

RECON Online Working Paper 2011/10

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RECON Online Working Paper 2011/10
March 2011

URL: www.reconproject.eu/projectweb/portalproject/RECONWorkingPapers.html

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RECON Online Working Paper Series | ISSN 1504-6907

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Issued by ARENA
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Tel: +47 22 85 87 00 | Fax +47 22 85 87 10
www.arena.uio.no

Abstract

European citizenship poses a theoretical challenge to the paradigmatic understanding of citizenship as congruence between nation, state, and membership rights. This challenge is addressed in this paper by focusing on ideal typical models of the EU polity. Is EU citizenship more nation-based, federal, or cosmopolitan? Utilized heuristically, the models account for different features of European citizenship practice, and the relative weighting between them. Based on this analysis, the main argument of the paper is that despite certain developments towards granting rights based on 'personhood' and not 'nationhood', institutional practices of European citizenship are also heavily dependent on the interface between nation-state and federal arrangements in EU politics. The main reasons for this conclusion are found in the continuing bifurcation of citizenship rights as transnational and supranational in the EU, and the institutionalization of member state nationality as a prerequisite for enjoying such rights. The degree of 'incongruence' or 'de-linkage' is therefore dependent on the mixed nature of EU politics, rather than the effect of postnational projects that address the 'liberation' of citizenship from nationality.

Keywords

European Citizenship — Federalism — Nationality — Nation State — Political Science

Introduction

As the most comprehensive project in international integration, the European Union (EU) has established direct links with the citizens of the Member States through Union citizenship and a European rights catalogue. Binding treaties, policy developments, legal doctrine have advanced some basic principles and institutional practices that structure the relationship between citizens and supranational institutions. Based on nationality as the main criterion for membership, European citizenship is *double-hatted*. It consists of two parallel sets of rights; direct supranational rights and a set of transnational rights that follow from the principle of free movement and access to rights in other member states. In other words, in the EU, which is not 'settled' as a polity compared to nation-states and has developed a complex system of multilevel decision-making, the scope and limits of citizenship are not clear cut. It does not, at the outset, constitute civil, political, and social *equality* among human beings based on '(...) the concept of *full* membership of a community' (Marshall 1992: 6). The traditional notion of membership in a 'closed' community (see Arendt 1968: 81-82) is, therefore, under pressure: the very idea of European citizenship poses a theoretical challenge to the paradigmatic understanding of citizenship as congruence between nation, state and membership rights (see Preuss 1998).

To what extent has this challenge come to fruition? This paper advances the argument that despite certain developments towards granting rights based on 'personhood' rather than 'nationhood' (Soysal 1994), institutional practices of European citizenship are also heavily dependent on the interface between nation-state and federal arrangements in EU politics. The degree of 'incongruence' or 'de-linkage' is therefore dependent on the mixed nature of EU politics, rather than postnational projects that address the 'liberation' of citizenship from nationality.

We know much about theoretical challenges and specific empirical developments of European citizenship from previous research. In the literature, different aspects of European citizenship have been highlighted, focusing for instance on its derivative character vis-à-vis national citizenship institutions (Closa 1994; d'Oliveira 1994), its largely formal content and deficits in terms of identification (Weiler 1999), its role as harbinger for a new postnational constellation (Curtin 1997; Habermas 2001), as a new institutional geography of fragmented citizenship (Wiener 1998), or its incommensurability with the very idea of citizenship as a national institution (Miller 2000; Shore 2004). The approach taken in this paper contributes to this literature, as it systematically analyses the mixed characteristics of European citizenship, at the interface between the paradigmatic nation-state concept, supranational developments, and cosmopolitan ideas.

While EU scholars disagree on the specific mix of different institutional levels, there is widespread agreement that EU actors and institutions engage in constant negotiation and conciliation between, say, intergovernmental, supranational, and transnational features of its political system (see e.g. Castiglione 2009; Hix 1999). These features highlight the different weighting of institutional layers in the relationship between

* This paper was presented at an in-house publications seminar at ARENA - Center for European Studies, University of Oslo, 25 November 2010. I thank all the participants for their constructive and critical comments, some of which have been addressed in the final version

member states and EU institutions. Moreover, they connect to different ideas of how to conceptualize a European polity, typically exemplified by intergovernmentalism (Majone 2005; Moravcsik 2006), federalism (Morgan 2005), and cosmopolitanism (Bohman 2005). In exploring the degree to which European citizenship practice challenges the modality of congruent citizenship, I rely on different democratic polity models of the EU (Eriksen and Fossum 2007). Starting out from the debate on EU polity solutions, three distinct models emerge: a) an intergovernmental *nation-based* model which posits that the EU can function as an 'audit'-based democracy where nation-states are the ultimate sources of legitimacy and hold final scrutiny over policies and decision-making through democratic procedures on the nation-state level, b) a *multinational federal* model which holds that the EU can proffer a European identity on which the boundaries of the EU polity can be drawn, direct legitimation of EU institutions through basic rights, well-defined institutional structures demarcating the different levels of political organization, and direct representative links to citizens in democratic terms, c) a *cosmopolitan model* model where the EU builds on multilevel democratic decision-making procedures, the protection of fundamental rights, and ultimately on cosmopolitan and boundary-transcending principles that political institutions and policy-making must comply with.¹

