

Citizens in Europe, citizens of Europe

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Introduction

“Democracy requires not only the *cracy* but also the *demos*, not only the state but also the people. You can create the apparatus of a state at European level, with a common frontier, a single immigration policy, a common foreign and defence policy, and a single currency. All the attributes of the nation state, all its *functions*, can be transferred to the European level along the Monnet-functional model. But what we do not have and what we cannot conjure up is a *demos* – that is, a single European people.”

Michael Portillo, “Democratic values and the currency”, IEA, 1998

What will it feel like to be a citizen of Europe? The propositions currently being considered and debated by the Council of Ministers, the European Parliament and the new constitutional convention will in due course result in many changes to ordinary people's relation to the EU. So will the enlargement process, as 10 applicant countries in central and eastern Europe and the Mediterranean are expected to join in 2004.

The conference today will ask if Michael Portillo is right. Is the European Union on the road to becoming a European nation state? Or is it a different kind of political entity?

Is the EU simply going to take over the role of the nation state in the life of the citizen? Or is the nature of citizenship changing altogether?

There are two challenges to the concept of national citizenship in Europe. The first is the European Union; the second is globalisation.

Since the ratification of the Maastricht treaty, the European Union now bestows its own rights on the citizens of the member states, rights those citizens would not have if their country were not in the EU. The Amsterdam treaty made clear that these rights are additional to those of national citizenship and do not replace them.

The effects of globalisation cannot be ignored in any discussion of the role of the state and the rights of the citizen. Many of the assumptions previously made no longer make sense. A simple example: the telephone system. Once it was considered a “natural monopoly” – it made no sense to have two competing telephone networks – and was owned by the state. Now, we have many competing telephone services both fixed and mobile. The idea of telecommunications as a state monopoly today seems absurd. Postal services are now moving in the same direction.

So, the traditional role of the nation state is now in question. Which of its functions should be taken over by the European Union? And which should be given up by the state altogether?

The role of the state has been continually changing ever since states were first created. The challenges today are perhaps greater and faster-moving than ever before, but the fact that there are challenges is not new.

This debate therefore is of interest to everyone who is concerned about the way we are governed, or – to phrase it better – the way we govern ourselves.

Morning workshops

The morning workshops will look at examples of citizenship in action. How do different countries interpret citizenship rights and duties? Why do different countries interpret them in different ways? Are some interpretations better or more acceptable than others? If so, why?

The examples chosen for discussion are atypical. This is deliberate.

In neuro-psychology, it is possible to learn about the way in which the brain functions in normal circumstances by studying abnormal or damaged brains. For example, clues to the way in which the brain interprets words when reading can be obtained from considering the case of someone who can read only numbers and not other words.

In the same way, we hope to learn something about the way in which citizenship rights and duties have developed by studying atypical or unusual examples of such rights and duties around the world. As far as possible, examples have been chosen from democracies. Democracy is the prevailing political ethos of our time.

This seminar will not give a simple description of the rights and duties of European citizens. You can find these yourself in the European treaties, or read the excellent explanation on the website of the European Citizen Action Service. Rather, this seminar aims to look at what these rights and duties mean. What are the implications of the development of the concept of European citizenship for the role and function of national citizenship?

Shared influence

Citizenship is normally treated as a political concept, and that is indeed one of its most important aspects. In a democracy, a mark of citizenship is the right to influence the politics of the state. Perhaps, in a circular manner, this also gives us a definition of democracy. The workshop on shared influence will look at examples from around the world of different definitions of who is entitled to take part in democratic politics.

The right to vote

Who is eligible to vote is also a key question, given that it is a core component of citizenship in democratic countries. In the UK, those who are eligible to vote must be British citizens, or other Commonwealth citizens (see below) or citizens of the Irish Republic who are resident in the UK. European Union citizens can not vote in UK elections, though they can vote in local elections and European Parliament elections (see below). UK expatriates lose the right to vote after 20 years.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) guarantees United States citizens overseas the right to vote in federal elections in the United States. (Federal elections include primaries, general and special elections for the President, Vice President, U.S. Senators and U.S. Representatives to Congress.) The UOCAVA applies only to federal elections. However, many states in the United States have enacted legislation whereby certain categories of citizens residing overseas can vote by absentee ballot for state or local officials.

All US citizens are liable to US federal taxation, wherever in the world they live. State taxation may also be applied to US citizens overseas who also vote in state elections. But federal law provides that no tax liability may be imposed based on exercising the right to vote in federal elections, e.g., the President, Vice President, U.S. Senators and U.S. Representatives to Congress.

Latvia grants the right to vote *inter alia* to all those who were Latvian citizens at the time of the occupation by the USSR in 1940. This includes those who fled at the time and have never been back, so that polling stations are set up in some old people's homes in the UK. It was proposed that ethnic Hungarians living in neighbouring countries should be permitted to vote in Hungarian elections.

Issues: who should have the right to vote?

The right to give money to political parties

Protection of national democracy not only prevents foreigners from voting, but also from donating money to political parties.

New rules mean that British (and Commonwealth) citizens enjoy privileges in the field of political patronage denied to foreigners. The Political Parties, Elections and Referendums Act 2000 introduces for the first time controls on political donations and requires the Electoral Commission to maintain a register of large donations.

While anyone can make a donation of less than £200, donations over this amount must be from a permissible source. This must be from one of the following:

- An individual resident in the United Kingdom or registered in an electoral register; a registered political party; a company; a trade union; a building society; a limited liability partnership; a friendly society or an unincorporated association. All foreign donations are banned.
- Therefore anyone registered on the electoral roll is entitled to make a more direct impact on political parties than just the weight of their vote. Interestingly, the Electoral Commission notes that ‘different rules are likely to apply to registered political parties and others in Northern Ireland’.

