

# TRACING COSMOPOLITAN STRANDS IN EU CITIZENSHIP

A postmodern idea?

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## INTRODUCTION

The European integration project is, to date, the world's most advanced post-national constellation of states. As such it has become a default case study and, at times, a quasi laboratory for political theorists and philosophers who are interested in studying and developing workable models of supranational and/or global governance. Prominent among these scholars are those who view the European Union (EU) through a cosmopolitan lens, analysing integration for its potential to contribute to a Kantian brand of universal egalitarianism. Such analyses are further encouraged by European elites who employ heavily normative rhetoric that reflects many of the tenets of cosmopolitan thought.

In practice, the European Union has evolved from a functional, utilitarian and largely economic project to a more complex political enterprise. The political framework for a broader and deeper integration of European states was established in the Treaty on European Union (also known as the Maastricht Treaty). In addition to consolidating the single market and opening the way for greater cooperation

on internal and foreign affairs, this document also introduced the status of EU citizenship. This was not intended to replace national citizenship but rather to complement it and, in doing so—it was hoped—enhance the legitimacy of Brussels elites and promote a stronger European identity.

Although the labelling of European citizenship as cosmopolitan is far from explicit or coherent in EU policies and narrative, proto-cosmopolitan doctrines of universal and general equality<sup>1</sup> are expressed by EU initiatives. It is claimed that European citizenship provides equal access to the individual-based legal status of union citizenship to all nationals, and universal civic protection to all nationals and residents, and this is to translate into a transcendent European identity. But is the cosmopolitan shaping of the European Union's common citizenship policy conducive to its underlying objective of legitimating the emerging European polity and creating an integrated European public?

This article engages directly with the proto-cosmopolitanist arguments in order to assess the relative legitimating potential of EU citizenship. In the first section, I review the evolution of contemporary cosmopolitan thought, highlighting in partic-

ular its relevance for the postmodern conceptualisation of citizenship. The viability of cosmopolitan frameworks rests on their ability to facilitate a new understanding of citizenship that is emerging from the globalised conditions of post-national multiculturalism and transnationalism. This section also demonstrates that the scope of scholarly research in these fields overlaps with European integration studies, supporting claims that the European Union represents the first proto-cosmopolitanist postmodern polity. In the second section, the paper identifies and investigates the main developmental phases of the European Union's common citizenship agenda. This section acknowledges the rhetorical use of cosmopolitanism by the Brussels elites; nonetheless, its primary focus lies in assessing the proto-cosmopolitanist threads in the treaties of the European Union.

The article concludes by acknowledging the existence of cosmopolitanist threads in the European Union's common citizenship policy. It questions, however, whether EU citizenship has the simultaneous ability to include all Europeans (cosmopolitanist), to accommodate diverse citizenship practices (post-national multiculturalist) and embrace emerging new and deliberative formations of citizenship (transnationalist). There are two observations that stem from this conclusion: first, that the integrative capacity of the current European citizenship regime is strictly limited; and second, that the cosmopolitan framing of EU citizenship has potentially contributed to the European Union's legitimacy deficit. These critiques also point to generic shortcomings of cosmopolitan ideology.

## **COSMOPOLITAN CITIZENSHIP AND POSTMODERNITY**

The scholarly exploration of the European Union's evolving citizenship regime takes place within an intellectual territory that is framed largely by debates surrounding globalisation and contemporary cosmopolitan ideology. By the 1990s, globalisation studies developed a set of new conditions for the postmodern re-conceptualisation of citizenship.<sup>2</sup> Cosmopolitanism emerged as a suitable ideological framework to accommodate these new conditions.<sup>3</sup> Academics and European policymakers thus often present the European integration project as a viable forum for the cosmopolitan conceptualisation of postmodern citizenship and further propose that the cosmopolitan framing of European citizenship has the potential to enhance the European Union's viability, legitimacy and integrative capacity.<sup>4</sup>

### **The end of modernity: postmodern conditions of citizenship**

Scholars concerned with the impact of globalisation have come to a common understanding that the modernist premises of the national state have been eroded.<sup>5</sup> The Westphalian state is no longer the singular unit of political power with absolute sovereignty. There exist quasi-autonomous political entities that nurture embryonic rights regimes and democratic institutions beyond the State. The nation is neither culturally homogenous nor the primary expression of collective identity. National communities are diverse; the individual's identity is multiple. Therefore, the *modernist paradigm* of citizenship that has had long symbiotic existence with the national state needs rethinking. The new

*postmodern* conceptualisation needs to express the multiplicity of citizenship as a politico-legal status (post-nationalism), accommodate diverse and multiple identities (multiculturalism) and facilitate the citizens' political activism on all levels of sovereignty (transnationalism).

In parallel, the heightened post-world-war awareness of the need for 'global planning, global knowledge and the recognition of a shared future'<sup>6</sup> restored interest in universal conceptualisations of belonging and institutional expressions of global norms. In the immediate absence of available conceptual frameworks to understand and respond to these challenges, the Kantian ideology of cosmopolitanism was resurrected. The contemporary expressions of cosmopolitanism are noted to represent a logical accommodation of the postmodern challenges to citizenship. Cosmopolitanism is depicted as the expression of a post-national multiculturalist model of political community, which preserves national and also facilitates global, regional and municipal loci of legal status and political membership.<sup>7</sup> It is also transnationalist, in that it promotes an active citizenry that is empowered within a global civil society and enabled to shape the political future and the socio-cultural facet of their communities.<sup>8</sup> The next section provides an abbreviated overview of cosmopolitan philosophy, highlighting critical junctures in its evolution and examining its relevance for the development of postmodern concepts of citizenship.

### **The Kantian theorem of cosmopolitanism**

A common reference point for contemporary cosmopolitanists is the Enlightenment philosophical works of Immanuel Kant.<sup>9</sup>

Immanuel Kant's cosmopolitanist theorem<sup>10</sup> was built around the vision of world peace. Kant proposed that the forming of a global ethical regime would eliminate the possibility of war, without the need to form a world state. The cornerstones of his normative order were the establishment of cosmopolitan law and the republican grooming of states.

Kant outlined a tripartite system of jurisprudence that contained a new type of jurisdiction—cosmopolitan law—in addition to domestic and international law. For Kant, cosmopolitan law was of a fundamentally different type of jurisdiction. The domestic law of a particular state contained rights and duties that regulated the individual citizens' relationships with fellow citizens as well as the State. International law was to police states only, and thus governed state-to-state relations. Cosmopolitan law was to consist of rights and duties that regulated 'the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole',<sup>11</sup> regardless of national origin or state citizenship.

Individual rights under the umbrella of Kant's cosmopolitan law also differed from citizenship rights in domestic law. First, the individual's access to cosmopolitan rights rested on the individual's natural belonging to humanity, a much wider justification than the individual's alliance with a particular state. Second, the notion of cosmopolitan rights was also unique in that it attempted to articulate a normative ideal in response to ethical problems that were raised by the organic transformation of the world order and the resulting heightened sense of global interconnectedness.<sup>12</sup> These new conditions called for new legal and institutional frameworks

and ultimately made cosmopolitan law ethically desirable and empirically necessary. With the idea of cosmopolitan rights, Kant sought to regulate this new type of relationship between the State and foreigners. Kant's primary aim was to guarantee the 'conditions of universal hospitality' defined as 'the *right* of a stranger not to be treated with hostility when he arrives on someone else's territory'.<sup>13</sup> Thus, for Kant, hospitality was not based on philanthropy but a legal and universal right.<sup>14</sup>

As for the institutionalisation of cosmopolitan law and rights, Kant rejected the idea of a world state.<sup>15</sup> Instead, Kant embraced the modern era's principle of non-intervention and reinforced the ideal of 'self-policing individual states'.<sup>16</sup> He proposed the establishment of a cosmopolitan world order centred on the congress of free states, whereby state cooperation was a regulative but not a constitutive principle. Externally, this meant the voluntary federative cooperation of independent states: 'a united power and law-governed decisions of a united will'.<sup>17</sup> Internally, this referred to the consolidation of the republican and representative democratic traditions of government.<sup>18</sup> Kant reasoned that democratic states did not go to war and therefore the establishment of 'domestic justice'<sup>19</sup> was a sufficient precondition for the federal cooperation of states. Once the federative cooperation of the states is facilitated, a cosmopolitan ethical order to guarantee the 'cosmopolitan condition of general political security'<sup>20</sup> is likely to emerge.