Methodologically, I utilize the models as ideal types in a weberian sense (Weber 1978). Ideal types can be used both for interpretive and causal purposes. In this paper, the aim is to give an interpretive account of the constitutive characteristics and institutional mix of European citizenship. What are the core attributes of European citizenship, and how do these relate to each other? In analyzing these questions I rely on evidence from sources such as EU Treaties, policy developments, and rulings of the European Court of Justice (ECJ). Concretely, the models address different specific properties of the EU polity. These properties are then utilized in the assessment of which features in European citizenship that each model can account for. In so doing, the analysis also confronts and makes use of existing scholarly accounts in highlighting the specific features of citizenship that has become manifested in European integration; and that make up the relative mix of nation-based, federal, and cosmopolitan attributes. The ideal typical models are in this sense heuristic devices that allow for interpretation of institutional practices from different conceptual perspectives. Moreover, this opens for addressing the strength of the analysis through alternative interpretations based on the models.

In the following section I theorize institutional practices of citizenship by breaking it into rights, membership, and participation as three analytical dimensions. I then present three democratic polity models that account for different ideas of the integrative project. Subsequently, the analysis starts out with the 'paradigmatic' nation-based model, and assess what features in European citizenship practice this model can account for. I then discuss complementary accounts and remaining issues in the analysis of the multinational federal and cosmopolitan models. Through this ideal typical approach, the paper sheds light on the relative weighting and enduring mix of intergovernmental, supranational, and postnational elements of European citizenship.

¹ These models build on Eriksen and Fossum (2007).

Studying Institutional Practices of European Citizenship

Citizenship is a contested concept (see Isin 2002; Tilly 2005). Generically speaking, I argue, citizenship still has a focal core (on concept formation, see Davis 2005). Citizenship is relational; it is simultaneously an individual and collective phenomenon which is created, activated and transformed in specific institutional practices (Brubaker 1992; Tilly 2005: 173-174). In *individual* terms, citizenship signifies a status of individuals tied to a political unit. In *collective* terms, citizenship is marked by the fact that it is always bestowed on individuals by specific institutions, and affected in its scope by political practices.

The aim here is to analyze the mixed nature of European citizenship utilizing three different models of the EU polity. This means that the focus is on identifying the specific institutional configuration of citizenship in European integration. Citizenship is, therefore, broken down analytically into three basic elements: membership, rights, and participation. This analytical move implies certain conceptual decisions with regard to defining the indicators of these elements for the purposes of empirical research.

Membership is defined as the designation of who are members and non-members of a given political unit. This phenomenon is not necessarily visible only in terms of a formal membership principle such as nationality, but may also be manifested through more informal, sometimes identity-oriented criteria (that might not coincide with the formal),² through which citizens and outsiders are distinguished (see Isin 2002: 22). Thus, in operational terms, membership can be ascertained by identifying who are seen as members and the formal or informal criteria through which they are included.

Rights are defined as specific entitlements that derive from the status of citizenship (Bauböck 1994: 233). In simple terms: Citizens have an array of rights that non-citizens do not enjoy. Generically speaking, rights are always linked to citizenship in terms of (non-)membership. Given this, when assessing conceptions of citizenship, we must investigate the extension of rights, that is, who are given which types of rights; and their degree of exclusivity.

Participation stipulates the status of citizen as a relation of the individual towards a political unit and not only vice versa, as the designation of individual membership and rights on the part of the collective. Yet, as the focus here is on the institutional side of citizenship, attention will not be put on active participation. Rather, I focus on the institutional facilitation of voluntary participation and the specification of duties that derive from the status of citizenship.

Theorizing Models of the EU as a Democratic Polity

Nation-Based Model of the EU. The skeptical critique of current EU politics and the recent constitution-making process is often rooted in the basic intergovernmental assumption that the Member States are the main 'players' in European integration

² See Taylor (1985: 34) who argues that identity relates to the questions of 'who we are' and 'what distinguishes us from others' within a political unit.

