s in turn, policies have been formulated within the context of a market-oriented paradigm with the overarching goal of constructing the single market without internal frontiers until 1992. Finally, in the 1990s, a swing in the policy paradigm has been predicted by many.

Figure 1: Analyzing the Regime of the Acquis

It includes the policy paradigm at one point in time (PP₁) that interrelates to a certain *acquis communautaire* at time 1 (AC₁). The relation between both is mediated by actors and generated by practices, discourse and ideas. The *acquis* comprises tangible institutions (AC_i) and constructed meaning and practices (AC_m). It is therefore split into AC_{1i} and AC_{1m}, where the less tangible institutions often form that part of a proposal that has been part of the debate for a certain period of time, such as for example the right to vote, and which has not been turned into regulations or directives yet. That is, they still require final adoption by the Council. In contrast, the formal institutions include the regulations, directives and decisions that have been adopted by the Council.

It can be assumed that the policy paradigm is largely subject to a consensus, the same accounts for the tangible institutions of the *acquis*. The less tangible institutions of the *acquis* are however likely to be contested. They will therefore most often be debated in the respective forums of the Euro-polity depending on the policy's link with one of the three Community pillars and hence the respective approach (Community or

intergovernmental) that applies. The change from time (t) to time (t+1) is represented by the debates in between both points in time or "snapshots". The dynamic of these debates is most likely based on the often contradictory interests between integrationists who will more often push for the adoption of a proposal (input *pos*), on the one hand, and the intergovernmentalists who will attempt to keep the status quo (input *neg*), on the other hand.

The case study applies this model. It reconstructs citizenship practice proceeding from the initial incentive to expand the *acquis communautaire* over the various periods of expansion. The context, resources, actors and new institutions are recalled via analysis of this discourse. From the basic information about the process of policymaking developed above, it is possible to derive the starting conditions for EC/U citizenship policymaking in the 1970s. Thus, the overarching goal of EC policymaking or the policy objective that was pointed to by the most influential politicians at the time was the establishment of political union. The policy instruments adopted by the European Council towards this goal were the citizenship policy packages of special rights and passport policy. The setting of these instruments was defined by the political opportunity of the time. It is important to note that this case study sets out to examine citizenship practice as **policymaking from above**.

The question from which the research starts is threefold: first, why has a particular policy idea been developed at a particular time and not at another (context), second, what was contained in this particular policy expressed as citizenship practice from above (discourse), thirdly, how has this been done (resources)? The empirical analysis identifies the flow of citizenship practice in various fora by following the negotiations of each of its parts over 20 years, until citizens of the Union vote and stand for elections at their place of residence for the first time in June 1994. The major actors in this process are the European Parliament, the Commission, the Council and the respective committees attached to the three major EC institutions. This policy analysis is thus restricted to the somewhat narrow framework of the institutions that are directly involved in the process of policy generation,

including the Parliament's resolutions, the Commission's drafting of proposals for Council directives, the corresponding motions, reports and resolutions of the Parliament, often intermediate reports and counter-reports by the Commission and the Parliament and finally the adopted Council directives and regulations. The European Court of Justice's contribution to this process remains an indirect source of policy input and has therefore not been systematically considered in this analysis for reasons of space. This by no means indicates that the ECJ or for that matter other actors such as Member States and interest groups are not to be considered regarding the emergence of citizenship policy and its interrelation with state-building in the EC/U. On the contrary, these groups should be precisely studied in subsequent work which begins with the stipulation of citizenship of the Union and proceeds from there.

While the three institutions' actions can be distinguished by referring to different functions in the policy process regarding their influence on policy objectives and policy instruments, it is part of this dissertation to understand the often informal interrelations between the Community organs and their subcommittees. These are often put into practice by individuals who emphasize that they do not speak in the name of their institution but give personal accounts of the particular problem. The study thus relies on the analysis of events, sequences, relationships, the documentary basis of which is distinguished according to certain categories such as (1) direct inside reporting of the conduct of public affairs, (2) routine by-products of organizational work, and (3) records and reports of interactions between governments and members of the Euro-polity (Tilly, 1975: 8, 16). For the EC/U documents this implies (1) dossiers and minutes of EC/U institution's meetings, *compte rendus* of meetings, (2) official documents such as the Bulletin of the European Communities, the Official Journal of the European Communities, Europe Documents (3) media output and drafted documents such as provided by Agence Europe and European Report as well as articles and speeches given by EC/U officials as main references.

Conclusion

This thesis tells a story of institution-building, where the institution is the European Community/Union. It is told from the perspective of the many architects of the Community who were engaged, directly or indirectly in the formal processes of policymaking. The focus is citizenship practice. From this perspective, a number of issues, quite crucial in their own right, will not be addressed, for example the politics of interest groups and/or economic interests of influence. From this perspective the leading questions can be summarized as, which policy objectives are developed in the process, which policy instruments are applied and how did the process work?

With these principal questions in mind, I now turn to reconstruct and analyze EC/U citizenship practice including elaboration and application of the EC/U's policy packages. These policy packages are presented according to their emergence in the Community's process of policy generation.³⁴ The discursive analysis respects the exact wording of the documents and their appearance in time and context. This procedure only considers those policies that eventually surfaced as citizenship. That is, that were named as part of citizenship at the end of the process.³⁵ Similar to much of EC/U history, the analysis is presented over three time periods. Each was initiated by a situation in which paradigm change and expansion of the *acquis communautaire* overlapped. The time

³⁴ I did carry out 20 interviews with EC/U officials as well as a series of phone interviews with scholars who work on European issues in order to situate the case study in 1993 and 1994 during three research stays in Brussels.

During the first round of interviews in June 1993, I was interested in the feasibility of this case study. Questions hence were directed towards gaining information about the respective interviewee's personal opinion as an experienced European politician, policymaker or scholar as to whether or not citizenship policy was an important policy. Very few of the interviewed considered the area of citizenship policy as important.

This attitude had changed dramatically when I carried out the second round of interviews a year later in June 1994. Now citizenship was a pressing problem for Commission officials. Reports for the coming 1996 IGC had to be prepared and legislation had to be completed.

These interviews were only used for background information; the discursive policy analysis does not consider the personal opinion of the involved individuals about what they did (or would have liked to have done) years ago in the process. That process is to be told by the documents of the time only.

³⁵ Policies such as, for example, social policy which are generally considered as a central component of an ideal citizenship do therefore only appear if they are mentioned by the citizenship discourse.

periods cluster around the 1974 Paris Summit, the 1984 Fontainebleau Summit, and the 1991 Maastricht Summit ³⁶

As has been stated earlier *rights, belonging, and access* are considered as the three perspectives of citizenship. In the following chapters on special rights and the passport union (points 11 and 10 of the Paris communiqué, respectively), the negotiations over the establishment of European citizenship based on rights and belonging will be pursued within their respective contexts as two dimensions of policymaking which aim at the establishment of European citizenship. They are analyzed as two citizenship policy packages. Since the EC presents a polity in construction, the story to be told about citizenship policymaking is one of construction. This implies that while policy-instruments for the creation of rights and belonging developed before citizenship as such was stipulated in the treaties, the aspect of access remains to be postponed until after the enforcement of the citizenship law (Article 8 EC Treaty). The latter will therefore be analyzed at the chronologically appropriate time and place, namely, when citizenship policy was transformed into Citizenship of the Union. Then, the question is twofold, first, does citizenship practice reveal that access is warranted and, second, if and how has citizenship(policy) contributed to the creation of European identity?

As the following will show, the transformation of objectives into action was long. The realization of the goals of the 1974 Communiqué took therefore almost 20 years until the Treaty on European Union entered into force in 1993, thereby legally stipulating the concept of Citizenship of the Union.

³⁶ These cornerstones of the development towards citizenship are largely shared in the relevant literature. See for example Magiera (1990:13, 14) who stresses the importance of the Paris and Fontainebleau summits. The following chapters of this dissertation explain the importance of these summits for the expansion of the *acquis* in a detailed manner.

CHAPTER 4

PARIS: AGENDA-SETTING TOWARDS POLITICAL UNION

I have at times compared Europe with Tarzan. It has a relatively advanced morphology but its speech is still fairly scanty (Davignon, 1972) ¹

Who speaks for Europe? (Kissinger, 1973) ²

For me, the conclusion is obvious: if we wish to safeguard the achievements of the Treaties and conquer new ground the Member States must agree on new aims. At this stage, the stakes are political, that is quite irrefutable (Tindemans, 1975) ³

Citizenship practice was initiated in the early 1970s, when the European Community was in a state of crisis. This crisis was initiated externally by structural changes in the global economy as the two central pillars of the Bretton Woods system, namely access to cheap oil and a fixed exchange rate, crumbled. With the sharp rise in oil prices (1973, 1974) and the end of the fixed-rate policy (1971), the regulative pattern of international cooperation had been destroyed and the search was on for new modes of interaction on the international stage. Internally the crisis manifested itself in declining public support from European citizens ⁴ In the following, I will examine the discourse of those actors seeking to mobilize the resources of the time which turned out to be richer than the context suggested. As will be shown, the political opportunity structure of the time was carefully exploited by interested actors.

¹ Agence Europe [hereafter: AE], No. 713, 5 January 1973, p. 7 [interview in *La Libre Belgique* 28 December 1972]

² Kissinger asked this question when a Danish representative of the EC spoke in the name of the Community in Washington in September 1973 (Dinan, 1994: 85)

³ Bulletin of the European Communities, [hereafter: Bull. EC] Supplement 1, 1976 [Tindemans Report]. Text of Mr Leo Tindemans' letter to his European Council colleagues sent on 29 December 1975, p. 1. It is interesting to note here that the French version of this text which was presumably the original uses the word "acquis" (French: "[S]i on veut sauvegarder l'acquis des traités et s'engager dans de nouvelles réalisations, les États membres doivent convenir d'objectifs nouveaux. L'enjeu à ce niveau-là est politique, c'est indiscutable.") [emphasis added] which does not appear in the English translation.

⁴ In the first 30 years of union-building, public support for the broad question of "In general, are you for or against efforts being made to unify Western Europe?" ranged usually on a quite high level between 87% and 91%. The three significant drops in support occurred in 1963, 1973 and 1982 to lows of 86%, 85% and 83% respectively (European Documentation Series, 1983: 20)

This chapter first reconstructs the political opportunity structure that resulted from the policy paradigm and the *acquis communautaire* in the wake of the 1974 Paris summit and the strategies that were chosen to confront this situation (part A). Second, it examines the mobilization of resources and expansion of the *acquis* based on the development of two new policy objectives that were agreed upon at Paris as a means towards the construction of a European identity: special rights and passport union (parts B and C). Finally, the chapter summarizes the results of this resource mobilization in terms of institutional changes of the time (part D).

PART A: POLITICAL OPPORTUNITY STRUCTURE IN THE 1970s

19-20 October 1972	European Summit at Paris
28 December 1972	Interview with Messrs Davignon and Van der Meulen in <i>La Libre Belgique</i>
7 July 1973	Speech of Foreign Minister R. van Elst on 27 June 1972 before the Belgian House of Representatives, made at the end of Belgium's six-month rotation at the presidency of the Council of Ministers
23 November 1973	Speech "A Programme for Europe" by Altiero Spinelli, Member of the European Commission, Rome
14-15 December 1973	European Summit at Copenhagen: Document "Of European Identity"
9-10 December 1974	European Summit at Paris: final communiqué

Towards A New Policy Paradigm

In the early 1970s, a qualitative turn was initiated by European politicians. The concept of European integration came to be redefined to include economic as well as political integration. The events of these years marked the turn from the "Europe of materials" to the "Europe for citizens" (Van den Berghe, 1982:22). Part of this project was the decision taken by representatives of the Member States to work towards the establishment of a political union in Europe. As the final Communiqué of the 1972 Paris summit stated, "[t]he member states of the Community, the driving force of European construction, affirm their intention before the end of the present decade to transform the

whole complex of their relations into a European Union "⁵ Some considered this an overly optimistic statement (Dinan, 1994:82), and with hindsight it is easy to observe that the time-frame of achieving this goal within eight years was clearly unrealistic. Indeed, the complete change from the favorable conditions during the early 1970s to the economic crisis and recession that was visible in 1974 hindered many of the plans for integration. However, the paradigm shift from talk of economic integration to political integration of the EEC was clear.⁶ Moreover, the climate of economic recession notwithstanding, the political opportunity structure nevertheless favoured some crucial initiatives for new policies. It resulted from the existing *acquis communautaire* which included already at that time the idea of European Union and the project to create a stronger European identity. The careful mobilization of the available resources by some politicians during this period was an important factor in shaping the institutional framework of the EU as we know it today.

The context was framed by changing institutional, economic and political conditions on the global level which influenced the flow of European politics. For example, the increase of oil prices in 1973, and the fall of the Bretton Woods system of fixed exchange rates shook the global economic system and eventually led to a "major change in the political economy of Western Europe" (Tsoukalis, 1993:37). In the light of the scattered patterns of international cooperation, European governments became more independent from the previously overwhelming US hegemony.⁷ European states would increasingly assume an independent and active role within the global political realm. These external changes contributed to the EC's adoption of a more European role in global politics. Indeed, some understand this time as a "turning point" in the process of European

⁵ Commission, 1972, General Report, point 5(16) (c.f. Dinan, 1994:81).

⁶ Indeed, as Desmond Dinan observes "[c]ompared with the laundry list produced after the Hague summit, this was a striking catalog of Community deepening" (Dinan, 1994:82).

⁷ Thus, Robert Keohane and Stanley Hoffmann comment for example that this situation "tempted European governments to make arrangements with oil-producing states that were at odds with their traditional deference to US leadership" (Keohane and Hoffmann, 1991:5).

integration (Ginsberg, 1989 267 and *passim*) In the following I will provide a brief insight into this process

Before this could happen, the three major institutions of the EC, namely the Commission, the Council of Ministers and the Parliament, were increasingly criticized for not being able to cope with these challenges. An institutional crisis emerged. The scope of the crisis was such that EC politics came close to stagnation. Indeed, the President of the Commission, Xavier Ortoli, stated after the 1972 Paris Summit that "the economic crisis and the changes in international relations, far from strengthening Community solidarity and leading to an assertion of Europe's identity vis-à-vis the rest of the world, have marked a further check, and perhaps a retreat, in the process of European construction. The Member States, tempted by purely national solutions, faced international discussion divided. The Community institutions have been too weak, and the means at their disposal too meager, to counteract this tendency."⁸

In this situation, those in favor of a movement towards European Union intervened frequently in order to set the policy objectives for the upcoming summits in Copenhagen 1973 and Paris 1974. The debates involved some European politicians, among them the President of the Commission Xavier Ortoli, the Belgian Foreign Minister R. Van Elsen, the Italian Commissioner Spinelli, the Belgian Commissioner Etienne Davignon and the German Foreign Minister Walter Scheel who argued in favor of active policy. For example Mr. Ortoli stressed "it is important to develop political-will power [since] in the new world situation, no member state can act efficiently alone";⁹ and Mr. Van Elsen emphasized that it was crucial to overcome the "total lack of political courage" of the time.¹⁰

⁸ Bull. EC, Supplement 5, 1975, Report on European Union, p. 5

⁹ AE, No. 1449, 2 February 1974, p. 7

¹⁰ AE, No. 1450, 4/5 February 1974, p. 1

Thus far, the diverse Member States had only been united in their understanding of the EC as a customs union. Thinking about integration until then had very much reflected the functionalist view of changes in political outcomes as "spill overs" from new economic and monetary policies (Ross, 1994: 6). Political relations thus had little status as policy objectives in their own right. The lack of a clear political conception of Community development, according to Davignon, was a glaring gap. As he explained:

one of the difficulties of European construction is that historical stages have to be missed out. It is necessary to behave as if Europe already existed, as a political entity. In history, all countries passed through a phase of exclusively national development. Yet in this instance Europe has to act and intervene at the international level before having completed the phase of its internal development.¹¹

Thus, if gradual European integration was still the goal, institutional changes were necessary in order to provide the proper means for achieving this end. Referring to the lack of support from European citizens, Davignon used a discourse of identity stressing *belongingness*. He stated that "[p]eople should not be able to say 'all we know of Europe is the VAT and the increase in the price of vegetables, but we don't feel that we belong to a new entity. *Europe should be personalized*.'" And he added that "[a]nother dimension should be added to Europe, the 'new Europe', that of the Nine, must be *more human*."¹²

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

[t]he priority being given to setting up the customs union, the difficulties of political union, the weariness that is caused by so many marathons and vague decisions, have gradually eroded away public opinion; the building of Europe is liable to cease being a common ideal, but rather an objective sought after by those who will profit directly from it. In other words, Europe cannot be monopolized by economic and technological achievements and neglect, under penalty of losing essential support, the aspirations of its citizens.

¹¹ AE, No. 713, 5 January 1973, p. 7.

¹² AE, No. 713, pp. 3-4 [emphasis added].

The European citizens, therefore, needed to be better linked to the project. The search was on for policy which would contribute to establish this link by creating a sense of belongingness. Van Elslande continued to stress that the Belgian presidency should aim at creating the "first concrete stage towards establishing European citizenship." This first stage would include mobility for students, exchanges of teachers and harmonization of diplomas, with a view to giving "young people ... the chance of feeling truly part of a vast network covering the whole of the Community." According to Van Elslande, three areas needed to be given preference: social policy, the integration of young people and students; and political responsibilities for nationals of Community countries on the local level. His primary emphasis, however, was the crucial importance of establishing an identity-based link among citizens and the Community since, in his view "[t]hese targets cannot be set on a technical basis. The political commitment must be a real one and each citizen must be able to grasp the significance of what has been decided."¹³

Similarly, Commission president Ortoli regarded certain policy fields as particularly important for the creation of a European identity. As he stated

it will be necessary to develop progressively new fields of Community action [...] There is a lot to do in this direction as regards both industrial and technological development of Europe and the standard of living. We must identify ourselves as 'a Europe which is a region of economic progress and better social justice'. We must also [...] tackle coherently the external problems of the Community (relations with the United States, the GATT negotiations, the reform of the international monetary system, the relations with the east European countries, and the relations with developing countries).¹⁴

Related to the idea of an improved presence of the EC within the international realm was the problem of administrative viability. EC policymaking had become more and more a matter of Council decisions, based on initiatives developed by the Committee of

¹³ Europe Documents, No. 752, 17 July 1973, pp. 1-2 [speech of Foreign Minister R. van Elslande on 27 June 1972 before the House of Representatives, made at the end of Belgium's six-month rota at the presidency of the Council of Ministers]

¹⁴ Europe Documents, No. 724, 5 March 1973, p. 4 [speech delivered at Chatham House, 23 February 1973, London]

Permanent Representatives (COREPER) which usually prepared the agenda for Council meetings. As the institution which according to the Treaty of Rome was to produce ideas, and proposals, and thus was potentially given the opportunity to initiate policymaking, the Commission lost influence as the Council turned away from majority voting. This practice of unanimity in Council decisions significantly reduced the Commission's capacity to mobilize resources towards integration.¹⁵ The political opportunity structure of the time clearly favoured other institutional frameworks of action, in particular among them, the Council of Ministers. However, despite these institutional handicaps single Commission and Parliament members continued to influence the policy process.

This development was criticized by Belgium Foreign minister Van Elsandé, who observed "that the political role of the Commission has been taken up at least in part and almost as a matter of course by a body which had not been anticipated in the two-way set-up based on the Commission/Council concept, that is to say by the Permanent Representatives Committee (better known as COREPER)". He pointed to an expert study of the "Vedel Group"¹⁶ which revealed

that the deviation in the relationship between the Commission and the Council was primarily due to the fact that the Council of Ministers no longer went by majority votes but systematically sought out unanimity. Consequently, as it was hardly a question any longer of majority decisions taken by the Permanent Representatives Committee and the Council of Ministers, the Commission found itself increasingly bound to look only to Community solutions what would be likely to be accepted unanimously. In other words, the dynamic role in the drawing up of policies of true Community inspiration has been gradually abandoned to the benefit of the more

¹⁵ Christoph Sasse attributes not only a restriction of Commission activity but also that of the Parliament to this "practice of decision-making" in the Council (Sasse, 1972: 61).

It is worthwhile to note that the Parliament was fairly unpopular with much of the younger population at that time, given the student mobilization that since 1968 had promoted the idea of outer parliamentary solutions instead. Roman Herzog mentions this factor pointing to the "critical situation of European parliamentarism" at the time (Herzog, 1972: 43). Sasse equally stresses the impact of the student movement on European parliamentary politics (1972: 65). That means that a large share of potentially mobilizable interest groups was not available in the early 1970s.

¹⁶ Bull. EC, Supplement 4, 1972 [Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament, "Vedel Report"]

technocratic function, consisting in encouraging the search for agreement based on the lowest common denominator between the delegations ¹⁷

In other words EC policymaking had become a matter of intergovernmental negotiations. Therefore, in the view of certain actors, the context for policy innovations leading towards European integration needed to be expanded. Spinelli had a particularly clear vision of the policy changes required in order to federalize further the EC. He did not only aim at facilitating improved economic relations within an economically defined space, but also at pursuing the political goal of establishing equity and solidarity among European citizens. To this end, he explained

proposals have been drafted within the Community aimed at laying real and solid foundations for a Community policy for society. The Council has undertaken to adopt decisions by the end of the year whereby a well-endowed regional policy fund should be set up and the social policy fund increased. These will only be initial steps, but they will be important ones because by taking them the community will go beyond its present role as a market controller and organizer and will become a political centre for the redistribution of income based on principles of solidarity and equity ¹⁸

Such policies would surely mean a qualitative shift in the Community's role. They were necessary according to Spinelli not only for reasons of solidarity and equity among Europeans but also for a better coordination of foreign policy. He gave the example of the possibility of an escalating crisis in the Middle East, and pointed out the lack of Community representatives with whom the United States' representatives could have communicated with regard to the problem.

[b]ut who could the Americans possibly have consulted on measures which had to be decided upon within a few hours? Since the community as an entity having a single foreign and defense policy does not exist, should they perhaps have held discussions with each individual member of the alliance?

In light of these events, Spinelli demanded that the upcoming Paris Summit focus on the central question of "what must be done to equip Europe at last with personality,

¹⁷ Europe Documents, No. 752, 17 July 1973, p. 5.

¹⁸ Europe Documents, No. 775, 3 December 1973, p. 2 [Speech "A Programme for Europe" by Altiero Spinelli, Member of the European Commission, Rome 23 November 1973].

identity, or, in short, that European Government of which it stands in need". As he defined it, "[t]he concept European Government means a political authority which is distinct from national governments, and would be responsible for conducting a number of common policies in accordance with common laws, covering the costs of such policies with common funds and justifying them in accordance with appropriate procedures to a Chamber of Deputies of the European people and to a Council of Representatives of the Member States."

He subsequently emphasized the necessity of profound changes in the European institutional setting,

[s]ince the member Governments of the Community have so far retained the power to decide what things are to be done in common, they will have to make decisions, in the space of a few weeks, on a number of measures not only of economic and monetary policy, regional policy, social policy and energy policy, but also of constitutional policy aiming to set up a democratically controlled European Government

Thus, not only was the question of the European Community as an actor within the international realm at stake, but the creation of this political actor had to respect democratic values, and be legitimized by the people. Such a project would, according to Spinelli, have to draw on a European identity. Thus, "the Copenhagen Summit will have the job of setting in motion a constitutional procedure for European identity," and he explained that such a procedure could be based on the nine leaders' expression of "their Governments' political obligation to bring forward the deadline for preparing the European political Union and to specify the form of such preparation."¹⁹

Commission president Xavier Ortoli explained the necessity to reestablish favorable conditions for active Commission policy in the following terms

[t]he resurgence of Europe [] calls for a lasting change in the behavior of the States, a new attitude, more determined, giving European policy greater importance in the future of our peoples, and understood as such, both within and outside our

¹⁹ Europe Documents, No. 775, pp. 3-5

frontiers. This is not enough [] The degree of unity which Europe requires calls for institutions capable of carrying out without delay and continuously a real policy. From this point of view, the present institutions are reaching the end of their effectiveness. The absolutely essential improvements will only allow for more effective functioning, while awaiting the achievement of the objective which our nine countries have already laid down, the creation of a European Union [] The Commission appeals to all Europeans to share the common guidelines it proposes, in order that the Community will once again be in a position to act.²⁰

The central issue in all these debates was that of addressing the EC's role as a political entity, based on a new identity and a working administrative body. Both the idea of a European identity and the construction of a Political Union had already been mentioned at the Paris Summit in 1972. However, the transformation of these ideas into concrete policies--that is to say, the move from a functionalist/economic to a more political understanding of integration as a concept--would require consensus among the Nine, the achievement of which had traditionally been the weak point of the Community. While it was thus questionable whether such a consensus could ever be achieved, the fact that political union was a clearly spelled out goal of EEC politics represented nonetheless a decisive break with prevailing functionalist assumptions.²¹ If the metaphor of a "spiral that coils ad infinitum" (Hoffmann, 1966:227) captured well the EEC policymaking process up until this point, this decision had created a fix point for the Euro-polity. Federalist politicians such as for example Spinelli or Ortoli, saw in this their chance to mobilize this new resource in the Community discourse and acted accordingly.

However, at the time there was little consensus among the nine Member States. Dissent was expressed particularly with reference to the establishment of the Regional Fund. As Mr. Bertrand, the Rapporteur for the Political Committee noted, "enthusiasm and confidence after this [Copenhagen] summit are out of place, as the formula appears to

²⁰ Europe Documents, No. 779, 15 December 1973, p. 3.

²¹ Much of the literature on European integration emphasizes on the debates over the choice between a functionalist and a federalist option as the major push factor in Community policymaking. The overwhelming majority agrees that in the 1950s and 1960s the functionalist option had dominated Community policymaking. See for example Haas (1964), Peters (1991:32), Lindberg and Scheingold (1970), Ross (1995:6), Schmitter (1969).

have failed to a large extent, this being produced by the deadlock on the question of the Regional Fund "²² Despite these differences, there were several agreements that if the process of European integration was to be continued at all, the idea of a "new Europe" that could present itself as a strong political actor needed to be supported. Even though European politicians acted under the auspices of the EC, it was nevertheless felt that those who spoke for the EC were not necessarily acknowledged, for example by the United States, as representatives of the EC nor were they democratically elected representatives of the Community.

The problem was thus how to increase the international presence of the EC. Both the question of global presence and that of belongingness were addressed by policies that included a turn to the citizen. Thus beginning within the policy paradigm of political union and an *acquis* that included a set of tangible institutions according to the Treaties a citizenship policy began to be elaborated during the early 1970s, within the context of addressing these central questions. The next section situates the beginnings of EC/U citizenship practice.

Changing global politics coincided with the process of enlargement of the EC which inspired a discussion over changes, renovations and innovations of the *acquis communautaire*. It gained momentum as the enlargement process from six to nine members reached completion in 1972. This process revealed the necessity of administrative changes, if often on the basis of a challenge to the existing *acquis communautaire* (Tsoukalis, 1993: 36, Sbragia, 1992: 14). It thus created a momentum for reviewing Community policies in order to state firmly what accounted for the *acquis communautaire* of the time, how to preserve it and how possibly to extend it.²³ The

²² AE. No. 1438, 18 January 1974, p. 4.

²³ Sbragia found for example that the first enlargement process in 1973 "strongly affected the way of policymaking, as well as political conflict, subsequently proceeded within the Community" (Sbragia 1992: 14).

See also Siegfried Magiera who similarly states an impact of the enlargement situation on consequent decisions towards a political union (Magiera, 1990: 14).

political opportunities of the time were structured in reaction to external and internal threats to the Community structure more than by active policy planning. It nevertheless contained space for some political initiatives both regarding institutional changes and the adoption of new policy objectives that proved to be decisive for European integration over the long-term.

Expanding the *Acquis Communautaire*: New Policy Objectives

26 June 1975	"Report on European Union". Sent by Mr François-Xavier Ortoli, President of the Commission, to Mr Liam Cosgrave, Prime Minister of Ireland and President of the Council
6 August 1975	"Resolution on European Union". Report prepared by the European Parliament and passed on to Leo Tindemans
29 December 1975	"Towards European Citizenship". Report prepared by the Commission
7 January 1976	"Tindemans Report"

After the declaration of the goal of political union at the 1972 Paris summit, it took two more years until the 1974 Paris Summit to transform these ideas into guidelines for future policymaking. In the meantime, the objectives had to be specified. At the 1973 Copenhagen Summit, a paper on "European Identity" was issued.²⁴ This paper broadly defined European identity as being based on a "common heritage" and "acting together in relation to the rest of the world", while the "dynamic nature of European unification" was to be respected.²⁵ Desmond Dinan links the adoption of this document to the development of EC-US relations. As he writes "Kissinger's response to the deteriorating US-EC relationship was typically extravagant: a call for a New Atlantic Charter as a part of the United States' Year of Europe in 1973. This prompted Michel Jobert, France's foreign minister, to draft a declaration of European identity as a basis for the Nine's international relations. The United States and the Nine toyed with various draft statements

²⁴ Europe Documents, No. 779

²⁵ Europe Documents, No. 779, p. 1

on US-European relations in the summer of 1973, before the member states adopted their Document on the European Identity on December 14" (Dinan, 1994 85)

Even though the document was, according to some observers, in "striking contradiction with the reality,"²⁶ it did spell out the normative administrative and constructive aspects which were essential for creating an European identity. All three of these were central points for citizenship practice. The normative was specified as the "fundamental elements" such as "the principles of representative democracy, of the rule of law, of social justice - which is the ultimate goal of economic progress - and of respect of human rights", the administrative was expressed as creating a "European union" by the end of the 1970s, and the constructive aspect was that the "European identity will evolve as a function of the dynamic of the construction of a united Europe", meaning that "the Nine propose progressively to undertake the definition of their identity in relation to other countries or groups of countries."²⁷

The Copenhagen Summit confirmed the intentions of the Nine to alter their internal relations, that is to say the relations among themselves, with respect to further political integration, by moving towards a European union as follows,

[o]n the basis of the Luxembourg and Copenhagen reports, the nine governments have established a system of political cooperation with a view to determining common attitudes, and, where possible and desirable, common action. They propose to develop this further. In accordance with the decision [about political union] taken at the Paris Conference [1972], the Nine reaffirm their intention of transforming the whole complex of their relations into a European union before the end of the present decade.²⁸

This idea of a European identity potentially touched three different contexts: international relations, intra-Community relations, and Community-citizen relations.

At the meeting between the Heads of Government and Commission president Ortolini in Paris 1974, this idea was transformed into policy objectives. The time frame for

²⁶ AE, No. 1427, 2/3 January 1974, p. 1.

²⁷ Europe Documents, No. 779, pp. 1-3.

²⁸ Europe Documents, No. 779, pp. 1, 2.

policies towards the creation of European Union was laid out²⁹ In this Council document, citizens were, for the first time, considered as participants in the process of European integration, not as consumers but as *subjects*³⁰ This notion of citizens as "subjects" became a new aspect of the *acquis communautaire* The final Communiqué of this meeting included statements about the need to increase the solidarity of the Nine by improving Community procedures as well as through the development of new common policies in areas to be decided upon at future Council meetings The Communiqué also spoke of granting the necessary powers to the institutions, renouncing the practice of unanimous voting in order to improve the functioning of the Council, reestablishing policymaking responsibilities and hence the power of initiative of the Commission, the time frame for the first elections of the European Assembly by direct universal suffrage "at any time in or after 1978," and the necessity to agree on a "concept of European Union." With a view to citizenship practice, the most significant points of the Communiqué were numbers 10 and 11 which proclaimed the creation of a Passport Union and the establishment of special rights for citizens of the nine Member States respectively.³¹ Special working groups were assigned the task of producing draft reports for the development of the passport union, special rights, universal suffrage and a concept of European Union

At this same time people began to speak of a "Citizens' Europe" (European Parliament, 1992 14, Van den Berghe, 1982 31) The following reports contributed to this new discourse on citizenship and citizens' rights In his report on European Union, Belgian Prime Minister Leo Tindemans referred for example to a "Citizens' Europe" His

²⁹ Other observers stress the direct link between the document on European identity and setting the policy objectives towards the creation of Community citizenship Thus Andrew Clapham finds for example that "[t]he 1973 Copenhagen Declaration on European Identity led to a decision at the Paris summit (1974) to set up a working party" to study the application of special rights (Clapham, 1991 66)

³⁰ For the observation on this new discourse on 'citizens', see also Guido van den Berghe who writes "[p]oint 11 of the final Communiqué is noteworthy, not only because it speaks of 'special rights', but also because the word 'citizen' of the nine Member States is used" (Van den Berghe, 1982 31)

³¹ Bull EC 12, 1974, pp 8, 9

suggestions for moving towards this goal developed along two lines of action. One was given by the protection of the rights of Europeans, the other by the perception of European solidarity as shown in daily life.³² It should be noted that the proposal for special rights policy was originally based on two earlier contributions by members of the Belgian and Italian delegations during the 1972 Paris summit which was the first summit conference of the enlarged Community.³³ Furthermore, the Italian delegation proposed to study "under what conditions and according to what timetable European citizenship could be granted to the citizens of the nine Member States." Following this question, the working party set up to examine the policy options suggested to grant the rights to vote and to stand for election at the level of the smaller regional units.³⁴ With a series of policy initiatives relative to the idea of creating a European identity card the goal of political union was thus proposed. For some, these innovations and the introduction of special rights for European citizens in particular, indicated the anticipation of a "future development towards a single citizenship for all nationals of all the Member States" (Van den Berghe 1982 32)

Indeed, such a development was already in part envisaged by the final Communiqué of the Paris Summit which called for the generation of policy guidelines for future policymaking and the aim of constructing European political union and the creation of a European identity. In particular, one report, produced by the Commission entitled "Towards European Citizenship," specified policy related problems regarding the granting of special rights and the introduction of a passport union. This report was sent to the

³² Bull. EC, supplement 1, 1976, p. 27

³³ The Belgian Prime Minister, G. Eyskens "had suggested that "subjects who have lived say five years in other Member States are to have a voice in the decisions of their local community." And he added that the Italian Prime Minister, G. Andreotti had said "we could as of now decide to establish a *European citizenship*, which would be in addition to the citizenship which the inhabitants of our countries now possess. It should permit the citizens of the Community countries, after a stay of a certain length in one of our countries, to exercise some political rights, such as that of participating in communal elections" (Bull. EC 1972, pp. 39-46, cf. Van den Berghe, 1982 31) [emphasis added]

³⁴ Bull. EC, Supplement 7, 1975, p. 28

Council on 29 December 1975.³⁵ Another report was prepared by Belgian Prime Minister Leo Tindemans [hereafter Tindemans Report] which proposed guidelines for policymaking towards European Union.³⁶ It was based on three earlier reports on European Union which had been produced independently by the European Parliament,³⁷ the European Court of Justice and the European Commission³⁸ as well as on consultations with the governments and a wide range of public opinion in the Community.³⁹

The Commission's report "Towards European Citizenship" focused on the transformation of ideas into policies. To this end, the report suggested beginning with the definition of "special rights." Before policy instruments based on the idea of special rights could be defined, some political decisions were required. For example, which rights should be granted, what were the conditions for granting these rights, what was the appropriate timing for the granting of the rights, how was this policy to be located within the framework of overall plans such as European citizenship and the migrant workers' charter, and finally which legal instruments were needed to grant special rights?⁴⁰ Facing these questions, the report was organized in accordance with two broad policy objectives, namely special rights and passport union, each of which was addressed according to the meaning of the respective concept, its possible mode of application as a policy, and the actors implicated in the process of policymaking.⁴¹

The Commission's report proposed two positions that were essential for the future. First, it pointed out that "special rights of a political nature are essentially the rights to

³⁵ Bull. EC, Supplement 7, 1975.

³⁶ The report was published on 7 January 1976, Bull. EC, Supplement 1, 1976, [Tindemans Report].

³⁷ For the report of the European Parliament see Official Journal of the European Communities, [hereafter OJ EC] No. C 179, 6.8.75, pp. 28-30, ["Resolution on European Union" a report prepared by the European Parliament and passed on to Leo Tindemans].

³⁸ For the report on European Union prepared by the Commission of the European Communities see Bull. EC, Supplement 5, 1975, Report on European Union.

³⁹ Bull. EC, Supplement 1, 1976 [introduction].

⁴⁰ Bull. EC, Supplement 7, 1975, p. 28.

⁴¹ Bull. EC, Supplement 7, 1975, see p. 8 on "passport union", p. 26 on "special rights", and passim.

vote, to stand for election and to hold public office "⁴² With respect to policies regarding special rights, it is important to note that, from the Commission's perspective, special rights comprised only those rights of Member States' nationals which had not been acquired (or were in the process of being acquired) yet by foreigners ⁴³ This indicated that for example

civil rights and liberties which are at least in principle generally granted to all foreigners and [.] economic and social rights as well as the right to become an official of the European Communities and the right to vote and to stand in elections to the European Parliament are real or potential rights acquired on the basis of the Community Treaties, it follows that the special rights referred to in point 11 of the Paris communiqué are first and foremost other rights which exist in the member States.

According to the report, the "special rights" the Commission had in mind were the "political rights traditionally withheld from foreigners" such as the "rights to vote, to stand for election and to become a public official at local, regional or national level "⁴⁴

Second, the report stated that Council decisions concerning passport union were based on two immediate objectives

- (1) the creation of a uniform passport to be issued by each Member State to its nationals in place of the passports of varying appearance currently issued, and which would symbolize a definite connection with the Communities, and the
- (2) the abolition of identity checks at Community internal frontiers, irrespective of whether these are carried out on nationals of the Member States or of non-member countries.⁴⁵

The difficulty in handling these two policy objectives lay in their different institutional contexts. These contexts remained however to be clarified. At this point, citizenship practice only revealed an insight about the possible contents, not the mode of application of these policies. With a view to recommendations for a working group that

⁴² Bull. EC, Supplement 7, 1975, p. 28

⁴³ At that time, the term 'foreigner' was used in Community documents for nationals of EC countries who lived in a Member State where they were not passport holders. For example a Belgian passport holder, living in France would be a foreigner in France, the French Member State was considered as the 'host country'.

⁴⁴ Bull. EC, Supplement 7, 1975, p. 27

⁴⁵ Bull. EC, Supplement 7, 1975, p. 7

was to specify the development of particular policy instruments, the Commission report demanded Commission participation with regard to both aspects of citizenship practice.

Thus it suggested that

[t]he granting of special rights would be the logical result of applying the principle of equality to the nationals of the host country and integration therein, to ensure the continuity of the work and its coordination with connected measures arising from the Community Treaties it would be best if the Commission provided the chairman and the secretariat for the working party ⁴⁶

And similarly it found that

[i]n view of the many connections between the passport union and free movement of persons within the Communities and the fact that the Commission has a central role in the organization of this free movement, it would be best if the Commission provided the Chairman and the secretariat of the working party. ⁴⁷

The Commission's perspective on this conceptual-legal link goes back to the qualification of the free movement of workers as "social policy" by the Commission (Van den Berghe, 1982:7). In 1968 Mr L. Levi-Sandri, Vice-President of the Commission, specified

[f]ree movement of persons represents something more important and more exacting than the free movement of a factor of production. It represents rather an incipient form--still embryonic and imperfect--of European citizenship: on the Community plane and as regards the pursuit of man's most practical activity--work--all the citizens of the Member States are placed on an equal footing and therefore possess the same status ⁴⁸

Despite different policy related contexts, the Commission emphasized in its report that both policy objectives were considered to fall under the Commission's competence as they both referred, albeit in different ways, to the establishment of the Common Market. Special rights were to be dealt with according to the Treaty's stipulation of equality and the passport union was a matter of the Common Market. For further examination of this process it is important to note the Commission's interest in clarifying that some aspects of citizenship practice were embedded in the institutional context of what later became the

⁴⁶ Bull EC, Supplement 7, 1975, p. 25

⁴⁷ Bull EC, Supplement 7, 1975, p. 7

⁴⁸ Bull EC I, 11, 1968, p. 6, cf. Van den Berghe (1982:8) [emphasis added]

first pillar, that is, it was part of the "community approach" implying that citizenship practice was not only based on intergovernmental bargaining but that it was also part of the Community-method. The following historical analysis of the negotiations over the policy instruments will progress accordingly

The Tindemans Report suggested the development of a political vision of the community and the appropriate institutional setting to define and work towards it. It thus contributed to establishing the policy paradigm of political union. It agreed with the Commission's suggestion to emphasize the necessity of citizenship rights as a policy objective. However, it also laid out a number of problems. Thus, the Tindemans Report pointed to a central dilemma that contributed to the stagnation of European integration. Specifically, Tindemans was

struck by a contradiction. On one hand, some people believed that it was particularly inappropriate to draw up a report on European Union at a time when the European concept was passing through a crisis and the incomplete European structure was swaying. Furthermore, there was the feeling that the economic recession has made itself felt in our Member States throughout 1975 without any large-scale joint action having been planned to counter the effects of economic depression and unemployment. And yet-- and this is most significant--almost all the people to whom I spoke stated that they could not imagine a better future than that offered by the building of Europe. They could not conceive of doing this other than by strengthening the Community (Tindemans, 1976: 1)

In other words, the political opportunity structure at the time did not facilitate sufficient access to institutional resources. Moreover, the maintenance of the *acquis communautaire* seemed at risk. There existed also, as Tindemans emphasized "a distinct divergence of views between public opinion and those who fulfill a political role in their respective countries" ⁴⁹

Two policy consequences concerning the prospect of a European union followed from this dilemma. First, greater commitment towards European integration was required on the part of the Member States. They needed to realize that a "Europe à la carte" did

⁴⁹ Bull. EC, Supplement 1, 1976, p. 1

not exist. Therefore Tindeman suggested, "each country will be bound by the agreement of all as to the final objective to be achieved in common, it is only the timescales for achievement which vary."⁵⁰ Politically, this implied (1) a common foreign policy, (2) a common economic and monetary policy, (3) a new regional policy, (4) a link between Union policy and individual everyday-life, (5) institutions established with the authority necessary to define a common political vision, and (6) a progressive construction of the Union.⁵¹ In sum, it was important to develop a Europe with a human dimension. "Measures taken in connection with the social policy of the Union, as regards security, concertation and participation will be directly felt in the daily lives of European. They will emphasize the human dimension of the undertaking."⁵² To reach this goal, Tindemans proposed new policies in the sectors of culture, education, information, communication, individual rights,⁵³ as well as the participation of workers. One chapter of the report stressed the importance of the institution of European citizenship. If the construction of Europe was supposed to flow from democratic principles, then citizenship rights marked the difference between such a construction and a mere collaboration among states.

To conclude, the Tindemans Report stressed the importance of new and at times philosophical ideas for the political project of creating the Union. According to Tindemans, the political consensus necessary for such a project would have to break "intellectual barriers," by constantly including a "European dimension" in daily politics. This intellectual breakthrough could be considered as having been achieved, when "European action is not longer thought of as an extension of minor and marginal importance of a national policy based on national interest, when European decisions and action are accepted as the normal means of controlling our society and safeguarding the

⁵⁰ Bull. EC, Supplement 1, 1976, p. 21

⁵¹ Bull. EC, Supplement 1, 1976, p. 13

⁵² Bull. EC, Supplement 1, 1976, p. 26

⁵³ Bull. EC, Supplement 1, 1976, p. 12-13

future "⁵⁴ Two areas were given particular importance for the construction of a "Citizens' Europe" One was the protection of fundamental rights and freedoms, the other was the creation of external signs of European solidarity Community policies should hence consider the institution of the European Court of Justice as the institution responsible for guarding the practice of the particular rights, and the guarantee of free movement of people within a passport union ⁵⁵ As was made clear from the beginning "[c]'est l'acquis communautaire qui est en question" ⁵⁶

Summary: Political Opportunities

The Paris Summits set the first stage for citizenship practice in the EC Beginning in the 1970s, the political opportunity structure provided only a few resources, as it was tightened by the collapse of the international financial system and the looming recession During this period, the EC Member States faced domestic problems and the public expectations for governments to take measures for combating inflation and unemployment were high. Some of these expectations had been directed towards the Euro-polity, as Tindemans had aptly pointed out This time of crisis was not considered a good moment for undertaking far-reaching political changes within the Euro-polity

Nonetheless, even if institutional resources were scarce, input of ideas towards an expansion of the intangible acquis was accomplished by those politicians who were ready to invest time and thought. As was pointed out repeatedly by outspoken politicians of the time, political will needed to be demonstrated in order to at least save what had been achieved so far As Tindemans stressed, the acquis communautaire itself was at stake One

⁵⁴ Bull. EC, Supplement 1, 1976, pp. 26-27

⁵⁵ Bull. EC, Supplement 1, 1976, pp. 28-29, and *passim*

⁵⁶ Bull. EC, Supplement 1, 1976, p. 11. Again, it is important to read the French text to understand the political range of this statement, namely, the threat towards the *acquis communautaire* as the central set of shared properties of tangible and intangible Community institutions. The English version does not allow for this insight, as it reads, "[t]oday Community attainments are being challenged" (p. 11) [emphasis added]

possibility for solving the problem of uncertainty and the threat of crumbling achievements within the EC was the plan to create a new European identity that would contribute to the EC's representation on the global stage. The EC, it was felt, had to be able to speak as a whole in upcoming negotiations concerning the reorganization of global economic cooperation as well as resource allocation.

Towards this end, the Council agreed to begin to institute some new policy instruments. Among these were the packages of special rights policy and passport policy that would eventually contribute to the creation of European citizenship. With the long-term goal of political union on the table and debates over the policy instruments needed for this objective well under way, the 1970s turned out to set a cornerstone for citizenship policy despite the economic crisis. Indeed, it can be argued that the crisis of the 1970s opened an opportunity structure to good-willed and idealistic politicians in the Euro-polity who in turn were decisive in bringing the idea of citizenship into the discourse of the time. In the next section of this chapter, I will trace the development of the special rights package as it emerged within this political opportunity structure of limited resources and broadly defined policy objectives that provided meaningful resources or informal institutions of the *acquis communautaire*.

PART B: SPECIAL RIGHTS

25 October 1977	Report of the Political Affairs Committee on the granting of special rights to the citizens of the Community. Rapporteur: Mr. Seelba
October 1977	Report of the Legal Affairs Committee on the granting of special rights to the citizens of the European Community. Draftsman: Mr. Bayerl
26-28 October 1978	Round Table on Special Rights and a Charter of the Rights of the Citizens of the European Community at Florence organized by the European Parliament
5 April 1982	Draft uniform electoral procedure for the election of Members of the European Parliament
1982	Draft Act adopting certain provisions relating to a uniform electoral procedure for the election of Members of the European Parliament submitted by the EP to the Council of Ministers
29 April 1983	Report of the Legal Affairs Committee on the right of citizens of a Member State residing in a Member State other than their own to stand for and vote in local elections. Rapporteur: Mrs. Maccocchi
19 March 1984	Preliminary draft Treaty establishing the European Union, drafted by the EP with Mr. Spinelli as coordinating rapporteur

Sorting the Resources

The Commission's proposal (1975) for a working party on special rights⁵⁷ set the tone for further negotiations. It noted how

[p]oint 11 [of the Paris Communiqué] talks of granting special rights to the citizens of Member States. This allusion to the citizen - basically a political concept which was substituted for the term national, which is always used in Community texts - provides a first clue to the civil and political nature of the special rights.⁵⁸

Subsequently, the Commission deduced its definition of special rights from political rights such as the right to vote, to stand for election and to become a public official in the Member States. Special rights would be derived from the concept of citizenship.

The recommendations for the working party on special rights included the examination of strategic guidelines for policymaking such as "the granting of voting rights and the conferment of eligibility for election at municipal level, together with the right of

⁵⁷ Bull. EC, Supplement 7, 1975, p. 26-32.

⁵⁸ Bull. EC, Supplement 7, 1975, p. 26.

access to public office dependent on election at this level."⁵⁹ The special rights package consisted of, according to the Commission, the right to vote and stand in elections and the right of access to public office. Concerning the upcoming problems with implementing special rights policy the Commission pointed to the necessity of "political decisions" in respect of the differing legislation in the Member States. Its report referred in particular to the problem of residence and nationality which in some Member States meant necessary conditions for guaranteed access to special rights.⁶⁰ Another problem depicted by the Commission was the expected public reaction to the granting of special political rights to foreigners. As the Commission reasoned, while

[e]qual treatment for foreigners in the economic and social fields is accepted by public opinion, since this has long been a subject for frequent negotiation between States[, t]he same does not apply to equal treatment for foreigners in the political field. This is a new idea and the public will have to be given an opportunity to get used to it.⁶¹

Finally, the problem of legal regulation needed to be confronted since then there were "no provisions in the Community Treaties, even including Article 235 of the EEC Treaty, which grants the power to act on political rights."⁶² The constitutional resources available did not provide the grounds for elaborating political citizenship rights. The legal instrument had therefore to be an "ad-hoc one, possibly a new treaty under international law or an amendment to the EEC Treaty based on Article 236 made by adding the necessary provisions to the Treaty, in the form of a protocol for example."⁶³

⁵⁹ Bull. EC, Supplement 7, 1975, pp. 28-29. At the same time the Commission's report kept the possibilities for a broadening of this interpretation at some unknown time in the future open, when it noted "[a]lthough complete assimilation with nationals as regards political rights is desirable in the long term from the point of view of a European Union, it must be acknowledged that for the present some of these rights must be ruled out, namely eligibility for election at national level and access to high political office" Bull. EC, Supplement 7, 1975, pp. 28-29.

⁶⁰ Bull. EC, Supplement 7, 1975, p. 29.

⁶¹ Bull. EC, Supplement 7, 1975, p. 30.

⁶² Bull. EC, Supplement 7, 1975, p. 30. Article 235 of the EEC Treaty refers to the legitimization of legal action by the Community that is considered necessary in order to realize a goal within the framework of the Common Market.

⁶³ Article 236 of the EEC Treaty refers to a change of the Treaty following a proposal of the Commission or the governments of the Member States to hold an intergovernmental conference.

In principle, the Commission's report reveals that it made a conceptual link between special rights and citizens' rights, or for that matter, special rights and European citizenship. In this respect it was important to examine "the idea behind point 11, that is to say the relationship between the forthcoming granting of some special rights and the concept of future Community nationality or citizenship contained in the Italian proposal"⁶⁴ Regarding the meaning of European citizenship, the Commission's report stated that in EC policymaking citizenship was not to be stressed as a concept that defined rights and obligations towards a political entity, but as one that entitled citizens to (special) rights based on the principle of equality. It suggested that European citizenship should not be achieved based on the process of "naturalization", since this process would involve the loss of the previous nationality by substituting a new European nationality. Instead of naturalization, citizens' rights should be defined according to the principle of equality, thus providing the citizens with the possibility of adding "rights relating to the original nationality [.] to the rights in the host State." With reference to the realization of the granting of special rights via policies and the probability of upcoming problems, the Commission added that it was important to consider the problem of whether foreigners should be granted special rights "on the foreigner's status as a worker [.] or] as a citizen of another Member State."

In sum, the Commission's report provided insights into the range of political implications of a special rights policy by tackling a number of questions on the subject. Were the rights fundamental or special in principle, and, as far as policy was concerned, were they considered as civil, political, and/or social rights? In which sectors were this policy to be applied? And finally, how were the required legal frameworks to be linked with or included in the Treaties? The answers to these questions set the agenda for further policymaking. As the following reconstruction of the debates over this issue among

⁶⁴ Bull. EC, Supplement 7, 1975, p. 30.

⁶⁵ Bull. EC, Supplement 7, 1975, p. 32.

Community and Member State institutions and their representatives suggests, these questions touched upon politically sensitive areas and were not easily resolved. Thus, during the Paris period, as Community institutions directed their attention mainly to the definition of what rights were to be granted, the debate was one of principles and concepts. That is, the focus was more philosophical than practical in scope. Consequently, the policy outcomes remained limited.

The reactions of the governments of the Member States were particularly criticized by observers as well as by actors involved in the process of negotiation during this time. The almost non-existent, or as Europe Documents put it, "the absent-minded attention of the governments for whom it [the Tindemans Report] was intended,"⁶⁶ was strongly criticized by Tindemans who noted "[o]f course, I can accept that my proposals or others are rejected, but how can one justify an attitude which amounts to even refusing to examine a proposal?"⁶⁷ And he clearly indicated the nature of the problem, namely that "the time has come to elaborate and defend a series of political choices, in order to spur the Commission and the Council on in the search for European solutions."⁶⁸

Despite these reactions to the reports on special rights, Mr. Scelba stressed in the 1977 verbatim report on the Parliament's Report on "Granting special rights to the citizens of the Community"⁶⁹ that a step towards the proposals of the Tindemans report was taken when the presidents of the three Community institutions - Parliament, Council and Commission - signed a common declaration on fundamental rights on 5 April of the same

⁶⁶ Europe Documents, No. 900, 15 June 1976, p. 1.

⁶⁷ Speech given by Belgian Prime Minister Leo Tindemans when he received the Prix Charlemagne in Aachen, 27 May 1976, reproduced in Europe Documents, No. 900, 15 June 1976, p. 6.

⁶⁸ Europe Documents, No. 900, 15 June 1976, p. 1.

⁶⁹ Report on "Granting special rights to the citizens of the Community", presented by Mr. Scelba as the Rapporteur of the Political Affairs Committee to the European Parliament on 16 November 1977 (European Parliament, 1979 93-94). For the declaration on fundamental rights see OJ, No. C 103, 27.4.77, p. 1. For further political debates and policy development, it is important to note that Mr. Davignon participated as the representative of the Commission in the meetings of the Political Affairs Committee. For evidence see for example: European Parliament, Proceedings of the Round Table, p. 94, where Mr. Scelba mentions that "Mr. Davignon [...] as representative of the Commission played an active part in meetings of the Political Affairs Committee."

year. Another declaration had been adopted by the European Council at Copenhagen on 7 and 8 April of that same year, namely a "declaration on democracy"⁷⁰ signed by the Heads of Government of the nine Member States. In this declaration the signatories expressed "their will to ensure that the cherished values of their legal, political and moral order are respected and to safeguard the principles of representative democracy, of the rule of law, of social justice and of respect for human rights." The practice of such principles implied "a political system of pluralist democracy which guarantees both the free expression of opinions within the constitutional organization of powers and the procedure necessary for the protection of human rights" (European Parliament, 1979:133). As Commission President Roy Jenkins crucially observed in a speech he gave on 10 October 1978,

[a]n essential element of such democracy is that those who make decisions should be subject to effective scrutiny and control by the representatives of those in whose name decisions are made []. But it is simply not possible to scrutinise and control the whole complex of Community decision-making at nine national levels.⁷¹

Democracy, these observations suggest, requires that the institutions which provide the context and the meaning for government be fit for the processes of governance. The *acquis communautaire* of this time included the protection of fundamental rights of citizens, the support of a pluralist democratic system, as well as the will to move on towards European integration.

⁷⁰ It is interesting to note that in the German translation of this declaration "the free expression of opinions within the constitutional organization of powers" reads as "die Vertretung der Meinungen im konstitutionellen Aufbau des Staates" (Declaration of the European Council of 8 April 1978: "Erklärung zur Demokratie" <Declaration of Democracy>, reproduced in Schwarze and Bieber, 1984:368) which can also be translated as 'the representation of opinions within the constitutional organization of the state'.

⁷¹ Speech by President of the European Commission given to the "Circle de l'Opinion" in Paris, 6 October 1978, reproduced in Europe Documents, No. 1024, 10 October 1978, p. 2.

Debating Ideas: The Florence Roundtable on Special Rights

In order to proceed with the process of defining special rights policy, the European Parliament organized a Roundtable on Special Rights and a Charter of the Rights of the Citizens of the European Community. Members of the Community institutions, parliamentary representatives from the Member States, and independent legal specialists were invited to this roundtable, with a view to drawing up a draft charter on special rights (European Parliament, 1979:51). The discussion was based on two reports (Scelba Report, Bayerl Report) and a resolution of the Parliament "on the granting of special rights to the citizens of the European Communities in implementation of the decision of the Paris Summit of December 1974 (point 11 of the final communiqué)"⁷² Early on the Parliament acknowledged the fact that special rights were the means to be used to transform a "citizen of the Common Market" into a "citizen of the European Community"⁷³

The Parliament's report on special rights was the most far-reaching as it considered special rights to follow from a conception of fundamental human rights. That is, according to the Scelba Report, the Parliament did not agree with the Commission's suggestion to differentiate between special rights (for nationals who lived in another Member State) and those rights which every Community citizen had towards the Community. Instead, the Parliament promoted citizen's rights that included fundamental rights and only differed as to the entity to which they referred (Van den Berghe, 1982:35). For example, the Parliament was the only institution to come forward with a catalogue of rights that it proposed to establish for Community citizens.⁷⁴ As the Parliamentarians noted during the

⁷² The resolution had been adopted by the European Parliament during the sitting of 16 November 1977. It has been published in *European Parliament* (1978:123-125).

⁷³ This comment has been made by Mr. Bayerl during the Florence Roundtable discussions (*European Parliament*, 1979:24).

⁷⁴ For this catalogue see the European Parliament's resolution of 16.11.1977 [OJ, No. C 299, 12.12.77] in which it invited the Commission to draw up proposals concerning special rights. The resolution envisages a system under which civil and political rights, even in relations between a State and its own citizens, would be governed by Community legislation and questions of interpretation would be a matter

Round Table debates, most initiatives for European citizenship had emerged out of the Parliamentary context. Mr. Bayerl even said that "in the matter of the consolidation of citizens' rights, all the initiatives had come from the European Parliament" (European Parliament, 1979 44-45) ⁷⁵

One of these parliamentary initiatives was a resolution which the Parliament passed as early as 1975⁷⁶ in favor of a "Charter of the rights of the peoples of the European Community," based on the hope that such a charter would contribute "to the development of a European Community consciousness." At the Florence Roundtable, Mr. Masullo urged the participating colleagues from other Community organs to move on from "major declarations of principle whose sole importance was to illustrate the need for a start to be made" towards the definition of policy strategies. "Now [they] had to go beyond these declarations of principle and determine what practical arrangements were needed to

for the Court of Justice. It includes a list of rights which the Parliament wants to be granted to Community citizens as a matter of priority, for example:

"(1) Community protection for civil and political rights equivalent to that provided for in the Treaties establishing the European Communities for economic rights, (2) The rights proposed in the Tindemans report and first and foremost the right for individuals to bring actions before the Court of Justice of the European Communities, (3) The right to submit petitions to the European Parliament, (4) The right to stand for an vote at elections and to hold any public office for which they would normally be eligible at local authority level, (5) The right of Community citizens who have been resident in a member State for at least 10 years to stand for and vote in elections and to hold public offices for which they are eligible in all regional administrative authorities between local authority and State level (departments, provinces, countries, regions, etc.), (6) The right to stand for and vote in election for political offices, for Community citizens satisfying special conditions, (7) All the rights connected with the right to stand for and to vote in elections, and in particular the freedom of assembly and association, (8) Equality with citizens of the Member States in which the Community citizen concerned resides as regards the assertion of rights and access to offices and posts in the professional, social and economic sphere, if necessary after a suitable period of residence, (9) The right to belong to a trade union of one's choice, (10) The right of residence for all Community citizens who have sufficient means of subsistence, (11) The right of Community citizens to use their mother tongue and to choose freely lawyers from any Member State for their defense in criminal proceedings before courts, (12) The right of community citizens to open educational establishments and to teach and study under the same conditions as those applicable to nationals []" (European Parliament, 1992 16-17)

⁷⁵ Opinion of the Legal Affairs Committee on the Scelba Report on "the granting of 'special rights' to the citizens of the European Community in implementation of the decision of the Paris Summit of December 1974 (point 11 of the final communiqué), adopted in 1977 and presented by draftsman Mr. Bayerl, reproduced in European Parliament (1978 84-92)

⁷⁶ OJ, No. C 179, 6.8.75, p. 30 [Resolution on European Union, a report prepared by the European Parliament and passed on to Leo Tindemans]

implement them. To this end a distinction had to be drawn between the idealist line and a policy for the practical implementation of provisions which would embody these rights" (European Parliament, 1979 40) Bayerl summarized the task which lay at the core of this meeting when he said "the present situation of a citizen of the Common Market had to be transformed through special rights into the status of citizen of the European Community" (Ibid 24)

The implications of a special rights policy had been clearly depicted in the Bayerl Report where special rights were defined as follows, "[s]pecial rights are 'subjective' public rights, in other words rights which the citizen possesses as a legal subject vis-à-vis the State and which may be asserted at any time." The practice of these citizenship rights, according to this report, took three forms (1) defensive rights which protect fundamental freedoms vis-à-vis the State (fundamental rights), (2) claims which citizens are entitled to make on the State, for example in respect of provision for their welfare (civil rights), and (3) rights which guarantee the participation of the citizen in the State's institutions (political rights). "To apply a special rights policy in the European Community indicated then that "all the constitutional rights on which the legitimacy of a democratic State depends are conferred upon the citizens of the European Community vis-à-vis the European Community and, secondly, to include those rights which citizens of a particular Member State possess but which have not hitherto been granted to other citizens of the Community" (Bayerl Report, cf European Parliament, 1979 86-87) Doubtless then, the Parliament had a state-building perspective in mind, and this was the context within which the relation between citizens and the new entity were to be defined. That was the intention of the special rights debate.

