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Social Citizenship in the European Union: Nested Membership*

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Abstract

The 'European social dimension' offers a strategic entry point for analysing the development of citizenship in the European Union (EU). The first part of this contribution discusses the functions of social citizenship in this emerging multi-level governance network. Second, the analysis deals with two prominent and stylized paradigms that have sought to grasp the new multiple-level quality of social citizenship in the EU: residual and post-national concepts of membership in liberal democracies and advanced welfare states. Although each of these approaches captures selected elements of social citizenship, they are unable to deal with rights and duties in multiple governance levels in a satisfactory way. Therefore, the discussion moves to an alternative concept – nested citizenship. This means that European citizenship is nested in various sites: regional, state and supra-state forms of citizenship function in complementary ways – while the associated norms, rules and institutions are subject to constant revision and further development on all governance levels. Third, the analysis shows that the concept of nested citizenship can help to overcome the fruitless dichotomy of Euro-optimism and Euro-pessimism concerning social policy and citizenship. This discussion suggests a conception of European social citizenship as a common project, evolving towards common present- and future-oriented understandings of substantial rights and democratic principles in the EU.

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Introduction

Social policies and social rights which are part of social citizenship constitute one of those realms of European integration in which the Member States' influence is usually regarded as predominant, despite pressures emanating from competition law encroaching in the delivery of social protection. Currently, EU-level social policies and ensuing rights mainly concern regulations securing the rights of different categories of persons in specific areas of labour market policy: these include the mutual recognition of social security contributions of migrant workers from EU Member States, equal treatment of men and women in occupational life, and some basic standards concerning working conditions, health protection and occupational safety. Many of these regulations can be regarded as results of the market-making 'negative integration' of the EU – the removal of obstacles to the free flow of the factors of production. In addition to the uninhibited flow of goods, capital and services, they also safeguard the free movement of labour. With this in mind, some voices warn of a further decoupling of economic integration and social security, because rapid economic integration is not accompanied by an equivalent adaptation of social policies and legislation (Streeck, 1996, p. 64). Therefore, analysts have concluded that 'Social Europe' is either underdeveloped or even sclerotic (Scharpf, 1999), and that it would be exceedingly difficult to develop adequate mechanisms to cope with the asymmetry of market-making and market-correcting mechanisms on the supra-state level (Offe, 1998). Correspondingly, the Union citizenship created by the Treaty of Maastricht is not considered to be an effective step in creating and maintaining substantive social rights. By contrast, others have emphasized rudimentary signs of market-correcting 'positive integration' in the EU. These voices of guarded optimism point to the emergence of supra-state joint decision networks with an inherent potential for further federal development on several levels of governance (cf. Kaufmann, 1997, p. 133). Empirical analyses claim that we do not find carbon copies of state-level social policies at the EU level, such as the characteristic mixtures of redistributive, distributive and regulative policies (Leibfried and Pierson, 1997). Instead, regulatory social policies and social rights have predominated at the supra-state level (Majone, 1994).

The first question raised by this ongoing controversy is, which concept of social citizenship best grasps the development of social politics and law within the EU during the last few decades? Any candidate concept must describe the asymmetry between market-making negative integration and market-correcting positive integration. Three alternative perspectives can be discerned: residual, post-national and nested social citizenship. The residual approach posits a weak form of social citizenship on the EU level and declining conditions of social rights on the level of the individual Member States. Key

words are 'social dumping' and a 'race to the bottom'. From this perspective, it is noteworthy that the rights people have as economic citizens – in their roles as consumers, workers, entrepreneurs or merchants – are both the most comprehensive and, with regard to legal aspects, the most differentiated (Shaw, 1997, Part IV). Conversely, a post-national notion claims an increasing convergence of rights guaranteed on the supra-state and Member State levels. The view taken here is that the concept of nested membership¹ is most appropriate to conceptualize both the federative and multilevel character of the EU governance network and the citizens' rights that exist on the different levels of governance – regional, state and supra-state. This multi-tiered membership system consists of a mixture of rights guaranteed by regional, state, inter-state and genuinely European institutions. The safeguarding of people's rights functions on several levels which are set within each other. Viewed from a nested citizenship perspective, it is not surprising that a common European social citizenship has not developed, based on the harmonization of social rights.

The second question is then, which moral and cultural aspects could be thought to form the basis for the further expansion of nested social citizenship in Europe? It is about the mechanisms by which the gap between negative and positive integration can be narrowed or even closed. The EU started by offering a mercantile kind of membership, giving citizenship to the Member States but not to citizens. Since the Treaty of Maastricht (1991), however, there is a specific form of EU citizenship, albeit often ridiculed as a sort of 'citizenship light'. All citizens of the Member States are now also EU citizens which, in principle, gives them the right to stay in every Member State. EU citizens living outside their home country but within the EU are entitled to vote and stand for election in local elections in their country of residence. They also have the right to take part in the election for the European Parliament (Arts. 17-21 EG-A; quoted according to the 1997 Treaty of Amsterdam). Union citizenship is a particularly interesting case of evolving full membership because it is solidly based on citizenship in the Member States. For example, in contrast to the Member State level, EU citizenship does not include regulations for its acquisition. On the European level there are no rules such as the blood principle (*jus sanguinis*) and the territory principle (*jus soli*). Also, there is no European *jus domicili* which would provide that those who have been born or settled in one of the Member States would have the option to acquire EU citizenship. And when moving from the status dimension of citizenship to issues of belonging and citizens' ties, it is usually ideas such as a common European cultural heritage or the principle of subsidiarity that become the focus of discussions.