However, British citizens directly affected both the Irish and Danish ‘no’ votes in their referendums on the Treaty of Nice and the Euro respectively. The British millionaire Eurosceptic, Paul Sykes, a member of the Tory party, helped to fund the successful ‘no’ campaign in Denmark (2000) through the placing of full-page advertisements in the Danish press. Moreover, Tory Eurosceptics in the European Foundation, led by Bill Cash MP, helped fund the ‘no’ campaign in Ireland against ratification of the Nice Treaty in 2001.

Issues: Where does the boundary of citizenship lie? Why does it seem to vary according to what aspect of citizenship is under scrutiny? Should non-citizens be allowed to influence the political system, either through voting or through financial means?

What is special about “national” elections in the EU?

Later this year, there are elections in other EU countries, including France and Germany. The outcome of these elections will have a big impact on the future of EU policies, e.g. agriculture, that have an impact on the UK. Agriculture is an EU competence, so the UK cannot make policy in this area without the agreement of other countries. So, the outcome of the elections will affect citizens in the UK, yet citizens of the UK are unable to influence that outcome. Is that democracy?

By contrast, in a UK by-election, for example the recent election in Ogmores, the only people allowed to cast votes were the voters of Ogmores, but the campaigning effort and the fundraising involved people from outside the constituency too. Should the people of Ogmores be protected from “outside” interference?

Issues: To what extent does it make sense to think of the French election as the French by-election in the European political process?

Voting rights of European citizens

Traditionally the right to vote in elections remains the right and privilege of only the citizens of the given country. People living in a country of which they are not citizens are not eligible to vote, hence they cannot exert political influence in the country where they are living (working, paying taxes, studying etc.). However, they have the same obligations, e.g. concerning paying taxes. Originally this had included all elections, such as general elections, local elections and European elections.

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However, the Maastricht Treaty invented the concept of “European citizenship” which exists in addition to the national citizenship of each citizen of an EU member state. The rights resulting from being an EU citizen include:

- The right to vote in local elections in their EU country of residence (i.e. British citizens living in France/ Spain/ Germany).
- The right to vote in elections to the European Parliament in their EU country of residence (e.g. French citizens living in the UK can vote for British MEPs).
- The exact definition of the voting rights of EU citizens in each country is laid down in each member state’s electoral legislation. In most cases EU citizens will e.g. be excluded from voting in referenda, unless it is on local topics.

For example, 1) EU citizens are allowed to vote in the referendum on directly elected mayors in the UK held by their local council, 2) EU citizens are allowed to vote for the local councils of the London boroughs, but not for the London Mayor, 3) EU citizens are not allowed to vote for e.g the Scottish Parliament.

Issues: Where are the boundaries of citizenship? Who should be allowed to vote on which level and why should non-citizens vote at local level and not at national level? Why are there restrictions on who can vote? Is it fair that foreign nationals living and working in another country pay taxes but are not allowed to vote for the government that sets these taxes?

Shared justice

Perhaps nothing engages public anger and concern so much as the criminal law. This is demonstrated by widespread and profound revulsion at recent paedophile cases, or the reaction to the growing theft of mobile phones

But what is a crime? How are guilt and innocence to be determined? And what is a suitable punishment? The answers to these questions can vary considerably from one country to another. Differences in the criminal law between one jurisdiction and another can pose an obstacle to the enforcement of that law. How far are we willing to go to connect different criminal jurisdictions together to ensure that justice is done?

What is a crime?

How does an act come to be defined as a crime? Why do different countries have different definitions of crime? (e.g. bullfighting is legal in Spain but would be illegal in the UK). Does it matter? Consider the case of someone who organised a bullfight in the UK, and then fled to Spain. Should the Spanish permit the extradition of that person back to the UK for prosecution? Are the Spanish entitled to conclude that UK law is wrong in making bullfighting illegal? Now that borders between different member states do not obstruct the free movement of citizens, does it make sense that wanted criminals can still hide behind those borders?

Why do different countries have different systems of criminal law? For example, the jury system and the presumption of innocence are held as important aspects of the English system. In France, a system of investigating magistrates is used instead. Is it acceptable to the English that English citizens be tried under French law? What if the English citizens concerned have to be extradited to France? Should the English be willing to hand them over? When does cultural variation become a matter of fundamental human rights?

For example, consider the opponents of the Egyptian government based in the UK. These people are wanted for trial in Egypt, however extradition has been refused on the grounds that they would not get a fair trial in Egypt. Is this a reason not to extradite?

Issues: why do different countries have different definitions of crime? To what extent is the definition of a crime a matter of culture and to what extent a matter of human rights? Are there any acts that are so serious that they should always be crimes, so that no country has the right to fail to punish it?

Deportation

One punishment that can be meted out to foreigners convicted of crimes is deportation. The right to residence is a privilege that may be withdrawn. Obviously, this cannot be applied to citizens, although some countries have a near-equivalent in internal exile. Many of the early colonists in Australia arrived there for this reason.

An awkward combination of deportation and citizenship that is inherited by birth rather than acquired by being born in a territory resulted in an extraordinary implementation of justice in

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Germany in 1998. A child of Turkish parents was treated in a way that a child of German parents would not be.

The authorities in Bavaria deported a fourteen-year-old boy to Turkey after months of controversy and legal argument. The boy, Muhlis Ari, had a long record of juvenile crime. He was flown to Istanbul after the German Constitutional Court upheld a lower court ruling that his residence permit should not be renewed. He was born and brought up in Germany, but was deported to a country he had never visited, with a language he didn't speak. Legal moves to deport his parents for failing to control him were defeated. They remained in Germany, but their son was met in Istanbul by relatives and German consular officials.