With its definition of special rights the European Parliament not only challenged the Commission's definition of special rights - where the Commission distinguished fundamental rights that European citizens already enjoyed based on the Treaties from special rights which the citizens enjoyed within the respective Member State. The

Parliament declared "[t]he distinction made in this context by the Commission [] is not justified since in both cases fundamental rights are involved and only the entity referred to (Member State or European Community) is different" (Bayerl Report, cf. European Parliament, 1979:86-87). It also named the highly sensitive political problem that was addressed by the whole debate over special rights, namely that citizenship rights could not be thought of, nor could they be protected, practiced, or defined if there was no agreement on the political entity within which they applied. This report then called for two things, (1) a transfer of the practice of citizenship rights from Member States to the European Community, and (2) a harmonization of the particular legal regulations among all the Member States of the Community.

In sum, the Florence debates on special rights centered upon the crucial question of whether or not Community institutions were ready to move ahead and prepare for the considerable shifts of power a special rights policy would include. Furthermore, they asked for the Member States' preparedness to realize those bold political moves which had been mentioned so frequently in the discourse that was generated before and during the European Council meetings in 1972, 1973 and 1974. The implementation of a special rights policy included transfers of citizens' rights and obligations from Member States to the European Community. This implied that in order to transform special rights from a policy objective into active policymaking the Member States were required to transfer sovereignty. The tension between the necessity of constructing a "European identity" as the basis of successful European politics on the one hand, and the fear of a loss of national identity due to the loss of sovereignty on the other, emerged once again.

With contributions to the European Parliament debate that preceded the adoption of the "Resolution on special rights" on 16 November 1977--and which mostly but not always reflected the Commission's position--Mr. Etienne Davignon, Member of the Commission stressed to an equal extent the political implications which flowed from a special rights policy. Thus, he commented that the Parliament "was right to take up this

important question [special rights and a charter of rights of the citizens of the European Community], and added that it came "at an appropriate moment in the process of considering the future of Europe" and that it was "in fact unavoidable, as we proceed with the pragmatic business of building Europe, that we must from time to time face a number of fundamental questions [] In doing this we naturally go beyond the exact intentions of the Heads of State or Government in 1974 " In view of the decision to move on, Davignon signaled the Commission's readiness to engage in the definitions of policymaking towards the establishment of special rights, when he said "Mr. Rivierez hinted at that in 1974 it was decided to adopt a step-by-step approach; these steps have been so small that we have not moved at all! Since nothing has happened, let us consider where the real problem lies." In this regard, Mr. Davignon asked some of questions which all pointed to inevitable political decisions if the idea of a new European identity was to hold. He asked, for example, "should [we] not ensure that the rights and guarantees granted by States are identical or comparable between all the Member States of the Community?" and similarly "ensure that membership in a Community increases the guarantees given to its citizens?" He added that it was "not a question of whether additional basic rights are to be given but of how these rights are to be supplemented to take account of the existence of Europe. Once we have accepted this, we are beginning to accept in political terms the idea that basic rights have been built into the framework of the community" (European Parliament, 1979 116-117).

The Council's position on the point of political decision remained, if barely spelled out during the Florence roundtable, uncertain. Thus, Mr. Von Dohnanyi, President-in-Office of the Council of the European Communities, mentioned that "the granting of certain rights would be a lengthy business because they posed a number of legal, political and social problems " He added that "it was, of course, important that the objective of the granting of special rights should be achieved but a gradual approach was necessary, starting with those rights which posed the least problems." Towards this end, Von Dohnanyi informed the participants of the roundtable, an "ad hoc Working Party had been

set up within the Council and this working party was at present studying the various problems arising directly and indirectly from special rights, especially the right to stand and vote at elections, freedom of expression and association, the right of residence and the right to submit petitions" (European Parliament, 1979 28-29)

Mr. Ehlermann, Director-General of the Commission's Legal Service, hinted at the Commission's problematic position at that time. He referred to Mr. Von Dohnanyi's comment when he said that while the Commission was ready to take the initiative and come forward with a proposal on special rights "it was not clear whether they should remain within or go beyond the framework of the Treaty" (Ibid. 42). Thus, the Florence Roundtable clearly showed the political difference between policymaking with a view towards protecting fundamental human rights on one hand, and that of defining and introducing special rights for European citizens on the other. While the former could be realized based upon international declarations and conventions, the latter implied major changes of rules, practices and institutions within the Community. As Mr. Colombo, President of the European Parliament, pointed out with regard to legal policies, this required "on the one hand to guarantee at Community level the protection of the civil and political rights of Community citizens, a requirement that had to be met before Community citizenship could be made a reality, [and] on the other hand to grant to the citizens of the Member States a package of political and civil rights based on the fact that they were at the same time citizens of a single Community." In view of the realization of new policies, Colombo reminded the members of the Florence Roundtable that while "the Community was created as an economic organization, [] its founders had made it clear that their objective was to make it into a political organization with autonomous and independent powers of decision, implementation and jurisdiction" (Ibid. 19).

To summarize, the 1978 Florence Roundtable on special rights generated a fresh look at the policy implications of potential special rights politics. Despite the unfavorable political opportunity structure and the lack of tangible institutional resources at the time, it

was possible to work on ideational resources. The *acquis communautaire* was thus expanded, if in a way that was not visible from a purely legal perspective. The Florence roundtable made manifest a lack of institutional resources and the presence of political will. If the slow movement towards a charter of special rights was regretted by those in favour of increased European integration and the problems involved in defining special rights were evident, suggestions for moving towards a more Community-based policy on citizens' rights had nevertheless been made by Parliamentarians and Commission officials in particular.

At the same time, caution had been expressed about the transfer of sovereignty towards the Community. Thus, as one in a series of many debates, the Florence Roundtable revealed once more that the political context of that time was hardly favorable to such far-reaching political innovations. It was, however, possible to take small steps because "acts (reports, resolutions and declarations) committed the institutions which signed them" as Bayerl summarized (Ibid. 24). For example, the 1979 elections of the Members of the European Parliament occurred according to a Council directive of 1978 that was based on a resolution on the right to vote adopted by the European Parliament on 11 June 1977.⁷⁷ This directive established the right to vote also for those citizens whose residence was in another Member State than their own: that is the right to "in-loco" vote.⁷⁸ Apart from the declarations of principle, such as those on fundamental rights and democracy, this was one important policy instrument that resulted from the political negotiations of the decade.

⁷⁷ OJ EC, No. C 163, 11.6.1977, p. 39. This resolution followed a Council decision of 20.9.76 which stipulated the establishment of direct universal suffrage, set the date for the first elections - which was not realized - and defined the particularities of the representatives' tenure of office. The decision did not refer to the electoral procedure. See OJ EC, No. L 278, 8.10.1977, pp. 1-11.

⁷⁸ Commission of the European Communities, 1993, SEK(93) 1021 final, p. 6.

Expanding the Acquis Step-by-Step: Belonging, Rights

Belonging. In 1979 the first direct universal elections of the European Parliament took place. While these elections did not yet reflect the new ideas about special rights discussed since the Paris Summit, the establishment of the in-loco right to vote characterized at least a partial expansion of the *acquis communautaire*. This fact reflected a successful "step-by-step" approach.⁷⁹ That is, despite the fact that general agreement about how to constitutionalize special rights was not yet in sight, each Member State could "make provision in its legislation for the rules of eligibility at local or regional level (citizenship of a Community Member State, residence qualifications, etc.)" This was part of the process of building Europe and after all it implied "the ability to take part in activities which are not exclusively of a national nature"⁸⁰

In other words, the elections of the European Parliament provided the opportunity to involve European citizens closer with European politics by providing access to participation not only for the citizens who were able to vote for the first time, but also for the Member States who were to decide on the provisions to add to their respective constitutions. They represented then the most visible sign of European citizenship policy in that decade. As the Commission noted in its report "Towards a European Citizenship", "[i]t must be acknowledged that the Community does not at present have jurisdiction over the rights of persons, with the exception of economic and social rights, and that European citizenship, which does not exist at present, will take the first step towards becoming a

⁷⁹ As Davignon said "[a]s long as we do not progress by small steps, there is this extraordinary excuse which says that unless every citizen of the Community can become a Minister or President in any community state, there is nothing that can be done to show our cohesion and the convergence of our attitudes. This is the ideal excuse for not taking a certain number of steps which are possible." This comment was made the parliamentary session on 16-11-1977 on the Siciba report (European Parliament, 1979-118)

⁸⁰ Comment during the parliamentary session on 16-11-1977 on the "Verbatim Report" in (European Parliament, 1979-118)

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PM-1 3½"x4" PHOTOGRAPHIC MICROCOPY TARGET
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PRECISIONSM RESOLUTION TARGETS

reality only with the election of the European Parliament on the basis of universal suffrage and the implementation of point 11 concerning special rights "81

In sum, the political process in the 1970s reflected two aspects of citizenship practice, namely legal and identity-based belonging. It showed that beyond rights as one historical focal point of citizenship practice, belonging mattered. In the EC as a supranational Community, the meaning of rights had to be constructed despite national belongingness. That is, the Community had to be brought closer to the citizen. How to do that was a complicated issue for EC policymakers. According to this understanding of citizenship practice, the meaning of the European elections is shown in a distinct light. Davignon characterized this aspect of citizenship very well when he developed a complicated set of links between elections and the education of the Community's citizens:

[c]ommunity citizens enjoyed certain rights, and it could be said that the status of 'Community citizen' had been 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.

He wondered, however,

how many Community citizens were aware that they had rights under these articles [. . .] Moreover, health, social security and living conditions had begun to find a more stable place in the community legal context. These rights existed, not because of a declaration similar to those issued in Federal States but by virtue of the results of the common policies of the Member States of the community.

Thus, he concluded

publicity was important, but the task should not be left solely to the Commission. As part of the information campaign for direct elections to the European Parliament, Parliament should seize this opportunity to give greater publicity to the rights which the Community had granted to individuals (European Parliament, 1979: 25-27).

Mr. Georgel, professor at the European University Institute, summarized this perspective of belonging thus:

81 Bull. EC, Supplement 7, 1975, p. 16.

82 Davignon referred to Articles 173 and 177 as well as Articles 178 and 215 of the EEC Treaty.

[t]he community was only a reality to those categories of individuals who were directly affected by Community provisions (farmers, the professions, etc.). That showed how much was still to be done and the extent to which we could accept Viscount Davignon's statement that 'the Community citizen' already existed (European Parliament, 1979:39-40)

In other words, a feeling of belonging to the Community that had been mentioned as one crucial missing link between the Community and its citizens by Davignon, van Elslande and Spinelli in the early 1970s depended on participation in Community affairs. That participation could, for example, be achieved on the basis of professional links which included an every-day contact with the Community, but elections were also a way to create such knowledge

The Political Right to Vote. On 8 October 1976, the Council adopted an "Act concerning the election of the representatives of the Assembly by direct universal suffrage " This act referred to the conclusion of the European Council in Rome on 1 and 2 December 1975 where it had been decided that "the election of the Assembly should be held on a single date within the period May/June 1978."⁸³ The electoral procedure was then still left to be defined. The Parliament which was to draw up a proposal on a uniform electoral procedure⁸⁴ adopted a resolution on a "draft uniform electoral procedure for the election of Members of the European Parliament" on 10 March 1982⁸⁵ and submitted it to the Council, expecting that the upcoming 1984 elections for the European Parliament should fall under the provisions of this act.

In 1983 the European Parliament's Legal Affairs Committee prepared a "Report on the right of citizens of a Member State residing in a Member State other than their own to stand for and vote in local elections."⁸⁶ With this report and the subsequent motion for a

⁸³ OJ EC No L 278, 8 10 76, pp.1-11

⁸⁴ OJ EC, No L 278, p. 6, where it says: "Article 7. 1. [...] the Assembly shall draw up a proposal for a uniform electoral procedure

2 Pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions."

⁸⁵ OJ EC, No. C 87, 5.4.82, p. 64; for the text of the Draft Act see pp. 61-62

⁸⁶ European Parliament, 29 April 1983, PE 81.699 final [Rapporteur: Mrs. M.-A. Macciocchi].

resolution, the Parliament urged the other Community institutions to consider and act on the institutional constraints regarding the objective of special rights for citizens. With reference to previous action taken towards this end, and in view of possible future action, the motion stated that

[c]onsidering that, especially with regard to political rights, complete equality of treatment between citizens, whatever the nationality of their residence, is an objective which is inherently essential to a Community whose ultimate aim is political integration; [c]onsidering that, although this objective seems remote at present, it is necessary to take action to ensure that citizens have those rights which can be protected in the present state of Community Law, [c]onsidering that these rights do not yet include the right to stand for and vote in local elections [...c]onsidering that the grant of this right certainly corresponds to one of the objectives of the European Community laid down in the preamble to and in Article 2 of the EEC Treaty, which are not only economic but also social, [c]onsidering, however, that the EEC Treaty has not provided 'the necessary powers', [c]onsidering, therefore, that the conditions for the application of Article 235 of the Treaty are fulfilled; [c]alls on the Commission of the European Communities to report to the European Parliament on the progress reached according the right to stand for and vote in local elections to Community citizens residing in a Member State other than their own.⁸⁷

This motion for a resolution clearly reflected the context of political and institutional constraints for such a policy at that time. This list of concerns presented a request for other Community institutions to review the instruments available for policymaking. The lack of power for decision-making on the Community level as well as the lack of access to participation on the citizen level were thus pushed once again to the foreground of the universe of political discourse.

Thus, even before the Fontainebleau Summit in 1984 and the establishment of a new Commission under the presidency of Jacques Delors in 1985 some ideas for new policy instruments were added to the special rights package. In 1982 the European Parliament submitted a proposal for a "Draft Act adopting certain provisions relating to a uniform electoral procedure for the election of Members of the European Parliament" to

⁸⁷ PE 81.699 final, pp. 6-7

the Council This Draft Act went beyond the in-loco vote suggesting the adoption of the "right to stand for election irrespective of their place of residence" (Art 6 1), specifying that this meant "the right to stand for election to nationals of another member State who have been resident on their territory for a least five years" (Article 6 (2)).⁸⁸

As the Commission noted later, the Council had considered this proposal; however, it had put a hold on its examination in 1983.⁸⁹ The Legal Affairs Committee for its part went on to develop new proposals regarding the transformation of the right to vote into a special (political) right. For example, in 1983 it submitted a motion for a resolution on "the right of citizens of a Member State residing in a Member State other than their own to stand for and vote in local elections" to the European Parliament.⁹⁰ Among other aspects, this motion for a resolution drew on a Commission proposal for an "action programme for migrant workers and their families"⁹¹ and on the Scelba Report on special rights.⁹² The resolution stated that "with regard to political rights, complete equality of treatment between citizens, whatever their nationality or their residence, is an objective which is inherently essential to a Community whose ultimate aim is political integration" and noted that "the right to stand for and vote in local elections [...] would permit citizens of one Member State residing in another Member State for an appropriate length of time to influence, through their vote or by taking an active part in politics, public affairs in their place of residence" (Ibid.:6, 7). This motion recognized that Community institutions did not yet have the powers necessary to transform such a proposal into a directive. It argued however that based on Art. 2 the conditions for the application of Art. 235 of the Treaty, that is amendment of the Treaty in accordance with the Communities'

⁸⁸ OJ EC, No C 87, pp.61-62

⁸⁹ SEK(93) 1021 final, p. 6

⁹⁰ PE 81 688/fin., 29.4.1983, [Report drawn up on behalf of the Legal Affairs Committee on the right of citizens of a Member State residing in a Member State other than their own to stand for and vote in local elections. Rapporteur: Mrs. M.-A. Macciocchi].

⁹¹ COM 74/2250, 18.12.1974

⁹² See above, see also, OJ EC, No C 299, 12.12.1977, p. 26

development by Council legislation, were fulfilled and asked the other Community institutions to consider these facts. In sum, with this motion for a resolution the Legal Affairs Committee of the European Parliament pushed hard for a political solution. It wanted the Treaty to be amended regarding special rights based on the status of workers as "the first citizens of Europe" ⁹³ "Migrant workers" this report stressed "should as far as possible be placed on an equal footing with the citizens of the host country, in particular, they should have the means of influencing, through their vote, the running of public affairs in the place in which they have opted (or have been obliged) to establish their residence." ⁹⁴

Upon failing to achieve political innovations referring to the establishment of special rights and their adoption by the Council, the report of the Legal Affairs Committee suggested that the rules regarding the process of developing Community law were being interpreted differently by different Community institutions. It observed, for example, that instead of following a more public policy procedure that was based on the Treaties, the Council was dealing with special rights policy as a matter of political cooperation, that was, on an inter-governmental basis. As the report said "[t]he mechanisms and procedures that apply here are altogether typical of the classical rules governing inter-State relations: the preliminary bilateral contacts, the secrecy, the absence of arrangements whereby directly elected representatives of the people can influence decisions or act in an advisory capacity." ⁹⁵ The debates about special rights policy thus shed new light on the procedures

⁹³ PE 81.688/fin., 29.4.1983, p. 9 [Report drawn up on behalf of the Legal Affairs Committee. Part B, "Explanatory Statement"]

⁹⁴ PE 81.688/fin., p. 9

⁹⁵ PE 81.688/fin., p. 12; with reference to Art. 149 of the EEC Treaty, the Committee's report explained that the correct procedure "for elaborating Community 'law' [...] codified (in the Treaties) is, by contrast, completely different. A proposal by the Commission, which is by nature public, is followed by a request for the opinion of Parliament (where this is laid down by the Treaty) and then, in accordance with well-defined rules, by the decision of the Council of Ministers, which may approve or reject the Commission's proposals, but may not amend them except unanimously [...] Once an act has been adopted by the Council, its legality is subject to review by the Court of Justice (see in particular Article 173 of the EEC Treaty)" (PE 81.688/fin., p. 12)

of citizenship practice by highlighting both the problem of its constitutionalization as well as the merits of practical application within the Euro-polity

The next step was the composition of a draft Treaty on European Union by the Committee on Institutional Affairs of the European Parliament with Mr. A. Spinelli as the coordinating Rapporteur.⁹⁶ The draft Treaty did not suggest changes or amendments to the existing EEC Treaty. It was, as Spinelli put it, "a Treaty which placed the Union ex novo, to be able to define structure, competences, phases, and modalities of the procedure in a coherent way."⁹⁷ The reactions to this proposal for a preliminary draft treaty by individuals who had been or were working with the Commission, the European Parliament, the European Court of Justice, the European Council as well as academics, were for the most part negative.⁹⁸ Most contributions suggested elaborating on the existing Treaties instead of developing a new one. Former member of the European Commission Mr. van der Groeben argued for example that a system of multiple politikverflechtung⁹⁹ had emerged within the Community and on the EC level in particular. He concluded, it was not appropriate at this time to make final statements about a constitution, but it was important to keep the discussions going (Schwarze and Bieber, 1984:209-210). He thereby pointed to the achievements of EC policy until that time, a comment that hints at the existence of probable unexplored resources at the time.

The political opportunity structure of the time was however not contributing to a favorable situation for the mobilization of these resources. The conflict which prevailed

⁹⁶ There are several publications of this Draft Treaty. For the published debate and vote over the "Preliminary draft Treaty establishing the European Union, see: OJ EC, No. C 77, 19.3.84, pp. 24-62. For the publication of this preliminary draft treaty see also: Europe Documents, Nos. 1287/1288, and Nos. 1289/1290. The proposal for a preliminary draft treaty had been adopted by the European Parliament in September 1983.

⁹⁷ Presentation by Altiero Spinelli at a conference organized by Jürgen Schwarze and Roland Bieber at the Institut für Integrationsforschung der Stiftung Europa-Kolleg, Hamburg 3-5 November 1983 (cf. Schwarze and Bieber, 1984:237).

⁹⁸ Among others Mr. Bangemann (MEP), Mr. Ehlermann (Commission), Mr. Glaesner (Council), Mr. von der Groeben (former Member of the Commission), Mr. Slyn (ECJ), Mr. Spinelli (EP).

⁹⁹ The German term 'politikverflechtung' means literally 'entanglement of policies'.

among actors within the Euro-polity, as noted by some observers, was another factor restricting the structure of opportunity at this time. Thus, Director General at the Commission Mr Ehlermann commented on the ongoing struggle over competences among the Community organs which accounted among other things for the EC's lack of decision-making capacity. As he explained, this problem was "based on the fact that national interests had become dominating within the Council. Rarely one would sense the breath of the Community within the Council" (Ehlermann, cf. Schwarze and Bieber, 1984:213).

Another divide had emerged among various groups within the Parliament. As the process of continuing work on proposals that would possibly pass the hurdle of the Council, the Commission and the Legal Affairs Committee showed, progress towards the constitutionalization of components of the *acquis communautaire* encountered critical opposition from German Christian Democrats in the Committee and in the European Parliament. This situation led to a slow-down of citizenship practice and was one aspect contributing to the shift of citizenship policy from a rights-discourse to a market-discourse. This Parliamentary division came to the fore during the debates preceding and following the Macciocchi Report that had been completed by the Legal Affairs Committee in 1983.¹⁰⁰ This report suggested that the Parliament request a Commission proposal for a directive on voting rights that would draw on Articles 3c and 235 as well as the preamble of the EEC Treaty, where Art. 3c stipulated the establishment of free movement of persons, Art. 235 entitled the Council to change the Treaties if so required, and the Preamble referred to the "constant improvement of the living and working conditions of their peoples."¹⁰¹ As the Commission recalled in 1986, a "new political divide"¹⁰² between progressive and conservative groups within the European Parliament came to the

¹⁰⁰ Macciocchi Report, doc. I-121/83, PE 81.68^o final, cf. Bull. EC, Supplement 7, 1986, p. 12 [Voting rights in local elections for Community nationals]

¹⁰¹ EEC Treaty, cf. Bull. EC, Supplement 7, 1986, p. 12

¹⁰² Bull. EC, Supplement 7, 1986, p. 13

fore on two grounds, first, "[d]uring discussions within the Legal Affairs Committee, adoption of an amendment tabled by a German Christian Democrat changed the request for formal proposal to a request for a report,"¹⁰³ and secondly, "[t]he political split within the Legal Affairs Committee was reproduced at the [European Parliament's] debate on 7 June 1983. While the Socialist, European Democrat, Communist and Liberal speakers were in favor of a formal proposal, the German Christian Democrats and European Progressive Democrats felt that it would be premature to say the least."¹⁰⁴ That is, by insisting on a report rather than a proposal that would start the process of Community policy action, the conservative parties clearly argued in favor of an indefinite delay of policy action on voting rights.

While the progressive argument succeeded in the end, as an "amendment" tabled by Mr. Tyrell, Mrs. Veil and Mrs. Cassanmagnago Cerretti,¹⁰⁵ was adopted in plenary session calling upon the Commission to present a formal proposal,"¹⁰⁶ the political divide became a constraint for future policymaking into the Commission. As Mr. Narjes said with reference to discussions within the Council, "when choosing the moment for producing a proposal along these lines, one thing we have to consider is whether that moment is politically opportune."¹⁰⁷ And before Fontainebleau, this political opportunity was not there, in fact, it was not to come until the 1990s.

Conclusion

During the decade 1974-1984 the political opportunity structure for special rights policy was framed by a policy paradigm change that introduced the goal of political union.

¹⁰³ Commission report on the work on voting rights policy by Mrs. Macciocchi of the Legal Affairs Committee in 1983, in: Bull. EC, Supplement 7, 1986, p. 12.

¹⁰⁴ Bull. EC, Supplement 7, 1986, p. 13.

¹⁰⁵ PE 85.054/Am. 2 of 2 June 1983; cf. Bull. EC, Supplement 7, 1986, p. 13.

¹⁰⁶ Bull. EC, Supplement 7, 1986, p. 13.

¹⁰⁷ Debates of the European Parliament, OJ EC, Annex No. 1-300, Sitting of 7 June 1983, p. 77; cf. Bull. EC, Supplement 7, 1986, p. 13.

Yet there was a lack of institutional resources to approach this goal. The evolving institutional crisis led some politicians to suggest the development of new resources, for example, the creation of public support for European integration. While this context did not favour major political innovations--given the lack of constitutional backing--it still provided grounds for a "step-by-step" mode of policymaking. Thus, ways to create the ties of belonging between the Community and the citizens began to be addressed, if on a largely ideational level. This policy, which drew much more on the normative dimension of the Treaties (principle of equality) than on regulations, later became the core instrument for establishing special rights and passport union after the 1984 Fontainebleau Council. I now turn to passport policy as the second policy objective that was part of the project envisioned in Paris 1974.

PART C: PASSPORT UNION

2 August 1976	Resolution of the European Parliament on the introduction of a uniform passport
16 November 1976	Commission Proposal for a Council directive on the harmonization of laws in the Member States to combat illegal migration and illegal employment
23 June 1981	Council Resolution on the Uniform Passport

Sorting the Resources

In addition to defining special rights for European citizens, creating a European entity came to entail the creation of a passport union. A uniform passport was assumed to contribute in a twofold way to the construction of ties between the Community and its citizens. On the one hand, one passport for all would provide a shared document of identity for all Community citizens; on the other, the possibility to move freely without being stopped by inner-Community borders would enhance the feeling of belonging to a territory broader than that of a single Member State or, for that matter, nation-state.

The final communiqué of the 1974 Paris Summit stated in this regard that a "working party was to study the possibility of establishing a passport union, and in anticipation of this, the introduction of a uniform passport." It was agreed that "this draft should be submitted to the Governments of the Member States before 31 December 1976" and was supposed to "provide for stage-by-stage harmonization of legislation affecting aliens and for the abolition of passport control within the Community." This passport, European politicians found at that time, was not only aimed at increasing awareness of Europe as a new political actor on the international stage, but it was also expected to create a feeling of belonging to the Community among European citizens. As the Communiqué clearly stated "the fact remains that the introduction of such a passport would have a psychological effect, one which would emphasize the feeling of nationals of

the nine Member States of belonging to the Community,"¹⁰⁸ and secondly, "[o]ne should take into account not simply the psychological effect of a uniform passport as justifying its existence but that such a passport might be equally justified by the desire of the nine Member States to affirm vis-à-vis non-member countries the existence of the Community as an entity, and eventually to obtain from each of them identical treatment for citizens of the Community." The aim of the passport policy package was then explicitly twofold "a project aimed at confirming the Community as an entity vis-à-vis the rest of the world and capable of reviving the feeling of citizens of the Community of belonging to that entity " The *practice* of carrying common passports within this new community was not yet named or politically defined. Among other things, it involved the reduction of border controls, and the introduction of spot-checks at internal Community borders. Thus the Commission's report suggested that: "[t]he actual scope of this may be discerned stage by stage by means of an analysis based on gradual elimination "

Despite a clearly defined policy objective (passport union), policy instrument (spot checking) and method (stage-by-stage), the actual time between designing the project and its realization was more than 15 years. As pointed out earlier, the successful accomplishment of policymaking hinged upon the changing political opportunity structure and the actors who were present and decided to mobilize existing resources or create new ones. In the following, I describe how the political opportunities for passport policy evolved and were seized or changed ever since passport policy had been defined as a policy objective at the 1974 Paris Summit

As was the case with the special rights package, the development of the passport union package and related policies had been expressed in documents produced by the Community's and other governments' institutions, accompanied by media commentary, and finally by individuals who, although being part of the elite of European policymaking

¹⁰⁸ Bull. EC 12, 1974, pp. 8-9

officials, also often expressed their views in the role of "ordinary" European citizens. While this process hardly produced front-page news, or for that matter aroused much academic interest, discursive analysis over time shows how and why this process contributed to establishing an understanding of things "European "

Unlike the launching of special rights policy, which had comprised long and often philosophical discussions over the definition of special rights for the better part of one decade, passport policy at first seemed to be a straightforward technical matter. As the Commission's working party, charged with the task of designing a project "Towards European Citizenship," described it, the project had two areas and four policy steps. One area was related to the political status of the individual Community citizen. The suggested measures included replacing national passports of varying appearance with a uniform national passport and seeking to secure identical treatment of citizens of the Community by every non-member country. The other area focused on the territorial status of the Member States, including security as well as justice and home affairs. With regard to these fields, policy suggestions included the abolition of the control of persons at internal frontiers and --to some degree-- transfer of that control to external frontiers, as well as the possible introduction of uniform treatment of non-member countries' nationals by all the Member States. In sum, the working party's task amounted to four headings:

- (1) uniform passport
- (2) abolition of control of persons at international frontiers in the Community
- (3) equality of treatment of nationals of Member States by third countries
- (4) legal implementation of the Passport Union ¹⁰⁹

If the definition of project and policy objectives sounded fairly straightforward, complications came to the fore once the judicial and political aspects of the policy were confronted

¹⁰⁹ Bull. EC, Supplement 7, 1975, pp. 10, 12

Discussing Competences and Policy Areas

In legal terms, the Commission's working party found that there "were two possible approaches with regard to legal implementation of the Passport Union: firstly a separate Treaty governed by international law and secondly a revision of the EC Treaty"¹¹⁰ That is, passport policy could either be approached via purely intergovernmental negotiations that would be outside Community legislation or it could become subject to the EC Treaty. If the latter option was favoured, a decision had still to be made about how passport policy would be integrated into the *acquis*. This choice included two legal options. The adoption of passport policy via Article 235 would presume that passport policy was one necessary aspect of common market operation. Adoption via Article 236 would involve a Treaty revision within the framework of an intergovernmental conference.¹¹¹

Given the availability of these legal resources the Commission concluded that

although the Passport Union is not essential to achievement of the objectives of the EEC Treaty as it stands at present and since it is therefore not possible to rely on Article 235, it remains true that it is a natural extension of the principle of free movement which constitutes one of the foundations of the Community.¹¹²

Legally speaking, it was not entirely impossible to apply Article 235. However, the Community crisis situation which prevailed during the 1970s granted little room for the type of political maneuvering required for such a project. Thus, in order to invoke Article 235, the Commission would have to play a strong role in taking the initiative. The chance for successfully implementing Commission proposals was at this time, however, reduced in an opportunity structure that was strongly incapacitated by the lingering "Luxembourg

¹¹⁰ Bull. EC, Supplement 7, 1975, pp. 16-17.

¹¹¹ Whereby the situation of a Treaty revision under Art. 235 applied in cases where the EC Treaty did not provide the necessary rules towards the establishment of the Common Market. As Article 235 EC Treaty stipulates, "[i]f action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

¹¹² Bull. EC, Supplement 7, 1975, pp. 16-17.

compromise " With the thus reduced Commission competences--due to the unanimity decisions that were the rule within the Councils at that time--according to Mr. Offele, an advisor to the General Secretary of the Commission, "in this situation of crisis, ideas of reform were not feasible."¹¹³

To summarize, the Commission's working party came forward with three basic findings for further policymaking procedures towards passport union. First, the establishment of a passport union was not an essential goal of the EEC Treaty and could therefore not be developed on the basis of strictly legally defined resources. Second, there existed the possibility to reach agreements based on international law. Third, passport union was clearly related to the policy of free movement of persons, goods, capital, and services as was stipulated by Article 8 of the EEC Treaty (common market).

While leaving room for debate over the appropriate mode and content of policymaking, the Commission stressed its position as a major actor as far as initiating the process of passport policymaking. Accordingly, in its concluding remarks the working party found that

to ensure that the work to be carried out is consistent with the objectives attained under the Community Treaties and to ensure their continuity the Commission proposes that it should itself provide the chairman of the working party which will be made up of persons designated by the Member States and will be required to submit a report to the government representatives meeting within the Council, and should also be responsible for the secretariat. Once the working party has been set up, the Commission will take the necessary steps to see that it meets without delay.¹¹⁴

As the constitutional embeddedness of passport policy remained unsolved because of questions of competence over a policy that while contributing to the market also involved the delicate question of border controls, the time-table that had originally been designed by the Commission in 1975 seemed no longer applicable. Clearly, since they touched upon issues of security and foreign policy, border controls fell into what political

¹¹³ Interview with Mr. Offele, Brussels 30 June 1993 [my translation]

¹¹⁴ Bull. EC, Supplement 7, 1975, p. 17

scientists traditionally define as high politics. In a word, the goal of passport union left less room for such philosophical discourses that had helped to focus special rights policy during 1978 Florence round table. Quite to the contrary, successful passport policy seemed to depend not on more but less public debate. It turned out to be an essentially diplomatic matter. And, before the passport union package was finally included into Article K.1 (TEU) in 1993,¹¹⁵ and thus became subject to international law (Muller-Graff, 1994:497), the debate over policy and institutional instruments that contributed to the construction of the policy objective of passport union emerged slowly.

The Parliament urged the Council to live up to the goals it had defined for itself at the 1974 Paris Summit and the 1975 Rome Summit. While the working group's study that followed the first summit had been accomplished, the later meeting had set the deadline for the creation of a uniform passport by stating that it was "to be in use by 1978."¹¹⁶ On this occasion the EP urged the Council "to ensure that the agreement for a uniform passport be carried into effect by 1978."¹¹⁷ It took however another five years until the Council agreed on a resolution during the 1981 Luxembourg Summit.

¹¹⁵ Article K.1, Treaty of European Union stipulates

"For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest: (1) asylum policy; (2) rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon; (3) immigration policy and policy regarding nationals of third countries: (a) conditions of entry and movement by nationals of third countries on the territory of Member States; (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment; (c) combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States; (4) combating drug addiction in so far as this is not covered by (7) to (9); (5) combating fraud on international scale in so far as this is not covered by (7) to (9); (6) judicial cooperation in civil matters; (7) judicial cooperation in criminal matters; (8) customs cooperation; (9) police cooperation for the purposes of preventing and combating terrorism, unlawful drug-trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)." (TEU, 1993:48)

¹¹⁶ OJ No. C 178, 28.76, p. 14 [Resolution of the European Parliament on the introduction of a uniform passport]

¹¹⁷ OJ No. C 178, p. 14

In the meantime, the European Parliament with support from individual Commission officials, pushed for policy outputs. Commission officials who supported a move towards integration identified the Council's ineffective tempo. For example Mr. Davignon stated in a 1977 Parliamentary session, that it was "time the Member States abandoned these futile squabbles they have been involved in. There is now an agreement on the color of the cover of the passport. Admirable process after a year and a half!" (European Parliament, 1979:119). Later, at the 1978 Florence Roundtable on Special Rights, Mr. Bayerl, then rapporteur for the EP's Legal Affairs Committee, made clear his views as to which of the four Community institutions was mainly responsible for the delay in passport union policy, suggesting that "it was the Council which in the past few years, had allowed obstacles to gather which were delaying progress towards political union for no valid reason. For example, the Council failed to implement the passport union which had been agreed four years ago." This lack in fulfillment of policy steps towards passport union was seen as particularly lamentable because according to Bayerl, it also led to a delay in special rights policy. While the report of the meeting noted that there was as yet no such person as the 'Community citizen' --so as to provide a basis for passport policy--, Bayerl's comment suggested a different logic. The way he saw it, "if the community passport had already been introduced, people would have noted the change" (European Parliament, 1979:45). From this perspective then, passport policy was seen as having an integrative function in European politics.

Apart from these debates, passport policy was put on hold for about five years after the Council's 1976 resolution on introduction of a common passport. Mr. Taschner, who began to work at the Commission's Directorate General III-F-1 in 1980, remembered that he found "a project that had not been worked on since 1976. In somewhat fading print, the dossier's title said 'European Passport'. I relaunched the project with the Italian Presidency. Thus, the European passport was created in 1981" (Taschner, 1992:233).

As it turned out, the creation of the passport and its actual use were two different matters. While the passport's introduction was launched, the project of passport union with no internal borders preventing European citizens from free movement was barely started. The discourse about passport policy clearly shows the twofold approach to passport policy. Thus, a Council resolution envisaged separating the project of a uniform passport from that of a Passport Union. It stated,

recalling that the Heads of Governments meeting in Paris [] requested that the possibility of creating a Passport union and, in advance, the introduction of a uniform passport, be examined by the European Council, meeting in Rome [], agreed [...] to introduce a passport of uniform design [This task was to be concluded] by 1 January 1985 at the latest.¹¹⁸

The introduction of a single passport in 1981 was thus the first stage of a larger project. Instead of mentioning future policy steps, for example with a view towards potential shape, function, and legal grounding of the passport union, the document focused on a detailed account of the exact looks of the future uniform passport. It included all possible details of a passport ranging from the colour of the passport cover ("burgundy red") to the eventual extra page ("beyond the 32 standard") for "people who travel more frequently"¹¹⁹ and, last but not least, it even offered the possibility of opting out for those Member States who considered this "necessary in particular cases"¹²⁰ This resolution appeared some five years after the agreement on the shape and colour of the passport had been made. Another year later, the Council's attention to detail was topped off by a "supplementary resolution to the resolution," where it specified that the colour of the cover of the passport was to be "as close as possible to RAL standard 4004 (Bordeaux red - violet) laid down by the German Standardization Committee"¹²¹

¹¹⁸ OJ EC, No. C 241, 19.9.81, p. 1 [Council Resolution of 23 June 1981]

¹¹⁹ OJ EC, No. C 241, p. 4

¹²⁰ OJ EC, No. C 241, p. 7

¹²¹ OJ EC, No. C 179, 16.7.82, p. 2 [supplementary resolution to the resolution adopted on 23 June 1981: Council - 30 June 1982]

In terms of expanding the formal institutions of the *acquis*, not much seemed to be achieved with these Council resolutions. However, it is important to note that the introduction of the burgundy passport did open a window of opportunity towards further expansion of the *acquis*. It was, for example, welcomed as a first step towards passport union, and it also created a new way of assessing the creation of belonging to the Community based on symbolic criteria. While the application of this regulation remained to be seen, a window of opportunity had nevertheless been opened.

As the EP recalled later

from the legal point of view, the European passport remains a national passport and [...] the harmonization relates only to certain graphic and physical aspects, namely the bordeaux-violet coloured outside cover and the words European Community followed by the name of the issuing Member State. Nevertheless, it is particularly useful, in so far as two important aims are pursued by the use of that document: one is *symbolic*, attaching importance to the feeling that citizens of the Member States belong to the Community, and the other is *practical*, since the introduction of the European passport represents the first step towards the implementation of the controls within the Community and quality of treatment of European citizens by non-member countries (European Parliament, 1992:24).¹²²

Politically speaking, the 1981 Council resolution's emphasis on what seemed as merely cosmetic matters expressed the problematic political aspects of a passport union. The necessity for all Member States to agree on new forms of border controls, the definition of internal and external border policies, visa, police and immigration regulations all required a seemingly endless list of decisions that needed to be taken. As Mr. Taschner, who was in charge of the Commission's policy in this regard for more than a decade recalled later, "[i]n order to make the introduction of these measures easier for those Member States that were perhaps less enthusiastic about them, the Commission waived to insist on a binding legal stipulation - thus, not a directive, but a 'gentlemen's agreement', that is a Council resolution, should provide the legal basis" (Taschner, 1990:10).¹²³ The

¹²²[emphasis added]

¹²³ For the resolution see OJ EC, No. C 197, 31.07.1982, and Bull. EC 6, 1982, point 2.1.10

Commission thus choose to focus on smaller steps towards passport policy. As the following section shows, these steps included work on a variety of issues.

With reference to the opportunity structure of the time, discourse analysis reveals a passport policy expressed by Council resolutions and Commission proposals that provided a view of two prospective policy areas that were linked with passport union. These were security and employment. Both were, if not equally emphasized, put forward by a 1976 Commission "Proposal for a Council directive on the harmonization of laws in the Member States to combat illegal migration and illegal employment"¹²⁴ which was submitted to the Council with the intention of creating a new border policy. As point 9 (preventive action) of the document explained:

[a]s regards the organisation of [effective] controls, the Commission is of the opinion that effective control at the internal frontiers of the Community is becoming more and more unreliable. This will become increasingly the case when the Community achieves a Passport Union and the subsequent easing or removal of all internal control on Community territory. It therefore proposes not to limit the checks on non-Community labour [...] to points of entry, but to provide, as necessary, at places of work.¹²⁵

To begin with, this proposal mentioned the issue of migration policy as one area that might be impacted upon by an eventual passport union. Secondly, this proposal emphasized the historically proven practice of exclusion of aliens in favour of the inclusion of citizens. A third finding, that will be discussed at greater length with reference to the following two decades, is the emerging link between policymaking in the areas of high politics of border control and low politics of employment. As I will go on to show, the contribution of this combination to the creation of a European identity proved to be essential for further passport policy.

¹²⁴ Europe Documents, No. 920, 16 Nov. 1976.

¹²⁵ Europe Documents, No. 920, p. 2.

Borders and Free Movement of Workers

12 February 1974	Council Resolution on a "social action programme"
14 February 1976	Council resolution on an "action programme for migrant workers and members of their families"
23 November 1976	Commission proposal on the "harmonization of laws in the Member States to combat illegal migration and illegal employment"

As the Commission had stated in its working party's 1975 report, the establishment of passport policy including the introduction of a uniform passport and the introduction of spot-checks instead of border controls, was technically linked to the establishment of the fundamental right of freedom of movement for workers within the territory of the European Communities (Art. 49, EEC). The particularities, such as, for example, the political and economic meaning of this right, became more evident in the context of the anticipated enlargement of the European Community.

In a 1978 Communication to the Council, the Commission emphasized the problems related to this process. In a report on "General Considerations of the Problems of Enlargement," it pointed out that

[f]reedom of movement of people, in particular workers, is a fundamental right that the Community cannot deny its members. While it is true that freedom of movement alone does not result in significant migratory flows in times of unemployment, it could give rise to severe strains when labour markets are under so much pressure. Therefore, both by promoting regional development and by adopting appropriate transitional measures, freedom of movement and work throughout the Community can progressively be ensured for nationals of the new Member States.¹²⁶

According to this observation, concerns about controls of extra- and intra-community migratory flows were of pivotal importance to the successful realization of passport policy and hence to citizenship policy. At the same time, these concerns were met by the Member States' reluctance to change practices of border controls.

This Commission paper was written in the pre-enlargement context of the pending applications of Greece, Portugal and Spain. It concentrated, among other things, on the

¹²⁶ Commission of the European Communities, 1978, "General Considerations of the Problems of Enlargement", cf. Europe Documents, No. 1000, 25 April 1978, p. 5 [emphasis in the original]

potential ramifications for economic, energy, regional and social policy of the enlarged Community, making a strong point about the necessity of workers' flexibility. In light of this reasoning, it turned out that passport policy was not only part of EC identity politics and, thus, an instrument towards the establishment of political union. It was also considered as one pre-condition for labour market regulation. Free movement of workers was an essential factor for keeping the balance in the complex interrelation among migratory flows and employment policy, as its potential flexibility indicated either smooth or rough labour market reactions to changing economic contexts. Passport policy, then, turned out to be based on a dual linkage within the universe of political discourse. It not only contributed to the creation of a feeling of belonging, but was considered as one crucial means allowing for a flexible labour market. These two motives for passport policymaking were explicitly expressed in the Council's resolution on a uniform passport in 1981 wherein it said it agreed to introduce a "passport of uniform design" on the basis that, first of all it was "*anxious* to promote any measures which might strengthen the feeling among nationals of the Member States that they belong to the same Community", and secondly, it considered that "the establishment of such a passport is likely to facilitate the movement of nationals of the Member States."¹²⁷ This dual linkage then facilitated two sets of resources, one market-based, the other symbolic which were both linked to borders and movement across them.

In sum, from the background of this resolution it seemed fair enough to conclude that the growing complexity of the Community as an enlarged market required the adoption of policies that were designed to address both matters of security and social policy. The problem at hand was now how to develop and initiate the respective policy strategies to create passport union. After all, at that time the daily policy experience among Commission and Member State officials contributed to a rather pessimistic view of

¹²⁷ OJEC; No. C 241, 19.9.81, p. 1 [Council Resolution of 23 June 1981]

the matter. Thus, one Commission official recalled the delicate political situation in 1981, when the Commission --passport in hand-- faced the development of a strategy towards the change of border controls

when the passport was ready, we were wondering, what is it that we are to do with this passport? After all, we were supposed to end border controls. We were, however, quite sure that we would never be able to achieve a fast agreement of the Member States on this (Taschner, 1992:233) ¹²⁸

The Member States did not show much inclination to push forward or cooperate in innovative policy regarding the matter. In light of the highly probable rejection of an overall Community based border policy, the Commission decided to follow a different path. As Mr. Taschner explained "in the Commission, we developed the idea to divide one big step into a few small ones. Instead of talking about the abolition of personal controls we called it "relief", which meant no more systematic controls but spot-checks. And on the roads a Euro-lane and at the airports a specific gate for those who belong to the EC. And the passport? It was supposed to allow travelers to pass border controls by showing the closed passport [...] And finally, not a directive, not Article 235 EEC, but a resolution of the Member States, that perhaps would be more easily acceptable" (Ibid.)¹²⁹

This brief report by one centrally involved Commission official working towards the realization of free movement via Article 8 EEC provides an idea of the key ingredients of the forthcoming Commission strategy after Fontainebleau. It indicates how the Commission was going to handle the available resources regarding three crucial aspects of passport policy,

- the places (for example borders that are crossed by transportation, such as airports and roads),
- the practice (spot checks; travelers showing a closed passport) and
- the legal mode (national rather than Community law).

¹²⁸ This and the following comments are cited from a presentation of the Commission official. The translations are mine

¹²⁹ [my translation]

Two insights follow from this early period of passport policymaking. First, it was going to be developed on a step-by-step basis. Here, it is notable that the actors, and the Commission as pro-integrative actor in particular, not only considered a factual but also a discursive step-by-step approach. It thus created resources that could become *acquis* as they created a context of familiarity with terms *and* practices of passport union over time. Secondly, an emerging tension between the political restraint and economic necessity of passport policy became evident. On one hand, border controls remained a security matter, and therefore the Member States were not inclined to transfer any sovereignty to the Community level in this area. On the other hand, free movement was crucial for market regulation in light of migration and employment policy and hence fell under the auspices of the Commission's internal market policymakers.¹³⁰ Before I turn to the new period of passport policy after the 1984 Fontainebleau Summit, I will provide a concluding perspective on the interrelation of both areas.

Conclusion

Elements of policymaking were consistent with early ideas about the EC's identity politics as part of foreign policy. This policy approach was characterized during the 1973 Copenhagen Summit conference of the then Nine EC member States. There, the representatives of Member States issued a paper entitled "Of European Identity"¹³¹ which declared that "European identity will evolve as a function of the dynamic of the construction of a united Europe. In their external relations, the Nine propose progressively to undertake the definition of their identity in relation to other countries or groups of countries." The document provided two reasons for this policy. First, it stated that the signatories believed "that in so doing they will strengthen their own cohesion and

¹³⁰ For an argument on the Commission's potential impact on the interrelated areas of employment and migration, see also: Wedell (1980:47-60).

¹³¹ Europe Documents, No. 779, 15 December 1973, "Of European Identity", pp. 1-3.

contribute to the framing of a genuinely European foreign policy," second, they were convinced that "building up this policy will help [...] to tackle with confidence and realism further stages in the construction of a united Europe thus making easier the proposed transformation of the whole complex of their relations into a European Union."¹³² European identity politics, then, were intended to contribute positively to the development of a clearly defined common foreign policy and to the construction of a stable "domestic" political situation, that eventually could be termed political union. In the same vein, the Council's discourse on passport policy related to the creation of a feeling of belonging, the necessity of being able to draw on a European identity for foreign policy matters, and labour market policy.

The peculiarity of the policy situation was rooted in the Janus-faced characteristics of this enterprise. Citizenship always includes drawing boundaries around and within communities. On the one hand, successful foreign policy depended on the acknowledgment of Europe as an actor in the global arena. On the other hand, the creation of this feeling of belonging--that was to eventually create European identity--depended among other things on the practice of border crossing. By waving a closed burgundy coloured passport at intra-Community borders, citizens of the European Community were crucial to the creation of this type of belonging. In short, the creation of identity depended on practicing belonging. This practice was however blocked from realization because of Member States' security concerns. Hence, at a time, when passport policy became part of the Community's political discourse via Council resolutions, it seemed that the needs of foreign policy and the concerns of security politics contradicted each other.

In this situation the Commission decided to put the responsibility of difficult and unpopular decisions on the shoulders of the Member States. This decision was noteworthy from various perspectives. Politically, it reflected the context of crisis, and that little room

¹³² Europe Documents, No. 779, p. 3

for maneuver in the political opportunity structure was left to the Community to act on foreign and security issues. In light of these circumstances, border politics as one aspect of passport union were assigned to the area of Member State policymaking. At the same time, passport policy included the realization of freedom of movement for workers, thus stipulating the Commission's duty to come forward with policy proposals on the matter. According to Article 49 EEC Treaty, the Council was to issue directives or make regulations setting out the measures required to bring about, by progressive stages, freedom of movement for workers, based on a proposal from the Commission and acting by a qualified majority.

The Commission's proposals in fact drew on Council regulations on the matter dating back as far as the 1960s.¹³³ It thus mobilized resources that had been part of the *acquis communautaire* for about a decade. These early regulations on the freedom of movement indicated the first steps towards passport union by stipulating the introduction of new practices of border crossing. Thus, for example a 1968 Council directive stated that

Member States shall, acting as provided in this directive, abolish restrictions on the movement and residence of nationals of the [Member] States [] Member States shall grant the nationals [..] the right to leave their territory in order to take up activities as employed persons and to pursue such activities in the territory of another Member States. Such right shall be exercised simply on production of a valid identity card or passport. [...] No entry visa or equivalent document may be demanded.

Further Council resolutions followed, such as, for example, on the "social action programme" (1974) and the "action programme for migrant workers and members of their families" (1976), as well as a Commission proposal on the "harmonization of laws in the

¹³³ See for example: OJ EC, No. L 257, 19 10 68, pp. 475-484 [Council Regulation (EEC), of 15 October 1968 on freedom of movement for workers within the Community], pp. 485-488 [Council Directive of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families]

Member States to combat illegal migration and illegal employment" (1976).¹³⁴ The Council regulation on the Social Action Programme clearly stated that this programme "should be implemented in accordance with the provisions laid down in the Treaties, including those of Article 235"¹³⁵ thus allowing for the policy instrument of taking measures that were not provided in the Treaty

¹³⁴ (J) No. C 13, 12.2.74, pp. 1-4; OJ No. C 34, 14.2.76, pp. 2-3, and OJ No. C 277, 23.11.76 pp. 2 and *passim*, respectively.

¹³⁵ OJ EC, No. C 13, p. 1

PART D: AN EXPANDED ACQUIS COMMUNAUTAIRE

While the context of the 1970s could be termed a constraint to EC policies at the time, the history of citizenship policymaking reveals how this constraint turns into an opportunity as specific strategies are developed to overcome it. Thus, EC policymakers were interested in maintaining the *acquis communautaire* of the time. As some suggested, this could only be achieved on the basis of an improved image of the EC in global politics, as one precondition to face the global crisis. As Henry Kissinger's query in the middle of the crisis (who speaks for Europe?) made clear, the EC lacked representation on the global stage. The discourse of the time reveals that politicians saw this void as being in part due to the lack of a European identity. While drawing on its quasi-constitution, EC politics were legally legitimized, the EC still did not speak in one voice, its speech remained "fairly scanty" as Davignon had rightly noted. Despite the agreement that Community policymaking was now aimed at creating a political union, the problem of how to create a feeling of belonging among the Community citizens that could contribute to the identity of this union remained.

The crisis thus evoked several new responses. As outspoken EC policymakers of the time stressed, collective (Community) action not national (Member State) policy needed to be invoked. For this type of action, new ideas were required. To that end the question of how the project of a gradually developing European Community could be sustained despite the crises had to be debated. Community documents, which reflect the EC's political discourse of the time, demonstrate that the debate over how to achieve a European identity received central attention. One suggestion was to work towards a European citizenship. The debates over policy objectives during this decade revealed how policymakers were organizing the existing resources such as constitutional assets and how they began to set new policy objectives and instruments. A set of new resources such as special rights and passport policy was envisioned. With the first steps towards their creation the *acquis* was gradually broadened. The adoption of the 1976 Council decision

to implement direct universal suffrage and the first European elections in 1979, on the one hand, and the adoption of the creation of a single European passport in 1981 on the other hand, were crucial first steps that expanded the institutionalized *acquis*

Besides these institutional changes the *acquis* was expanded on a discursive level as the idea of "Europeanness" that had been introduced with the document on European identity in 1973 and was gradually being realized by both special rights and passport policy. As Guido Van den Berghe points out, a "qualitative change" is introduced by voting directly for the European parliament. What was formerly "abroad" was now to be thought of as European, as if the Community was beginning to assume its own "territory."¹³⁶ At the end of this decade that territory was a space where voters shared the practice of voting. In this early stage then citizenship practice introduced perspectives that contributed to a new way of transgressing inter-Community borders.

What then changed within the *acquis* and what does this imply for the way how we think about EC/U citizenship? A closer look at the resources brings changes to the fore, beyond that it highlights a growing tension in European politics. There was the emergence of a gradually widening gap between functional (market-oriented) aspects of integration, on the one hand, and the intended and unintended consequences of this process, on the other.¹³⁷ Both aspects will be explained shortly. Thus, the first period of citizenship practice in the European Community involved a considerable mobilization of resources. This was possible within an opportunity structure that was constructed by the lingering

¹³⁶ In his study of the development of political rights in the EC, Van den Berghe points out "[a]lthough the European Community does not have its own territory, whereas the different Member States do, the term 'abroad' has throughout the entire study been put into inverted commas in order to underline the qualitative change from national elections which direct elections are taken to represent for the citizens of the Member States resident in another Member State. Indeed, in contrast to national elections, these electors are not persons resident outside the geographical area in which elections are held" (Van den Berghe, 1982:2).

¹³⁷ Some differentiate between rights as "useful tools for integration" and rights as "weapons in the hands of Community citizens" (Clapham, 1991:10). While this dissertation agrees with the first aspect, it maintains scepticism against a rights approach in the EC in particular where the Bismarckian type of citizenship practice, a lack of stateness and of interest group organization during the first years of citizenship practice in particular contradicts the central categories of a contractual logic (see chapter 2).

policy paradigm of the previous decade, on one hand, and an *acquis communautaire* on the other. The *acquis* provided a set of institutions, beliefs, symbols and practices that turned out to be helpful for those politicians who were interested in mobilizing the resources of the time.

In this final section, the thus construed expansion of the *acquis* is summarized. The expansion sets the institutional point of departure for the next period of citizenship practice during which the political opportunity structure and actors change the *acquis* once again. The major changes included the fleshing out of policymaking towards political union and the creation of a European identity. The action taken in this regard were reflected by three types of resources (1) institutionalized resources residing in Council Communiqués, decisions and regulations; (2) institutional practices and procedures, (3) symbols and a discourse about the meaning of special rights in the case of the EC in particular and citizen's rights in general. Innovations regarding the first type of resource include for example the *in-loco* right to vote in European elections, the right of residence and the adoption of the Council decision about the uniform passport. The second type of resource involves the debate over responsibilities of Community organs, how they have been stipulated in the treaties and actually practised by the respective institutions. An outstanding example for this period was the debate over the Luxembourg compromise and the Commission's repeated request to turn away from unanimity decisions within the Council.

Finally the third group of resources was the one that changed the most during this period. These ideational resources include among others normative, philosophical and ethical aspects. They hence stem from a framework that may be appropriately characterized by the history of social and political thought about citizenship. This type of background has not been central for Community policymaking in the previous decades which were mostly focused on the establishment of a common market policy. As the discursive analysis reveals, the new overarching goal of political union, a new necessity to

speak with one voice in global politics and the introduction of a debate over the definition of citizens brought new concerns to the fore. The question of how to define the rights of European citizens thus triggered a series of questions which contributed to a new perspective on Europe. It was considered as an entity that could be compared to processes of modern state-building which also included a redefinition of the relation between citizen and political entity

From historical processes we know that the establishment of political rights involves redefining the interrelation between citizen and the state.¹³⁸ It is a process which has always been highly conflictive as it involves changes of identity and legitimacy.¹³⁹ According to T H. Marshall citizenship policy is also about solidarity as the triad of civil, political and social citizenship rights reflect "the modern drive towards social equality" (Marshall, 1950:10). These issues become apparent once the concept of citizenship practice reveals the contribution of citizenship policy. Approaches that focus only on citizenship made through social struggle fail to realize that states (or in this case an entity-in-becoming) can also act to generate not only rights and access but also the feelings of belonging upon which the legitimacy of the new entity depends. These years of citizenship practice in the EC reveal policymaking which generated citizenship from above.

From this perspective then, citizenship practice is closely connected to union-building. As European citizenship practice proceeds, national citizenship practice does not remain unchallenged. That is, if citizenship is established via civil, political and social rights, and there is a role for citizenship in forging the principles of identity, legitimacy and

¹³⁸As Charles Tilly explains, "[b]etween the development of stateness, on the one hand, and the pattern of mobilization, on the other, comes the acquisition of political rights binding on agents of the government by the members of the mobilized groups within the subject population. Extensions of the suffrage, for example, do not follow from the pace of state-making alone, or from the pattern of mobilization alone, but from an interaction between the two processes" (Tilly, 1975a:35). And Reinhard Bendix observes, "a core element of nation-building is the codification of the rights and duties of all adults who are classified as citizens" (Bendix, 1964:74).

¹³⁹ Thus, studies have found that citizenship not only defines membership in a nation-state but it contributes to both "state-making" and "nation-building" by establishing a link between the individual citizen and the community (Tilly 1975a:37 and Bendix 1964:74).

solidarity as basic principles that lie at the center of the modern nation-state, then this creates a dilemma for the participating Member States in the EC. After all, the Member States' identity, legitimacy and solidarity stems from precisely these aspects of citizenship. A construction of a European citizenship therefore means a challenge to their political domain.¹⁴⁰ Yet this process has been encouraged by the introduction of special rights to the *acquis*. Despite their naming as special rights, legal observers find that they are after all "not special in themselves, but rather a gradual extension of rights which the Member States tend to safeguard for their own nationals, to the nationals of the other Member States, who live in that Member State" (Van den Berghe, 1992: 42).

¹⁴⁰ Van den Berghe points at this dilemma early in the process when he notes that to grant 'foreigners'--that is nationals living outside their Member State of origin within the Community--the political right to vote is considered by the majority of the Member States as breaking with the "idea that the political domain is reserved for its own nationals" (Van den Berghe, 1982: 47).

CHAPTER 5

FONTAINEBLEAU: MARKET-MAKING AND UNION-BUILDING

The qualitative leap that is being carried out by way of the Single European Act in order to assign the task of promoting democracy to the Community, obliges the Community to act, in particular since its action is indirectly considered as the cause for that democratic weakness (Lobkowitz, 1989:525).

PART A: POLITICAL OPPORTUNITY STRUCTURE IN THE 1980s

19 June 1983	European Council meeting at Stuttgart
25-26 June 1984	European Council meeting at Fontainebleau: Conclusions of the Presidency
September 1984	A People's Europe. Implementing the conclusions of the Fontainebleau European Council: Communication from the Commission to the Council
14-15 January 1985	The thrust of Commission Policy. Statement by Jacques Delors, President of the Commission, to the European Parliament and his reply to the ensuing debate, Strasbourg, 14 and 15 January 1985
21 March 1985	Reports from the ad hoc Committee on Institutional Affairs (Dooge Report)
29-30 March 1985	European Council Meeting at Brussels
29-30 March 1985	First Report from the ad hoc Committee on a People's Europe (Adonnino Committee) presented to the European Council, Brussels, 29 and 30 March 1985
28-29 June 1985	European Council Meeting at Milan
28-29 June 1985	Second Report from the ad hoc Committee on a People's Europe (Adonnino Committee) to the European Council, Milan, 28 and 29 June 1985

In this chapter, I continue to analyze citizenship practice, by asking what is being done and how? The focus remains on the issue of which resources are mobilized and which are created. The context is, however, different so that the policy paradigm, the *acquis communautaire* and hence the political opportunity structure need to be identified anew. Once this is completed, the chapter explores the development of citizenship practice following the debates over special rights and passport policy in the time period from the 1984 Fontainebleau summit until the end of the 1980s.