¹ This definition is inspired by Tsebelis' (1995) conceptualization of 'nested games', a contribution to game theory.

In contrast, the argument made here is that the further development of social citizenship on the European level represents a common project which has a strong present- and future-orientation. Its dynamics stem from the very creation of common rights.

Section I of this analysis discusses the basic characteristics of social citizenship. In Section II, the EU is described as a 'multilevel governance network' which regulates some social rights. Section III then addresses the question of which conception of membership best describes the reality of multiple levels of governance in a federative and supra-state network: residual, post-national or nested membership. Section IV defends the conception of nested membership advanced here against positions which place high hopes on the 'European Social Dimension' or have great fears that the Europeanization of certain rights and policies could undermine current welfare state standards.

I. Dimensions of Social Citizenship

Citizenship is a contested and a normative concept (Walzer, 1989). Therefore, there are no authoritative definitions. According to the Aristotelian tradition, citizenship constitutes an expression of full membership of persons in a political community, eventually aiming towards equal political liberty, irrespective of whether the citizens are governing or are governed (Aristotle, 1962, III.1274b32–5b21). Citizenship has two dimensions – ties between citizens and the status of citizens (cf. Table 1). The first dimension of citizenship refers to the citizens' ties between themselves and of the citizens to the respective state or governing body. According to Rousseau, citizens have a two-fold obligation – 'as members of the Sovereign towards individuals and as members of the state towards the Sovereign' (Rousseau, 1995, p. 76; my translation). So citizenship forms a continuing series of institutionalized ties among citizens. In particular, citizenship connotes the institutionalization of generalized reciprocity and diffuse solidarity of members in a political community² – like a social contract (Dahrendorf, 1988, p. 116). States and governance networks such as the EU hold ties and webs of solidarity and reciprocity in trust for

² Reciprocity in its specific form refers to situations in which specified partners exchange items of equivalent value in a strictly delimited sequence. If any obligations exist, they are clearly specified in terms of rights and duties of a particular actor. Specific reciprocity pertains to varied situations, for example, when children care for their elderly parents. Generalized reciprocity means that equivalence is less precise, one's partners may be viewed as a group in a community or a country, rather than as particular actors, and the sequence of events is less narrowly bounded. It involves conforming to generally accepted standards of behaviour. Similarly, solidarity can be either focused, directed towards a narrow kin group, frequently bounded by household and blood lineage, or it can extend to more diffuse forms. Diffuse solidarity pertains to larger aggregates, such as territorial and symbolic community groupings (nations) and organizations (insurance schemes or even states) in which participants and members largely lack face-to-face contact (cf. Faist, 2000, Ch. 4).

Table 1: Dimensions of Citizenship

<i>Dimensions of Full Citizenship</i>	<i>Ties Among Citizens and to the Political Community (Relational)</i>	<i>Status Rights and Duties of Citizens (Formal)</i>
<i>Realms of Rights and Duties</i>		
Constitutional	'We group' feelings: nationality/ supranationality	States/ supra-state and federative governance networks
Political-institutional	Public recognition of culture, life-style, religion, ethnicity	Regulatory, distributive and redistributive policies and programmes

citizens in the political community. The second dimension of citizenship concerns the status of members in political communities. Citizens are full and equal members of a political community with all attending rights and duties.

There is a double coding of citizenship (cf. Habermas, 1998): the access to legally guaranteed status and rights usually implies belonging to a politically defined community. This double coding is central at this point, as social and political analyses often tend to focus on the aspect of status and to ignore the aspect of ties. However, quite a few social rights and corresponding policies, i.e. those who have a redistributive effect, require generalized reciprocal ties among citizens (e.g. the 'generations' agreement' for the German pension scheme), or even need a basis in diffuse solidarity (e.g. social assistance).

II. EU Social Policy and Rights in a Federative and Multi-Tiered System

As a multi-level governance system the EU clearly reaches beyond a low-profile inter-state regime (Jachtenfuchs and Kohler-Koch, 1996), although it has not (yet) developed into a coherent supra-state institution, as the early neofunctionalists optimistically envisaged (Haas, 1958). The EU is a supra-state and federative governance network with mixed intergovernmental and common authorities. Within this multi-tiered governance system, the rules of the game for the formulation of institutions and policies are constantly being developed and redefined. Even social policy and accompanying rights have developed rapidly from the EU Charter of Social Rights in 1989 and the Treaty of Amsterdam in 1997 which subjected more issue-areas to qualified majority voting in the Council of Ministers.³ This means that the institutional design of

³ There are three tiers of decision-making, each of which covers distinct policy areas. (1) Directives in which most relevant policy actors are involved (EU Commission, Council of Ministers, social partners, European Parliament): working environment, health and security of employees; working conditions;

relations between Member States, the states and their citizens, as well as between the members of the federal governance network, is in considerable flux. Two components have characterized the development of the European social dimension: substantive elements such as EU legislation and rulings of the European Court of Justice (ECJ), and procedural innovations such as qualified majority voting.