Kant's cosmopolitan law and world order fundamentally shaped Kant's notions of cosmopolitan citizenship. First, Kant's interpretation of the right to universal hospitality was grounded in the natural

right to exercise trading activity—that is, in the temporary, sporadic and trade-focused interactions among the foreigners, and the State and its citizens. Only those foreigners who passed through or resided in another state for the specific purpose of trading were entitled to cosmopolitan rights.<sup>21</sup> Second, Kant's rejection of the need to institutionalise cosmopolitan law beyond the State meant that guarantees for generating, implementing, enforcing and upholding cosmopolitan rights relied primarily on the State's ethical commitment to cosmopolitan ideals, rather than on the sovereignty of supra and supranational institutions. According to these two conditions, the State's responsibility towards non-citizens was simply to provide the conditions of hospitality—that is, a limited form of civil protection to enable their economic activity. This further meant that the rights of citizens and of foreigners were to be kept separate. Despite the expression of its global and universal scope, cosmopolitan law was not considered to have the competence to override domestic law and grant foreigners access to civic and political rights associated with state citizenship. In short, Kant's cosmopolitan citizenship was more an expression of global collective identity than a constitutionalised politico-legal status of universal belonging.<sup>22</sup>

It is evident that Kant's theorem was grounded in the modernist rather than the postmodernist understanding of citizenship. In the absence of inter and supranational legal and institutional frameworks for citizenship, it falls short of post-nationalism. As the cosmopolitan ethical order is conditioned on the states' cooperative activity and democratic ability, it is also deficient in terms of transnational cit-

izenry activism. As it is focused on the universal sameness of all, it does not engage with the notion of cultural diversity. Further to this, Kant's cosmopolitan citizen is also an inconsistent notion. The cosmopolitan ideology and the modern paradigm of citizenship are founded in the liberal principles of individualism, egalitarianism and universalism. As Kant's cosmopolitan rights are limited in content and in terms of access, it serves only as a fragmented category that fails to fulfil universal and individual equality.

### **Liberal national and universal cosmopolitanism**

In the recent globalised context, cosmopolitan thought has flowed into several core streams, two of which—universalism and liberal nationalism—have preserved a common root in the Kantian traditions.<sup>23</sup> Despite their shared legacy, liberal nationalism and universal cosmopolitanism differ fundamentally. Liberal cosmopolitanism embraces the Kantian limitations on political cosmopolitanism and proposes that normative cosmopolitanism is best expressed and maintained within the national context. As such, liberal nationalism is often mistaken as being anti-cosmopolitanism. However, what liberalists in fact foster is the cosmopolitanist remodelling of the national state so that basic principles of liberalism can be reconciled with multicultural diversity.<sup>24</sup>

The universalist position promotes the expression of global morality in the form of supranational legal systems and political institutions. It is founded on the belief that the ideology of cosmopolitanism and the modern national state-based theory of citizenship differ fundamentally. Universalists also claim that cosmopolitanism is su-

perior, or at least more valid, in the context of the postmodern conditions. As they promote the politico-institutional establishment of the cosmopolitan ideal, the universalist stream is rightly labelled as the 'radical extension of Kant's theory of world citizenship'.<sup>25</sup>

The article proceeds with a focus on the universalist stream of cosmopolitan thought, as it is the universalists who are engaged with the European traditions of the cosmopolitan theory of citizenship and the development of the institutional and the ethical frameworks of cosmopolitan citizenship—both of which are already established to some degree in the European Union. Universalists trace a developmental arc of contemporary cosmopolitan thought from a singular to a hybrid and multi-layered expression of sovereignty and identity, and from international rights to European citizenship as the manifestation of the cosmopolitan idea.

### **The cosmopolitan democracy thesis**

A major contribution to the universalist stream is the theory of cosmopolitan democracy, centred on David Held's idea of global governance. Held argues that the realisation of the cosmopolitan vision, that of lasting world peace and universal equality of individuals, cannot rely on the states' democratic capacity only. As a result of globalisation, the locus of political power can no longer be assumed to be with the State. Therefore, the State on its own cannot generate the conditions of democracy within its boundaries and then transfer the democratic principle into the international domain. Thus Held argues that, for 'democratic law to be effective it must be internationalised'.<sup>26</sup>

A regular collaborator with Held, Daniele Archibugi, elaborates on Held's new democratic condition. Archibugi argues that an international system that is based on democratic principles does not necessarily generate democracy within the constituting states. Therefore, democracy has to function simultaneously on all levels of political authority—domestic, international and global—in order to generate a lasting normative framework in each domain. In short, Archibugi's vision of the cosmopolitan world order is one of a multi-level system of democratic governance.<sup>27</sup>

Therefore, Held's and Archibugi's recreation of Kant's tripartite jurisprudence exceeds the Kantian global order in many respects. The democratic requirements of domestic law subscribe to the Kantian idea of republican democracy in the State. The international requirement of democracy is no longer purely reliant on the respect for reciprocal sovereignty between states; it rests on two additional criteria: the agreement on commonly shared norms to which states subscribe and the institutionalisation of these principles through the establishment of intergovernmental organisations.<sup>28</sup> Further to this, the global (or cosmopolitan) domain is not restricted to the universal right of 'hospitality for strangers' but a more comprehensive, and state-like, package of rights.

Based on this new conditionality for democracy, it is thus clear that the cosmopolitan democracy theory moves away from Kant's purely ethical to a more constituting and institutionalised world order. For Held and Archibugi, the entrenchment of democratic institutions outside of the boundaries of the State is indeed necessary in order to complement the inadequate democratic capacities of the postmodern

state<sup>29</sup> and to monitor the domestic affairs of states.<sup>30</sup> Universalist scholars emphasise that the cosmopolitan argument for the federative development of the global domain is not a call for the establishment of a global federation in the traditional sense. As Held notes, 'any global legislative institution should be conceived *above all* as a "framework-setting" institution', and not a nascent global government of an emergent world state.<sup>31</sup>

Further to this, cosmopolitan democracy also means the active membership of individuals in the global community.<sup>32</sup> Global issues, such as human rights, the environment and poverty, have a universal impact on all individuals, and as such, transcend national and international frameworks of cooperation. If global challenges are to be addressed in line with basic democratic principles, citizens shall have political representation in global affairs. This representation shall be independent and autonomous of the citizens' politico-legal status in domestic affairs. The citizen of the postmodern and globalised epoch has 'a twofold role—that of citizens of the state, and that of citizens of the world'.<sup>33</sup> Held and Archibugi argue that this requires the establishment of global bodies that are designed to facilitate the deliberation of individual interests in specific global issues. It further involves the institutionalisation of a universal and global citizenship status, which contains 'a mandatory core of rights', such as political rights of representation and participation, civic rights of protection, 'duties *vis-à-vis* global institutions', as well as instruments of accountability and transparency.<sup>34</sup> In short, global citizenship means the transfer of specific elements of national

citizenship into the global domain so that specific global issues can be tackled.

On the basis of the previous synopsis, it is important to note that the cosmopolitan democracy thesis expresses itself as a postmodern reinterpretation of Kant's cosmopolitan philosophy. The focus on the institutional establishment of the cosmopolitan ideal and the emphasis on the multi-level nature of the emerging system of governance indicate that the thesis subscribes to the condition of *multiple post-nationalism*. The introduction of a (global) cosmopolitan citizenship status to complement national citizenship indicates that the project of cosmopolitan democracy aspires to comply with *the de-national and the de-territorial*, and consequently with the *multiple* conditions of citizenship. References to the continuing relevance of national as well as regional and local loci of citizenship in terms of social membership and collective identity in the globalised world mean that the thesis also claims to suit the requirements of *multiculturalism*. Finally, the expression of cosmopolitan citizenship as the empowerment of a nascent global civil society denotes the *transnational* ambition of the cosmopolitan democracy project.

### **Cosmopolitanism and constitutional patriotism**

A comprehensive critique of the cosmopolitan democracy thesis is provided by Jürgen Habermas, whose own theorem shares a common foundation in universal ethics and rights. Like Held and Archibugi, Habermas endorses the requirement of supranational democratic institutions and transnational civic activity, and denies the viability of Kant's self-imposed limitations on political cosmopolitanism. Yet Habermas

takes issue with the postmodern deficiencies and the traditional modernist premises of the Heldian model.

First, Habermas rejects the prospect of a world state that he claims underwrites the cosmopolitan democracy thesis. Habermas argues that Held's and Archibugi's cosmopolitan vision relies on the reproduction of state-like institutions on a global scale. Therefore its global community-building trajectory has a tendency to shift away from a multi-layered post-national system of governance to a universal state. In particular, Habermas notes that the cosmopolitan democracy thesis explicitly advocates traditional institutions and guarantees of membership. Habermas instead envisions a new cosmopolitan order that is 'a dynamic picture of interferences and interactions *between* political processes that persist at national, international, and global levels'.<sup>35</sup> Further, Habermas proposes to introduce a procedural notion of governance, whereby only the conditions of rational and democratic decision making are guaranteed but not a fixed institutional and legislative outcome.

Second, Habermas also maintains that the thesis of cosmopolitan democracy does not employ multiculturalist attributes. It prioritises universalism that is focused on an all-inclusive and a priori sameness at the cost of multicultural particularism. It fails to engage with the notion of the 'other' in general and the idea of national political culture in particular. In simple terms, it cannot reconcile universalism and particularism and therefore re-establishes the competitive relationship between the national and cosmopolitan domains of collective belonging.

On this point Habermas stresses the importance of implementing a new community-building logic in the national and the global domains. He argues that the cohesiveness of a national community cannot be guaranteed by fostering an exclusionary ethno-cultural identity. Instead, Habermas pleads for the advancement of a civic form of national identity: 'constitutional patriotism'. He reasons that rationally chosen commitments to a common set of constitutional principles, fundamental rights and democratic institutions can provide a common normative framework that is culturally neutral and therefore sufficiently inclusive for binding a multi-cultural society together.<sup>36</sup>

Habermas claims that although constitutional patriotism is posited on neutral and universally shared norms, it does not involve the rejection of particularism *per se*. Like any other civic form of collective identity, constitutional patriotism is also culturally patterned—it is an expression of 'universalism sensitive to difference'.<sup>37</sup> Universalism refers to the individuals' commitment to abstract principles and rights. Particularism is attributed to 'the context of a historically specific political culture',<sup>38</sup> which for Habermas is indeed crucial in translating abstract norms into meaningful political actions and institutions for the individual.