Cem Oezdemir, a German MP whose parents are Turkish, says he was shocked by the authorities' actions. "Our problem in Germany is that we are talking here about a child who was born in Germany, who belongs to Germany, who is in trouble with the law. But Mehmet committed his crimes in this country and Turkey is not responsible for that. We are responsible for it, and as long as Germany doesn't realise that we are responsible for the children born in this country - wherever their parents came from - we won't solve this problem."

Issues: Why is deportation considered a punishment? In a world of increasing cross-border communication, does it make much difference any more? Why should a country be forced to accept a deportee?

Extradition

There are several countries, including Germany, Austria and Switzerland, whose code of law generally prohibits the extradition of their own nationals (Austrians from Austria etc.). They claim that their nationals, if they have committed crimes outside their own country, should be tried in their own country. Other countries however (including the UK) have agreed to mutual agreements which provide for extradition of their citizens to the other country under certain circumstances. The EU has agreed on an EU arrest warrant which would supersede bilateral agreements and instead allow for the extradition of EU citizens to other EU member states.

Issues: Should the justice system of one country be allowed to judge the citizens of another country? Should a person be tried under the law under which he/she committed the crime or under which his citizens' rights originate from? What implication does this have for countries which use the death penalty (i.e. foreign nationals held by the USA for terrorism charges)?

International criminal justice

Slobodan Milosevic is currently being tried in The Hague. Is this victors' justice, or is it justice?

In 1998 139 member states of the United Nations created the International Criminal Court (ICC) as an international institution to prosecute individuals accused of genocide, crimes against humanity and war crimes (it still awaits ratification before it comes into being). In human rights circles it is seen as a great advance in human rights protection.

Jesse Helms, a conservative rightwing US senator, opposes the ICC because he believes that US citizens should not be able to be tried by an international body. The background to this is that it could be used against American soldiers, e.g. regarding war crimes committed by NATO in the Kosovo war in the 1999 or UN peacekeeping missions. Helms fears that the International Criminal Court could impinge on the US sovereignty in foreign policy. “Why would Americans submit matters of national security to the judgement of an International Criminal Court, a continent away, comprised of mostly foreign judges elected by an international body made up of the membership of the U.N. General Assembly?” As the ICC will answer to an assembly of UN member states, Helms fears that UN members hostile to the USA, such as Sudan or Cuba, could get a say in the prosecution of American citizens. However, only states who have ratified the treaty would have a say, and what the US sees as “rogue states” are unlikely to do so, as it would expose their leaders to prosecution.

Jesse Helms introduced a ‘bill to protect United States military personnel and other elected and appointed officials of the United States Government against criminal prosecution by an international criminal court to which the United States is not party’. The suggested bill:

- Prohibits U.S. co-operation with the International Criminal Court.
- Limits US participation in UN peacekeeping missions and assistance to allied countries which are part of the ICC.
- Gives authorisation for the President to take any action and use all means necessary (including the provision of legal assistance) to bring about the release of US military personnel held by the ICC.
- Gives authorisation to allocate the financial contributions of the US to the UN to the Embassy Security, Construction and Maintenance Account of the Department of State instead.
- Suggests that the President should rescind the signature made on behalf of the United States to the Rome Statute of the International Criminal Court.

This bill hence authorises the invasion of the Netherlands (the seat of the ICC and a NATO member) in order to protect American citizens from prosecution.

Issues: Should international organisations have the capacity to judge? Should states protect their citizens from being tried by an international organisation?

The right to trial by jury

The right to trial by jury is often described as ‘the jewel in the Crown’ or ‘the corner stone’ of the British justice system. For most it is also an important incident of citizenship: De Tocqueville memorably described it as a ‘peerless teacher of citizenship’ and it is a good example of the correspondence between a citizen’s rights, and one’s duties. Though it is undergoing reform, following a review by Sir Robin Auld, at present it means that what is a key civic duty is avoided, or avoids, many English citizens.

- The only qualification for jury service in England and Wales, apart from age and ordinary residence in this country, is entry on the electoral roll. (See political influence sheet for more info on this).
- The nature of this record results in under-representation of those in their early 20s, ethnic minorities and the more mobile sections of the community, such as those living in rented accommodation.
- Certain professions are exempt at present from jury service, including doctors and MPs.
- In contrast, in New York and many other states in the USA, source records for jury service have been expanded, all or most of the exemptions from jury trial have been swept away, and excusals have largely become deferrals. The result is that nearly

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everyone does jury service as an acknowledged civic duty, including judges, lawyers, policemen, doctors and clergymen.

- As with the USA Federal and State jurisdiction and a number of Commonwealth countries, Sir Robin Auld has recommended that the source base can be supplemented by cross-checking the electoral roll by reference to other sources, for example the Driver and Vehicle Licensing Authority, the Department for Work and Pensions, the Inland Revenue and telephone directories.
- Jury service is not regarded as a citizen's duty throughout the EU: in Germany for e.g. citizens are not required to sit on juries, in Spain jury service has only recently been recognised as a civic duty, and MPs, policemen, lawyers, professors in law and legal medicine and prison officers are all exempt, to name but a few.

Issues: Should jury service be a civic duty? If so, why are some citizens excluded?

Shared resources

The communities we live in are bound together not only by law but also by material possessions. Collective services can be provided and paid for by collective taxation. But who pays the taxes, and who benefits from the services? Citizenship can be a valuable thing to have.

A fair deal for foreigners?