First, there are now policy ratchets in some issue-areas which create sunk costs and lock-in effects, prohibiting Member States from cutting back their existing standards and thus social rights. Virtually all of the EU-wide social policies and social rights connected to them are of a regulatory nature and relate to employment protection. Early examples dating back to the 1970s include legislation concerning collective redundancies, the transfer of businesses and the rights of employees of insolvent employers. Newer examples are the Atypical Work (health and safety) Directive of 1991, the Maternity Directive of 1992, the European Works Council Directive of 1994, the Parental Leave Directive of 1996 and the Atypical Work Directive of 1997. Interestingly, the last two directives are the first in which the key organizations of labour unions and employers' associations – social partners – were explicitly involved (Falkner, 1998, pp. 114–45). Since the Maastricht Social Protocol and Agreement, the ECJ also has more power to fine non-compliant Member States.

Second, innovations have occurred on the procedural level. Qualified majority voting on social policy issues has been expanding since the early 1990s under Art. 118A of the Single European Act. A prominent example is European health and safety regulation. Also, European social policy and rights-making occurs on multiple levels and in different arenas in which, besides Member States and EU institutions, interest groups such as the social partners are involved. Policy-making that involves social partners has traditionally been a preserve of state-level bargaining. New trends of supra-state social partnership are especially visible in those policy areas in which the EU has developed explicit competence. We find that supra-state actors such as the EU Commission – which has the right to propose legislation – encourage the formation of rather comprehensive policy networks of state and non-governmental actors. Prominent actors focusing on specific issues are, for example, the European Trade Union Confederation (ETUC), the European Centre of Enterprises with Public Participation (CEEP) for the employers in the public sector, and the Union of Industrial Corporations in Europe (UNICE) in the

integration into the labour market; equal pay for men and women; measures against social exclusion; equal opportunity for men and women in the working world. (2) Directives which can only be implemented unanimously and on consultation with the European Parliament: social security; protection against dismissals; working conditions for third-country citizens; financial measures to promote employment. (3) No Community competence: wages and salaries; right to form coalitions; strikes.

private sector. These collective actors on the EU level are composed of representatives from Member State federations. The quasi-legislative competence of the social partners, however, does not cover central realms of social politics such as social insurance and collective bargaining. The core areas are still subject to the principle of unanimity (Keller and Sörries, 1999).

III. Three Models of Social Citizenship in the EU: Residual, Post-national and Nested Membership

Let us now turn to the three stylized notions of social membership. No one author has single-mindedly adhered to one of these perspectives. However, a critical analysis is helpful to bring out the strengths and weaknesses of each conceptual model.

Residual Social Membership

Observers who regard the EU mainly as a federation of autonomous and sovereign states possessing only minor supra-state competence usually claim that social rights guaranteed by the EU are minimal (Moravcsik, 1998, pp. 140–2). Consequently, they do not grant high priority to European social citizenship. In its exaggerated form, the corresponding notion of residual membership assumes that social citizenship in the EU has a sort of virtual quality only – very much like the virtual reality of the internet world. This view emphasizes that market-correcting social policies and rights at the EU level have not shown any substantial impact on redressing risks and inequalities concerning EU citizens. In general, the residual perspective is particularly appealing because it cogently refutes the ‘spillover’ thesis, which claims that the politics of European integration is a process driven by a logic of immanent growth, resulting in ever-growing political regulation and leading to supranational welfare state formation. The residual perspective, on the contrary, points to the low standards of social regulation at the EU level.

Usually, we find three arguments supporting the residual position. First, the EU is mostly engaged in activities regarding market-making and market compatibility. For example, the EU encourages the free movement of workers.⁴ The EU, so this view goes, is not extensively involved in market-correcting, which would involve the formation of redistributive rights and policies. Also, there is no European law granting individual entitlements against Brussels, and there are no direct taxes or contributions funding a social

⁴The free movement of workers introduced by the Treaty of Rome (1957) was largely a product of Italy’s influence which at that time was the biggest exporter of labour to the EU. The actual extent of intra-state mobility in the EU is quite low: on average, it amounted to only 1.7 per cent during the 1990s. This rate roughly corresponds to the global rate of inter-state mobility (Faist, 2000, pp. 3–6).

policy budget which would back such entitlements. Moreover, the EU is not a big social policy spender in itself. On average only 0.7 per cent of its budget was geared towards social policy in the 1990s. Nevertheless roughly 80 per cent of EU expenditure is dedicated to policies which can have indirect effects on social policies: Common Agricultural Policy and structural or social funds.

