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Breaking the Marshallian Chain?

An Analysis of the Development of Rights in
European Union Citizenship from 1951 to 2013

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"Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed. There is no universal principle that determines what those rights and duties shall be, but societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed. The urge forward along the path thus plotted is an urge towards a fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed" (Marshall, 1950, p. 18).

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I take full responsibility for any faults in this thesis.

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Table of Contents

1. Introduction.....	1
1.1 Overview.....	5
2. Literature Review: The Contemporary Relevance of T. H. Marshall.....	7
3. Marshall’s Tripartite Citizenship	13
3.1 Civil Rights	15
3.2 Political Rights.....	17
3.3 Social Rights	20
3.4 Summary of the Marshallian Paradigm	23
4. From Marshall to European Union Citizenship – A Method of Analysis	25
4.1 Models of EU Citizenship.....	30
4.2 Model 1: Civil – Political - Social	33
4.3 Model 2: Civil – Social - Political	37
4.4 Model 3: Political – Civil – Social.....	39
4.5 Testing the Models.....	41
5. The Development of Rights in European Union Citizenship	45
5.1 The Treaties from Paris to Lisbon (1951-2007)	45
5.2 Supranational Harmonization of Sets of Rights.....	50
5.2.1 Supranational Harmonization of Civil Rights.....	50
5.2.2 Supranational Harmonization of Political Rights	56
5.2.3 Supranational Harmonization of Social Rights.....	64
6. Discussion.....	73
7. Conclusion	79
8. References.....	83
9. Appendix.....	91

List of Tables and Figures

Figure 4.1 The Process of Supranational Harmonization of Rights:	29
Table 4.1 List of Models	31
Figure 4.2 Example of a Marshallian Model:	32
Table 4.2 Model 1: Civil – Political - Social	36
Table 4.3 Model 2: Civil – Social - Political	38
Table 4.4 Model 3: Political – Civil - Social	41
Table 5.1 Table Summarizing the Rights Stated in the Treaties from Paris to Lisbon.....	49
Figure 6.1 The Marshallian Chain (without harmonized social rights).....	76
Figure 6.2 Convergence of Model 1 & 2	77

List of Abbreviations

EC	European Community
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEC	European Economic Community
EP	European Parliament
ESC	Economic and Social Committee
ESF	European Social Fund
EU	European Union
EU citizenship	European Union citizenship
MEP	Member of European Parliament
MP	Member of Parliament
OMC	Open Method of Coordination
SEA	Single European Act
TNC	Third Country National
VET	Vocational Education and Training

1. Introduction

2013 is the European Year of Citizens, introduced to better the understanding of what EU citizenship means for the more than half a billion Europeans sharing this status.¹ It is meant to increase participation, create a more vibrant democracy as well as raise awareness about the rights each citizen possesses (European Commission, 2011). This celebration of citizenship spurred my interest in the dynamics and development of European Union citizenship, as well as in citizenship itself which, so blatantly yet still unseen, affects us all. To increase my knowledge I read the seminal essay of T. H. Marshall, “Citizenship and Social Class”, in which the author placed central rights of citizenship into sets, and made it clear that these sets were constantly developing (Marshall, 1950, pp. 8-9). Marshall added a logical perspective on how rights can gradually and sequentially evolve over time, as well as connecting complementary institutions to each set of rights. The sets of rights, through their complementary institutions, went from being strictly local and varied to becoming more harmonized at the national level. These developments were landmarks in citizenship development, enriching the stuff of which the status was made and increasing in the number of those on whom the status was bestowed (Marshall, 1950, p. 18).

Has European Union citizenship experienced a logical buildup of sets of rights similar to the one in Marshall’s analysis? Have these sets of rights gone through an equivalent process of becoming more harmonized at the supranational level through complementary institutions, thus restricting Member State variance? These are the research questions motivating this thesis.