(see e.g. Majone 2005; Moravcsik 2006). In this model, then, the nation-states that comprise the Union are re-focused so that the reach of EU integration is limited insofar as ultimate and final arbitration always rests on the national level. More concretely, this implies that the nation-states retain veto power and ultimate 'authority' on all issues they deem salient for their continued political autonomy and their particular strong evaluations on issues such as boundaries, community, and sovereignty. As such, the nation-based model proffers a robustly intergovernmental institutional system where the Member States of the Union are the unequivocal 'masters of the Treaties.' Consequently, the democratic legitimacy of EU policy-making is exclusively vested on the national level through the scrutiny powers held by national governments, parliaments, and public spheres. In short, this adds up to a kind of 'audit democracy' where important decisions may be pooled to the level above the nation-state, but where nation-state institutions retain full control and power to review political decisions. In the classic 'statist' reading, citizenship is closely linked to the sovereign status of states: in securing its borders and the political community the state has complete control over the access of individuals to its territory (Walzer 1983). In terms of citizenship in this model, it follows that the nation-states retain complete control on the thresholds of gaining membership, the scope of rights, and requisite duties linked not only to the national, but also to the EU level.

Multinational Federal Model of the EU. The federalist view of the EU proffers the transfer of decision-making power and jurisdiction to the supranational level (see e.g. Morgan 2005). In this model, the core idea is that the EU can be reconstituted as a federal state of a multinational kind which encompasses a multiplicity of already existing nation-states which are politically and culturally institutionalized or entrenched. Hence, the federal model entails a top-down hierarchical system of decision-making, but where the boundaries between the composite levels of political organization are clearly drawn. It follows from this that a federal EU polity will be a political community that grounds its institutions on a sustainable identity-building process based on common European values. This further entails a demarcation against other political entities based on a well-defined European political identity. The supranational decision-making system renders legitimacy from this political identity through direct representation of citizens in all relevant domains on the EU level. As regards citizenship, a federal system of this kind entails nested citizenship between levels. Following from the demarcation between the composite levels, citizens have clearly defined basic rights which apply to the different levels, but which are safeguarded through common constitutional norms. Finally, the designation of membership will be centralized, as the forging of a common identity and supranational institutions requires federal-level control over its political community.

Regional-Cosmopolitan Model of the EU. Cosmopolitans and transnational governance scholars foresee the possibility of democracy beyond the template of nation-states (see e.g. Bohman 2005). Linked to the EU, the cosmopolitan idea holds out the promise of a non-state entity based on cosmopolitan principles, universal human rights, and rule of law; a regional subset of a cosmopolitan global order. Central to this model, then, is the de-linking of democratic decision-making and individual rights from the institutional stronghold of the nation-state. This does not mean, however, that political institutions of government are obsolete, as some hierarchical attributes are necessary to enforce compliance with cosmopolitan norms. Institutionally, then, a cosmopolitan system of this kind would suggest a loosely coupled and functionally differentiated decision-making system on multiple levels. More concretely, this entails

a pyramidal institutional structure with a differentiation between levels: global, European and the Member States. Democratically, the cosmopolitan model consequently proffers a system where boundaries in the 'classical' modern sense – the congruence of nation, territory, and state – are no longer crucial for access to and the exercise of citizenship rights. As such, democratic legitimacy rests on an individual basis where the integrity of citizens is safeguarded through adhering to universal rights and higher-ranking law. Consequently, citizenship is genuinely postnational in the cosmopolitan model of the EU as rights are inherently individual and universal, and not at the outset circumscribed through the particularity of membership in a nation-state among states.

Nationality and Transnational Rights: The Nation-Based Model

The idea of citizenship often harbors a unitary strain; it is perceived as an institutional projection of individual membership and a bundle of rights that link *one* citizen to *one* political entity (see e.g. Grimm 1995; Schnapper 1994; Walzer 1983). The consequent stance that the nation-state and meaningful citizenship is intimately linked has been prevalent among scholars that take a skeptical view on citizenship in the EU (Aron 1974; Grimm 1995; Schnapper 1994; Shore 2004). Indeed, Aron (1974: 653) argued that 'multiple citizenship' – national and European in tandem – was 'impossible'. As such, the nation-based model could at the outset be interpreted as rescinding any ground for discussion of a *European* citizenship that is comparable to long-standing national citizenship institutions. Yet, some modicum of citizenship and rights does exist in the EU setting. How can this be accounted for by a nation-based polity model of the EU?

Interestingly, access to European citizenship is based on what can be called the 'nationality principle.' It is from this specific politics of membership that the frequent labeling of European citizenship as 'derivative', 'supplementary', or 'additional' take their cue. Already at the outset of the European integration process, membership was tied to nationality through the granting of special rights to Member State citizens only (Olsen 2008a). This 'basic' principle of regulating relations between citizens and EU institutions has moreover proven 'sticky' over the course of sixty odd years of integration. Hence, despite the fact that European citizenship grants Member State citizens rights in other Member States than that of their own, membership decisions have not been transferred to the supranational level.