Second, EU social rights are effective in very few areas only, most notably gender equality (equal treatment of men and women in all their forms) and gender equity (measures to integrate women into labour markets on an equal footing with men; Art. 141 EC-A⁵), health and safety in the workplace and intra-EU migration. These rights pale in their significance *vis-à-vis* rights to social insurance, social assistance and even collective bargaining and codetermination of workers. Industrial rights have been blocked. The German codetermination model has not spread. Instead, the EU has agreed on only minimal standards for the consultation of workers in border-crossing companies. In addition, the Treaties of Maastricht and Amsterdam have not yielded a total breakthrough. Only a few more areas are now brought under qualified majority voting, such as information and consultation of workers in transnational companies. The core issues of wage bargaining are still excluded from EU competence: remuneration, the right to strike, and labour union rights. In short, the EU Commission, even after the Community launched the 'Luxembourg Process' in 1997, possesses no far-reaching competence in social and labour market policies and corresponding citizens' rights – which would be similar to the competence the Member States have vested in the EU regarding the common fiscal and monetary policies (Arts. 104–111 EG-A). Moreover, supra-state actors in areas such as employment policy are not able to impose any sanctions against the Member States who do not reach certain levels of employment. Rather, EU actors have to content themselves with 'management by objectives' – mechanisms such as the exchange of information and 'best practices', monitoring, policy evaluation and recommendations to the Member State governments after co-ordinated consultation by the EU Commission, the Council of Ministers, the European Parliament, and the Council of Regions (for a complete list of the reforms engendered by the new chapter on employment since the Treaty of Amsterdam, see Hörburger, 1998, pp. 113–15).

Third, even if we take social policy in a wider perspective and include the structural and regional funds and the Common Agricultural Policy, the picture does not look much brighter. Time-limited structural funds and cohesion funds are intended to counterbalance the uneven impacts of the Common Market. Granted, these policies temporarily infuse southern European Member States,

⁵ This gender-oriented stipulation can be traced back to the intervention by France in the late 1950s. At that time, however, it was considered to be an exhortation, and was not given the attention it received two decades later.

Northern Ireland and the Republic of Ireland with the means to improve infrastructures in traffic, social services and environment. However, given the fact of highly unequal income distribution in the poorer regions of the EU, most of the funds probably lead to a decrease in real taxation in the subsidized regions. For example, if we follow the experience of the Italian Mezzogiorno, we would expect most of the benefits to end up in the hands of relatively richer individuals (Majone, 1994). Only individual social rights allow for the real transfer of payments to the people in the poorer regions of the EU.

Nevertheless, we should question the notion of residual social membership for three reasons. First, the Treaty of Amsterdam has added to the substance of EU citizenship by formally declaring that the basis of the EU lies in including fundamental human rights – as defined in the European Convention on Human Rights (Rome 1950), and fundamental social rights – as defined in the European Social Charter (Torino 1961) and developed in the Community's own Charter of Social Rights (1989). The Charter of Social Rights also provides for practical employment-related social rights (Arts. 136–145 EG-A). Second, Europeanization in the sense of external challenges raised by the four border-crossing freedoms has led to a renewal of social pacts at the level of Member States. In particular, the completion of the single market in the early 1990s, and meeting the criteria to join the European Monetary Union (EMU) in the late 1990s, led relevant actors in various countries to agree upon wage guidelines: Ireland, Italy, Portugal and Spain (Ferrera *et al.*, 2000, p. 56). Even earlier, social pacts were formed in Denmark and the Netherlands to cope with the consequences of the European Monetary System (EMS). This evidence indicates that external challenges may have induced renewed activity to form domestic coalitions in support of commonly agreed labour market policies, and thus employment levels. Third, the residual model ties social citizenship only to rights granted at the supra-state level, and pays no attention to the multi-level governance system of the EU.

Post-national Social Membership

While the notion of residual membership ultimately disregards the emergence of effective individual rights through multi-level integration, the concept of post-national citizenship emphasizes the increasing relevance of genuinely inter- and supra-state policies and rights. This concept explicitly deals with border-crossing influences upon people. In general, post-nationals claim that human rights have come closer to citizens' and also social rights. In their view, liberal-democratic states have increasingly come to respect the human rights of persons, irrespective of their citizenship (cf. Soysal, 1994). Inter-state human rights discourses and supra-state institutions such as the EU have led states to grant rights to certain groups which thereby do not become citizens

(yet) but denizens – immigrants holding permanent residence status, including virtually all civil and social rights (Dörr and Faist, 1997). These categories of people include citizens of third states (*extracommunitari*), holding the citizenship of a non-EU country. This means that supra-state institutions such as the European Court of Justice (ECJ) have developed common rights for all residents. For this reason, there are nowadays few differences in social rights for denizens and citizens of EU Member States. Nevertheless, writers in the post-national vein have little to say about citizens. They are mainly concerned with closing the gap of rights between denizens and citizens (Jacobson, 1995).

There is a central problem with the post-national view. It is certainly true that basic human and civil rights have become enshrined on a supra-state level in the EU. But this is obviously not true for social rights. A post-nationalist perspective neglects the double coding of citizenship. It disregards the fact that morally demanding social rights, for example those involving redistribution of funds, require support by strong social and symbolic ties of generalized reciprocity and diffuse solidarity. Such ties are usually limited to collectives which are much narrower than the category 'European people' as a whole. For example, generational reciprocity in pension systems does not reach from Finland to Portugal.