The chapter is divided into five parts. Part A maps out the institutional context that sets the stage for the principal actors (the Commission and its President Jacques Delors, the Council, the Parliament, the Adonnino and Dooge ad hoc Committees) of the Fontainebleau period and identifies the policy paradigm of this time. Part B focuses on the steps towards the pathbreaking institutional reform that was introduced by the Single European Act (SEA). Part C re-constructs special rights policy along the lines of policymaking towards a "People's Europe", including the debates over the political right to vote, and the adoption of a "Community Charter of Fundamental Social Rights for Workers". Part D on passport policy recalls the negotiations over issues of border controls and freedom of movement for various groups of persons. Part E summarizes the expanded *acquis communautaire*.

Towards a New Policy Paradigm

In order to identify the political opportunity structure, it is necessary to define the policy paradigm within the broader economic and political context and what Community actors make of it by mobilizing the institutional and discursive resources available. To that end, this section briefly recalls the situation of economic change and the related change in nation-state politics.

The Fontainebleau period followed a decade of economic uncertainty, widespread concerns over "ungovernability" in the Member States, and an increasing fear of "Euro-sclerosis" as EC policymaking remained widely blocked by unsolved budgetary problems, thus contributing to an overall feeling of "Euro-pessimism" (W. Wallace, 1994:64-5, Ross, 1993b:44-5; Tsoukalis, 1993:1). Indeed, the early 1980s were considered a time of "turbulence" in EC politics (Taylor, 1989:3). "European nation states appeared to be losing power and authority not to any new supranational authority to which decision-making capacities and loyalties were being transferred (as the neo-functionalists had hoped) but into a void" (W. Wallace, 1994:65). The observation of "a qualitative new

stage in the evolution of Western European states" from nation-state to industrial state is shared by others who link this change to the way how European institutions evolve and who see a connection between the two processes (Wessels, 1992:21).¹ From this perspective the declining authority of nation-states does not necessarily lead into a void but may appear in a changed new form in the Euro-polity. Global economic restructuring, in particular the "relative American decline and Japanese ascent," was seen as a new structure that "triggered the 1992 process" (Sandholtz and Zysman, 1989:95).

It is then possible to summarize the context of the 1980s as one of increasing globalisation of production and monetary operations, in which social and economic rights of citizens became derooted from their national contexts. On one hand, this process generated among other things a decline of national welfare systems, albeit with different consequences in various contexts. On the other hand, this process led to changes in the politics of social closure and disclosure and thus to changes in citizenship practice. New migratory flows led to an extension of social rights and a decline of political rights (Brubaker, 1992; Bös, 1993; Bös and Wenzel 1995; Leibfried and Pierson, 1992; Soysal, 1994a). They thus created a new potential for political tension.

In this context, Community policy included the adoption of the Single European Act, a new social dialogue and an overall plea for solidarity among the European regions. In short, the EC began to take increasing responsibility for welfare provisions that had previously been handled by the Member States who were no longer able to compete internationally based on their welfare promises. Some suggest that this context contributed to a political opportunity structure in the Community that was favorable to strong agency. Thus, George Ross writes "the effects of economic crisis and [...] policy-induced inflation of the earlier 1980s [...] created an environment which was more propitious for new

¹ For example, looking at the changes generated by the SEA Wolfgang Wessels notes that "[t]he Community and its institutions are ... reactions to persistent patterns of the West European developments" (Wessels, 1992: 22)

Europeanizing measures than it had been for nearly two decades " However "the mere existence of a more favorable setting did not mean that a renaissance of European integration would follow. *Actors had to make it happen*, and the new European Commission appointed in 1985 turned out to be central" (Ross, 1993b 45) ² The context of the early 1980s also was one of Community enlargement and thus one that included incentives for new policies as such (Sbragia, 1992; Tsoukalis, 1993) ³

These factors of economic change, welfare regime transformation, and political negotiations over enlargement provide the context for Community policymaking that set the tone of EC politics in the 1980s. Shifting political opportunity structures were induced then by a profound change in the political and economic situation of nation-states and the subsequent transformations of political domains. As this chapter will show, this situation did not necessarily lead into a void, instead it created new political opportunities.⁴ The mobilized resources were overall geared towards market-making. In this period the change in Community self perception as suffering from "Euro-sclerosis" towards a new European image of "Europhoria" was in part promoted by a politics that was linked to market needs. That is, the process of building a European identity was firmly couched in a market paradigm. Yet, as I argue, this process of "market-making" (Streeck, 1992) was linked with that of union-building. The reconstruction of the discourse on special rights and passport policy as citizenship practice which continued in the EC makes clearly evident this linkage. Focusing on the institutional resources available to the actors of the time supports this argument. If the Euro-polity was to assume the power supposedly lost by the nation-states, it needed first to overcome the lingering deficit of institutional resources that

²[emphasis added] While the observation of strong agency as one crucial factor in this period is acknowledged here, it is also part of this dissertation does not share a narrow focus on the Commission

³ Spain and Portugal became Members of the Community in 1986 (Dinan, 1994; Nugent, 1991)

⁴ This argument about a transfer of agency from the national Member State's polity to the Euro-polity agrees with Wessel's observation that constraints in the domain of "the modern Western European state" contribute, in part, to "the evolution of the institutional set-up of the EC" (Wessels, 1992 21)

hindered active policymaking. Indeed, how to reform the institutional framework was a major concern in the 1980s.

Institutional Resources

Similar to the 1974 Paris Summit that was commonly considered as a breakthrough for European policymaking, and which was preceded by a summit that brought forward new ideas, the 1984 Fontainebleau Summit was another pathbreaking summit that drew on ideas which were spelled out earlier.⁵ Thus the 1983 Stuttgart Summit ended with the Council's "Solemn Declaration on European Union."⁶ This declaration drew on the themes of European identity, political union and institutional reform that had been on the Community agenda since the 1973 Paris Summit, thus reiterating the overarching goal of political union as part of the *acquis*. In the same vein, the necessity of identity was restated as firmly as ever. As the document said

[t]he Heads of States or Governments, on the basis of an awareness of a common destiny and the wish to affirm the European identity, confirm their commitment to progress towards an ever closer union among the peoples and Member States of the European Community.

Somewhat lagging behind these bold words, the corresponding policy objectives and policy instruments remained to be defined until after the Fontainebleau Summit, that is in a year's time. With strong wording and few commitments as to their realization, the declaration reflected the context of political crisis, the instability and the economic problems of that time. For example, rather than expanding on the meaning of special rights, the Stuttgart declaration mentioned "fundamental rights" as "recognized in the constitutions and laws of the Member States, in the European Convention for the Protection of Human Rights and the European Social Charter, notably freedom, equality and social justice" in order to "promote democracy."⁷ While the declaration thus

⁵ For a similar evaluation of this summit's importance for special rights policy, see Magiera (1987a:222).

⁶ European Report, 23 June, 1984, No. 1053, pp. 6-10 [European Council, Stuttgart, 19 June 1983]

⁷ European Report, No. 1053, p. 6.

mentioned fundamental rights, a long lasting demand of the Parliament, these rights were not explicitly related to the relation between Community citizens and the Community but they were considered as characterizing the relation between Member States and citizen. No direct responsibility of the Community as a political entity or its accountability observed by the ECJ was involved.⁸ Compared to the proposals on special rights made by the European Parliament and the Commission during the previous decade then, this wording suggested a hesitant Council attitude and few decisive steps regarding the matter.

New for the creation of a feeling of belonging for European citizens was the suggestion to work towards "closer cooperation on cultural matters, in order to affirm the awareness of a common cultural heritage as an element in the European identity."⁹ Important--and, as it turned out later, crucial for successful policymaking in the 1980s--was the change in the structure of opportunities. A strong mandate was given to the Commission by the Heads of State and/or Government. They underlined

the particular importance of the Commission as guardian of the Treaties of Paris and Rome and as a driving force in the process of European integration [and confirmed] the value of making more frequent use of the possibility of delegating powers to the Commission within the framework of the Treaties. In addition to the tasks and powers laid down in those Treaties, the Commission is fully associated with the work of European Political Cooperation and, where appropriate, with other activities within the framework of European Union.¹⁰

⁸It is important to note here that the European Social Charter is different from what came to be called 'the' Social Charter later on in the Fontainebleau period. The European Social Charter dates back to 1961. It "was not designed to meet the needs of Community citizens in a single market" (Clapham, 1991:64). In turn, what is now commonly referred to as 'The' Social Charter is a charter which was adopted as "Community Charter of the Fundamental Social Rights of Workers" by 11 Member States on December 1989 (Clapham, 1991:63). Its impact on citizenship practice will be more thoroughly explored in part C of this chapter.

⁹ European Report, No. 1053, p. 6.

¹⁰ European Report, No. 1053, p. 8. The declaration also reflected the Council's increasing awareness of the Court of Justice as an actor in the policymaking context. As it stressed "[t]he Court of Justice of the European Communities has an essential role to play in progress towards European Union, by securing compliance with and development of, Community law. Taking account of the respective constitutional provisions in their States, the Heads of State or Government agree to consider, on a case-by-case basis, the inclusion, as appropriate, in international conventions between Member States, of a clause conferring on the Court of justice appropriate jurisdiction with regard to the interpretation of the texts" (Ibid.) This document pointed out that the Council saw the ECJ as both a guardian of the treaties and an

Yet, the downside of this mandate was the quite well known fact that at that time the Commission's frame of action was cut short, as the Council became used to deciding unanimously, thus relying more on COREPER and less on the Commission for Community policymaking. The "Luxembourg compromise" was still in place, even though its ongoing practice was to be confronted shortly by the creation of new institutional resources based on the SEA.

Most importantly, the political opportunity structure at the eve of the Fontainebleau Council meeting was crucially influenced by a deadlock in EC budget talks, due to the British "budget problem that had monopolised every council meeting since 1980"¹¹ In fact, François Mitterrand as president of the Fontainebleau European Council faced nothing less than the tough task of unblocking the budget negotiations. The Commission based journal *European Report* gave a rather dramatic account of this upcoming event when it explained

[t]he Fontainebleau European Council will open on June 25 with François Mitterrand's head on the block: the French President must find a solution to the UK budget problem and wrap up the bitter-sweet pill that it represents for France and its nine partners in a series of commitments and guidelines on the revitalisation of European construction, thereby enabling the French Presidency to go out in glory, or, should budget talks break down yet again, succeed in "relativising" the disagreement by ensuring a "united Nine" which will immediately undertake initiatives to show that the Community is still alive and going forward.

In short, this commentary expressed the scepticism towards anything like a relaunch of European Union that prevailed at the time. Much to the contrary, it was expected that if there was anything to emerge from this Council meeting at all, it had to be hidden from the Euro-pessimists¹²

active contributor to their further development. It stands however in contrast with the thin institutional resources on which the ECJ could relate at that time.

¹¹ *European Report*, No. 1052, p. 6. On the "British problem" see also Bull. EC 6, 1984, p. 12.

¹² "[T]he three major protagonists - the United Kingdom, France and Germany - appear to have a common twin objective: to find an agreement and to camouflage its price - much higher than each had hoped - in a revitalisation of European construction" (*European Report*, No. 1053, p. 1).

At the same time President Mitterrand voiced increasing French interest in Community progress. For example, in a speech given to the European Parliament he addressed two central and sensitive points of the project towards European Union. For one, he spoke about the need to change the habit of unanimous voting within the Council of Ministers that had been institutionalized over time. He said

[i]t is time to find some more normal and promising approach than that offered by the insistence on unanimity in Council decisions. The practice has gone way beyond the limits of the treaty and even beyond those envisaged in the Luxembourg agreement. Recourse to unanimity should be restricted to specific cases

In doing so, he envisaged a fresh role for the Commission as a policymaking organ of the Community and "emphasized the importance of restoring to the Commission its proper authority." Mitterrand also made reference to the Parliament's blueprint for a Treaty on European Union, saying that he was ready to examine this draft treaty which, "dans son inspiration, lui convient."¹³ To summarize the pre-summit situation, Mitterrand stressed that the meeting's agenda would include the following three main issues: (1) an examination of the international situation with emphasis on East-West problems in the light of talks held that week in Moscow, (2) the future of the European Community and, in a more general context, European construction (European Union, a new Treaty, new policies); and (3) an in-depth look at the EEC's budgetary problems including budgetary discipline, the 1984 Budget shortfall and the UK Budget problem.¹⁴

Quite to the surprise of observers, the European Council meeting in Fontainebleau on 25-26 June 1984 turned out to be a success.¹⁵ As Mitterrand told reporters at the end of the meeting, "there is not a single dispute left to settle." The budget block was broken and, "with the problem of the British contribution resolved", he added, "the Community

¹³ European Report, No. 1049, p. 17.

¹⁴ European Report, No. 1052, p. 5.

¹⁵ As Paul Taylor argues part of this success had been a letter that was given to the EC Heads of Government by British Prime Minister Margaret Thatcher as "a contribution to discussion at the European Council held at Fontainebleau 25/26 June 1984." In this letter, Mrs. Thatcher had said that "periodic expressions of pessimism about the future of the Community have never turned out to be justified" "Progress that has been made is unlikely to be reversed" (unpublished document of Taylor, 1989: 5).

can at long last stage a strong revival "¹⁶ This success was largely attributed to a change of attitude of British Prime Minister Margaret Thatcher on the one hand, and French President Mitterand's ability to cause this.¹⁷ By putting pressure on the British delegation with the expression of support for higher levels of integration as had been suggested by the Parliament's suggestion for a Treaty on European Union (1984), some argued, the British would be more likely to accept the budgetary terms fearing that European integration would move forward to decisive deepening without them (Taylor, 1989:3-6; Moravcsik, 1991:56). Altiero Spinelli's vision of a federal Europe that was expressed by this draft Treaty, then, was applied as one crucial resource for intergovernmental bargaining.

Indeed, beyond the President's comments to the press, the conclusions of the presidency confirmed that a relaunch of European construction was under way. Thus, the idea of European identity was put on the agenda of Community policies once again. The European Council considered "it essential 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 the rest of the world."¹⁸ To this end, the establishment of working committees was planned. Two ad hoc committees were to be composed of representatives of the Heads of State and Government of the Member States and a Commission representative. In the aftermath of the meeting, the Commission immediately set forth to fulfill its responsibilities regarding the matter and began to write proposals for the realization of the Fontainebleau conclusions.¹⁹

¹⁶ Bull. EC 6, 1984, p. 12.

¹⁷ Moravcsik for example considers the French Presidency as facilitating a "turning point in European politics" (Moravcsik, 1991:54) and observes a "new positive spirit" with Thatcher who "seemed sobered by her experience at [the preceding summit at] Brussels" (Moravcsik, 1991:57).

¹⁸ Bull. EC, Supplement 7, 1985 "A People's Europe", Reports from the ad hoc Committee", p. 5 [European Council meeting at Fontainebleau - Conclusions of the presidency].

¹⁹ Europe Documents, No. 1324, 27 September 1984, pp. 1-8 [A People's Europe. Implementing the conclusions of the Fontainebleau European Council", communication from the Commission to the Council (first of a series of two proposals)].

Decisive actions towards a People's Europe and institutional reforms were taken under the Italian Presidency of the Council and with Jacques Delors as the new Commission President after 1985. Two new committees worked towards proposals for the establishment of a "People's Europe" and institutional changes, respectively. One was the ad hoc Committee for a People's Europe, chaired by Mr. Adonnino.²⁰ The other was the ad hoc Committee on Institutional Affairs, chaired by Mr. Dooge.²¹ Both committees had received a mandate for making proposals from the Heads of State and Government gathered at the Fontainebleau European Council. Work towards the objective of European Union was now occurring within a new political opportunity structure: a market-oriented policy paradigm was matched by a solved budget problem and the will of some to further expansion of the *acquis*. In the following I will provide first a view of the actors and second the policy style. Based on this information, the generation of institutional reform is then analyzed in Part B.

Participating Actors

Adonnino Committee. According to the Fontainebleau mandate, the task of the Adonnino Committee was threefold. First, to study measures that would lead to "a single document for the movement of goods, the abolition of all police and customs formalities for people crossing intra-Community frontiers, and a general system for ensuring the equivalence of university diplomas, in order to bring about the effective freedom of establishment within the Community." Second, it was to examine the suggestions of "symbols of the Community's existence, such as a flag and an anthem, formation of European sports teams, streamlining procedures at frontier posts, and minting of a

²⁰ Bull. EC, Supplement 7, 1985, p. 33 [A People's Europe: Reports from the ad hoc Committee].

²¹ Europe Documents, No. 1349/1350, 21 March 1985, p. 14; Europe Documents, Nos. 1333 (interim report) and 1349/1350 (final report).

European coinage, namely the ECU.²² Third, it was to examine the possibilities of involving young people in the Community. Thus, a decade after the Paris Summit, the project of constructing a European identity was revived at the Fontainebleau Council.

On 7 November 1984, the Adonnino Committee met for the first time. With two reports that were delivered to the Council in March and June 1985, respectively, it followed the Council's suggestion to concentrate on economic and cultural policy. Yet, beyond these themes it also drew on the Commission's proposals for policymaking in the area of social and political rights of citizens.²³ This was achieved by providing one report that included proposals on short-term policy for "concrete decisions here and now" and another report containing proposals for "wider initiatives."²⁴ The first report concentrated on passport policy suggesting measures to facilitate border crossings of goods and people, the right of establishment, the right of residence and the recognition of diplomas, thus promoting prompt action on those issues that were most visible to European citizens.²⁵ The second report put forward proposals that focused first and foremost on special rights policy, concentrating for example on voting rights and easier access to the Treaty's legislation for European citizens (it also included suggestions on culture and information, youth, health and social security policies).²⁶

²² Bull. EC, Supplement 7, 1985, p. 5 [European Council meeting at Fontainebleau - Conclusions of the presidency]: For an analysis of the application of these symbols and the question of European identity, see (Odermatt, 1991).

On the minting of the ECU, Pietro Adonnino later wrote in Brussels, 20 June 1985 to Mr. Bettino Craxi, President of the European Council, Prime Minister of the Italian Republic: "Among the topics indicated to the Committee by the European Council at its meeting in Fontainebleau was that of minting the ECU. The Committee considered that, in view of current developments in the EMS, minting could only be of value to collectors: it therefore preferred not to make any proposals" (Bull. EC, Supplement 7, 1985, p. 17).

²³ Europe Documents, No. 1324, 27 September 1984, p. 7.

²⁴ For both citations see, Bull. EC, Supplement 7, 1985, p. 7 [Introductory letter from the Chairman to the President of the European Council (B. Craxi)].

²⁵ Bull. EC, Supplement 7, 1985, pp. 9-14 [Report from the ad hoc Committee on a People's Europe, presented to the European Council, Brussels, 29 and 30 March 1985].

²⁶ Bull. EC, Supplement 7, 1985, pp. 18-30 [Report to the European Council, Milan, 28 and 29 June 1985].

The proposals that played a key role in the development of the special rights policy as the one citizenship policy package that was the particular focus of the second report of the Adonnino Committee will be examined in Part B of this chapter and the development of passport policy in Part C. As the work of the Dooge Committee had an impact on both policy packages, its role will also be discussed in these later sections. Before the policy-related discourse is highlighted, this section points out the changing institutional resources. In doing this, the discourse which contributed to institutional reform is closely examined because it often provides helpful insights into the changing political opportunity structure for citizenship practice. Two things are thus important here, the institutionalization of changes in the constitutional framework of the *acquis communautaire* on the one hand, and ideas about how to mobilize resources within the new policy paradigm, on the other.²⁷

The second report of the Adonnino Committee drew specifically on the 1973 document on "European Identity" which defines the interrelation between special rights and the principles of representative democracy, the rule of law, social justice and respect for human rights. Regarding the development of special rights of citizens in the

²⁷ For an understanding of the continuity of Commission policy, it is helpful to note some aspects of Commission personnel that were to reappear in decisive positions at a later point in time of the citizenship story. Thus, the committee that came to be known by the name of "Dooge Group" was composed by representatives of the Heads of State or Government of the ten Member States and a representative of Commission President Jacques Delors (Europe Documents, No. 1349/1350, 21 March 1985, p. 14).

The representative of the Commission President, Carlos Ripa di Meana, was also a Member of the Adonnino Committee on a People's Europe and he was responsible for the Commission's report on the right to vote that was presented to the Parliament in 1986. For publication of the reports of the ad hoc Committee on Institutional Affairs, see: Europe Documents, Nos. 1333 (interim report) and 1349/1350 (final report).

Members of the Adonnino Committee included representatives of the Heads of State or Government of the 10 Member States as well as the representative of the Commission President Jacques Delors. Among others, these representatives included Mr. David Williamson who participated in the Intergovernmental Conferences on Political Union of the 1990s as secretary general of the Commission (Bull. E.C. Supplement 7, 1985, p. 33; interview with Mr. David Williamson, Secretary General of the Commission, 28 June 1994 in Brussels).

Community and among the Member States since the 1974 Paris Summit, the Committee made proposals in five areas of special rights policy. These areas were:

- the citizen as a participant in the political process of the Community;
- the citizen as a participant in the political process of Member States;
- consultation of citizens on transfrontier issues within the Community;
- the citizen in relation to Community legal instruments;
- the citizen as traveler outside the Community.²⁸

They thus comprised the elements of the political right to vote and be elected, the right to free movement within the community, the civil right to sue and the right to diplomatic protection which are all citizenship rights as we know them from the historical emergence of citizenship in modern nation-states.

The proposals of the ad hoc Committee on a Citizen's Europe were approved by the European Council in Milan on 28 and 29 June 1985, which subsequently invited the Community institutions to adopt the measures necessary to implement them as soon as possible. The European Parliament welcomed the Adonnino Committee as an important contribution towards the end of citizenship policy, noting that, "ten years after the Paris Summit, the Citizens' Europe was given significant new impetus" (European Parliament, 1992b 18). Yet, a framework for the realization of the Citizens' Europe remained to be established.

Dooge Committee Proposals for such a framework were provided by the "Dooge Report" drawn up by the ad hoc Committee on Institutional Affairs. This report clearly focused on the completion of the internal economic area as a "priority objective".²⁹ It named necessary institutional changes such as qualified majority voting in the Council, thereby introducing crucial new institutional resources for citizenship practice.³⁰ The Dooge Committee stressed that it placed itself "firmly on the political level, and without purporting to draft a new Treaty in legal form, proposes to set out the objectives, policies

²⁸ Bull. EC, Supplement 7, 1985, pp. 18-21

²⁹ Europe Documents, No. 1349/1350, 21 March 1985, p. 1 and in more detail, pp. 3-6

³⁰ Europe Documents, No. 1349/50, p. 9 [Easier decision-making in the Council]

and institutional reforms which are necessary to restore to Europe the vigour and ambition of its inception "³¹ It suggested a framework with regard to the realization of the idea of Europe as a "genuine political entity " To this end, it first defined three priority objectives a homogeneous internal economic area, the promotion of the common values of civilization, and the search for an external identity. Then it identified the four means it considered central to realizing these objectives easier decision-making in the Council, a strengthened Commission, the European Parliament as the guarantor of democracy, and the Court of Justice. Third, it decided on the method the negotiation of the draft European Union Treaty based on the Declaration on European Union and guided by the spirit and method of the draft Treaty voted by the European Parliament ³²

Similarly to the Adonnino Committee, the Dooge Committee's proposals gave priority to the economic area On a short-term basis, the concept of a "homogeneous internal economic area"³³ was to facilitate European competitiveness From a long-term perspective, it was supposed to lead to a European Union that shared "common values of civilization" and included a "European Social Area" and a "homogeneous judicial area" Market policy then was considered as a short-range policy towards the long term aim of political union which had been part of the *acquis communautaire* as an overarching goal of Community politics since the 1970s.

In sum, the Dooge Committee focused on a priority area for short-term policymaking, at the same time establishing a set of follow-up measures with a view to long-term policymaking. Thus it stated that

[t]he contemplated European Union will not rest on an economic community alone The logic of integration has already led Member States to co-operate in fields other than economic ones and will continue to lead them still further along that path |

³¹ Europe Documents. Nos. 1349/1350. p. 2 [Report of the Ad Hoc Committee on Institutional Questions to the European Council]

³² Europe Documents. Nos. 1349/50. p. 1, 12 and *passim*

³³ Europe Documents. Nos. 1349/50. pp. 1, 3 and *passim*

to that end a number of measures must be undertaken, whenever possible [...] with regard to the promotion of human rights and the common cultural identity.

Similarly, it declared that

[a]n integrated internal economic area must be based not only on industrial, economic and monetary policies, but also on social policy. In this field, the Union will have to remain true to the objectives which the Community set itself from its inception and will have to have the necessary powers and means to act whenever social policy measures are required at European level.³⁴

While this wording clearly indicates an awareness of the EC being more than an economic organization raising concerns beyond economic policy, it nevertheless expresses a pragmatic perspective on policymaking. On these grounds, the Committee's position drew on both types of policymaking, the area-oriented approach and the step-by-step approach. This minimalist approach that defined approachable - and agreeable - policy objectives first, and specified them later set the tone and style for policymaking during the Fontainebleau period. Moreover, the stress on economic policymaking was one aspect of the economic policy paradigm that dominated the universe of political discourse in the 1980s.

Council According to the conclusions of the presidency of the European Council meeting at Fontainebleau, June 25-26, 1984, the Council decided on a more general level that it was "essential 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."³⁵ With this statement, the Council repeated what had been said before, namely, that identity politics would eventually contribute to the development of a united foreign policy.³⁶ In the 1973 document and the consequent

³⁴ Europe Documents, Nos. 1349/50, p. 6.

³⁵ Bull. EC, Supplement 7, 1985, p. 5 [Conclusions of the Presidency].

³⁶ For comparison, the 1973 document "Of European Identity", which was signed by the then nine Member States at the Copenhagen Summit Conference, stated "[t]he European identity will evolve as a function of the dynamic of the construction of a united Europe. In their external relations, the Nine propose progressively to undertake the definition of their identity in relation to other countries or groups of countries. They believe that in so doing they will strengthen their own cohesion and contribute to the framing of a genuinely European foreign policy" (Europe Documents, No. 779, 15 December 1973, p. 3).

politics during the following decade, Community identity politics had two major addressees, the international community of states on a world politics level, and the Member States on the Community politics level. The 1984 conclusion again addressed two types of actors. This time, however, these actors were the international community and the European citizens, not the Member States.

Thus, while the overall sense of this brief introductory statement to the Council's conclusion seems repetitive compared to what had been said at Paris in 1974, a closer look reveals a difference as far as to whom policy should be directed. Instead of the Member States, this document spoke of citizens and more importantly of groups of citizens, thus indicating a possible shift in policy matters towards domestic (Community) policy. For example, the presidency's conclusion proceeded to state its approval of the agreement "reached on the principle of creating a European passport and asks the Council to take the necessary decisions to ensure that this passport is actually available to the Member States' nationals by 1 January 1985 at the latest." It further emphasized the necessity to focus on the "study of measures which could be taken" towards the introduction of (1) a single document for the movement of goods, (2) the abolition of all police and customs formalities for people crossing intra-Community frontiers, and (3) a general system for ensuring the equivalence of university diplomas, in order to bring about the effective freedom of establishment within the Community. The measures were to be accomplished before the middle of 1985. The committee was to focus, furthermore, on suggestions as to the "streamlining" of procedures at frontier posts.³⁷

Practices and Procedures: From 'What' to 'How'

The need for new space for policymaking led to the convening of the IGC and the Commission's White Paper. The Commission's work during the end of the previous

³⁷ Bull. EC, Supplement 7, 1985, p. 5.

decade had already addressed some of the institutional constraints. To this end, it suggested a change from five-year plans to thematic or area-oriented policymaking. In a communication to the Council, the Commission explained this policy change was necessitated by the Community's low performance in the area of competition policy.³⁸

To face this problem, the communication suggested that

[i]n the circumstances, and in view of the need to reach practical conclusions for policy in all the major areas where action is deemed necessary, the practice of drawing up a medium-term programme every five years to cover the entire range of issues is not appropriate. [Therefore] the best response to the requirements of the present situation would be a set of jointly agreed medium-term national and Community measures to be worked out and implemented in a continuous process [thus insuring] greater flexibility.³⁹

It was described by the Commission as follows,

[f]irst of all, the major steps that need to be taken to arrest the community's economic decline should be jointly identified, with special attention to remedying the employment situation. [...] next, the Commission, on the basis of the preliminary draft prepared by the Economic Policy Committee, would establish draft guidelines on practical action to be undertaken on each agreed subject, and would forward this draft to the Council.⁴⁰

That is, agreements on broader subjects such as policy objectives preceded the definition of the more specific policy instruments, thus providing the Commission with much more flexibility in its action.

The Commission thus confronted political constraints on two terrains. One was the further development of the step-by-step policymaking that had been designed in the late 1970s. The other was the introduction of area-oriented policymaking rather than five-year

³⁸ Europe Documents, No. 1320, 9 July 1984.

³⁹ Europe Documents, No. 1320, 9 July 1984, p. 3. This new procedure for examining medium-term economic policy problems to be adopted by the Commission can be considered as an innovation in policymaking that later on led to the so-called "Russian Doll policy." George Ross relates this metaphor to the style of policymaking of the Delors commission when he writes "Delors et son personnel ont rapidement réinvesti le capital politique accumulé grâce à 'l'Europe 1992' dans ce qu'ils ont appelé leur stratégie de 'poupées russes'"; and adds that the "signification de la métaphore semble assez claire. La Commission cherchait à élaborer des politiques dont le succès aurait pour effet de générer de nouvelles ressources, qui seraient à leur tour utilisées afin d'initier d'autres politiques innovatrices" (Ross, 1993a 575).

⁴⁰ Europe Documents, No. 1320, 9 July 1984, p. 3.

plans. With these propositions, it made an effort to transform political constraints into institutional opportunities. While step-by-step policymaking evolved from the negotiations over citizenship policy, area-oriented policymaking was suggested as a remedy to the Community's low competitiveness on a global scale. The policy was based on the Commission's observation that while global competition required new economic policies, economic restructuring had to be socially acceptable. Ergo, a "higher degree of convergence between economic and social fundamentals" ensuring "greater monetary stability" was needed.⁴¹ The development of special rights policy and passport policy during the decade following the Fontainebleau Council brought the refinement of both policies. As the following will show, the style of mid-term regulatory policymaking, that was characteristic for the Delors Commissions (1985-1994), as well as the establishment of qualified majority voting on market related issues with the Single European Act (SEA) contributed to the success of this approach.

Barely settling in his new position, Delors left no doubt about where he intended to go and how to get there, when he first addressed the European Parliament in a speech on the Commission's programme 1985. Central to the new Commission policy were two principles, one was to rely on (and build) "strength of character", the other was the Community's "economic muscle".⁴² Delors thus clearly pointed to a lack of unity in the Community position that had contributed to an image of the Community being a weak negotiating partner on the world stage. To stress the necessity of demonstrating self-confidence and being clear in political statements to international partners, Delors recalled a history of poor experiences of Community officials, stating "I could review three and a half years of world monetary history for you to demonstrate that only once in that time did we succeed in convincing our American friends. And on that day we spoke strongly and in

⁴¹ Europe Documents, No. 1320, p. 2.

⁴² Bull. EC, Supplement 1, 1985, p. 18 [The Thrust of Commission Policy. Statement by Jacques Delors, President of the Commission, to the European Parliament and extracts from his reply to the ensuing debate, Strasbourg, 14 and 15 January 1985].

unison. We were agreed on our proposals and we all followed the same strategy."⁴³ In short, Delors emphasized that the Community needed to "speak with one voice" and turn into "an actor rather than a spectator on the contemporary stage"⁴⁴ With regard to the need for economic muscle-flexing, Delors pointed to the need to mobilize the Community's resources, such as the "young people" and the social forces into a project of restructuring the economy, if economic recovery was to be successful.⁴⁵

Clearly then, successful market policymaking depended on tying various groups of citizens to the project. The universe of political discourse was thus tentatively restructured by this first speech of the Commission President. According to Delors the economy provided the context and various groups that might potentially participate in it were to be mobilized. Hence, his discourse introduced the notion of merging economic needs and strategic action. Translated into the language of policymaking, these statements included a active role for the Commission working towards a better environment for competition based on the institutional resources which were provided by the Treaty. He would also restructure the political opportunity structure.

With this focus in mind, the best possible use of the existing institutional framework, was according to Delors, "working within the Treaty, all of the Treaty".⁴⁶ As he explained, this meant among other things that "[t]he Commission will make full use of its right of initiative to accomplish the priority tasks." During the ensuing debate with Parliamentarians, Delors explained that the major purpose of his speech "was to reflect on 'how to go about it' rather than 'what has to be done' "⁴⁷ This statement embodied an early hint at the new Commission President's pragmatic approach to Community policymaking. It was based on the knowledge that the EC was not a political entity that could come up

⁴³ Bull. EC, Supplement 1, 1985, p. 18.

⁴⁴ Bull. EC, Supplement 1, 1985, p. 16.

⁴⁵ Bull. EC, Supplement 1, 1985, p. 19.

⁴⁶ Bull. EC, Supplement 1, 1985, p. 11, p. 21 and *passim*; among these resources were the "harmonization of rules" towards the establishment of the common market in particular.

⁴⁷ [emphasis added]

with goals and promises, but one that rather proceeded by naming major issues, placing them on the agenda to then be "flesh [ed] out later "⁴⁸ This statement corresponded with a earlier communication from the Commission to the Council, where it was argued that the European Community did "not need new ideas, new policies or new Community funds in order to consolidate the internal market " Instead it was to focus on the "main problem" which lay "in the failure to implement the political decisions taken long ago by the Heads of State or Government."⁴⁹

As noteworthy as this new strategy were the overwhelmingly positive and at times even enthusiastic reactions of the three major groups in the European Parliament (Socialists; Liberal Group; European People's Party) to the introductory speech of the new Commission President Thus, for the Socialists, Mr Lionel Jospin expressed satisfaction with Delors' ability to find a middle ground

between the President's evident conviction and his respect for the variety of other people's convictions (those of governments, of members of the Commission and of members of Parliament); between the overriding need to settle short-term difficulties [...] and the desire to advance towards new prospects for Europe, between the Community's basic economic, social and cultural problems [], between what the Commission wanted to do and what it was able to do

For the Liberal Group, Mrs Simone Veil stated that

[t]he President had not indulged in either lyricism or demagogy but had explained, in simple terms, the priorities the Commission had set itself and the methods it intended to pursue to build a credible and strong Europe He had been at pains to reflect on how to go about it rather than what ha[d] to be done There was no denying his high view of the Commission's role He had made it clear that the Commission was not to be the Council's secretariat but Europe's chief engineer " She added that this "was to be welcomed because the gradual weakening of the Commission had been largely responsible for the stagnation of the Community

And finally, Mr Nicolas Estgen of the European People's Party stressed that

⁴⁸ Bull EC, Supplement I, 1985, pp 15, 17 respectively

⁴⁹ European Report, No 1053, 23 June 1984, p 27 ["Consolidating the internal market", Communication from the Commission to the Council]

Mr Delors had given a meaningful message of courageous yet level-headed enthusiasm. He had not fallen into the trap of demagoguery and vague promises: the Commission's position was foursquare within the existing Treaties, and Parliament should not expect otherwise since the Commission was basically the guardian and executor of the Treaties. The Commission had said it would make full use of the potential offered by the Treaties, and that was precisely what Parliament expected of it.⁵⁰

All three commentaries reflect the remarkable fact that Delors had struck common ground, and, more than this, he had planted the seed of a renewed dynamic of European integration.

This dynamic was enforced by new strategies of citizenship practice and with a view towards the establishment of political union as well as the development of a European identity. Both were promoted by the two committees that had been assigned by the Fontainebleau European Council and whose reports were accepted during Council meetings of that year. This type of an emergent successful cooperation among Community institutions was couched in a new discourse that stressed the "how" of policymaking.

⁵⁰ Bull. EC, Supplement I, 1985, pp. 8-9.

PART B: REFORMING THE INSTITUTIONS

14 June 1985	Completing the Internal Market White Paper from the Commission to the European Council
28-29 June 1985	European Council Meeting at Milan
22-23 July 1985	European Council Meeting at Luxembourg
9 September 1985	First Meeting of the Intergovernmental Conference (IGC)
2-3 December 1985	European Council Meeting at Luxembourg
11 December 1985	Debate on the Luxembourg Council in the European Parliament
28 February 1986	Single European Act

The Milan European Council in June 1985 sent a clear signal from the Council to the Commission that its work was accepted and its newly acquired influence in shaping proposals as well as the effective diplomacy of its president were well respected. This attitude was especially prevalent in two Council decisions. First, the European Council "welcomed the white paper on completing the internal market, submitted at its request by the Commission."⁵¹ And second, it closed with Council President B. Craxi's announcement that an intergovernmental conference on institutional renewal be convened in order to be better able to apply the measures towards the construction of the internal market without frontiers.⁵² Both decisions will be elaborated as important decisions that led to the adoption of the SEA. Since institutional reforms were of critical importance for the prospects of citizenship practice at this time, this part of the chapter begins with an exploration of institutional reform before it turns to the analysis of citizenship practice within the framework of the new *acquis*.

The White Paper

The White Paper⁵³ was presented to the Milan Council by Lord Cockfield as the Commissioner who held the portfolio of internal market policy at DG III. As he stated,

⁵¹ Bull. EC 6, 1985, p. 14 [The European Council in Milan]

⁵² Bull. EC 6, 1985, p. 13 and *passim*

⁵³ COM(85)310 final, Brussels, 14 June 1985 [Completing the Internal Market White Paper from the Commission to the European Council, Milan, 28-29 June 1985]

"the completion of the internal market was the first priority of the present Commission, and was perhaps the major achievement required of the Commission during its term of office," adding that, "if the programme succeeded, it would fundamentally alter the face of Europe."⁵⁴ The programme included 279 measures that were divided into three overall stages, namely, the removal of (1) physical, (2) technical, and (3) fiscal barriers.⁵⁵ In an annex, the programme provided a detailed "Timetable for completing the Internal Market by 1992", naming the subject of the measure, the planned date of the Commission proposal regarding the matter, as well as the expected date for adoption by the Council.⁵⁶ And it defined the goal of the enterprise in one paragraph:

The specific measures set out in the timetable aim to eliminate barriers of all kinds (physical, technical and fiscal). They would have an impact directly or indirectly, on the lives of all Community citizens and on the functions of Community enterprises of all kinds. By 1992, Community citizens would for the first time be free to move within the Community without systematic checks on their identity or personal belongings, goods would be freed of all controls at internal frontiers; Community manufacturers would be able to market freely their goods on the basis of mutually agreed standards throughout the Community; and enterprises would be relieved of the current obstacles to providing cross-border services.⁵⁷

Citizens and enterprises were then the addressees of this programme, both in their function as benefactors (movement) and controllers (vote) of the process; participation through movement was the strategy. The Member States, as those actors who were to realize the programme, remained almost mysteriously invisible in the text. This document stood in stark contrast to previously failed Council efforts regarding the adoption of resolutions on the easing of border controls. It represented another way of approaching the abolition of border controls by making it a matter of the common market and hence subject to the community method. This move also brought the Commission in as a competent producer of ideas for passport policy.

⁵⁴ Bull. EC 6, 1985, p. 18

⁵⁵ COM(85)310 final, pp. 1-2

⁵⁶ COM(85)310 final, Annex, pp. 1-32

⁵⁷ COM(85)310 final, Annex, p. 1

In sum, the White Paper included a new means for dealing with the Member States' political and legal reservations concerning the abolition of border controls by simply subjecting border controls and their removal to the project of the single market. This project had been long aimed at by the European Council, which was the representative organ of the Heads of State or Government themselves. As the document stated in its introduction, quoting European Council conclusions with regard to the internal market,

The European Council ... instructs the Council

- to decide, before the end of March 1983, on the priority measures proposed by the Commission to reinforce the internal market" (Copenhagen, 3/4 December 1982)

It asks the Council and the Member States to put in hand without delay a study of the measures which could be taken to bring about in the near future

- the abolition of all police and customs formalities for people crossing intra-Community frontiers ... (Fontainebleau, 25/26 June 1984)

The European Council ... agreed that the Council, in its appropriate formations ... should take steps to complete the Internal Market, including the implementation of European standards (Dublin, 3/4 December 1984)

[t]he European Council laid particular emphasis on the following fields of action

- action to achieve a single large market by 1992 thereby creating a more favorable environment for stimulating enterprise, competition and trade,
- it called upon the Commission to draw up a detailed programme with a specific timetable before its next meeting. (Brussels, 29/30 March 1985)⁵⁸

The Commission had thus created a framework to mobilize the existing discourse (i.e. the goal that was repeated in all these European Council conclusions) in order to create an institutional setting which would allow the transformation of words into practice. As stated in the annex "[t]he Commission's White Paper sets out the essential and logical consequences of accepting the European Council's repeated commitment to completing the Internal Market by 1992."⁵⁹

⁵⁸ COM(85)310 final, p. 3

⁵⁹ COM(85)310 final, Annex, p. 1

The White Paper was a document without precedent in Community history. Not only was it an attempt to streamline the until then often confusing and disorganized flow of Community policymaking in an extraordinary way. Beyond such tremendous practical value, the Delors Commission had provided a major innovation for Community policymaking as it allowed for the language of success and achievement to become part of the Community discourse.⁶⁰ The specific historical context had so far allowed for few ways of measuring successful Community policymaking. This lack of capability to spell out policy goals, and then point at their successful realization in due time had crucially contributed to a vague notion among the citizens of the Community as a huge "bureaucracy" that prevented "transparent" politics, in other words, it was conceived as "undemocratic."⁶¹

The White Paper responded to these concerns in two ways. First, it set out reasonable goals that were to be realized within a short and/or middle-range time frame. It explained them in a straightforward technical manner, thus rendering the project accessible to the officials and citizens who were going to read it. Thus, the type of success that was to be expected by the citizens was clearly pointed out in the paper, noting

[w]hen will Community citizens and enterprises see tangible evidence of the effect of the measures proposed? The [] milestones along the path to completion of the Internal Market [would] give some indication of the progress and benefits the Commission would wish to see

Community policy was now pronounced in a more visible fashion. Thus, it would be more controllable by those affected by it. On these newly acquired grounds, policymaking could, of course, also more easily become the subject of criticism and debate.

⁶⁰ The definition of the Community was that of a political entity in the making. New Member States could request association (potentially until the new polity included all those European states), and the market was always defined as an "expanding market - *not static but growing*" (COM(85)310 final, p. 5). [emphasis added]

⁶¹ Various media began reporting on the "democratic deficit" in the late 1980s and 1990s. Among them was for example the Financial Times 3 7 1990. The term dates however back to the 1970s in EC debates on legitimacy (Herzog, 1972)

Apart from the creation of such new channels of potential access to participation in Community affairs, the White Paper did not restrict the imagination of policymakers with respect to new stages of European integration. In fact, by stretching the timetable until 1992 it provided room for maneuver for the Community institutions. While small steps of successful Community policy could from now on be observed as "milestones along the path to completion of the Internal Market" and double-checked by the public, this time span also allowed for a period of seven years during which major new political projects could be developed, while at the same time, no major decisions were necessarily expected from the Community institutions. As the paper stated,

[c]learly, the Internal Market cannot be completed at a stroke. The interim period leading up to 1992 must be put to the best possible use to ensure that the adjustments needed to cope with the final dismantling of internal frontiers are not too abrupt. Progress towards the objective needs to be discernible at an early stage, and will be so, provided that the proposed timetable is respected.⁶²

The political opportunity of the time thus allowed for the mobilization of resources by the Commission. By seizing this opportunity the Commission had created a new framework for policymaking. From now on parts of citizenship practice such as social rights, and free movement, were pursued from this new perspective that linked the market paradigm with the policy objectives that had been created during the Paris period. The Commission had thus created a new institutional space for itself for years to come.⁶³ More specifically, with a view to citizenship practice, the White Paper included the realization of essential goals of passport policy. It announced the easing of border controls, abolition of checks on individuals leaving one Member State for another, and the disappearance of all systematic checks on the movement of citizens within the Community.⁶⁴

⁶² COM(85)310 final, Annex, p. 1

⁶³ This was indeed an "agenda-setting coup which began the renaissance of European integration. In placing a time limit on implementation - the lifetime of two successive Commissions - the White Paper created a slogan, '1992'. It proved a stroke of political genius" (Ross, 1993b: 46)

⁶⁴ COM(85)310 final, Annex, p. 1

While the Member States had to agree to this programme, which included the "abolition of barriers of all kinds, harmonization of rules, approximation of legislation and tax structures, strengthening of monetary cooperation and the necessary flanking measures to encourage European firms to work together," the Commission aimed at more than a mere adoption of the timeable. The realization of this programme required an institutional basis that was operational and remained yet to be clarified. The tricks and traps of the experience of two decades ruled by the institution of the "Luxembourg compromise" needed to be eradicated. The crippled Community's decision-making structure which had limited the Commission's innovative proposal writing role to that of producing papers which would meet the lowest common denominator had to be reversed, if any of the White Paper's programme was to be completed in due time. To this end the Milan European Council decided to convene an IGC. Italian Foreign Minister Andreotti called for a majority vote to convene an IGC based on Article 236 EEC Treaty in order to work on a revision of the EEC Treaty and a new Treaty on Political Cooperation. In sum, the Commission managed to put a foot in the door regarding the introduction of measures towards the establishment of a functional internal market. As the subsequent policy development showed, this new space was to be extended beyond the market towards a politically defined territory

The Intergovernmental Conference

At the end of the second day of the 1985 Milan European Council, the President of the Council, Bettino Craxi, said

that the political requirements were satisfied for convening an intergovernmental conference to draft a treaty on a common foreign and security policy and, in accordance with Article 236 of the EEC Treaty, to draw up the amendments to the EEC Treaty that were needed to enable institutional changes to be made in the Council's decision-making procedure, the Commission's executive power and the

powers of Parliament, and the extension of Community activities into new areas as proposed by the Dooge and Adonnino Committees⁶⁵

Made in accordance with Article 236 EEC Treaty,⁶⁶ and with reference to a request for an IGC made by the European Parliament⁶⁷ as well as a proposal from the Commission,⁶⁸ this decision had not come without tough debate, because the British, Danish and Greek Governments did not approve of the idea⁶⁹ The vote produced a majority in favor, with the British, Danish and Greek delegations against Despite this protest, the IGC was convened and met first on 9 September 1985 Its task was defined as

[a] revision of the Treaty establishing the European Economic Community [] undertaken with a view to improving Council decision-making procedures, strengthening the Commission's implementing power; increasing the European Parliament's powers; as well as extending Community policies to new areas of activity. These amendments should be based on the proposals made by the Dooge Committee and Adonnino Committee and also on some aspects of the Commission proposal on the free movement of persons.⁷⁰

The request for an IGC could thus draw on the decisions of the Fontainebleau summit which had already put two working groups towards institutional renewal in place In its conclusions, the European Council stressed the link between the completion of the internal market and a renewed institutional setting, confirming "the need to improve the operation of the Community in order to give concrete form to the objectives it has set itself, in particular as regards the completion of the internal market by 1992 "⁷¹

⁶⁵ Bull. EC 6, 1985, p. 13

⁶⁶ As Article 236 EEC stipulated, "[t]he government of any Member State or the Commission may submit to the council proposals for the amendment of this Treaty. If the Council, after consulting the Assembly and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the Governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to this Treaty. The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements" (Bull. EC 7/8, 1985, p. 8)

⁶⁷ OJ EC, No. C 229, 9.9.85

⁶⁸ COM(85) 455 final and Bull. EC 7/8, 1985, pp. 9-10

⁶⁹ Bull. EC 6, 1985, p. 13

⁷⁰ Europe Documents, No. 1366, 30 July 1985, p. 1 [Aims of the revisions according to the draft submitted by the Luxembourg Government as the holder of the Council presidency at that time]

⁷¹ Bull. EC 6, 1985, p. 13. Formally called by the Luxembourg Council on 22-23 July 1985, the IGC was to convene at Foreign Minister level with the Commission fully participating and Spain and Portugal present as the prospective new Member States. A working party composed of the Permanent Representatives of the Member States and presided by Mr. Dondelinger, Secretary-General at the

The act of convening an IGC promptly followed the Milan European Council's decision to tackle the identified problems in the immediate future. As such, it stood out in contrast to a long series of European Council conclusions which had typically contained bold wording but few hints about how to tackle these problems as a practical matter. At a press conference about the Council, Commission President Delors summarized this exceptional event, noting that

as regards the Community dynamic, this meeting saw the emergence of a broader, deeper and in a way more serious awareness of the challenges facing Europe that I have ever seen or even read about. The meeting has also shown a more confident determination than usual to face up to these challenges. What further proof could be needed than the very great interest shown by the European Council in our proposals on the internal market and the problems of technology, and on economic questions in general ... I believe, then, that this European Council will stand in the history of Europe as a kind of turning point in the Europeans' resolve not only to survive, but to assert themselves independently and to join forces to tackle the main problems.⁷²

Delors summarized the important contribution of the IGC that was expected by the Commission with a view to institutional changes that would facilitate the application of the White Paper's directives when he reasoned, "the internal market was regarded by all as crucial to the revitalization of European integration. *The means must therefore be provided to achieve it.*" As for the target date of 1992, he added that "political commitment must be turned into legal requirement; otherwise it would be a dead letter."⁷³

Accordingly, the Commission submitted a set of proposals to the opening IGC in Luxembourg on 9 September 1985. Among other things the Commission proposed for example that "the Conference combine the results of its work both on amendment of the EEC Treaty and on political cooperation in one single legal instrument." Within such a

Luxembourg Ministry of Foreign Affairs, was set up to prepare the revision of the EEC Treaty (Bull. EC 7/8, 1985, p. 10)

The IGC was to first meet on September 9, 1985 and to submit its final report to the European Council in December 1985. It was convened in order to "amend the EEC Treaty and to draft a treaty on a common foreign and security policy" (Bull. EC 11, 1985, p. 18)

⁷² Bull. EC 6, 1985, p. 13. As has been pointed out earlier, the IGC was the only constitutional means to change the Treaties

⁷³ Bull. EC 9, 1985, p. 8 [emphasis added]

single framework, it was argued, it would be possible to "preserve the dichotomy between areas of activity and legal systems [and at the same time] facilitate the transitional stages in the gradual achievement of European Union "⁷⁴ As the Commission further specified, the advantages of a single act were twofold. First, it would establish realistic conditions for osmosis between economic, social and monetary policy on the one hand and foreign policy on the other. Second, it would symbolize the political will to move towards European Union, both for the peoples of the Member States and for non-member countries.⁷⁵ Again then, the overarching goal of political union as the long-term aim underlay part of the short-term strategies towards the economically phrased mid-term goal of "Europe '92 "

With reference to the establishment of the internal market, the Commission's proposal stressed the Community's responsibilities in four areas, namely (1) the large internal market, (2) technological development, (3) economic and social cohesion, and (4) monetary capacity. The Commission proposal on the internal market singled out two objectives which were especially important for future passport policymaking. First, it emphasized the goal of achieving an area without frontiers by 31 December 1992 at the latest. In this newly established area, persons, goods, services and capital would be able to move about under the same conditions as in a Member State. Among other things then, passport policy was firmly couched in the framework of the White Paper on the completion of the internal market. Second, it proposed the "introduction of greater flexibility into the legislative process based on qualified majority voting for the adoption of

⁷⁴ It is noteworthy to understand that the "[s]ingle European Act is *single* because there is only one text to modify all of the EC Treaties, not because of the Single Market" (Ross, 1995: 258). Yet, the discursive overlap in both the act and the market being envisioned as 'single' contributed to make the complicated legal process of the SEA with all its consequences for the *acquis* sound as if it were simply functional to the single market and not what some of its supporters saw it, namely as a step towards political union. As Jacques Delors emphasized with hindsight "a movement has taken shape. It encompasses far more than the unification of the domestic markets of the Twelve, to which some would like to reduce it []. In fact it pursues the historic purpose of European political union *enshrined* in the new Community charter, the Single European Act." (Delors, 1989: 35) [emphasis added]

While the act was a single one, it bore multiple resources for mobilisation towards political union.

⁷⁵ Bull. EC 9, 1985, p. 10.

all the measures needed to achieve the internal market." Most importantly for future passport policy this proposal did not include the free movement of persons within this area. Considering the problematic issue of security and health protection attached to it, the Commission proposed that "the principle of unanimity be maintained until 31 December 1992."⁷⁶

The Commission was clear about the project at hand being one that would eventually lead to the economic, political, cultural and social integration of the European Community. It seemed also resolved about how and when to take which steps towards this end. As Commission President Delors claimed in his speech at the inaugural session of the IGC,

today we have the rare and golden opportunity to put the European venture back into perspective and lay the political and institutional foundations for dynamic renewal. [...] With regard, more specifically, to the political and institutional foundations for dynamic renewal of the Community, the gradualism which has worked well enough and proved its worth since the Treaty came into being is not in question. But it does seem to me that in the proposals from certain member countries there has for some time now been a questioning of the Community method as a means of building Europe [...] I think we have to do some straight talking and, when we speak of excessive bureaucracy, the funereal pace of decision-making and the difficulty of advancing as Twelve, we need to know whether we can eliminate the causes of these problems without jeopardizing a method which, all things considered, has enabled Europe to go forward.

Thus, the historical experience of successfully achieved gradual progress in policymaking was evoked and reconceptualized in the context of the political opportunity structure that provided major economic openings in the 1980s.

However, in its concern for binding decisions, Delors' discourse differed from the tone of previous Community policymaking. Thus he added that although it was not possible to achieve the realization of European Union in one step, it was something that had to be planned for, and while it was

⁷⁶ Bull. EC 9, 1985, p. 11

not possible today it need be ensured that it will be tomorrow because of the close interdependence between foreign policy and security matters on the one hand and what we might call stewardship (economic, financial and monetary matters) on the other.

According to this perspective the large, internal market was only one aspect of a project of societal dimensions. And Delors went on, stating that "the stewardship also extends to social affairs, culture and the will to live together " In other words, he concluded, if the Community was not to become a "UPO --a sort of unidentified political object--", it had to be welded into an entity⁷⁷ Towards this end, one essential measure was to "cut the Gordian knot, break with the present practice of systematically seeking unanimity and shift to qualified-majority voting in clearly defined cases "⁷⁸

Such a legally grounded re-establishment of qualified majority voting would, according to Delors, modify a gray area in the decision making procedure "not by eliminating the Luxembourg pseudo-compromise [] but simply by deciding to switch to qualified-majority voting when the aim is to attain objectives agreed to in principle by all."⁷⁹ The constitutional means necessary to apply the White Paper were thus clearly pronounced: the "Luxembourg compromise" was to be abolished for ever, based on the constitutionally approved tangible change of the *acquis communautaire*, a demand the SEA was precisely to achieve.

The Single European Act

The adoption of the single act was preceded by "thirty hours of relentless discussion"⁸⁰ among the Heads of State or Government and the Commission President at the following Luxembourg European Council on 2-3 December 1985 and a series of IGC meetings before and after the Council provided an idea of the importance of the matter⁸¹

⁷⁷ Bull. EC 9, 1985, pp. 7-8

⁷⁸ Bull. EC 9, 1985, p. 9

⁷⁹ Bull. EC 9, 1985, p. 10

⁸⁰ Bull. EC 11, 1985, p. 7-8

⁸¹ Bull. EC 11, 1985, p. 7 and pp 18-21

In the end, the Council conclusions included the adoption of what was to become the SEA, including precise suggestions on monetary cooperation, the internal market, economic and social cohesion, technological cooperation and a social dimension.⁸² As Delors noted the "agreement gives the Community new horizons for the next 20 years."⁸³ He thus pronounced the Commission's readiness to use this newly created institutional space for its long-term ambitions of linking functional aspects (i.e. economic timetables and procedural innovations) with the goal of integration (i.e. social cohesion and political integration). In other words, the agreement of the Luxembourg European Council was characterized as one milestone on the long road towards European integration and placing this milestone within other larger projects contributed to building a discursive framework that was to back up future policymaking.

Contrary to the Commission President's call to make the most out of the agreed minimum, the Parliament did not favour such flexibility. It stuck to its plans for institutional change that were based on its 1984 treaty proposal for European Union which implied the overall application of a new Treaty.⁸⁴ Accordingly, the European Parliament during its debate on the Luxembourg Council on 11 December 1985 criticized the Council's conclusion primarily for not being far-reaching enough. And Mr. Spinelli,

⁸² Bull. EC 11, 1985, pp. 7-17: The meaning of the IGC's negotiations over the SEA was reflected in the concluding comments on this second Luxembourg European Council by its leading participants. For example the then President of the Council Mr. Jacques Santer stated that the Council had been "a unique, if not historic, opportunity to undertake a project of reform and point the Community towards new horizons", and announced that "agreement had been reached on a number of texts, albeit still provisional". While Santer appeared happy to announce a first compromise that would probably lead to the institutionalization of a single European act, the comments of Commission President Jacques Delors showed ambivalence. On the one hand, he could have wished for an agreement that went further saying that he "was hoping for something better." On the other hand, he stressed the Commission's intentions to move forward as fast as possible, yet in terms that remained respectful of those who were moving at a different speed towards integration. At the same time, he did not leave any doubt about the Commission's further political intentions adding that this was a "compromise which means progress" and the Commission would try to "make it dynamic" (Bull. EC 11, 1985, p. 17).

⁸³ Bull. EC 11, 1985, p. 7

⁸⁴ This proposal had been drawn up as the "preliminary draft Treaty establishing the European Union" on behalf of the Committee on Institutional Affairs 1983. One of the most salient supporters and promoters of this ideas was Mr. Spinelli (COM/I). For the document, see OJ EC, No. C 77, 19.3.84

Chairman of the Committee on Institutional Affairs, specified that "the European Council had tackled all the major problems of the Community but had failed to find a satisfactory solution to any of them."⁸⁵ As an EP resolution adopted at the end of the debate showed, Parliament's discontent with the achievements of the IGC emanated in particular from three major themes. The resolution stressed first the problem of missing agreements on the incorporation of a social dimension into the European area, second, the lack of interregional solidarity; and third, the need to clarify and define the mode of cooperation between the Council and the European Parliament towards a "genuine joint decision-making procedure."⁸⁶ As often was the case with EC politics, the Parliament thus demanded the mobilization of resources that did not yet exist, thereby introducing new ideas to the discourse of the time.

Notwithstanding these criticisms, the seventh IGC held in Brussels, on 16-17 December 1985 reached a conclusion on a SEA. Once signed and ratified by the Member States, this single act was to change the three Rome Treaties in one stroke, as the Commission had originally intended.⁸⁷ Most importantly, as has been frequently noted, the SEA stipulated the rule of qualified majority voting for Council of minister's decisions on issues related to the establishment of the internal market as an area without internal frontiers (Engel and Wessels, 1992; Moravcsik, 1991, Noel, 1986, Louis, 1992, Wessels, 1992). It also set a time frame for the realization of the project and named the Commission as the Community institution in charge of producing ideas as well as monitoring the process. Thus, in subsection I on the internal market, the SEA stated that the EEC Treaty [was to] be supplemented by the following provisions:

⁸⁵ Bull. EC 11, 1985, p. 9

⁸⁶ Bull. EC 11, 1985, pp. 10-11, see also OJ EC, No. C 352, 13 12 1985

⁸⁷ Bull. EC 9, 1985, p. 10

'Article 8 A

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8 D, 8 C, 28, 57(2), 59, 70(1), 83, 99, 100 A and 100 B [...]

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty' [...]

Article 8 B

The Commission shall report to the Council before 31 December 1988 and again before 31 December 1990 on the progress made towards achieving the internal market within the time limit fixed in Article 8 A.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.⁸⁸

Regarding the further development of passport policy within the Community the provisions of Articles 100 A and 100 B were most important. The former spelled out the exact institutional procedure for moving towards the internal market, and the latter defined how the Community's institutions were to measure the achieved degree of harmonization after 1992 and how to enforce its realization in cases where it would be necessary.⁸⁹ Most importantly, Article 100 A, Paragraph 2 specified that the mode of qualified majority voting was *not* to apply to the free movement of persons. Security concerns of the Member States with regard to the often overlapping policy fields of justice and home affairs, political cooperation and the large internal market had informed this special treatment of the free movement of persons. The issues of fiscal provisions and provisions relating to the rights and interests of employed persons were similarly excluded from the common procedure of qualified majority voting.⁹⁰

⁸⁸ Bull. EC, Supplement 2, 1986, p. 11 and passim

⁸⁹ Bull. EC, Supplement 2, 1986, p. 12

⁹⁰ According to Article 18 SEA, the "EEC Treaty shall be supplemented by the following provisions Article 100 A | | 2 Paragraph 1 | „qualified majority | shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons" (Bull. EC, Supplement 2, 1986, p. 12)

Once again, the SEA became the object of tough criticism from the EP. During the 16 January 1986 debate in Parliament, Spinelli left no doubt about the EP's position and lack of enthusiasm about the act when he stated that "[t]he Council has produced a mouse, a miserable stillborn mouse" thus reasoning that the EP as the one European institution with an elected body ought to have participated in this Council decision. As a whole, the EP announced that

it would exploit to the very limit the possibilities offered by the Single Act and instructed its Committee on Institutional Affairs to draw up by 1 January 1988 a review of the results obtained from the implementation of the Single Act in order to prepare, in due course, proposals for reform to be put to the citizens of the Community at the 1989 elections.