In this thesis I apply one of the most influential works on citizenship to the development of one the most politically ambitious projects of modern Europe. My approach is to create a method of analysis that can identify the development of rights in European Union citizenship (hereafter EU citizenship), and Marshall’s analysis provides the ideal blueprint for this. His tripartite system consisted of three sets: civil, political and social. Civil rights made people free and equal before the law, political rights granted people the right to participate in the exercise of political power, and social rights granted welfare and education so citizens were equally capable of enjoying their civil and political rights. These sets evolved—in that particular order—over the course of almost three centuries in Britain, and each attempted to

¹ See <http://europa.eu/citizens-2013/en/home>.

overcome the shortcomings of its predecessor, developing a fuller measure of equality in an array of rights and increased membership. Civil rights mitigated the inequalities produced by the lack of a uniform set of rights at the national level, political rights remedied the problems of second-class citizenship and inequalities in political influence, and social rights enabled more citizens to actually enjoy the previous two sets of rights.

Added to this Marshallian chain of sequential evolution, and essential for the development of each set of rights, was a transition of rights from being local and varied to becoming national and harmonized, restricting this local variance. This process of gradual harmonization was brought on by complementary institutions to each of the three sets of rights: the courts of justice were connected to civil rights, parliament and councils of local government to political rights, and the education system and social services to social rights. Together these institutions aided the process of making citizenship universal, and administered the most central features of modern citizenship, without which it would be impossible to speak of a national and shared personal status of citizenship. I argue that Marshall's value lies also in this transitional process of national harmonization of rights, not only in his categorization of rights in a sequence of which he is most often accredited.

The underlying logics in Marshall's analysis regarding these two factors—that rights can come in a certain order with each remedying the shortcomings of the former, and the process of national harmonization through complementary institutions—form the methodological basis for my thesis. I argue that a similar process of development of rights can be identified in European Union citizenship, yet hold that the sets of rights don't necessarily follow the same order of appearance as Marshall depicted. In applying Marshall to EU citizenship I therefore make models that take this into account by breaking the Marshallian chain, showing the expected development of EU citizenship with different constellations of sets of rights. In order to create such models I will pinpoint the underlying principles of each set of rights Marshall identified in his analysis, in terms of rights introduced, how they remedied earlier shortcomings of citizenship and how they were nationally harmonized. Using these underlying logics I can generate expectations about the development of sets of right in EU citizenship, providing us with a counterfactual standard for comparison. I have created three models, each depicting a different buildup of sets of rights in EU citizenship, consequentially with different expectations to its development. These expectations include sets of rights introduced in EU citizenship, their expected benefits and shortcomings, and also expectations

about how these rights have gradually transitioned from being national and varied to becoming harmonized at a higher level. The main difference between Marshall's analysis and mine is that where he studied the transition of sets of rights from having local variance to becoming more nationally harmonized, I study this transition going from the national to the supranational level.

The fit of the three models will then be tested by identifying which one (if any) is closest to the empirical development of EU citizenship rights. To track the empirical development I will examine the rights stated in the Treaties from 1951 to 2013, and categorize these into sets according to the underlying principles set down by Marshall. I will also look to the scholarly debate to track the development of the expected complementary institutions to each set of rights in this time period, to see whether these institutions have contributed to the restriction of Member State variance through a harmonization of rights at the supranational level.

While Marshall's tripartite system is much discussed, the transition of sets of rights from local variance to national harmonization is less evident in the post-Marshallian debate. I argue that it will provide unique insight into the development of European Union citizenship. A Marshallian analysis will reveal not only the construction of a rights-based EU citizenship, it will also show to what extent this is moving towards being a supranational citizenship with harmonized rights for its citizens and restriction of Member State variance. This perspective can show us the very foundation and process upon which European Union citizenship is built, the relation between the sets of rights, their shortcomings, as well as help identify central actors in the process of harmonization of rights. I hope that using Marshall directly in this manner will increase knowledge about the development of rights in EU citizenship for the half a billion people that are currently sharing this status, displaying the path that has led to the European Year of Citizens in 2013. Knowledge about developments of rights and the consequences of non-harmonized rights can prove vital for future policy-making as the expansion of EU citizenship continues, and I hope that this thesis can prove an aid in this regard. I also hope that it may breathe new life into Marshall's seminal contribution to theories of citizenship, and show the value of his method as a blueprint for studying citizenship.