Nested Social Membership

The concept of nested membership says that membership of the EU has multiple sites and there is an interactive system of politics, policies and social rights between the sub-state, state, inter-state and supra-state levels. The web of governance networks allows for enshrining a few new rights at the supra-state level, interconnecting them with old ones, and – above all – re-adapting social rights and institutions in existing welfare states. In the near future, the EU will probably not become a federal welfare system like those found in sovereign welfare states. Therefore, we cannot speak of EU citizenship as fully fledged federal citizenship. But what has evolved in the EU is an extraordinarily intricate network of overlapping authorities and attendant social rights, in which Member States play a central but by no means exclusive role.

The first characteristic of nested social membership is that it implies multiple levels. The political actors – including sovereign Member States, the EU Commission, the Council of Ministers, lobby groups, citizens' associations – are involved in activities at different levels. Nested membership means that European membership cannot be restricted to European Union citizenship. It encompasses all levels of governance relevant for social rights. It is interesting that in the Treaty of Maastricht the EU designates two kinds of citizens, namely Member States and their citizens. This implies two kinds of actors: individual and collective citizens. Politics and governance on multiple

levels are organized in various ways, in the intergovernmental and community pillars. There are overlapping authorities in fields such as employment policy which imply annual reports and exchanges about 'best practices' (cf. Arts. 125–30 EG-A).

Second, nested citizenship is a form of federative membership. Similar terms have been used before, such as 'multiple citizenship' (Marks, 1997, p. 35), which means citizenship at several governance levels. Elizabeth Meehan comes closer to the meaning of nested membership. According to her, the emerging new citizenship in the European Union is 'neither national nor cosmopolitan, but ... in the sense that the identities, rights and obligations associated ... with citizenship are expressed through an increasingly complex configuration of common Community institutions, states, national and transnational voluntary associations, regions, alliances of regions' (Meehan, 1993, p. 1). Nested membership even goes a step further: in contrast to multiple citizenship, there is no simple coexistence of different levels. European social citizenship as a whole is sited in various governance levels.

The notion of nested membership deals explicitly with the interrelation of the different levels. Nested membership is compound and implies a federative element. From an ideal-typical point of view, nested membership in the EU includes citizenship at the supra-state and Member State levels, as well as membership on the regional and communal tiers. Nested membership in the EU should be thought of as a cumulative phenomenon, not a purely additive one. New regulations and rights on one governance level have feedback effects and often entail potential adaptations on another level. This is usually the case from the supra-state or inter-state down to state and regional levels, when viewed in a top-down perspective. There has indeed been a reduction of the sovereignty of member welfare states through pan-European regulations and new methods of enforcing adherence of Member States to EU directives by the ECJ. The EU and here, especially, the ECJ have defined in increasingly liberal terms who is a worker. Nowadays, it is any EU citizen who engages in genuinely economic activities in another Member State. This makes it close to impossible for Member States effectively to control entry of EU citizens into domestic labour markets. For example, the freedom of services provision allows companies to post workers without restrictions in all Member States (cf. Faist *et al.*, 1999, Ch. 7). In short, Europeanization has sharpened the tension between the border-crossing freedom of economic activity, on the one hand, and the protected sphere of citizenship, on the other hand.

The bottom-up perspective, from the regions and Member States to supra-state and inter-state institutions, helps to explain why nested citizenship is not evolving smoothly to a truly federal citizenship. The sovereignty of Member States in granting citizenship at the state level carries far-reaching implications

for the slow evolution of a more coherent EU citizenship, and the resilience of Member States against it. Take the example of free movement: if Italy decided to naturalize all African immigrants in a very generous manner, they could immediately – as nested citizens – move elsewhere in the European Union and have free access to labour markets. This situation certainly constitutes one of the factors slowing down the harmonization of citizenship laws or even the unification of citizenship within the EU. The ability of Member States to regulate admission to state citizenship stands in stark contrast to their growing inability to define who is considered a ‘worker’ and thus able to cross borders freely and engage in economic activities. Access to Member State citizenship is an instrument wielded by the now semi-sovereign states to fend off continued encroachment of EU case law on access to their labour markets. Member States try to offset their sovereignty losses concerning the free movement of labour by protecting their exclusive right to naturalization.

Looking at both the top-down and the bottom-up directions of nested citizenship we encounter a duality familiar from the world of migration. On the one hand, globalization in the form of economic Europeanization limits the sovereignty of Member States, turning them into semi-sovereign welfare states. On the other hand, the sovereignty of Member States in terms of formal and full citizenship remains uncontested. One result is that very few new ‘positive’ social rights are created at the supra-state level. By contrast, governments at the Member State level constantly need to re-adapt and reformulate social rights. Under propitious political conditions, this may even enhance the opportunities for welfare states to engage anew in fields such as employment promotion, which may be badly needed in times of persistent high levels of unemployment in many Member States.

The third characteristic of nested citizenship is that it cannot be thought of as membership being guided by a coherent or even centralized core of political authority. As opposed to citizenship in federal political systems such as the Federal Republic of Germany, the highest level of the EU should not be understood as the primary centre of political authority standing above the sub-state systems. The multi-tiered governance network of the EU is better understood as a loose federal system. Considering the development of competence at the highest level, the EU supra-state level can best be compared with the federal dimension in the USA until the 14th Amendment in 1868 and the German situation from 1871 until the *Reichs- und Staatsangehörigkeitsgesetz* (RuStAG) of 1913. In both cases, federal citizenship derived from sub-federal citizenship. The federal governments had no authority over the decisions of sub-federal states (Grawert, 1973, pp. 174–212; Friedman Goldstein, 1997).