Habermas's third critique regards the democratic credentials of the cosmopolitan democracy thesis. He notes that Held et al. draw on the traditional Kantian belief in a pre-existing global morality that holds all humans together in a global community. This grounding implies that cosmopolitan rights are also understood as predefined and universal, distilled from the notion of global morality.<sup>39</sup> For

Habermas, this logic is antithetical to the principles of democracy. Democracy, as Habermas understands it, is the self-defined and self-legislated power of the public. That is, identity, rights and their institutional manifestations are organic and negotiated categories, and not elemental and constructed notions. The cosmopolitan democracy project does not meet this transnational requirement. Rather, it employs conservative notions of republican democracy and democratic legitimacy, relying on the logic of functional (or system) integration from above and avoids the notion of social, informal integration from below. In this sense, Habermas claims, the theory of cosmopolitan democracy subscribes to the traditional logic of community building that underlines the modern national paradigm of citizenship: citizenship rights constitute the single source of collective identity and collective identity is a sufficient source of legitimacy.

In order to overcome the democratic deficiency of the cosmopolitan democracy thesis, Habermas advocates the move away from representative towards a deliberative notion of democracy domestically and globally. The latter entails a more extensive involvement of the people in the political decision-making processes.<sup>40</sup> It involves a 'self-referential model of citizenship'<sup>41</sup> under an umbrella of a political order that is 'created by the people themselves and legitimated by their opinion and will formation'.<sup>42</sup> In particular, deliberative democracy promotes channels of interactive and discourse-based civic activity in addition to the formalised institutional representation and participation of the citizen.<sup>43</sup> It further facilitates a comprehensive notion of public sphere: a dimension of civil society whereby indi-



viduals can engage in rational critical discourse about affairs of common political interests. Following from here, Habermas argues that deliberative democracy creates socially constructed collective identity that is constantly reproduced, and generates legitimacy from below. He notes that deliberative practices facilitate epistemic as well as integrative functions. They accumulate knowledge and thus enable reason-based decision making. They internalise decisions and create ownership of agreements.<sup>44</sup>

Habermas's final criticism of the cosmopolitan democracy thesis refers to its empirical foundations. It is mistaken to base a cosmopolitanist thesis on the developments of the international domain: the evolution of an international human rights regime and the UN system. He insists that 'any plans for a "cosmopolitan democracy" will have to proceed according to another model'<sup>45</sup> and posits the European Union as a viable 'example for a form of democracy beyond the nation-state'.<sup>46</sup> Habermas points out that since Maastricht, the European Union has created and consolidated the status of union citizenship, gradually upgraded the European Parliament's decision-making power, introduced the deliberative-style convention method in the European Union's decision-making procedures and launched the constitutionalisation process. These developments, he argues, demonstrate the willingness of the political elites to empower the citizens of Europe in shaping the future direction of the integration project.

Despite this positive outlook, Habermas admits that the European Union is not yet adequately equipped to deliver on this promise. He insists that the integration venture must incorporate the vehicles of

constitutional patriotism and deliberative democracy so that the deficiencies of the European Union's democratic capacity can be mended while the multi-layered nature of the European polity can be maintained. In particular, a common European political culture—shared political values, moral norms and legal rights—is yet to be distilled. The exercise of producing such a common ethical framework can only transcend but not erode national and cultural particularism if it wants to provide a viable and meaningful basis of solidarity for the public.<sup>47</sup> For this, the European Union needs to advance the deliberative capacity of the supranational institutions of democracy, simplify multi-level decision making by deepening the federative aspects of the European Union<sup>48</sup> and establish a common European constitution.<sup>49</sup>

## **COSMOPOLITAN SHAPING OF THE EUROPEAN UNION'S CITIZENSHIP POLITY**

This section explores the rights attached to the union status, the way access to these rights is defined and the supranational institutional framework of these rights. The analysis is divided into three sections, which correspond to the European Union's constitutional development in the form of treaties. These are the founding treaties (1951, 1957), which established an embryonic supranational rights regime for Europe; the Maastricht Treaty (1992), which introduced the status of union citizenship; and the Treaty of Nice (2001), which launched the constitutional process in the European Union.

### **The founding treaties and Kantian cosmopolitanism**

Although it can be argued that European integration has always been a political project, the founding treaties did not contain explicit political provisions. These treaties focused on the functional, largely economic cooperation of the member states. Accordingly, the transfer of competencies and sovereignty from the national to the supranational level was minimal. The supranational decision-making mechanism and inter-institutional relationships were based on the primacy of national interests and the logic of intergovernmental-style bargaining.<sup>50</sup> As a result, the sovereignty of the member states remained relatively intact. Thus, the creation of a common European status of citizenship in a binding treaty form was seen as neither viable nor desirable, and the founding treaties of European integration made no explicit reference to citizenship.

These treaties did, however, institute four basic freedoms in order to facilitate the establishment of a free trade area (later common market). These four freedoms pertained to the movement of goods, capital, services and, most importantly, persons/workers. These principles were later identified as 'mobility rights'.<sup>51</sup> The EC-SC Treaty (otherwise Treaty of Paris, 1951) applied the freedom of movement of people to only coal and steel workers, but the subsequent Rome Treaties (1957) extended the scope of mobility rights to all workers, with the only exception of those employed in the public service.<sup>52</sup> In addition, these treaties also established a community-wide ethical framework for the European Union's emerging rights regime. They upheld the general principle of equality and introduced binding anti-discrimination legislation on grounds of

nationality, race, ethnic origin, religion, gender and age.

Finally, the founding treaties also settled the institutional competences over these provisions. They empowered the High Authority (later European Commission) with the right to propose measures to achieve the free movement of workers.<sup>53</sup> It was, however, the member state that remained primarily responsible to decide on the content of mobility rights through the Council of Ministers, and then to implement them domestically. The third supranational institution, the Common Assembly—later to become the European Parliament (EP)—was a marginal supranational player at this time, which had an advisory role but no decision-making power. Its democratic credentials were also compromised as its members were appointed by national parliaments and not directly elected by the public.<sup>54</sup> As a result, the developmental capacity of mobility rights remained in the hands of national governments.

The 'freedoms' of the founding treaties were, in effect, quite restricted. Due to the limited economic scope of community competences, the application of individual mobility rights, as well as the attached principles of non-discrimination and equality, was limited to employment in member states. The right of residency was granted only to workers and was linked to their right to exercise labour activity in another member state.<sup>55</sup> Further, the member states were also granted the power to limit mobility rights on grounds of public policy, health and security.<sup>56</sup> Finally, eligibility for European work permits was linked to 'recognised qualifications', as defined by national legislation.

<sup>57</sup> These legislative and institutional re-

strictions demonstrate that the early right provisions of EC treaties were not bound to any citizenship concept. They were pragmatic facilitators of the economic integration of the member states. In this sense, Elisabeth Meehan rightly points out that Europe's 'first citizens' were 'citizens-as-workers, not citizens-as-human-beings'.<sup>58</sup>

Antje Wiener argues similarly when she stresses that the special rights granted to individuals by the founding treaties were not accessible for all Europeans but only for a well-defined group of community citizens. On this basis, she argues, these entitlements were inherently problematic as *citizenship* rights. Their limited scope and accessibility undermined the principle norms that underwrote the abstract notion of citizenship (and also cosmopolitanism), that of equality and individualism. Further to this, the restrictions also contradicted the principle of equality established in the very same treaties.<sup>59</sup>

Therefore, I propose that Europe's rights regime created in the founding treaties conforms to the Kantian model of cosmopolitan citizenship. The very definition provided for mobility rights in the treaties echoes Kant's notion of cosmopolitan right—that is, the right to universal hospitality. The limited supranational character of European institutions in general and the restricted developmental capacity of the treaties' rights provisions in particular emulate the model of 'self-policing individual states', which underwrite Kant's cosmopolitan order.

### **The Maastricht Treaty—cosmopolitan democracy?**

By the 1970s, the understanding of integration as a primarily economic cooperation

of quasi-sovereign states driven by political elites changed profoundly. The deepening of the economic integration of member states, the multiplication of common policies and the extension of supranational competencies were shifting the scope of integration from economic to more political and social arenas. This transition culminated in the political redefinition of the European integration process, labelled as a paradigm shift from 'policy to polity' and from 'diplomacy to democracy'.<sup>60</sup> A European polity was in the making.