Marshall's impact on citizenship studies has been huge, yet I'm not aware of anyone who has applied Marshall directly to the development of EU citizenship in this manner. He created an

understanding of citizenship that for a period of time was by many seen as “[...] the only possible account” (Rees, 1996, p. 3). His work was so influential that it has set the stage for the resurgence of citizenship studies today, be it through those who are inspired by him or those who criticize him. What motivated and narrowed the scope of this thesis was indeed one of the most striking criticisms made by Bryan Turner, who attacked Marshall’s cumulative sequentialism (see Turner, 2007). Turner held that Marshall’s argument—that civil rights formed the foundation for political rights and was followed in turn by social rights—seemed too rigid to infer to other countries.² This would imply that there are different ways of putting these building blocks of rights together, consequentially with different outcomes. The theoretical thrust of this article is therefore highly inspired by Marshall, both in terms of his tools of analysis but also his critics. I would like to make it clear that it is by no means an attempt to empirically compare British citizenship with European Union citizenship. The use of Marshall and his tripartite rights system will work only as a tool to make assumptions about EU citizenship, and in turn empirically to test these.

My findings indicate that the supranational harmonization of rights is similar in process to the development T. H. Marshall depicted in his analysis if we use the strict criteria generated by the three models I develop for the analysis. This is closest to model 1 in my analysis, depicting this Marshallian “chain”. This means that EU citizenship started with a supranational harmonization of civil rights, continued with political rights, yet does not show much signs of the supranational harmonization of social rights. The civil rights were without a doubt the first set of rights to be stated in the Treaties and to start the transition of supranational harmonization through European Court of Justice case law in the early 1960s. Political rights are the second set of rights introduced in EU citizenship: the increased power of the European Parliament and the introduction of universal suffrage in the 1970s started the harmonization of political rights in Europe. Political rights also show signs of supranational harmonization in terms of mitigating the expected shortcomings of a civil rights based citizenship. Following the criteria set in the models there is little evidence that social rights have been supranationally harmonized, as there is no evidence for a supranational harmonized welfare or education system.

² One need indeed not go further than Wilhelmine Germany to find an example of social rights preceding political rights (Rees, 1996, p. 14).

At the same time there are certain aspects that fit the expectations my second model, breaking the Marshallian chain by placing social rights before political rights. Certain expected mitigations of social rights, when civil rights were introduced in the absence of political rights, were met. Social rights in European Union citizenship are tightly connected to the civil rights and market integrative aspects of the Union, though not connected to a personal status of citizenship. The social rights presently support the extent to which civil rights are harmonized, but do not support the enjoyment of political rights. These results indicate that a combination of models 1 and 2 can more accurately describe the development of rights in EU citizenship. By a combination I mean that social and political rights are simultaneously and independently branching out from civil rights, trying to fix its shortcomings. Though breaking the Marshallian chain, these findings still show to an equivalent process of sets of rights becoming more harmonized at the supranational level through complementary institutions.

1.1 Overview

To understand Marshall's influence in the resurgence of citizenship studies, I will start with a literature review in Chapter 2. This will provide insight into how this thesis is different from previous work. In Chapter 3 I will build up the theoretical argument derived from Marshall's work, starting chronologically with the civil rights in the eighteenth century and moving through the political and social rights in the nineteenth and twentieth centuries, respectively. I identify the criteria by which I can identify rights as belonging to each set, what shortcomings these remedied, and how each of these went from having local variance to becoming harmonized at the national level through complementary institutions. Chapter 3 will include historical accounts only as far as is necessary to understand the logic of his argument, as this thesis is not socio-historic comparative in nature.

In Chapter 4 I will make more explicit the tools derived from the theoretical chapter, and connect these to a method of analysis for EU citizenship by forming the expectations for each set of rights derived from Marshall's analysis. In the same Chapter I introduce three models, each depicting a different order in sets of rights becoming supranationally harmonized and restricting Member State variance. Chapter 5 organizes the rights stated in the Treaties from Paris (1951) to Lisbon (2007) into the three sets, and tracks the empirical data on the supranational harmonization of each set of rights. In Chapter 6 I juxtapose the empirical data from the two previous Chapters with the models generated in Chapter 4, discussing which of the models best fits the empirical data. I conclude in Chapter 7.

Let us begin with the literature review, to get an overview of the contemporary citizenship studies debate relevant for this thesis.