Similarly to the US and German governments at that time, the EU today has no authority over the granting of Member State citizenship. Viewed in

historical perspective, there is a striking similarity in the expansion of federal elements of citizenship: the role of the courts as a catalyst of political development going beyond the single US states, and the EU Member States, respectively. However, while the USA in the late nineteenth century can adequately be described as a 'state of courts and parties' (Skowronek, 1982), the latter element is not worthy of closer examination as a motor for supra-state integration in Europe – mainly because of the weak position of the European Parliament.

These characteristics of nested membership suggest that there is not necessarily an upward ratcheting of social rights at the EU level, as indicated by the post-national perspective. But there is also no automatic downgrading, as predicted by the residual understanding. Some Member States are creatively adapting to the new environment by social pacts and none of the Member States has given up control over the access to meaningful social citizenship. The basic characteristics of nested citizenship are nicely illustrated in the case of German retirees and their need of long-term care outside Germany. On average, about 30,000 pensioners from Germany have lived all year round in Spain over the past 20 years. As the periods of stay increased, not only medical care *per se* became a problem – this problem could be solved by the co-operation of the regional Spanish institutions with German statutory health insurance. The main problem occurred when these pensioners became invalids and needed increased and more intensive care (Seiler, 1994). To be eligible for social services or, nowadays, the benefits of long-term care insurance, they had to return to Germany. This changed when the ECJ decided that the benefits of long-term care insurance are portable across borders to other EU countries (Sieveking, 1998). This is an instance of how the ECJ applied the market compatibility requirement: Member States may no longer insist that their benefits are only consumed in their own territories. In this case the ECJ decided that Germany had to implement the border-crossing portability of social rights. This example shows that prominent supra-state actors have helped to establish parameters for permissible social policies, while leaving it to the Member States to formulate the required adjustments.

IV. The Further Development of European Social Citizenship

Having sketched the concept of nested citizenship in contrast to competing descriptions, it is now possible to elaborate on the requirements for expanding social citizenship in the EU. Most analysts take the model of a sovereign state as the final destination of European integration. Such a perspective has led the cautious Euro-optimists to discover the manifold so-called 'deficits' of formal EU membership which allegedly need to be overcome (Table 2). And Euro-

sceptics claim that a development towards a kind of European social citizenship is not possible at all, because it would be extremely demanding. The concept of nested membership, however, is able to lessen the drama inherent in these overdrawn hopes and fears. The main thesis here is that social citizenship at the EU level is not as demanding as most analysts would claim. Social rights mostly pertain to regulatory policies. Nevertheless, a common project, involving moral and cultural foundations, is necessary for the further expansion of nested citizenship.

The Euro-optimists and the Euro-sceptics elaborate four main deficits which can be conveniently grouped along the dimensions of citizenship: the social, the democratic, the solidarity and the cultural deficit (the legitimization deficit applies to more than one realm of citizenship). The first two aspects – social and democratic – have been described at length in the political science and social policy literature (for a summary, see Böhner, 1998). Suffice it to say that the notion of residual membership focuses on the ‘social deficits’ and deplores a lack of full social rights at the EU level: ‘the policy-making capacities of the Union have not been strengthened nearly as much as capabilities at the level of Member States have declined’ (Scharpf, 1999, p. 220). The democratic deficit is relevant because the weakness of the European Parliament, the absence of a European *demos* and the procedures of the EU executive that are not democratically legitimated, all point to an important fact: without a truly democratic border-crossing polity the enabling function of social citizenship cannot be fulfilled. Connected to the democratic and social deficits are specific forms of legitimization deficits. Legitimacy is based partly on democratic procedures which go hand-in-hand with the *demos*’ trust in the ruling classes (legitimation deficit 1), and partly on achievement (legitimation deficit 2). Compared to standards of liberal democracy, the EU shows a gap: a comparatively high degree of technocratic efficiency but a low degree of democratic legitimacy. Here, the focus is on citizens’ ties that have to be taken

Table 2: The ‘Deficits’ of Social Citizenship in the EU

<i>Dimensions of Full Citizenship</i>	<i>Ties</i>	<i>Status</i>
<i>Realms of Rights and Duties</i>		
Constitutional	‘Solidarity deficit’	‘Democratic deficit’ (and ‘legitimation deficit 1’: participation of citizens)
Political-institutional	‘Cultural deficit’	‘Social deficit’ (and ‘legitimation deficit 2’: effective rights and policies)

into account. Without any ties that concatenate into 'we group' feelings (see Table 1), the social rights and policies implied by citizenship cannot be put on a solid basis because social citizenship requires diffuse solidarity and some basic, common cultural goals.