The new discourse that stemmed from this transformation was organised around one key theme, that of legitimating the political development of the European project. The key question that engaged European political elites regarded the need for a European status of citizenship in order to render itself as a legitimate political community.<sup>61</sup>

The Maastricht Treaty (1992) reflected the paradigm shift in constitutional terms.<sup>62</sup> In response to the desire for greater political legitimacy, it introduced the status of European Union citizenship—subsequently consolidated in the Treaty of Amsterdam (1997). Maastricht established that 'every person holding the nationality of a Member State shall be a citizen of the Union'.<sup>63</sup> The status of union citizenship that emerged from Maastricht did not replace but complemented national citizenship.<sup>64</sup>

There was a widespread view that the establishment of democratic institutions and legal status of European citizenship would solidify the European Union as an emerging political community and provide it with the direct popular legitimacy it lacked.<sup>65</sup> The assumption that grounded this belief was a rather traditionalist take

on the political uses of citizenship: rights translate into collective identity, and identity produces sufficient popular legitimacy. de Burca accordingly describes the concept of citizenship employed in the Maastricht era as 'unifying, community-building, identity-building and legitimating'.<sup>66</sup>

The Maastricht Treaty defined the status of union citizenship primarily as a legal concept, which contained a bundle of individual rights, specified access to these rights and set the institutional frameworks of the developmental capacity of the status. In addition, the treaty also reinforced the normative bedding of the European Union's rights regime. It explicitly linked the newly established status to earlier provisions,<sup>67</sup> and incorporated the principles of non-discrimination, and the principle of equal access to the community's Civil Service.<sup>68</sup>

The rights of the union citizenship package, compared with what is generally regarded as citizenship, made up a rather limited and 'unusual' set of political and civil rights.<sup>69</sup> Politically, the union status granted electoral rights: the rights to vote and stand in local government and European Parliament elections in the country of residence. This was limited to municipal (local) and European elections. They did not address state (national) and federal (regional) elections.<sup>70</sup> Further to this, political freedoms—such as the freedoms of association, peaceful assembly and expression—were only implicitly referenced in EU law at the time of Maastricht.<sup>71</sup> The Charter of Fundamental Rights was not incorporated in the treaty proper and therefore had only declaratory status in EU law. As such, the charter did not provide a binding framework of gen-

eral principles for political membership in the European Union.<sup>72</sup>

With respect to civic rights, Maastricht granted the following entitlements: right to have diplomatic and consular protection from the authorities of any member state where the country of which a person was a national was not represented in a non-union country; right of petition to the European Parliament and appeal to the European Ombudsman. The Amsterdam Treaty later amended the civic component of the status to include the right to write to European institutions in any of the official EU languages and to expect a response in the same language.<sup>73</sup> Amsterdam also introduced the transparency clause, making the documents of the parliament, the commission and the council accessible to union citizens, subject to certain principles and conditions.<sup>74</sup>

Finally, as a clear indication of the will to generate a continuation of the pre-Maastricht legacy as well as to rationalise the so-called *quasi* citizenship rights established in the pre-Maastricht period, Maastricht also placed the so-called mobility rights under the union status. With this act, Maastricht extended the right to free movement in the member states' territory to all union citizens.<sup>75</sup> The so-called attached rights—rights associated with the free movement principle, such as access to employment, welfare benefits and public services as well as passports, identity cards and resident permits—did not fall under supranational competences but were included within the intergovernmental decision-making mechanism.<sup>76</sup> This means that the content of and access to these rights were determined by national legislation.<sup>77</sup>

With regard to determining access to union citizenship rights, the Treaty of Amsterdam institutionalised the nationality rule. Only national citizens of the member states had access to union status and the rights it involved.<sup>78</sup> Third-country nationals (TCNs)—nationals of non-European Union states—remained excluded from the political provisions of EU citizenship. This means that the Treaties of Maastricht and Amsterdam failed to establish a consistent legal basis for residency-based electoral rights: EU citizens had local voting rights throughout the union, while the granting of voting rights to TCNs remained dependent on national electoral legislation and diffuse international principles.<sup>79</sup> The nationality rule was also applied to mobility and associated rights. The civic component of union citizenship was, however, conferred to all resident natural and legal persons.

The consolidation of supranational democracy was also an integral part of the legitimisation efforts. Maastricht and Amsterdam set out to consolidate the institutional essentials of representative-style democracy. Direct elections based on universal suffrage to the European Parliament had been already effective since the Paris Summit resolution in 1974. The first such election took place in 1979. Until the Maastricht Treaty, however, the European Parliament was lacking effective political powers and was considered a secondary political player in the supranational edifice. Therefore, the specific objective of Maastricht and Amsterdam was to improve the relative political status of the parliament in the supranational decision-making edifice.

The TEU expanded the decision-making competences of the European Parlia-

ment by the introduction of the co-decision procedure and the extension of the use of the cooperation and assent procedures. The co-decision principle gave the parliament the power in specific policy fields to adopt legislations jointly with the council.<sup>80</sup> The extension of the cooperation and assent procedures established a greater consultative and mending role, and thus increased political influence for the European Parliament. As a result, the council was no longer in position to 'de facto impose its views on other institutions'.<sup>81</sup>

Nonetheless, the co-decision principle did not extend to all policy areas of common interest at that time; the power balance between the council and the parliament continued to favour national interests over European, and intergovernmental bargaining over supranational decision making.<sup>82</sup> More notably, the overall strengthening of the European Parliament's formal power and relative status had little relevance for the European Union's common citizenship provisions. The co-decision principle did not apply to the policy field of citizenship. In matters of union citizenship, the European Parliament was granted only consultative competence. Maastricht specified that European citizenship rights could be amended via a truncated treaty amending procedure. The council would make the decision on strengthening or adding rights to the existing union status unanimously, on the basis of the commission's proposal and after consulting the parliament.<sup>83</sup> As a result, the future potential of union citizenship lay clearly in the hands of the member states, and not the EU institutions or the newly established European public.<sup>84</sup>

On the basis of the above depiction of union citizenship in the Treaties of Maastricht and Amsterdam, it can be argued that the treaty approach to community building followed a similar logic to the cosmopolitan democracy thesis. Maastricht and Amsterdam focused on building the vertical relations between the citizen and the European polity. The 'national prototype' of citizenship was revoked on the supranational level as regards rights, access to rights and representative democracy beyond the State.

The implementation of Held's and Archibugi's cosmopolitanist ideal was, however, deficient in the European context. Instead of building a common status of citizenship that was independent of national citizenship, union citizenship was defined as a derivative and secondary status. The treaties also failed to assert the supranational competences over citizenship and the development of common citizenship remained under the control of the member states. The establishment of the European Parliament, and thus the European citizen, as a competent political actor was also lacking.

### **Towards constitutional patriotism?**

The ratification crises in the 1990s were interpreted by many as an indication of the European Union's lingering legitimacy deficit. This was not interpreted as a sign of the public's rejection of the European integration project per se. According to the discourse of the Brussels elites, the causes of the crisis were specific and also rectifiable. The legitimacy crisis was interpreted as a combined failure of delivery and communication. Delivery referred to the failure to translate rhetorical promises and the public's primary concerns into

concrete treaty provisions. At the time of Amsterdam, the economic phase of integration remained incomplete, the political provisions still embryonic and the common citizenship policy only a transitional arrangement. As for the last, the normative and the social (mobility rights) components were noted as seriously deficient. The communication failure was understood as the public's inability to connect with and understand the process, institutions and treaty provisions of European integration. Lack of sufficient information campaigns and the complexity of supranational structures and procedures were identified as the primary contributing factors.

The recognition of the complexity of the European Union's legitimacy deficit was linked to a growing awareness that the Maastricht approach to community building had failed. It became evident that conferring rights did not necessarily produce strong collective identification with political order. Although Maastricht can be considered a successful project in creating the legal hallmarks of citizen-polity relations, it failed in establishing citizen-citizen relations, instituting participatory channels of democracy and accommodating mediating structures. Without these, the formation of thick collective identities is problematic. The revision of the Maastricht approach also concluded that a (thin) collective identity was not a sufficient source of legitimacy. Maastricht and Amsterdam reinforced the traditional elite-driven nature of European integration, consolidated the dominance of inter-governmental decision making and instituted a rather deficient representative democratic body. This meant that the public had little if no influence on the shaping of the European polity, including

the content of the European Union's common citizenship policy. In short, the Maastricht approach did not deliver on the putative need to generate a unified, active and enabled European demos.

The call for a new paradigm shift culminated in the commission's *White Paper on Governance* (2001). The white paper presented, once again, common citizenship as the cure for the European Union's legitimacy deficit. However, while the document defined similar long-term goals to the strategic underpinnings of the Maastricht and Amsterdam Treaties, it expressed profoundly different understandings of citizenship and legitimacy. Regarding citizenship, the white paper advocated a shift away from the politico-legal aspects towards the socio-cultural dimensions of citizenship. More notably, it proposed to complement the supranational arrangements of representative democracy with increased participatory opportunity channels. Improved participation would enhance the legitimacy and democratic credentials of European governance by transforming the 'top-down approach' of supranational decision making into 'more inclusive and accountable' processes.<sup>85</sup>

The white paper marked a conscious shift from the political to the social conditions of legitimacy. While Maastricht focused on building citizen-polity relations (vertical), the post-Maastricht narrative of the white paper concentrated on building citizen-citizen relations (horizontal). The proposal called for the establishment of deliberative frameworks of democracy. In particular, the introduction of the convention method was to facilitate a pan-European dialogue, nurture a European civil society and ultimately produce a

single legal basis, a constitution, for Europe—requisites of the emergence of a European demos.<sup>86</sup>

The white paper reflects a certain aspiration for provisions conducive to the establishment of a Habermasian-style constitutional patriotism. According to Habermas, pan-European solidarity and loyalty are to emanate from a set of legally entrenched rights and deliberative democratic procedures. Constitutional patriotism would ultimately establish the European citizen as not simply the *subject* but the *creator* of the EU law and the European polity.<sup>87</sup>

The post-Maastricht era brought about only a partial resolution of the deficiencies of the Maastricht approach and a limited implementation of the white paper's rhetorical promises. The Treaty of Nice and the *Draft Constitution* did not amend the rights component of union citizenship, and did not introduce new rights. Regarding political rights, they failed to extend the range of elections covered under the union status and did not establish a consistent constitutional legal basis for residency-based electoral rights. Neither did the Treaty of Nice and the *Draft Constitution* institute participatory and deliberative-style democracy in Europe. The treaties treated the notion of governance within the standard liberal model of representative democracy. Further, the relative status of the European Parliament has not been improved. Although there has been considerable increase in the use of qualified majority voting within the council, neither this nor the co-decision principle have been defined as the standard supranational decision-making mechanism.