Within the UK, university tuition fees have been a hot topic of discussion in recent years. While not only challenging the long held belief that a right to a free education was an important tenet of British citizenship, they also highlight, together with other university fees, the shifting boundaries of where British citizenship lies:

- While Scottish students studying in England and Wales and N. Ireland currently pay tuition fees, they do not do so in Scotland.
- Should you be an undergraduate from outside the EU, you will be expected to pay university fees of around £10, 000, depending on the course and university (e.g. £9, 859 at Nottingham University)
- While all EU students pay tuition fees and are supposed to pay the same university fees whichever country they are from, non-UK EU students are not eligible for a UK student loan, supplementary grants, hardship loans or Access Funds.
- At postgraduate level in the UK, unlike some other EU countries such as France where no one pays, all students pay substantial university fees. However, these are again variable should you come from inside or outside the EU (e.g. at LSE, the standard fee is £6, 917 for 'home' students (those inside the EU) and £10, 168 for international students.
- The concept of differential fees for non-nationals (or non-EU members) is apparent elsewhere: at the Hermitage in St. Petersburg, Russia, considered to be a valuable element of the national heritage, Russian citizens pay only 15 roubles; others pay 300 roubles. Furthermore, should you have been a resident of Leningrad during the Blockade, a veteran of WWII or disabled, you get in for free...

Issues: why are there differences in the rights that English and Scottish students have at universities. Should all citizens be entitled to the same rights? Why should non-citizens receive fewer services than citizens.

Who benefits?

The island of Jersey in the Channels Islands grants full citizenship rights to permanent residents after six months. However, there are stiff restrictions on who may become a permanent resident. The Jersey Citizens Advice Bureau says the following:

Jersey has very strict housing laws which specify who can rent or buy property and more specifically who can live in it. A small number of people each year who are considered to be of social and/or economic benefit to the island are granted consent to purchase dwelling accommodation. The properties which they can buy are usually outside the price range of the generality of local purchasers.

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[A somewhat different sentiment from the inscription on the Statue of Liberty: “Give me your tired, your poor / Your huddled masses yearning to breathe free”.]

During the 1990s, in the run-up to the return of Hong Kong to China, different countries offered visas and residence permits to Hong Kong Chinese. Canada operated a points system, so that the opportunity to emigrate to Canada from Hong Kong was greater for those who were educated, professionally qualified, young and/or wealthy.

The USA operates a green card system, in which a certain number of permanent residence and work visas are offered at random. This year, 50,000 green cards are available through the Diversity Immigrant Visa Lottery. Applicants for green cards are chosen by a random computer-generated lottery drawing. Compared with the Canadian approach to Hong Kong, the education criteria are very low – either 12 years’ schooling or two years out of the past five doing a job that requires two years training or experience

Hungary has introduced a system granting employment rights for periods of 3 months at a time to ethnic Hungarians in neighbouring countries (except Austria). Austria was exempted at the insistence of the EU because EU law forbids discrimination on grounds of race. The EU does not appear to wish to export this principle to accession countries.

Issues: should countries be permitted to pick and choose their new citizens on the basis of money or education, or should immigration be a right equally available to all?

Who owns your DNA?

Almost all of the 270,000 inhabitants of Iceland are descended from a few Norse and Celtic settlers. The relatively homogenous and well-documented gene pool is a treasure trove for genetic researchers, who are eager to mine the Icelandic genome for hints on how to treat human disease. In 2000 an Icelandic biotech company called DeCode was granted an exclusive licence to build a database combining genealogical records, medical records, and DNA. The implications of this in terms of privacy, rights and duties of a citizen are enormous, and unprecedented.

- Kari Stephansson, president and CEO of DeCode, argues that it is a citizen’s duty to share his/her genetic information, as Icelanders are only privy to the good health care system they use today because ‘our parents and their parents allowed us to use the information generated when they received health care... When we take advantage of this health care system, it is a right that comes with an obligation, a obligation to contribute the same.’
- However, few have raised the issue of the small number of immigrants, who do not share this genetic inheritance. Will they still benefit from the knowledge the database brings?
- Moreover, Stephansson’s assertion that it is a citizen’s duty to share such personal information, for future as well as current members of society, does not go unchallenged: Petur Hauksson and the “Mannvernd” organisation protest that the government does not have the right to sell its people’s genetic information, that the exclusive licensing deal set up has turned what is a quintessentially public resource into a private commodity, which may end up denying access to its benefits to the very individuals whose DNA make the discoveries possible.

Issues: right to own/sell/make use of personal genetic information? Who benefits? Should a public resource be available to all or just a section of society? Private use of public resources?

The future of collective insurance as the mystery of life becomes less mysterious

The Genetics and Insurance Committee (GAIC) in the UK recently announced that insurance companies could use results from genetic testing for Huntington's Disease when assessing applications for life insurance. Supposedly, this is because many that have a family history of a genetic disorder such as Huntington's Disease have difficulty in obtaining insurance because of their family history. The approval of the two tests for Huntington's will allow insurance to be provided at normal rates to those who have a normal test result.

- However, dissent has been voiced that this undermines a citizen's right to privacy, that it might lead to discrimination or exploitation, and questions the very concept of insurance: "I work in the reinsurance industry. My major concern about this approach to individual underwriting is that it undermines the fundamental principle of insurance, which is the mutualisation of risk through the law of large numbers."

Issues: Do citizens have an obligation to make their genetic data available to insurers/ medical research/ general public? Could this lead to discrimination against some citizens? If one of the characteristics of citizenship has been access to public provision of healthcare, what happens when healthcare provision starts to be influenced by knowledge of genetic factors? Does this undermine one of the features of citizenship?