Notwithstanding this nationality principle, a recurring argument in the literature on European citizenship has been that this novel institutional status proffers the delinking of rights from national citizenship (see e.g. Curtin 1997; Gerstenberg 2001; Habermas 1998; Preuss 1998). This 'disaggregation' thesis holds that as non-citizens – in most cases legal migrants – increasingly gain rights that were previously exclusive for citizens only, the nationality/rights nexus is weaker than before (see e.g. Benhabib 2004; Soysal 1994). In fact, in the EU this state of affairs has become 'institutionalized' in the sense that EU citizens enjoy political, civil, economic, and social rights in *other* member states. But is this enough to accord disaggregation a pivotal place in contemporary citizenship developments?

It can be argued that the opposite has occurred. In the aftermath of the Maastricht Treaty and the Danish 'no', the European Council underlined that the insertion of

citizenship into the Treaty text was not designed to 'replace' national citizenship.³ Rather, it was to be understood as an additional status to that of national citizenship. There is, in other words, no 'easy' access to European rights for third country nationals: they have to go the 'hard' way via naturalization principles and procedures in the Member States. There is, moreover, a tendency in several European states to strengthen cultural criteria for access to citizenship rights, evident for instance in granting voting rights to non-resident co-nationals while retaining high thresholds for granting full citizen rights to resident non-citizens (Howard 2009; Joppke 2001). Rather than contributing to the dissociation of nationality and citizenship, then, European citizenship has in a sense reinforced the link, in terms of the *ultimate* access to membership and rights.

This is also evident with regard to rights. Member state nationals (or read: EU citizens) must be *in movement* for rights to be activated in the European setting. Indeed, free movement rights, linked exclusively in the founding treaties to the 'worker-citizen' and (potential) participation in the internal market, has been at the core of conceptions of citizenship *throughout* the integration process (Maas 2007; Olsen 2008a). Concretely, free movement rights are linked directly to the articles on Union citizenship in the Treaty on European Union⁴ as well as to several articles scattered throughout the Treaty, the most important example being non-discrimination based on nationality in another Member State (Somek 2008: 204ff.).⁵ Hence, while European citizenship and free movement rights undoubtedly have expanded the *scope* of individual rights, these are still tied to national citizenship at the outset. In keeping with the nation-based model, then, EU member states retain considerable control on citizenship.

National control over membership is, however, primarily *internal*. While European rights are dependent on nationality, member states have lost considerable control over access to their territory as a consequence of free movement. The upshot of this is that membership decisions in one Member State has potential consequences for rights politics in other Member States as such 'new' citizens automatically gain EU rights to free movement. This is further underscored by the fact that while efforts to harmonize policies that link up with issues of state borders, identity, and citizenship – migration is one prominent example – has been off the board in terms of, say, naturalization policies. In one sense, then, the membership and identity dimensions trump prospective considerations on the consequences of transnational rights for the nation-states that make up the Union.

The lack of Europeanization on the crucial membership dimension of citizenship highlights an EU which eschews 'strong evaluations' on the make-up of a multilevel democratic community rooted in and co-existing with the Member States. From the perspective of the nation-based model this is not surprising as it understands EU institutions as oriented towards problem-solving, rather than values or identity projects. Still, the transnationalization of rights and the existence of EU level voting rights draw attention to the fact that domestic democratic politics in the EU setting is not completely protected against 'outside' influence. Hence, while the continued

³ Birmingham European Council, Conclusions of the Presidency, Bull. EC, 10-1992, p. 7ff.; Edinburgh European Council, Conclusions of the Presidency, Bull. EC, 12-1992, I.

⁴ Treaty on European Union, Title II, Part Two, Citizenship of the Union, OJ C 191, 29 July 1992.

⁵ Treaty of Amsterdam, Article 12, OJ C 340, 10 November 1997.

importance of nationality to (European) citizenship politics points towards significant aspects of a nation-based polity model for the EU, there are clear tensions in the system between rights issues and membership discourse, that are better accounted for by a supranationally oriented model.

‘Unity in Diversity’ of Membership and (Limited) Supranational Rights: The Multinational Federal Model

Citizenship is a privilege. In democratic states, becoming citizen of a polity means that one has equal access to a comprehensive set of rights as well as to move freely within the polity’s territory. This goes for unitary as well as for federal systems of government. In the EU, citizenship takes on a particular ‘nested’ form of membership. Theoretically, nested citizenship signifies that a citizen is simultaneously a member on different levels of political organization, most typically on the level of the constituent units and on the central level (Bauböck 2007; Burgess 2006; Jackson 2001). Viable and stable federal systems provide a coherent ‘conflicts rule’ which stipulates the tasks and decisions that belong on which level of government (Elazar 1987). It is a system which creates limited political associations while preserving the respective integrities of the constituent units.