2. Literature Review: The Contemporary Relevance of T. H. Marshall

With the resurgence of citizenship studies in the 1990s, Marshall provided the most influential exposition of the postwar orthodoxy of citizenship as a collection of rights (Kymlicka & Norman, 1994). Today, Marshall's work is arguably one of the most cited in contemporary citizenship theory. A lot of the debate circles around his division of rights into three sets, and on his idea of citizenship as a status of equality shared by all (Bulmer & Rees, 1996b; Kymlicka & Norman, 1994). Marshall added empirical, theoretical and normative value to the citizenship debate, yet he has not been without criticism, and the critique relevant for this thesis mostly revolves around three key issues. The first issue concerns the contemporary relevance of Marshall's essay, and how the world has changed since he wrote his essay, especially regarding social rights. The second issue has to do with Marshall's inferential value as a theory of citizenship, due to his Anglophile analysis and (arguably) fixed notion of the evolutionary sequence of sets of rights. The third issue is connected to the debate around globalization and its effect on citizenship, and whether Marshall fits within this development since some argue that a Marshallian analysis cannot move beyond analyzing the nation-state. The following paragraphs will address these critiques, and from there describe Marshall's modern contributions for analyzing EU citizenship.

Several authors have questioned Marshall's contemporary relevance, as the nature of citizenship probably has changed since Marshall first held the lectures in the late 1940s, upon which his essay is based. The literature has been especially concerned with his work on social rights, and how the post-Marshallian welfare state has retracted in Europe in general (Giddens, 1996; Runciman, 1996; Turner, 2001; Yalçın-Heckmann, 2011). Where Turner (2001) argues that social citizenship has eroded, Yalçın-Heckman (2011) denies that this has gone as far as to make social rights irrelevant; the state still has responsibility for its citizens' welfare and social rights as is evident in the needs of refugees and the homeless. Regardless, the questionable future of social rights does not remove them from existence as a set of rights or detract from its relevance in the study of the development of citizenships. Whether or not social rights have retreated, they have still been a part of the development of national citizenships, and one can only assume that EU citizenship isn't an exception to this.

Where some therefore scrutinize Marshall's social rights, others go further and disagree with Marshall's evolutionary sequence itself (Mann, 1996). This brings us to the second key issue:

Marshall's inferential value as a general theory of citizenship. Marshall's analysis has been criticized for being too confined to the borders and history of Britain, and therefore not saying much about citizenship in general (Rees, 1996). Mann (1996) points to other countries, both inside and outside of Europe, where the sequence has been different because of the dominant economic class and political and military rulers. Soviet authoritarian socialism moved furthest towards social rights, lacking civil and political rights, and the USA as the most powerful capitalist country did not develop citizenship on the basis of class struggle and has rather marginal social rights. Bulmer and Rees (1996a) also note that citizenship development hasn't had the quality of being a singular process as Marshall perhaps indicates. They do, however, argue that citizenship has developed various forms and rhythms, some of which undercut others. They conclude in this regard that the precise status of T. H. Marshall today is uncertain, but that the usual approach is to treat it as a set of hypotheses about historical development. This is precisely what I'm doing in this thesis, as I create hypothetical models about the development of rights in EU citizenship and test to see if these fit empirically.

Lister (2005) points out that Marshall is not opposed to running the argument in different directions, and that Marshall's argument was about a connection between the different sets of rights. He is worth quoting at length as he argues that

“[...] citizenship is not a simple, one-size-fits-all category, but is rather a contingent set of accommodations of the underlying principle of equality of status. This means that citizenship is a contested concept, where different spheres ground the idea of equality of status differently and where different facets of citizenship are prioritized over others. Hence, citizenship takes different forms at different places at different times, but is nevertheless, unified” (Lister, 2005, p. 474).

Continuing from this line of argument is the notion that even if these sets of rights share the ideal of furthering equality and increasing membership, it doesn't mean that their order is predetermined. Consequently a different build-up of rights could result in different outcomes. I see little evidence in Marshall's essay implying that he was adamant about the sequence of the rights he identified. In fact, he recognized the Poor Law as a social right existing before civil and political rights. Even if this was not the case, pointing out different historical outcomes does not weaken his method of analysis. It rather strengthens the use of Marshall's analysis as a blueprint for studying the development of citizenship. For this thesis, Marshall's value lays precisely in his method of analysis, not in his historical and empirical accuracy.