The privatisation of public services

Ever since Beveridge's promise of 'cradle to grave' services back in 1945, a fundamental tenet of British government has been the provision of public services for all, regardless of income. This is seen as a basic citizen's right in the UK. However, Blair's 'third way' involves "Public Finance Initiatives" and "Public Private Partnerships", expanding the role the private sector plays in the provision of national, city and increasingly community level services. While the justification for this is that the private sector is more efficient, innovative, offers better value for money and does not compromise the core principles of institutions such as the NHS, others claim it is privatisation through the back door, and are opposed to it for both ideological and practical reasons. While Alan Milburn, the Health Secretary, maintained that 'Care will still be based on clinical need, not the ability to pay, and services will continue to be free at the point of use', the Centre for Public Services has issued a report challenging such statements.

- It maintains that the public and private sectors operate with different values: in the private sector profit is prioritised over social need and public interest;
- Global, regional and national public goods are becoming more important in determining collective and individual welfare and reducing inequality, yet the increasing private provision of public goods could change the 'publicness' of public goods-e.g. private provision will lead to an increased business role in determining the level, quality, availability of and access to services, the terms on which they are promoted, the division into commercial and non-commercial services, the emergence of competing privately financed services for wealthy and middle class users resulting in further exclusion and widening inequality.
- Is the current notion of citizenship in the UK then outdated? In the US, individuals have to take out their own health insurance. Yet the UK is in a way broadening out the hitherto national provision of public goods to encompass the EU as well, not only in education, but in health: last summer a ruling by the European Court of Justice broadened out the circumstances under which countries can carry out reciprocal treatment. Recently the first British patients travelled to France for operations.

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Issues: Should certain essential services be publicly run? Should these be maintained by the nation state/ the EU/ something else? Is the collective provision of public services an essential part of what it means to be a citizen, or is it merely a financially and administratively convenient mechanism?

Taxation – who pays?

Most countries in the world tax their residents in various degrees, to pay for the services provided for those residents. However, the USA levies federal income tax on the worldwide income of its citizens, regardless of where they live. In practice, a series of tax credits and international treaties eliminates the financial threat of double taxation on American expatriates. But the IRS maintains a network of international offices to help US citizens overseas pay their US tax.

A large proportion of global wealth is owned in tax havens – small countries that do not levy high taxes (because they do not provide lots of public services) and thus attract financial institutions to set up there. This can have the effect of reducing the amount of tax revenue that can be raised by countries with more extensive public service provision.

Issues: Who should pay for the provision of collective services? Should non-citizens (i.e. non-voters) be obliged to pay taxes, if they have no right to influence how those taxes are spent? (No taxation without representation?) Is it fair that people can avoid taxation by moving their financial assets to tax havens? If not, how does this square with the idea that each country should be allowed to control its own taxation?

Shared identity

What do citizens have in common? They are subject to the same laws and decision-making, and may share resources in common, but so do people on a passenger jet. What else is it that brings citizens together? Are these features in any way natural, or can they be manufactured by political decision? And when does the preservation of cultural traditions against external influence turn into racism?

The right to be a citizen

How do people become citizens of a country? There are two ways: either by birth or through naturalisation. Different countries apply different rules on who is eligible for citizenship by birth and on the requirements to become a citizen by naturalisation.

Citizenship questions are closely linked with questions on identity. In many countries citizenship laws have developed out of historic circumstances.

The German citizenship law has certain characteristics, which have evolved from the changing of its borders after the First and Second World War. It is based on the concept of *ius sanguini* (“law of blood”) which means that people with German ancestors are eligible to become citizens. In the UK, in contrast, citizenship legislation is based on the concept of *ius soli* (“law of the soil”), which means that people who are born on British soil are eligible for British citizenship. This is combined with the *ius sanguini*, making sure that children born by British parents abroad are also eligible.

The German law led to the contradiction, that people could emigrate to Germany e.g. from the former Soviet republics, and, provided they had German ancestors, immediately acquired full citizenship, while e. g. Turkish children, born and raised in Germany by Turkish parents, were not German citizens.

The German citizenship legislation was changed when the contradiction became too stark in the 1990s with large numbers of ‘ethnic Germans’ from former Soviet republics and other Eastern European countries emigrating to Germany after the fall of the Berlin Wall. In the new legislation, children who are born in Germany by non-German parents obtain automatically dual citizenship at their birth – German citizenship and that of their parents. At the age of 18 they will have to choose one of them, because Germany does not allow dual citizenship. The new regulation makes sure that children born in Germany enjoy the protection of both the country they live in and the country of their parents. They also have the opportunity to become adult German citizens without any hindrance. Hence, German citizenship at birth can now be obtained by children of non-German parents, which was not possible before.

Commonwealth citizens

The status of a Commonwealth citizen is defined under the British Nationality Act 1981. This includes:

- British Citizens;
- British subjects with the right of abode in the UK (this generally applies to people who were born before 1 January 1949 and who had a connection with either British India or the Republic of Ireland);

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- British Dependent Territories citizens (i.e. people who obtained their citizenship from a connection with a territory which remains a British dependency e. g. Gibraltar, Bermuda);
- British Overseas Citizens (i.e. people who have a connection with a former British colony - for example, Kenya - who did not become citizens of that country when it became independent and did not become British citizens).
- A further category was added in 1986: British National (Overseas): this applies to former British Dependent Territories citizens connected with Hong Kong.

Issues: who should be permitted to be a citizen? Should it be based on country of birth or country of ancestry, or on something else altogether? Should historical connections between different countries make it easier to acquire citizenship?