'Solidarity Deficit'

Eurosceptics argue that an accumulation of resources at the EU level would be necessary but nevertheless impossible. They assume that there will be no pan-European communal solidarity in any strong meaning of the term in the foreseeable future. In their view, ties of solidarity are necessary to raise resources in order to reduce social exclusion. This is only possible when a shared sense of belonging can be appealed to – notably a common national identity (cf. Miller, 1993). Citizenship built upon ties of national solidarity is morally very demanding because it is geared towards security through serial reciprocity and redistribution – consider, for example, the so-called 'contract of generations' in the German public pension scheme. And redistributive policies – such as the German statutory health insurance – have undoubtedly lessened class tensions and introduced norms of equality in addition to those of fairness. In this view, because the nation is such a demanding political and social community, it would be nearly impossible to create a similar one at the European level.

Two questions arise from such a straightforward projection of reciprocity and solidarity from the Member State to the European level. First, do we actually need a tightly-woven collective, characterized by high degrees of solidarity, at the supra-state level, so that social rights and social policies can be effective? The tentative answer would be, 'not really'. The reason is that EU social citizenship is of a nested nature and supra-state social policy is mostly regulatory. Only in a wider sense is European social policy redistributive, such as structural funds and agricultural policy which can be interpreted as side-payments for poorer Member States to consent to stricter social regulations (Lange, 1993). However, these policies are not directly relevant for citizenship since they do not imply explicit individual entitlements.

Second, the 'nation' has not always been such an important solidarity collective. The history of social policy in Europe suggests that welfare state institutions developed first and then the collective identities around it. Comparative studies of welfare state development in the USA, Germany, France and the UK show that 'collective action produced both a collective capable of co-ordinating the actions of its members effectively and a collective good which corresponds to this level of integration, but can not exist apart from it' (de Swaan, 1988, p. 4). In Europe and North America, state-wide social insurance schemes only gradually replaced the smaller solidarity communities

with bigger ones. National identities emerged slowly into communities of solidarity when old solidarities disintegrated in early capitalism. The welfare state then substituted them with new relations of solidarity that were permanent, did not exclude heavy social risks and were encompassing (Tennstedt, 1981, p. 166). One of the incentives for political elites driving welfare-state building since the nineteenth century was the risks generated by the 'vagrant poor' and potentially revolutionary masses. Nowadays, external and internal challenges are not perceived to be as threatening and dire. Nonetheless, Europeanization has fostered social pacts for employment growth in Member States.

Needless to say, in the real world institutions do not come before possible collective identity and collective identities do not necessarily precede institutions. Rather, the causal arrows usually run both ways. It is important to remember that solidarity is embedded in a variety of differing welfare institutions and rights in the EU Member States. The governing citizens and those who are governed usually stick closely to historically evolved patterns of risk insurance and welfare in a path-dependent manner. In short, the slow emergence of solidarity at the supra-state level on a scale similar to the national level is simply not the issue. This is not to say that EU-level policies do not fulfil important functions for social citizenship. Gender and migration policies, for example, contribute to the enabling function by increasing resources and self-confidence of individuals. Since the Treaty of Amsterdam gender equality and equity have a status akin to a basic social right (Art. 2 EC-A).

'Cultural Deficit'

Again, if we took the welfare state as the only foil against which to model social citizenship in Europe, we would have a tall agenda. In the words of an EU expert: 'European integration must recreate what exists on the level of the nation state, but this is impossible because Europe is devoid of a cultural framework independent of the nation state' (Delanty, 1996, p. 6). In essence, so the argument goes, there is a missing cultural framework, as evidenced in the weakness or absence of European-level collective identity. And this results from the assumption that common culture or civilization would form the basis of common citizenship. Undoubtedly, not only citizenship in Member States but also nested membership needs a basis in common understandings. The intellectual godfather of the social citizenship concept, T.H. Marshall, stated succinctly: 'citizenship requires ... a direct sense of community membership based on loyalty to a civilisation which is a common possession' (Marshall, 1964, p. 92). Marshall's view was that common national cultures or 'civilizations' have evolved in societies in the modern period to which all members of those societies are equally obliged.

At the European level, national-type traditions are evidently lacking or only present in weak and unconvincing ways (Weiler, 1997, p. 118). But there is empirical evidence indicating a nested collective identity among European citizens. We observe the Europeanization of national identities – as happened on a grand scale with German identity, standing in stark contrast to other Member States such as the United Kingdom, where national identity is still defined in opposition to Europe (Marcussen *et al.*, 1999). While an overwhelming majority of all citizens in Europe do not feel exclusively ‘European’ – in contrast to being nationals of a country – representative surveys unearth a substantial majority who perceive the EU as a source of identity which is complementary to and not competing with the respective national identity (Immerfall and Sobisch, 1997, p. 33). And there is even a considerable minority of citizens in EU Member States who perceive a European cultural identity shared by all Europeans – about 38 per cent in 1998 (Commission, 1999, p. 60; based on *Eurobarometer* No. 50, 1998).