This resolution was the result of a debate over amendments that included outright rejection of the SEA by a group centered around German Social Democrat Mr. Hansch and the European Democrats' supporting attitude of the act.

The European People's Party's (EPP) point of view as presented by Mr. Dankert (Soc/NL) was more pragmatic. While objecting to the Council conclusion and "not welcoming them", Dankert suggested the EP "make the best of what little had been obtained." Along these lines, Delors, who was equally unsatisfied, expressed the necessity of turning the meager outcome into success based on changed behaviour of the European institutions as the main actors. As he specified "much would depend on making the arrangements work which would in turn depend on new forms of behaviour in all the institutions." According to Delors, the three institutional conditions for success, were "the use of qualified majority voting, recognition of effective implementing powers for the Commission and full participation by Parliament."⁹¹

The Single European Act drew mainly on the Dooge report of the ad hoc Committee for Institutional Reform that had been set up after the 1984 Fontainebleau Summit. While it depends on the angle of analysis whether or not the SEA seemed

⁹¹ Bull. EC I, 1986, p. 9

"unexpected" (Moravcsik 1991:41), this "relaunching" of European Integration (Colchester and Buchan, 1990) represented a swing in European policymaking shifting the focus towards the completion of the single market without frontiers in 1992. Three aspects of the SEA were of central importance to the progress of citizenship practice in the long run. The first was the re-introduction of qualified majority voting for decisions regarding the realization of the internal market;⁹² the second was the stipulation of "Economic and Social Cohesion" in Title V of the EEC Treaties, and the third was the decision of all Member States to "work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention of the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice."⁹³

With the SEA the long practised "Luxembourg compromise" as one intangible institution of the *acquis* was put to an end.⁹⁴ As Jean-Victor Louis comments "[l]'Acte unique a, une fois pour toutes, fait de l'unanimité l'exception, et de la majorité la règle. En faisant cette constatation, nous ne prétendons pas énoncer une norme juridique mais plutôt traduire un état d'esprit" (Louis, 1992:162).⁹⁵ Now the constant threat of blocking proposals by the veto of one Member State was abolished because decision-making procedures were clearly spelled out in the Treaty.⁹⁶ This implied a decisive change in the

⁹² Such as as for example in Articles 8b (single market), 28 (tariffs), 57 (diplomas), 59 (free movement of services), 70 (movement of capital), 84 (means of transportation), 100a (harmonization of legal provisions). These areas for qualified majority voting in the Council of Ministers are stipulated in Article 8a EEC Treaty.

⁹³ Bull. EC, Supplement 2, 1986, "The Single European Act", p. 5 [Preamble of the SEA].

⁹⁴ On the story of the Luxembourg Compromise see in particular, Teasdale who writes about the "life and death" of this practice (1993:567ff).

⁹⁵ As former secretary general of the Commission Emile Noël specified "[t]he so-called 'compromise' does not constitute a political (or a fortiori, legal) commitment. It came into existence only *through the behaviour of some States*" (Noël, 1986:3). [emphasis added]

⁹⁶ This long-standing practice of an, if not legally grounded, right to veto any decision that contrasted with "vital national interest" had been criticized on numerous occasions as the main hindrance for progress towards European integration. It had once been introduced, or for that matter, imposed on the Council by the French representatives. This practice led to the long time of forced unanimity of policymaking within the Council contained two important insights for EC policy analysis.

political opportunity structure as it opened windows both to turning proposals into directives and introducing new ideas. The story of the Luxembourg compromise provided an understanding of how new institutions might emerge and rule Community policies without even changing one word of the Treaty. Subtle dynamics such as the intangible *acquis communautaire* exercised at times a stricter constraint on EC policymakers possibilities than more constitutional factors.⁹⁷

Conclusion

During the Fontainebleau period, the policy objective of "Europe '92" was put forth as a medium range goal for EC politics. The objective of political union to which the European leaders had made a commitment at the 1974 Paris summit was less visible. Instead, with the project of creating a common market without internal frontiers by 1992 a number of policies such as competition, tax, trade, and other market related policies rather than citizenship were put at the top of the policy agenda. The Delors Commission's new discourse on "Europe '92" contributed to setting such medium-term goals. Now, institutional re-arrangements could be declared as functional within the framework of deregulatory policies. Economic progress was on top of the agenda of Community policies. Within this new discursive framework, identity politics did not disappear, however. Citizenship practice simply became closely tied to the market. A discourse of solidarity reflected the transfer of social responsibility from the national to the European level of policymaking as policies aimed at tying workers and youth to the European project which was represented, at that time, as one of the internal market.

The global economy of the time contributed to this paradigm shift in the Fontainebleau period. Given this framework, this period of citizenship practice was not

⁹⁷ Noël reiterated this perspective when pointing to misinterpretations of those who assumed the establishment of majority voting in the Council by the SEA a novelty as well as the blindness of such assumptions towards Community history, when he observed, that "[t]he Luxembourg "compromise" did not figure in Single Act negotiations, and the Act makes no mention of it" (Noël, 1986: 3).

one that led to the constitutionalisation of citizenship. In fact, citizenship practice was rarely mentioned during the five years between Fontainebleau and Maastricht. Yet the solidarity politics during the Fontainebleau period prepared the ground for the successful re-emergence of citizenship practice in the Maastricht period. In fact, the Fontainebleau summit marked another cornerstone towards European integration bringing forth a considerable expansion of the *acquis* including a series of institutional reforms and policy innovations.⁹⁸ Among them were the implementation of the SEA, the Intergovernmental Conferences (IGC) on Political Union, and area-oriented policymaking towards the creation of the single market based on the Commission's White Paper.

Three observations can be made in a comparison of EC citizenship practice with developments in earlier "large processes of transformation" (Tilly, 1975 and 1984). This comparison reveals the continuity of three crucial elements, namely, (1) processes of institution-building that contribute to the centralization of policies such as budgetary policies, social policies, judicial policies, agricultural policies, fiscal policies,⁹⁹ (2) the definition of belonging to an entity based on rights, and (3) the establishment of identity-based belonging via participation. The first is reflected in the SEA and the Social Charter; the second is reflected in the political rights to vote, and the third is reflected in policies towards the inclusion of various groups, including young people, academics and workers in Community affairs.

Despite the overall market-oriented preferences, the necessity of creating a European identity remained an ongoing concern for Community policymakers during the 1980s. In fact, the idea of citizenship policymaking as one way of fostering European

⁹⁸ Fontainebleau was also first and foremost considered as a summit that hindered the backsliding of European integration. As Paul Taylor notes, "[i]n some ways Fontainebleau represented a stepping point back from the brink" (Taylor, 1989: 5).

⁹⁹ If we compare the situation of the EC with emergent modern national states at the turn of the century, we find elements such as for example the centralization of agricultural policies, budgetary policy, trade policy, tax policy, structural funds, social policies, migration policies and, if still largely invisible citizenship policy, all of which have been considered as general characteristics of the modern state (Tilly, 1975).

identity had not vanished from the discourse ever since it had been spelled out as a necessity in the 1973 document on "European Identity". It was however addressed differently than during the previous decade.

This time policymaking towards the construction of a European identity was pursued within a universe of political discourse that was dominated by the market paradigm. It was to be developed on the grounds of economic and social policy that was functional to market-building rather than those of political and civil rights. Even if it seemed a detour, reconstruction of citizenship policy reveals an ongoing step-by-step policy method towards the creation of a European identity. This focus on economic and social as well as to a certain extent on cultural aspects of European identity policymaking suggests that European Communities worked with an understanding of identity as comprising multiple layers. Different layers of this identity were mobilized according to the varying political opportunity structures of the time. In the 1980s, the political opportunity structure was clearly dominated by the paradigm of market deregulation, as well as by the effort to invoke solidarity among those who had to endure and/or were to struggle against the effects of those policies.

To sum up, for citizenship practice this meant that the universe of political discourse had shifted from a focus on ideational resources such as the legal philosophical debates in the Paris period to one about policy strategies in the Fontainebleau period. Thus resources mobilized in the political opportunity structure differed too. During the Fontainebleau period citizenship practice was to be realized through and in relation with the market only. What had been debated in philosophical and political terms in the aftermath of Paris, such as, for example, special rights policy, now turned into a matter of the Single Market. The consequence of institutional reforms and policy innovations was that citizenship policy was now to be realized via the market. Accordingly, passport policy was, albeit temporarily, restricted to the movement of worker-citizens. It was approached via the issues of border control, spot checking and migration, thereby remaining clearly

within the margin of possible political changes defined by the *acquis communautaire* of that time. Similarly to the previous period, special rights policy was pursued with a view to the political rights to vote and stand for election. In the next section I will show how the SEA had created space for policy innovations in both areas

PART C: SPECIAL RIGHTS

14 November 1985	Debates of the European Parliament. Sitting of 14 November 1985
27 November 1985	Commission communication to the Council on "A People's Europe"
October 1986	Voting rights in local elections for Community nationals. Report from the Commission to the European Parliament transmitted for information to the Council
6 November 1987	Vetter Report - Interim Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights on voting rights in local elections for Community nationals residing in a Member State other than their own. Rapporteur: Mr. Heinz Oskar Vetter
26 November 1987	Annex to the report by Mr. Vetter drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights. Opinion of the Political Affairs Committee
11 July 1988	Commission proposal for a Council directive on voting rights for Community nationals in local elections in their Member State of residence
20 September 1988	Commission proposal for a Council Directive on voting rights for Community nationals in local elections in their Member States of residence (with an "explanatory memorandum")
9 February 1989	Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights on the proposal from the Commission for a Council directive on voting rights for Community nationals in local elections in their Member States of residence. Rapporteur: Mr. Heinz Oskar Vetter

The special rights policy of the Fontainebleau period concentrated on defining terms and planning strategies. This section of the chapter focuses on the efforts to Europeanize two types of citizenship rights: the political right to vote and the social right of access to social benefits and labor regulation. To that end, it examines the challenges to political constraints presented by the Commission's various action programmes, the Dooge Committee, the Intergovernmental Conference, and the Single European Market. In addition, and interwoven with the emergence of institutional changes, this chapter takes up again the themes of special rights policy as they were interrelated with the right to vote and stand for election on the local level, social rights for workers, and the Adonnino Reports on a "People's Europe" and addressed anew as part of the consolidation of the internal market. The discussion proceeds in three steps:

First, it re-constructs the debates and their outcomes over a Europeanized right to vote, that is the active and passive right to vote in municipal elections and in elections to the European Parliament. As the debate shows, the impact of the Parliament's progressive push towards the establishment of special rights was often opposed by the Commission's more pragmatic style of policymaking. Second, it summarizes the central steps towards the signing of a "Social Charter" that established, if not a legal basis, nevertheless a moral responsibility to practice solidarity among working European citizens.

The Political Right to Vote

Following the Fontainebleau summit a new way of addressing special rights policy gradually emerged. While it was obvious that the political right flowed from the simple fact of previous migration of a person, it was important to realize that, with regard to policymaking, the special right to vote was now linked with the completion of the internal market. As the following will show, the less obvious choice of realizing political rights via the market was the Commission's reaction to Member States' objection to the loss of sovereignty and conservative European Parliamentarians' rejection of anything resembling federalism. I argue that this type of policymaking by the Commission in collaboration with progressive European Parliamentarians, can be interpreted as an effort to change political constraints into opportunities.

The Commission observed, that "eight months after the first [Adonnino] report and five months after the second, achievements are lagging behind objectives,"¹⁰⁰ and therefore pushed for implementation of the report's proposals with a new communication to the Council in November 1985.¹⁰¹ The Commission once again stressed the Council's

¹⁰⁰ Commission's observation in Europe Documents, No. 1382, 27 November 1985, p. 1 [Communication to the Council on A People's Europe]

¹⁰¹ Europe Documents, No. 1382, pp. 1-4

problem with realizing plans. According to this communication, the Council had not been able to work on

[s]everal proposals presented following the ad hoc Committee's recommendations [that] are pending before the Council [for example] the proposal on generalized right of residence, which has been discussed several times at Council level. [And it continued to argue that i]n approving the first report the European Council took a political decision of principle on generalized rights of residence for all Community citizens. It was to pave the way for a legal decision which has still not materialized.¹⁰² that

Similarly, the Parliament's proposal for an electoral system under Article 138 of the EEC Treaty was still pending.¹⁰³ In order to develop legislation that could provide guidelines for the 1989 elections of the European Parliament, it was however necessary for the Council to "act before 1987," as the Commission pointed out

In light of these delays, the Commission composed a "priority work programme" to be implemented before June 1986, this programme produced measures that were considered as "most likely to have an impact on public opinion."¹⁰⁴ Among others, it included those measures that contributed to the establishment of citizenship of the union such as the free movement of persons, the introduction of the right to vote in local elections for all Community nationals, health measures and the strengthening of the Community's image and identity based on such symbols as a flag, an emblem and an anthem, as well as the creation of a television broadcasting area, combatting drug trafficking, and developing measures in the field of education and youth exchanges.¹⁰⁵ In an effort to carry out this priority working programme, the Commission developed a report on voting rights for citizens whose residence was in a Member State other than their country of citizenship.

¹⁰² Europe Documents. No 1382. p 2

¹⁰³ PE 81.699/fin., 29 April 1983 [Rapporteur: Mrs M.-A. Macciocchi]

¹⁰⁴ Europe Documents. No 1382. p 3

¹⁰⁵ Europe Documents. No 1382. p 4

The debates over voting rights were one example of struggling in the political opportunity structure using institutional resources of the time. In the following, I show how the struggle over the establishment of the right to vote at one's place of residence in municipal and/or European elections--a right that had been termed "in loco" vote in the Paris period, but which had never been legally stipulated by way of a Council directive¹⁰⁶--was, on the one hand, encouraged by the changed political opportunity structure and, on the other, led by a pragmatic and strategically thinking Commission versus a politically and strategically disagreeing Parliament. What then was, the impact of these three indicators: the institutional framework, political opportunity structure and conflicting interests?

First of all, with the last three Member States signing of the SEA on 28 February 1986¹⁰⁷ the institutional framework for policymaking included an incentive to act towards the establishment of democratic conditions in the EC. As the signatories state in the preamble of the Act, they are "[d]etermined to work together to promote democracy"¹⁰⁸. As the following debates show, that incentive was the starting point for the Commission to write up a proposal. Thus, the Commission's argument pointed out that many European citizens were, for example, not able to practise their democratic right to vote because they did not have the right to vote at their place of residence in a country where they did not have the nationality.

In order to first lay out a clear conceptual framework, in 1986 the Commission presented a report on "Voting rights in local elections for Community nationals" to the

¹⁰⁶ As Siegfried Magiera explains, the Council resolutions regarding the right to vote had not been realized except for the legalization of direct elections of the EP on 20.9.76 (Magiera, 1987a:222 and Magiera, 1987b:331). For the legislation, see OJ EC, No. L 278, p. 1.

¹⁰⁷ The final text of the SEA was agreed upon after the last IGC meetings on 27 January 1986 and signed a month later at the European Council at The Hague. It did not enter into force before 1 July 1987.

¹⁰⁸ Bull. EC, Supplement 2 1986, p. 5 [Single European Act]

European Parliament.¹⁰⁹ This report defined the conceptual terms of what the right to vote meant in principle and in the specific context of the EC, moreover, it gave a detailed overview of the legal situation regarding suffrage in each Member State and finally it presented statistics about the numbers of European "foreigners" living in each Member States. The Commission considered this report as logically evolving from the report on "A People's Europe" that had been completed by the Adonnino Committee. As the report concluded,

the Commission considers that an initiative on voting rights in local elections in the Member State of residence is a logical consequence of the desire to create 'a People's Europe'. The political and legal difficulties do not justify abandoning this idea which could demonstrate to the man [sic] in the street that the Community is relevant and give voters identical rights irrespective of their place of residence. This leaves the question of the legal instrument to be used completely open.¹¹⁰

In other words, the report did not make any precise suggestions as to what legal actions needed to be taken towards the realization of the right to vote. The Commission clearly did not want to encourage anything that would not get Parliamentary consensus. As this consensus seemed to be out of reach at the time, as the following will further specify, the Commission produced discourse about the historical, cultural, philosophical, demographic, and national aspects of voting rights in Europe - perspectives which all provided a helpful ground in favour of the political right to vote as an essential aspect of democratically governed polities.

In the introduction, emphasis was put on the Europeanness of the right to vote, comprising, for example, arguments on the basis of European history, culture and philosophy and drawing a line from the Greek city state via the Roman *civitas*, the German *Rechtsstaat*,¹¹¹ to democratic freedoms and universal suffrage. This evolution was then

¹⁰⁹ Bull. EC, Supplement 7, 1986. Supplement based on COM(86) 487 final [Voting rights in local elections for Community nationals. Report from the Commission to the European Parliament transmitted for information to the Council in October 1986].

¹¹⁰ Bull. EC, Supplement 7, 1986, p. 44.

¹¹¹ literally: "state of law", refers to the *Grundgesetz* (basic law) as Germany's quasi constitution which is the basis for sovereignty of the German state (constitutional sovereignty).

juxtaposed with the paradox of citizens today being excluded from universal suffrage because they had participated in the modern flows of migration. According to the Commission,

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

In the light of this situation, the Commission stressed that one could "reasonably ask whether the suffrage is still universal."¹¹² The argument was hence made on political grounds, referring to the conceptual-philosophical debates that led the debates over special rights in the previous decade. But it was the movement of worker-citizens which contradicted the aspiration of democratic legitimacy of the EC as a political entity. In other words, the movement which was encouraged by Community policy now raised questions about democracy and legitimacy. In the following the pragmatic and progressive mode of mobilizing resources around special rights policy will be explored more closely.

Pragmatic Approach - The Commission

In its report the Commission pointed to a tension that had been created by the successful politics of economic integration and by political exclusion. Namely, people who used their right to move within the enlarged economic space lost access to democratic practice because the political space had not expanded in accordance with the economic space.¹¹³ The political boundaries needed therefore to be redrawn. One way to do this

¹¹² Bull. EC, Supplement 7, 1986, p. 6 [Voting rights in local elections for Community nationals]

¹¹³ Magiera also notes this tension, he elaborates on the problem pointing out that the lack of the political right to vote at one's place of residence would, in such cases, lead to a "personality split" of the respective citizens (Magiera, 1987a: 221)

was to redefine the right to vote in the direction of including those citizens whose status had been reduced to one of market citizens.¹¹⁴

Accordingly, the Commission argued that the establishment of voting rights in the country of residence was "consistent with the logic of a People's Europe."¹¹⁵ Indeed, it reiterated that this political dimension of the debate needed to be focused upon more closely if the tension between integration on the European level and marginalization on the individual level was to be solved. Not only democracy, but also the principle of Community was at stake. As the Commission asked,

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

The concept of community that dominated EC discourse at that time was according to the Commission too closely drawn from the "purely economic [concept defined] in the Treaties." It was therefore time to take on

a new dimension in the context of a People's Europe [, because] the concept of community which is purely economic in the Treaties, raises the question of whether or not a People's Europe necessarily involves the granting of political rights, at least at the local level.¹¹⁶

The Commission's discursive intervention was thus strategically well placed. The overall hegemony of economic discourse of the time did not provide resources for bold and clearly pronounced political moves but it did allow some movement. The link between mobility as functional for a successful market development on the one hand, and the right to vote on the other, brought normative values into the otherwise economy-oriented discourse of the time. Thus, concerns about democracy and legitimacy might be mobilized

¹¹⁴ The position of market citizens or bourgeois as opposed to citizens with political rights or citoyens dates back to the historical development of the concept (Grawert, 1973). For the use of these terms in the European debate see particularly more recent studies that comment on the changes introduced by the Maastricht Treaty in 1993 (Meehan, 1993; Hobe, 1993).

¹¹⁵ Bull. EC, Supplement 7, 1986, p. 5.

¹¹⁶ Bull. EC, Supplement 7, 1986, p. 7.

In fact, the normative perspective facilitated a fresh view of the factual exclusion--instead of integration--of moving Community citizens from enjoying political rights in their communities of residence. It suggested that this exclusion was part of the intergovernmental policy approach of the Council and the subsequent rejection of political rights for European "foreigners" by some European Members of Parliament. The Council had clearly stressed that the granting of special rights "posed a number of legal, political and social problems," hence, from the point of view of the Council, special rights could only be achieved through a "gradual approach [...] starting with those rights which posed the least problems."¹¹⁷ As problems existed in abundance, it had practically declared the topic of voting rights a taboo, the matter had been abandoned and "not been discussed by the Council" since 1979.¹¹⁸

Convincing the Council was one reason for the Commission's pragmatic approach. Towards this end, it drew on the theme of the People's Europe, which was one that had already been adopted by the Council. The report demonstrated the Commission's contribution to citizenship practice very well: the Commission managed to come forward with a new suggestion on voting rights policy. The political right to vote, the Commission suggested, should be dealt with on three premises

negotiation at Community level of an instrument based on reciprocity between the 12 Member States, second approval of that instrument by all the Member States, and third, adoption of the constitutional amendments required in certain Member States

Moreover, voting rights should be dealt with as a "right but not an obligation,"¹¹⁹ thus leaving the option for the citizen to decide where they wanted to vote.

The varying interests of opposed groups within the Parliament posed yet another problem to the introduction of the political right to vote in municipal elections. They led to

¹¹⁷ As Mr. v. Dohnany, President-in-Office of the Council, had stressed at the Florence Roundtable in 1978 (European Parliament, 1978)

¹¹⁸ Bull. EC, Supplement 7, 1986, pp. 11-12

¹¹⁹ Bull. EC, Supplement 7, 1986, p. 39

the Parliament's failure to produce a majority in favour of a Commission proposal for a directive on voting rights. The Commission repeatedly stressed that it was waiting for a clear signal in order to begin drafting a proposal for a directive. Mr Ripa di Meana as the Commission's representative in the EP debate on this report explained this position to the Parliament. He pointed out "that he personally favoured the option of a binding legal act."¹²⁰ And he went on to spell out the Commission's preference for a clear mandate stating,

[i]f the majority, the great majority, in Parliament want this legislative type of initiative, I can today, in front of you all, undertake to ask the Commission to consider whether it would not be opportune to present forthwith a proposal for a directive.¹²¹

Since that clear mandate had not been provided by the Parliament so far, the Commission continued to follow the step-by-step approach, proceeding as slowly as possible and thereby leaving political space for maneuver to the Member States as well as the Parliamentarians.

Here it is important to understand the procedural difference between the right to initiative regarding elections to the European Parliament and municipal elections. Whereas the Parliament had the right of initiative to the former based on Art. 138 EEC Treaty, the Commission was obliged to propose a directive to the Council on the latter.¹²² For example Commission official Mr. de Lobkowicz wondered whether "it was at all logical for the Commission to make the suggestions on the municipal level which the Parliament had not proposed for European elections?" (de Lobkowicz, 1989:522). That question was central for the coming quarrels between Commission and Parliament in which the Parliament accused the Commission of not keeping promises (Vetter Report 1987) and the

¹²⁰ PE 115.057/fin., 6 November 1987, p. 8 [Interim Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights on voting rights in local elections for Community nationals residing in a Member State other than their own; Rapporteur: Mr. Heinz Oskar Vetter]

¹²¹ PE 115.057/fin., 6 November 1987, p. 8

¹²² For an elaboration of the particularities of that legal background see de Lobkowicz (1989:520) and *passim*) and Magiera (1987a and 1987b).

Commission had to face a Parliament that seemed unable to produce a majority in favour of the issue "The groups of the Left and the Rainbow Group remained in favour of voting rights but the Christian Democrats were divided, the Italians for and the Germans against" ¹²³

Progressive Yet Divided - Parliament

The division among MEPs generated a series of controversial debates which arose as a consequence of some newly introduced proposals for amendments relating to third country nationals' right to vote. ¹²⁴ That is, while the Commission was still working towards the creation of special rights for Community citizens (including the right to vote), the more progressive groups of MEPs wanted this right to apply as well to those who were residents within the territory of the EC but did not have the nationality of one of the Member States. Clearly, at this point, such a request did not correspond easily to the Commission's pragmatic step-by-step approach, concentrating on the European elections as a first step. The Parliament however, obviously preferred the Commission to take another step first; namely to write a proposal for a Council directive on municipal elections.

The European Parliament's reaction to the Commission's 1986 report then was an interim report on voting rights in local elections for Community nationals residing in a Member State other than their own ¹²⁵. This report soon came to be known as the Vetter report after its rapporteur Mr. Heinz Oskar Vetter and was to become a landmark document for further policy on voting rights. In the document, the EP critically observed

¹²³ OJ EC, Annex No. 2-232, pp. 180-181 [Debates of the European Parliament: Sitting of 14 November 1985], cf. Bull. EC, Supplement 7, 1986, p. 14.

¹²⁴ Motions for resolutions were handed in by MEPs Ciccomessere, Barzanti, Ulburghs and Rothley, PE 115 581/1, 3, 10, 11 10 December 1987 (cf. de Lobkowicz, 1989:12).

¹²⁵ PE 115 057/fin, 6 November 1987 [Interim Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights on voting rights in local elections for Community nationals residing in a Member State other than their own, Rapporteur: Mr. Heinz Oskar Vetter]

that the Commission report did "not contain a formal legislative proposal. Instead, [rapporteur Vetter found] the final passage calls on Parliament to establish the precondition for the submission of any formal proposal." The report acknowledged that the Commission apparently expected the EP "to give a political signal." After all the Commission had suggested earlier that

Parliament should start by submitting a new draft uniform electoral procedure to the Council, replacing the 1982 draft and unambiguously endorsing the residence criterion [...] Unless such a political signal is forthcoming, it would be unwise [for the Commission] to embark on a venture for which there is no backing.¹²⁶

The Vetter report thus acknowledged that without a first move by the European Parliament, the Commission would not come forth with a proposal for legislation.

The major concern of the Vetter report was based on the observation that local and European elections were two essentially different processes. They were not only politically different procedures but also had different impact on the construction of a People's Europe. Indeed, the report stated, the EP "rejects in particular the Commission's attempt to tie the right to vote and stand in local elections to the uniform procedure for elections to the European Parliament."¹²⁷ And it explained that this was so because the

elections embrace very different orders of magnitude. On the one hand, there is the European Parliament with 518 Members representing some 320 million Community citizens, on the other, the local council, whose responsibilities are confined within the familiar bounds of a borough or commune. The subjects of discussion and action can be as dissimilar as matters of world security on the one hand and the building of a children's playground on the other. The role of the European Parliament, which is mainly advisory and supervisory [according to Article 137 of the EEC Treaty], can not be likened to the power of a borough council to take decisions affecting an individual's most immediate environment. However sensible and logical it may be to elect the European Parliament by a uniform procedure [...] the right to stand and vote in local elections for all Community nationals is still a far more important aspect of the creation of a People's Europe.

¹²⁶ PE 115.057/fin., 6 November 1987, p. 9.

¹²⁷ PE 115.057/fin., p. 5.

With this explanation for the EP's quite critical reaction to the Commission's report on voting rights, the Vetter report brought the issue of citizen's relation to place once again to the fore

In other words, those citizens who were already resident in the place which was defined as their space of socio-economically and culturally--active lives, were supposed to be granted the right to full political participation too. And the Vetter report stressed once again,

as far as local elections are concerned, there is no doubt that the right to vote and to stand for election should be accorded on the basis of residence. After all, the whole idea of local elections is to give members of the public a say and a chance to be involved in the community in which they actually live.

This experience would, according to the Vetter report, contribute to the creation of a People's Europe which was intended to foster a feeling of belonging to the Community so as to enforce the Community's identity by participating in local elections. This participation on the local level was different from participating on the European level. Moreover, the

right to make proposals is vested in different bodies [as the report pointed out] in the European Parliament in the case of the uniform electoral procedure [under Article 138 EEC Treaty] and in the Commission in the case of the right to vote and stand in local elections [under Article 235 EEC Treaty] 128

Clearly, local elections represented an interference with the national legislation of the Member States. Hence, changing them required a Council directive.

The Commission's reaction to this report implies that Commission officials did not consider the market-oriented and deregulatory framework of international politics in the 1980s a good time for coming forward with suggestions for explicitly political institutional re-arrangements such as the change of voting rights, hence, the Commission's decision to write up a report and not, as the EP had requested in its Macciocchi report three years

128 PE 115 057/fm, p. 10

earlier,¹²⁹ a proposal. (A reminder, that earlier report had introduced new arguments to the universe of political discourse, linking democracy--and the political right to vote for freely moving citizens-- with legitimacy.) In reaction to this decision, the EP's tone was openly critical of the Commission. It stated, for example, that the Commission

has fenced and procrastinated without spelling out to Parliament precisely what it wants. In the face of Parliament's unambiguous wish, it has sought to mask its indecision with stalling tactics. This places a severe strain on its relations with Parliament, especially after the entry into force of the Single Act, which the Commission and Parliament were supposed (and willing) to use to take joint steps not just to complete the internal market but to build a People's Europe.¹³⁰

In a document that followed the Vetter report, the Political Affairs Committee of the EP asked the Committee on Legal Affairs and Citizens' Rights to table a motion for a resolution to

break the Commission's inertia and bring about as soon as possible and by 30 June 1988 at the very latest, the drawing-up and submission of a Commission draft directive, to be implemented in the Member States by virtue of the precedence of Community law.¹³¹

And it added that it

believes, further, that such a regulation could constitute a legal precedent giving rise to further consequences, which would enable the citizens of the Member States to enjoy special rights as favoured as long ago as December 1974 by the Heads of State or Government, who are asked to demonstrate clearly and consistently that they abide by their own declarations made as long as thirteen years ago.¹³²

With this reference then, the EP reassumed the construction of special rights policy which it had begun to build during the Paris period. The Commission, in turn, now presented the requested proposal for a Council directive on voting rights for Community nationals in local elections in their Member State of residence within the given time limit.¹³³ That

¹²⁹ PE 81.688/fin, 29 April 1983.

¹³⁰ PE 115.057/fin, p. 11.

¹³¹ PE 118.171/fin, p. 5 [Annex to the report by Mr. Vetter drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights, Opinion of the Political Affairs Committee].

¹³² PE 118.171/fin, 26 November 1987, p. 5.

¹³³ That proposal picked up the discourse exactly where the EP document had left off, beginning with the political obligation that had been developed over time. It explained that as "far back as 1974, the highest

proposal was amended by the EP and, finally, adopted by the EP's Committee on Legal Affairs and Citizens' Rights ¹³⁴

It was to provide the crucial basis for the citizenship legislation that evolved post-Maastricht. Towards the "Proposal for a Council Directive on voting rights for Community nationals in local elections in their Member States of residence,"¹³⁵ which was presented to the Council on 24 June 1988, the Commission had produced a communication on "A People's Europe" which had been transmitted to the European Parliament on 22 June 1988 and drew on its 1986 report.¹³⁶ The proposal recognized the right of European citizens to vote and stand for election in municipal elections regardless of their place of residence within the Community, as long as they belonged to one of the Member States (i.e. defined by their nationality). The Commission clearly drew on Article 8a, when it argued

[w]hereas Article 8a of the EEC Treaty stipulates that the activities of the Community require the Community to adopt measures with the aim of progressively establishing an area without internal frontiers in which the free movement of persons is ensured in accordance with the provisions of the Treaty

and added

[w]hereas if the right to move freely is to be exercised, by objective standards, in freedom and dignity, Community nationals must be integrated into the life of the host country [and that] the right to vote and stand for election in local elections in the Member State of residence is a necessary step towards achieving such

political authorities in the Member States, the Heads of State and Government, have called for a study on the granting of 'special rights' to citizens of the Member States." And it was added in the document that the Commission had itself inserted the notion of "the right to vote in local elections for citizens of Member States resident elsewhere than in the Member States to which they are nationals" as "at least" one such special right. Parliament, the explanatory memorandum of this proposal stressed, had "expressed its commitment to this idea" as "long ago as 1983" (COM(88) 371 final, 11 July 1988, p. 2).

¹³⁴ PF 126 461/fin., 9 February 1989, p. 3 [Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights on the proposal from the Commission (COM(88) 371 - C 2-104/88) for a Council directive on voting rights for Community nationals in local elections in their Member States of residence: Rapporteur: Mr H. O. Vetter]

¹³⁵ COM(88) 371 final, cf. OJ EC, No. C 246, 20.9.88, pp. 3-5

¹³⁶ COM(88) 331 final, cf. Bull. EC, Supplement 2, 1988, pp. 6-25

integration, contributing to respect for democratic rights which the Member States pledged themselves to promote in the Single European Act¹³⁷

With this communication and subsequent proposal the Commission drew the preceding debates on the special rights package and the passport union package together under one theme, namely that of the "People's Europe." This theme was, as the communication suggested, to be realized within the project of the internal market. Thus, the Commission stressed that

[t]he completion by 1992 of the single European market means, as provided for by the Single European Act, the creation of an area with no internal frontiers, in which goods, people, services and capital will be able to move freely. This objective adds a new dimension to a people's Europe and will entail the adoption of new regulations concerning the movement of persons and the crossing of frontiers with a view to their gradual removal so that citizens can really *feel that they belong to one large economic and social community*.¹³⁸

To sum up, with this new initiative the Commission located citizenship practice discursively within the framework of the Single European Market. Put in a more straightforward way, while still including political rights, special rights of Community citizens now also meant free movement as well as social and economic integration into a new Community without frontiers. Citizens, this communication said, had the right to politically participate in a Community they contributed to building.

If ordinary citizens are to be involved in the building of Europe, they have to be gradually granted at European level the political rights enabling them to do so. The Commission is aware of the importance of this issue, [and] is consequently proposing a Council Directive on voting rights for Community nationals in local elections in their Member State of residence.

As for direct elections to the European Parliament, the Commission found it

regrettable that a large number of Community citizens are being deprived of their right to vote [and therefore felt] that the introduction of a uniform electoral procedure in conformity with Article 138(3) of the EEC Treaty is essential.¹³⁹

¹³⁷ OJ EC, No. C 246, 20.9.88, p. 3.

¹³⁸ Bull. EC, Supplement 2, 1988, pp. 16-17 [emphasis added].

¹³⁹ Bull. EC, Supplement 2, 1988, p. 24. Article 138(3) of the EEC Treaty stipulates that the European Parliament develops draft proposals for direct universal suffrage.

The proposed directive, while endorsing the right to vote and stand for election in municipal election at the place of residence for all Community nationals,¹⁴⁰ left the exact definition of how it was to be implemented subject to the respective Member States. Mr. Taschner who was the responsible advisor in the Commission for developing this proposal referred to the recurring legal problems the Member States raised with reference to the adoption of this proposal. He explained that the Commission had foreseen a series of legal problems and therefore formulated the proposal for a directive accordingly. He stressed that "the Commission had expected the Member States to act *first* on adapting their respective constitutions and only *afterwards* agree with the directive."¹⁴¹

At that time, the action of the Member States remained a question for the future. For the time being, the proposal for a directive represented a clear strategy that would turn market citizens into citizens with political rights, or, as Mr. de Lobkowicz termed it, now citizens who resided in Member States where they were not nationals could become "civis europeus" rather than being viewed as only "homo economicus" (Lobkowicz, 1989:530). According to the 1986 Commission report the stipulation of the municipal right to vote

would demonstrate better than any other that 'a People's Europe' is in the making. The move from building the Community to specifically political decisions would be important, proving that any steps towards European Union will be consistent with democracy.¹⁴²

This process would be completed in the next--Maastricht--period with the IGC on political union and the signing of the revised Treaty. Overall, the debates over voting rights showed that the Single European Act generated new resources and thus created a new universe of

¹⁴⁰ See Title II, Article 2 of the directive, which says "The Member States shall grant nationals of other Member States, recognized as residing on their territory, the right to vote in local elections in the municipality in which they are resident subject to the conditions set out in Articles 3 to 6 below" (Bull. EC, Supplement 2, 1988, p. 37).

¹⁴¹ Mr. Taschner made this comment during a conference on the "Europe of Citizens in a Community without Domestic Frontiers", at the Research Institute for Public Administration at the University for Public Administration Sciences in Speyer, Germany, 1989 (Taschner 1990a:41).

¹⁴² Bull. EC, Supplement 7, 1986, p. 44.

political discourse, thereby modifying the political opportunity structure. At the same time, the struggle between and within the EC institutions had not only made clear the contextual difficulties and strategic differences among them, but had also contributed to bring coming debates on nationality and Europeanness to the fore within the universe of political discourse in which economic discourse was paradigmatic during the Fontainebleau period. This context provided a much broader window of opportunity to discuss the introduction of social citizenship rights. The remainder of this section describes the debate over social rights and how it was linked with the market paradigm in the Fontainebleau period.

The expanded *acquis* which included institutionalized procedures such as qualified majority voting on matters of common market policymaking as well as such new resources that the White Paper, contributed to the Commission's newly enhanced powers to put forward proposals on market related matters. The changed political opportunity structure was well appreciated by the Delors Commission's enthusiasm for European integration which was busy both mobilizing existing resources and creating new ones. Thus, after the entering into force of the SEA, special rights policy was pursued on the basis of Article 8a EEC Treaty which outlines the legislation related to the establishment of the internal market. This article provided the legal legitimation for special rights policymaking what was developed with a view towards the movement of worker-citizens within an economic space without internal frontiers. As the Commission summarized, "the social dimension of the internal market is enshrined in Article 117 of the Treaty, which refers to 'the need to promote improved working conditions and an improved standard of living for workers', and is one of the objectives consolidated and expanded by the Single European Act."¹⁴³

¹⁴³ Bull. EC 5, 1982, p. 9.

The Social Charter

30 May 1989	Commission adopts a preliminary draft Community Charter of Fundamental Social Rights
9 November 1989	Parliament Report on a Community Charter of Fundamental Social Rights
29 November 1989	Commission communication on a Community Charter of Basic Social Rights for Workers
8-9 December 1989	European Council Meeting at Strasbourg
8-9 December 1989	European Council adopts the Community Charter of Fundamental Rights for Workers

During the Fontainebleau period, apart from voting rights, special rights policy addressed the issue of social rights for workers. While voting rights were not legally stipulated until the Treaty of European Union entered into force in 1993, a moral commitment to a responsibility towards workers based on social rights policy was achieved with the signing of 1989 Community Charter of Worker's Fundamental Social Rights.¹⁴⁴

A new Social Charter was debated as part of the common market without internal frontiers. On one hand, this Social Charter drew on the special rights debate ongoing since 1974, on the other hand, it evolved from the "Val Duchesse social dialogue" which started during the Delors presidency.¹⁴⁵ This social dialogue involved a series of meetings that had been initiated by the Delors Commission and which stood for an effort to include the social partners in the process of Community policymaking.¹⁴⁶ The 1987 meeting was

¹⁴⁴ This charter had changed names quite a few times. Thus, the Commission labelled it "Community charter of fundamental social rights" in its preliminary draft on 30 May 1989 (COM(89) 248 final; the Parliament referred to the same name in a 9 November 1989 report (PE 134.164/fin.), then the Commission labeled it "Community Charter of Basic Social Rights for Workers" in a 29 November 1989 communication to the Council (COM(89) 568 final) and it was adopted by the European Council in Strasbourg, 8-9 December 1989, as the "Community Charter of fundamental rights for workers". When it is called the "Social Charter" it is important to keep in mind that another "Social Charter" had been adopted by the Council of Europe that is outside Community legislation. I will refer to it in the following as the "Social Charter" thus keeping with common EC language.

¹⁴⁵ Bull. EC 5, 1987, for a report on the Val Duchesse meeting see Bull. EC, 1, 1985.

¹⁴⁶ Its name stemmed from a first meeting at Val Duchesse, 31 January 1985. The series of meetings includes a second meeting on 12 November 1985, and following meetings on 6 November 1986 and 6 March 1987. For an account of the meetings see EC Bull. 11, 1985, EC Bull. 11 1986 and EC Bull. 3 1987 respectively.

intended to facilitate an agreement on the Commission's proposal for growth and employment and to define further policy in the area ¹⁴⁷ At the meeting it was decided that the "dialogue" would continue based on two working parties. The first group on macro-economics was to examine issues left pending, such as the reduction of state expenditure, organization and duration of working time as well as the Commission's communication entitled 'The Single Act: A New Frontier for Europe'. The second group on new technologies and social dialogue was to turn its attention to the external and internal adaptability of firms and the organization of the labour market ¹⁴⁸

Important for the proceedings and eventual success of the social dialogue was the Commission's role as the Community organ that had mobilized this slack resource and hence began to coordinate the respective policy. This role was highlighted by the Commission's declaration regarding the 1987 dialogue, which stated that it was "ready to act in an organizing and promotion capacity while fully respecting the autonomous will of the parties, though without prejudicing the exercise of powers conferred upon it by the Treaties and the Single European Act" ¹⁴⁹ The result was the 1989 "Community Charter of Fundamental Social Rights for Workers," published 20 October 1989 ¹⁵⁰ It was signed at the European Council of Strasbourg by all Member States except the UK. As the European Parliament notes, the "Community Charter of fundamental social rights for workers sets out a genuine programme for Community social policy, it identifies various areas for intervention, such as

- Free movement for citizens,
- Freedom to choose work and freedom to perform work,

¹⁴⁷ The 1987 meeting was attended by three types of political actors. From the Commission came President Jacques Delors and Vice-President Manuel Marin as the responsible Commissioner for employment and social affairs. Representing the partners were the Union of Industries in the European Community, the European Trade Union confederation, and the European Centre of Public Enterprises. The Council was also represented by its president Martens, the Belgian Prime Minister, as well as the Ministers for Economic Affairs and Employment (Bull. EC 5, 1987, p. 10).

¹⁴⁸ Bull. EC 5, 1987, pp. 10-11.

¹⁴⁹ Bull. EC 5, 1987, p. 11.

¹⁵⁰ COM(89) 248 [Preliminary draft. Community charter of fundamental social rights]

- Entitlement to decent living and working conditions,
- Entitlement to adequate social protection and to social benefits of an adequate level,
- Freedom of association and collective bargaining,
- Entitlement to vocational training and access to continuing and permanent training,
- Equal treatment for males and females;
- Entitlement to information, consultation and participation of workers;
- Entitlement to satisfactory conditions at the workplace regarding health and safety;
- Protection of children and adolescents,
- Entitlement of workers to pensions and to an income guaranteeing a decent standard of living,
- Entitlement of disabled persons to additional specific measures designed to promote their vocational and social integration" (European Parliament, 1992:29-30)

After the adoption of the Social Charter the Commission submitted an action programme for its implementation.¹⁵¹ The Social Charter's preparation had taken a long time. And yet, after its publication, it was not welcomed by those whom it targeted, that is the workers. Both the Social Charter and action programme promoted sharp criticism from the European Parliament and European Trade Union Organizations. As the Parliament summarized,

[t]he European Parliament has always supported the plan for a Community Charter of fundamental social rights for workers. However, it considered that that document should form part of the Community Treaties whereas in the event it is merely a political document setting out a programme, which requires proposals for implementation (European Parliament, 1992:29-30)

And it requested that

the qualified majority voting procedure under Article 118A should apply to the proposals put forward by the Commission for implementation of the Social Charter.¹⁵² In addition to suggesting the initiatives which should be taken as a matter of priority in the social field, it recommended, "inter alia, an extension of Community competence in the social field, more systematic recourse to the cooperation procedure and the establishment of a European Labour Court (European Parliament, 1992:30).

¹⁵¹ COM(89) 568 def., see also Europe documents, No. 1587, 14 December 1989

¹⁵² OJ EC, No. 68, 19.3.90 and OJ EC, No. C 260, 15.10.90

Such critiques shed light on two problems that were representative of the political situation at the time. First, they stressed the political meaning of the Social Charter. As part of the Treaty it would have clearly meant a Community decision towards positive integration; that is, an integration which would follow the lines of state-building towards a new political entity.¹⁵³ As the political constraints presented by the Member States as well as by some conservative Parliamentarians indicated, the time for positive integration had not yet arrived. Secondly, and related to the first aspect, the critiques stressed that negative integration, that is a conglomeration of Member States towards the end of a free trade area, did not meet the expectations of the Community citizens. By providing citizens as workers with new rights vis-à-vis the Community the Social Charter policy not only solved a problem (i.e. that of social dumping) but it also created a tension.¹⁵⁴ This tension was caused by the mechanisms of inclusion and exclusion that are an inherent part of citizenship practice.

Conclusion

During the Fontainebleau period it became apparent that special rights policy did not mean only the political right to vote. The observation that the term 'special rights' had already been considered as unprecise and therefore debatable during the 1970s, and some observers had correctly argued that these rights were not really special but rather similar to those that had been granted to citizens of nation-states (Van den Berghe, 1984), was thus supported. Analysis of the discourses of various actors during this period leads to conclude that special rights were special because they were valid for Community citizens

¹⁵³ On the meaning of positive and negative integration see among others Herzog (1972: 38ff). He suggests to distinguish between "primary integration" that includes a feeling of belonging and political togetherness thus suggesting roots in national thought (Herzog 1972: 39) which can be linked with the idea of a political community of fate and another type of "secondary integration" that focuses on the reduction of disintegrating factors instead which are in turn seen to be dominating in the EC of the 1970s (Herzog, 1972: 39ff). Leibfried and Pierson apply the concept of positive and negative integration when discussing the "prospects of a social Europe" including social citizenship (Leibfried and Pierson, 1992).

¹⁵⁴ On the issue of social dumping see also Steinmeyer (1990: 77).

only. Indeed, it is suggested here that it is possible to look at "special" rights in the meaning of "Community citizens'" rights. This "special rights" discourse included already a variety of citizenship rights, namely, the political right to vote and be elected, the civil rights to sue (and be sued), the social right to pursue an economic activity in a working surrounding that was based on equality and non-discrimination.

Once rights are defined in this way, it is possible to understand the impact they have on the process of integration. Thus, the granting of special rights to special, that is Community, citizens produces a tension among the included and the excluded. As the story unfolds, this tension is unlikely to disappear. Based upon other processes of citizenship practice, it is possible to anticipate increasing demands for inclusion. This, in turn, may induce a step forward from market-making to union-building. The inclusion/exclusion gap works like this: First, social rights are granted in order to provide equal conditions for competition among the Member States. Then, those citizens who enjoy these new social rights demand political rights as well (such as the right to vote at one's place of residence). If such political rights were to be granted in the future, then they would certainly create another tension among included and excluded residents, as the third country nationals would not be able to vote, a fact which the Parliament had already and rightly acknowledged in the 1980s. Yet, from the Commission's perspective this progressive view of some Parliamentarians did not meet the pragmatic requirements of the time. To sum up, the policy of the time produced a gap between Community policy and individual demands for participation because the new social rights remained limited to those who had access to economic activity within the Community.¹⁵⁵ As the story unfolds, the tensions it creates over time and their impact on the *acquis* will be carefully observed.

¹⁵⁵ "Citizens of the Member States of the Community can not lay claim to the application or to the enjoyment of the advantages arising from freedom of movement in the Community unless they participate in an economic activity in a real and effective manner" (Vogel-Polsky, 1991:14).

PART D: PASSPORT POLICY

19 June 1984	Council Resolution on passport union
13 July 1984	Franco-German Agreement on the gradual abolition of checks at the borders of France and FRG
23 January 1985	Commission proposal for a directive on the gradual abolition of border controls to the Council
14 June 1985	Schengen Agreement on the gradual abolition of border controls signed by the governments of the Benelux economic union, the Federal Republic of Germany and the Republic of France in the town of Schengen, Luxembourg
20 November 1989	European Parliament, Draft for a resolution under rule 64 on Schengen, Strasbourg

In a somewhat different fashion from the policy instrument of special rights policy which focused on *what* to do and *how*, passport policy was taking shape based on discussions about *where* to go and *how* to get from there. Passport policy was also embedded in the framework of the market paradigm, as became particularly apparent in the discourse of the White Paper. Thus the SEA established new incentives for Community action as well as an institutional framework for the Community approach as it favoured Commission initiative based on Article 8a EEC Treaty. However, this embeddedness in the market did not solve the problems of passport policy because that policy also touched upon areas of police and security which are traditionally characterized as high politics, in fields of justice and home affairs which are predominantly about borders.

This section shows how Member States' concerns about security impacted on the realization of passport policy because security concerns were often in conflict with such practical considerations as abolishing (or deregulating) passport controls at internal Community borders. Passport policy then, is a sensitive policy area where stark contrasts between Commission interests and obligations towards the establishment of the single market and Member States' interests about security appear. This conflict was overlaid by the PE's increasing concern about the lack of democratic procedure which became much more evident in the 1990s. The following reconstruction of major concerns in this respect

and how they have been dealt with Community policymakers provides an insight into this struggle and shows how it centred on questions of "border politics" (security) and "boundary politics" (movement) whereas the former defines the conditions for inclusion and exclusion on material grounds, and the latter defines them based on a more subtle feeling of belonging. As will be argued, belonging may take different and at times conflictual forms of expression.

Border Politics: Towards the Schengen Accord

The ink of the Fontainebleau Council's conclusion had barely dried when the Governments of the Federal Republic of Germany and the French Republic came forward with an agreement on the gradual abolition of checks at the borders of France and the FRG. The agreement included 18 Articles that presented a timetable towards the abolition of border checks. It was signed in Saarbrücken, 13 July 1984. More specifically, it defined three types of measures that were to be taken, namely, measures to apply without delay (Title I), a second stage of measures that were to be introduced by a subsequent Franco-German summit in October 1984 (Title II), and measures to be taken by 31 December 1986 (Title III).¹⁵⁶

By signing this document, the French and German governments agreed to introduce a change in border policies, moving from regular border checks to spot checks.¹⁵⁷ Thus, the Commission's strategy for passport policy as a step-by-step policy towards a "relief" of border checking based on spot checks (Taschner, 1990b:9) was found to be realized in an even more step-by-step way, as a bilateral agreement among Member States.¹⁵⁸ Most importantly for the further development of passport policy, the

¹⁵⁶ Bull. EC 7/8, 1984, pp. 120-121.

¹⁵⁷ "[A]s a first stage, checks should be confined to spot checks" (Bull. EC 7/8, 1984, pp. 120).

¹⁵⁸ As Mr. Taschner explained, the step-by-step policy strategy had been introduced to Commission policymaking by himself. The origin of this type of policymaking was the "policy of small steps" (Politik der kleinen Schritte) that had been applied first by the representatives of the Federal Republic of

agreement did not leave any doubt about the ideal link between this agreement and Community policy, stressing that the contracting parties were

aware that the ever-closer union of the peoples of the Member States of the European Communities should find expression in free passage across internal borders for all nationals of those States [and] considering also the progress made in the European Communities in ensuring the free movement of persons and goods

The agreement thus referred implicitly to Art. 49 EEC on the freedom of movement. Indeed, in stating with reference to spot checks that, "such a procedure could be applied generally once the legal and administrative provisions on which the checks are based have been harmonized,"¹⁵⁹ it went beyond existing Treaty stipulations.

This agreement came eight days after a difficult Council resolution on passport union and shortly before the 1984 European Parliamentary elections.¹⁶⁰ The final version of the resolution included nothing more than suggestions for possible steps in the direction of gradually facilitating the movement of nationals of Member States. "A step in the gradual implementation of this objective should be to try to make it easier for nationals of Member States to cross frontiers" the document said.

The Member States shall take appropriate measures to reduce waiting time and the duration of checks to the minimum necessary, if they have not already done so. To this end they *may, for instance* set up special check-points, carry out checks by means of spot checks.¹⁶¹

As Taschner, not speaking for the Commission, later recalled, a British proposal that aimed at a "reduction of the waiting period and the time of [border] controls" had caused particular dismay on the side of Commission officials. "Waiting time and similar inconveniences for Community nationals while crossing borders were the main concern according to this discourse. As if this was about passing airport controls a few seconds faster--the British Delegation indeed, qualified this as progress--given that one has to wait

Germany towards the German Democratic Republic in order to ease the political relations between the two German states (interview with Mr. Taschner, Brussels 8 June 1994).

¹⁵⁹ Bull. EC 7/8, 1984, pp. 120.

¹⁶⁰ OJEC, No. C 159, 19.06.1984, p. 1.

¹⁶¹ OJEC, No. C 159, 19.06.84, cf. Bull. EC 6, 1984, p. 24 [emphasis added].

3

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20 minutes for one's suitcase anyway. The European idea could not penetrate this thicket of bureaucratic narrow-mindedness" (Taschner, 1990b 11) ¹⁶²

Based on the way negotiations over this resolution unfolded, then, things did not evolve around a shared European vision of border crossing and its contribution to the creation of *Europeanness*. Time was understood in two different ways. It was understood as simply time calculable in minutes by the British delegation, whereas the Commission's understanding of time was with Europe in mind. It meant creating a European identity over time as European passport holders would repeatedly experience border crossing more quickly and without being checked ¹⁶³. This impression was enforced by the fact that a shift of passport policy into the terrain of Member State policymaking had taken place. The Commission's reaction to this development was a pragmatic one. It noted that, after all, the Council resolution did

open the way to initiatives such as the decision announced on 28 and 29 May by President Mitterrand and Chancellor Kohl to end all customs formalities for Community nationals traveling between France and Germany--a decision the Commission welcomes since it concerns the longest land frontier within the Community. The Commission hopes that other Member States will follow this example. ¹⁶⁴

Subsequently, the Commission wrote the proposal for a directive including the idea of easing border controls within the whole Community, not only at land frontiers but also at sky and sea frontiers (Taschner, 1990b 12) ¹⁶⁵. In this proposal, which was submitted to the Council on 23 January 1985, ¹⁶⁶ it suggested as an "intermediate step" (Taschner

¹⁶²[my translation]

¹⁶³ Given these preceding events, the Franco-German Agreement on the Gradual Abolition of Border Checks could not have come as a greater surprise. As Mr. Taschner recalled, "[t]o our greatest astonishment, they [Chancellor Kohl and President Mitterrand] agreed on what we had proposed, and what had been rejected by the representatives of the Member States as being something akin to the end of security in Europe, namely, spot checks at the border between both states, that is particularly at road checkpoints: thorough controls only if necessary [...] and the so-called green E--our idea of presenting a closed European passport [...]" (Taschner, 1990b.11) [my translation] that reaction of surprise was equally stressed by Mr. Taschner during an interview in Brussels, 8 June 1994.

¹⁶⁴ OJ EC, No. C 159, 19.06.84; cf. Bull. EC 6, 1984, p. 25.

¹⁶⁵ [my translation] for the Commission proposal see OJ EC, No. C 47, 19.02.85, p. 5.

¹⁶⁶ COM(84) 749 final; see also OJ EC, No. C 47, 19.02.85.

1990a 234) to set guidelines for a new mode of policymaking towards passport union. The proposal stressed that

whereas the total abolition of the controls and formalities in question requires the achievement, in parallel, of basic preconditions, such as the harmonization of legislation concerning foreigners and of policy matters connected with issuing visas, the strengthening of cooperation in matters of public security, or further fiscal harmonization; [and] whereas in the interim period until the controls and formalities in question has been completely eliminated, it is possible to carry out a policy of progressive elimination, by, at the same time, ensuring closer cooperation between the competent authorities of the Member States and an intensification of controls on persons at the Community's external frontiers¹⁶⁷

Passport policy, according to this proposal was going to be based on small steps and basically Member State action in coordination with the Commission. The latter was reiterated once again as the document said "the Commission and the Member States must collaborate closely"¹⁶⁸ The directive then, comprising 15 Articles, assigned the task of carrying out the Commission's ideas on passport policy to the Member States, ending with the statement, that "[t]his directive is addressed to the Member States."¹⁶⁹

Two aspects were important for the policies that were developed in the aftermath of this proposal. the Council's reaction, and the Commission's statement about the distribution of Community competences. First, the Council's attitude towards this directive turned out to be not very enthusiastic. The more or less expected reserved attitudes of the UK, Ireland, Denmark, and Greece, as well as the scepticism of the French and German delegations towards the proposal, hinged upon the unsolved security question. While the latter two agreed "in principle with the view of a coming complete abolition of frontiers," they made clear that "before this goal could be reached, all security functions usually fulfilled at borders had to be replaced by other means." These other means included

¹⁶⁷ OJ EC. No. C 47. pp. 5-6

¹⁶⁸ OJ EC. No. C 47. p. 6

¹⁶⁹ OJ EC. No. C 47. pp. 6-7. and p. 7

prevention of criminal acts and terrorism based on police cooperation, exchange of information, reinforced controls at external borders, fight against drug-trafficking and illegal arms trade based on the harmonization of the drug and arms legislation, the control of third country immigrants based on a common vignette policy and finally the agreement on the responsibility of the Member States for the treatment of requests for asylum (Taschner 1990b 13) ¹⁷⁰

In the light of this catalogue of required action before the abolition of border controls could even begin, the borders in question were quickly reduced to land frontiers only. While this agenda was endorsed --and most enthusiastically by those Member States which had maritime ports of entry--an agreement could not be reached, and became a very unlikely option when the British representatives became aware of the fact that the Eurotunnel project would soon turn the French-British border into a land frontier. Thus, the resolution remained unadopted for years to come.

Second, with this document, the Commission acknowledged the Member States' competence in the question of borders. This was a decisive step that was to provoke much discussion, debate and critique among the Community organs and within the Commission as well. It meant that the opportunity structure had changed: now the Council was to mobilize resources towards the border aspect of passport policy, the Commission in turn was to restrict its power of initiative to other aspects of passport policy including education, movement and, to a certain extent, social rights policy, a policy area that had produced an overlap between special rights and passport policy. Beyond the question of competences, the problem of democratic performance was soon to arise again. In this regard, the Parliamentary impact on forthcoming debates was crucial. However, these aspects were not central in the Fontainebleau period, they came to the fore more clearly during the Maastricht period and will therefore be discussed further in the next chapter.

It is important to note that border policymaking comprised both intergovernmental and Community elements, the Member States acting as the negotiating partners on the one hand, and, on the other, the Commission's effort to influence the process by providing

¹⁷⁰ [my translation]

ideas that were introduced to the negotiations over border politics via the forum of COREPER. The Commission was represented by Mr. Bangemann the internal market Commissioner and DG III and his co-workers, and in particular Mr. Taschner whose involvement was crucial to the accomplishment of signing the Schengen Agreement in 1985 and the follow-up agreements in 1990 and 1992.

This division of competences among the Commission and the Member States was endorsed by a series of Parliamentary resolutions adopted shortly before the Milan European Council, 28 and 29 June 1985. In its resolution on the European Passport the Parliament drew on previous Council decisions on Passport Union at the 1974 Paris Summit. It also drew on its own resolution of 23 June 1981 and recalled that according to the Fontainebleau European Council resolution "the European Passport should be made available to Member States' nationals by 1 January 1985" noting that, despite these resolutions, "this deadline has not been met by all the Member States".¹⁷¹ In a follow up resolution, it named the particular Member States that had thus far failed to enact measures towards Passport Union, calling specifically on

the governments of Belgium, the Federal Republic of Germany, Greece, France, the Netherlands and the United Kingdom to take all the necessary steps to ensure that the European Passport can be introduced throughout the Community before the end of June 1985.

Towards this end, the EP encouraged the Commission and the Council "to use their influence with the individual Member States with regard to the introduction of the European Passport".¹⁷² This resolution then reflected the shared opinion of the time that measures towards passport policy were to be carried out by the Member States, whereas the motor and the brains of the policy (ideas) were rooted within the Community institutions.

¹⁷¹ OJ EC, No. C 175, 15.7.85, p. 275.

¹⁷² OJ EC, No. C 175, p. 276.

Another question, namely that of procedure, became particularly salient as the process unfolded and Parliament insisted on its democratization. The procedures were continuously refined over the course of the following decade. Over time more Member States participated in bilateral and multilateral negotiations over border controls that eventually led to the first Schengen Agreement in 1985¹⁷³ and passport policymaking was actively addressed within the bilateral and soon multilateral negotiations that followed the signing of the Franco-German Agreement on the gradual abolition of border controls earlier that year.

The progress in the area of border policy culminated with a multilateral agreement. Thus, Austria requested a bilateral agreement similar to the Franco-German agreement with Germany, which was signed in the same year. In the next year, Italy and Austria also agreed on eased border crossing conditions. And finally, the "Schengen Agreement On the Gradual Abolition of Checks at their Common Borders"¹⁷⁴ was signed as an agreement between the governments of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on 14 June 1985 in Schengen, Luxembourg.¹⁷⁵ The town of Schengen had particular symbolic importance since it was located at a place that had borders with France, the Benelux countries (via Luxembourg) and Germany.