In such a system citizens can enjoy the benefits of nested or ‘overlapping’ membership within the confines of the federal polity as long as there is clarity on where the final decision rests on *access* to citizenship (Jackson 2001). In modern federalism, this is typically found on the central level of government. This is, however, not the case with European citizenship.⁶ In terms of the membership decision, European citizenship is marked by an inverted federal structure; to be a European citizen one must first be a national citizen of one of the Member States. The nation-based model highlighted the enduring importance of the nationality principle in this regard. This is, however, not the whole story of how citizenship is constructed in the EU. In this sense, the multinational part of the second model is especially well suited to account for the particularity of nested citizenship in the EU. A federal-type system which retains the crucial membership decision for the sub-units underlines the identity dimension of the political communities that comprise the Union. It confirms the diversity and multiplicity of ‘we’-identities that co-exist between the Member States. It is a system where the central level, while having considerable decision-making power and authority over the Member States in designated policy areas, does *not* have control regarding territorial access for individual citizens and their ‘right to have rights’ on EU territory. This is evident in the failure of harmonizing all policies that deal with the access of non-citizens to EU territory. While the EU has common measures in place with regard to asylum and visa policy, harmonization on principles and decisions on individual citizenship of the Member States and subsequently the EU polity lags behind. This is important from a national perspective as the question of

⁶ Seen historically, this is not a unique feature only of European citizenship. In federal systems the regional level did at one point enjoy exclusive or a considerable amount of autonomy in decisions on inclusion and exclusion of individuals to their political community. Yet, in the US, the decision on citizenship was centralized in 1868, turning state citizenship into a status of residence rather than one of continuous membership. This centralizing tendency also holds for, say, Germany and Switzerland, where jurisdiction over citizenship matters has moved in the same direction (Maas 2008: 585).

who should be granted citizenship is closely related to the self-understanding of the membership-granting community (Walzer 1983: 32).

While accommodated well by the multinational part, the 'decentralized' system of membership allocation goes against the core of the federal equation of the multinational federal model. This is important for clarifying the degree to which citizenship is actually de-linked in European integration. Concretely, the multinational federal polity model rests on the 'unity in diversity' credo, but also highlights a notion of political community and identity as necessary for direct democratic legitimation of a federal system. The lack of supranational control on membership highlights that the linking of political community, territoriality, and identity is problematic in the EU. While the EU has developed into a complex polity with interlocking institutions that affect citizens in most walks of life, it has not developed a comprehensive notion of how to piece this together as a 'community of strangers' (see Castiglione 2009: 49ff.). Such a political community might be based on different aspects of identity - memory, culture, language, or ethnicity - but it is nevertheless characterized by inclusive relationships of 'relative familiarity' and solidarity between citizens (ibid.). The degree to which this can be created on the EU level is unclear. If we assume that there is a link between citizenship policy, rights, and citizens' notion of belonging to the polity, the EU system is tilted towards the Member States, and closer to the nation-based model on this score.

EU institutions continuously highlight the need for legitimacy and increased trust of citizens in the European project. After the nation-state 'imitations' in the identity project of the 1970s and 1980s (see Shore 2000) this is, however, increasingly linked to the outputs of policy-making and the possibilities created for citizens, rather than a notion of political community.⁷ Hence, while EU policy-making has an increasing effect on the everyday lives and opportunities of citizens, the ultimate decisions on 'who the Europeans are' that can benefit from this system continues to rest with the Member States. Moreover, it can be argued that as a consequence European citizenship falls short of its 'promise' of denationalizing citizenship as third country nationals are consistently excluded from the benefits that European citizenship rights render in second countries of the Union (Maas 2008).