Language

When applying to obtain citizenship (naturalisation) most countries require the applicants to prove their knowledge of the language. For example: the Home Office requires people applying to become British citizens to have *a sufficient knowledge of the English language* (or Welsh or Scottish Gaelic). The knowledge of the language does not have to be perfect, but it must be sufficient for the applicant to fulfil their duties as a citizen, and to mix easily with the people with whom they work. Exceptions are made for the wife or husband of a British citizen who does not have to meet the requirement of sufficient knowledge of English to become a British citizen.

Recently the Home Office has announced plans to change the procedure of naturalisation, which include the language requirement even for wife/ husband of a British citizen. These plans were angrily opposed by the Asian community, as they seem to target specifically the practice of bringing a wife/ husband from an arranged marriage (born and brought up e.g in India and often not English-speaking) to the UK.

A law went into effect in Poland last year obliging all companies selling or advertising foreign products to use Polish in their advertisements, labelling and instructions. Latvia has tried to keep Russian (and, to be more precise, Russians) at bay by insisting on the use of the Latvian language in business. Perhaps the most effective way of keeping a language alive, however, is to give it a political purpose. The association of Irish with Irish nationalism has helped a revival in this language in the 19th century, just as Israeli nation-building has converted Hebrew from being a merely written language into a national tongue.

Issues: How far should citizenship require cultural assimilation? Should the government regulate the languages spoken by citizens, or is this something that should be left to people and their own choices?

Conscription

There are many countries which use conscription as means of recruiting for their armies. The possession of an army is one of the features of a state, and conscription is often seen as a means of creating an identification between the citizen and the state.

Typically, all young men (and in the case of Israel even women) are required to serve a limited period (generally between 12 and 18 months) in the army. It is possible to do social work instead, if for moral reasons someone does not want to carry weapons. One advantage

of conscription is seen in the fact that the army gets a direct link to society, reducing the possibility for it to turn into a separate power as has e. g. happened in military dictatorships. In contrast, in the UK conscription was only introduced during war times.

The Israeli Conscription Law requires all Israeli nationals or permanent residents of a certain age to serve in the army. However, in practice Muslims and Christians are not called upon. Although the reasons for this seem obvious, the contradiction remains that Arab Israelis are citizens just as Jewish Israelis, yet they do not have to fulfil their citizenship duty of serving in the Army. The fact that Arab Israelis do not serve in the army leads to further discrimination, because many places of employment or residence require the candidate to have served in the army. Arab Israelis can therefore face difficulties in employment and accommodation.

A similar case of discrimination was an issue in Northern Ireland during the First and Second World War. When conscription was introduced during the war, all male British citizens were called up, but not those in Northern Ireland. The issue of conscription led to controversy if it was to be extended to Northern Ireland, for fears that not all citizens would follow the call loyally and that it would be seen as an act of aggression both in Northern Ireland and south of the border. There was particular opposition in the Catholic communities. As a result, Northern Irish citizens were not treated in the same way as citizens of the rest of the United Kingdom and serve in the army.

Issues: Should citizens be conscripted for military service? Is defending the country a duty of being a citizen? What is wrong with conscripting foreigners?

Reservation of state employment

While in EU employment law there is a principle of equal treatment and the prohibition of discrimination on grounds of nationality, member states may still reserve certain posts for their own nationals, which must be concerned with the exercise of powers conferred by public law and the safeguarding of general interests of the State or local authorities. For example, 25 % of the UK's Home Civil Service positions are reserved for 'UK nationals' (where 'special allegiance to the state' is required) and posts in the Diplomatic Service (i.e. Foreign and Commonwealth Office) are open only to British citizens.

- In countries such as France, Germany and Austria teachers have civil servant status. As you can only become a civil servant if you are a national of the respective country, you can only become a teacher if you are a French/ German/ Austrian citizen (some exceptions apply for language teachers).
- To work as a civil servant for the EU institutions you have to be a citizen of one of the 15 member states.

Issues: France and the UK have different ideas of what service should be reserved for nationals. Why? Why should the job of a teacher be given this protection? Is any state reservation of employment necessary in the EU?

Case studies

The afternoon workshops will look at some of the features that make up citizenship within the member states of the European Union at present, and ask whether they can or should be replicated at the European level.

The European Union has not been created from scratch. Its members are states in their own right, often with hundreds of years of history, plenty of time in which to build up the traditions and features of national identity.

Many of the attributes of a nation state are not in fact legal in character but cultural. Should the European Union seek to establish the equivalent of these features at the European level?

This suggestion needs an example. Every European country has an education system that is geared, among other things, to producing graduates to staff the institutions of government. Sometimes these connections are very strong – 8 out of the 10 post-war British prime ministers studied at Oxford – but always they are there. The College of Europe, one of the first European institutions created after the second world war, has assumed this role with regard to the institutions of the EU. Similarly, there exists the European University Institute in Florence. Both of these institutions specialise in their research and tuition in matters relating to the European Union.

Now, a European educational institution does not undermine the existence of national educational institutions, so it is hardly controversial. The European flag and anthem are similarly harmless but nevertheless raise opposition among anti-Europeans in the UK.

But there are features of “national” life which must necessarily, if established at European level, weaken or even replace those within the member states. The examples put forward for discussion seek to illustrate this question.

Let us go back to the argument posed by Michael Portillo. Is the European Union becoming a European nation state, or is it in fact a new kind of institution altogether?

A European level of politics

One feature of recent years is the growth of a European level of political activity. The European institutions have become surrounded by lobbyists and interest groups of all types. It was recently estimated by Euractiv.com that there are 100,000 people employed full-time on EU-related business. Should the EU encourage this?

For example, the EU currently funds European-level NGOs such as BEUC (the European Consumers’ Organisation), the European Citizen Action Service and the European Movement. (Perhaps they cease strictly speaking to be NGOs.)