The Schengen Agreement contained measures that were to be taken once the Agreement had been signed and realized by 1 January 1986 (Title I), as well as measures that were to be implemented by 1 January 1990 at the latest (Title II) (Stobbe, 1989: 4).

¹⁷³ This agreement on the gradual abolition of border controls was signed by the governments of the Benelux-economic union, the Federal Republic of Germany and the Republic of France, on 14 June 1985 in the town of Schengen, Luxembourg, [hereafter Schengen Agreement].

¹⁷⁴ Typescript, Brussels 1994 p. 1: As H. Meijers notes, the Schengen Agreement was "no more than a forerunner to the second, referred to as Convention [] The second agreement was signed on 19 June 1990" (Meijers, 1991:1). While this observation is true as far as the legal steps of its implementation are concerned, in this dissertation it is argued that the 1985 accord had a crucial role in the debate over Community competences. After all, it made clear that passport policy as border politics was now no longer subject to Community competence.

¹⁷⁵ For comments on this process, see (Stobbe, 1989: 4 and passim).

Three aspects of this agreement were especially noteworthy. First, of all, the process developed more quickly than knowledgeable observers would have expected,¹⁷⁶ second, it referred to the European Communities, thus indicating that the Schengen process included Community policy, albeit within the terrain of intergovernmental policymaking; and third, it was --at least on the German side--initiated and pushed towards realization by the Chancellor's office and not by the state department. It was signed by Mr. Schreckenberger as Chancellor Kohl's representative, thus expressing the Agreement's legal basis in international law which did not require parliamentary consent nor ratification. The only necessary step previous to signing the Agreement was for Chancellor Kohl to receive the agreement of the ministers whose portfolio's were possibly affected by the legal innovation's stipulated in the document. Once the consent of the ministries was secured, and the document itself signed, it entered into force (Stobbe, 1989:25-38). This legal basis created the twofold effects of parliamentary (European and Member States') opposition to the Agreement. The people had been excluded from the decision and hope of a Community relaunch of passport union had been diminished.

The first sort of reaction was brought to the fore by two observations in particular. First, as German law professor Stobbe observed "within the context of a democratic state, and given the case of an international convention that affects the individual citizen--as is the case regarding the Schengen Agreement--by stipulating special rights, one would have to request an announcement or an official publication of this particular legislation so that it be accessible to all citizens" (Stobbe, 1989:26).¹⁷⁷ He thus indicated, that while as a treaty between governments the Schengen Agreement did not require publication, it was reasonable to expect citizens' appeals and critique as the Schengen Agreement clearly had an effect on the individual citizen. Second, the European Parliament soon was to direct

¹⁷⁶ Interview with Hans C. Taschner who was the responsible Commission official for special rights policy at the time (Brussels, DG XV, Directorate D, 8.6. 1994)

¹⁷⁷ [my translation]

questions and resolutions at the Member States and the Commission, regarding the undemocratic procedures around the Schengen Agreement, thus, albeit without direct reference, endorsing Stobbe's line of argument ¹⁷⁸

In sum, the fast and at times surprising conclusion of the Schengen Agreement left it on politically shaky grounds despite a sound legal basis. Indeed, as the further development of Schengen politics was to reveal, this procedure had violated one of the most basic expectations within a modern democratic societies, namely public access and debate of the law. This seed kept growing over the years and contributed much to the sharp and at time stormy debates over Schengen in the 1990s

Boundary Politics: Belonging Through Participation

In the meantime, the first report of the Adonnino Committee on a People's Europe was presented to the European Council at Brussels, 29-30 March, 1985 ¹⁷⁹. It reintroduced the subjects of borders, passports, and identity as themes of the Internal Market on the one hand, and Member States' agreements on the other. Given its mandate to bring about "the abolition of all police and customs formalities for people crossing intra-Community frontiers" ¹⁸⁰, the report included measures concerning of (1) freedom of movement for Community citizens; (2) freedom of movement of goods, including transport services; (3) administrative formalities for border-area traffic, and (4) wider opportunities for employment and residence. The report made obvious reference to citizens' expectations, speaking of the need to "ease rules and practices which cause irritation to Community citizens and undermine the credibility of the Community." Yet, it did not leave any doubt as to where the legal procedural grounds of the suggested policy were to be found, as well as how to argue the point politically. Referring to Jacques

¹⁷⁸ European Parliament, Draft for a resolution under rule 64, Strasbourg, 20-11-1989. Typescript

¹⁷⁹ Bull. EC, Supplement 7, 1985, pp. 9-14 [Adonnino Report on A People's Europe]

¹⁸⁰ The mandate was assigned to the Committee by the Heads of States or Governments at the 1984 Fontainebleau Council. See: "Conclusions of the Presidency", in: Bull. EC, Supplement 7, 1985, p. 5

Delors' announced goal of a "Europe without Frontiers by 1992", the report defined border politics as "a necessary corollary of the programme for the completion of the internal market which has received, rightly, the highest priority "¹⁸¹

Overall, the report repeated most of the issues that had been front and center in the preceding decade. What was new, was reference to the Delors Commission's goals and the demand for a clear timetable that the European Council should decide upon for realizing them. As the report stressed "President Delors has proposed a 'Europe sans frontières' by 1992. In order to achieve this objective the European Council should approve a precise timetable for the completion of the single market." Referring to the exact areas that needed to be considered, it continued that it was necessary for the European Council

to decide to put in hand now work on problems related to the effective cooperation between authorities responsible for the fight against crime, as well as to the definition and gradual application of a common policy concerning the entry, movement and expulsion of foreigners, visa policy and the transfer of control of persons to the external frontiers of the Community, and agreements with third countries on expanded cooperation in frontier passage.¹⁸²

Parallel to the developments towards signing the Schengen Agreement, the Commission was engaged in a whole series of actions. Included among these were plans for moving towards the abolition of other internal frontiers. Thus, the Commission prepared three memoranda on the "economic and social situation in the Community", "strengthening the technological base and competitiveness of Community industry", and "a Europe-wide environment policy "¹⁸³ These documents, expressing the policy preferences of the time, and emphasizing in particular the creation of a single European market, were sent to the European Council for its meeting in Brussels on 29-30 March 1985. Embedded in this project was the abolition of inner Community frontiers.

As the second memorandum said,

¹⁸¹ Bull. EC, Supplement 7, 1985, p. 9

¹⁸² Bull. EC, Supplement 7, 1985, p. 10

¹⁸³ Bull. EC, 3, 1985, p. 97

[t]he Commission has already expressed its determination to abolish internal frontiers within the Community by 1992 in the interests of the citizens and companies of Europe. This complete unification of the market will be carried out in stages, following a precise timetable.¹⁸⁴

The idea of an internal market without frontiers was to be supported materially by a strategy of making the best use of human resources. The Commission thus specified,

[a] programme designed to promote cooperation between universities and industry so as to improve in both numerical and qualitative terms the training of personnel qualified in the use of new technologies is now being prepared in the Community. The emphasis will be on the need to increase the mobility of students by facilitating study periods or training in firms in a different Community country.

A European identity was thus to be created as part of the drive towards the "better use of human resources." As the programme further clarified,

[r]ecognition as a 'Community centre of excellence' for establishments giving additional training or conducting very advanced research in specialized areas would help towards the increased mobility of students and research scientists within the Community. The European Council should express its support for these types of activity, which will promote the European identity in the eyes of the economic and social decision-makers of the future in the Community.¹⁸⁵

This plan provided three insights into the Commission's position on passport policy. First, it suggested that, as a policy instrument, passport policy was understood as part of the internal market programme and thus remained linked to the Community approach. It was not simply in the realm of Member States policymaking as the Schengen Agreement seemed to indicate. Second, it showed that while the tempo of the Delors Commission's policy output was without precedent in the history of the Community, overall, these policies remained faithful to the strategy of step-by-step policymaking that had been established earlier. And third, it suggested a new way of thinking about the establishment of passport policy; namely a strategy that was based on a group-by-group basis. With these memoranda, students were the one target group added to that of workers which had been defined in earlier Commission proposals for the Social Charter. In

¹⁸⁴ Bull. EC, 3, 1985, p. 99.

¹⁸⁵ Bull. EC, 3, 1985, p. 101.

sum, the Commission's strategy focused on the direct link between citizens and the Community. Since the relationship between citizens and Community is one constitutive element of citizenship as a concept, this concern was essentially one of citizenship practice.

With regard to the inclusion of young people as a new target group for participation on an everyday basis within the Community, the Commission drafted a proposal for "A general system for the recognition of higher education diplomas."¹⁸⁶ Moreover various exchange programmes for university students as well as for young workers were successfully designed and established in the late 1980s.¹⁸⁷ The European Parliament stressed the importance of such programmes towards the building of an ever closer union when it observed:

[c]ooperation among the Member States of the Community in the field of education and culture is inherent to the process of the construction of Europe, and reflects the spirit of the Treaties, since there is no doubt that it promotes closer relations between peoples.¹⁸⁸

These programmes were designed to counter the often slow change of the letter of the law by designing participatory programmes which translated the spirit of the law into practice. Thus the Commission explained, "the existence of cultural unity within Europe is a fact which is nowhere called into question, but which in the law of the Member States of the Community only makes its presence felt in sporadic and feeble fashion."¹⁸⁹ In its explanatory memorandum for such a directive, the Commission emphasized the importance of the "common cultural heritage" which had been divided throughout the processes of nation-state building in the nineteenth and twentieth centuries, and concluded

¹⁸⁶ Bull. EC, Supplement 8, 1985 [Proposal for a Council Directive transmitted by the Commission on 9 July 1985, based on COM(85) 355 final].

¹⁸⁷ Among these programmes were for example the European Community Action Scheme for the Mobility of University Students (ERASMUS), see: Coimbra Report, European Parliament, May 1986, Doc. A 2-22/86 and the Young Workers' Exchange Scheme (YES), see: Fontaine Report, European Parliament, November 1986, Doc. A 2-109/86.

¹⁸⁸ European Parliament, Directorate General for Research, Action Taken Series no. 3, 11, 1988, p. 103.

¹⁸⁹ Bull. EC, Supplement 8, 1985, p. 5 [Proposal for a Council Directive, Explanatory memorandum].

that "the professions have become cut off from each other and locked within the individual countries, in spite of the existence of a common cultural heritage from which each of them continues to draw."

In other words, the Community was ready to reunite what, in its view, had been separated for so long. Clearly, this discourse shed light on a feeling of belonging to a shared cultural space, and what was more, it suggested that it did not have to be created but could be reconstructed from historical roots. These cultural boundaries could, according to the Commission, be redrawn based on (1) mutual recognition of training courses and diplomas, and (2) cooperation between the national authorities responsible for higher education and the supervision of the professions. This step, the Commission pointed out, "constitutes an important aspect of the common vocational training policy in the Community, which contributes to the attainment of freedom of movement and to the improvement of living and working conditions." The process would hence aim at dismantling the boundaries which had been established around the nation-states' respective cultural spaces, and would contribute to "establish harmony between national laws, and this in turn will give legal expression to that cultural unity which has long existed between the peoples of the Community."¹⁹⁰

Further developments of Community policies during the 1980s demonstrated the consistency of the Commission's thinking in this respect. During subsequent European Councils, and the meetings that were held in their preparation, institutional and political discourse reflected these Commission memoranda, as well as Commission President Jacques Delors' central points made in his first speech to the European Parliament. Thus, much of the preparatory work in the wake of the Single European Act concentrated on issues that were either closely related to or embedded in the Commission's idea of an internal market defined as "an area without internal frontiers in which the free movement

¹⁹⁰ Bull. EC. Supplement 8, 1985, p. 5

of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty"¹⁹¹ which was supposed to be, according to a firm time-table, until 1992

Towards Other Frontiers of Citizenship

The first European Council after the signing of the SEA¹⁹² recognized that "the implementation of the report on a People's Europe (Adonnino Report) was clearly not proceeding as quickly as had been expected " To remedy this situation, the Council of Ministers was asked "to give further attention to carrying out the recommendations contained in this report and to submit a report on progress made at the next meeting of the European Council " The areas that needed to be addressed in particular included the easing of restrictions on "border area passenger traffic" and the "right of residence" among others ¹⁹³ The ground for these new areas had been prepared by an extensive policy programme that was based on the establishment of a single market without frontiers and had been drawn up by the Commission ¹⁹⁴ This new programme was first proposed to the Council as a Commission communication, then introduced by Delors to the European Parliament, before it was published in its full length ¹⁹⁵

Different from the 1985 White Paper that obviously emphasized technical aspects more than political strategies in the construction of the internal market, the 1987 Commission programme contained a more pointed political discourse. It was directed towards a variety of Community actors from Member States through social partners and youth as a new group of Community interest. It was also specific about political goals. The Commission was now clearly pushing forward towards further integrative measures

¹⁹¹ Preliminary text of the SEA, adopted at the European Council in Luxembourg, 2-3 December 1985, [final version, Intergovernmental Conference on 16-17 December, 1985] cf Bull EC 11, 1985, p. 9

¹⁹² Compared to the struggle over constitutional reform, this was according to Jacques Delors a "fireside chat" (Bull EC 6, 1986, p. 7)

¹⁹³ Bull EC 6, 1986, p. 9

¹⁹⁴ Bull. EC, Supplement 1, 1987

¹⁹⁵ COM(87) 100, reprinted in Bull EC, Supplement 1, 1987, pp. 6-23, pp. 26-34, and pp. 36-63 respectively

thus seizing upon the changed opportunity structure and mobilizing new resources. For example, this communication set the tone for the Commission's new enterprise speaking of the SEA as

a new frontier for Europe, [that is, a new goal which set] new objectives for the Community, notably the completion of the internal market by 1992 and the strengthening of economic and social cohesion ¹⁹⁶

While this was nothing strikingly new, the communication went on to argue that if this programme was to succeed, a whole series of reforms would have to be carried out first. "In order to succeed in its new responsibilities, the Community must first complete the reforms it has started, especially since 1984, with the aim of adapting its old policies to the new conditions "

These necessary measures included reforms of the common agricultural policy, the structural funds and the financing rules to insure a budgetary discipline. Beyond these reforms the communication stressed that it was "hardly necessary to point out that this 'new frontier' entails the simultaneous implementation of the six policies highlighted by the Single European Act." ¹⁹⁷ The policies were defined as relating to (1) the establishment of a large market without internal frontiers, (2) economic and social cohesion, (3) scientific and technological development, (4) the European Monetary System, (5) a European social dimension, and (6) the environment. And once again, it was reiterated in this communication that it was

easy to show that these policies has to go hand-in-hand if the single economic area is really to be achieved, which is the only outcome compatible with the overriding idea of European Union, as formally restated in the preamble of the Act

The communication went so far as to include the necessity of a "common, strong and coherent external policy" as a condition sine qua non for successful policymaking ¹⁹⁸

¹⁹⁶[emphasis added]

¹⁹⁷ Bull. EC. Supplement 1. 1987. p. 6

¹⁹⁸ Bull. EC. Supplement 1. 1987. p. 7

In other words, this programme towards the establishment of a large single market went well beyond the mobilization of resources in the service of economic policies. It included an ambitious project of centralizing state-building elements such as a common economic, social, monetary and R & D policy. While none of the mentioned policies were totally new to Community policymakers, the decisive and novel aspect of this programme was that it proposed strategies for implementing these ideas. In 60 pages the Commission publication named, explained and promoted policies, necessary steps towards their implementation and provided an eloquent argument as to why there was no alternative to the proposed programme. The why and how of policymaking that had been introduced when Delors first outlined the new Commission policy in 1985 was thus fleshed out even further.

As Delors stressed in his speech to the European Parliament there were "two pitfalls that bedevil European integration: impatience and inertia," and to overcome them he intended to "measure [...] the gap between words and deeds, between promises made and goods delivered, so that [the Commission] can do better and advance more rapidly on the road to European Union." In the course of his presentation, Delors did not leave any doubt about how the Commission understood the Treaty and its role in the process. He explained that "the Single Act was in fact more demanding than it appears on first sight" and added that it was for the Commission "[that] year and next, to translate the Single Act into action and proposals and to ensure that the 12 Member States are made aware of the implications."¹⁹⁹ To many outsiders at the time, such statements must have created the impression that the Commission saw more than anybody else involved in the process. However, it is suggested here, that the Commission officials, and the Delors cabinet in particular, simply were more visionary than its predecessors. Indeed, it seemed to treat ideas as resources. To underline the point, Delors spoke about choices that had to be

¹⁹⁹ Bull. EC, Supplement 1, 1987, p. 26

made there and then in order to proceed without delay describing the situation as one where "the choice is between a hazy free trade area embellished with a few financial transfers and a truly common economic area, a precondition for European Union, solemnly proclaimed in the Preamble to the Single Act " The means to this end hinged upon "two ideas: more cohesion, more discipline" (Ibid) Translated into the language of political science, these two simple ideas can be identified as nothing less than state-building and regulation.

According to Delors, the new faster pace of development towards European Union had already been initiated by the process of signing the SEA, notwithstanding the fact that the Council was only reluctantly applying the principle of qualified majority voting in the defined areas. Delors reasoned, that

[s]ince movement builds up momentum, we must broaden and strengthen the base for revitalization in 1987 by advancing towards completion of the internal market and implementation of Community policies which this implies, by moving to a new phase of the European Monetary System, by taking the people of Europe and 'the two sides of industry with us, by viewing the year ahead as a test of the improved functioning of the institutions in line with the Single Act.²⁰⁰

The President thus indicated that action was required in order to pull the citizens into the process. This urge for action was translated into the proposals. Thus, in a communication that preceded the programme, the Commission defined the modes of policymaking as well as target groups. It argued, for example, that it was vital to concentrate on but a few specific and concrete programmes, whereby the "concept of 'programme' should replace, for the most part, that of 'projects'." It also set out to define clear priorities, such as, for example, a focus on social policy, on young people and the unemployed, rather than "a wide scatter of individual schemes born of a plethora of objectives and criteria "²⁰¹ As for the institutional environment necessary for the realization of the proposed policies, the Commission stressed three things. First, the Council was to make full use of qualified-

²⁰⁰ Bull. EC, Supplement 1, 1987, pp 30-31

²⁰¹ Bull. EC, Supplement 1, 1987, p. 8

majority voting, second, the Commission was to be given more (executive) power; and third, Parliament was to assume full responsibility as co-legislator in the cooperation procedure ²⁰²

If the Commission's proposal turned out to be as successful as its presentation by Jacques Delors to the European Parliament, then, the Commission might have created a new role for itself as a major actor in the process of European policymaking by mobilizing all available resources and exploring fully their potential, including the expansion of the *acquis* towards new ideas. More to the point, by specifying and bundling policies into packages, and by concentrating on a few well defined programmes, the Commission not only spelled out Community policy in a simple way, but also restricted its projects to a few. As Delors emphasized when speaking to Parliament, "[t]he Commission's proposals form a complete and coherent package of policies and suggestions" ²⁰³ Concentrating on a few projects proposed by and carried out under the guidance of the Commission would expand the increasingly controlling and regulating function of the Commission. This function contrasted with the Commission's often invoked discourse concerning the advantages of deregulation, such as, for example, the argument that harmonization of competition policy really meant liberalization, as one could move more freely in a new terrain without borders. ²⁰⁴ Analyzed on these discursive grounds, it is fair to conclude that the term 'new frontier' had acquired--almost overnight as it must have seemed to the casual observer--a new meaning. While drawing on the ideas of the past decade and a half, this Commission communication seemed to indicate that the frontiers in question, and which had to be torn down, were not simply borders within the large internal market but frontiers in the minds of Euro-pessimists.

²⁰² Bull. EC, Supplement I, 1987, p. 9

²⁰³ Bull. EC, Supplement I, 1987, p. 34

²⁰⁴ For this observation see in particular Renaud Dehousse who explains how deregulation and regulation are often much more a question of context than actual procedure. As he observes, the 1992 programme had been characterized as "ultra-liberal" from a French perspective and as "over-regulatory" from a British one (Dehousse, 1992:383).

Following this line of argument, it seemed that there were now two new frontiers that needed to be tackled by discourse, policy-planning and strategy of the Community institutions. The first was political. The eventual establishment of political union was a goal that had always been on the Community agenda, but which had always lacked the political will for its realization. The second new frontier was more abstract and seemed to lead much further away from straight forward market policy. It expressed the Member States' concern for the consequences which followed from a conceptual understanding of community which evolved from modern democratic values, despite its embeddedness in a discourse of the single market. To overcome this type of frontier, the Commission introduced a new dimension to citizenship practice, solidarity, and began accordingly to develop the proper policy instruments for its practice.

Conclusion

The negotiations, Council meetings, and resolutions that followed the Fontainebleau European Council in 1984 were particularly important for future passport policy on two accounts. The first was based on two Declarations of Title II of the Final Act. The second went back to the Adonnino Report on a "People's Europe". The two declarations together paved the way towards future passport policymaking because they specified the Member States' role in the process. Thus, the "Political declaration by the Governments of the Member States on the free movement of persons" specified

[i]n order to promote the free movement of persons, the Member States shall cooperate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries. They shall also cooperate in the combating of terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.²⁰⁵

And the "General declaration on Articles 13 to 19 of the Single European Act" stated that

²⁰⁵ Bull. EC, Supplement 2, 1986, p. 25

[n]othing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.²⁰⁶

As the events prior to and shortly after the Milan Council made clear, the impact of the Community institutions such as the Council of Ministers, the European Council and the Commission was enforced by a set of rules, procedures and ideas, that comprised a newly emergent institutional framework. While these institutions, such as step-by-step policymaking, area oriented policymaking, stage-by-stage and group-by-group advancements, had been developed for the most part over the previous decade, their features became more apparent as they were successfully used by the Delors Commission.

Indeed, the Commission aimed at being a central motor of the Community's strategy for passport policymaking. While the Member States battled over and introduced new rules and regulations in the field of Justice and Home Affairs, it would be the Commission's task to make repeated efforts at implementing proposals. That is, the Commission intended to define the dynamic of the process towards the market with no internal frontiers, despite the two hurdles of Community legislation, namely, the Treaty's reduction of Community influence on the free movement of persons because of its security implications (SEA, Final Act) as well as the restricted Community influence on the matter because it was subjected to unanimous voting (Article 100 A (2) EEC). The innovative attitude of the Commission was supported by the second central aspect for passport policy; namely a new function of the Adonnino Report on a "People's Europe" for the abolition of barriers that restricted the movement of persons. Once the establishment of free movement of persons had been excluded from the principle of qualified majority voting by Article 100 A (2) SEA, the realization of the report's recommendations acquired a new role. It turned into the only quasi-institutionalized and hence legitimate means to advocate the realization of free movement of persons.

²⁰⁶ Bull. EC, Supplement 2, 1986, p. 24

PART E: AN EXPANDED ACQUIS COMMUNAUTAIRE

Post-Fontainebleau Community policy represented one major achievement the planning, negotiating, and signing of the Single European Act. Not surprisingly then, most analyses of this period concentrated on matters related to the Single Market. Meanwhile the impact on the less economically involved and hence less politically exposed individual citizen within the area of the internal market remained barely visible. This lack of attention to the individual citizen or "the people" of the Community was, however, not shared by the Commission and much less by the Parliament. Both institutions frequently mentioned the need to include "the ordinary citizen." Despite these efforts, in the late 1980s, Delors' view of an ideal type "ordinary citizen" who stood "for change which strengthens the feeling of belonging to one and the same community"²⁰⁷ had yet to be articulated in terms of practical policy. Nevertheless, analyzing the discourse of various actors suggests that Community policy in this period was up to something that went beyond the economy. Once the thick layers of talk about the economy are stripped away, and the policy discourse of this period is related to that of the preceding decade and a half, it becomes apparent that the thinking underlying discussions about the single market went beyond the level of economics alone. By way of conclusion, this final part first briefly recalls the overall story of citizenship practice during the Fontainebleau period and then summarizes the changed *acquis* of citizenship practice in particular.

The SEA decisively changed the Community's institutional network as well as the interest of Community organs in expanding it.²⁰⁸ Part of these changes was clearly the institutionalized procedure of qualified majority voting which meant the introduction of "minisupranationality" according to some (Nicoll, 1993: 24). For its part, increased interest in expanding the Community created the basis for a dynamic policy process.

²⁰⁷ Bull. EC, Supplement 1, 1987, p. 33.

²⁰⁸ Some indeed compare the Fontainebleau period with the previous period by referring to a changed attitude towards the constitutional development of the Community, viewing the SEA as leading towards the "high road of treaty revision" (Nicoll, 1993: 19).

towards integration. Thus, the context was created wherein the notions of democratic procedure as well as democratic values could be addressed. Changes in the Community's institutional framework reflected an increasing focus on democratic decision-making procedures. Democratic values were brought in as a factor of a Community without internal frontiers. The SEA thus "ultimately proved to be instrumental in reviving the dynamic of EC political as well as economic integration" (Bulmer and Scott, 1994:4).

The dynamic of this process was particularly reflected in the Commission's broadened influence as the initiator of proposals in all matters regarding the accomplishment of the internal market based on Article 8a EEC Treaty. As the discursive analysis of the period reveals, the Delors Commission was interested in developing the means for policy developments beyond the market, considering the market as one aspect, or, for that matter, the mid-term goal of European integration towards the overarching goal of political union. With the successful settlement of the budget dilemma, the political opportunity structure of the Fontainebleau period facilitated a fresh start for further European integration. Indeed, the Fontainebleau summit meant a "breakthrough" for Community politics. It created a "momentum toward a package deal containing internal market liberalization and decision-making reform" (Moravcsik, 1991:57).

The Commission's White Paper and the convening of an IGC in the 1980s contributed to the creation of new resources that expanded the *acquis*, the former by turning ideas into directives and the latter by providing the legal framework to mobilize them as part of the common market policy. More specifically, the clear definition of the 279 directives prescribed by the Commission's White Paper 1992 provided the point of departure for this type of policymaking which led to a new era in Community politics which soon became known under the slogan of "Europe '92". While the White Paper went beyond market policymaking it was nonetheless conceptualized to operate within a market paradigm. Behind a quite technical appearance, the White Paper had a whole series of legal commitments for the Member States in store that were part of the

implementation of the directives. It therefore required basic agreement on the legal basis for resolving intra-Community disputes. With the White Paper then the Commission had established a time table for economic policymaking by setting the 1992 time limit for the process of creating an internal market without frontiers. Beyond that, by means of an IGC it had elaborated a plausible reason for a Treaty reform.

Within this political opportunity structure, the Commission's responsibilities with regard to passport policymaking seemed limited to worker-related issues. Citizens at that time had to be considered as worker-citizens in order to ensure continuous progress with regard to citizenship practice. Indeed some of the debated special rights were best termed "wage-earners' rights" (Ross, 1995: 103) such as for example the rights that had been named in the Social Charter. Their right to move freely within the Community was advantageous from the point of view of the economic goals of Community policy (Steenbergen, 1992: 57). Signing the Schengen Accord in 1985 showed that some Member States had a particular interest in cross-border traffic. The following chapter will explore the Schengen policy more profoundly and show how, despite the split between intergovernmental policy (foreign and security issues) and Community policy (freedom of movement for workers), the Commission continued to exert an important influence on passport policy.²⁰⁹

Market-making then held indeed more in store than the construction of an economic area, it was also about the construction of a social space (Byre, 1992; Meehan, 1993; Leibfried and Pierson, 1992; Ross, 1993b; Springer, 1994). Beyond that, it was one necessary stage towards the goal of union-building. Free movement was the special right that economically active citizens of the Community increasingly enjoyed as the

²⁰⁹ This impact was based on two types of actions. First, the Commission often brokered and directed bilateral and later multilateral agreements among Member States that were to participate in the negotiations over the Schengen Agreements (1985, 1990, 1992). Second, it continued to perform a central role towards the realization of free movement of persons within the Community, based on its role as one proposal generating organ in this polity in the making.

internal market approached completion. Based on the movement of workers, then two types of special--or rather Community--citizens' rights were negotiated by Community policy makers and the Member States' politicians. First, a series of social rights such as health care, the right to establishment, old age pension, the recognition of diplomas were defined with the Social Charter.²¹⁰ These rights were the economic and social requirements to prevent social dumping. Second, a series of debates and documents led to the Commission's drafting a proposal for a Council directive on the right to vote and stand for election in municipal elections.

Talk about market borders had been first materialized on the basis of workers who were able and had the right to move within the newly expanded boundaries of economic area that was built as one aspect of the single market without internal frontiers. Geographically speaking, this market was a space which was surrounded by the external borders of all Community Member States. As things stood at the end of the 1980s, the definition of new frontiers of citizenship concentrated on territorial and socioeconomic limits of citizenship. In socioeconomic terms, these frontiers excluded some citizens based on newly established special rights for worker-citizens, as well as non-income producing citizens or those who were not considered as being related to economically active worker-citizens. In fact, the line between inclusion and exclusion was set by restricting free movement to the worker-citizen, her/his spouse and their family. Those who did not qualify for the right to freedom of movement according to this definition were excluded.

Apart from materialized geographical borders, socio-economically set boundaries thus had an impact on the practice of movement and vice versa. The management of these boundaries, or the mechanisms of closure and disclosure, was central to the project of market-making. One of these mechanisms was based on movement to the interest of labour-market flexibility; this in turn enhanced the competitive capability of the

²¹⁰ For an extensive exploration of the Social Charter and the legal policy involved, see (Byrne, 1992). See also Cram (1995).

Community as one actor in the global economy. The mechanism of closure and disclosure rested on such aspects of citizenship practice as the rights to movement, residence and establishment.²¹¹

While the process of market-making proceeded throughout the mid- and late 1980s, a discourse about the impact this market would have on the political and legal status of Community citizens vis-à-vis the Community also emerged. That discourse identified the impact of economic integration as being a loss of status. That is, once citizens moved they lost access to participation. This was considered as a lack of democracy and was hence one aspect of the "democratic deficit."²¹² This argument which was introduced to the universe of political discourse by the Commission is notably embedded in modern citizenship discourse. After all, the concept of modern citizenship rests on three constitutive elements (nation-state/community, citizen, citizenship practice) and three historical elements. Access to participation is one of the latter. With the demand for access then, the question of state-building was - however carefully - introduced to the discourse. Similar to the loss of power by nation-states--something which had been observed as one phenomenon of the 1980s and some of which had been restored within the Community--we then observe a loss of access on the part of the citizen.

²¹¹ According to Article 8A EEC Treaty, the territorial limits were set by the borders of the internal market. As Article 48 EEC stated, "[f]reedom of movement for workers shall be secured within the Community ... it shall entail the right to move freely within the territory of Member States for [the purpose of employment]." According to Article 48(3) EC, the freedom of movement for workers entailed the right to (a) accept offers of employment and (b) move freely within the territory of Member States for this purpose, as well as (c) to stay in a Member State for the purpose of employment "subject to limitations justified on grounds of public policy, public security or public health." Public servants were excluded from this freedom according to Article 48(4).

²¹² The other aspect of the "democratic deficit" was a question of democratic procedure. Both aspects are rooted in different contexts. Bulmer and Scott note that the SEA had not successfully challenged the deficit. They identify a twofold procedural deficit, one as the "Community's decision-making procedures" and the other as the lack of "democratic legitimacy" as regards the legislative process (Bulmer and Scott, 1994:7).

In turn, the Commission's demand for the political right to vote is based on historical experience of citizenship practice in nation-states. The often interchangeable use of the term prevents a clear understanding of the political consequences involved.

Second, this chapter argued that both innovations pointed to the interrelation between market-making and union-building as one that is always underlying once an economic space is considered to live up to the standard expectations of modern democratic polities. The Commission's discourse in its report on the right to vote shed light on that fact and the Parliament had repeatedly pushed for far-reaching innovations with regard to political rights. The introduction of such democratic discourse to the universe of political discourse which was, at the time, dominated by the market paradigm, contributed a crucial ideational aspect to the *acquis communautaire* of the time. As market integration assumed momentum and the establishment of the free movement of capital, goods, services, and persons took shape accordingly, the absence of political rights would lead to individual political exclusion. To provide individual integration into the Community, it was argued, political rights needed to be appended to the Treaty via Article 235 EEC Treaty (Magiera, 1987a). These concerns for democratizing the process came much more clearly to the fore when 'legitimacy' and more precisely 'democratic legitimacy' turned out to be the central principle of the 1990s. However it is worthwhile to note that they had been added as a new ideational resource to the *acquis* before the Maastricht negotiations were to begin if their union-building contribution is to be understood.

To sum up, during the Fontainebleau period the universe of political discourse in which citizenship practice was embedded according to three factors: the market paradigm, a new ambitious Commission and an *acquis* that already included the concept of identity and the objects of special rights and passport policy. They were brought to the fore by the political opportunity structure and the actors. At that time citizenship practice was embedded in major innovations (for example competence shifts among the Community's institutions), on the one hand, and changes of meaning as the less visible aspect of the *acquis* (for example a new discourse on democracy and related with it the political right to vote) on the other hand. These changes were evoked by the mobilization of two types of resources that were available at the time. One was the mobilization of market-making

resources. This led to the expansion of the formal institutions of the *acquis*, that was clearly expressed by the institutional reform of the Treaty based on the Single Act. The other was a mobilization of meaning and ideas that generated a new discourse about democracy.

Both flowed from this period's stress on the free movement of worker-citizens as one crucial aspect of market-making. The former was represented as the splitting of passport policy into boundary politics and border politics which involved a competence separation among Community institutions. Subsequently the area of justice and home affairs was defined as being part of the Member States' domain whereas the implementation of measures towards the completion of the common market remained according to Article 8A EEC Treaty, the Commission's domain. The latter aspect emerged in the universe of political discourse when the Commission argued that the special right to free movement in the Community would lead to deprivation of democratic participation, unless those who moved to work in another Member State were granted the political right to vote.

This interrelation between the free movement of worker-citizens and the political right to vote and stand for election represented a decisive discursive shift in EC citizenship practice because it linked normative values to the politics of market-making. The discourse thus highlighted the different expressions of belonging, namely, belonging with reference to a community within a bounded territory which is defined by political citizenship rights and access to political participation. This was the type of belonging-discourse invoked by the Commission's report on the right to vote. The other type of belonging is more subtle as it rests on feelings of inclusion and exclusion that are often based on actual inclusion by means of social rights that have been established as consequences the expansion of social policy. This type of expansion of social policy towards immigrants who are not (yet) nationals and do not have access to political citizenship rights has been characterized as a policy of "disclosure" in other cases

(Brubaker, 1992, Soysal, 1994a, Bos and Wenzel 1995) Such a situation of disclosure had precisely been created by the Community's top-down citizenship practice that contributed to the adoption of the Social Charter

The conflictual aspect of market-making called for a narrowing of the gap between the politically excluded and socio-economically included Community citizens. That gap between legal and identity-based belonging would begin to diminish as more political citizenship rights would be stipulated. The Commission contributed to the creation of meaningful new resources towards that new step of disclosure in citizenship practice. This newly invoked discourse on democracy as one resource towards the development of citizenship was enforced by referring to common European historical experience when it emphasized, that this tension contradicted the European democratic heritage.²¹³ The measure to close the gap was at hand and had been prepared for a long time. enhanced special rights policy

Whether or not these changes of the *acquis* would contribute to successful resource mobilization towards the establishment of citizenship, and if so, how remained an open question during the Fontainebleau period. Nevertheless, it is possible to summarize that the discursive analysis of citizenship practice in this context brought some crucial insights to the fore. Despite the numerous statements that acknowledge this period as one of successful relaunch including institutional reform (Wessels, 1992; Louis, 1992; Lodge, 1994) and subsequent market-making (Sandholtz and Zysman, 1989; Streeck, 1992), this period also contributed to the process of union-building as some steps towards a refined relationship between Community citizens and the Community had been accomplished and

²¹³ Brigid Laffan identifies a tension between "integration and democracy" whereas the "West European state, notwithstanding different traditions and historical experiences, is the primary focus of allegiance and loyalty [and] provides the framework for democratic politics"(Laffan, 1994:100). As she adds, it is because of "our attention to the state as a normative order" that we are aware of this tension (Ibid.) Historical experience then is a crucial factor once the political meaning of European integration is at stake

further steps had been prepared. If the latter aspect remained largely invisible during the 1980s, the changes of the less tangible aspects of the acquis substantiate this view.

CHAPTER 6

MAASTRICHT: UNION-BUILDING AND DEMOCRATIC LEGITIMACY

D'anciens foyers d'incendie, comme le nationalisme, le fanatisme religieux, le racisme, l'exclusion des minorités, que nous croyions éteints depuis longtemps, pourraient brusquement se rallumer. Dans un tel environnement, il nous faut une Communauté européenne forte - pour nous, dans notre intérêt, mais surtout dans l'intérêt de ceux qui mettent leur espoir dans cette Europe (Bangemann, 1990).¹

With the end of the Cold War issues of collective identity have become centrally important [...] For example, the shape and speed of the European integration process and the question of how that Europe will relate to the outside world is of critical political importance (Katzenstein, 1995:14).

L'introduction dans le traité sur l'Union européenne du concept de citoyenneté a une valeur fortement emblématique. D'une part, le choix même du terme de citoyenneté révèle une intention politique, et tranche sur le vocabulaire généralement utilisé antérieurement, dont la tonalité était beaucoup plus neutre, puisqu'il faisait référence aux ressortissants "droits spéciaux", selon l'expression utilisée pour désigner les droits reconnus aux ressortissants des autres Etats membres sur le territoire de l'Etat membre d'accueil, de façon à assurer leur intégration au milieu social du pays résidence. D'autre part, l'insertion des dispositions relatives à la citoyenneté dans le corps même du traité, de même que le fait que ces dispositions soient inscrites dans le traité instituant la CEE, révèlent l'intention d'en faire des dispositions présentant une portée "opérationnelle" (Kovar and Simon 1994:286).

At the beginning of this last stage towards embedding citizenship in the Treaty, the political opportunity structure included two major structuring factors, one economic, the other political. On the one hand, the (common) market was picking up and moving towards consolidation, on the other hand, nation-states were losing power and authority. As the previous chapter has shown, both contributed in different ways to the citizens losing access to participation resulting in the so-called democratic deficit. This chapter will show how the democratic deficit was specified comprising both procedural as well as normative aspects and bring their respective contribution to union-building to the fore, as the relationship between citizens and the Community, and soon Union, continues to be redefined and structured by citizenship practice. The chapter also brings a new aspect to

¹ SG(90) D/05797, p. 9 [intervention of Martin Bangemann, Vice-President of the Commission, 11 July 1990, in the European Parliament]

the fore, namely, an evolving citizenship practice in terms of political struggle from below. The precedence which the institutions of the Community had enjoyed in this policy domain did not last.

The chapter is divided into five parts. Part A briefly introduces the context and actors that brought about a paradigm change in the early 1990s. Part B traces the multi-tiered path of passport policy, including boundary negotiations as part of the Community's competences (Dublin Convention on Asylum) and border negotiations that were outside Community competence (Schengen Group) and their respective outcomes as legal stipulations in the revised Treaty. Part C focuses on the emergent debates over the application of the Schengen Convention. Part D reconstructs aspects of the preparations to the IGC on political union in the early 1990s and follows the development of special rights policy from then until the stipulation of new citizenship rights with the TEU. Finally, Part E highlights debates over possible expansion of Article 8 EC Treaty (citizenship), thus shifting the focus to political struggle as the other aspect of citizenship practice. It concludes with a summary of the expanded *acquis communautaire*.

PART A: THE POLITICAL OPPORTUNITY STRUCTURE IN THE 1990s

27 February 1990	Martin Report (I)
19 March 1990	Belgian memorandum on political union
19 April 1990	Mitterrand-Kohl Letter
28 April 1990	Special European Council meeting at Dublin (I)

Policy Paradigm: Towards Union-Building

During this period, which included the preparations for the treaty revisions at the European Council at Maastricht, a sudden shift from what may overall be considered as a balanced continuity of market-making towards the management of political turbulence took place. Thus, the smooth flow of Community politics faced a serious external blow

when the Berlin Wall tumbled in 1989. With the ensuing changes in world politics the cold war balance of power lost its stabilizing affect on Community policy. According to most observers these world political events had a decisive impact on further development of the Community (Bulmer and Scott, 1994; Lodge, 1994; Nicoll, 1993; H. Wallace, 1994).

In this introductory part of the chapter these external changes are recalled in order to understand the changed policy paradigm and political opportunity structure of the time that contributed to another paradigm shift. Yet, it is one main aspect of this dissertation to also understand the historically evolving discourse that is embedded in the larger context. Thus the "Maastricht negotiations would not have taken place without the success of the 1986 Single European Act" and while "political integration cannot be divorced from economic integration, the collapse of communism and the rapid German unification provided the main impetus behind the political union negotiations" that were one central aspect of the Maastricht period (Laffan, 1993:35).

While the so-called *annus mirabilis*, the miracle year, had first encouraged high hopes for a new world order, the changed power relations in global politics soon revealed a series of problems such as state-fragmentation, rising east-west migratory flows and global restructuring. These changes also had an impact on the EC (Bulmer and Scott, 1994:7). As EC officials expressed it, with the balance between two hegemonic systems broken in the 1990s, the EC needed to develop a new stability in order to provide access and create hope for the now disorganized Eastern European countries. Vice-president of the Commission Martin Bangemann stated, for example, in a speech to the European Parliament "[I]a bipolarité des superpuissances n'existe plus, d'où la nécessité de canaliser et de maîtriser autrement, lors des inévitables tensions et conflits, les relations internationales qu'elles entretiennent."² And he went on to paint a picture of possible future scenarios of unrest and implied that only a strong and united Europe could face

² SG(90) D/05797, p. 8

these challenges. Bangemann's intervention was not restricted to the downside of such potential crises; it also addressed the prospective role of a strengthened European political union as an international actor. These comments reflected the major concern of Community politicians in the early 1990s, namely structural changes in world politics and how the Community should respond to them while maintaining the *acquis communautaire* of the past four decades.

Not least of these new shifts was the Community's suddenly changed geopolitical position (Bolten, 1992:11; Cohn-Bendit, 1993; Garcia, 1993:2). Dinan notes one aspect of this change, when he writes "[f]rom the outset, the Community had considered itself as synonymous with 'Europe'. With the Cold War over, could the Community foster a sense of pan-European solidarity and genuinely pan-European integration?" (Dinan, 1994:158). These were serious questions that also problematized the discourse on a "European" identity that had been so crucial for the emergence of citizenship practice in the early 1970s. While "European" identity as then applied meant Western Europeans (including the potential Western European new Member States' citizens), the fall of the Berlin Wall now challenged the use of that term. Some Europeans had been left out all along, as non-Community nationals had been excluded from the special rights policy for years (Hoogenboom, 1992:74). This fact became much more obvious in the border and boundary debates that set the tone of passport policy in the 1990s.³ Now it was "no longer possible to talk of Western Europe as a clearly defined region in world politics" (Laffan, 1993:36). With the meaning of "European" thus challenged, the Community's future was as uncertain as ever (Dinan, 1994:158).

It is important to note that, in contrast to the less visible interlocking between foreign and domestic policymaking in the 1980s, after 1989 a clear interplay between external and internal factors contributed to the Community's discursive policy process

³ One possible result of the inclusion/exclusion mechanism this process brought forth was seen in a new economic divide between Western and Eastern Europe (Saryusz-Wolsky, 1994:17ff).

This moment of turbulence in world politics thus generated another policy paradigm shift for Community politics. While, during the mid-1980s, "the dynamic underpinning" of European integration was mainly economic in its orientation (Bulmer and Scott, 1994:6), now it became increasingly obvious that market-making was not sufficient to meet the political challenges of the time. With the changed geography of the Community and Germany, as the economically and politically strongest Member State with, moreover the eastern-most border of all EC members, issues of foreign policy coordination and the unsolved democratic deficit came to the fore as major concerns.

At that point the drafting process towards the construction of European Monetary Union (EMU) had been well under way based on the 1989 Delors Report (Commission of the European Communities, 1989; Dinan, 1994:159; Ross, 1995:79). Indeed, EMU had until that time "reached the most prominent place on the European agenda" and the idea was to reassure political commitment to the next stage of EMU "while Euro-phoria still lasted" (Tsoukalis, 1993:205, 206).⁴ This Euro-phoria was now challenged as the various Member States had to agree on how to face the new upheavals. Most significant at this time was a diverging interest that split the historically successful Paris-Bonn axis, a fact that could contribute to weakening the dynamic towards integration. Thus, German Chancellor Kohl pushed for fast German unification while French President Mitterrand was "torn between an instinctive antipathy toward German unification [...], and an equally instinctive affinity for European integration" (Dinan, 1994:163). One way of facing this tension was to forge a link between the two. In fact, this solution seemed feasible to the majority of the Member States, and as it turned out, it involved a new approach to political integration. The "[l]inkage between German unification and deeper political

⁴ Such a political commitment for EMU was needed because "[a]lthough mentioned in the SEA, no binding commitment had been undertaken in the latest revision of the treaties for the realization of the EMU" (Tsoukalis, 1993:206)

integration and between EMU and European Political Union (EPU) emerged explicitly at the Strasbourg Summit in early December 1989" (Dinan, 1994 161) ⁵

Sorting the Resources

According to the Italian government which was to assume the presidency of the Community Council from July 1st to December 31st 1990, the external political changes led to the "opening up [of] a constituent era of international relations in our Continent" ⁶ In a summary note concerning the guidelines for the Italian presidency, it stressed that such a new era required an additional conference on institutional matters. As the document specified,

the opening of this constituent phase of Community relations is expected to begin as early as the Dublin Summit at the end of April, with the setting up of an ad hoc Committee to prepare the institutional conference. It will be summoned jointly with the Conference on Economic and Monetary Union and will be concluded in 1991. Thus, the institutional reforms could be implemented as early as the next elections of the European Parliament in 1994. ⁷

Shortly after the publication of this summary note, Chancellor Kohl and President Mitterrand addressed the now famous letter of 19 April 1990 to the Irish Council presidency, ⁸ wherein they stressed that the political situation required a second conference on political union. Their argument built on the "far-reaching changes in Europe" as well as the upcoming "completion of the single market and the realization of economic and monetary union." That is, they cited both the external impact on Community politics and the domestic situation. "With this in mind," the letter concluded, they

would like to see the European Council deciding as follows on 28 April [] The European Council should ask the competent bodies to intensify the preparations for

⁵ During this time Thomas Mann's term of a "European Germany" was a theme that guided much of the German discourse that tackled the new relationship between Germany and the Community (Dinan, 1994:162-63).

⁶ Europe Documents, No. 1611, 10 April 1990, p. 1

⁷ Europe Documents, No. 1611, p. 2

⁸ Indeed, the letter was termed a "landmark in the history of EPU" which was "rightly credited with getting the negotiations going" (Dinan, 1994 165)

the intergovernmental conference on economic and monetary union [...] The European Council should initiate preparations for an intergovernmental conference on political union.

The object of this enterprise was to

- strengthen the democratic legitimation of the union,
- render its institutions more efficient,
- ensure unity and coherence of the union's economic, monetary and political action,
- define and implement a common foreign and security policy.

The letter thus contained a straightforward demand to initiate steps towards the institutional establishment of political union. It also signified a new form of co-ordination in the Franco-German perspective, thus enabling Kohl and Mitterrand to set a clear time frame. As they declared "our aim is that these fundamental reforms--economic and monetary union as well as political union--should enter into force on 1 January 1993 after ratification by the national parliaments."⁹

The initiative drew in many ways on the Martin Report (I) that had been adopted by the European Parliament on 27 February 1990, and which had emphasized the urgent need to transform the EC into a federalized European Union.¹⁰ This report was prepared for the upcoming IGC. The Parliament also called upon this IGC to concern itself with subjects that went beyond EMU, stressing that this view was shared by the Commission as well as by national parliaments.¹¹ It singled out four main areas in which the frame of Community competences was not sufficient, namely

- Economic and Monetary Union (EMU),
- competences that would allow for a success of EMU, particularly in the areas of social policy and the environment;
- foreign policy;
- citizens' Europe/rights of European citizens (including protection of fundamental rights)¹²

⁹ AE, No 5238, 20 April 1990, p. 3

¹⁰ PE 137.068/engd., 27.2.1990, p. 6

¹¹ PE 137.068/engd., p. 7

¹² PE 137.068/engd., p. 14 [my translation]

Among other things, the Parliament demanded the inclusion of provisions on the Citizens' Europe into the treaties, arguing that, so far, progress with a view to a citizens' Europe had been extremely modest, in particular once the fact of missing treaty provisions, which could facilitate progress in this area, was considered.¹³ While this vision of Europe had been shared by some national governments of the Twelve as well as the Commission, it had always met fierce opposition from at least one Member State

The Kohl-Mitterrand initiative was followed by a Belgian Memorandum¹⁴ on political union, that was drawn up to "suggest that the European Community be given a new stimulus towards political union." In a more subtle way, the memorandum singled out two major tasks on the Community's political agenda. The first was to clarify the "Community's political purpose" in the light of the international political transformation, and, the second was to deal with the "growing democratic deficit" that had developed along with the growth of the single market. Similar to the Martin Report, the Belgian document stressed the necessity of including provisions that created a stronger link between the Community and its citizens, for example, on the basis of a uniform electoral procedure and the right for Community citizens to vote in local elections. (Permanent Representation of Belgium, 1990).¹⁵

These documents showed how the changed external conditions had opened new space for negotiations on a new institutional entrenchment of political union. The political opportunity structure of the time was indeed favorable to the inclusion of some long-standing ideas that had been constructed as citizenship practice had proceeded over the

¹³ PE 137 068/endg., pp. 6, 8, and 16-17 [my translation]. As Mr. Martin explained, it was important to "add to the treaties the Declaration on Fundamental Rights and Freedoms adopted by the European Parliament on 12 April 1989" because thus the Court of Justice would have "jurisdiction for the protection of these fundamental rights." By acceding to the European Convention of Human Rights of the Council of Europe, the Community's procedures for protecting fundamental rights would be subject to an external body. "This would mean that the EC would be subject to the European Convention in the same way as individual states - even those with charters of their own." (Martin, 1991: 56)

¹⁴ This Belgian Memorandum was the first formal proposal towards EPU (Dinan, 1994: 164)

¹⁵ see also: SI(90) 232, 26.3.1990

decades, for example, political citizenship rights, a concept which had been part of the acquis since the mid-1980s. This resource of constructed meaning was now mobilized by those who brought it to the fore, pushing towards its materialization. Such demands were, however, not welcomed by all delegations, and provoked intense debates in the wake of the informal Dublin summit (Dublin I).

The need for progress was most explicitly put forth by the president of the European Parliament, Enrique Baron Crespo, who declared that he would "like the Dublin summit to express a position in favour of a rapid qualitative leap in the Community, whatever procedure is chosen."¹⁶ All four documents, the Martin Report, the Italian government's summary note, the Kohl-Mitterrand letter, and the Belgian Memorandum reflected this expectation as they worked in similar directions with regards to both contents and strategy. None of them stressed a particular need for new ideas, but all made precise propositions with respect to the procedural steps necessary to bring about political union. In this respect the Kohl-Mitterrand letter was the most outspoken, going so far as to suggest that the "Foreign Ministers should be instructed to prepare an initial report for the meeting of the European Council in June and to submit a final report to the European Council meeting in December."¹⁷ For some then the moment for "naming" things had come.¹⁸ This judgment of the existing political opportunity was, however, not shared by all actors on the Western European stage.¹⁹ The opposing two positions in this debate

¹⁶ Europe Documents, No. 1618, 16 May 1990, p. 2

¹⁷ AE, No. 5238, 20 April 1990, p. 3

¹⁸ Once things are named within the universe of political discourse they can be debated, they thus contribute to substantiate arguments and often facilitate a shift in outcomes of struggles once they are according to the political opportunity structure and actors of the time mobilized. For the development of this concept see: Jenson (1993, 1995b).

¹⁹ Before the extraordinary summit at Dublin on 28 April 1990, Commission President Jacques Delors seemed among the few supporters of a second IGC on political union who cautioned against using "u", or for that matter "f", words all too loosely. For example he stated that what some called political union, he "preferred to call the strengthening of the political dimension, an expression that is easier to translate into English", thereby unmistakably hinting at the British negative reaction to plans for political union. Delors' comments expressed awareness of the expected tough negotiations between the British and other delegations. It appeared as if he had assumed his role as conflict mediator for the coming conferences and European Councils early on, not taking sides with any party and suggesting carefully weighed middle

were personified in the British and French Foreign Ministers. While British Foreign Secretary Mr. Hurd went so far as to refuse even the mere mention of an intergovernmental conference for the upcoming summit, French Foreign Minister Dumas reiterated that "the Franco-German proposition wants to [] orient European construction towards political union once and for all."²⁰

British Prime Minister Thatcher "adamantly opposed a parallel IGC" (Dinan, 1994:166). She identified the problem at hand when she noted that during the Dublin discussions questions of national identity and sovereignty were "very upfront." As she said, "we must not underestimate the fears of some British citizens who interpret the message from Mr. Kohl and Mr. Mitterrand as being an intention to create a 'single unitarian' State. It is, therefore, necessary to explain to them that this initiative does not mean an end to the historic nation States with their monarchies, their Heads of State, their Parliaments, their legal system, and their electoral system."²¹ At that time, what Mrs Thatcher had called the "historic nation-states" were already in the process of transferring sovereignty rights to the Community. After all, the transfer of sovereignty had been the logical and practical consequence of every directive adopted ever since the founding of the Community itself.²²

ground policies. He went as far as making a point of declaring to the press that he "absolutely does not know the content [of the Kohl/Mitterrand letter]" nor was he aware of the "projects behind this letter, if there are any" (AE, No. 5243, 27 April 1990, p. 5 and AE, No. 5245, 30 April - 1 May 1990, p. 4, respectively).

²⁰ AE, No. 5240, 23/24 April 1990, p. 4: After the first big debate on the Dublin agenda among the Foreign Ministers, Delors declared that he had "simply listened to the ministers", who kept struggling over the agenda for Dublin (should the IGC be convened at this extraordinary Council or not?) (ibid.)

²¹ AE, No. 5245, 30 April - 1 May 1990, p. 4

²² This process does not necessarily indicate the loss of sovereignty as some point out, it rather indicates the "pooling of sovereignty" (Williams, 1991:155ff). At that time, the *acquis communautaire* included pooled sovereignties in various policy areas, among them competition, taxation, several aspects of social policy.

Sovereignty was thus not necessarily lost, although the interdependence among the Member States in its use had considerably increased. However, the "universal territorial sovereignty" (Leibfried and Pierson, 1992:333) continued to remain with each Member State at that point in time of European integration. Lepsius characterizes the process of sovereignty changes as one that creates "dual sovereignty" which in turn contributes to a "constitution-conflict" between Parliament and Council. That is, while sovereign Member States have once begun to create a supranational regime, this regime has step by step achieved an

In contrast to Mrs. Thatcher's view was Commissioner Sir Leon Brittan's effort to encourage British participation in the process of "moving towards EMU and strengthening the Community's institutions."²³ This seemed to be the question at hand: would stronger European institutions threaten national power based on sovereignty and identity? As President of the EP Enrique Baron Crespo summarized, this delicate and substantial matter proved repeatedly to be a hindrance on the long path towards European union.

The idea [of political union] launched at Dublin notably on the initiative of President François Mitterrand and Chancellor Helmut Kohl is not new, but it has taken a long time to mature. National sovereignty, national egotism have been its enemies.²⁴

For the European Parliament then, the position on this subject seemed clear: "the EP had been waiting for an initiative of this kind for years. We said this in 1984,"²⁵ Baron Crespo thus recognized that the Kohl-Mitterrand initiative was solidly rooted in the EP's own suggestions for a treaty on political union. He later clarified what he meant, saying that "the policy of small steps has ended. The Europe of the Twelve needs to make a *major qualitative jump* which corresponds to the requirements of Europe at the end of the century."²⁶

While Parliament had indeed supported the move towards political union for a long time, the EP resolutions did not necessarily reflect the intentions and preferences of the national parliaments. Indeed, the national parliaments in general (with some exceptions, among them Germany) did not even allow MEPs to participate in their committee meetings. This lack of democratic transparency was addressed by Delors as one aspect of national politics and its impact on "institutional balance" and "democratization" in the EC.

independence from its constituent Member States. It has indeed created a growing competence (*Eigenkompetenz*) and a "supranational sovereign" (Lepsius, 1991:62; my translation). This perspective on sovereignty transfers was the picture that threatened Thatcher. The question was, however, not whether or not this supranational regime was to be created at the Dublin conference, its construction had already been on its way for decades at that time.

²³ AE, No. 5244, 28 April 1990, p. 3

²⁴ Europe Documents, No. 1618, 16 May 1990, p. 2; [Speech given in Brussels, on 8 May 1990, on the occasion of the fortieth anniversary of the declaration by Robert Schuman]

²⁵ AE, No. 5245, 30 April/1 May 1990, p. 6

²⁶ Europe Documents, No. 1618, 16 May 1990, p. 2 [emphasis added]

According to him, the national governments often, in fact, were not prepared to move closer to the citizens with their so-called democratic practices. He explained "[o]ne way of getting closer to the citizens is democratization, this is what frightens national parliaments."²⁷ And he wondered about this strange behaviour, noting that the national parliaments at the same time "tell the East European countries that one of the conditions for their success - including material - is to call on the returns of multi-party democracies and the direct representation of the citizens. What a contradiction!"²⁸ Delors thus put his finger on a largely invisible issue, namely, the conflictual coexistence of national parliaments and the EP in their task of representing the citizens.²⁹

To summarize, the political momentum seems to have inspired enthusiasm among some Member States but revived dire expectations among others. In this context, Delors "posed the question as to whether it were preferable to envisage a sort of Second Single Act at this stage, namely a new step forward, rather than to take the final step."³⁰ Such an approach would according to Delors, follow more closely the parameters of the Belgian Memorandum. Despite obvious disagreements concerning the degree of institutional changes, the special Dublin Summit at 28 April 1990 achieved two goals. As Jacques Delors put it, "[i]t was necessary to give political impetus, it has been done. It was necessary to establish a procedure: a decision has been taken."³¹ These achievements were explained at greater length by Charles Haughey, President of the European Council,

²⁷ Europe Documents, No. 1618, p. 7. To achieve the qualitative leap the EP and other institutions were so fond of, then, required a careful analysis of where the process of democratization had got stuck in the first place and how that problem was to be challenged in the second instance. All these questions amounted to the umbrella term of democratization, a catchword in documents, debates and the media of the early 1990s. The process of European integration thus in turn enforced the need to rethink and reorganize national institutions according to democratic demands. This necessity was pointed out with the EP's Duverger report on the "assizes", that is, the establishment of regular meetings between the EP and the national parliaments.

²⁸ Europe Documents, No. 1618, p. 7.

²⁹ Moreover, this observation reflected an increasing international worry about an increasing lack of democracy. This aspect of Community policy was thus interrelated with broader international developments.

³⁰ AE, No. 5245, 30 April/1 May 1990, p. 3.

³¹ AE, No. 5245, p. 3.

who presented the results of the Council to the European Parliament on 16 May 1990.³² In his speech, he defined "three useful guidelines" on which further thinking could be based "democratic legitimacy, effective institutions, and coherence in international action." These three guidelines were seen as highly interdependent since the "effectiveness of the Community's institutions is inextricable from that of democratic legitimacy" and it was therefore "crucial for the democratic legitimacy of the Community that the balance between the institutions reflect the will of the people." This balance between the institutions and hence progress towards European Union depended on the "development of the European identity of [European] citizens."

European assizes, which would bring together representatives of the European and national parliaments, were seen as one way of narrowing the gap.³³ As the current President of the Council Mr. Haughey noted, the "assizes still offer a useful opportunity for a constructive exchange of views between parliamentarians on how to ensure an adequate degree of democratic accountability for Community government." He therefore hoped that the results of these discussions "will be available [...] to inform the work of the intergovernmental conference."³⁴ Finally, he emphasized that the "special Council has made it clear that the Community will act as a political entity on the international scene," adding that there was also a "definite view that if European union is to develop in a rounded and coherent way we have to move positively to closer political union."³⁵ To this end, "Foreign Ministers have been instructed to undertake a detailed examination and analysis, and to prepare proposals to be discussed at the European Council in June with a view to a decision on the holding of a second intergovernmental conference."³⁶ The careful diplomatic style of the wording of this wording provided an indication as to the

³² Bull EC 5, 1990, pp. 138-144

³³ For the Duverger report on the "assizes", that is on the cooperation between the parliaments of the Member States and the Community, see PE A3-162-90, see also, Lodge (1994.80)

³⁴ Bull EC 5, 1990, p. 143

³⁵ Bull EC 5, 1990, pp. 140 and 141 respectively

³⁶ Bull EC 5, 1990, pp. 138-142

tedious debates and relentless efforts that had occurred during the Council in order to assure British participation in this new step towards political union. Similarly, according to Delors, "in a Europe with a still uncertain destiny, it is important for Community countries to renew their vows, to ensure that the aspiration for a greater Europe will not be achieved to the detriment of the Community, by throwing away thirty years of unique experience."³⁷ He thus referred to the problem of diverging positions among the Member States that had been expressed so clearly during the previous Dublin summit.³⁸ At this time then, the Community organs faced two tasks: one was to keep the *acquis communautaire*, as the set of institutional practices, procedures, texts and meanings that had been achieved until then; the other was to face the challenges that were posed by the political transformations of the time.