Yet, the federal model is better suited to explicate parts of the development of European rights politics especially since the institutionalization of Union citizenship in the Maastricht Treaty. While the notion of membership is pivotal for the understanding of institutional practices of citizenship, the scope and form of individual rights is equally important. In fact, one can argue that this is especially interesting in the EU setting as the Union since the founding Treaties has granted rights to Member State citizens linked to the aims of the integration project (see e.g. Maas 2007; Olsen 2008a). Certain civil rights that follow from the status of European citizenship are, for instance, exclusively linked to the supranational level. The rights to petition to the EU Ombudsman and to contact EU institutions and receive answer in their vernacular (Article 21) are activated irrespective of where the citizen resides, contrary to the movement requirement of transnational rights. Moreover, in recent years the ECJ have broadened the degree to which citizens can invoke European

⁷ See for instance the post-constitutional effort from the European Commission to re-engage European citizens in the integration project: European Commission, A single market for 21st century Europe, COM(2007) 724 final, 20 November 2007.

rights against their 'own' state.⁸ Still, as they are linked mostly to cases of family reunification and social rights and not with issues linked to political citizenship and democratic participation, such supranational rights are more often than not linked to some *form* of movement between Member States and a modicum of linkage to a Member State through national citizenship (Nic Shuibhne 2002). Hence, while exerting the role of 'federalist', the ECJ is still bound by the Treaty and its emphasis on transnational rights and nationality as *primary* elements of citizenship in the EU.

More importantly, EU citizens have a set of Treaty-based supranational political rights in European and local elections. However derived – that is through which primary criterion for inclusion – such rights matter as they form the nucleus of political citizenship. This political citizenship in the EU is, however, constructed so as to avoid 'Euro-federalization' of citizenship in the constituent units. As voting rights are only activated in local and European elections, EU citizens are prevented from full political citizenship in their place of residence, if this is in another EU Member State. While this issue has been addressed at different junctures by, for instance, the Commission⁹ it is unlikely to be more than a sleeping, yet important normative issue in the foreseeable future.¹⁰ Hence, supranational political rights form an important part of European citizenship, but are yet to materialize in political structures analogous to national political systems in an institutional sense. This lack of extension of EU electoral rights is a crucial impediment on European citizenship as the Council remains important in the EU decision-making process and since national parliaments are given a stronger role with the Lisbon Treaty. In federal states, this kind of residence-based system would mean full citizenship also on the level of constituent units. In other words, in the EU political citizenship is not 'portable' in the modern federal sense. The originality of citizenship found in the politics of membership is therefore an obstacle to further federative elements in the relationship between citizens and EU institutions.

The mixed picture in terms of accounting for EU citizenship politics from the perspective of a multinational federal model of the Union highlights the enduring tension in European integration between intergovernmental and supranational levels of governance. Despite some examples of the disaggregation of citizenship and access to rights, the EU also exhibits a system where considerable discretions are retained for the Member States in terms of control over political community. Clearly, citizenship remains one of the last vestiges of national sovereignty in the EU. Hence, the diversity of Member States in terms of historical backgrounds, perceptions of identity, and the role of political community is not challenged to any considerable extent by supranational institutions. In democratic terms, this means that the EU continues to struggle with the tensions of its political system between its expanding role in an increasing number of policy areas, the need for direct democratic legitimation, and

⁸ See for instance Case C-214/94 *Boukhalfa v Federal Republic of Germany* [1996] ECR I-2253; Case C-194/96 *Kulzer v Freistaat Bayern* [1998] ECR I-985. Nic Shuibhne (2002) provides an in-depth analysis of the case-law after the Maastricht Treaty.

⁹ See e.g. A Passport Union, Bull. EC, Supp 7/75; European Commission, Fourth Report on Citizenship of the Union, COM (2004) 695 final.

¹⁰ For the most comprehensive discussion on voting rights and citizenship in the EU setting, including a theoretical and normative assessment of extending European citizenship to include national-level elections, see Shaw (2007).

the anchoring of European citizenship in national decisions on individual membership.

Personhood: The Cosmopolitan Model

The two preceding models accounted for the predominant national anchoring of European citizenship and EU-level individual rights, as well as its inherently multinational features where common citizenship rests on ultimate respect for the political communities of the member states. As such, these models can account for the greater part of what we know as European citizenship today: two parallel sets of transnational and supranational rights, dependent on Member State nationality to be fully activated. What, then, if anything, is left for cosmopolitan thinking on citizenship in European integration?

In the EU, the link between citizenship, nationality, and access to rights and benefits has clearly gone through a process of some disaggregation (Kostakopoulou 2001; 2005; Soysal 1994). So-called second country nationals are now granted political citizenship in European and local elections in Member States wherein they are not citizens. Moreover, in Western countries, civil and social rights for migrants have been increasingly 'denationalized' as a result of human rights proliferation after World War II (Soysal 1994). It is clear that the entitlement to rights in a given political community is no longer *completely* dependent on the status of citizenship. As such, we are witnessing a partial move towards 'personhood' as a criterion for access to citizenship rights, a fact which is certainly accommodated by the cosmopolitan model which emphasizes the 'self-standing' character of rights. Originally, the horizontal dimension of European citizenship privileged the 'market citizen' of early integration (Everson 1995). The emphasis on personhood has to some extent overridden the status of 'worker' or 'market participant' as a condition for the enjoyment of rights *after* the exercise of free movement (Castro Oliveira 2002).