Marshall's social rights have also been in focus due to their placement as the last set of rights in his tripartite system, interpreted as a form of culmination in the development of citizenship. To remedy the erosion of the relevance of social rights, Turner claims that Marshall's theory needs to be augmented by sets of rights that include environmental rights, aboriginal rights and cultural rights (Turner, 2001, p. 207). This doesn't remove the relevance of studying EU citizenship with Marshall's tripartite system, but rather adds additional factors that should be discussed. Doing so, and debating whether or not these new sets of rights need to be added, is beyond the scope of this thesis. More critical for this thesis is Turner's (2001) and Soysal's (1994) arguments concerning the applicability of Marshall's empirical analysis to modern Europe because of his restriction to the UK. Soysal makes mention of the Marshallian order of appearance of rights, and how it does not apply to EU citizenship because social rights preceded political rights (1994, p. 131). If Marshall was indeed trying to infer a fixed path for all citizenships based on the case of Britain, which evidently was developed within the framework of a single nation state, these criticisms hold much water. I argue that these critiques of Marshall miss the mark.

Marshall did not attempt to prescribe the empirical evolution of rights in Britain to other European countries (Lister, 2005, p. 476). Hence the contemporary relevance of Marshall lies in his method of studying citizenship and not in his empirical account. This thesis therefore doesn't try to apply the empirical account of Britain comparatively to the European Union, but rather uses Turner's, Soysal's, and Mann's arguments to show Marshall's contemporary applicability to European Union citizenship; sets of rights *can* have a different order of appearance. This suggestion moves the debate into the third key issue with Marshall in the contemporary debate, because this argument for augmented rights comes as a result of societal development and the globalization process producing citizenships and rights above the national level. EU citizenship is at the center of this debate, both in academic attempts to identify its relative placement to national citizenship or as part of a multilevel or transnational citizenship, as well as in attempting to understand if it is a substantial form of citizenship or not.

Maas (2013) claims that multilevel citizenship is not new, and that EU citizenship can be a source of rights and status, arguing that a lot of the academic debate takes for granted the both untrue and arbitrary assumption that nation-states have a natural monopoly on citizenship. Maas' article runs parallel to the front lines of the legal debate, which eagerly follows the

apparent changes in the ‘realness’ of EU citizenship. The status of EU citizenship has changed from its inception, where most scholars saw it as a purely symbolic citizenship, to have matured into something more (Kostakopoulou, 2005, 2007, 2008). Kochenov argues that we are witnessing a possible tectonic shift in the direction of a very real EU citizenship, as he analyzes legal implications of recent cases of *Rottmann*, *Ruiz Zambrano* and *McCarthy* (Kochenov 2011a, 2011b, 2011c; Kochenov & Plender, 2012). This development seems to further blur the lines between national and supranational citizenships. If the status of citizenship itself is uncertain, does that inherently make Marshall irrelevant?

This is where we must clarify Marshall’s theoretical and analytical value in a globalized world. Marshall wrote in a time where globalization wasn’t an issue; by focusing solely on Britain, it is easy to dismiss his value beyond the national level of analysis. But as Crowley (1998) deftly notes, the only reason Marshall’s theory is placed within the realm of nation states is because it is taken for granted. Marshall (1950, p. 9) *does* mention in his essay that his concern is with the national citizenship, but this should not be interpreted without context. Crowley (1998) argues that Marshall’s intention was to contrast the local and national, and not the national and the foreign. Marshall’s analysis does not pit British citizenship up against its exclusion of other states. It rather shows how rights expanded to include larger segments of the population, and that citizenship grew from a local to a national institution. I make the same argument for European Union citizenship, which I will analyze in the same manner, only a level above it: going from national to supranational. Whether or not EU citizenship is symbolic the moment, it has evidently gathered substance since the early debates about European integration at the start of the project. It is a citizenship in development. In this light, Marshall’s study of development of citizenship is relevant, regardless of the level of analysis. Crowley goes as far as to say that Marshall’s analysis provides an ideal blueprint for innovative theorizing about a citizenship beyond the nation-state (Crowley, 1998, p. 168). I treat it as such.