Summary: Political Opportunities

To sum up, in the 1990s the emergent new world order and the fact that German unification as one expression of this order took place within the European Community, created a political momentum for change in the direction of political union that was without precedence in Community history. This momentum evolved on two grounds. First, a unified Germany, which implied an increased number of German MEPs in the European Parliament thereby enhancing Germany's political weight, posed a potential threat to the still unstable institutional setting within the Community. After all, the geopolitical changes initiated with the collapse of the Berlin wall had moved Germany almost overnight into the middle of Europe as opposed to its former status of lingering on the eastern margins of Western Europe.

³⁷ AE, No. 5243, 27 April 1990, p. 5.

³⁸ Given this background, Delors' personal preference was "for the Foreign Ministers to use the period up to the summit at the end of June to study", and he explained "at that point, we will have more time and the climate will perhaps be less stressful" (AE, No. 5243, 27 April 1990, p. 5).

Second, there was no doubt that prospective Community policy would have to focus on relations with Central and Eastern Europe and, eventually, the EC's enlargement policy towards the East. A unified Germany and Community expansion towards the east presented new challenges to Community policies. The new external influences on EC politics, then, disrupted a previously relatively smooth flow of Community politics, at a time when EC politics were focused on preparations for the upcoming IGC on EMU and when a common foreign policy was practically non-existent. At this time, the European Parliament observed that while "Europe might be an economic giant, it remained a political dwarf"³⁹. As regards to creating more political strength based on institutional changes, past experiences and future expectations created an odd mix of bold demands from those who promoted further integration and outright denial of those who preferred the establishment of an enlarged trade area to that of the Community during the unfolding debates.

The significant aspect for citizenship practice was that the political opportunity structure was enhanced by normative aspects such as, for example, the concept of democracy. This resource included, for example, the political rights discourse that had been generated by citizenship practice ever since the early 1970s and was--however carefully--revived in the 1980s. These resources could now be mobilized. While it seems as if citizenship was brought into the universe of political discourse almost over night, taking a historical perspective with respect to citizenship practice allows for an understanding of how resources were constructed and how citizenship emerged.

³⁹ PE 137 068/cndg . p. 16 [my translation]

PART B: A "SPACE WITHOUT FRONTIERS"- BORDER POLITICS⁴⁰

As the previous part of this chapter has shown, the turbulences of the early 1990s led the Community to turn towards union-building. Besides the IGC on EMU that had been well planned and was prepared by the Delors Report of 1989, the European Council at Dublin on 25-26 June 1990 decided to convene a second IGC on European Political Union (EPU). The related debates shed light on a new aspect of EC/U citizenship practice as they worked towards and succeeded in embedding the concept of citizenship in the revised Treaty of European Union. Before I reconstruct the process that led to citizenship becoming a visible part of European politics by writing it into the Treaty, I will discuss the other part of the story of citizenship practice, namely the politics of creating a space without frontiers and establishing the material conditions which would allow for the practice of the special right of free movement.

As the next two parts of this chapter show, what began as "passport policy" at the 1974 Paris summit, and then turned into "border and boundary politics" in the 1980s, was continued along these same lines in the 1990s. The SEA had given a fresh impetus to border politics in defining the establishment of an area without internal frontiers as the "paramount objective" for the EC (Bolten, 1992:11). Yet as this part of the chapter shows, with evolving border politics of the 1990s, tensions between social inclusion and political exclusion rose, and debates over competences and shifting powers among the Member States' and the Community's political domain gained momentum. Citizenship practice in the 1990s was thus touched by, among other things, immigration or visa policy on the one hand,⁴¹ and questions of how to construct an overall structure of the new

⁴⁰For this formulation see the title of a internal Commission document on the state of the realization of free movement of people which was titled "Free movement of people in the space without frontiers: the changes" (Commission of the European Communities, 1992a)

⁴¹As Mr. Adrian Fortescue, Director with Responsibility for Co-operation in the fields of Justice and Home Affairs in the Secretariat General of the Commission put it, "the Single European Act of 1987, with its goal of a Europe without Frontiers, strongly motivated the EC to examine jointly certain immigration issues directly related to the abolition of frontier controls. One unintended effect of this link was that their

European legal space on the other.⁴² Both were ultimately, if with varying success reflected in the Maastricht Treaty. In the process, new conflicts were to be faced and, as it turned out, the Commission was to receive much of the blame. While the political opportunity structure had enabled the mobilization of resources towards the acceleration of citizenship practice by focusing on the historical element of *rights*, border politics encountered more constraints than opportunities in the 1990s. With the Berlin Wall down, the Community had to face a new challenge in the area of border politics; namely the question of visa and asylum policy, now involving the question of east-west migration, and how it was to be dealt with by the upcoming Schengen re-negotiations (Bolten, 1992; Faist, 1994; Fortescue, 1993; Heinelt, 1993; Hoogenboom, 1992; Steenbergen, 1992).

This part focuses on continuity and change in border politics and its impact on the development of supranational citizenship. I argue that despite the new constraints on border politics, the Schengen negotiations, by highlighting the question of *access*, generated a fresh view of the link between the three historical elements of citizenship--*rights, belonging and access*--in the particular context of the Community, and now Union. I begin with the debates at the Dublin I European Council meeting, that is at the time when the Community began to strategize within the new opportunity structure of the 1990s. Part C proceeds to elaborate the struggles that unfolded with a view to facilitating the freedom of movement of persons rather than workers. Inasmuch as the analysis sheds light on conflicts of interest among the Community Member States, the Schengen States,⁴³ the Commission, the European Parliament, National Parliaments as well as various nationally based interest groups as the different actors involved in the process, it brings a new development of citizenship practice to the fore.

initial efforts were viewed by some as anti-immigration measures symptomatic of a Fortress Europe mentality" (Fortescue, 1993:wp)

⁴² As Bolten explains, "[t]oday's borders are essentially boundaries between distinct legal systems such as States" (Bolten, 1992:11).

⁴³ The name Schengen States refers to those states that have signed the Schengen Agreement on the gradual abolition of border controls

Access: The Special Rights to Movement and Residence

The problem of access was addressed at the Dublin I Council of 25-26 June 1990 where the right of residence was finally established in the form of three directives it was granted to workers and their families and to students, thereby continuing the group-by-group policy approach of the 1980s. Thus, while in the EC free movement had always been restricted to persons engaged in an economic activity and to their families, now these "directives concerning the residence of economically non-active EC subjects and their families in the territories of the Member States" had been adopted (Steenbergen, 1992:59, Degen 1993:753; Hobe, 1993:248). More importantly, these directives stipulated (1) the rights of residence for wage-earners, or for that matter insured and non-welfare dependent persons, (2) the rights of residence for employees and self-employed persons who had ceased their occupational activity, and (3) the right of residence for students. It is important to note, then, that the right to residence still remained restricted to non-welfare dependent persons, thus excluding, in particular, elderly, children, and otherwise socio-economically dependent citizens.⁴⁴ The socioeconomic aspects of movement which had been part of the politics of solidarity during the Fontainebleau period were thus materialized in the three directives on residence which were now part of an expanded *acquis*.⁴⁵

However, in order to practise free movement, something more than establishing socioeconomic boundaries and territorial borders was needed. Among other things, questions of security and control remained to be addressed before the practice of open

⁴⁴ For the result of an over and over again refined debate about the highly sensitive directive on the rights of residence, see: OJ EC, No. L 180, 13.7.90.

⁴⁵ The directives survived the Maastricht Treaty. They were however partially challenged by the Parliament later on and came increasingly under attack, thus opening new opportunities for the pursuit of citizenship practice once the TEU had entered into force on 1 November 1993, see COM(93) 702 final, 21 December 1993, p. 4 and PE 206 769/fin, 2 December 1993 [Opinion of the Committee on Women's Rights] respectively.

internal borders could be realized.⁴⁶ These security issues presented a huge problem because they involved questions of policing and control; in other words, they went to the core of the political domain of the Member States as nation-states. In tension with this political issue stood the need to provide incentives to initiate movement in order to (a) realize the planned labour market improvement, and (b) provide Europeans with the opportunity to experience belonging as they crossed borders un-checked. Market-making, then, affected crucial political domains of the Member States as well as being closely linked with union-building on the other. Both were interrelated; one was not possible without the other.

The market-making policy to encourage mobility in various ways also included a regulative aspect. For example, mobility of workers within regions, which were close to internal borders, was encouraged as part of the social dialogue. As the Commission reported

[i]n July 1990, as part of the social dialogue at Community level, the social partners drew up a joint opinion on the prospects for a European labour market. This is devoted to the creation of a 'European space' for vocational and geographical mobility and to improvements in the way the European job market operates.⁴⁷

Another approach to the creation of incentives for movement went beyond the functional aspect of increasing flexibility among workers. Following the group-by-group approach, it targeted the groups of young worker-citizens and student-citizens with the goal of strengthening a feeling of belonging and the development of a European identity among European citizens. Based on the three directives on the right of residence it was now possible to encourage the movement of European worker and student-citizens. While

⁴⁶ Indeed, as one observer put it with a view to the realization of the Convention's measures before 1993, this "second agreement deals with very diverse, extensive and intricate a subject matter and so seriously interferes with the domestic legal systems, that the original schedule has proven to be too optimistic" (Meijers, 1992:1).

⁴⁷ COM(90) 561 final, 27 November 1990, p. 21 [Communication from the Commission on the living and working conditions of Community citizens resident in frontier regions, with special reference to frontier workers]

exchange programmes quickly gained momentum (European Parliament, 1988) the question of the practice and politics of border crossing remained largely unresolved

With December 31, 1992 as the final date to complete the conditions for a functioning internal market, the free movement of goods, capital, services and persons had to be guaranteed as Article 8A EEC Treaty stipulated. The legal basis of Article 8A EEC provided a strong argument for those who pushed for the realization of the four freedoms including that of persons (rather than working persons) After all, those actors who did not comply with their duties according to the Treaty faced the risk of being taken to court The next section on access and control provides insights into the conflictual process that was part of the realization of the market until the deadline of "1992 "

Control: Schengen

Border control, in the sense of abolishing internal Community borders and enforcing external borders, had been one aspect of passport policymaking for almost two decades. From early on this issue had involved diplomatic much more than philosophical matters (Paris 1974) and non-Community more than Community guided negotiations (Fontainebleau 1984).⁴⁸ In other words, it had been dealt with as a security matter of high politics and been addressed in an intergovernmental fashion Over time, a series of emerging groups, committees and sub-committees was busy analyzing the matters of policing and related issues of drugs and terrorism These groups were frequently characterized as lacking transparency, not only for the public but also for Commission and Parliament officials involved in the process At times, even participants of one group did not know about the work of another--related--group. Responsible government officials were, in fact, often not adequately informed As Belgian socialist MEP Lode van Outrive observed,

⁴⁸ I use the term 'non-Community' and not intergovernmental, because the Community approach to border politics was equally negotiated on an intergovernmental basis

to talk about clearly set democratic goals will be out of proportion; there is an array of working groups which keep their results as a secret, so that did not even know about the object of their work among themselves. Moreover national members of government are often not informed.⁴⁹

A good part of the movement discourse was generated within the framework of the Central Negotiating Group towards Schengen (GCN)⁵⁰ which was composed of the signatory countries of the 1985 Schengen Agreement (France, Germany and Benelux). With five Member States participating, and Italy and Austria applying for membership, Schengen had turned into something like an "engine" or a "catalysateur" in the complicated process towards the realization of an internal market without frontiers.⁵¹ In fact, as a Commission memo on the subject declared

cette volonté politique, exprimée par les cinq Etats membre, constitue un élément tout à fait positif dans la perspective de la réalisation des objectifs à atteindre au niveau de la Communauté dans la mesure où elle peut provoquer un *effet moteur* à l'égard des Etats qui ne participent pas à l'Accord de Schengen.

As this note explained, the project was expected to create a dynamic which would spill over into Community politics, thus allowing the Community to work towards the deadline of "Europe '92" which required the abolition of border checks among all twelve Member States, not just the Schengen Five. According to the Commission, it followed that notwithstanding the Community institutions' lack of control over the project (it was exclusively handled by the Member States that had signed the Schengen accord), Schengen would contribute to the project of abolishing internal frontiers and would thus reinforce Community politics. As the document explained, "l'initiative prise par les États membres signataires de l'Accord de Schengen peut constituer un élément dynamique dans

⁴⁹ PE 202 540/endg. 5 November 1992, p. 21 [my translation]

⁵⁰ This is the acronym for the French term Group Central de Negotiation.

⁵¹ An internal Commission's report on the Schengen ministers' meeting in Bonn, 25 June 1991, reported that M. Bangemann had recalled the catalyst function of the Schengen Group (French), see: European Commission, DG III/F/1, 9 July 1991, p. 2

l'achèvement du marché Intérieur au niveau communautaire La Commission s'en est félicitée" (Commission, 1989b:2).⁵²

However, from a Community perspective, this moteur operated out of control, that is, the only access point for Community institutions was an informal one via the Council of Ministers. Moreover, as the following discourse analysis reveals, the Commission's pragmatic support and consequent acceptance of mere observer status in the GCN turned out to be much more controversial than assumed in the early Schengen years. While Commission officials had hoped for the Schengen Accord to be one step towards the internal market without frontiers, a goal that was compatible with Community policy, the secrecy of the Schengen process generated protest, debate and finally a long delay in abolishing internal frontiers. The Commission had unintentionally put itself into the position of mediator between Council and Parliament. Thus, with the 1992 deadline approaching quickly, the Commission's observer status included the continuous monitoring of events within the GCN, on the one hand, and the defense of its pragmatic position towards the European Parliament, on the other. The debates and discourse of the time shed light on both the complex process of border politics, including not only the freedom to cross them (positive discursive effect), but also the duty to secure and control them and the territory they bounded (negative discursive effect). Moreover, this discourse revealed how the Commission came to be increasingly blamed for much of the difficulties in ensuring free movement.

So far, the Commission and the European Parliament had been the major actors in pushing for a positive discursive effect with a view to (1) the creation of a functional internal market, and (2) the development of a feeling of belonging among European citizens that would slowly but steadily contribute to the emergence of a European identity. With security policy on the agenda, not the EP and the Commission but the Member

⁵² [emphasis added]

States represented in the Council of Ministers were the ones to show an increasing interest. This interest resulted in a shift of policymaking style as well as the policy networks involved in the process.⁵³ Soon, the complexity of the border issue itself was dealt with by an equally if not more complex network of groups, subgroups and institutions.

The institutional bodies which were involved in border politics included six different types of groups that worked with sub-groups, committees and the like. The Commission had access to some of them, to others not. While the names of these groups do not contribute substantively to this analysis, it is nevertheless helpful for an understanding of the debates to note the astounding variety of institutional bodies that, in fact, were the operating basis for the free passage of people across borders at this time.

Accordingly, these were: (1) the Pompidou Group which existed since 1971 as a Council of Europe body to combat drug trafficking in the Member States; (2) the GCN (Central Negotiation Group) that included the signatory countries of the Schengen Agreement since 1985 and to which the Commission had observer status; (3) the ad hoc group on immigration to which the Commission also had observer status was set up in 1986 and composed of ministers who were responsible for immigration in the twelve EC Member States, it was responsible for questions of asylum, visa policy and police cooperation to fight forged passports and visas and had a permanent secretariat attached to the Council of Ministers,⁵⁴ (4) most importantly for the further development of border politics, was the Coordinators, or Rhodes Group which was founded in 1988 and was to report regularly to the Council. Its strategy was based on the Palma Document that listed the problems which might occur upon the abolition of border controls, and suggested how to solve them. It also contained a timetable with exact plans about who was supposed to

⁵³ This is not the place to pursue a detailed study of policy networks. For insights into the network see Den Boer and Walker (1993); for literature on policy networks in the EC/U. see Lenschow (1995), Peterson (1995) and Zito (1995)

⁵⁴ PE 202 540/endg . p. 20, see also: Taschner (1990b 24)

do what and when, and provided an ongoing inventory about progress in abolishing border controls as well as a timetable for steps to be taken towards their final removal⁵⁵ (5) Moreover, there was a whole series of TREVI groups, Trevi I, II, III and eventually Trevi '92,⁵⁶ which had been first established in 1975 on an intergovernmental basis to develop anti-terrorist strategies and covered police cooperation measures among the Twelve It was managed by the Council of Ministers on Justice and Home Affairs and since the 1990s included the issues of terrorism, general police affairs, organized crime and drugs (Den Boer and Walker, 1993:6) The Commission remained excluded from the Trevi groups And finally, there was (6) the European Political Cooperation (EPC) in the form of the political directors of the Ministries of Foreign Affairs The EPC had to be involved as visa policy was an element of foreign policy

As the Parliament's Outrive Report observed,

European cooperation between the police and the courts is disturbed by the lack of cooperation between numerous initiatives in this area which overlap and cut across each other. This broad number of groups, working groups, committees, clubs [] have resulted in a real chaos⁵⁷

Clearly, this document showed that the Parliament was not convinced that the Commission's approach to Schengen would make things any easier Still, this approach was supported by the Commission as exemplified by Social Affairs Commissioner Padraig Flynn's opinion that

[t]he experience of even such a tight-knit group of nations as the twelve Member States of the Community suggests that it is easier to proceed step by step and tackle the various aspects separately - entry for employment, asylum, family reunification etc. ... only at a later stage might it make sense to examine whether it is necessary to

⁵⁵ For information on these groups see: De Boer and Walker (1993 4-7 and *passim*), and Commission (1990a)

⁵⁶ TREVI was short for Terrorism, Radicalism, Extremism and International Violence (Masson Report, 1991:33) to the French Senate (Sénat, No. 167, 12 December 1991), p. 33. CELAD is the acronym for Comité Européen de la Lutte Anti-Drogue and was set up in 1989. UCLAF is short for Unité de la Coordination de la Lutte Anti-Fraude. It was set up by the Commission in 1989

⁵⁷ PE 202.540/endg. 5 November 1992, p. 20 [my translation]; for an overview of all groups see: PE 156.390 [Outrive Report I]

turn agreed principles into a legal instrument on a pan-European scale (Flynn, 1993 4)

This disagreement among Commission and Parliament showed the difference in approach of the two Community institutions very well. While the Commission pursued a pragmatic step-by-step approach that favoured incremental policymaking, Parliament often preferred a more dramatic approach always in the pursuit of more immediate and far-reaching results. Thus far, this arrangement had proved to be constructive for citizenship practice, with the Parliament pushing for new regulations and Treaty changes or even new Treaties, and the Commission assuming the task of substantiating and organizing them. Whether the Schengen process would unfold according to this practice seemed questionable, already at this point in the story.

As the Outrive Report summarized, the overall divergence of responsibilities resulted in "secret negotiations within groups over freedom of movement and security without any democratic control," and it continued that this represented "already a violation of democratic principles."⁵⁸ The situation added much power to a growing discourse denouncing the lack of transparency and democratic control as it had been introduced by the Schengen process. Moreover, a discourse of inclusion and exclusion was generated by the debate over borders during the early Maastricht period. It showed that, as opposed to the socio-economic tone of the early special rights discourse, now passport policy brought the profoundly political issues of security and control to the fore. Related to these issues was the call from those who were excluded for more democratic procedures such as, for example, transparency and *access* to control. Thus the democratic deficit was emphasized in the universe of political discourse at the time. The following section will continue to disentangle the flow of border discourse that emerged within a network of numerous groups, committees and sub-committees and developed over time.

⁵⁸PE 202 540/endg. 5 November 1992. pp. 20-21 [my translation]

Conflict: Lack of Transparency and Democracy

Despite the optimism and enthusiasm demonstrated towards the Schengen initiative as being an engine towards the realization of Article 8A (freedom of movement of persons, goods, capital and services within the internal market)--as the following will show--throughout the process the Commission was fully aware of the high risk this choice involved. However, it calculated that within the Schengen framework it would be more likely to pursue successfully a step-by-step approach towards the establishment of freedom of movement of persons compared to the option of a path via the Treaty. This approach involved unanimity voting according to Article 100a(2) EEC Treaty and would make the realization of free movement of persons highly unlikely.⁵⁹ This explanation put a finger on the principal problem during the final stage of policymaking towards "1992", namely, the fact that the Community's quasi-constitution (EEC Treaty) contained a built-in hurdle towards the free movement of persons which was, at the same time, seen as an important step towards the creation of European identity and *belonging*.

With Europeans being able to cross borders uncontrolled (and perhaps "waving" closed passports on internal Schengen borders),⁶⁰ it was expected that a new feeling of belonging would be experienced. Thus the symbolic value of the realization of "1992" was immense. The cost of non-Schengen would lead to the opposite. To put it differently, if Schengen was not signed by all Community Member States by the end of 1992, yet the

⁵⁹ As one Commission official explained, the political advantage of the Schengen negotiations lay in the additive process of the Schengen Group's formation, that is, countries signed one by one accepting the "acquis schengenois" (Taschner, 1990b:30).

As Mr. Taschner commented stressing that he spoke personally not representing the opinion of the Commission "the EC Member States have agreed on the . . . Single European Act, their parliaments have ratified the consequent change of the EEC Treaty. This change includes [] Article 8a which, I dare say, constitutionally stipulated the un-controlled movement of persons in the internal market of '92 - [as] the EEC Treaty is our constitution". However he added, while these observations were true, it was also of crucial importance to understand that "[w]ith regard to the realization of movement of persons the necessary form of agreement towards the adoption of a legal act was based on . . . unanimity, Article 100a(2) EEC" (Taschner, 1990b:20). [my translation]

⁶⁰ This idea was originally presented by Martin Bangemann who was the centrally involved Commissioner in this process. Hence, the policy came to be termed the "Bangeman wave" in internal Commission documents.

agreement was to be applied, then the external Schengen borders would create a fortress mentality within the Community and the principle of the "Bangemann wave" would not work. The Commission knew that not achieving this goal, which was one of the few political goals ever promised to the European public, meant that a major political conflict would be hard to avoid.

What we observe here then is a development that had a double effect: the symbolic value was as visible to the citizens (who began to expect the much touted new freedom) as it was to the participating Member States, some of which clearly saw free border crossing as a major encroachment on state sovereignty. It therefore caused conflictual reactions among European actors; governments and interest groups alike. At that time, the Commission opted in favour of the Schengen solution with a view to thereby overcoming the unanimity hurdle of the Treaty. However, international agreements could be reversed; they were not final. Unlike the international agreements that formed the legal framework of the Schengen process, directives did not require ratification yet they were subject to the same legal framework and were difficult to be reversed once they became part of the formal institutions of the *acquis*. Moreover it is important to recall that with respect to the democratic deficit and the related question of legitimacy, directives came into effect with the cooperation of the European Parliament. Based on an international treaty, however, the EP was excluded.

According to the Commission's statements, it supported the Schengen negotiations despite these facts. Still, the risks were not unknown to the Commission. A memo written in the late 1980s revealed the location of the possible political costs involved, stating that "il y a donc un risque réel que, faute d'atteindre une 'masse critique', Schengen ne pousse à la création d'une Europe à deux vitesses au lieu d'être la locomotive de l'espace sans frontières" (Commission 1989b:3). And an engine, it had to be, if a success was to be scored.

Early concerns about the re-definition of borders focused, in particular, on security issues. These were raised within the broader context of Europeans questioning the Schengen agreement in various Member States⁶¹ as well as the early processes of German unification after the fall of the Berlin Wall in 1989. At that time, the final preparations of the GCN for signing the Schengen Convention were almost complete.⁶² The Convention included the supplementary measures that were considered necessary for the realization of the agreement once the abolition of border controls came into effect.

According to a document of the German Ministry of the Interior on "Balancing Measures to the Schengen Agreement," the need for the realization of the Schengen Agreement comprised everything from the introduction of spot checks to a removal of controls from internal to external borders, a revision of the legislation on drugs, on arms and ammunition, on foreigners and on asylum (Deutscher Bundestag, 1988:2-10). The importance of crime control and security was stressed often not only in the documents of government and police but also in party documents of the participating Member States. A brief insight into the process drawing on the German example provides an idea about the counter-Schengen discourse which gained momentum before the second step of the Agreement could be signed.

The critiques included two perspectives in particular: the first comprised the position of border personnel such as police and customs officers who faced changes in their employment and work situation once Schengen was ratified and put into practice; the second evolved around concerns about human rights that resulted from the changed

⁶¹ For German reactions, see for example the opinions mentioned above. For French reactions, see for example the expression of French concern on TV, November 15, 1989, as well as a questioning of Mme Cresson on the EP's position in the process of signing which were both stressed in an internal Commission memo on the subject (Commission, 1989b).

⁶² This agreement was signed on 19 June 1990 in the border town of Schengen. It was titled "Convention Applying the Schengen Accord concerning the Gradual Abolition of the Checks at the Common Borders of 14 June 1985 between the Kingdom of the Netherlands, the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Federal Republic of Germany and the French Republic." Since the Schengen process is not a Community matter but an international one the materials that document its progress are often scattered. For a good overview including the reprinted convention, see Steenbergen (1992).

border practice that was suggested by the Schengen agreement and the harm that might be done to personal freedom (data protection) with the introduction of the Schengen Information System (S.I.S) The following two sections provide some insights into the two different types of concerns and the tone of these critical public voices as well as the addressee of their complaints

Security One example represented police concerns as the security force with an interest in ongoing employment and changes of job description Thus, the head of a municipal German border protection service group explained in a letter to Commissioner Bangemann

We border policemen [sic] ... want to cooperate towards the construction of a unified Europe without restraint! We want a human, and free Europe of Citizens without barriers! We do not want a Europe of the godfathers of gangster groups! (Bundesgrenzschutz, 1989:1-2).⁶³

This complaint revealed two crucial insights into the progress of citizenship practice of the time, namely, the police spoke as citizens affected by what they assumed to be Community politics Hence the letter to Mr. Bangemann who was neither accountable to the German citizens nor responsible for the matter. The abolition of border controls had been initiated by the first Franco-German Agreement in 1984, as this analysis of citizenship practice pointed out earlier While the Commission's reaction to this agreement had been approval, the abolition of border controls nonetheless remained part of the domain and responsibility of the Member States Despite this fact, the protest was addressed to a Community institution, namely the Commission.

In a similar vein, trade unions manifested a skeptical attitude towards the abolition of borders As the chairman of the German Police Union complained "[o]ur countries' security is sacrificed on the altar of Europe." And the German Federal Minister of the Interior reportedly received about 50 letters of complaint a day all of which argued against

⁶³ [my translation]

the abolition of border police jobs (Frankfurter Rundschau, c f Taschner 1990b 17) ⁶⁴ Although not directly political in scope, these documents shed new light on the matter. According to the tone of these complaints, disorder was to be anticipated once border posts were stripped of their protective influence. Not only would beamte, that is life-long employees of the German state, lose their jobs, but the good law-abiding citizen would become exposed to internationally connected criminal forces.

Human Rights. Another example of emerging concerns was provided by the SPD (Social Democratic Party), then opposition party in the German Bundestag. The SPD voiced citizens' concerns about losing their rights and freedoms once countries that did not legally protect personal data gained access to personal data of inhabitants across the Schengen territory. As the SPD document stated, first of all, Chancellor Kohl's almost "naive euphoria" about Schengen created a number of serious problems. "Next to the harmonization of rules on immigration and visa, tariffs and the rights of foreigners, problems of internal security were of utmost importance." Concerns were raised specifically with regard to the establishment of the Schengen Information System (S I S) which would be capable of saving "criminal records of about 800,000 persons" (Die SPD, 1989:1). As the motion for a resolution of the SPD stressed, the "planned information system could hit citizens' rights at a sensitive point" (Die SPD, 1989 2) ⁶⁵ Before the new information system could be applied, the party hence demanded the creation of guarantees that would protect citizens' personal data. This concern had previously been addressed by MEPs, in particular members of the Socialist and Green groups, among them Lode van Outrive and Claudia Roth.

In the early Maastricht period, the creation of a market without internal frontiers was thus increasingly embedded within a discourse of police, (in-)security risks, and crime,

⁶⁴ [my translation]

⁶⁵ [my translation] It is important to recall that in 1983 the German census had caused broad protest and led to the formation of social movements against changes in the policy of data-protection.

instead of one that stressed the new achievements of European (worker) citizens, such as the freedom of movement and the rights of citizens to establish themselves and reside within a newly broadened territory. The concerns about crime and security were spreading fast in the public discourse, thereby putting the successful realization of the whole project at risk. Indeed, the office of the Commission Delegation in Germany faxed its concern about the timely fulfillment of the Schengen plan to the Commission, stating that the "conference of the [German] Ministers of the Interior [including the Federal Minister ...] voiced strong reservations regarding the time table. A security deficit was feared" (Commission 1989c) ⁶⁶ The arguments were defined as, first of all, "no free access for criminals." Furthermore concerns included the still non-working computerized security system, and hence insufficient controls at external borders. The fax also revealed that some of the conference participants had discussed these security concerns in the media (TV and press); that France shared most of these concerns; and moreover, the responsible civil servants in the area of security were not showing the will to cooperate on the matter (Commission, 1989c:2).

A parliamentary draft for a resolution in the name of the Socialist group that expressed critical concerns set the framework for an argument that was to unfold throughout the 1990s. The resolution of the Socialist group of the EP centered around two major concerns: human rights and parliamentary control. A document that was drafted during the November 1989 EP meetings in Strasbourg stressed that the lack of respect of human rights as well as the lack of parliamentary action would endanger "the legal protection, the right of defense and the right on privacy of people." This lack of respect for basic human rights was particularly alarming with regards to their effect on the group of "refugees and migrant workers by tightening up the considerable restriction on

⁶⁶As regards the time table, the Supplementary Schengen Agreement was supposed to be signed by the end of the year 1989

such people to enter the five states concerned at a level of the most restrictive state" (European Parliament, 1989:1)

The draft for a resolution accused the GCN, and hence implicitly the Commission which endorsed the Group's agenda, of trying to avoid parliamentary input into the decisionmaking process that was so closely linked to human rights. As the document stated, the Socialist group of the EP was

aware that the rush to sign a Supplementary Schengen Agreement on December 15th 1989, [was] an attempt to avoid parliamentary and public debate on an issue which [was] vital for the kind of Europe which [they were] going to create, for the kind of legal protection and human rights position of persons living in the European Community (European Parliament, 1989:1).

The Socialist MEPs thus assumed there was a strategy of avoidance of democratic procedures. And they went on to identify the basis for this reasoning, declaring that they were

concerned that the secret discussions, without democratic control by Parliamentary supervision, on matters of police actions, internal and external security and immigration, namely those affecting refugees, by Member States acting outside the competence of the European institutions within fora such as Schengen, TREVI and the ad-hoc-Immigration Group violates the aforementioned Conventions [UN Charter of Human Rights, European Convention of Human Rights, Geneva Convention relating to the Status of Refugees] and democratic principles.

Consequently, the draft resolution called for,

- (1) Member States' governments to involve and to inform their Parliaments and the Commission to involve and to inform the European Parliament, via its Committee on Legal Affairs and Citizens' Rights, on all matters involved in the Schengen Agreement and the Supplementary Schengen Agreement;
- (2) the governments of the 5 Schengen Agreement States meanwhile not to sign the Supplementary Schengen Agreement;
- (3) on the Commission to assume its responsibility in this domain, contact the Member States concerned in view of invoking Art 169 of the Treaty of Rome and keep the UNHCR [United Nations High Commission on Refugees] fully involved in any action taken (European Parliament, 1989:1-2)

The political significance of the matter was underlined by the intention to send this resolution to not only the Community institutions (Council, Commission) but also to

national and international institutions (Member States' governments, parliaments, UNHCR)

In sum, the level of interest group and Parliamentary criticism and protest in the wake of the signing of the Schengen Convention increased in the late 1980s, that is, in period prior to the Intergovernmental Conferences on Political Union and on Monetary Union. Worth noting at this point in the story about citizenship practice was that even if the Member States, and not the Community institutions were the responsible actors, interest groups reacted to what they perceived as Community policy that had an impact on them by addressing the EC institutions. The focus on the democratic deficit, in terms of a lack of control, was brought more clearly to the fore once the Schengen Convention was signed. Part C examines this discourse and its role in citizenship practice as it increasingly became the focus of political struggle.

PART C: LEGITIMACY AND FRONTIERS OF DEMOCRACY

19 June 1990	Convention Applying the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders at Schengen
20-21 February 1991	Question period in the European Parliament with answers given by Commissioner Martin Bangemann
September 1991	Standing Committee of Experts on International Immigration, Refugee and Criminal Law: Opinion, recommendations and Proposals Concerning the Parliamentary Approval of the Schengen Implementing Agreement at Utrecht
12 December 1991	Masson Report to the French Senate at Paris
5 November 1992	Ourive Report of the Committee of Civil Liberties and Internal Affairs of the European Parliament

Despite a delay during the turbulent months that followed the fall of the Berlin Wall, negotiations towards the Schengen Convention continued in 1990 and led to the signing of the Supplementary Schengen Agreement on 19 June 1990 by Belgium, France, Germany, France, Luxembourg and the Netherlands⁶⁷ Reconstruction of some crucial aspects of border politics in the early 1990s reveals how the changed global context impacted on the political opportunity structure Immigration and policing were to become even more sensitive issues than had previously been the case As one observer put it, "[t]he legal geography of Europe is changing its face bewilderingly East Germany's joining the Federal Republic of German, and thereby 'Schengenland' and the European Communities, will shortly relegate the notorious 'hole' in the Berlin wall for Third World refugees to oblivion." In this changed context, new foci were to be addressed, they were "first the external borders of 'Schengenland', then the present outer edges of the EC" (Bolten, 1992:11).

⁶⁷ On 13 December 1989, two days before the Schengen Convention was to be signed, the Federal Republic of Germany requested an extension. The reason for this change of mind was allegedly the fall of the Berlin Wall and the turbulences it had brought with it The reasons for this request must remain a matter of speculation here. Clearly, the domestic political situation did not allow for talk about the establishment of Schengen borders between the two Germanys (at that time the annexation process was in its early beginnings). And the more likely prospectus of a German border as a new external Schengen border towards Eastern Europe was a delicate political issue

The Schengen Convention included agreements on the measures that were to be taken by each Member State in view of the prospective lack of controls at the internal Schengen borders. First of all, it entailed a definition of internal and external borders. Thus, it said clearly,

[1] internal borders shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular trans-shipment connections exclusively from or to other ports within the territories of the Contracting Parties not calling at any ports outside those territories; [2] external borders shall mean the Contracting Parties' land and sea borders and their airports and sea ports, provided they are not internal borders (Schengen, 1990:3).

The list of supplementary measures was long. The measures were bundled in titles which included,

- Title II the abolition of checks at internal borders and movement of persons;
- Title III. police and security;
- Title IV the Schengen information system,
- Title V transport and movement of goods,
- Title VI protection of personal data;
- Title VII executive committee which was to be set up to control the implementation of the Convention
- Title VIII. final provisions.

Most importantly, Title VIII on final provisions stated that all provisions of the Convention should "apply only insofar as they are compatible with Community law" (Schengen, 1990:70). The link (to the Community) and the purpose of the enterprise (facilitating free movement for all persons) were thus clear. This clarity vanished however, as soon as practical measures were to be implemented. While those definitions sounded fairly straightforward, similar to early passport policy planning, the idea of practising free access yet providing adequate security controls at internal borders gradually turned into something of a political nightmare.

In the short-term, the major problem was that external Schengen borders such as, for example, Amsterdam's Schiphol Airport were at the same time internal Community borders. Hence, how was a European citizen who arrived, for example, from London (not

a Schengen country but a Community Member State) to be checked at Schiphol? Was she going to be treated as an "alien," that is, "any person other than a national of the Member State of the European Communities?" (Schengen, 1990 3) Such treatment would clearly not contribute to creating a symbolic sense of European identity. Quite to the contrary, a feeling of belonging was the supposed effect of being treated as a member and who was therefore not subjected to security controls. Yet, if her identity and baggage remained unchecked at external Schengen borders (Schiphol Airport), the security risk was considered too high. The dilemma was perfect.

Procedures: Schengen and Palma

Debates within the Commission, between Commission officials and Member State representatives of the Schengen Group, as well as criticism from Parliament, highlighted the complicated issue of "national security" and border checks. Problems kept unfolding and solutions remained scarce according to both approaches, the Community approach of the Twelve that was based on the Palma Document (Council, 1990), and the intergovernmental approach of the Schengen Five that was based on the Schengen Convention. This was among other things due to the fact that European integration required a structure at an international level, which could guarantee the interests of human rights and the integrity of criminal justice (Swart, 1992 109). This structure was not in place yet and not surprisingly then, debates over the Schengen way to approach the evolving problems loomed large. An examination of the Schengen and Palma documents contributes to understanding why Schengen appeared as the more attractive alternative to the Commission to begin with but backfired politically on Europe in the long run.

Based on the Palma report, a list of tasks was defined by the group of coordinators with a view to the end of organizing the removal of internal Community borders and reinforcing controls along external borders. It distinguished between "essential" and "desirable" measures (Council, 1990 1-4). According to the Commission,

both types of measures had to be realized before the 1992 deadline. However, in the event that the desirable measures would not be realized before this date, "ceci n'empêchera la réalisation de l'objectif, notamment l'espace sans frontières ultérieures"⁶⁸ The Commission's focus--as observer in the Palma realization process--was therefore on the essential measures in the first place. These included seven measures:

- (1) the harmonization of controls at and observation of external frontiers,
- (2) the definition of those frontiers,
- (3) the cooperation and exchange of information between police and customs,
- (4) the problem of agreements made between Member States and third countries;
- (5) the struggle against secret immigration networks;
- (6) the system of information exchange about people that had been found to be non-admissible,
- (7) the examination of a possible financing of infrastructures at external frontiers
(Commission, 1991 1)

According to the Commission document, one desirable measure was the realization of controls and the organization of free movement of travelers at ports and airports (Commission, 1991 2).

It is important to recall that the GCN was not composed of Community institutions. However, the Ministers of the Interior of the Schengen countries who participated in the GCN also represented the delegations of the twelve Community Member States in the meetings of the Council of Ministers towards the application of the Palma document. A personnel overlap thus existed. However this fact did not resolve the problem of a deficit in democratic decision-making procedures. Thus, the GCN met two times a year in capitals of the Schengen countries (Taschner, 1990b:17; Masson Report, 1991:33). The meetings took place behind closed doors which the Commission had been able to open just a bit by being granted observer status. As vice-president of the Commission and responsible for the realization of the internal market (policymaking related to Article 8A EEC) Commissioner Bangemann recalled that observer status had

⁶⁸ This distinction had been emphasized in a "note de dossier" of the Cabinet Bangemann on the state of the realization of the Palma report (Commission, 1991 1).

never been easy to be put into practice. Indeed, it often required great persistence on his part. As he explained, he even "had to stage sit-ins to be admitted to the meetings of the working groups [that are involved in the Schengen process]"⁶⁹ This type of closed-door policy was confirmed in a report on a GCN meeting during which the group debated the EP's Committee of Fundamental Freedoms request for openness about the process. As the Commission's report about this meeting recalled,

[I]a nouvelle commission de libertés publiques du PE a demandé à la présidence Schengen de lui communiquer tous les documents en discussion. Il va de soi que le GCN a répondu par la négative à cette demande (Commission, 1992c: 3)

Much to the satisfaction of the Commission, the Schengen ratification process got a jump start with the French National Assembly ratifying the Convention rather quickly, about a year after the it was signed, and the Commission publication European Report stated quite enthusiastically that "the ratification by the other signatory countries will require a few more months to complete, as will the development of a Schengen Information System."⁷⁰ As it turned out, this observation was overly optimistic. Neither ratification nor the SIS followed. Rather debates, doubts and threats of taking the Commission to trial over the Schengen politics emerged. And as time would show, the "desirable measure" of travelers practising free movement at airports and sea ports turned into a major obstacle to the realization of the new space without frontiers, which would not occur finally until March 1995.⁷¹

While it seemed in the beginning that Schengen could be a model and an incentive for rapid development towards free border crossing of European citizens, this hope soon

⁶⁹ This incident took place when the Commission was criticized by the EP for its "lack of initiative" in the Schengen question by German MEP Jarzenbowski (CDU) during the EP debate over the report by Lode van Outrive (SOC/B) on the entry into force of the Schengen Conventions, Strasbourg 17 November 1992; see: AE, No. 5859, 18 November 1992, p. 3.

⁷⁰ European Report, No. 1683, 8 June 1991, p. 2.

⁷¹ As Victor Smart and Rory Watson reported in February 1995 about the "creation of a huge border-free zone on 26 March [1995] under the Schengen Agreement". As they explained, "[u]nder Schengen, seven EU states - Belgium, France, Germany, Luxembourg, the Netherlands, Portugal, and Spain - are to scrap all passport and identity-card checks on travellers from next month" (The European, February 17-23, 1995, No. 249, p. 1).

diminished. A Commission study which compared progress towards the establishment of freedom of movement of persons in both frameworks, Palma and Schengen, found that there were no major differences among the two. Vice-president Bangemann stressed this fact in an introductory note to the document, stating that "[l]e document de travail aboutit à des conclusions factuelles indiquant notamment qu'il n'y a pas de différences majeures en ce qui concerne la liste des mesures d'accompagnement essentielles." According to Bangemann differences were found with reference to the method of realization. As he commented, the "méthodes de réalisation par contre sont différentes: le groupe de Schengen a repris toutes ces mesures dans une seule convention; au niveau des Douze, une pluralité d'instruments indépendants sera adoptée par les différentes enceintes concernées."⁷²

With regard to things that needed to be accomplished, the Commission statement was obviously correct. However, with regard to the procedure and the practice of realizing border policy, there were considerable differences between the Community (Palma) approach and the intergovernmental approach (Schengen). Thus, the transfer of the better part of border politics from the area of Community policymaking (the Twelve/Palma) into--secretive--Schengen policymaking did not correspond well to the expectations for democratic and transparent functioning of most Member States's legal systems.⁷³ The Commission's tightrope act was grounded in the fact that the whole Schengen procedure was indeed not democratic.

Contrary to this lack of democratic control, the Palma document required solutions based on directives which, once adopted, could be enforced on the basis of the institutional control of the ECJ. The problem was, however, that these directives were to

⁷² SEC(91)895, 6 May 1991, p. 1.

⁷³ Every society assumes a particular legal culture over time and with experience. While there were on the one hand differences in legal culture among the twelve Member States, these in turn were also different from the legal space that was in the process of being constructed on the Community level. On the developing legal space see: Weiler (1994). For a view on different legal cultures in the Member States, see Swart (1992).

be adopted by unanimous vote. Given the British, Irish and Danish positions against free movement, it seemed very unlikely that a unanimous vote in its favour could be obtained. Nevertheless, according to Article 8A EEC Treaty, all Member States were obliged to allow for the free movement of goods, capital, services and workers until 31 December 1992.

For the mentioned reasons of possibly being able to avoid the hurdle of unanimity, the Commission stuck to its decision of supporting the Schengen project while trying to keep things together, or for that matter, to keep the European Parliament informed. That decision had placed Commission politics in the middle of two processes that were moving at different speed, with Commissioner Bangemann in particular trying to be part of both at the same time. From Bangemann's interventions in the Parliament it was to be concluded that the Commission had taken a genuine interest in achieving some sort of free border crossing by any means so as to provide a symbolic success to the European public.

By choosing a path that excluded the Parliament, a conflict was initiated that soon acquired broad public dimensions. This conflict concerned the second *procedural* aspect of the "democratic deficit" in the Community, the other being the *normative* aspect of democracy that had been brought into the discourse by the Commission's report on the political right to vote in 1986. Yet, at the same time realizing Schengen was considered as one necessary step towards movement. And moving and waving closed passports at internal Community borders meant the creation of belonging as one of the three historical essentials of citizenship.⁷⁴ The Schengen approach thus contributed to move this dilemma of democratic procedure onto an open stage, thus revealing the profound tension that was generated by interrelated market-making and union-building. The emerging interest group demands that were often picked up and brought into Community discourse via Parliament kept the pressure for union-building measures high. They also contributed to creating the

⁷⁴ This would only work on the condition that the external borders of "Schengenland" were the same as the external Community borders, to be sure.

Commission's much desired publicizing of the matter of borders, albeit in a way that had not been designed or foreseen by the Commission. The following debates prove this point.

Politics: Three Reports

The newly adopted Commission politics included a pragmatic approach to the Schengen Group's contribution towards realizing the single internal market without frontiers, on the one hand, and being as communicative and open as possible towards the European Parliament's requests for information and transparency, on the other hand. The former turned out to be complicated and time consuming because the signed agreements could only enter into force once they had been ratified by all parliaments of the participating member states. That process was unpredictable, as it proceeded quite differently in the different Schengen countries

Three documents that were frequently cited represented a significant discursive turn towards a tone of pessimism and rejection of the Schengen Convention. One was an evaluation by the Dutch Standing Committee of Experts on International Immigration, Refugee and Criminal Law which included an opinion, recommendations and proposals concerning the parliamentary approval of the Schengen implementing agreement (Standing Committee, 1991). The second was the report of a control committee established by the French Senate on 26 June 1991 in order to examine "the construction and execution" of the Schengen Convention. Named after the committee's chairman, H. Paul Masson, this report was known as the Masson Report (Masson Report, 1991:1).⁷⁵ And the third was the EP's Second report of the Committee on Civil Liberties and Internal Affairs on the realization of the Schengen Agreement which is better known as the Outrive Report.⁷⁶ All three documents criticized the undemocratic character of the Schengen process on the one hand and the abundance of complexity on the other hand. Indeed they led to a legitimization

⁷⁵ For comments, see also: AE, no. 5651, 22 January 1992, pp. 11-12

⁷⁶ PE 202.540/final, 5 November 1992

crisis within the Community, while the process of ratifying Maastricht was still under way in some of the twelve Member States, including Germany, France, Ireland and Denmark

The Dutch Standing Committee Report, which was prepared at the request of the Dutch interest groups, produced something akin to a tool kit for democratic procedures. These included the establishment of parliamentary and judicial control as well as the publication of project proposals. As opposed to the EC Treaty that contained these guarantees, the Dutch document stated that the Schengen Convention lacked all of them. As the Standing Committee pointed out, "as long as there was no Community procedure within the EC, the Schengen Group had in any case - as far as possible - to seek links with the instances of the Community that incorporated the democratic character of the Community, such as for example the European Court of Justice." Consequently, and "[a]ccording to the opinion of the Committee the Supplementary Agreement [Schengen Convention] was not to be ratified, if a minimal amount of fixed guarantees were not provided" (Standing Committee, 1991:3) ⁷⁷ The Standing Committee forwarded a list of necessary conditions for the ratification of the Schengen Convention, including

- (a) a clarification of the position of the European Human Rights Convention (EHRC);
 - (b) the specification of a responsible court;
 - (c) the inclusion of the national parliaments before decisions were made;
 - (d) the guaranteed treatment of requests for asylum according to the EHRC;
 - (e) the possibility to question administrative decisions on legal grounds;
 - (f) a common definition and clarification of the terms 'public order' and 'national security';
 - (g) with a view to the establishment of the SIS, the protection of persons against illegally obtained information had to remain legally grounded;
 - (h) before ratification it was recommended to guarantee the right to insight into personal data within all Schengen states; and
 - (i) the provisory character of Schengen II had to be established
- (Standing Committee, 1991:4-5) ⁷⁸

⁷⁷ [my translation]

⁷⁸ [my translation]

This Dutch report then clarified the meaning of the lack of democracy by defining the democratic procedures which had to be established in order to overcome the problem. It was soon to become a commonly accepted yardstick in the ensuing debates within the European institutions, the European Parliament in particular (Steenbergen, 1992).

In fact, Schengen meant an exclusion of the European institutions of Parliament and the Court of Justice. The simple democratic principles of representation in the process of the realization of Schengen and control over and/or access to the Schengen instruments once they were established were not respected. In short, the Schengen Convention neither included nor aspired to establish democratic accountability. The only point that brought something akin to democracy into this process was the moment when parliaments were to ratify the finished project with a yes or no vote. According to the French Senate's Masson Report, this equaled a "misuse of legitimacy." More precisely, the report explained, that

[w]ith the application of the principle by virtue of which questions affecting the free movement of persons forms part of traditional diplomatic negotiation - and therefore excludes national representation, the Parliament only being asked to ratify by a yes or no vote - it may be said that on questions so closely affecting individual freedoms and the future of a society when it is a question of immigration, drugs or terrorism, this practice is tantamount to misuse of legitimacy: *democracy has truly been confiscated* ⁷⁹

Overall, the report emphasized the practical aspects that the French Senate foresaw, given the complicated and undemocratic procedures of the Schengen system. Not only the procedure of ratification contributed to the lack of democracy, but, as the report explained, also the incomprehensible process within and among the Schengen groups and sub-groups themselves. As the report specified,

[g]iven the fact that [responsible] persons are only named between two meetings, it is practically impossible to recognize the real negotiators, that is, those who are responsible for a decision [...] Who was the final responsible person to give orders in the area of airports as to the realization of the provisions of the common internal market? (Masson Report, 1991.34).⁸⁰

⁷⁹ [emphasis of the document] see also AE, No. 5651, 22 January 1992.

⁸⁰ [my translation]

It took great pains to point at the practical sources of what already was well known as the Community's "the democratic deficit" at that time. Thus, it declared that

the lack of consultation of national parliaments would fit exactly the description of a Europe that was constructed according to procedures that relied on and created a 'democratic deficit' [and it went on to explain that the Committee] did not want to return to this finding once again, it wanted to point at four examples that followed as practical consequences in the area of free movement of persons (Masson Report, 1991:35).⁸¹

And the Committee proceeded to provide examples from the areas of visa policy, asylum policy, police cooperation and the Schengen Information System (SIS)

As opposed to the Dutch report which had a strong legal bent to it, the Masson Report sought to put the emphasis on practical and procedural problems. This position was based on the fact that the Commission had sent a memo on the distinction between immigration and asylum policy to the Council and the Parliament, an action which suggested insecurity in the Commission's attitude towards the Schengen project. From this way of handling the issue, the Committee concluded

for Brussels civil servants to send such a memo on the right of asylum to the European Parliament means to implicitly acknowledge that it is necessary to lead the debate in public [...] to *re-introduce democratic interrelations to the process of examining a problem* which goes far beyond the responsibilities of the civil servants (Masson Report, 1991:38).⁸²

Similar to the Dutch report, the Masson report also stressed the lack of democracy. In turn, and much in line with the Dutch document, the second Outrive report on the realization of the Supplementary Schengen Agreement strongly criticized a "stubbornly persistent lack of transparency" in the process.⁸³ The report stood out in the Schengen discourse because it was among the first Community documents on Schengen to make

⁸¹ [my translation]

⁸² [emphasis of the document: my translation]

⁸³ PE 202.540/endg. p. 18 and passim; For other EP reports which critically took issue with the newly emerging Schengen policy, see for example, the Tsimas Report on Article 8A (PE 201.529/def. 2 October 1992) . the Malangré Report on the Freedom of Movement for Persons and Security in the European Community (EP Doc. A3-199/91, 25 September 1990) . For critical reports by national institutions see Standing Committee (1991) and Masson Report (1991)

explicit reference to Union citizenship.⁸⁴ It consisted of a motion for a resolution and an explanatory statement. The main elements of the report were based on a request to respect the principles of equality and democracy in the process. The demands included

- (1) the right of access to the documents during the process of realizing Schengen,
- (2) the establishment of judicial control by designating a responsible court of justice and
- (3) the request to fulfill the process in time

Perhaps most importantly for the coming period of citizenship practice, the report introduced a new way of thinking about asylum and immigration policy based on the principle of equality among all citizens.⁸⁵ More specifically, the report related to the principle of equality when it stated that

nine EC Member States intend to apply the Supplementary Agreement on the Realization of Schengen [--Belgium, the Netherlands, Luxembourg, Germany, France, Italy, Spain, Portugal and Greece had signed at that time--], additional rights and duties would apply to their citizens and those who want to enter the sovereign territory [of these states] and that citizens of non-Schengen countries would be treated differently from those of other EC Member States.⁸⁶

With the possibility of such newly emerging differences, the document asked the Commission to "work towards the realization of the principle of equality and freedom of movement, as intended by the Supplementary Agreement for all citizens - men and women - and also from third countries within the Community."⁸⁷ The Outrive report clearly considered the Schengen Convention as a transitory period. It represented an

appropriate *laboratory* for Community regulation on those areas which were covered by the agreement and which can figure as starting point for the sensibilization of the European Parliament and the national parliaments on these matters.⁸⁸

⁸⁴ PE 162.995, 19 November 1992, p. 30.

⁸⁵ PE 202.540/engd.

⁸⁶ PE 162.995, p. 30.

⁸⁷ PE 162.995, p. 32 [emphasis added].

⁸⁸ PE 162.995, p. 31 [emphasis added]. In the explanatory statement, the report specified, that the "Schengen Agreement - as a laboratory for the Twelve - has positive aspects to it or, at least, potential possibilities" (PE 202.540/final, p. 17).

As the discursive analysis has shown so far, this effect had in fact been produced by Schengen. Indeed, Bangemann also mentioned this role when he stated during an EP question period that he had "always defended Schengen as a type of *laboratory*, as a test for the abolition of borders," even though he shared part of the criticism that the EP had voiced against it.⁸⁹ With reference to the laboratory role of the Schengen Convention, the report stressed that, once the intermediate period was over, it would be necessary to "formally establish the principles of parliamentary control, judicial control, and information of Community citizens." It also requested the possibility of access to the documents before decisions would be made as well as regular reports on progress in implementing the agreement. The EP also considered the establishment of international control of Schengen practice as necessary and suggested that the European Court of Justice was the appropriate institution for this.⁹⁰

In the explanatory statement, the report acknowledged the Commission's efforts to inform the EP and always relate Schengen to the realization of the stipulations of Article 8a EEC Treaty.⁹¹ It did, however, point out the very problematic situation of democratic control and transparency. This situation was made worse by the strong influence of legal and police measures regarding the movement of persons which, as the report stated, did not have much in common with the original idea to ease the border crossing. "the civil servants of the departments of justice and police in particular had taken over the Schengen platform." As a consequence of this "crime, terrorism, drug policy, illegal third country foreigners and asylum seekers are always mentioned in one line." And it stressed, "such a populist bent and lack of dignity are indeed pitiful."⁹² Indeed, the increasingly strong influence of police cooperation on the Schengen process also created dismay on the side

⁸⁹ EP minutes, 14 May 1991, p. 139 [debate on the Wogau report] [see also correspondence between Bangemann and Stauffenberg of 27.5.91]

⁹⁰ PE 162.995, p. 33

⁹¹ PE 202.540/final, p. 18

⁹² PE 202.540/final, p. 20 [my translation]

of the Commission. As Commissioner Bangemann reported to the EP, with such strong emphasis on police and security, the Schengen process had forced him to develop an interest in areas that were entirely alien to his portfolio. According to Bangemann, he had "even in [his] wildest dreams, [.] never considered getting mixed up in police cooperation."⁹³

The focus on the complex problem of immigration, the situation of third country citizens who have been residents of the Community for a long time, and the expected increase of asylum seekers as a consequence of anticipated atrocities in the collapsing Eastern bloc, introduced a new tone and with it a new policy perspective for the EU. The motion for a resolution of the Otrive report made three proposals for addressing this problem: (1) it asked for a harmonization of visa and asylum policies within the framework of the Community; (2) it asked that the principle of equality be applied to all citizens, including third country nationals; and (3) it asked the Commission and the Council to focus on a democratic and humanitarian asylum policy with a reference to the international dimension of the refugee problem.⁹⁴

The political weight behind this report was undoubtedly strengthened by the legal basis of these arguments. As the EP made clear, in the event that the "free movement of goods, services, capital and persons" were not realized according to the stipulations of the 1985 White Paper, "particular Member States will be taken to the European Court of Justice." In this regard, the EP welcomed the fact that Bangemann had spoken in favour of the application of Article 8A EEC Treaty and had declared that "the Commission shared the position of the EP on this point and would try to find a regulation on the Community level."⁹⁵

⁹³ AE, No. 5859, 18 November 1992, p. 3.

⁹⁴ PE 162 995, pp. 31-32.

⁹⁵ PE 202 540/final, p. 29.

Two further Parliamentary reports, a second Outrive Report on Schengen and the Malangré Report on free movement of persons, stressed the practical problems caused by this situation. The Outrive document pointed out the contradictory discourse of introducing a new freedom of movement by removing internal frontiers according to Article 8A EEC Treaty and the parallel request for newly fortified borders around the Schengen countries as a terrain within the Community

[i]f ... the conditions according to Title II of the Schengen [II] agreement have to be realized in relation with the border traffic with Member States of the Community that have not signed the agreement, then we are dealing with real border controls which are contradictory to the envisaged European integration

Thus the Outrive report summarized there would be two future categories of citizens which "stood in flagrant contradiction with the philosophy of European integration indeed."⁹⁶

These reports notwithstanding, and despite the secretive GCN policy, the Commission succeeded in establishing a way of providing the EP with regular, albeit second hand, information about the negotiating process. As the GCN policy included the establishment of a policy procedure in which the parliaments (supranational or national) were only granted the possibility of either accepting or denying what were already completed matters, this information was urgently requested as a minimum commitment to openness. One of the question periods in the EP resulted in vigorous debates which suggested that the "engine" function of the Schengen Agreement was doomed to failure. On this occasion, in February 1991, Bangemann as Vice-President of the Commission and the Commissioner with responsibility for the completion of the 1992 programme who had "always insisted that border controls on people and goods moving within the EC must end from January 1, 1993" answered questions on the situation of borders and free movement (European Parliament, 1992a)

⁹⁶ PE 202.540/final, p. 22: for the Malangré Report on the Freedom of Movement for Persons and Security in the European Community see EP Doc A3-199/91, 25 September 1990

It turned out that throughout the Schengen process the Commission did not develop fond memories about the cooperation between Community officials and officials of national parliaments and governments. Bangemann was quite outspoken with regard to the problems he encountered while trying to deal with national offices. For example, on 20 and 21 February 1991 during a question period on asylum in the European Parliament, he named some of the problems that had often inhibited effective cooperation between the supranational and national bureaucracies. He stated that in "the national administrations there are people who are not in the least willing to listen to anything about the Community. That is particularly true with regard to the Ministries of the Interior. It is a plague to have the Commission participating as observer in the work of TREVI '92 - I have only been able to succeed by relying almost exclusively on the strategy of blackmailing - after all, this is obviously a question that is related to the internal market."⁹⁷

According to Bangemann, then, the origins of the democratic deficit were to be found not in the Commission but in national administrations. He therefore suggested that the Parliament concentrate its energy on addressing the real enemy. Exclaiming "let us not quarrel!", he explained that there was "no reason at all" for conflict because the Commission was "on the same wavelength" as the Parliament. It was "trying to establish a common jurisdiction. But that was not possible if [they] always missed their enemy." He suggested that the European Parliament "search for the real enemy," and added that he was perfectly able to describe the type of a bureaucrat from a national ministry of the interior whom "the EP should attack!" (Masson Report, 1991 43).⁹⁸

National officials however were not blind to the complexity of the problem. In a report which had been approved at the Maastricht summit the European Ministers responsible for immigration stressed that,

⁹⁷ [my translation]

⁹⁸ [my translation]

if we insist too much on making procedures uniform among the Twelve, the process of harmonization risks being slowed down, [as] the status of the more or less independent administrative bodies, as well as the role of national legislation in the asylum procedure are questions which touch on fundamental aspects of the State's organization

Still, they added that it was "certainly desirable to agree on the length of time a request be studied, on the working out of a uniform priority procedure for dealing with clearly unfounded requests, etc. [however .] in the short-term, it would be wise to give priority to the work on harmonizing the ground rules " In a word, the Ministers' report concluded that, on one hand "it is wrong to suppose that it is possible to establish, at European level, a certain number of legal rules which would constitute a system dealing with all the aspects of a request for asylum", yet on the other hand, "it is possible to imagine a more or less abstract legal framework for looking at requests "99

The national ministers' awareness of the complexity of the issues did not, however, lead to a straightforward solution of the basic problem: how could free movement of persons be established as the symbol of belonging and an enforcement of a European identity? The debates over border definitions and the related border politics including asylum, immigration, drugs, crime and terrorism had all developed special institutional networks that operated according to their own not widely publicized and much less accessible rules. This diversion of passport policymaking led far astray from the question of what were the conditions for political participation in the EC/U? The European Parliament had not lost that focus as the Ourive Report's cross reference to the concept of citizenship underscored

Conclusion

To sum up, border politics in the 1990s cast light on the unfolding debate about the democratic deficit which had been generated by the signing of the Schengen

⁹⁹ AE, No 5657, 30 January 1992, p. 13

Convention This debate demonstrated two things. On the one hand, the Schengen Convention's structure was without doubt undemocratic and was, therefore, contested by the Parliament as well as several interest groups. On the other, the debate made clear, that "borders and border controls must not be confused" (Bolten, 1992:11) That is, the different legal spaces within the EC had to be unified under one structure in order to make the free movement of persons work. Until this was accomplished, free movement would continue to be one aspect of the market that generated conflicts. As the debates over border politics showed, the Commission preferred progress towards the establishment of the internal market without frontiers over stagnation. It therefore accepted ascribing the limited role of observer status to some of the many committees that dealt with the issue. The European Parliament was, however, completely excluded from any direct influence on the process. It could only indirectly put pressure on the Commission, which it did quite successfully as the question periods and Commissioner Bangemann's tightrope act between the EP and the Schengen group proved.