The achievements of Nice and the *Draft Constitution* lie elsewhere. First, they

made considerable progress in consolidating the normative framework of union citizenship. Fundamental rights were assembled in one single text, the *Charter of Fundamental Rights of the European Union*. The charter was proclaimed by all supranational institutions in Nice (2000) and later incorporated in the treaty establishing the *Draft Constitution*. Further to this, the protection of civil liberties of *all* individuals was reinforced. Second, Nice and the *Draft Constitution* also strengthened the supranational competences over mobility rights and attached rights. The treaties did not reform the overall supranational decision-making mechanism; the primary decision-making body remained the council. Nonetheless, according to the Nice resolutions, decisions regarding mobility rights were to be made according to qualified majority, and not unanimity, in the council.<sup>88</sup> Nice and the constitutional draft also moved considerable parts of the attached rights under supranational competences (EC pillar). Decisions about these attached rights were made according to the original restricted mechanism of decision making, that of the council's unanimous decision following consultation with the parliament.<sup>89</sup>

That is, neither the Nice Treaty nor the failed Constitutional Draft Treaty implemented the Habermasian model of cosmopolitanism and established postmodern conditions for citizenship. The legal basis of union citizenship remained reliant on the premises of cosmopolitan democracy and tied to a traditional conceptualisation of citizenship.

## CONCLUSION

The historical overview of the European Union's common citizenship policy demonstrates that the notion of union citizenship has followed the developmental arc of cosmopolitan thought. The understanding of common rights moved from the politically restrained grounds of Kantian cosmopolitanism to the Heldian-Archibugian model of cosmopolitan democracy. By the time of the *Draft Constitution*, the European Union's citizenship discourse expressed Habermasian aspirations of establishing a new political community resting on the premises of constitutional democracy and a deliberative model of cosmopolitan citizenship. The rhetorical transition to the Habermasian model implies the European Union's ambition to overcome the traditional limitations of union citizenship and the shortcomings of its cosmopolitan credentials. It can be considered as a conscious move away from the national prototype to a postmodernist notion of citizenship.

Nonetheless, the translation of the rhetorical aspirations into concrete treaty provisions was insufficient, in terms of its cosmopolitan stance and postmodern potentials. As for its cosmopolitan credentials, union citizenship does not fully subscribe to the principles of *universal egalitarianism*. As political rights are not conferred on the basis of a Europe-wide residency rule, a considerable part of Europe's social constituency, TCNs, are excluded from the European Union's political process. TCNs are conferred only the civic entitlements of union citizenship. Further, due to the lack of supranational competences and common provisions to converge national citizenship policies,



conditions for accessing national citizenship, and therefore the union status, are persistently diverse across the member states. This means that the European Union has also failed to establish a European norm of equality with regard to nationals as well.

From a postmodernist perspective, the shortcomings of the common citizenship policy—the nationality clause and partial constitutionalisation of the residency principle pertaining to voting rights; failure to include national elections in the electoral rights package; and consolidation of national competencies over supranational interests in the policy area of citizenship—all detract from the objective of creating a direct link between the individual and the union. Maastricht, rather, helped to consolidate national sovereignty<sup>90</sup> and established a subordinate supranational citizenship status. The *post-national* credentials of the European Union's common citizenship regime thus remained compromised.

The *post-national multicultural* qualities of union citizenship were limited by the consolidation of the nationality rule. The nationality rule undermined the cosmopolitan principles of generality and reinforced the national character of citizenship in Europe. Further, it prioritised national/ethno-cultural difference over other types of diversity.

Finally, the decision-making procedure specified in the treaties is problematic regarding the *transnational* value of common voting rights. Gardner remarks that electoral rights are the central 'hallmarks' of citizenship since 'the content of the rights and duties of citizens at any one time can indirectly be influenced or determined by its exercise'.<sup>91</sup> Despite the rhetorical am-

bitions, the treaties continue to facilitate representative, rather than participatory and deliberative, democracy. Therefore the European Union currently does not sufficiently facilitate its citizens' involvement in the shaping of the future direction of the integration project. Further, the competence to determine the very status of union citizenship is still not delegated to the European Parliament, thus allocating European citizens a minor role in the shaping of the European Union's evolving political community.

The two corollary conclusions that stem from these observations are the following. First, the legal and institutional foundations of union citizenship have failed to move away from the national prototype of citizenship. The treaties have not established the postmodernist credentials of political membership and collective belonging in Europe. The limited transnational and multicultural character undermines the legitimating potential of union citizenship. Second, the bifurcation of narrative and treaty feeds into a rhetorical overreach, which, in the retrospect of the failure to ratify the *Draft Constitution* and its subsequent revision,<sup>92</sup> has contributed to the European Union's lingering legitimacy deficit. It can then be argued that the proto-cosmopolitanist posing of citizenship in Europe seriously undermines the integrative and legitimating potential of common citizenship in Europe.

On such critical grounds, I wish to put forward the following recommendation. By overcoming the postmodernist deficiencies of union citizenship, the European Union could translate its rhetorical promises into concrete political action, which in turn would close the union's legitimacy gap. In particular, in order to generate a

culturally neutral and all-inclusive framework for accommodating all types of diversity, the European Union shall override the nationality clause and place political rights on a residency basis, and establish a European condition of residency. This would enhance the multicultural credentials of union citizenship and also emancipate it from national citizenship, making it of post-national status. Further to this, by the extension of the co-decision principle, the European Union could place the parliament on equal footing with the council. This, matched with residency-based electoral supranational rights, would found the transnational condition of EU democracy.

## ENDNOTES

<sup>1</sup> Thomas Pogge defines three central principles that all streams of cosmopolitan thought share: individualism, universality and generality. According to individualism and universality, cosmopolitan citizenship rights are granted to all human beings. These tenets also underwrite the modernist liberal paradigm of rights. It is the principle of generality that distinguishes cosmopolitanism from state-based citizenship. In opposition to the particularistic character of the national paradigm of rights, generality means that the cosmopolitan status has a global force. See Pogge, Thomas W. 1992, 'Cosmopolitanism and sovereignty', *Ethics*, vol. 103, no. 1.

<sup>2</sup> The literature identifies three stages in globalisation studies. First-wave scholars investigated the impact of globalisation on national economies and concluded that a neo-liberal world economy government and homogenous world society were on the rise and the national state was in demise (globality and universalism). The second-wave engaged in the cultural aspects of globalisation and argued against the convergence thesis of the first wave. It advocated a fragmented and multidimensional world view, whereby national communities would be only one of the multiple loci of human organisation (globalism and particularism). The third-wave brings together a multidisciplinary and multidimensional exploration of globalisation, with particular focus on the political manifestation of globalisation. It concludes that globality and globalism represent the dual character of globalisation, in that they simultaneously generate the condi-

tions of universalism and particularism. Beck, Ulrich 2000, *What is globalization?*, Polity Press, Malden, Mass.; Brodie, Janine 2004, 'Introduction: globalization and citizenship beyond the national state', *Citizenship Studies*, vol. 8, no. 4; Falk, Richard 2000, 'The decline of citizenship in an era of globalization', *Citizenship Studies*, vol. 4, no. 1.

<sup>3</sup> Habermas, Jürgen 1996, 'The European nation-state—its achievements and its limits. On the past and future of sovereignty and citizenship', in Gopal Balakrishnan (ed.), *Mapping the Nation*, Verso, London; Habermas, Jürgen 2003, 'Making sense of the EU: toward a cosmopolitan Europe', *Journal of Democracy*, vol. 14, no. 4; Archibugi, Daniele, Held, David and Kohler, Martin (eds) 1998, *Re-Imagining Political Community—Studies in cosmopolitan democracy*, Stanford University Press, Stanford; Linklater, Andrew 2002, 'Cosmopolitan citizenship', in Engin F. Isin and Brian F. Turner (eds), *Handbook of Citizenship Studies*, Sage, London; Preuss, Ulrich 1998, 'Citizenship in the European Union: a paradigm for transnational democracy', in Archibugi et al., *Re-Imagining Political Community*; Rumford, Chris 2003, *Rethinking the state and polity-building in the European Union: the sociology of globalization and the rise of reflexive government*, European Political Communication Working Paper Series, Issue 4/03; Rumford, Chris 2003, 'European civil society or transnational social space?', *European Journal of Social Theory*, vol. 6, no. 1; Weiler, Joseph 1996, 'European neo-constitutionalism—in search of foundations for the European constitutional order', in Richard Bellamy and Dario Castiglione (eds), *Constitutionalism in Transformation*, Blackwell Publishers, Oxford.