In addition, free movement is increasingly interpreted as a fundamental right of EU citizens (Somek 2008: 204-206). Finally, the so-called Citizenship Directive¹¹ codified and consolidated existing EU law on free movement rights. In contrast to previous legislative acts, this directive linked the issues of free movement and residence rights directly to Union citizenship as a fundamental status of Member State nationals and a crucial building block in the construction of citizenship in the EU. Further, the directive also emphasised that such rights should be strengthened not only for the original 'focal points' of European integration such as workers or self-employed persons, but for *all* Union citizens.

Yet, the focus on persons more so than workers is still based on the nationality principle for access to European rights, and the rights are activated only upon travel across intra-EU borders. As such, the distinction between a horizontal and vertical dimension of citizenship in supranational integration (Magnette 2005) is still highly relevant. The horizontal dimension of European citizenship continues to be more extensively developed than the vertical dimension. This has the consequence that whatever the criteria for access to European rights, nationality and free movement are

¹¹ Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004.

still very much part of the whole equation of rights. While the rules of inclusion might approach cosmopolitan ideas of universal rights and border-less membership, the form of citizenship is at the end of the day always *grounded* in a primary affiliation of citizens. This state of affairs highlights that even in the EU the practice of citizenship leans towards unity in the decisive moment of membership allocation. Consequently, this makes it difficult to foster the concept of 'multiple citizenship' (Magnetete 2005: 174). In addition, the residence rights of European citizens are not *unconditional* compared to the rights of national citizens. They are linked to different criteria such as having a modicum of independent resources or participating in the economic life of the host state (Bellamy 2008: 598). Hence, even though there has been some development towards a greater emphasis on citizens as persons and not only workers, this has, in the end, not engendered a radically new understanding of the relation between citizens and European institutions, by way of a genuinely unconditional, postnational citizenship.

As cosmopolitan and postnational ideas have enjoyed a strong standing in EU studies, why do they not account for more of the 'transformation' of citizenship in European integration? Creating citizenship outside the nation-state frame challenges our understanding of citizenship, and cosmopolitan citizenship is the ultimate theoretical reflection of this challenge. I end, therefore, with some reflections on this question as it sheds light on the scope and limits of European citizenship. While the limited disaggregation of citizenship and rights in contemporary Europe is undisputed, European citizenship discourse is still filled with tension between intergovernmental, transnational, and supranational features. European integration has not led to the cosmopolitization of citizenship where nationality, belonging, and boundaries no longer matter for the membership of individuals in rights-granting democratic polities. Effectively, European citizens enjoy a kind of privileged semi-citizenship in other EU Member States than their own. Here, an alternative interpretation could be that the reality of supranational political rights in European and local elections is a strong rupture of the historical linkage between voting rights, political membership, and territorial nation-states. But, as highlighted by the two preceding models, for such developments to lead to a comprehensive de-linking of citizenship and the principle of nationality, this would also have to be considered necessary on the national level. Here, the strong link between political membership and national citizenship prevails also in European citizenship discourse.

In essence, the cosmopolitan model is premised on the notion that political institutions should be constructed on the basis of higher-order moral principles and not on pre-political notions of difference in, say, language, culture, and identity. Cosmopolitan citizenship requires therefore the severing of ties between nationality, identity, and the access to rights (Falk 1994; Linklater 1998). Yet, in the EU, the cosmopolitan model struggles with the fact that third country nationals, for instance, continues to be in a relatively more precarious situation than European citizens in terms of access to rights (Maas 2008). As Benhabib (2004: 149) puts it, '[t]he obverse side of membership in the EU is a sharper delineation of the conditions of those who are non-members.' Third country nationals are still not accorded the same rights as second country nationals in the EU. As the nation-based and federal models highlighted, European citizenship is inclusive in terms of opening up political communities to non-citizens horizontally *within* the Union, yet exclusive in that there is no uniform policy on the rights of non-EU citizens. Hence, at the end of the day, the

EU maintains the territorial construction of citizenship, albeit in a more complex fashion than in the traditional nation-state experience. While the 'material' constitution of the EU (see Menéndez 2004) has increased the importance of the border-crossing nature of European citizenship, the system still continues the nation-state 'tradition' of creating insiders and outsiders in relation to 'full' membership of the political community. The *externally* exclusionary European citizenship is then without a doubt based on nationality, and not on, say, a cosmopolitan notion of 'universal' personhood.