Now the question arises, which kind of collective representation is appropriate to advance European social citizenship. One candidate is a notion of cultural Europe grounded in a ‘common culture’ perspective. However, notions of common culture tend to overemphasize the importance of the past and traditions. Relevant examples are the Europe of a resurrected Christianity (Novalis, 1983); the tradition of enlightenment and universal human rights; and a Europe of national characters (Johann Gottfried Herder and Ortega y Gasset). The discomfiting answer, of course, is that there is no pure, pristine and true cultural tradition of Europe to return to (Lepsius, 1999, p. 220). Nevertheless, there may be generally accepted ideas underpinning a common social citizenship in the EU. The most obvious case would be the notion of subsidiarity. Politicians often refer to the idea of subsidiarity which was originally voiced in Catholic social doctrine to justify the division of responsibilities and powers among the EU, Member State governments and other levels of governance. The papal decrees *Rerum Novarum* and *Quadragesimo Anno* voiced this Catholic social doctrine, later taken up by EU leaders such as Jacques Delors. This doctrine says that authorities need to delegate all those issues which can be handled at the lower levels of society, ultimately down to the family. It is also the basis for all policy, according to the Treaty on European Union (Art. 5 EG-A). In this respect, subsidiarity encourages the idea of a multi-level governance system. Yet, ultimately, it is a vague and difficult concept, prone to many interpretations (van Kersbergen and Verbeek, 1994).

The picture looks somewhat different when we turn from this inside view of Europe to a perspective from the outside; for example, from a Chinese or North American vantage point. Then, some European characteristics, such as

the legal inheritance of a christianized Roman Empire do indeed look like a common feature of the EU Member States. Also, compared to other regions in the world such as North America, the EU has a more equal wage and income structure – measured by indicators such as the Gini-coefficient (Ferrera *et al.*, 2000, p. 38).

Nevertheless, a static kind of common culture, i.e. culture as a hardware (cf. Nederveen Pieterse, 1994), or even an uncontested cultural homogeneity cannot serve as a basis for social solidarity because of changes in the cultural mosaic of Europe. Without any claim to exhaust the range of possibilities, a few of these changes are that life-styles have become more plural and processes of ‘individualization’ have multiplied. In the course of inter-state migration, various cultural mixtures have emerged in the cities across Europe. And we have seen the renewal of regional collective identities among the periodically resurgent and resuscitated sub-state cultures in Europe – think of groups in Scotland, Wales, Lombardy, Flanders and Wallonia, the Basque country, Catalonia and Corsica (cf. García, 1994).

Therefore, the antiquated notion of a common culture has to be complemented, though not totally replaced, with European citizenship as a common project. To use the computer metaphor once more: perspectives on culture as hardware need to be enlarged by approaches which think of culture as software. This is necessary because European integration is an open-ended process. The main characteristic of a common project within which nested membership can grow is the notion of a common future and present – instead of only a common past. Most of the common culture arguments tend to overestimate the shared heritage and common tradition when conceptualizing culture and collective identity in modernity. The chance of a common future or even the existing common present are neglected. Take an obvious counter-example: the French Revolution is a symbol that has repeatedly been used to connect the past with present- and future-oriented political agendas. Therefore, the cautious proposition here is that conceptualizations of common culture which are more present- and future-oriented are of great significance for understanding contemporary and emerging possibilities for social citizenship in Europe (cf. Roche, 2001). The notion of a common project is relevant not only for aspects of social citizenship but also for the civil, political and cultural aspects of membership in political communities and governance networks.

Within such a common present- and future-oriented project, cultural hardware is indeed significant – but only when used in innovative ways. For example, most of continental Europe adopted Roman law and not common or Germanic law after the eighteenth century as legal hardware. This commonality constitutes a great part of the cultural backbone of EU ‘integration through law’. Although it is not a tradition covering all of the EU – England

is an obvious exception – the Roman law experience has informed the body of accumulated EU law (*acquis communautaire*).

It may seem to be tautological at first glance, but the best guarantee for developing common and institutionalized ties among the citizens in Europe is not the abstract idea of a common culture, but the actual project of unfolding and expanding social, civil and political rights across borders. Drawing an historic parallel, we return to the development of modern welfare states. It was the institutionalization of citizenship in emerging welfare states which prepared the ground for a legally regulated solidarity among citizens. Normatively, nested membership also means that these earlier experiences are inserted into the growing political culture in Europe and the common project of European citizenship. From this point of view it is, however, questionable that EU citizenship should depend exclusively on the Member States' definition of citizenship. Otherwise, denizens from third countries would continue to be excluded from EU citizenship.

V. Conclusion: Social Citizenship as a Common Project

The concept of nested citizenship helps to assess the concept of residual membership which claims the virtual absence of a 'social dimension' in the EU. The perspective of residual citizenship disregards the interaction of multiple levels of governance which leads Member State governments to adapt social rights to European integration in innovative ways. The concept of nested membership is more nuanced and thus also allows us to correct unrealistically high expectations of a new welfare state on the EU level – as predicted by the concept of post-national membership. Post-national perspectives focus on the fact that the sovereignty of Member States has been restricted in social policy-making. However, post-nationals omit the fact that social rights need a solid grounding in social and symbolic ties between citizens.

Importantly, nested citizenship helps to conceptualize the further expansion of social citizenship as part of a present- and future-oriented common project which includes the development of human, civil and political rights. In this process, social rights are of central importance for equal political liberty because of their enabling aspect. Moreover, they play an important part since they create a special form of legitimation. The development of social rights in a federative, multi-tiered governance network produces a higher degree of acceptance for the European integration process. However, in the long term, social rights will not be conducive to the democratic legitimization of supra-state institutions unless the ties of state, governance networks and citizens are strengthened by expanding the participation rights for citizens at the EU level.

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