That situation would of course create diverging positions among the Parliament and the Commission. After all, within the 1990s discourse about the "democratic deficit" this lack of the constituency's position did represent a particularly strong affront against the requirements of democratic politics based on the minimal "principles of politico-parliamentary control, judicial control and information of Community citizens" as the Outrive report stressed ¹⁰⁰ It also brought a new aspect of thinking about territoriality to the fore. Departing from the perception of citizenship as membership in a nation-state (Brubaker, 1992), thus referring to a bounded territory that entails the institutional arrangements of the modern nation state, Community border politics during the Maastricht period initiated the establishment of a dispersed rather than a centralized police system

¹⁰⁰ PE 162 995, p. 31

This stage of citizenship practice as border politics showed that passport policy was not only connected with the philosophy of special rights but was a central basis for the functioning of the internal market, something which in turn required political foundations. These foundations were built on political legitimacy on the one hand, and the establishment of regulations on residence, movement and borders on the other. The former had been addressed by special rights policy and negotiated by the three central European institutions, the Parliament, the Commission and the Council of Ministers. The latter policy, however, went increasingly astray from traditional policymaking procedures in the Community. Beginning with the 1984 Saarbrücken Agreement on the Abolition of Border Controls among Germany and France and the 1985 Schengen Convention, passport policy began to become divided into a Community and a non-Community approach with the latter excluding EP contributions entirely, and reducing the Commission's influence to that of an observer in both cases. It proved important to keep in mind for the future that such distancing from Community policy was carried out during a time when democratic legitimacy was at the forefront of Community and public discourse. As a highly sensitive issue, passport policy soon became the province of a seemingly impermeable network of groups and committees that seemed to be non-transparent even for those Commission officials most closely involved in the process. Strangely, this situation contradicted the politics of legitimacy that was otherwise regarded as the founding principle for a new Community identity in the 1990s. In discussing border politics, Parts B and C of this chapter focused on this contradiction, through an analysis of both the extension of citizens' access to new territory based on their freedom to move across borders and the desire to control borders for reasons of security.¹⁰¹ This process of re-defining borders territorially contributed to the creation of a new visibility of citizenship politics in the EC/U.

¹⁰¹ In a report on immigration policies which was written under the auspices of DG V, this dilemma is well expressed with the title line "Between the need for control and the desire for integration" (Commission, 1992b).

PART D: ESTABLISHING THE RIGHT TO PARTICIPATE

While border politics generated increasing concerns about a democratic deficit in the EC, the emergence of a citizenship discourse identifying that lack of democracy as mainly one of procedure and lack of control began to focus on *access* to political participation by citizens. The emergence of these concerns may be appropriately divided into four stages. During the first, which included the preparatory documents and debates towards the convening of an IGC on political union at Dublin II, 25-26 June 1990, debate was triggered by a Spanish letter written before an interinstitutional conference¹⁰² in May 1990. The second stage included the time between the Dublin II Council and the first meeting of the IGC on 14-15 December 1990. In this period, the concept of "European citizenship" became part of the Community discourse. The third stage lasted until the Maastricht European Council in December 1991, and was mostly dedicated to a legal definition of citizenship so as to include it in the Treaties. The fourth stage began after Maastricht period and ended with the first Citizenship report of the Commission in 1993. During this stage, the practical aspects of citizenship policy such as voting rights were refined.

Stage One - Triggering Debate over Citizenship

10 April 1990	Italian Note
4 May 1990	Gonzalez Letter
15 May 1990	Greek Memorandum
17 May 1990	Interinstitutional Preparatory Conference at Strasbourg

Italian Note and Greek Memorandum. Shortly before the decision about a separate IGC on political union was made, several documents contributed to the composition of its contents. The Italian delegation observed, for example, that there "already exists a single Europe of behaviours, values, life patterns and a single civil

¹⁰² The conference was termed "interinstitutional" because it included the main Community institutions. It was not restricted to the participation of the Member States like an IGC.

society," and "a European citizen is developing even before actions by States shape Europe" and concluded that "[a] legal framework needs to be provided to this new situation."¹⁰³¹⁰⁴ A Greek Memorandum similarly stressed the necessity for a "legal order" stating that "[a]s well as the democratic deficit in the functioning of the institutions, the Community should remedy shortcomings and strengthen its citizens' feeling of belonging to one legal community." To this end, the Greek delegation argued that

the concepts of European citizen and of basic human rights could be recognized in the Treaty. Citizens living in another Member State should gradually be granted the right to vote in local elections and in elections for the European Parliament, in conjunction with the adoption of a uniform electoral procedure. Citizens' possibilities of access to the Court of Justice should be simplified (Greek Memorandum, 1992:280).

In sum, these two delegations' views on citizenship policy included the aspects of the political right to vote in local and PE elections, the civil right of residence throughout the Community and the possibility to practice civil rights based on improved access to the legal system. This was a perspective and procedure that had been long sought by both the European Parliament as well as the Commission, as the historical experience of the two previous periods of citizenship practice has shown

Interinstitutional Preparatory Conference. Next came the interinstitutional preparatory conference for the IGC. It took place at Strasbourg on 17 May 1990 and joined the representatives of the European Council, the Commission, the Parliament and the Member States.¹⁰⁵ The conference had been demanded as a pre-conference for the IGC by the Martin (I) Report (Martin, 1991:51). During this conference the participants' expectations for the coming Dublin (II) Council were specified as regards to the question of whether or not a decision would be made about convening of a second IGC on political

¹⁰³ Europe Documents, No. 1611, 10 April 1990, p. 2

¹⁰⁴ As Dinan notes, Gianni de Michelis, Italy's foreign minister "played a key role in pushing the Community towards EPU" (Dinan, 1994:165). This note reflects that interest in further European integration.

¹⁰⁵ SEC(90) 1015 /2, 18 May 1990

union. There was also discussion about citizenship, defining it as "one of three supporting pillars of the new political project."¹⁰⁶

Gonzalez Letter This topic was introduced to the conference by a letter from Spanish Prime Minister Felipe Gonzalez to the President of the Council on 4 May 1990, which proposed to include citizenship in the Treaty.¹⁰⁷ While citizenship was not a completely new topic in Community politics, this letter did present citizenship in a way that related early Community citizenship practice in the 1970s to the recent developments of economic progress and the demand for political integration. It placed Community citizenship within the context of the abolition of frontiers and the free movement of persons, as two issues that were related to the legal stipulation of citizenship rights. This new context required the creation of a "real content" for political union, as Spanish representative Fernandez Ordoñez explained during the conference. It was, for example, possible to think of such a political union as being based on "three pillars: an integrated economic space, a common foreign and security policy, and a common citizenship." And, as Ordoñez specified, a common citizenship might eventually embrace

- une citoyenneté qui s'acquiert, s'exerce et se perd avec la citoyenneté d'un Etat membre et non de façon séparée,
- des droits fondamentaux de citoyens de l'Union, tels qu'ils sont déjà proposés dans le Mémorandum belge,
- des droits politiques des citoyens de l'Union,
- des libertés concrètes, telles qu'elles avaient été proposées par le comité Adonnino,
- des politiques communes de l'Union au service des citoyens.¹⁰⁸

With this intervention the Spanish delegation began to mobilize resources that had been generated during more than a decade and a half of EC citizenship practice. This contribution was particularly important because it set in motion a process that was to sharpen the concept of supranational citizenship that so far had not been visible in the discourse even though the policy packages of special rights and passport policy had been

¹⁰⁶ SEC(90) 1015 /2, 18 May 1990, p. 6

¹⁰⁷ SEC(90) 1084, see also AE, No. 5252, 11 May 1990, p. 3 and Closa (1992.1153)

¹⁰⁸ SEC(90) 1015 /2, p. 6

pursued for a decade and a half. Even though citizenship and citizens' rights had been increasingly brought into the discussion during the preparations for the IGC, no participant in the debate had so far taken pains to name the issue, and provide ideas of how to flesh it out and position it within the institutional framework of the Community. Citizenship policy, the Spanish suggested, could support a qualitative change of the Community, that is, a leap forward from a Community based on the common market to a Community tied together by political rights. "The idea was backed by the Italian and the Danish delegations, it was regarded as a rather vague notion by some other Member States. Thus, the Belgian representatives argued that citizenship should be seen rather as an objective to be achieved and the UK believed that it was premature to consider citizenship as a constitutive element of political union" (Closa, 1992: 1154). "In the Spanish view, the creation of a new instance of political power, i.e. the Union, would require the definition of rights and duties of the affected individuals as happens in national States" (Solbes Mira, 1991: 168-170, cf. Closa 1992: 1154).

In sum, the conference participants demonstrated, on the whole, a receptive attitude towards political union. Commission president Jacques Delors requested particular attention to three subjects: (1) political cooperation/enlargement, (2) democratization of the Community in particular through the creation of a Community citizenship as proposed by President Gonzalez, (3) efficiency of Community procedures.¹⁰⁹

Foreign Ministers' Note for Reflection. According to the Dublin I mandate, the Foreign Ministers of the Twelve produced a "reflection document" on political union that was submitted to the European Council in Dublin II, 25-26 June 1990.¹¹⁰ This document reflected the preceding debates and a series of "non-papers" by various delegations. It drew on three points which had been defined by the European Council as being central to

¹⁰⁹ SEC(90) 1015 /2, pp. 3-4.

¹¹⁰ Europe Documents, No. 1628, 23 June 1990, 5 pp.

the IGC on political union. These points included "strengthening democratic legitimacy of the Union, enabling the Community and its institutions to respond efficiently and effectively to the demands of the new situation, and assuring unity and coherence in the Community's international action"¹¹¹ The overall message of the document was that the IGC had to deal with the "transformation of the Community from an entity mainly based on economic integration and political cooperation into a union of a political nature, including a common foreign and security policy "

In a word, this note referred to the model of a union that was based on democratic legitimacy. One aspect of such a politically legitimate union was, according to the document, the development of citizenship policy. It noted, for example, that the "overall objective of Political Union" included three main aspects. First, a scope that included the transfer of competences, the notion of "Community citizenship" and the free circulation of persons. As regards special rights policy, the Foreign Ministers asked

[h]ow will the Union include and extend the notion of *Community citizenship* carrying with it specific rights (human, political, social, the right of complete free movement and residence ...) for the citizens of Member States by virtue of these states belonging to the Union?

The second aspect referred to institutional matters, including the necessity to define "[t]o what extent new or changed institutional arrangements will be required to ensure the unity and coherence of all the constituent elements of the European Union." And third, the document stressed the importance of the next Dublin Council at the end of June 1990 for defining the meaning and application of such general principles as national identity and subsidiarity.¹¹²

In this quickly written reflection note, then, a functional bias of Community citizenship policy could be discerned. The message was clear that if the Community was to turn into a "union of a political nature" with a mandate to take foreign policy decisions,

¹¹¹ Europe Documents, No. 1628, pp. 1-2.

¹¹² Europe Documents, No. 1628, p. 2 [emphasis added].

citizens as constituents of this new entity needed to be bound to the Community. Similarly, the European Parliament as the representative of this constituency needed to acquire more powers. These were the grounds on which the ongoing problem of democratic legitimacy was to be tackled.

The straightforward style of this document then appeared to be in tune with the Mitterrand-Kohl initiative. Its call for political change differed from more cautious notes such as those of the Italian and the Greek delegations. The Commission's approach to change at that time was a similarly cautious one. As Mr. David Williamson, Secretary-General of the Commission and head of the so-called Williamson group on institutional change¹¹³ put it, there were four key elements to European Union, "the internal market, the economic and monetary union, a common foreign policy and a European citizenship." Many members of the group shared the understanding that a project resting on these elements could also be approached via a type of "Single Act bis."¹¹⁴ Once again the Commission signaled its preference for cautious steps towards long-term change over bold words in favour of short term change. At this point of the citizenship story, it remains to be seen how past experience and the current political momentum worked together, and how this affected sovereignty transfers towards supranational state-building.

Stage Two - Mobilizing Resources

25-26 June 1990	European Council meeting at Dublin (II)
11 July 1990	Martin II Report, Resolution on the IGC
24 September 1990	Spanish Proposal on Citizenship (I)
21 October 1990	Commission opinion on the proposal for amendment of the Treaty establishing the European Economic Community with a view to Political Union

¹¹³ The Williamson Group which involved civil servants and had been founded in order to "examiner les principaux éléments qui doivent être traités dans la perspective du renforcement de la dimension politique et institutionnelle de l'Europe autant que nécessaire". The group was founded on 16 May 1990 and presided over by Secretary General of the Commission, David Williamson. It included one personal representative of each Commission member as well as of the judicial service. Its work turned out to be crucial for the Commission's contribution to the IGC (see COM(90)PV 1012, p. 7, cf. SEC(90) 1215, 15 June 1990, p. 1 "Rapport intérimaire du groupe").

¹¹⁴ SG(90) D/04842, 8 June 1990, p. 2.

Dublin II According to Commission president Jacques Delors, five major questions needed to be tackled at the Dublin II summit.

First, can progress be made on foreign policy and security; second, can the Community's operating procedures be made more democratic; third, should the Community's competences be extended, fourth, how can this whole be assured a maximum of effectiveness, and fifth, how can a flesh and blood content be given to the notion of European citizenship so judiciously proposed by Felipe Gonzalez?¹¹⁵

The conclusions of the Council Presidency summarized the context of Community politics very well when it noted

[t]he European Council, determined to ensure the continued dynamic development of the Community at a time of great challenge for Europe and the world, agreed to intensify the process of transforming relations as a whole among Member States into a European union invested with the necessary means of action

The president further reported on Council discussions concerning ways to improve both the individual citizen's sense of belonging to the Community on one hand, and the Community's role in the world on the other. Accordingly, the final document went on to stress the essential importance of action in areas that were directly related to the individual citizen if the project of political union was to be successful

With a view to enhancing the benefits which our peoples derive from belonging to a Community which has as its *raison d'être* the promotion of their rights, their freedoms and their welfare, the European Council dealt with a number of themes of particular relevance to the individual citizen including the free movement of persons, the environment, drugs and their links with organized crime, and anti-Semitism.¹¹⁶

Overall assessments of the Council defined the meeting as a breakthrough. Thus, President Enrique Baron Crespo of the EP announced the "Heads of State and Government have come some way towards Parliament's approach to European Union,"¹¹⁷ and the president of the European Council, Mr Haughey declared that

¹¹⁵ AE, No 5281, 23 June 1990, p 4

¹¹⁶ Bull. EC 6, 1990, p 8

¹¹⁷ A, No 5284, 28 June 1990, p 3

decisions taken on convening the two intergovernmental conferences represented "another milestone in the Community's development which in itself would suffice to qualify [the] meeting of the European Council as a major success"¹¹⁸ Quite to the contrary, however, Mrs. Thatcher termed Dublin II a "routine summit" According to her understanding the IGC on political union "should essentially aim at improving the function of the existing European institutions " To her, this meant "the Twelve wish to continue to be sovereign states, willing to cooperate "¹¹⁹

Other participants of the Council obviously did not share this perception of protecting state sovereignty. For example, Mr. Mitterrand supported the proposal by Mr. Gonzalez to give a concrete content to the notion of a Europe of the Citizens and Chancellor Kohl summarized the prevailing expectations among the conference participants when he stated that it was "urgent to open the dossier on political union "¹²⁰ And as the Bangemann cabinet stressed within the framework of the Williamson Group, political union could not be built without a constitution that granted equal and enforceable rights to European citizens The project required, therefore, a reform of Community legal practice (Commission, 1990c).¹²¹ Clearly, these statements included a notion of union-building Indeed, from this discourse it is fair to conclude that citizenship was a necessary component of the Union that was to be built

In sum, on the basis of the paper submitted by the Foreign Ministers and, despite the at times bitter debates over whether or not to convene an IGC on political union, the second European Council at Dublin, 25 and 26 June 1990, finally decided unanimously to convene the IGC on political union on 14 December, one day after convening the IGC on EMU¹²² The IGC on political union was to be prepared by the Foreign Ministers and

¹¹⁸ AE. No. 52xx. 12 July 1990, p. x

¹¹⁹ AE. No. 5283. 27 June 1990, p. 4

¹²⁰ AE. No. 5282. 25/26 June 1990, p. 4

¹²¹ [my translation]

¹²² Bull. EC 6. 1990, p. 7

cover two stages, the first of which would last until the special Council at 6 and 7 October 1990, and the second lasting until the opening of the IGC on 14 December 1990. The preparatory work for these meetings was to be carried out by a working party of personal representatives of the Ministers and of the President of the Commission which was to meet once a week.¹²³

This timing meant that proposals for EPU had to be written in very short order.¹²⁴ And, as things were, most of the proposals had to be drafted basically from scratch. After all, before the "acceleration of history"¹²⁵ in the late 1980s, the EPU had not been on the Community's agenda. Therefore, the project of EPU remained to be defined for the better part of the preparatory process; it was, as some writers describe it, "blurred". "lightly prepared" and "precision was lacking" (Dinan, 1994:167; Nicoll, 1993:19; Ross, 1995:90). Moreover, in the absence of a preparatory phase comparable to that for EMU or the Single European Act (SEA) during which well equipped Committees were working on the subject, the amount of paper that was drafted often had not been subjected to a lengthy bureaucratic process but were handled by only a few politicians. This opened a window of opportunity for new ideas. The rapid expansion towards new policy areas caused a situation in which policymakers in the Community were frequently casting for ideas. Subsequently, those who did have resources to draw on and were able to present them convincingly had a good chance to push them through without being too seriously challenged.

Spanish Note Between the Dublin II Council and the convening of the IGC on political union on 14 December 1990 a Spanish proposal for citizenship¹²⁶ proved to be

¹²³ 7536/90 (Presse 116 - G), p. 5, Press Release of 16/17/VII/1990.

¹²⁴ As Ross comments, "[n]o one had really enough time to give full thought to this long list of contentious issues [the issues related with EPU] in the few short working months between Dublin II in June and the official opening of the IGC in December 1990" (Ross, 1995:89).

¹²⁵ This is Jacques Delors' term for the quickening tempo of developments in Eastern Europe that culminated in the revolution of 1989 (cf. Dinan, 1994:158).

¹²⁶ SN/3940/90, 24 September 1990.

particularly influential. Beyond this, a series of Commission contributions were elaborated by a group that was coordinated by Commission Secretary-General Williamson.¹²⁷ Both the European Parliament and the Commission pursued the potential innovations of citizenship practice within the framework of debates over institutional reform. While the Williamson Group had decided to make citizenship one special issue of debate that required elaboration,¹²⁸ the Parliament adopted a package of four reports that formed the institutional reform package.¹²⁹ In his intervention during the EP debate over these four reports, Commission president Delors defined two central issues. First, he stressed that it was important to reconsider whether it was at that time preferable to focus on the final stage of Community development (as opposed to move one further step ahead), and secondly, he declared that democracy was composed of a dialectical process between those who governed and those who were governed. That is, democracy meant "an appeal to the participation of citizens."¹³⁰ Referring to the Gonzalez Letter, he pointed out that the final element of democratization was European citizenship. However, he added, "tangible signs" such as, for example the single currency, and that went beyond the adoption of the European Convention on Human Rights and Fundamental Freedoms were required.¹³¹

Soon after the Gonzalez Letter Spanish authorities produced a second note on citizenship.¹³² This document stressed the significant impact on economic and monetary

¹²⁷ As Ross points out, "[o]nly a very few people actually participated in writing the Commission documents for political union." Among them was the Secretary-General (Ross, 1995: 90).

¹²⁸ COM(90)PV 1012, p. 2, c.f. SEC(90) 1215, 15 June 1990, p. 1. As the document stated, "[l]e groupe se propose de poursuivre ses travaux sur les points suivants - unité et cohérence dans l'action internationale de la Communauté, - citoyenneté européenne, thème qui a été discuté dans les instances du Conseil et qui pourrait avoir un effet positif sur l'attitude des citoyens et des jeunes."

¹²⁹ SP(90) 1991/4, Strasbourg, 13 July 1990. The reports included the Colombo report on the Constitution of the Union, the Martin Report on the IGC, the Giscard d'Estaing report on subsidiarity and the Duverger report on the assizes. See Martin report - PE 137 068/fin, 27 February 1990. For the resolutions of 11 July 1990 on these reports see Official Journal EC, No. C 231, 17 September 1990 as well as PE 143 504 (Giscard d'Estaing, Colombo, Martin) and PE 143 504 (Duverger).

¹³⁰ SG(90) D/05797, 16 July 1990, p. 12 [my translation].

¹³¹ SG(90) D/05797, p. 16.

¹³² SG(90) D/06001, 24 July 1990 [Union politique et citoyenneté commune] (French version).

union that had been caused by the SEA. It pointed out that it was time, however, to work on the regrettable fact that only those citizens who occupied functions of consumers or producers had equal access to the Community. For a political union to be created, this economic dimension needed to be transcended, the document said.¹³³ The type of citizenship aspired by this proposal was based on the observation that "the concept of Community citizenship was different from the notion of the Europe of citizens that had been introduced at the Fontainebleau summit."¹³⁴

This new concept of citizenship could be materialized because the resources had been generated earlier. They could now be mobilized based on three components of new meaning that were now part of the *acquis*. First, citizenship was to grant rights that were special to the particular territory of the Community (free movement, residence, establishment, vote in municipal elections at the place of residence, vote in European elections at the place of residence). Second, these rights could only be granted in a "judicial European space", which needed to be established, and third, the visible sign of European citizenship while traveling outside of the Community was the European passport.¹³⁵ The document further stressed that in order to turn European citizenship into practice, it was important to consider citizenship as including political, economic and social citizenship rights. Such an understanding of citizenship implied that

[l]a mise en oeuvre du concept de citoyenneté communautaire doit tenir compte du fait que les droits des citoyens sont *politiques, économiques et sociaux*, l'objectif de l'union politique devant consister, à partir de normes minimales, à éliminer progressivement les disparités existant entre les citoyens de la Communauté. Cela implique un transfert de compétences à l'union et, le cas échéant, l'élaboration de nouvelles politiques.¹³⁶

Whether intended or not, the Spanish authorities invoked the Marshallian triad of citizenship rights, including the implication that social rights were progressive and aiming

¹³³ SG(90) D/06001, p. 1

¹³⁴ SG(90) D/06001, p. 2 [my translation]

¹³⁵ SG(90) D/06001, p. 3

¹³⁶ SG(90) D/06001, p. 4

at an increasing equalization of access to citizenship over time¹³⁷ This dynamic perspective on equal citizenship rights was new in Community history Previously, Community citizenship policy was part of the project which emerged from the necessity of creating identity on the one hand, and the Parliament's continuous push for a link between citizens in the Euro-polity, on the other While policymakers had understood identity in Community rather than individual terms (Paris, 1974), and promoted it as solidarity and equality among those who participated in the market not in the Community as a whole (Fontainebleau, 1984),¹³⁸ they had never before voiced the intention to engage in creating equality among *all* citizens based on progressive citizenship rights With its novel focus on dynamically developing citizenship rights, the Spanish proposal thus opened a perspective for European citizenship practice It could however only do so because the resources were available

Spanish Proposal for Citizenship (I) This perspective was refined in September with a Spanish Government proposal on "European Citizenship" which represented an elaborate answer to both the Foreign Minister's question regarding citizenship ("how to include and extend the notion of Community citizenship carrying with it specific rights [] for the citizens of Member States by virtue of these states belonging to the Union?"¹³⁹) and Delors' inquiry about how to give a "flesh and blood content" to the notion of European citizenship as proposed by Felipe Gonzalez¹⁴⁰

The proposal located citizenship practice within an integrated European space, as defined by three basic elements a common market area, free movement of persons, and foreign policy These three aspects were interlocked in different ways With the

¹³⁷ On the broad and quite farreaching Spanish approach to citizenship based on the principle of equity, see also Degen (1993 751-52).

¹³⁸ Article 48(2) of the EEC Treaty stipulates that the freedom of movement entail the "abolition of any discrimination based on nationality between workers of the Member States as regards employment remuneration and other conditions of work and employment "

¹³⁹ Europe Documents, No 1628, 23 June 1990, p 2

¹⁴⁰ AE, No 5281, p. 4

establishment of the new internal market --and soon EMU--the movement of persons became a crucial factor. Despite new possibilities and manifold efforts to include groups of citizens by providing them with the opportunity to move across internal borders and establish themselves in Member States of which they were not nationals, the fact of being a moving market participant never actually enabled Community citizens to achieve anything more than the de-facto status of "privileged foreigners." As the proposal pointed out, in view of the upcoming development towards political union --possibly including a common foreign and security policy-- the status quo would undergo radical changes. That "requires the creation of a common integrated area, where the European citizen will have a central and fundamental role", and, to this end, the Spanish Government proposal proceeded, it was "important to define a citizenship of the European Political Union."¹⁴¹ That citizenship could be defined as

personal and inalienable status of citizens of Member States, which by virtue of their membership in the Union, have special rights and tasks, inherent in the framework of the Union, which are exercised and protected specifically within the borders of the Community, without this prejudicing the possibility of taking advantage of this same quality of European citizen also outside the said borders.

As the document went on to emphasize, citizenship was a flexible and dynamic concept, it needed to be approached both in principle as well as in practice. Hence, the suggestion forwarded by this proposal was to understand citizenship as developing along with political union, that is, the "progress which will be made for the union to attain its final objective will be accompanied by a more precise and complete definition of the quality of European citizens." The Spanish government emphasized the need to make a qualitative leap so as to launch this dynamic development of citizenship. It therefore recommended that the IGC

debate the necessity of changing or completing the treaties in such a way as to at least define and resolve the notion of citizenship, as well as the status civitatis,

¹⁴¹ Europe Documents, No. 1653, 2 October 1990, p. 1 and passim

designed as a set of rights, freedoms and obligations of citizens of the European Union.

To this end, the Spanish proposal defined three sets of rights and responsibility that informed the eventual content of European citizenship, namely, those that referred to national, Community and Union citizenship respectively ¹⁴² While Community citizenship did not yet reach beyond the notion of a "privileged foreigner" (with no political rights), Union citizenship was to grant these "privileged foreigners" rights in order to participate as members in the context of their Community Member State of residence. These rights were to be composed of (1) special basic rights, (2) new (dynamic) rights, and (3) protective rights. The special basic rights comprised "complete freedom of movement, free choice of place of residence and free participation in political life in the place of residence." The new rights were to develop dynamically according to the interdependence of citizenship policy and other policy areas such as, for example, social policy, culture and the environment. And the dynamic rights would establish consular protection for Union citizens outside Community territory ¹⁴³

As the document noted, a series of these rights were already--at least partially--in place or else had been part of policy negotiations among the Community institutions and the Member States. Thus special rights policy in the 1970s and 1980s established the right of residence for workers and their families and students. ¹⁴⁴ There was also a renewed debate and a Commission proposal for a Council directive on the right to vote and stand for election in European and municipal elections at one's place of residence in 1988 ¹⁴⁵ The document suggested however including these rights in the Treaty so that they would

¹⁴² Europe Documents, No. 1653, p. 2

¹⁴³ Europe Documents, No. 1653, p. 3

¹⁴⁴ For the result of an over and over again refined debate about the highly sensitive directive on the rights of residence, see OJ EC, No. L 180, 13.7.90, Council Directives on (1) the rights of residence (for insured and non-welfare dependent) persons, (2) the rights of residence for employees and self-employed persons who have ceased their occupational activity, and (3) the right of residence for students (pp. 26-31). It is important to note that the right of residence thus remains restricted to non-welfare dependent persons; it hence excludes elderly, children, and otherwise dependent citizens.

¹⁴⁵ COM(88) 371 final; see OJ EC, No. C 246, 20.9.88

be granted by the Union. Thus, the relation between citizen and Union would be established depicting the Union as the institution responsible for granting or denying these rights. The document's suggestions for the materialization of citizenship then drew precisely upon the resources that had been developed by previous citizenship practice. As the opportunity structure opened, the Spanish proposal came forward with suggestions of how to embed this practice in the revised Treaty.

To summarize, the Spanish document included notions of political rights (assembly, expression, association, vote), and of civil rights (business, movement, residence), as well as "dynamic" social rights (education, health social relations etc.). That notion of social rights brought a particularly interesting aspect to the fore, as it provided a view to the future. As the document said, if this political project were to lead towards a "real union", it "should aim to overcome the inequalities which continue to exist between Community citizens because they live in different areas of the Community and through different means reinforce the social cohesion in a concrete framework."¹⁴⁶ Moreover the discourse on regional differences invoked the aspect of inequality among community citizens. This inequality, the document pointed out, could be addressed via social citizenship rights. Previous policy discourse in the Community during the Fontainebleau period had already raised the idea of solidarity based on the adoption of the Social Charter. Now this notion was brought to the fore again as some Member States and the Spanish delegation in particular, demanded "a new regional initiative on cohesion to offset its impending net revenue loss with the Community" (Marks, 1993:393). As it appears, then, that proposal of the Spanish delegation took advantage of the general openness and lack of clear strategies during this short period of preparation for the EPU to push this project.¹⁴⁷

¹⁴⁶ Europe Documents, No. 1653, 2 October 1990, p. 2.

¹⁴⁷ As Ross comments, for the Spanish "bird in the hand" theory dictated policymaking over that issue at the time (Ross, 1995:102). That policy paid off on the long run, social cohesion (Article 130a EC Treaty).

Stage Three - Acquiring a Place in the Community Discourse

16 November 1990	The Presidency's initial report on Political Union, Rome
30 November 1990	Memorandum from the Portuguese Delegation
6 December 1990	Kohl-Mitterrand letter to Andreotti

The language of the first Spanish proposal soon made its way into Community discourse. Among the first reactions were a Commission opinion¹⁴⁸ and the Rome Council of 27-28 October 1990.¹⁴⁹ The Commission's opinion had been requested by the Italian Presidency with a view to proposing an amendment to the Treaty pursuant to Article 236 EEC. This opinion placed the debate within the framework of both foreign and domestic policy. The former was defined as the Community's aspiration to contribute to the creation of a "fairer more efficient world order," the latter as the need to establish "democratic legitimacy." With respect to domestic policy the document specified the question: "how can the people of Europe be genuinely involved in the shared adventure of European integration, or to put it another way, how can the challenge of democratic legitimacy be met?"¹⁵⁰

According to the Commission document, if democratic legitimacy was at issue, a "twin standpoint,"¹⁵¹ including the Community's institutional practices on the one hand and the Community-citizen relation on the other, needed to be considered as two interdependent aspects of what the democratic process meant. As the Commission specified,

strengthening the institutions will not be enough of itself to ensure that citizens are genuinely involved in the Community's activities at every stage of the definition of policies in fields directly affecting them [Therefore it] endorses the proposal put

but and also a new organ for regional representation, the Committee of the Regions (Articles 198a to 198c EC Treaty) were included in the Treaty

¹⁴⁸ Bull. EC, Supplement 2, 1991, pp 75-82, Bull. EC, Supplement 2, 1991, pp 85-88

¹⁴⁹ Europe Documents, No. 1658, 30 October 1990

¹⁵⁰ Bull. EC, Supplement 2, 1991, p 75

¹⁵¹ Bull. EC, Supplement 2, 1991, p 78

forward by the Spanish Prime Minister Felipe Gonzalez, for the introduction of the notion of European citizenship ¹⁵²

As was the case with the Spanish delegation's use of the resources of citizenship practice, the Commission mobilized various aspects of citizenship practice with this opinion. Indeed, this opinion gathered together various ideas about involving citizens and constitutionalizing their involvement by granting them rights. This suggestion thus meant a qualitative turn from the functional aspect of involving citizens towards the normative aspect of tying them to the political project as a whole. Beyond that, the Commission's comment shed light on the henceforth often confusing discourse on democracy, wherein some understood democracy as a procedural problem that was to be solved through improved decision-making structures while others saw democracy as including access to political participation. Apparently, in the political opportunity structure of the time, and with the Spanish proposal clearly spelling out what was at stake, the Commission felt compelled to come forward with a link between institutional and normative aspects of democracy thus supporting a crucial move towards union-building.

In its opinion, the Commission adopted the Spanish call for the rights of vote, residence, movement (whether persons were economically active or not), as well as the idea of the expansion of rights in a dynamic fashion according to the development of the union. It made a specific point of "enhancing the status of the Economic and Social Committee" so as to attribute specific attention to the improvement of the social dialogue in the Treaty. As for the regions, the Commission suggested that the IGC "take account of the demand for the creation of a body to represent the Community's regions [as one] important parameter of subsidiarity." In sum, the Commission requested that attention be

¹⁵² Commission opinion of 21 October on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union (Bull. EC, Supplement 2, 1991, p. 79).

paid to the interdependence of citizens and Community institutions with special reference to social dialogue and regional participation ¹⁵³

The Rome Council on 22-23 October 1990 decided to develop further the role of the European Parliament and to define European citizenship. Both measures were considered as leading towards the establishment of democratic legitimacy in the Community, or rather, the future political union. In this respect, the Council's concluding document stated that

[i]n accordance with the democratic tradition of all Member States, and to increase the democratic legitimacy of the Union, the progress of the Community towards European Union must be accompanied by the development of the European Parliament's role in the legislative sphere and with respect to the monitoring of the activities of the Union, which, together with the role of the national Parliaments, will underpin the democratic legitimacy of the Union ¹⁵⁴

Similarly, the document stated, progress towards European union built on democratic legitimacy required "defining European citizenship, to be additional to citizenship of a Member State, as well as by taking account, in accordance with appropriate procedures, of the particular interests of the regions." With regards to moving towards a common foreign and security policy, another crucial matter for establishing political union, the communique of the Rome Council reported that "[i]n the sphere of foreign policy, the European Council recorded consensus on the objective of a common foreign and security policy to strengthen the identity of the Community and the coherence of its action on the international scene." The Council also noted that "there was a consensus to go beyond the present limits in regard to security" ¹⁵⁵

¹⁵³ With regard to regional difference the document remained somewhat unspecific stating "[t]he wide variety of regional structures in the Member States precludes - and will probably continue to do so - the involvement of such a body in the decision-making process" (Bull. EC Supplement 2/1991 p. 79)

¹⁵⁴ Europe Documents, No. 1658, 30 October 1990, p. 2 [Conclusions of the Presidency]

¹⁵⁵ Europe Documents, No. 1658, pp. 2-3. While these Council positions on the aspects of the role of the European Parliament, citizenship and a common foreign and security, p. 40, were not breaking the news as such, the fact that the United Kingdom delegation "prefers not to pre-empt the debate in the Intergovernmental Conference" regarding all three matters surely did. The "consensus" mentioned in the Council conclusions would therefore have to stand the proof of being a stable one in the 100+ negotiations that lay ahead (Ibid. 2-4)

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These comments from different Community organs showed that the Spanish Proposal of 24 September 1990 indeed caused widespread reaction. The documents revealed that before the IGC was actually convened debates over citizenship emerged and soon proposals were drafted. Among those who provided input into this unfolding debate on citizenship as a legal concept with a view to including it in the Treaties, were the Commission,¹⁵⁶ the Council,¹⁵⁷ the European Parliament,¹⁵⁸ and once again the Spanish government with a second proposal on citizenship.¹⁵⁹ In the meantime, the European Parliament's Committee on Institutional Affairs had protested by moving for a resolution against the EPs exclusion from the proceedings of the IGC.¹⁶⁰ The process developed over two stages, the first was dominated by the preparatory documents, notes and papers for the IGC meetings following the European Council in Rome 22-23 October 1990, and the second was the IGC meetings leading up to the European Council in Maastricht December 1991.

Council. In the initial report on political union that was drafted shortly before the IGC, and which was presented to the Rome Council on 16 November 1990, the Italian Presidency pointed out that

[t]he very success of Community policies, particularly in the wake of the Single Act, calls for the establishment of European citizenship and for greater participation by its citizens in the collective endeavour of building the Union, in particular in areas which have a direct bearing on their daily lives (Council 1990, cf. Commission 1990b:1).

To this end, the document suggested that the

definition of European citizenship should be enshrined in the Treaty. This would gradually supplement but not replace national citizenship and would include the

¹⁵⁶ Bull. EC, Supplement 2, 1991, pp. 75-82, see also Bull. EC, Supplement 2, 1991, pp. 85-88.

¹⁵⁷ The Presidency's initial report on political Union, Rome 16 November 1990 (Commission of the European Communities, General Secretariat, 21 November 1990 (cf. Commission 1990b)).

¹⁵⁸ PE 150.034/fin., 23 May 1991 [Bindi Report I], PE 153.099/fin., 6 November 1991 [Bindi Report II].

¹⁵⁹ CONF-UP 1731, 21 February 1991, 6 pp.

¹⁶⁰ PE 145.024/fin., 7 November 1990.

existing rights as well as those which will be granted on the basis of the further development of the union

The dynamic aspect that had been developed with the Spanish had thus been accepted by the Presidency.

Similarly, the Spanish definition of rights (vote, residence, movement, diplomatic protection and fundamental human rights) was broadly included in the Presidency's Initial Report on Political Union, even though the categories of rights were labeled differently ("basic", "civic", "economic and social", "rights of the union") (Ibid .7) For analytical purposes, in the following I continue to refer to the Marshallian triad of civil, political and social rights. According to this definition, the type of dynamic social rights that referred to equalities within the EC was based on regional differences and which had been so obviously stressed by both the Spanish papers (note and proposal), were not included in this Presidency's note. While the Presidency's note included a dynamic notion of citizenship ("rights . which will be granted on the basis of the further development of the union"), it did not specify what type of rights those might be. Whereas the original Spanish conception defined equality with a view to the Community as a whole, the Presidency's note spoke of equality in a more restricted sense, referring to it as "equality of treatment within a Member State for residents, whether they are citizens of that Member State or not" (Council, 1990, cf. Commission 1990b.7). For further development of a legal and conceptual definition of citizenship it is then important to observe the policymakers' handling of social rights.

For understanding the meaning of social rights policy and its position in the citizenship debate, it was important to watch the discourse about "community" at that time. For example a German speaking note on foreign and security policy stressed the need to respect the principle of acting as one political entity. "Togetherness" instead of "opting out" was required. As the note said

[t]he 'opting out' course is inconsistent with the 'togetherness' principle. It endangers Community solidarity and that of the Member States, jeopardizes the credibility of the common policy and is likely to lead to a policy of a "two-speed" Europe.¹⁶¹

With regard to the citizenship debate and the perspective of solidarity among the unequally distributed wealth among the regions of that time, this note then brought a contrast to the fore. It exposed the tension between a "defense identity" expressed by so many EC politicians during that period and the apparent lack of willingness to go all the way by building democratic institutions and practising democracy in the effort to create such an identity. In short, it indicated that if solidarity could not be kept a priority on the domestic agenda the chance to establish grounds for a common foreign and security policy would decrease. The complicated relation between the creation of a defense identity and the stipulation of social rights was highlighted by the citizenship discourse. It is helpful to keep this view in mind, in order to understand the next policy steps of citizenship practice.

Among other documents that responded to the Spanish proposal were a so-called "non-paper" or, document for discussion, written by the General Secretary of the Council on "Citizenship of the Union,"¹⁶² a Memorandum of the Portuguese Delegation (Permanent Representation of Portugal, 1990) and another Kohl-Mitterrand letter directed to Mr. Andreotti, the Italian President of the Council (Kohl-Mitterrand, 1990). The Council paper agreed with the Spanish definition of citizenship as dynamic, in the sense that it suggested to begin with the "recognition of certain basic rights which result from the Treaties (including specific rights that might be introduced through the present revision of the Treaties)" and it also considered "rights that would be introduced in parallel with the transfer to the community of new policies on e.g. social relations, health,

¹⁶¹ SN 4611/90, 12 November 1990, p. 3.

The reference to the "togetherness principle" points to a definition of the nation by Carl Friedrich, who stated that "[a] political community must be seen as a togetherness of persons who are united by having in common some of their values, interests, ideas (including ideologies), myths, utopias and their symbols, religion and its rituals. Such uniting will be partly by emotional attachment and partly by subjection to common rules, responding partly to organic need and partly to conscious purpose, expressing both what already exists and what is explicitly willed" (Friedrich, 1969: 23, cf. Clossa, 1992: 1138).

¹⁶² Council 1990, cf. Commission 1990b [Addendum].

education, culture, diplomatic protection in third countries, etc." The paper summarized the discussion about citizenship rights at that time as comprising, (1) the right to political participation (vote, assembly, expression, association), (2) the rights to freedom of movement, residence and equal treatment before the law to be extended to "all persons" and (3) the "right of Union citizens outside Community frontiers."

While this non-paper did not refer to regionally based inequalities and a possible establishment of dynamic social rights to overcome them, it did take pains to point out the inequalities that existed at that time between economically active and non-active citizens. To underline the point, it observed, for example, "[f]requent cases have been brought before the Court [showing] that this equality is not ensured in all fields. The equality of treatment does not apply to non-active persons." The document's explicit reference to "all persons" then was in line with the Spanish request for movement from economic to political union. The instances which were to protect these citizenship rights were "the national courts and the European Court of Justice acting according to their respective competence", and the right to petition to European Parliament and the institution of an ombudsman that was to be created.¹⁶³

Portuguese Memorandum The Memorandum from the Portuguese Delegation dedicated a whole section to the theme of "Bringing the Community closer to the citizen" and called for the stipulation of European Citizenship in the Treaty, arguing that an "understanding of the concept of European citizenship by all citizens is an essential prerequisite for Political Union which must be enshrined in the relevant Treaty." In line with the Spanish proposal, the document specified that, for the first stage of citizenship legislation through the Treaty, it was necessary to assign the greatest importance to the areas of "free movement of persons without hindrance, right of abode for all community citizens, participation in local and European elections and provision of common diplomatic

¹⁶³ see Council 1990, cf. Commission 1990b [Addendum] pp. 1-5

and consular protection outside Community frontiers" (Permanent Representation of Portugal, 1990). It endorsed the Spanish focus on the special basic rights to movement, residence, and vote, as well as the right to diplomatic protection

Kohl-Mitterrand Letter A similar reaction was contained in a letter sent by Chancellor Kohl and President Mitterrand to the Italian President of the Council Andreotti. In this letter the two statesmen made proposals for the IGC on political union with respect to four central areas of concern: competences, democratic legitimacy, effectiveness, and common foreign and security policy. It explicitly stated that "European citizenship" was one way of tackling the democratic deficit, specifying that "the treaty should define the foundations and conditions for establishing true European citizenship, taking into consideration the proposals made by the Spanish government." Kohl and Mitterrand further suggested introducing the procedure of "co-decision-making for the European Parliament for acts that are truly legislative in nature" (Kohl-Mitterrand, 1990)

In the context of the non-papers and other documents this letter did not seem of particular political importance. From the perspective of the whole framework of discussion that preceded the IGC meetings, the letter might however be read in a different way, thus attaching to it great diplomatic importance. After all, problems of identity, solidarity, difference, and equality all touched, in some way or other, sovereignty and nationality both of which were defined most explicitly by Mrs. Thatcher's post-Dublin discourse as non-issues for an IGC. By not only addressing the democratic deficit on procedural grounds (co-decision) but also stressing the importance of the normative (true European citizenship) aspect of democracy, this letter clearly may be seen as another landmark in the history of European union-building. Moreover, by endorsing the Spanish agenda for citizenship, it clearly spelled out which direction to follow

Stage Four - Writing Citizenship into the Treaty

14 December 1990	European Council meeting at Rome [convening IGC on EPU]
21 February 1991	Spanish Proposal (II)
1 May 1991	Spanish Proposal on redistribution of resources
6 May 1991	European Council meeting at Luxembourg
13-14 May 1991	European Council meeting at Brussels
3 June 1991	Informal Council of Foreign Ministers Meeting, Dresden
25-26 June 1991	European Council meeting at Luxembourg
9-10 December 1991	European Council meeting at Maastricht

IGC Meetings The meetings within the framework of the IGC on EPU brought an interesting twist from the perspective of the emergence of a new European citizenship policy. Citizenship understood as political citizenship rights had now become a regular ingredient of many Community documents. Despite this change of Community discourse, the EP complained that the debate over citizenship rights was not far-reaching enough. As a Parliamentary Resolution on Union Citizenship put it, the debate often remained restricted to the legal definition of "a number of special rights of a partial nature."¹⁶⁴

I argue here that while the European Parliament was clearly justified in this observation, a careful examination of the discourse that was produced not only about citizenship specifically but also on related issues, brings a different and perhaps more optimistic perspective on European citizenship to the fore. This perspective came forth without much notice. The generally sceptical reaction to the social policy achievements of the Maastricht Agreements on 9-10 December 1991 was a case in point. After all, the social charter and with it the possibility to improve the constitutional basis for social rights--a major dimension of citizenship--became part of a Treaty protocol because of a British veto. Despite this fact, the Treaty did include a stipulation of political and civil rights of citizens with Article 8 EC Treaty. Beyond this, a new interpretation of social rights was introduced into the discourse with the Spanish insistence on fighting regional inequalities within the framework of a policy on economic and social cohesion.

¹⁶⁴ OJ EC, C 183, 15 July 1991, p. 475 [Resolution on Union citizenship]

Central to the citizenship discourse of the time were the second Spanish proposal for citizenship (Permanent Representation of Spain, 1990),¹⁶⁵ a Commission contribution on citizenship to the IGC on EPU,¹⁶⁶ a non-paper "with a view to achieving political union" drafted by the Luxembourg Presidency,¹⁶⁷ an interim report on "Union citizenship" by the EP Committee on Institutional Affairs,¹⁶⁸ a resolution on "Union citizenship" of the European Parliament,¹⁶⁹ another draft treaty on "the Union" that was used as a reference document until Maastricht,¹⁷⁰ a Dutch draft treaty "towards European Union,"¹⁷¹ a final report on "Union Citizenship" by the EP (Bindi Report)¹⁷² and the Maastricht Council conclusions¹⁷³ as well as the final Dutch draft of the "Treaty on Political Union" as modified by the Maastricht Summit¹⁷⁴

Spanish Proposal (II). In time for the IGC on EPU on 28 February, the Spanish Delegation came forward with a second proposal on citizenship that was proposed to embed citizenship in the Treaty by way of a new Title. This Title was meant to provide a framework for a concept of citizenship that would evolve along with the gradual transformation of the Union. To this end, the proposed Title on citizenship was intended to introduce a new political basis to the Union, thus reflecting the transcendence from economic Community to political Union. As the document stressed, the

proposal envisages a specific framework for the general aspects of European citizenship as one of the three pillars of the future Union and the foundation of its democratic legitimacy. The concept and content of citizenship are conceived of as

¹⁶⁵ see also: CONF-UP 1731/91, 20 Februar 1991

¹⁶⁶ SEC(91) 500, 30 March 1991; and Bull. EC, Supplement 2, 1991, pp. 85-88

¹⁶⁷ This paper was written on 12 April 1991. For a publication of the full text see: Europe Documents No. 1709/1710, 3 May 1991

¹⁶⁸ PE 150.034/fin., 23 May 1991, Rapporteure: Mrs. Rosamaria Bindi

¹⁶⁹ OJ EC, C 183, 15 July 1991, pp. 473-476

¹⁷⁰ This document was officially submitted to the IGC by Ambassador Joseph Weyland, the Luxembourg representative for the Community, on 20 June 1991; it was published in Europe Documents No. 1722/1723, 5 July 1991

¹⁷¹ Europe Documents, No. 1733/1734, 3 October 1991

¹⁷² PE 153.099/fin., 6 November 1991

¹⁷³ European Report, Document No. 1728, 11 December 1991

¹⁷⁴ Europe Documents, No. 1750, 1751, 13 December 1991

having an evolving dimension and as being an element which should inform all the policies of the Union (Permanent Representation of Spain, cf Laursen et al 1992 325) ¹⁷⁵

According to the Spanish wording, citizenship was not only perceived as dynamic but understood as interrelated with other Union policies. The framework was therefore general in nature and provided the capacity for being fleshed out later. To this end the document specified

[n]o mention is made, although it is not ruled out, of possible specific treatments of citizenship in individual areas, some of which are already under examination in the Conference, particularly in the chapter on the extension of redefinition of jurisdiction, such as judicial co-operation, public health or the disclosure of information, to mention only a few of the abovementioned initiatives (Ibid.: 325)

The interdependence between citizenship and other policies was particularly highlighted by Article 4 (2) which stated the

Union shall, in implementing common policies and actions, take specific account of the objective set out in the preceding paragraph [on equal opportunity] and shall contribute to its attainment by adopting the appropriate measures where necessary.

The rights mentioned in the Title included most importantly, first of all, the social right of a citizen to "enjoy equal opportunities and to develop his abilities to the full in his customary environment," second, the civil rights to movement and residence "without limitation of duration in the territory of the Union," third, the political rights to "take part in the political life of the place where he lives, and in particular the right to belong to political associations or groupings and the rights to vote in and stand for local elections and elections to the European Parliament;" and finally the right to "enjoy the protection of the Union and that of each member State" while in third countries (Ibid.:326-27). Overall, as the preamble stated, these citizenship rights were expected to expand and develop according to "the progressive constitution of a common citizenship, the rights and obligations of which derive from the Union" (Ibid.:325).

¹⁷⁵ See also CONF-UP 1731/91, 20 Februar 1991

Once this proposal is put into the perspective of the historical evolution of citizenship discourse in the Community, three aspects of particular importance come to the fore. First, it is important to note that the political entity that was supposed to have an impact on the development of this dynamic concept of citizenship was, first of all, the Union, not the Member States. Second, the Title was conceived as evolutionary and interrelated with other areas of Community policies, thus citizenship could develop drawing on the political opportunity structure as it changed over time based on changing policy paradigms, actors and the *acquis communautaire*. Such a conceptualization favoured the ongoing production of ideas as debates and struggle over citizenship evolved, and used the available resources such as, for example, the existing proposal on voting rights and a consensus on the establishment of Political Union of the time. The framework was thus agreed upon, it could be "fleshed out later." Third, the proposal included civil, political and social rights all defined in relation with the Union as a new political entity. This practice of Community policymaking is worthwhile to recall, in particular with a view on the final version of Article 8 EC Treaty where citizenship is practically stripped of social rights, and political rights remain restricted to the right to vote, thereby leaving out the right to assembly, expression and association.

Bindi Report. Almost parallel to the Spanish delegation's proposals, notes and letters on citizenship of the Union, a Spanish Member of the European Parliament, Mr Medina Ortega had proposed a resolution on Community citizenship.¹⁷⁶ The Parliament's Committee on Institutional Affairs agreed towards the end of January 1991 to draw up a report and appointed Mrs Rosamaria Bindi as rapporteure. The first draft was debated by the Committee at its meeting on 18 and 19 March 1991.¹⁷⁷ Now that citizenship was

¹⁷⁶ This motion for a resolution was reported in PE 150 034/fin. [Bindi Report I] p. 3. For the full text see: PE 150 034/fin./Ann., p. 17.

¹⁷⁷ The decision to draft a report was made during the Committee's meeting on 29-30 January 1991. The final motion for a resolution "on Union Citizenship" was adopted on 21 May 1991, under Spanish Chairman Mr. M. Oreja, see: PE 150 034/fin. p. 3.

named and debated as such in the various Community institutions in connection with the IGC on EPU, the evolving discussions within the institutions of the Parliament showed the topic to be a highly sensitive one. Nevertheless the issues had now been put on the agenda. For one, the debate "revealed the potentially complex legal consequences of the concept"¹⁷⁸ Another dimension of citizenship came to the fore when French Socialist Claude Cheysson stressed the link between nationality and citizenship during an EP debate on the first draft of the Bindi report on "Union citizenship." With regard to the development towards European Union he pointed out that, for example, "*European citizenship places us in the supranational, whereas European Union [does] not,*"¹⁷⁹ thus implying that citizenship understood as a legal concept would be of union-building quality.

These comments demonstrate two things. First, that citizenship superseded the boundaries of an identity providing concept (special rights in the 1970s), and, second, it meant more than solidarity (social rights in the 1980s). It formed one political tool that was designed to overcome the legitimization crisis of the European Union as a political actor in the new international system (political rights in the 1990s). Now, it was one aspect of a larger project that included not only an economic but also a political dimension. This debate suggested that beyond the contractarian understanding of citizenship as granting full membership in a community, citizenship also contributed to the definition of the community in question thus evoking the Habermasian concept of a dialectical notion of citizenship based on intersubjectively shared practices that contribute to the creation of change (Habermas, 1994). Understood in that way citizenship is one defining element of statehood or, for that matter, the state of the union. Citizenship named as such and visible, meant not only the civil, political and social rights of citizens, but included the 'high politics' of defining territory and power within the international system.

¹⁷⁸ AE, No. 5457, 22 March 1991, p. 4.

¹⁷⁹ AE, No. 5457, 22 March 1991, p. 6.

of states. The Bindi report highlighted this particular meaning of citizenship when it explained, that both

the concepts of 'union' and 'citizenship' are undergoing wholesale and simultaneous changes in Community Europe [and it concluded that, once understood in this way] the actual attribution of the status of Community citizen to citizens of the Member States becomes a central element of the reforms and a reference point in determining the level of integration achieved by the Union which is being established.¹⁸⁰

Parliament demanded that Union citizenship be included in the Treaty as a "separate title" comprising the following central aspects: social rights including a "substantial widening of the proposals contained in the Social Charter," equal rights between men and women, the political right to vote and stand for election in local and EP elections at one's place of residence, as well as the political right to full political participation at one's place of residence, and the civil right to free movement and residence in all Member States.¹⁸¹ Importantly, the report repeatedly emphasized the necessity to rethink citizenship in the light of globalisation and the crisis of the nation-state, leading to the creation of a new set of relations between the state and the individual, alongside citizenship, which can no longer be reduced to the traditional dichotomy between citizen and foreigner or to the exclusive relationship between the state and the citizens as individual.¹⁸² Various individuals enjoyed different types of rights in this new world that reflected flexibility and mobility. In other words, it became increasingly difficult to define citizenship practice as based on nationality. The explanatory statement of the report stressed, that in light of this dilemma "the prospect of the Union provides a substantial basis for overcoming these limits and resolving problems, with which the individual state is [at the time] ill-equipped to deal" (Ibid.).

This report thus recalled the altered positions of nation-states and of citizens in a changing world. As the political domain of nation-states was partially shifting towards the

¹⁸⁰ PE 150.034/fin . p 10

¹⁸¹ PE 150.034/fin.. pp. 6-7

¹⁸² PE 150.034/fin . p 9

supranational level, citizens had access to political participation. In Western Europe this trend was challenged by an evolving citizenship practice on the supranational level which entailed not only a qualitative leap in the citizen-Community relation but beyond that it was to turn into an "essential step towards the state quality of the Union" (Hobe, 1993: 264) once the revised Treaty was signed.¹⁸³ This evaluation of citizenship as an indicator of European integration mirrored Tilly's definition of the ongoing struggle over political rights of citizens as one indicator of the degree of state-building during the evolution of modern nation-states in Western Europe (Tilly, 1975a: 32).

Meehan captured the constructive aspect of European citizenship by pointing out that it was "neither national nor cosmopolitan but that is multiple in the sense that the identities, rights and obligations associated [] with citizenship, are expressed through an increasingly complex configuration of common Community institutions, states, national and transnational voluntary associations, regions and alliances of regions" (Meehan, 1993: 1). In other words, citizenship practice in the Community did not mean the sum of the Member States' types of national citizenship but it meant constructing citizenship of the Union anew and with its own character. This process had been accomplished to a certain degree in the 1990s when the IGC on EPU began to focus on the subject. Until then, one of the particularities of the citizenship discourse was that citizenship rights were understood as special rights in the sense that they were not only *special* because since the 1970s they were meant for Europeans only but being accessible only for special groups of Community citizens they had become literally *specialized*. Citizenship rights were now defined according to what individuals did or what they were (workers, old, young, unemployed) rather than according to the fact that they were human beings. As Meehan put it, they were "citizens-as-workers, not citizens-as-human-beings" (Meehan, 1993: 147).

¹⁸³ [my translation]

This aspect had already been addressed by the 1986 Commission report on the political right to vote when the Commission had brought the normative aspect of democratic legitimacy into the debate. Now the Bindi Report raised the problem of hyphenated citizenship, arguing that

[w]ith regard to fundamental rights, and those linked to the status of citizen, I believe that they must not be limited to the individual sphere and must protect the citizens - and any individual, where fundamental rights are concerned - in his or her social setting, i.e. his or her actual mode of existence in society. I am referring, for example, to the family, where the individual conducts an essential part of his or her activities and life. It is largely in groupings of a number of people that the possibility of self-expression as an individual exists. I believe that this aspect is not fully exploited in the Community system. In fact, there is more of a tendency to consider the individual as producer, consumer, unemployed or old rather than as an individual. However, it is essential to ensure at Community level that no obstacles are set up to recognizing the right to, and providing the essential guarantees of, an individual's complete self-development in his or her social groups, particularly the family.¹⁸⁴

The Bindi report thus argued from a perspective that aimed at something akin to ideal citizenship. As many analysts have suggested this assumption of an ideal citizenship is problematic insofar as there does not exist one ideal citizenship but many historically different types (Leca, 1990 cf. Meehan 1993 xii). Yet, the fact that Parliament introduced the notion of ideal citizenship inspired new interests and debates over the topic. These were to produce serious arguments on immigration policy, in particular, in post-Maastricht citizenship practice. I will turn to their emergence later.

Council Compared with the Bindi report's plea for a more holistic approach to citizenship, which would include defining the status of Union citizens, the Presidency's non-paper on draft articles with a view to political Union appeared rather meager, as it basically restricted possible Treaty stipulations to the right to movement and residence, vote in municipal and European Parliament elections, the right to petition to the EP, and diplomatic protection in third countries.¹⁸⁵

¹⁸⁴ PE 150 034/fin p. 15

¹⁸⁵ Europe Documents, No. 1709/1710, 3 May 1991, pp. 4-5

It is worthwhile to note that when speaking of citizens' rights this non-paper did include the notion of "every Union citizen " This was a point that the Bindi report emphasized as substantial if the Community were to perform a qualitative transformation towards political Union As the report stated "[o]ne of the cardinal principles is the attribution of these [citizenship] rights to citizens as individuals, irrespective of their social and economic role "¹⁸⁶ How this legal concept of citizenship might be fleshed out will be shown in the next section which focuses on the political struggle that ensued upon Maastricht entering into force

¹⁸⁶ PE 150 034/fin p 13 Different from the dynamically conceptualized notion of citizenship that had been forwarded by the Bindi report as well as with the Spanish proposals, the Luxembourg non-paper basically neglected social rights, considering social protection a "burden" that resulted for Member States in relation with the rights to free movement and residence and which therefore needed to be dealt with (Europe Documents, No 1709/1710, 3 May 1991, p 4)

E: CITIZENSHIP PRACTICE: BRINGING POLITICS IN

23 June 1993	Commission Proposal for a Council Directive on elections to the Parliament. Working Document
20 October 1993	Parliament Draft Report on Citizenship of the Union. Rapporteur: Mr Renzo Imbeni
9 December 1993	Commission Document de réflexion: Le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre de résidence
23 February 1994	Commission Proposal for a directive on municipal elections

Before drawing conclusions from this story of citizenship practice, this last section of the case study provides an insight into some aspects of the ensuing debates over the stipulations of the new citizenship article in the Treaty of European Union. To that end, three questions are highlighted: first, who has the right to vote, second who belongs to the new Union, third, what comes next in the story of citizenship practice? In exploring answers to these questions, this section focuses on various interest groups and their newly emergent demands. I argue that these questions could only be asked in a political opportunity structure that was built on the newly constitutionalized relationship between citizens and the Union and the history of European citizenship practice.