The motivation of this thesis is therefore highly shaped by the contemporary debate about citizenship. Little of this debate aspires to actively use Marshall’s legacy on the development of EU citizenship. Olsen (2007) employs a somewhat similar study to this one, in analyzing EU citizenship in terms of membership, identity, rights and participation. This thesis is not directly connected to Olsen’s study, however. My research question implies that the order of appearance of these rights matter, which consequentially might affect membership, identity,

rights and participation. Olsen emphasized the interplay between these, and is therefore quite in line with this argument, even if different in the approach. In a working paper from February, Greer (2013) applies Marshall to EU citizenship in light of the current economic crisis, focusing on the effects of austerity politics and policy on the citizenship rights of Europeans. His study is quite different from mine, however, because of his focus on the economy and economic institutions and choice of time period for his study. Neither does he study the development of rights in terms of supranational harmonization.

In sum, the contemporary value of Marshall lies in the means of his analysis. Whereas the larger debate tends to detract or add to the value of T. H. Marshall, and also tries to study the effects of globalization on citizenship, I am not aware of any attempt to use Marshall's method of analysis directly on European Union citizenship in this manner. His method is transferrable even if social rights have declined, or if rights have appeared in different orders in different countries, or if globalization has changed citizenship. It is relevant whether EU citizenship is a symbolic addition to Member State citizenship or not. Crowley assesses that Marshall's lasting value are "[...] not so much his specific conclusions about social rights – which are dependent on restrictive assumptions relevant primarily to the British case – as the structure of his argument" (Crowley, 1998, p. 176). Shaw makes the argument that the Marshallian triad of rights offers a means to "assess the range of policy arenas across which citizenship policy in a very broad sense needs to be identified and assessed" (Shaw, 1998, p. 315). She continues saying that with such a frame you can suggest some preliminary assessments about Union citizenship and its evolution. This is what I'm doing. This debate is the motivation for this thesis, and also how I approach Marshall's analysis. The next section will outline Marshall's "Citizenship and Social Class" and his underlying logic of the development of sets of rights, providing the basis for the subsequent models of the development of EU citizenship.

3. Marshall's Tripartite Citizenship

T. H. Marshall analyzed the growth and change of citizenship in Britain from the eighteenth century and up until his own time in the twentieth (Marshall, 1950, p. 9). His overarching description of the ideal development of citizenship is worth quoting at length:

"Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed. There is no universal principle that determines what those rights and duties shall be, but societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed. The urge forward along the path thus plotted is an urge towards a fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed" (Marshall, 1950, p. 18).

The last sentence is especially notable, because it adequately sums up the essence of his historical account of Britain. The drive of these sets of rights was, and is, increasing equality and membership. In his seminal essay "Citizenship and Social Class" he identified three sets of rights: civil, political and social. For a long time these rights (or rather, privileges at the time) were amalgamated and restricted to status in terms of class; a relic from feudal times defined by its inequality. In the eighteenth century these rights parted and grew separately because the institutions on which they depended went through a "complete [...] divorce" (Marshall, 1950, p. 10). Marshall roughly ascribed each of the sets as belonging to separate centuries; civil rights to the eighteenth; political to the nineteenth; and social rights to the twentieth. Together these formed the ideal of modern citizenship in which everyone is a full and equal member of a community. The modern striving for social equality in Britain is but one step in an evolutionary process that had been in continuous progress for about 250 years at the time Marshall wrote his essay. Marshall makes the argument of a constant development clear, by saying that "[...W]hen the institutions on which the three elements of citizenship depended parted company, it became possible for each to go its separate way, travelling at its own speed under the direction of its own peculiar principles. Before long, they were spread far out along the course, and it is only in the present century, in fact I might say only within the last few months, that the three runners have come abreast of one another" (ibid., p. 9).

There is a nice symmetry to Marshall's placing of rights into centuries, but what's most interesting is the appealing underlying principles in each set, and the logic of how the sets of

rights appeared in a certain sequential and evolutionary fashion, each remedying the blemishes of the former. Marshall placed the evolution of civil rights in the eighteenth century. These made men free, and entitled them to equality before the law. Political rights came in the nineteenth century, granting rights to participate in the exercise of political power and the previously socially and economically restricted political rights were thus granted to a larger segment of the population. Social rights of the twentieth century granted education and welfare in the attempt to dam up the inequalities that otherwise would have prevented citizens from enjoying their civil and political rights. The overarching development of these sets of rights was—as mentioned in the introductory quote of this Chapter—the urge towards a “fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed” (Marshall, 1950, p. 18). Marshall makes no claim that a different type of evolution is impossible, but he does shed light on the *possibility* of one evolutionary sequence, even if it is hard to imagine how things could have gone differently in the British case.