These organisations exist, at least in part, to lobby the very institutions that give them money, and – in the case of the European Movement – to defend those institutions against their nationalist critics. Is it legitimate for the European institutions to fund their own lobbyists? But what if the alternative is that the consumers’ voice is not heard at European level? Is that preferable?

(It should be pointed out that the national section of the European Movement in the UK does not receive money from the European Commission, or indeed from any other public source.)

Should there be European political parties?

A democracy is more than just the laws or constitution that define it. It is also the expression of democratic practice. To what extent should the European Union encourage the practise of democracy at the European level?

A specific question is the creation of a European level of political parties. Political parties in the EU are at present, almost without exception, organised on a national basis. They group together in the European Parliament and sometimes before meetings of the European Council in order to exert more influence in those institutions. But proposals on the table of the Convention on the Future of Europe might go much further than that.

For example, should there be seats in the European Parliament specifically for European lists? Should candidates for the European Commission presidency be nominated by European parties? Should the manifestoes of the European parties take precedence over the manifestoes of the national parties?

To reward political parties that are organised at European level is to reward those political groups that are represented across the European Union. Political parties that exist only within their own member states will tend to lose out under such a system. Should the European political system steer its political parties in one direction rather than another?

A European welfare state?

Conceptions of the welfare state vary widely across the EU. A report by the Office of Health Economics (OHE) in July 2001 revealed that the UK spends £970 per person on health - compared to £1,400 in France and £1,700 in Germany. Higher spending on public services must of course be paid for by higher taxation.

The Maastricht treaty specifically forbids member states from bailing each other out in the event of an unmanageable deficit, and the Stability and Growth Pact aims to prevent deficits becoming unmanageable in the first place. The emphasis is on the provision of welfare services at the national level.

But, what happens in a Europe of free movement. Citizens are free to move from one country to another in search of work, or merely for pleasure. Are welfare rights to be portable?

The pension system in each EU member state is distinct from those of its neighbours. Those who move from one country to another during their working lives risk building up substantially inferior pension rights compared with those who stay put in one country. The UK is almost unique in its system of portable private pensions. Should pension rights be harmonised in some way to accompany the free movement of labour?

What if people start emigrating to countries with low taxation – we could see a brain drain. Should there be limits on each country's freedom to set tax rates? How do we otherwise

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prevent the competitive reduction in taxation and spending? A minimum rate for VAT was agreed as an integral part of the creation of the single market: is something similar needed to accompany the creation of the euro? Where is the dividing line between solidarity between countries on the one hand and national autonomy on the other?

European media and communication

Every country in Europe has some kind of national broadcasting system. National news is reported, and national weather forecasts are presented. Do we need a European media?

There are some European TV stations – Euronews, Eurosport – but they are not market leaders. Should the EU take action to promote more European news coverage? Or should this be left to the market, so that pan-European media will only emerge in response to already-existing demand?

One obstacle to international news coverage is the lack of a common language. Even European media must exist in different linguistic variants. Should the EU encourage the use of one language (e.g. English) in European communication? Should it support the continued use of different languages through, for example, supporting research into automatic translation techniques?

This sporting life

Sport in Europe is generally organised on a national basis. Taking football as the best example, every country has a national team and national tournaments. The separate identity of these national tournaments is policed very vigorously by UEFA, the European governing body. Carmarthen Town, a Welsh team, was banned from playing in an English league; the existence of a few historical anomalies has not undermined the enforcement of this principle.

Should international leagues be permitted as well as, or instead of, national tournaments? Football clubs in Scotland, Portugal, Belgium, the Netherlands and Scandinavia speculated about the creation of an Atlantic League. This was firmly rejected by UEFA, insisting that national tournaments were the building block of football. Should the EU accept this? Already, the rules about the minimum representation from players of the home country has been swept away by the single market. Is sport a business, or is it an expression of culture?

Do we need European sports teams? The athletics world cup has a European team, and the Ryder Cup is played between teams of golfers from the USA and Europe. Should there be more support for European sporting representation?

Who are the heroes of Europe?

Unlike just about national set of banknotes ever produced, the euro banknotes do not feature national or other notable figures. The notes of the former national currencies being withdrawn feature poets, generals and national heroes. They have been replaced by featureless windows and anonymous bridges. Is it possible for the European Union to commemorate individuals on its banknotes? If so, who should they be?

Trade unions

Different EU member states have different traditions concerning labour relations. Some, such as Austria, have highly developed systems of searching for and obtaining agreement between the social partners. Others, such as the UK, do not.

In the single market, as increasing numbers of companies operate at a European level, are these different national traditions sustainable? The Works Council Directive has brought in some rights for employees, in large companies organised in more than one member state. But this still leaves trade union organisation a long way short of company organisation at the European level. Should the EU seek to involve itself further in the development of labour relations structures at the European level, or should this be left to the member states?

A European constitution?

Every member state within the European Union has a constitution, a set of rules to determine how it is governed. Constitutions can vary considerably in nature – some are long, some are short, some are not even written down – but each shapes the politics of the country that has adopted it. A constitution serves as a symbol of a polity as a self-governing entity, expressing a set of political values and acting as a focus of loyalty for its citizens. It also assigns powers to the institutions of government and describes how they relate to each other and to the voters.

The Laeken Declaration of December 2001 established a convention to consider possible reforms of the European Union. Should the European Union adopt a constitution of its own? Or should it remain governed according to a series of international treaties (Rome, Maastricht, Amsterdam, etc)?

European citizens

At present, European citizenship is possessed by citizens of the 15 EU member states. It is something they all have in common, because of the legal status of their countries of nationality, i.e. as member states, rather than because of anything they themselves may have done.