The Political Opportunity Structure After Maastricht

One result of the constitutionalization of political citizenship rights in the EU is that it is now possible to talk about citizens' rights and accordingly, citizenship practice as citizenship policy. With this innovation citizenship is up for debate once again and another circle of citizenship practice emerges now framed in a new political opportunity structure. In order to situate this emerging debate, it is helpful to characterize briefly the main formal and informal institutional innovations of the *acquis communautaire* that flow from embedding political citizenship rights in the Treaty.

The discourse on citizenship practice in the early 1990s showed that although the historical element of *belonging* was continuously addressed, the focus was shifted from

creating a *feeling* of belonging to establishing the *legal ties* of belonging. Thus, the TEU conferred the rights of residence, movement and vote in municipal and European elections as well as the right to diplomatic protection when abroad to citizens of the Union (O'Keeffe, 1994). While the identity-based link between citizens and the Union had been pursued over the previous decades, and continued to be part of the border politics of the 1990s as well, citizenship practice in the Maastricht period succeeded in legally establishing a bundle of citizenship rights, among them first and foremost, political rights. It thus established the legal ties of belonging which are one necessary condition for *access* to participation. Yet it is important to keep in mind the definition of citizenship offered in this thesis which assumes that legal ties of belonging do not automatically imply participation. Instead, the historical elements of rights and of access to participation are interrelated wherein access to participation depends on the previous constitutionalization of the political right to belong. Whether it is actually possible for citizens to participate, depends on what citizens are able to make of this right. In the case of EU citizenship practice this implies that the establishment of access to participation as another historical element of citizenship is possibly generated by further citizenship practice.¹⁸⁷

In this final section on the Maastricht period, I will highlight two aspects which are important for an understanding of the new citizenship article for further citizenship practice. One is an understanding of how the formal attributes of the *acquis* have been expanded and what this implies for citizenship practice. This aspect relies largely on legal information. It is based on the letter of the Treaty and most extensively elaborated by legal studies (O'Keeffe, 1994; Closa, 1992, 1994 and 1995; O'Leary, 1995). The other is about the informal attributes of the *acquis* that provide information about the meaning of this newly established supranational citizenship. It is about public expectations of citizenship

¹⁸⁷ In this vein, Manfred Degen characterizes the situation of Union citizens based on the signed Maastricht Treaty as one that is about the "extension of the status *activus* of Union citizens" (Degen, 1993: 752). See also David O'Keeffe, who notes the incremental character of the citizenship article speaking of an "ever-increasing bundle of rights attached to Union citizenship" (O'Keeffe, 1994: 92).

and the means to realize them. This aspect was most clearly explored by groups and committees of the European Parliament as well as by a rising number of interest groups as well as social movements.¹⁸⁸

As O'Keefe observes, "[t]he importance of the TEU citizenship provisions lies not in their content but rather in the *promise* they hold out for the future. The concept is a dynamic one, capable of being added to or strengthened, but not diminished" (O'Keefe, 1994:106).¹⁸⁹ In order to assess these aspects of citizenship, in the following I proceed in three steps thereby elaborating the (1) formal grounds of Union citizenship, (2) the meaning of Union citizenship, and (3) the means to expand Union citizenship. This section shows how a shift in political opportunity structure created space for bottom-up action. With the changed *acquis* citizenship practice from below came to the fore of the universe of political discourse.

Formal Grounds: The Political Right to Vote

The question of voting procedure was by no means unproblematic. The European Parliament and the Commission had been constantly submitting motions, resolutions, communications and proposals on the issue over the years, yet, as late as in 1993 there was still no adopted Council directive according to which the elections for the 1994 European Parliament would be carried out. The problem of writing and adopting this directive can be broken down according to the two types of European elections in question, namely, elections for the European Parliament and local or municipal elections. For both types of elections, it was necessary to agree first on the definitions of the entities (institutional arrangements) in question and, second, the rules of residence and citizenship

¹⁸⁸ See for example, the Parliament's Bindt Reports of 1991-1993 (PE 207.047/fin), as well as the Imbenti Report of 1993 (PE 206.762), the Banotti Report of 1993 (PE 206.769/fin), contributions by church and immigration committees (Niedersachsenbüro, 1993), and for the social movements see the Antiracist Network for Equality in Europe (ARNE) and Eurotopia (ARNE, 1995; Eurotopia, 1995).

¹⁸⁹ [emphasis added]

which then had to be harmonized upon among the Twelve Article 8 of the EC Treaty defined those citizens who had access to the political right to vote as citizens of the Union, leaving the definition of national citizenship for each Member State to define. Based on this article, it was now possible for those citizens who were not nationals of the Member States in which they were residents to participate in elections. In other words, they were no longer considered as foreigners in their place of residence and hence had the political right to vote and stand for election. This new right applied to "some five million citizens of the Union "190

The major legal and hence political difference between European and municipal elections was that the right to vote in European elections was restricted to Union citizens' participation in EP political activities on the European level which had only indirect influence on national politics. In turn, the right to vote in municipal elections meant the stipulation of Union citizens' right to participate in political places with direct influence on national politics if from the municipal level (Degen, 1993:753). In the following both processes and the respective institutional arrangements which had to be established in order to carry out the elections are briefly recalled.

Article 8B(1) EC Treaty:

Every citizen of the Union residing in a Member State of which he was not a national shall have the right to vote and stand as a candidate at *municipal elections* in the Member State in which he [sic] resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements *to be adopted before 31 December 1994* by the Council, acting unanimously on a proposal from the Commission and after consulting the

¹⁹⁰ COM(94) 38, 23 February 1994, p. 3 [Explanatory Memorandum, pp. 1-29; Text of Proposal, pp. 30-40], see also, OJEC, No C 105, 13 April 1994, pp. 8-13.

More in detail: the disaggregated figures showed that some 130,000 Belgians, 40,000 Danes, 290,000 Germans, 360,000 Greeks, 470,000 Spaniards, 300,000 French, 630,000 Irish, 1.2 million Italians, 11,000 Luxemburgers, 240,000 Dutch, 840,000 Portuguese and 400,000 Britons were established outside their home Member State.

From the perspective of how many non-nationals were resident in each Member State, approximately 541,000 resided in Belgium, 27,000 in Denmark, 1.3 million in Germany, 50,000 in Greece, 240,000 in Spain, 1.3 million in France, 62,000 in Ireland, 150,000 in Italy, 105,000 in Luxembourg, 163,000 in the Netherlands, 29,000 in Portugal and 880,000 in the United Kingdom (Eurostat population statistics, 1992, c f COM(94) 38, 23 February 1994, p. 3)

European Parliament, these arrangements may provide for derogations where warranted by problems specific to a Member State.¹⁹¹

The adoption of a directive for municipal elections not only had to face the procedural obstacles but there was also the additional problem of language and its political implication. Thus first and foremost, it was necessary to decide upon what was meant by "local" or "municipal" (O'Keeffe, 1994: 97). A Commission document for reflection on the right to vote and stand for election in the Member State of residence according to Article 8B (1) EC Treaty explained the dilemma like this "[é]tant donné la grande richesse des régimes administratifs et électoraux des états membres, la notion des *élections municipales* manque de clarté et nécessite d'être précisée." And it pointed to the fact that not even the different translations of the Treaty of European Union (TEU) were identical regarding the matter. Thus, what in the English texts was termed 'municipal elections,' was called *elecciones municipales* in the Spanish texts, *élections municipales* in the French, *elezioni comunali* in the Italian, *gemeenteraatsverkiezingen* in the Dutch and *eleições municipais* in the Portuguese translations of the Treaty. All these versions of the Treaty related strictly to the basic level of political administration only. Different from the meaning of these linguistic representations of what the English labelled 'municipal,' the Danish term *kommunale valg* and the German term *Kommunalwahlen* comprised not only that most basic level but also the intermediate level of political administration that was placed in between the lowest level and the regional or national level.¹⁹² These translations again were often umbrella terms for a more specific set of various municipal or local elections. As it turned out, between the Twelve there were about 45 specific definitions of electoral units that were likely to correspond to the local or the municipal.¹⁹³

¹⁹¹ [emphasis added]

¹⁹² European Commission, DG XV, 9 December 1993, pp. 7-8 [Document de réflexion: Le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre de résidence (Article 8 B, paragraphe 1er, du traité CE: French)]

¹⁹³ For the detailed list, see: OJ EC, No. C 105, 13 April 1994, pp. 12-13

While this is not the place to pursue these differences in further detail, it is crucial to note the difference among the institutional arrangements within the twelve Member States, as it was expressed not only at the level of political administration but also the names of these levels. Elections, and therefore citizens' representation, meant different things in different linguistically, politically and legally defined contexts.¹⁹⁴ Union citizens who were not living in the Member State of their national citizenship had thus to learn about the naming and functioning of other types of political arrangements and during the process develop what may be called a more European perspective towards elections. That is, an awareness of difference would evolve along with participation in elections of one's place of residence in another Member State.

In the Commission's final proposal for a Council directive on laying down detailed arrangements for exercising the right to vote as well as citizens of the Union standing for election at the municipal level in a Member State of which they were not nationals, the term "municipal" was used.¹⁹⁵ In this proposal municipal elections were defined as "elections by direct universal suffrage to appoint the members of the representative council and, where appropriate under the laws of each Member State, the head and members of the executive of a basic local government unit."¹⁹⁶

Important for this new right to vote and stand for election was what the Commission called "link with the place," and it explained that "[i]n all Member States a person wishing to vote or to stand as a candidate in local elections in any of the basic local government units must already have some specified and stable link with the place."¹⁹⁷ With reference to *place* the term 'basic local government units' was defined as "the authorities closest to the citizen [which] are given a measure of independence by the

¹⁹⁴ For a project that focuses precisely on the question of different trajectories of meaning of citizenship in five different Member States, see: Everson and Preuß (1995).

¹⁹⁵ COM(94) 38, 23 February 1994 [Explanatory Memorandum, pp. 1-29; Text of Proposal, pp. 30-40]; see also OJ EC, No. C 105, 13 April 1994, pp. 8-13.

¹⁹⁶ COM(94) 38, 23 February 1994, p. 33.

¹⁹⁷ COM(94) 38, 23 February 1994, p. 8.

constitution or by statute, and handle the main local government tasks [and] have their own territory, their own democratic institutions and their own staff" ¹⁹⁸ With reference to *politics*, this territory was the place in which the participation of citizens in municipal politics outside of their national territory but still within European territory, would be possible once the directive had been adopted by the Council. It was defined as

the administrative entities [. . .] which, in accordance with the laws of each Member State, contain bodies elected by direct universal suffrage and empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility

This proposal for a directive, then, established the conditions for political participation based on the principle of equality among national and non-national Union citizens. With their involvement in municipal politics the image of non-national Union citizens as "foreigners" was to vanish (as the Spanish proposals for citizenship had demanded) and the opportunity for democratic participation would be created (as earlier Commission and EP contributions had requested). ¹⁹⁹

In turn, with regard to elections to the European Parliament the Treaty stated

Article 8B(2) EC Treaty:

Without prejudice to Article 138(3) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he was not a national shall have the right to vote and stand as a candidate in elections to the *European Parliament* in the Member State in which he [sic] resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements *to be adopted before 31 December 1993* 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. ²⁰⁰

¹⁹⁸ COM(94) 38, 23 February 1994, p. 4

¹⁹⁹ According to Article 3 of the directive, "[a]ny person who, on the reference date: (a) is a citizen of the Union within the meaning of the second subparagraph, 1 of Article 8(1) of the Treaty, and (b) is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals, shall have the right to vote and to stand as a candidate in municipal elections in the Member State of residence in accordance with this Directive" (COM(94) 38, 23 February 1994, p. 33)

²⁰⁰ [emphasis added]

While the Treaty thus included both the right to vote and stand for election at the European and municipal levels, it did not define the regulations according to which the elections themselves would be held. Contrary to expectations of time at the moment when the time-table for holding elections was written into the treaty, it turned out that the actual time frame for the adoption of a directive and hence for the Commission to write up a proposal for a uniform electoral procedure in European elections in particular²⁰¹ became really tight (Degen, 1993:757, O'Keeffe 1994:97, 98). The unexpected shortage of time was due to the delay in ratifying the Treaty by some Member States.

With the Treaty entering into force on 1 November 1993, there was barely one month left during which a proposal had to be written and adopted so that it could apply for the fourth direct elections to the Parliament in 1994. Meeting the deadline was crucial in order to live up to citizens' expectations and important for creating a feeling of belonging among Union citizens. As the Commission stressed, participation in these elections meant "enabling the citizens of the Union to exercise these new rights for the first time and experience the reality of European Union."²⁰² With the importance of this action in mind, the Commission had already prepared a draft proposal by 23 June 1993²⁰³ and had "held informal discussions between July and October 1993" so that the Council could decide about the final text until 31 December 1993.²⁰⁴ While the proposal for a

²⁰¹ COM(93) 534 final, 27 October 1993 [Proposal presented by the Commission on 27 October 1993]

²⁰² COM(93) 534 final, p. 7

²⁰³ SEC(93) 1021 final, 23 June 1993 [Working Document of the Commission: Proposal for a Council Directive]

²⁰⁴ COM(93) 534 final, 27 October 1993, p. 7. For the proposal see: SEC(93) 1021 final. This proposal was an informal one, however the Commission had decided to pass it on to the Council as a working document (Degen, 1993:757).

According to final proposal of the Commission, Article 3 stated that "[a]ny person who, on the reference date (a) is a citizen of the Union within the meaning of the second subparagraph of Article 8(1) of the Treaty, (b) not being a national of the Member State of residence, satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals, shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7. Where, in order to stand as a candidate, nationals of the Member State of residence must have been nationals for a certain minimum period, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period" (COM(93) 534 final, 27 October 1993, p. 26).

directive emerged only shortly before the fourth European elections, and thus either remained unknown to many Union citizens who would have qualified to participate, or left them little time to request their registration in the election roll in a number of Union citizens nonetheless took advantage of this new opportunity ²⁰⁵

The importance of the agreement among the Twelve on the electoral law was that it meant changing twelve different electoral laws, hence impacting on their respective political and legal cultures. While national domains were affected by this step, in turn, another step towards union-building had been accomplished (Hobe, 1993, Degen, 1993). In view of the expected intrusions into national legal and political space, the negotiations over "fleshing" out Article 8 were complex and time consuming. Both paragraphs of the citizenship Article are a crucial basis for further citizenship practice, after all, the right to vote may be characterized as "the political right par excellence" (O'Keeffe, 1994:95). It is important to note that while the paragraph on municipal elections reflects the demands for *more democracy* that date back to the 1986 Commission report on the right to vote,²⁰⁶ the paragraph on elections to the European Parliament draws on the *quest for identity* that is based on the fact that all Union citizens share electoral practice on the same day (Degen, 1993:757).

Meaning: Who Belongs?

While citizenship was now part of the revised EC Treaty, the meaning of the concept for daily life and politics as well as for future policymaking remained to be refined. The Economic and Social Committee (ESC) pointed to this open question when it stated

[u]nder the Maastricht Treaty, European citizenship is *officially established in terms of both rights and duties imposed thereby*. But notions of what European citizenship really means remain hazy or at best only partially expressed.

²⁰⁵ The voter turnout was 56.4% of the eligible voters (Delegation of the European Commission, 1994).

²⁰⁶ For this Commission report see Bull. EC, Supplement 2, 1986.

Some of its suggestions implied series of "values" and "ethics" based on shared humanistic principles (notably the right to human dignity) " The document stressed that "[e]conomic and social rights are indissolubly linked to civil and political rights: together these citizens' rights and accompanying duties constitute the cornerstone of a free, democratic society founded on respect for human rights."²⁰⁷ From its elaboration of the humanistic background of citizenship, the Committee concluded

[c]itizenship is a token of belonging to a community in which each member takes part in implementing the wishes of the whole, submitting oneself to them without loss of personal freedom, since one is obeying rules which one has had a say in drawing up. A democratic society can only be freely constructed around positive values shared by citizens who are equal in freedom. European citizenship is therefore not simply the sum of 12 national citizenships, but constitutes an "added value," enriching and adding to them all.²⁰⁸

According to this document the meaning of citizenship of the Union went clearly beyond legal stipulations about political citizenship rights. Indeed, this opinion revealed that Union citizenship was more than the simple sum of its parts. It created something new. By referring to the experience of participating in the process of establishing citizenship (of the Union), the ESC underlined the importance of the historical element of belonging for defining citizenship

The Parliament's Committee on Civil Liberties and Internal Affairs Draft Report on citizenship of the Union²⁰⁹ went further with regards to the definition of belonging. Among the most challenging contributions to a constructive and dynamic citizenship politics that followed immediately after the Maastricht Treaty entered into force were a series of requests by socialist, Green, and feminist MEPs. The debate unfolded according to two distinguishable patterns: the contents of citizenship rights on one hand, and the procedure of practising citizenship rights in elections on the other. For example, the Draft

²⁰⁷ CES 1037/92 AHMFdG/AG/em, 23 September 1992, p. 2 [Opinion of the Economic and Social Committee on The Citizens' Europe]

²⁰⁸ CES 1037/92 AHMFdG/AG/em, 23 September 1992, p. 7

²⁰⁹ PE 206 762, 20 October 1993 [Rapporteur: Mr Renzo Imbeni]

Report on Citizenship of the Union which had been prepared by Mr Renzo Imbeni declared in a straightforward manner that "the concept of citizenship can no longer be modeled on that of nationality "

The report referred to what may be identified as two characteristics of Union citizenship. One was historical, the other political. As regards the first, the report explained, certain characteristics such as "religious, linguistic, traditional aspects"²¹⁰ had been added to citizenship over time. At the same time institutional and global changes had led to a change in the relationship between state and individual. These changes had an impact then, not only on belonging but also on the procedure of democratic participation," and specified that "the increasing trend towards a global economy is not only leading to the movement of millions of people but also affecting the economic and social structures of many countries because of decisions that are frequently taken elsewhere"²¹¹. This observation implied that since people's access to decision-making institutions was often impaired, it therefore needed to be re-established anew. With European integration and the creation of the European Union, such a process had been initiated. For example,

millions of immigrants, especially from the Third World, take an active part in the economic life of our countries; this means that we must revise our definition of citizenship, [and it added that this redefinition had to] be based on Community patrimony but allow for its evolution.²¹²

Some of the legal foundations on which these envisaged changes could be based, were provided in a list of demands that needed to be respected, if citizenship of the Union were to encompass "positive rights inherent in personal identity." These rights included, among others, the right to work, equal opportunities and a decent standard of living, the right of

²¹⁰ PE 206.250, 20 October 1993, p. 10 [Draft Report on Citizenship of the Union, Part B: Explanatory Statement]

²¹¹ PE 206.250, p. 90

²¹² PE 206.250, p. 10. In 1993, the group of legally resident immigrants in all EU Member States comprised about 8.5 Million people (out of 320 Million); see PE 205.506, 6 July 1993, p. 3 [Arbeitsdokument im Hinblick auf die Ausarbeitung einer 'europäischen Einwanderungscharta', Rapporteur: Frau Maria Mangani-Noya]

citizens of third countries normally resident in the Union to acquire citizenship of the Union on certain conditions, the right to legal recognition of (sexual, cultural, racial etc.) differences as a prerequisite for effective application of the principle of non-discrimination and equality before the law, and provisions safeguarding certain individual rights such as a woman's freedom to choose whether to become a mother or not and the physical and moral inviolability of the individual.²¹³

In sum, within the framework of newly established institutional arrangements that had created new opportunities for change, the EP's first draft report on citizenship of the Union after Maastricht stated

the concept of citizenship of the Union as defined in Article 8 of the Treaty represents an important stage in the democratic construction of the political union of the European Community in that it postulates an active role for citizens of the Member States within the Community system²¹⁴

The Imbeni report thus referred to the crucial question of the meaning of Union citizenship, pointing out that it meant more than the sum of its parts

With respect to the political characteristics of Union citizenship the report emphasized the political content of the citizenship article by stating that while "the nature and aims of the [EEC] articles [2, 7, 48, 51, 42-66, 119, 173, 177] are purely economic," the Maastricht Treaty

gives formal recognition for the first time to 'citizenship of the Union' and makes a definite commitment to a change of course in the definition of 'European citizenship' In practice this signals a change in the subjective legal position of the individual in the Community legal system

Beyond these legal changes the report observed political changes in the relation between the individual and the Union which influenced the meaning of citizenship on a daily basis. He explained for example that

²¹³ PE 206 762, p. 5

²¹⁴ PE 206 762, p. 3

[i]n political terms 'European citizenship' has to be interpreted as abandonment of purely economic European integration in that citizens are no longer merely subject to Community rules but become involved in the dynamic process of European integration and Community activities that affect and will increasingly affect their daily lives ²¹⁵

This constructive aspect of citizenship was further developed by a series of amendments, that were based on two opinions concerning citizenship of the Union that had been written for the Committee of Civil Liberties and Internal Affairs. One was drafted by Rosamaria Bindi of the Committee on Institutional Affairs,²¹⁶ and the other by Mary Banotti of the Committee on Women's Rights.²¹⁷ Other proposals for amendments were made by MEPs who spoke for the Socialist and the Green groups in the Parliament.²¹⁸

The Bindi document stressed three aspects of citizenship: first, its political link to democratic procedures in the Community, second, the cultural aspect of identity and belonging in relation to regions, Member States and the Union, and third, the aspect of space and status as they related to citizenship. As Bindi stressed with reference to the first aspect, while the Treaty "maintains a broader concept [of rights], conferring on citizens all the rights recognized in the Treaty, not just those of a political nature, [] it does not include all possible political rights."²¹⁹ And the amendment suggested by Claudia Roth, on behalf of the Greens defined political rights as "the right to unrestricted participation in political decisions, as well as the right of assembly, to form associations and the right to vote and stand as a candidate in elections."²²⁰ According to the Bindi document, the problem of "democratizing the Community system, is a process which still has far to go" and which could "not be ignored in a discussion with citizenship."

²¹⁵ PE 206.762, B. Explanatory Statement p. 7

²¹⁶ PE 207.047/fin., 25 November 1993

²¹⁷ PE 206.769/fin., 2 December 1993

²¹⁸ PE 178.166/1, 13 January 1994. The suggested amendments to the Imbenti Report on citizenship included amendments by Mr Imbenti himself and Mr Van Oottrive (Soc) and Mrs Roth (Greens)

²¹⁹ PE 207.047/fin., 25 November 1993, p. 3

²²⁰ PE 178.166/3, 13 January 1994

Regarding the question of belonging and identity, Bindi acknowledged the "legitimate sense of regional identity" and welcomed a "sense of belonging to a wider community" despite the fact that nationalities were defined by the Member States. This was problematic in so far as

the whole range of social, economic and cultural rights recognized by the Treaty are still essentially linked to citizenship. In broad terms the Treaty still ties the exercise of these rights to a political factor - citizenship - which, if one looks at it closely, does not justify anything more than some differences in the exercise of rights which are themselves political. This is a case of pure discrimination which has to be remedied.²²¹

These observations thus emphasized the fact that, with the ratification of the Maastricht Treaty, a legal focus on a politically rather than a socio-culturally derived definition of citizenship contributed to an ongoing practice of defining citizenship according to standards of nationality. Such standards were, however, not appropriate at a time when people often did not live and work within the national contexts of their place of birth but had established themselves as residents in new contexts. In making these observations, Parliament brought to light the tension between socioeconomic inclusion and political exclusion. Expressed in terms of the three historical essentials of citizenship which enable us to capture the constructive aspect of citizenship practice, this tension stressed that a legal stipulation of citizenship remained restricted and therefore led to the political exclusion of large groups of otherwise socially, culturally and economically included members of the European Union as a new community.²²²

A Commission report on the Concept of Citizenship of the Union agreed in principle with these constructive aspects of citizenship practice. However, it also emphasized that this newly established political relationship between the Union and its

²²¹ PE 207 047/fin, 25 November 1993, pp. 3-4.

²²² The excluded groups comprise according to different estimates between 8 and 13 million people (O'Keefe, 1994: 104).

citizens would contribute to bring forth a feeling of identity. The Commission document stated in this respect that

[f]or the first time, the Treaty has created a direct *political* link between the citizens of the Member States and the European Union such as never existed with the Community, with the aim of fostering a sense of identity with the Union. [And it went on to explain] as testimony for their importance, the Intergovernmental Conference placed them immediately after the introductory provisions of the Treaty of Rome, such as Article 6 EC (formerly 7 EEC) which prohibits discrimination on the grounds of nationality, and Article 7A EC (formerly 8A EEC), which provides for the establishment of the internal market *inter alia* for persons. Thus citizenship of the Union appears in the Treaty even before the four freedoms which together make up the internal market.

With regard to the future development or, for that matter, political practice of these new citizen rights which were now "granted constitutional status," the document specified the dynamic aspect of Article 8 EC Treaty, stating that "it must be stressed that the provisions of Part II of the EC Treaty are not static, but are essentially dynamic in nature. This is plainly spelled out in Article 8E itself, in so far as it envisages that these provisions be strengthened or supplemented in the future."²²³ Participation in elections for both the European Parliament and on the municipal level were now to be carried out according to geographical, not national, terms of belonging. While it is often and correctly emphasized that nationality remains the pre-condition for obtaining the political right to vote (Closa, 1994 and 1995, O'Leary 1995, O'Keeffe, 1994, Martiniello, 1994), the notion of 'place' was now introduced as a new component to identify where to practice this right. Thus, according to Socialist MEP Lode van Outrive a prospective step towards solving the problem of third country nationals' rights to participate politically could lie in a move towards a "place-oriented definition of citizenship" (Verbindungsbüro des Landes Niedersachsen, 1993).

To summarize, three major characteristics of citizenship practice were reflected in the first Commission report on citizenship since the Maastricht Treaty entered into force

²²³ COM(93) 702 final, 21 December 1993, p. 2 [emphasis of the document]

on 1 November 1993. First, the report revealed a discursive link to the original idea of creating a European identity as it had been forged in the early 1970s and then been integrated step-by-step into the treaty until it culminated in the stipulation of citizenship in the TEU. Second, this statement expressed the interdependence of special rights as political rights of citizens and passport union which includes the establishment of the freedom of movement. And, third, by bringing attention to the dynamic nature of the Treaty provisions, the document underlined the constructive aspect of this formal expansion of the *acquis*.

While it is not intended to continue the citizenship story *ad infinitum*, this thesis will provide a brief perspective on new actors who contributed to the development of citizenship practice post-Maastricht. These actors drew on the ideas which had previously contributed to generate the meaning of Union citizenship. With this meaning now being part of the *acquis communautaire*, they could now be mobilized within the new political opportunity structure and by more actors than the institutions which had been thereby involved.²²⁴ An overview over possible future actors was provided by a group of various representatives of interest groups and Community institutions which met in September 1993 in Brussels to discuss citizenship practice strategies. The debates provided by indicate that EC/U citizenship practice is not restricted to the construction of citizenship in a top-down manner alone--as the first two decades of EC/U citizenship practice suggested--it also includes bottom-up political action.

While post-Maastricht citizenship practice is not a central part of this thesis, it is nevertheless crucial to note that previous citizenship practice has created shifts in the political opportunity structure which contributed to the emergence of new actors in the universe of political discourse. Beyond the formal aspect of new political rights, the

²²⁴ As O'Keeffe crucially observes, the argument made in favour of the municipal vote of Community nationals living in another Member States "also apply in the case of third country nationals" (O'Keeffe, 1994: 104). This indicates that previous citizenship practice which had contributed to the *acquis communautaire* may now be mobilised for other or similar citizenship practice in the new circle.

practice shows that citizenship practice may have ceased to be a top-down practice that relies on Community institutions only. Instead an emerging interest of social forces such as social movements and interest groups imply that citizenship practice now also increasingly includes more actors. As the Imbeni Report of the Parliament put it, "now that the Treaty has been ratified, consideration must be given to the new legal framework for improving it."²²⁵

Indeed, Maastricht was seen as the a "starting point, not the end point, for negotiation among interested parties" (Marks, 1993:394). However, it also presents a challenge to the Union citizens because "[d]espite the high emotions it [the Maastricht Treaty] has engendered among publics who were formerly content to let elites run European integration, the Treaty is an open-ended and ambiguous document. It is full of legalese and 'Eurospeak' concerning an impressive range of policy areas but holds few hard commitments on the part of the member states" (Marks, 1993:394).

Mobilizing Resources: A New Type of Citizenship Practice

Given these changes, how could further conceptual innovations be translated into the language of constitutional law? Was it possible at all to integrate them into the Treaty? Those were some of the central questions which were addressed not only by MEPs but by representatives of other social forces. At one event, for example, a regional representation office (Lower Saxony/Germany) invited experts on immigration and citizenship from a broad spectrum of institutions, among them the Commission, the EP, sub-national parliaments, the ECS, the church, the print media, as well as representatives of political foundations and the forum of immigrants (Verbindungsburö des Landes Niedersachsen, 1993). During the workshop, the participants proceeded to debate possible political initiatives towards the realization of a "European civil right" (europäisches Bürgerrecht).

²²⁵ PE 206 762 and PE 206.250, 20 October 1993, p. 10

(Verbindungsbüro des Landes Niedersachsen, 1993:3) The initiatives could draw on the fact that with the introduction of the term 'EC-citizenship' the regressive nationalist logic that was inherent principle of a people's nation was undermined (Ibid. 4).²²⁶

Conceptually, the differences between various categories of citizens within the EU, for example third country nationals--among them also these nationals who belonged to countries of the European Free Trade Area (EFTA)--and Union citizens, led to discrimination as long as the legal principles of *ius solis* and *ius sanguinis* were valid as the basis of the status of citizenship. To overcome this situation, it was suggested to link rights to persons, instead of principles (Verbindungsbüro des Landes Niedersachsen, 1993:4) The issue of human rights which had already been addressed by the Parliament was considered as one possible approach.²²⁷ The central questions were (1) who would be the possible actors, and (2) how to establish legal regulations for citizens of third countries. With regard to the first question, the European Parliament, the ESC as well as the new Committee of the Regions²²⁸ were considered as possible actors. Concerning the second question, two possible strategies were suggested drawing on the political experience of the 20 year long process which ultimately led to the inclusion of Union

²²⁶ While not referring explicitly to the concept of the concept of citizenship of the Union, the controversial document of the conservative CDU/CSU (Christian Democratic Union/Christian Social Union) parliamentary group in the German Parliament (Bundestag) on the "Future of European Unification", also stressed the EU as one possible concept to overcome "regressive nationalism". As the document stated, [a]n increase in regressive nationalism' in (almost) all member countries, which is the product of deep-seated fears and anxieties caused by the internal crisis of modern society and by external threats, such as migration. Fear and anxiety tempt people to seek, if not a solution, then at least refuge in a return to the nation-state and all things national; [and it went on to stress, the] highly debilitating effect of the enormous demands places on national governments and parliaments by the above problems. It thereby implied that within the EU and through the EU such problems might be better addressed, which eventually led to the demand for a federal if "two tiered Europe", the most controversial statement of the document (AE, No. 1895/96, 7 September 1994, p. 2, and *passim*).

²²⁷ For initiatives of the EP towards such an approach, see for example: PE 205.506, 6 July 1993 and PE 205 843, 10 September 1993.

²²⁸ For the establishment of this Committee of the Regions, see: Article 198a, EC Treaty which states: "A Committee consisting of representatives of regional and local bodies, hereinafter referred to as 'the Committee of the Regions', is hereby established with advisory status." The number of members of the Committee were distributed as follows: Germany, France, Italy and the UK (24); Spain (21); Belgium, Greece, the Netherlands, Portugal (12); Denmark and Ireland (9) and Luxembourg (6).

citizenship in the Treaty. From this experience, it was known that three factors had contributed to the final success: (1) the will to bring about political union, (2) the will to social harmonization, and (3) the pressure that had been generated by the Parliament. An additional premise was the enormous taboo that any type of harmonization regarding the third pillar (Justice and Home Affairs) meant for the Member States.

Hence, the representatives of interest groups, Commission officials as well as MEPs who participated in this debate considered it most adequate to distinguish between purely legal and political interpretation of the Maastricht Treaty. Accordingly, two combined strategies seemed promising. One would be to go issue-by-issue, such as, for example, visa regulations, vote in municipal elections, external borders and freedom of movement. The second strategy would be to generate political dynamics, for example, by the Parliament which supported the discussion about democratization as one type of dynamic in particular (Verbindungsbüro des Landes Niedersachsen, 1993: 7-9).²²⁹ As the debate over third country nationals' rights within the Union gained momentum during the 1990s, it became apparent that Article 8e entailed an opportunity to bring in a new political dimension, provided that the political opportunity structure was favorable.

The "dynamic" citizenship Article 8E EC Treaty is identified as a possible basis of expanding Union citizenship.²³⁰ It states:

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee before 31 December 1993 and then every three

²²⁹ Of the four issue areas which could be tackled the question of vote was the obvious one to address first, as the next European elections were to be held in June 1994. Hence the rules for the voting procedure had to be set qua Council directive by that time. As for the other three areas, freedom of movement remained subject to the realization of free movement of persons based on the Schengen Convention and/or the Maastricht Treaty (now Article 7A EC instead of Article 8A EEC)²²⁹ of which the question of external borders and visa regulations form part (see previous chapter) and which was at the time delayed because of the failure of the respective participating countries to agree on how to harmonize their security and control issues.

²³⁰ Article 8E EC Treaty has indeed been termed the "Evolutivklausel" (evolutive article) meaning that it provides space for further development of citizenship (Degen, 1993: 752, 758). It then keeps to a certain extent with the Spanish proposal's demand for "dynamic" citizenship (Permanent Representation of Spain, 1991).

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 with 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.

The Article thus provides a possibility to prepare new proposals and introduce them once the opportunity is right. Whether and how this process proceeds is another story.

Most certainly, not only the question of fundamental and human rights and their link with the EC Treaty (O'Leary, 1995; Weiler, 1994), but also the extension of participatory rights based on the principle of equality as they have been voiced by the Parliament, will be an important issue in the forthcoming debate. However, these considerations remain speculations at this point in time and are to be explored much more carefully elsewhere. This thesis is neither the place to pursue them further nor to evaluate them. Crucially, the provisions of Article 8e EC Treaty are written in a way that allows for incremental change of Union citizenship Thus citizenship rights may be "strengthened" or others might be "added", however, they may not be diminished (O'Keeffe, 1994:102). In other words, Union citizenship is conceptualized as a dynamic concept it bears potential for change

Conclusion

The date of the TEU entering into force on November 1, 1993 marks one stage in the story of constructing European citizenship; namely, citizenship has been included in the Treaty, it is clearly defined and visible. Now the Article 8 EC Treaty may be invoked. However, as this dissertation argued, the embedding of citizenship in the Treaty represents but one dimension of this story. Beyond this legal dimension, the institutional as well as the sociocultural dimensions have proved to be crucial, as both contributed not only to the project of market-making but also to that of Union-building. Secondly, this thesis began

with the assumption of citizenship being a dynamic concept. In other words, if the union-building contribution of citizenship is examined, it is important to understand where such constructive aspects of citizenship are situated and which institutions have been involved in constructing them.

The focus of the ensuing debates after Maastricht added a new insight into the case study. It suggests that a change occurred in EC/U citizenship practice by pointing out how the European Parliament and interest groups in the EU worked with the changed institutional framework, that is the formally expanded *acquis*. Union citizenship was defined and the political right to vote of Union citizens was beginning to be generalized across the Union. Despite the failure to include all political rights such as, for example, the right to association and the right to freedom of expression which would have facilitated "full political participation" as Green MEP Roth described it, new opportunities for citizenship practice had been created. These opportunities included new access to political participation (European and municipal elections), the right to move and reside freely within the territory of Member States, the right to petition, and fourth the right to consular protection while abroad.

Compared to the early beginnings of citizenship practice, this struggle takes place in a political opportunity structure that includes a revised and expanded *acquis communautaire*. The set of formal institutional arrangements now entails the Single European Act (1987), the Social Charter (1989), the Schengen Convention (1990), and with the Treaty of European Union most importantly, the Committee of the Regions, co-decision and Article 8 EC Treaty on Union Citizenship (1993). These innovations include formal institutional aspects of the *acquis communautaire* such as conventions, acts, articles, protocols and procedures which decisively contributed to a changing political opportunity structure by facilitating new institutional resources. Whether or not they were accessible and if so how, remains to be shown. The resources which could be mobilized for such struggle are part of the *acquis*. They consist of a set of formal institutions such as

the rights defined by the Treaty and most clearly by Article 8 EC Treaty on the one hand, and of a set of practices and meanings that had been accumulated over time, on the other. The change in citizenship practice suggests that the time to work with the newly established institution of Union citizenship has come. The question is now one of political opportunity

CHAPTER 7

CONCLUSION: PARAMETERS OF A NEW GEOGRAPHY OF CITIZENSHIP

Citizenship practice is related to state-building. This is the lesson to be learned from the history of most of the Western European nation-states which are now Member States of the European Union. Their respective experiences of citizenship practice suggest that citizenship does not drop from the sky. Instead it evolves over time and its meaning differs across time and place (Bendix, 1964; Brubaker, 1992; Degen, 1993; Hammar, 1990; Hobe, 1993; Lepsius, 1991; Meehan, 1993a; Tilly, 1975; Turner, 1990). The implication is that it is always historical experience that defines the meaning of citizenship.

This dissertation has explored two things. First, what do these observations imply for an understanding of the emerging citizenship practice in the European Community, and now Union? Second, what do the findings about this citizenship then indicate for our understanding of citizenship on a more general theoretical level? To answer these questions this study has applied two perspectives. One was *conceptual* and included the development of an ideal-type model of citizenship which would be applicable to the analysis of different contexts while leaving space for historical particularities. The other was *methodological* and entailed a systematized approach within a historical institutionalist framework. This framework was refined by proposing a focus on the changing universe of political discourse and political opportunity structure.

I found that the emergent model of supranational citizenship in the EC/U conforms to the ideal-type in that it includes rights, access, and belonging. In this way it shares the central historical elements of modern citizenship practice that contributed to nation/state-building during the nineteenth and early twentieth centuries. In order to discern the emergence of this ideal-type it was necessary to employ the concept of citizenship practice. This concept identified large processes of transformation, and tensions over inclusion and exclusion. The analysis of citizenship practice in relation to new borders,

new boundaries and new politics of belonging provides one way of assessing the political organization of collectivity in supranational socio-economic and political spaces.

In the remainder of this concluding chapter, I elaborate this theme. To that end, I first recall most recent theoretical queries about citizenship, nationality and identity as well as the meaning of this new type of citizenship from a legal and from a socio-historical perspective. As expressions of uncertainties about supranational citizenship they highlight heuristic concerns, to some of which the solution of this dissertation contributes. Then I recall the theory and methodology that underlay this dissertation and the story of EC/U citizenship practice they facilitated. Subsequently I summarize the analysis and identify the characteristics of Union citizenship compared to the now familiar concept of citizenship in modern nation-states.

Union Citizenship

From a legal perspective, the analysis of Union citizenship is fairly simple and straightforward (Eversen and Preuß, 1995:8). Union citizenship is not unitary but federalist. Member State nationality is a condition *sine qua non* for obtaining political citizenship rights (Degen, 1993:751). Moreover, "despite the establishment of Union citizenship in Article 8 EC, the Union Treaty has, on the whole, simply constitutionalized certain rights which previously existed in Community law, introduced a few new ones and provided a legal basis, as yet untested, for the enlargement of the content of Union citizenship in the future" (O'Leary, 1995:519, O'Keeffe, 1994:106). Yet Union citizenship is innovative because it "adds to the first group of nationality rights enjoyed within a Member State a second circle of new rights enjoyed in any Member State" (Closa, 1995:493).

From a socio-historical or political perspective, questions about state-building and identity have been raised, once political citizenship rights had been defined by the Maastricht Treaty (Closa, 1995, Habermas, 1991, Hobe, 1993, Lenoble and Dewandre,

1992; Wildenmann, 1991). Regarding the question of identity, some observers concluded that the development of Union citizenship was not possible because of a lack of "Community identity" (Closa, 1995:507). The underlying logic of this argument is one that deduces the concept of citizen identity from an understanding of national identity. Since Union citizenship has not superseded nationality, it concludes, we cannot speak of supranational citizenship. Others were less sceptical of the state-building quality of citizenship. They found it "difficult to understand which meaning this new element of the EC Treaty may have for the process of European integration, and which stamp it might imprint on the character of the emergent 'European Union'" (Eversen and Preuß, 1995:8). Such divergent views suggest the need for conceptual clarification. While there might be more to understand about the concept of Union citizenship than mere legal provisions "[t]he assessments of the importance of the institution 'citizenship of the Union' are vague and cautious at best" (Eversen and Preuß, 1995:8).

By focusing on EC/U citizenship practice, this dissertation has shed light on both the question of identity and that of state-building. It did not begin from an approach that defines citizenship *legally* according to citizenship rights (O'Leary, 1995, O'Keeffe, 1994), nor did it seek to assess the potential of European citizenship to develop a European *national* identity (Closa, 1994 and 1995, Evans and Jessurun d'Oliveira 1991). Instead it aimed at an understanding of a *characteristic* of European citizenship. Similar to Meehan's work (Meehan, 1993a and 1993b) then, this project assumed citizenship to be constructed in practice particular to time, place, actors and institutions. In a word, it aimed at identifying Union citizenship in its own context, adopting Marshall's view of citizenship being "dictated by history even more clearly than by logic" (Marshall, 1950:10). I wanted to know whether citizenship practice would entail large transformatory aspects which could be compared to the (nation)state-building capacity of previous citizenship practice in the period of modern nation-state construction.

Concepts and Methodology

The theoretical basis of this examination of citizenship policymaking rested on an ideal-type model of citizenship which contains constitutive and historical elements. Accordingly it considered the traditionally necessary elements for any citizenship analysis; namely the individual, the community/nation-state and citizenship practice being the relation between the first two. These were the constitutive elements while the elements of rights, access, and belonging which characterize historical variability among different trajectories of citizenship were the historical elements of citizenship.

Two aspects of this ideal-type model of citizenship have come to the fore in the study. One was the development of the concept of citizenship practice. It has added historicity to the largely unresearched link between individual and community by allowing for a simultaneous focus on both policymaking from above and politics from below. According to this model, citizenship practice is considered as neither state-centric nor society-centric but as a process of interrelation between the state and society, notwithstanding the frequent hegemony of one type of citizenship practice over the other. The other central theoretical aspect is that 'belonging to a community' is understood as based on two different types of links between the individual and the community. That is, belonging may indicate *legal* ties on the one hand, and expressions of *identity* on the other. Whereas legal ties are defined by law--they are materialized as constitutionalized rights and often linked with an expectation of loyalty--identity ties hinge upon the perception of attitudes, feelings or personal preferences that depend on whether or not citizens are able to develop a sense of belongingness to a community.

From this ideal-type model, we can study historically specific types of citizenship without making assumptions about the type of "state" or society involved. Thus if it were possible to observe at least one constitutive element, we would also find the historical elements. I chose the case of EC/U citizenship as one among other obvious cases that

challenge current definitions of citizenship, because this case provides the most dramatic deviation from what may be termed "traditional" assumptions about citizenship

The particular theoretical and political challenges to both current approaches and politics of citizenship rest on the observation that the EC/U does not qualify as a community of belonging such as, for example, modern nation-states. Instead, it is a community that changes not only with reference to time but also to place. This incremental growth is best explained by the much discussed processes of "widening and deepening" of the community. Where widening refers to the enlargement process as new states become members of the EC/U, the process of deepening defines the constitutionalization of new institutions in the Euro-polity (Wessels, 1991). Both these processes follow a pattern of incremental growth. I assumed that if it were possible to discern anything akin to a systematization of such supranational citizenship policymaking, then this would provide insights for further citizenship politics in times of a new global (dis)order in which traditional, or, for that matter, nation-state related citizenship is increasingly challenged by processes of migration, guest-worker migration, and de-colonization (Held, 1991, Soysal, 1994a). As Held summarizes this situation of (dis)order

[o]ne final question remains unanswered: to what political entity does the democratic citizen belong? Everywhere the sovereignty of the nation state itself - the entity to which the *language of citizenship* refers, and within which the claims of citizenship, community and *participation* are made - is being eroded and challenged. Externally, the processes of economic, political, military and ecological interrelation are beginning to undermine the status of nation state as a sacred and self-sufficient entity. The rise of regional and local 'nationalisms' are beginning to wear away at it internally" (Held, 1991: 24).¹

Held notes that the "language" of citizenship traditionally refers to 'citizens' and 'nation-states'. Logically then, it is problematic to study citizenship based on a language which no longer represents historical reality. To avoid this problem, the dissertation did not proceed from the "language" of citizenship (as in citizenship theory) but from

¹ [emphasis added]

citizenship as practice. By assessing citizenship in this fashion, it allowed for an understanding of an emerging discourse of citizenship. The main methodological project of this thesis was therefore to "situate" the making of EC/U citizenship in its historical context to allow for systematic analysis, without presuming any particular historical given. To that end, I examined how the language of citizenship emerged over time becoming part of the official Community discourse in the early 1970s, and then being defined as a new supranational institution in the Treaty of the Union two decades later.

The three leading questions of this dissertation were (1) what does EC/U citizenship entail? (2) How have citizenship rights been established? (3) Is the EU proposing to establish rights, access and belonging similar to those of earlier manifestations of citizenship?

Accordingly, I sought early citizenship practice in the documented policy process of the EC/U and then examined its contribution to the *acquis communautaire*--conceived as a set of formal and informal institutions--that expanded over time. Thus, the emphasis was on the organic growth of citizenship that depended on actors, resources, political opportunity structure and the dominating policy paradigm at any time. The *acquis* included materialized or formal institutions such as treaties, regulations and directives, meaningful resources such as ideas, proposals and philosophical discourse and shared practices and beliefs.

By focusing on the relationship between citizen and community as one that is constructive, this thesis has also avoided the 'nationality trap' that often emerges when citizenship and national identity are used interchangeably. Instead, a dynamic and dialectical understanding of citizenship has provided a fresh view on newly developed identities as the process of citizenship practice evolved. From that view, it was possible to reconstruct the story of EC/U citizenship practice. In the following, I facilitate a brief summary of this story and its analysis, thus answering the third question; namely, what does EC/U citizenship entail? The summary draws on both the methodological approach

that generated the story of citizenship practice and the theoretical innovations which facilitate a view of its historical variability

Constructive Citizenship Practice: Rights, Access, Belonging

The Story. The case study has revealed that EC/U citizenship practice has begun to generate rights, access and belonging as elements which bear a specific character. The story of citizenship practice began during a period (Paris, 1970s) when Community politicians voiced the need to develop a European identity. Out of the debates over identity which ensued were generated the policy objectives of "special rights" for European citizens and a "passport union." Both aimed at the creation of identity based on a feeling of *belonging*. According to the approach to citizenship pursued in this dissertation identity is one aspect of the twofold historical element of belonging, that hinges on the rules of membership on the one hand, and a feeling of belonging on the other.

The next stage of Community development (Fontainebleau, 1980s) involved the need of an increasing movement of worker-citizens as one basic condition for economic flexibility. With this movement, the demand for greater social and political equality among "foreigners" and "nationals" arose. With reference to democratic expectations, thus evoking a shared--European--history of democratic experience, more democracy was requested and an increasingly public awareness of a "democratic deficit", both in procedural and normative terms emerged. With this context of functionalist needs towards economic integration and normative demands for participation and equality unfolding, first the Social Charter was adopted, then proposals for increased political participation were written and a Common European Passport was created.

These demands for greater *access* to participation both in political and socio-economic terms were renewed in the changed political opportunity structure of the 1990s (Maastricht). They resulted in the adoption of political citizenship *rights* with Article 8 EC

Treaty, as well as the stipulation of the rights of free movement and residence not only for the employed and their families, but also for other persons, under the condition of economic security and nationality

The Analysis. First and foremost, this case of EC/U citizenship practice finds, that Union citizenship means much more than a simple compilation of rights. Once studied within a socio-historical framework, it also turns out to be a story about identities. While both types of belonging (legal and identity-based) have been the target of EC/U policy, it was the question of belonging in the meaning of "identity" that was first mobilized by policymakers. This identity was however not understood as national identity, that is as one that distinguished Community citizens according to nationalities, nor did it aim at replacing national identity with a European one. Instead, the citizenship practice analysis suggests that the creation of belongingness to the EC/U emerged according to what individuals did or might aspire to do with reference to economic and political participation. Crossing national borders as economically active citizens, waving closed passports at internal Community borders as travelers, exchanging knowledge as scholars and students, voting commonly for the European Parliament and sharing municipal governance as Union citizens were aspects of this process. Indeed, belongingness was generated step-by-step and area-by-area.

Comparing Citizenship Practice

The comparison of EC/U citizenship to the characteristic pattern of citizenship in modern European nation-states, reveals similar as well as different features. To recall briefly: Modern citizenship practice was embedded in a centralized institutional organization of the nation-state. Both citizenship policy and citizenship politics led to the establishment of civil, political and social *rights*, to a shared understanding of legal and identity-based *belonging* to a community and the ongoing struggle for *access* to participation. Characteristic for this type of national citizenship practice as struggle was

that demands were directed towards the state,² in turn, policy was directed to those citizens who were nationals of the state.³ As a whole, this process of interaction between state and societal forces forged the institutions of modern national states

In the European Union no central Union with "state" institutions was established. The Union is neither a centrally organized state nor does it follow state-centric types of policymaking (Hooghe et al. 1995). It may be identified as a union-state (as opposed to city-state or nation-state) with its own characteristics which at times overlap with, and at other times differ from known state patterns. The citizenship practice related to this union generated a dispersed type of citizenship. It is dispersed because Union citizens direct demands towards the Member States and to the Union as well, they also may belong to one local community of a Member State (in terms of their social, cultural, economic and political activities) and at the same time, they belong to a national community of another Member State (legal/national ties and political activity). The establishment of this supranational citizenship also brought changes in national institutional practices.

Both types of citizenship--national and EC/U--are linked with and embedded in large processes of transformation (Tilly, 1975 and 1984, Bendix, 1964).⁴ While citizenship practice of nation-states developed historical characteristics in close relation with the societal changes during the industrial revolution, and an emerging world system

² As Turner summarizes, "[c]itizenship is, as it were, pushed along by the development of social conflicts and social struggles within [...] a political and cultural arena, as social groups compete with each other over access to resources. Such a theory of citizenship also requires a notion of the state as that institution which is caught in the contradictions between property rights and political freedoms" (Turner, 1990: 195).

³ Indeed, the distinctive features of a modern state included that it was "an organization which controls the population occupying a defined territory [...] in so far as (1) it is differentiated from other organizations operating in the same territory; (2) it is autonomous; (3) it is centralized; and (4) its divisions are formally coordinated with one another" (Tilly, 1975: 70).

⁴ Tilly characterizes political rights of citizens as "political rights in a large sense - political in that they constitute binding claims on the agents of government, rather than some other groups" and he continues that "that specification clarifies a large historical transformation. The European national revolutions of the last few centuries did not so much expand political rights as concentrate them in the state and reduce their investment in other sorts of governments. A large part of the process consisted in the state's abridging, destroying or absorbing rights previously lodged in other political units: manors, communities, provinces, estates" (Tilly, 1975: 37).

of interacting nation-states, citizenship practice of the EC/U acquired characteristic meaning during a time of increasing globalization of the economy. Both types of citizenship bear the historical imprint of their time. What does this imply for the European case?

This case study not only located the historical elements of rights, access and belonging in their Euro-specific appearances, but it also facilitated a view of tensions which evolved during the process of citizenship practice. Thus, in a nutshell, the establishment of special rights of movement for European citizens and the desired establishment of an area without internal frontiers did two things. On the one hand, it guaranteed the civil right of free movement, and on the other, it created political and social inequalities among those who moved to another Member State and those who were citizens of that Member State. This tension led to the establishment of, first, social rights and, in the long run, to the establishment of the political right to vote. Subsequently, those who could not move freely because they did not belong to the group of wage earners or were not related to them, also requested freedom of movement. Prior to Maastricht, the differences between so-called Community "foreigners", that is nationals living in a Member State with which they had not legal ties of loyalty but might have developed a feeling of belonging, and nationals, that is those who possessed the legal ties to that particular Member State, was at stake. It was addressed by guaranteeing the right to vote and stand for election in European and municipal elections to these "foreigners".

Post-Maastricht, another debate about the inclusion of Union citizens, that is citizens who had legal ties with the Union, and the exclusion of "third country citizens," in other words, individuals who did not possess legal ties with the union but might have developed a feeling of belonging was pushed by interest groups and the European Parliament in particular. One proposition to solve this potential political problem was the

establishment of place-oriented citizenship.⁵ This demand was brought into the debate by the European Parliament (Oultrive Report, Imbeni Report). It was enforced by the social movements' demand to change the citizenship legislation of the Treaty. For example, instead of granting citizenship of the Union to "[e]very person holding the nationality of a Member State" (Article 8 (1)), the ARNE group requested citizenship for "[e]very person holding the nationality of a Member State *and every person residing within the territory of the European Union*" (ARNE, 1995: 4).⁶

The discourse on place-oriented citizenship brought to the fore in the 1990s then facilitates another perspective on the conceptualization of EC/U citizenship: it suggests to respect the new geography of citizenship. That is, citizenship may be studied according to its practice in different spaces within a Community. It is not built on the legal ties of belonging to the community alone but also on identity-based ties of belonging to spaces within the Community, thus allowing access to citizenship rights for more than Member State citizens.

From the methodological framework of this case study, which focused on the changing political opportunity structure, it is now possible to note a similarity in argumentation in both: the demand for political rights of Community "foreigners" (who are nationals of one of the Member States) and "third country nationals" (who are not nationals of any Member State).⁷ This argumentative similarity means that the resources which may be mobilized by the political actors during the post-Maastricht period have previously been created as part of the citizenship *acquis communautaire*. The thus enlarged *acquis communautaire* contributes to establish a new opportunity structure: it

⁵ It is interesting to observe the notion of "place-oriented" citizenship as *discourse* discerned from the study of citizenship practice in the EC/U context, on the one hand, with the application of "place-sensitive" citizenship as a *concept* suggested by Jenson's work on citizenship in the Canadian context (Jenson, 1991). This observation may be crucial for subsequent comparative studies on citizenship practice in contexts that differ from those of the familiar nation-state model.

⁶ Emphasis of the document.

⁷ For this observation see also O'Keeffe (1994).

facilitates individual citizens' involvement as well as the participation and reorganization of interest groups such as for example municipalities, or regional representations which are now able to address their concerns about rights, access and belonging with reference to the new centralized institution of Article 8 EC Treaty. If a new philosophical debate is to emerge over the meaning of citizenship,⁸ the past 20 years have contributed new information and insights into institutional arrangements as the framework of this debate.

In the 1990s, emerging struggle for improved citizenship rights led to the next circle of citizenship practice, which now involves politics more than before. It remains for future studies to establish, whether, and if so, how and to which success they are mobilized, given that actors, policy paradigm and the institutional framework to mobilize them have changed. The emergent citizenship practice as politics sheds light on the other aspect of citizenship practice and thus provides new insights into the link between citizenship practice and union-building. The reconstructed debates over who belongs, and who votes, about what action to take and on what legal grounds, involving a wide range of EC/U actors--from officials of the Euro-polity and MEPs to interest groups and others⁹--show that the story of citizenship practice does not end with the constitutionalization of political citizenship rights.

As the participants of these negotiations stressed repeatedly, the definition of citizenship rights established for the first time a direct political link between the citizens and the Community. No matter how Union citizenship may be interpreted, it does set individual citizens as a "legitimizing reference for EU law and politics" (Closa, 1995:488). And legal analyses point to Article 8e EC Treaty as the evolutive provisions and hence possible means to expand citizenship over time. With Maastricht enforced the struggle

⁸ A fact that the literature on citizenship strongly suggests. see: chapters 1 and 2.

⁹ For such mobilization see for instance the work of the Antiracist Network for Equality in Europe (ARNE) as well as the mobilization of network for democracy in Europe. Eurotopia (The Maastricht Working Group. ARNE, 1995; Eurotopia 1995 respectively. For information on the former I thank Vince della Sala)

over political tensions may turn increasingly into something like an engine towards union-building, similar to but different from modern processes of state-building. The comparison suggests that EC/U citizenship practice does not forge centralized institutions of the polity but rather generates dispersed institutions that relate to multiple types of identities. Most importantly, national identity albeit an entrance rule for "membership" in the community of Union citizens, increasingly loses identity generating power to new concepts of place and process oriented identity, developed as a feeling of belonging.

To sum up, EC/U citizenship-building is contributing to the creation of a new type of citizenship that includes the patterns of rights, access and belonging. It does not supersede national identities. Rather the emergence of a European identity is able to evoke various identities of citizens as workers, as voters, as family members and so forth. Thus citizenship practice contributed to providing access to a growing number of target groups, such as workers, wage earners, students etc. A result of citizenship practice is the creation of new institutions which facilitated access, such as social rights, new voting rights, a European passport, changed rules of border crossing and practices that would contribute to create a feeling of belonging such as waving one's passport at internal Community borders.

The newly created institutions are functional to the request of market flexibility and competitiveness. At the same time, they facilitate a step-by-step narrowing of the gap between economically included and politically excluded Europeans. While citizenship practice thus enabled inclusion based on new institutions and, relatedly, new supranational practices, it also generated political tension. The normative demand for more access to such democratic institutions as the right to vote clearly brought the problem of inclusion and exclusion among Member State nationals and "other" European residents, namely the so-called "third country nationals" to the fore. Crucially, this focus on institutions and practices highlights the problem of the so-called "democratic deficit" in the EC/U as one that is actually twofold. It comprises both a procedural aspect, that is, a problem of

supranational decision-making, and a normative aspect, that is, a problem of equality. Neither problem is exclusively European but both have been addressed elsewhere in relation with processes of globalization in general (Cerny, 1995)

Conclusion: Parameters of Supranational Citizenship Practice

This thesis comes to the conclusion that EC/U citizenship practice is neither an overall straightforward process as suggested by a purely legal perspective, nor is it--given its "scattered appearance" (Jorna, 1994)--barely accessible. Instead, it is argued here that a systematic socio-historical perspective may tackle this highly complex and comprehensive process with a view to identifying the historical elements, to systematizing their emergence and to pointing out their political potential. These findings bear theoretical and political promises.

The story of citizenship practice has shown that once we allow for a holistic and contested notion of citizenship, it is possible to capture the constructive moment of citizenship. Talk about citizenship in the EC/U thus turns into a complex history of Union-building. Conceiving citizenship in terms of situated practice permits for a location of conflicts and a perception of access points to solve such conflicts based on policy. Furthermore, it makes evident the political character of citizenship. This political character of citizenship contributed to increasingly far-reaching institutional reforms which, for the moment, have culminated in the establishment of Union citizenship.

In sum, this case study of supranational citizenship practice is perhaps most precisely defined as a case that has contributed to understand the changed geography of citizenship in high modern times.¹⁰ It crucially questions traditional modern ways of

¹⁰ For some observers, the EC/U's "institutional, juridical, and spatial complexes [...] may constitute nothing less than the emergence of the first truly postmodern international political form" (Ruggie 1993: 140). This case study shows that it is not time for that emergence of postmodernity yet. Clearly, the idea of citizenship and its embeddedness in a shared belief in access to democratic participation, rights and belonging bear the historicity of modern experiences and, drawing on them, contribute to generate new ones.

thinking about both citizenship as (national) identity, as well as citizenship practice being situated within borders of a (national) state. Indeed, based on the discourse analysis that I have carried out, it is possible to state that European citizenship practice could precisely proceed because it did not aim at destroying *one* (national) identity--albeit this was a frequently mentioned British worry all through the process. It rather attempted to continuously mobilize *various* identities. While policymakers have not specified this particular policy, from other cases of citizenship practice, we know that such policymaking relies on the knowledge of citizens as having multiple layered identities.¹¹

Couched in an historical institutionalist approach, this thesis confirmed previous observations about the existence of European citizenship. Beyond that, and most importantly, it facilitated another finding that indicates a change in patterns of identity generation, as the central characteristic of supranational citizenship. This characteristic is derived from a new importance of the historical element of belonging and the institutions and actors of the new political entity which generate, control and/or contest it. The parameters of citizenship brought to the center of citizenship practice by this case are borders, boundaries and the politics of belonging. They create the basis for new collective action within the new geography of citizenship in the new world (dis)order.

¹¹ This notion of multiple-layered identities has been more thoroughly analyzed in relation with citizenship practice as politics. Part of this politics is the process of deconstructing boundaries, or the collective struggle of groups which fight for equity. As Jenson demonstrates, an approach to citizenship which includes this notion, "recognizes and asks about the power of groups to disseminate their preferred patterns of inclusion and exclusion. It thereby sees all identities, but especially the identity of 'citizen' as contingent results of political practice" (Jenson 1995: 103). It is important to note then, that multiple identities are thus understood as the basis of multiply structured boundaries, yet they remain operational for collective action as struggle over preferred identities points to strategically central identity claims at certain points in time.

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