Conclusion: European Citizenship Straddling the Nation-State/Federal Divide

This paper has argued that European citizenship is better accounted for by the nation-based and multinational federal models of the European polity, than regional cosmopolitanism. The main reasons for this conclusion are found in the continuing bifurcation of citizenship rights as transnational and supranational in the EU and the institutionalization of member state nationality as a prerequisite for enjoying such rights. Consequently, the theoretical challenge posed by European citizenship to the idea of unity and congruence of nation, state, and citizenship is only partly supported by practice. Indeed, there are some developments towards a stronger emphasis on personhood as an additional criterion for the enjoyment of rights. Still, European citizenship is not strictly 'incongruent' compared to the unitary idea of national citizenship. Important vestiges of nationality remain essential for citizenship practice also in the domain purportedly 'beyond the nation-state.'

What stands out when analyzing European citizenship from the vantage point of polity models is, then, not experimentation with new forms of, say, cosmopolitan rights, but rather the enduring co-existence of intergovernmental and supranational features of EU governance. As such, EU institutions have exploited existing institutional arrangements and the continuing prevalence of linking citizenship to some form of a nation-based principle. Moreover, this institutional practice has been sticky since the Maastricht Treaty with few or no radical changes in twenty odd years. Olsen (2007: 172) argues that this is a common state of affairs in EU reform: 'They will be exploiting the status quo of established arrangements, rather than exploring the potential of experimenting with new forms (...).' Despite numerous reform proposals to 'federate' or even 'postnationalize' decisions on citizenship in the EU as part of the broad-based efforts to engineer a more 'streamlined' political system in intergovernmental conferences and the Convention (Olsen 2008b), the EU is still characterized by polycentric and multi-tiered solutions. This does not mean that there is complete inertia in terms of citizenship developments, but rather that changes to the politics of belonging and rights in the EU setting follow from a pre-given template that has proven solid despite the continued widening and deepening of European integration.

Citizenship in the EU is, then, on the one hand constantly 'audited' by the member states through the nationality principle, and on the other hand at the core of direct representation through voting rights in European parliamentary elections. Yet, while the national insulation of democratic politics is surely challenged by supranational voting rights, European citizenship has not progressed to include political rights for participation in general, parliamentary elections on the national level (Shaw 2007). On

this score, the Member States are not even 'auditing' Europeanization, they have protected a set of rights from integration. Democratic politics remains nationally rooted in this sense, and highlights the limits as of yet of theorizing postnational citizenship beyond the template of the nation-state. This is perhaps due to the difficulties in postnational citizenship projects to move beyond the accusation that they lead to ideals of 'lean citizenship' (Thaa 2001) where the 'praxis' of politics concerning communication, political judgment, and identity are difficult to piece together. While EU politics and institutional practice clearly challenges the 'holy trinity' of nation, state, and citizenship, the member states still cling to traditional interpretations and 'historically rooted national distinctions' (Howard 2009: 199), at least in terms of decisions on individual access to full citizenship rights.

However much one might conceive of alternative models and experimental designs, this paper has therefore underlined how certain institutions, concepts and symbols of importance for the nation-state idea are not easily turned away from *some* grounding in the idea of nationality. Hence, even in European citizenship politics we find nationality as a core principle. The nation-based model accounts for this by the need for Member States to 'audit' the reach of their political communities as they have pooled sovereignty on the supranational level. Still, the analysis underlined how this is not only a case of nation-states' strong evaluations on identity, but also a case of mutual respect for the national identities of other Member States, a state of affairs closer to the core tenets of the multinational federal model. This prevalence of nationality oriented constructions of citizenship go against the core of the cosmopolitan model with its emphasis on de-linking the access to rights from nation-based criteria. Nevertheless, this model is not redundant from an analytical perspective. It serves to contrast the more 'traditional' understandings of citizenship, and can account for certain moves towards 'personhood', albeit with little significance for political citizenship outside the nation-state.

The upshot of this is that the EU holds out an interesting case of constantly challenging basic ideas and concepts of the nation-state experience in policy-making, while at the same time harboring a system where there is continuity of exclusive political community in some crucial areas, such as decisions on naturalization of new citizens or electoral rights in centralized elections. There are, then, seemingly strong symbolic and substantive limits to re-constituting democratic politics and citizenship in Europe. At the end of the day, 'it's all in the mix' as the saying goes. At this point in time in the aftermath of the Lisbon Treaty, this mix of European citizenship continues to be nation-based and multinational, with little likelihood of new cosmopolitan solutions in the foreseeable future.

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RECON is an Integrated Project financed by the European Commission's Sixth Framework Programme for Research, Priority 7 – Citizens and Governance in a Knowledge-based Society. Project No.: CIT4-CT-2006-028698.

Coordinator: ARENA – Centre for European Studies, University of Oslo.

Project website: www.reconproject.eu

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