<sup>4</sup> Bowden, Brett 2003, 'The perils of global citizenship', *Citizenship Studies*, vol. 7, no. 3.

<sup>5</sup> Chris Rumford expressly concludes: 'Modernity has come to an end, replaced by the Global Age, a transformation which requires a new conceptual framework.' See Rumford, Chris 2002, *The European Union: A political sociology*, Blackwell, Oxford, p. 24. See also Albrow, Martin 1996, *The Global Age: State and society beyond modernity*, Polity Press, Cambridge; Biswas, Shampa 2002, 'W(h)ither the nation-state? National and state identity in the face of fragmentation and globalisation', *Global Society*, vol. 16, no. 2; Brodie, Janine 2004, 'Introduction: globalization and citizenship beyond the national state', *Citizenship Studies*, vol. 8, no. 4.

<sup>6</sup> Nussbaum, Martha 1994, 'Patriotism and cosmopolitanism', *Boston Review*, vol. 19, no. 5, p. 5.

<sup>7</sup> Habermas, 'The European nation state—its achievements and its limits'; Koopmans, Ruud and Statham, Paul 2000, 'Challenging the liberal nation-state? Post-nationalism, multiculturalism, and the collective claims-making of migrants and ethnic minorities in Britain and Germany', in Ruud Koop-

mans and Paul Statham (eds), *Challenging Immigration and Ethnic Relations Politics*, Oxford University Press, Oxford.

<sup>8</sup> Conway, Janet 2004, 'Citizenship in a time of empire: the world social forum as a new public space', *Citizenship Studies*, vol. 8, no. 4. See also Dagnino, Evelina 1998, 'Culture, citizenship and democracy: changing discourses and practices of the Latin American left', in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar (eds), *Cultures of Politics, Politics of Cultures: Re-visioning Latin American social movements*, Westview Press, Boulder, Colo.; Falk, Richard 1994, 'The making of global citizenship', in Bart van Steenberg (ed.), *The Condition of Citizenship*, Sage, London; Falk, 'The decline of citizenship in an era of globalization'; Fraser, Nancy 1997, *Justice Interruptus: Critical reflections on the 'postsocialist' condition*, Routledge, New York.

<sup>9</sup> Delanty, Gerard 2006, 'Nationalism and cosmopolitanism: the paradox of modernity', in Gerard Delanty and Krishan Kumar (eds), *The SAGE Handbook of Nations and Nationalism*, Sage, London; Linklater, 'Cosmopolitan citizenship'.

<sup>10</sup> The depiction of Kant's cosmopolitan theory in this article relies primarily on Kant's highly influential 1795 essay, 'Perpetual peace'. His further works—such as 'Idea for a universal history with cosmopolitan purpose', 'The metaphysics of morals' and 'The conflict of faculties'—will also be referenced. See Kant, Immanuel 1970 [1795], 'Perpetual peace: a philosophical sketch', in Murray Forsyth, Maurice Keens-Soper and Peter Savigear (eds), *The Theory of International Relations: Selected texts from Gentili to Treitschke*, Allen & Unwin, London; Kant, Immanuel 1970 [1784], 'Idea for a universal history with cosmopolitan purpose', in H Reiss (ed.), *Kant's Political Writings*, Cambridge University Press, Cambridge; Kant, Immanuel 1991, *The Metaphysics of Morals*, Translated by Mary J. Gregor, Cambridge University Press, Cambridge; Kant, Immanuel 1992, *The Conflict of Faculties*, Translated by Mary J. Gregor, University of Nebraska Press, Lincoln. Further, the article also presents a mainstream reading of Kant's cosmopolitan vision, which accepts Kant's self-imposed limitations on political/institutional cosmopolitanism and thus a world state. This orthodox reading is claimed to have grounded modern international relations theory and contemporary streams of cosmopolitan thought. Central to the mainstream reading of Kant's theory is the original scholarship of Friedrich and Hisley (see Friedrich, Carl Joachim 1948, *Inevitable Peace*, Harvard University Press, Cambridge, Mass.; Hinsley, F. H. 1963, *Power and Pursuit of Peace: Theory and practice in the history of relations between states*, Cambridge University Press, Cambridge). On non-orthodox reading, see further under Note 17.

<sup>11</sup> Kant's 'Doctrine of rights' (6:34), cited in Muthu, Sankar 2000, 'Justice and foreigners: Kant's cosmopolitan rights', *Constellations*, vol. 7, no. 1, p. 32. See also Brown, Garrett Wallace 2005, 'State sovereignty, federation and Kantian cosmopolitanism', *European Journal of International Relations*, vol. 11, no. 4; Hutchings, Kimberly 1999, 'Political theory and cosmopolitan citizenship', in Kimberly Hutchings and Roland Dannreuther (eds), *Cosmopolitan Citizenship*, St Martin's Press, New York.

<sup>12</sup> 'Perpetual Peace', p. 107. See also Muthu, 'Justice and foreigners'.

<sup>13</sup> Ibid., p. 105, emphasis added.

<sup>14</sup> Brown, 'State sovereignty, federation and Kantian cosmopolitanism', p. 511. See also Pagden, Anthony 2000, 'Stoicism, cosmopolitanism, and the legacy of European imperialism', *Constellations*, vol. 7, no. 1.

<sup>15</sup> 'Perpetual Peace'; Brown, 'State sovereignty, federation and Kantian cosmopolitanism'; Covell, Charles 1998, *Kant and the Law of Peace. A study in the philosophy of international law and international relations*, Macmillan, London; Donaldson, Thomas 1992, 'Kant's global rationalism', in Terry Nardin and David Mapel (eds), *Traditions of International Ethics*, Cambridge University Press, Cambridge; Franck, Thomas M. 1990, *The Power of Legitimacy Among Nations*, Oxford University Press, Oxford; Linklater, 'Cosmopolitan citizenship'; Pagden, 'Stoicism, cosmopolitanism, and the legacy of European imperialism'.

<sup>16</sup> A term borrowed from Linklater, 'Cosmopolitan citizenship', p. 321.

<sup>17</sup> Kant explicitly remarked that 'this federation does not aim to acquire any power like that of the state, but merely to preserve and secure the freedom of each state itself ('Idea for a universal history with cosmopolitan purpose', p. 104; 'Perpetual peace', p. 47). According to the mainstream interpretation of Kant's limited political cosmopolitanism, as presented in this article so far, Kant consolidated the centrality of the national state as *the* locus of political power and *the* referent to the political organisation of humanity. Nonetheless, there exists another, non-orthodox reading of Kant's scholarship. There are a number of scholars who argue that Kant's cosmopolitan vision is a teleological theorem and ultimately antagonistic to the modern state. The textual inconsistencies and ambiguities indicate that Kant proposed that the federative association of states was indeed a transitional stage towards a world republic. See Bull, Hedley 1977, *The Anarchical Society: A study of order in world politics*, Columbia University Press, New York; Cavallar, Georg 1999, *Kant and the Theory and Practice of International Right*, University of Wales Press, Cardiff; Bohman, James and Lutz-Bachmann, Matthias (eds), *Perpetual Peace: Essays on Kant's*

*cosmopolitan ideal*, MIT Press, Cambridge, Mass.; Wight, Martin 1987, 'An anatomy of international thought', *Review of International Studies*, vol. 13, no. 3.

<sup>18</sup> For Kant, the internal conditions of democracy meant the implementation of four principles: separation of powers; freedom for all members of society; legal equality of citizens; dependence of everyone upon a single common legislation. That is, liberal democracy and representative government are the essential and sufficient mechanisms to generate the internal guarantees of Kant's cosmopolitan ideal. Further, inherent to Kant's depiction of republican democracy was the establishment of a social contract (*anima pacti originarii*) between the citizen and the State. With this, Kant expected to delegate sovereign power to the people and thus to replace the liberal idea of absolute sovereignty with the republican idea of popular sovereignty. For Kant, the long-term guarantee for the democratic credentials of the State rested on popular sovereignty (see 'Perpetual peace'). See also Franceschet, Antonio 2002, 'Popular sovereignty or cosmopolitan democracy? Liberalism, Kant and international reform', *European Journal of International Relations*, vol. 6, no. 2.

<sup>19</sup> Brown, 'State sovereignty, federation and Kantian cosmopolitanism', p. 503.

<sup>20</sup> 'Perpetual peace', p. 210; 'Idea for a universal history', p. 49.

<sup>21</sup> Kant wrote that the right to hospitality derived from the ancient and natural right to 'free access to all for the purpose' to 'establish community with all' ('Perpetual peace', pp. 107–8, 106–7).

<sup>22</sup> Kant, Immanuel 2002, *Critique of Practical Reason*, Translated by Werner S. Pluhar, Hackett Publishing, Indianapolis, Ind., p. 321.