Should European citizenship become available to people resident in the EU who are nationals of one of the 15 member states? There are many people from outside the EU who are permanently resident within it. The rights of European citizenship are currently denied to them, although they are subject to all the obligations imposed by the European Union.

Underpinning this innovation would be the concept that the EU is no longer just an association of member states but a political institution representing citizens directly. Is this correct? Is this acceptable?

Citizenship – a complex concept

What is citizenship?

Citizenship is about your interaction and involvement with the social and political world around you. An important part of citizenship are your

rights:

- rights to individual freedom, such as the right to private property
- political rights, such as voting or standing as candidate in elections
- social rights, such as the right to welfare.

duties:

- the respect of law
- responsibility towards others
- an understanding of the political system.

British citizenship and identity

A person becomes a British citizen through the following ways:

- by birth in the UK, or in a place still a British colony;
- by naturalisation in the UK or a British colony;
- by registration as a citizen of the UK and Colonies
- by legitimate descent from a father or mother to whom the previous conditions applied.

However, what it means to be European, British, English, Scottish, can vary enormously. 'Citizen' and 'state' are words often used, but seldom properly understood. The composite nature of the UK makes the issue even more complicated. 'Britain' is commonly identified with the UK but that isn't correct, as the *state* is officially called the United Kingdom of Great Britain and Northern Ireland.

Then there is the question of citizenship: that is designated as 'British' - but historically this has been confused with nationality. In Great Britain there are certainly three nations - the English, the Scots, the Welsh. In Northern Ireland, moreover, there are the divergent self-identifications of that province's population as either British or Irish. Moreover, our formal acknowledgement of citizenship in Britain is actually rather recent: a passport, which expired as late as 1992, still identified an Englishman as a 'British subject'- of Her Britannic Majesty. Current passports identify him as a 'British citizen' - which, confusingly, is actually the designation given to his nationality.

In terms of identity, there has long been a widespread muddling up of Britishness with Englishness in England but this misperception has also been shared by much of the rest of the world. Viewed both from the outside and the inside of the United Kingdom, Englishness has long obscured the smaller national identities.

A recent Runnymede Trust commission into multiculturalism in the UK, led by Professor Lord Parekh, has argued for a new and more diverse conception of 'Britishness', that embraces devolution and the full range of cultural difference in the UK. A number of ethnic minority commentators, such as Darcus Howe and Yasmin Alibhai-Brown, have addressed what kind of identity Englishness now is and what it might offer as opposed to Britishness.

European citizenship

In modern Europe the first step towards this came in 1950 with the Council of Europe's Convention on Human Rights, backed up by the European Court of Human Rights in Strasbourg, which gave citizens the right to appeal against rulings made by their own government. While the term EU citizenship was not formally introduced as a legal concept until the Maastricht Treaty in 1992, the roots of European citizenship therefore lay in the concept of non-discrimination.

Every person who is a citizen of one of the Member States of the European Union is also a European citizen. There is a single set of rights and duties for all EU citizens. Regardless in which EU country you live, you enjoy the same rights and protection as the citizens of that country. For example, as a UK citizen living in France you enjoy the same rights and protection as the French citizens.

As a European citizen you can...

- travel freely in the EU
- move wherever you like in the EU and study, work or retire there
- benefit from diplomatic protection of other EU members states when you are outside the EU
- vote and stand as candidate in European and local elections of your country of residence anywhere in the EU

So, freedom of movement is no longer confined to economic activities but is a general right to be enjoyed by students, pensioners, and indeed anyone with adequate financial means. Although at the moment these rights only apply to EU nationals, the right to seek work or reside in any other member state could soon be extended to any third country nationals who have lived legally in the EU for a qualifying period of time.

The aim of achieving a full common market has led to the Schengen Agreement, under which the internal borders are abolished, accompanied by compensatory measures such as police co-operation of the Schengen states (Ireland and the UK have decided not to sign the Schengen Agreement due to their geographical situation with long sea borders). The Schengen Agreement also includes a joint way of dealing with non-EU nationals coming into the EU. The Schengen states have agreed to a common list of countries whose nationals require a visa to enter the EU, and a common "Schengen Visa" allows people who have a visa for one of the Schengen states to move freely between all of them.

[A controversial debate has opened with regard to the future Eastern enlargement of the EU. Due to the large differences in income and employment between the current EU member states and the accession countries those EU members with an Eastern border (Germany and Austria) were worried about the free movement of labour, with large numbers of cheap Eastern European workers flooding onto their labour market. The EU has hence suggested transitional periods of 2-7 years, in which the 'new' EU citizens (as they will then be) will not have the same right of free movement and seek work in any other EU member state as the 'old' EU citizens have: they would be '2nd class EU citizens'.]

In recognition of the diversity of the EU, in recent years an increased emphasis has been placed on what are best described as citizenship values. They are broadly the common values of 'liberty, democracy, respect for human rights and fundamental freedoms, and the rule of

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law.’ Recent directives express these values in more concrete terms. To the earlier legislation banning discrimination on the grounds of nationality and gender the new directives now in force add a guarantee of equal treatment, regardless of racial or ethnic origin, in employment and access to services and also a ban on religious discrimination in employment. This legislation applies to all persons legally resident in the EU, whether national of member states or not. The full panoply of such rights is now codified in the EU Charter of Fundamental Rights.

Nevertheless, the issue is a complex one. When EU citizenship was first introduced many people feared it was an attempt to replace national citizenship and would undermine their national identity. A later treaty amendment therefore made it clear that ‘Citizenship of the Union shall complement and not replace national citizenship.’ Legally, therefore, we enjoy multi-layered citizenship. As today’s discussion will highlight, what privileges and obligations accrue to citizens varies both within and between nation states.