<sup>23</sup> Delanty, 'Nationalism and cosmopolitanism'. Further to universalism and liberal nationalism, Delanty identifies a third stream of the contemporary cosmopolitan scholarship: post-colonialism. The post-colonial stream differs from universalism and liberal nationalism, in that it rejects the modernist legacy of political thought in general and opposes the Eurocentrism and liberal individualistic ideology entailed in the other streams of cosmopolitanism. Post-colonialists argue that the nation and national identity are essentially hybrid categories, in which the national, transnational and global domains are simultaneously implicated. That is, nationalism and cosmopolitanism are neither competing nor separable frameworks for the political and social organisation of humanity. For post-colonialism, see Bhabha, Homi K. (ed.) 2000, 'Cosmopolitanisms', *Public Culture*, vol. 12, no. 3; Bhabha, Homi K. 1990, *Nation and Narration*, Routledge, London; Appiah, Kwame Anthony 1998, 'Cosmopolitan patriots', in Pheng Cheah and Bruce

Robbins (eds), *Cosmopolitics: Thinking and feeling beyond the nation*, University of Minnesota Press, Minneapolis, Minn.

<sup>24</sup> Miller, David 1999, 'Bounded citizenship', in Hutchings and Dannreuther, *Cosmopolitan Citizenship*; Miller, David 2000, *Citizenship and National Identity*, Polity Press, Oxford; Walzer, Michael 1994, 'Spheres of affection. In response to Martha Nussbaum's patriotism and cosmopolitanism, 1994', *Boston Review*, vol. 19, no. 5; Walzer, Michael 1997, *On Toleration*, Yale University Press, New Haven.

<sup>25</sup> Linklater, 'Cosmopolitan citizenship', p. 328.

<sup>26</sup> Held, David 1997, 'Democracy and globalization', *Global Governance*, vol. 3, no. 3, p. 225.

<sup>27</sup> Archibugi, Daniele 1998, 'Principles of cosmopolitan democracy', in Archibugi et al., *Re-Imagining Political Community*, pp. 207–9. See also Archibugi, Daniele 2004, 'Cosmopolitan democracy and its critics: a review', *European Journal of International Relations*, vol. 10, no. 3.

<sup>28</sup> Archibugi, 'Principles of cosmopolitan democracy', pp. 210–11.

<sup>29</sup> Held, 'Democracy and globalization', p. 263.

<sup>30</sup> Archibugi, Daniele and Held, David (eds), *Cosmopolitan Democracy—An agenda for a new world order*, Polity Press, Oxford, p. 14.

<sup>31</sup> Held, David 1995, *Democracy and the Global Order—From the modern state to cosmopolitan governance*, Polity Press, Oxford, p. 274 (emphasis added).

<sup>32</sup> Archibugi, 'Cosmopolitan democracy and its critics', p. 456. See also Carter, April 2001, *The Political Theory of Global Citizenship*, Routledge, London; Dower, Nigel and Williams, John (eds) 2002, *Global Citizenship—A critical introduction*, Routledge, New York; Heater, David 2002, *World Citizenship: Cosmopolitan thinking and its opponents*, Continuum, London.

<sup>33</sup> Archibugi, 'Cosmopolitan democracy and its critics', p. 456.

<sup>34</sup> Archibugi, 'Principles of cosmopolitan democracy', pp. 216–17. See also Dower, Nigel 2000, 'The idea of global citizenship', *Global Society*, vol. 14, no. 4; Held, 'Democracy and the global order'; Linklater, 'Cosmopolitan citizenship'.

<sup>35</sup> Habermas, Jürgen 2001, 'The postnational constellation: political essays', in Thomas McCarthy (ed.), *Studies in Contemporary German Social Thought*, Polity Press, Cambridge, p. 110.

<sup>36</sup> Habermas, Jürgen 1994, 'Struggles for recognition in the democratic constitutional state', in Amy Guttmann (ed.), *Multiculturalism: Examining the politics of recognition*, Princeton University Press,

Jürgen. See also MacCormick, Neil 1999, 'Does a nation need a state? Reflections on liberal nationalism', in Edward Moritimer (ed.), *People, Nation and State: The meaning of ethnicity and nationalism*, I. B. Tauris, London.

<sup>37</sup> Habermas, 'The postnational constellation', p. 84.

<sup>38</sup> Habermas, Jürgen 1998, 'The European nation-state: on the past and future of sovereignty and citizenship', *Public Culture*, vol. 10, no. 2, p. 226.

<sup>39</sup> Habermas, 'The postnational constellation'. See also Fine, Robert and Smith, Will 2003, 'Jürgen Habermas' theory cosmopolitanism', *Constellations*, vol. 10, no. 4.

<sup>40</sup> Habermas, 'The postnational constellation'.

<sup>41</sup> Ibid, p. 76 (emphasis added).

<sup>42</sup> Ibid, p. 65. See also Habermas, Jürgen 1995, 'Citizenship and national identity: some reflections on the future of Europe', in Ronald Beiner (ed.), *Theorizing Citizenship*, University of New York Press, Albany.

<sup>43</sup> Habermas, 'The European nation state—its achievements and its limits'. See also Cohen, Joshua 1989, 'Deliberation and democratic legitimacy', in Alan Hamlin and Phillip Pettit(eds), *The Good Polity*, Blackwell, Oxford; Dryzek, John S. 1990, *Discursive Democracy*, Cambridge University Press, Cambridge; Dryzek, John S. 2000, *Deliberative Democracy and Beyond*, Oxford University Press, Oxford.

<sup>44</sup> Habermas, 'The postnational constellation', p. 76.

<sup>45</sup> Habermas, Jürgen 2001, 'Why Europe needs a constitution', *New Left Review*, vol. NLR II, no. 11, p. 109.

<sup>46</sup> Habermas, 'Making sense of the EU', p. 94.

<sup>47</sup> Habermas, 'Citizenship and national identity'.

<sup>48</sup> Habermas, 'Making sense of the EU'.

<sup>49</sup> Habermas, Jürgen 1999, 'The European nation-state and the pressures of globalization', *New Left Review*, vol. NLR I, no. 235.

<sup>50</sup> Nugent notes that the founding treaties put in place a mechanism of decision making in which 'the Commission would propose, the Parliament would advise, the Council would decide, and—when law was made—the Court of Justice would interpret'. See Nugent, Neill 2003, *The Government and Politics of the European Union*, Macmillan and Palgrave, Houndmills, Basingstoke and New York, p. 49.

<sup>51</sup> Maas, Willem 2005, 'The genesis of European rights', *Journal of Common Market Studies*, vol. 43, no. 5. Further, the importance of mobility rights was acknowledged by Europe's political elites. The freedom of movement of workers was noted to 'represent a rather incipient form—still embryonic and imper-

fect—of European citizenship' (Levi-Sandri, Lionello 1968, *Free movement of workers in the European Community*, Bulletin EC 11/68, Commission of the European Communities, Brussels, p. 6). See also Hallstein, Walter 1972 [1969], *Europe in the Making*, Allen & Unwin, London.

<sup>52</sup> The Rome Treaties defined the freedom of movement for workers as 'the right...to accept offers of employment actually made; to move freely within the territory of the Member States for this purpose; to stay in a Member State for the purpose of employment...[and] to remain in the territory of a Member State after having been employed in that State' (Treaty of Rome, EEC, Article 48).

<sup>53</sup> Treaty of Rome, EEC, Article 49.

<sup>54</sup> The fourth institution, the European Court of Justice (ECJ), was set up as a supranational *legal body* with the competence to produce binding legislation as regards community competencies. It was not until the late 1970s, by the time the European Court of Justice accumulated a vast amount of case law, that it started to play a greater role in the non-legal, political shaping of the European venture.

<sup>55</sup> Treaty of Paris, Article 69; Treaty of Rome, Article 48. The ECSC Treaty announced that the 'Member States undertake to remove any restriction based on nationality upon the employment in the coal and steel industries of workers who are nationals of Member States and have recognised qualifications in a coalmining or steelmaking occupation, subject to the limitations imposed by the basic requirements of health and public policy' (Treaty of Paris, Article 69).

<sup>56</sup> Maas, 'The genesis of European rights', pp. 1014, 1020–1. Maas remarks that since the introduction of the freedom principles, the legal and practical restraints on the freedom of movement have been gradually disappearing. Nevertheless, on the basis of Articles 39 and 46 in the Treaty of Amsterdam (1997), mobility rights continue to be subject to these limitations.

<sup>57</sup> Treaty of Paris, Article 69.

<sup>58</sup> Meehan, Elizabeth 1993, *Citizenship and the European Community*, Sage, London, p. 147. See also Everson, Michelle 1995, 'The legacy of the market citizen', in Jo Shaw and Gillian More (eds), *New Legal Dynamics of European Union*, Oxford University Press, Oxford.

<sup>59</sup> Antje Wiener expressly writes that the set of rights granted to certain groups of citizens of the member states 'was not only contradicting the universalising (Europeanizing) mission of the integration of the founding fathers but also posed a challenge to conceptualisations of citizenship as universal'. Further, Wiener remarked that this intrinsic tension of

the early approach to 'citizenship' rights was only, and only partially, resolved by the institutionalisation of the status of union citizenship in the Maastricht Treaty (Wiener, Antje 1998, *European Citizenship Practice: Building institutions of a non-state*, Westview Press, Boulder, Colo., p. 294).

<sup>60</sup> Shaw, Jo 1998, 'The interpretation of European Union citizenship', *Modern Law Review*, vol. 61, no. 3; Bellamy, Richard and Castiglione, Dario 1998, 'Between cosmopolis and community: three models of rights and democracy within the European Union', in Archibugi et al., *Re-Imagining Political Community*; Chryssochoou, Dimitris N. 2001, 'Paradigm shift: from policy to polity', in Dimitris N. Chryssochoou (ed.), *Theorizing European Integration*, Sage, London.

<sup>61</sup> As testimony to the political awakening of Europe, the discourse about legitimacy produced a number of policy initiatives as regards common European citizenship, such as: the Tindemans Report (1975), the Dooge Report (1984), the Draft Treaty Establishing the European Union by the Spinelli group (1984) and the Adonnino Report (1985).

<sup>62</sup> In the late 1980s, the decision-making elites of the European Community proved to have insufficient political commitment (council) and inadequate political weight (commission and parliament) to push through politically candid proposals. The *Single European Act* (SEA, 1987) did introduce common citizenship status and did not increase the status of the European Parliament.

<sup>63</sup> Treaty on European Union (TEU), Article 8; Treaty of Amsterdam (hereafter, TEC), Article 17.

<sup>64</sup> TEC, Article 17.

<sup>65</sup> Jo Shaw writes that 'specific motivation for the institution of the concept of citizenship via the Treaty of Maastricht was a top-down [approach] concerned with facilitating the creation of European identity, and even a European demos which could be the basis for a European democracy'. See Shaw, Jo 2007, 'The transformation of citizenship in the European Union: electoral rights and the restructuring of political space', in Laurence Gormley and Jo Shaw (eds), *Cambridge Studies in European Law and Policy*, Cambridge University Press, Cambridge, p. 38.

<sup>66</sup> de Burca, Grainne 1996, 'The quest for legitimacy in the European Union', *Modern Law Review*, vol. 59, no. 3, p. 359. de Burca (ibid., pp. 355–6) further elaborates: 'What most of the suggestions and proposals [had] in common [when preparing the Maastricht Treaty as well as in the post-Maastricht Treaty debates was] that the concept of European citizenship has the potential to contribute to a sense of European identity and thus of identification with the Union as a legitimate polity'.

<sup>67</sup> These included: fundamental freedoms and the principle of equality as set out in the Rome Treaties (1957), the Joint Declaration on Fundamental Human Rights (1977), the Declaration on Democracy (1978), the principle of direct parliamentary elections (1979) and the *Charter of Fundamental Social Rights* (1989).

<sup>68</sup> TEU, Articles 12–13.

<sup>69</sup> TEU, Articles 8a–8d; TEC, Articles 18–21.

<sup>70</sup> This is often considered an important limitation that renders the union status deficient and secondary to national citizenship. See Meehan, *Citizenship and the European Community*; O'Keefe, David 1994, 'Union citizenship', in David O'Keefe and Patrick M. Twomey (eds), *Legal Issues of the Maastricht Treaty*, Wiley, Chichester; d'Oliviera, Hans 1994, 'European citizenship: its meaning, its potential', in Renaud Dehousse (ed.), *Europe After Maastricht: An ever closer union?*, Law Books in Europe, Munich. Heather Lardy goes even further and contests whether the union citizenship status 'which carrie[d] with it such limited political rights [was] not really a form of citizenship at all'. See Lardy, Heather 1996, 'The political rights of union citizenship', *European Public Law*, vol. 2, no. 4, p. 613.

<sup>71</sup> Article 12 in the *Charter of Fundamental Rights* addressed the freedom of association in political matters. In Article 21(2), the charter prohibited discrimination on grounds of nationality.

<sup>72</sup> Shaw, 'The transformation of citizenship', p. 155. Further, Shaw notes that political freedoms are expressly provided to foreign residents on the same terms as to nationals of the given state in the Council of Europe's Convention on 'Participation of foreigners in public life at the local level'. However, as the convention was signed by only the minority of the community's member states, it could not provide a universal and binding legal basis for political freedoms in EU law either.

<sup>73</sup> TEC, Articles 21 and 314.

<sup>74</sup> TEC, Article 255.

<sup>75</sup> It was argued that the inclusion of mobility rights in the union status resolved the tension between access to freedom principles and the universal conceptualisation of citizenship rights. It is important to emphasise that this was, however, only a partial resolution, as the union status remained inaccessible to third-country nationals under EU law; see nationality clause later. See Wiener, *European Citizenship Practice*.

<sup>76</sup> These were included within 'Justice and Home Affairs' (otherwise, Third Pillar) in the Maastricht Treaty. For background, with the reinforced European Parliament, the Maastricht Treaty solidified a two-tier decision-making and legislative system for the European Union. This was based on the division

of powers between the national and supranational levels. The novelty of Maastricht in terms of division of powers was a new pillar structure, which organised the competencies by policy fields. The first pillar concerned the domains in which the member states and the community had shared competencies and produced common policies under binding EU law. Decisions were taken according to the community method, favouring the co-decision and cooperation principles and the qualified majority rule in the council. The second pillar, titled Common Foreign and Security Policy (CFSP), established a mechanism for the member states to take joint actions, devise common strategies and reach common positions in the field of foreign policy. The second pillar followed an intergovernmental decision-making procedure that relied heavily on the unanimity rule in the council. The third pillar, titled Justice and Home Affairs (JHA), facilitated intergovernmental cooperation among the member states in the areas of freedom, security and justice. The TEU listed the following nine areas of 'common interest' under the JHA pillar: asylum; crossing of external borders; immigration; combatting drug addiction; combatting fraud on an international scale; judicial cooperation in civil matters; judicial cooperation in criminal matters; customs cooperation; police cooperation (TEU, Article 11; TEC, Article 29).

<sup>77</sup> Previous treaties simply excluded these attached rights under the category of sensitive issues close to the concerns of national sovereignty (see TEC, Article 18[3]). Nonetheless, certain groups of TCNs had access to civic protection as well as mobility and attached social rights, originating in the resolutions of the Treaty of Rome, such as: members of a migrant EU family and nationals of a third country that held an agreement with the community. See Meehan, Elizabeth 2000, *Citizenship and the European Union*, ZEI Discussion Paper, C63/2000Meehan, Centre of Integration Studies, Rheinische Friedrich Wilhelms Universität, Bonn; Shaw, 'The transformation of citizenship'.

<sup>78</sup> TEC, Article 17.

<sup>79</sup> Siofra O'Leary points out that by the implementation of the Maastricht Treaty, only three of the member states (Denmark, the Netherlands and Ireland) provided long-term residents with voting rights. As for international protocols, the electoral rights of immigrants in the member states remained dependent on the given state being a signatory of the Council of Europe's *Convention on The Political Participation of Foreigners in Local Life* (1992). See O'Leary, Siofra 1996, *The Evolving Concept of Community Citizenship: From the free movement of persons to union citizenship*, Kluwer Law International, The Hague. See also O'Keefe, 'Union citizenship'; Wiener, *European Citizenship Practice*.

<sup>80</sup> Maastricht also improved the European Parliament's position vis-a-vis the European Commission. Parliamentary approval was henceforth required for the appointment of the Commission President (see TEU, Article 189b; TEC, Article 251).

<sup>81</sup> Falkner, Gerda and Nentwich, Michael 2000, 'The Amsterdam Treaty: the blueprint for the future institutional balance', in Karlheinz Neunreither and Antje Wiener (eds), *European Integration After Amsterdam. Institutional dynamics and prospects for democracy*, Oxford University Press, Oxford.

<sup>82</sup> Ibid.

<sup>83</sup> TEU, Article 8e; TEC Article 22.

<sup>84</sup> Shaw, 'The transformation of citizenship', p. 9. See also Preuss, Ulrich, Everson, Michelle, Koenig-Archibugi, Mathias and Lefebvre, Edwige 2003, 'Traditions of citizenship in the European Union', *Citizenship Studies*, vol. 7, no. 1.

<sup>85</sup> European Commission, *White Paper on European Governance*, CONM 20010 428, The European Commission, Brussels.

<sup>86</sup> The central objective of the white paper was identifying tools to improve the democratic capacity of the European Union. It argued for the introduction of participatory and deliberative opportunity channels to complement the supranational institution of representation. This was matched with a range of pragmatic reform proposals that aimed at closing the communication gap and providing a point of closure for the Maastricht initiatives. These included launching information campaigns and streamlining and simplifying the common policies and structures under a consolidated single treaty (constitution).

<sup>87</sup> Habermas, 'The European nation-state: on the past and future'.

<sup>88</sup> Constitutional Treaty (CT), Article III-125(1).

<sup>89</sup> CT, Article III-125(2).

<sup>90</sup> O'Leary, *The Evolving Concept of Community Citizenship*.

<sup>91</sup> Gardner, J. P. 1997, *Citizenship: The white paper*, The Institute for Citizenship, London, p. 39.

<sup>92</sup> Treaty of Lisbon (otherwise Reform Treaty), 2007.