Added to his tripartite system of sequential development is the identification of complementary institutions to each set of rights. The courts of justice secured civil liberties, the parliament and councils of local government were connected to political rights, and social rights were related to the education system and social services. These institutions administer the central features of modern citizenship, and through them each set of rights went from having local variance in their practice, to harmonize at the national level to a fuller measure of equality, making citizenship grow “from a local into a national institution” (Marshall, 1950, p. 12). Marshall touched upon this local/national transition in each set of rights, explaining how each of them developed from having local variance to becoming nationally harmonized. Addressing Marshall’s tripartite system of rights in this thesis therefore also means addressing the process of harmonization of rights at a higher level. This will form a theoretical baseline that will enable a study of EU citizenship, as it provides us with a counterfactual standard for comparison.

This study will not offer an attempt to identify the causal mechanisms behind important changes, but rather use Marshall’s logical build-up to study the development of European Union citizenship rights. The above paragraphs outlined the skeleton of Marshall’s analysis. The following chapters are devoted to adding flesh to that skeleton by identifying the underlying logic of Marshall’s depiction of the national harmonization of each set of rights

through complementary institutions. I will limit the historical descriptions to what's necessary for understanding Marshall's method and conclusions and the theoretical thrust of my own analysis.

3.1 Civil Rights

Marshall's analysis begins in the eighteenth century when civil rights were introduced and developed alongside the advent of liberalism and its anti-absolutist sentiments, and with the shedding of British feudalist heritage (Marshall, 1950, p. 9). There are two especially notable things in Marshall's work on this time period: 1) how rights went from being local and varied to being national and universal through legal development; and 2) his implicit reasoning for why these civil rights came first and formed the basis for the subsequent development of political rights.

There did exist genuine and equal citizenship in terms of legal equality before the national harmonization of civil rights in the eighteenth century. Yet the specific rights and duties from feudal times were "strictly local". This contrasts strongly with the universal civil rights that were developed later (Marshall, 1950, p. 9). In feudal times there was no "uniform collection of rights and duties with which all men [...] were endowed by virtue of their membership of the society" (ibid., p. 8). Marshall notes that it is the national citizenship he wishes to trace, and that the process of legal development transformed local variance of civil rights to a national and universal citizenship.

Marshall's tracking of the legal development identifies the civil rights' formative period to roughly have been between the Revolution (1688) and the first Reform Act (1832). In this time period important legal steps were taken to make men more equal before the law (at least on paper): The Habeas Corpus of 1679 stopped unlawful legal detention of an individual,³ the Toleration Act of 1689 introduced freedom of worship (with exceptions),⁴ laws censoring the press were abolished, the Catholic Emancipation Act of 1829 removed many restrictions made on Roman Catholics,⁵ and the repeal of the Combination Acts in 1824 enabled trade

³ See Library of Congress. (2012).

⁴ See Zwicker (1991).

⁵ See Hexter (1936).

unions and collective bargaining.⁶ Brick by brick these legal developments added to the legal security of the individual, and built a citizenship of legal rights (Marshall, 1950, p. 10).

There were also changes in the economic sphere that strengthened individual rights, as the conception of local/group monopoly according to class as a public interest was also challenged in this time period (Marshall, 1950, pp. 12-13). The Elizabethan Statute of Artificers was an anachronistic remnant from feudal times, which made your profession dependent on class, reserved employment in a town to its own members, and set the wages. In practice, this meant that you had no guarantee that you could work where and with what you preferred, and economically you had little hope of getting a better income. This deterministic system made it difficult or unlikely to climb the social and economic ladder.

The Elizabethan Statute of Artificers was repealed in the beginning of the nineteenth century, and the reason for this is what's most interesting. Marshall connects it to the change in both custom and public interest because it came to be seen as "[...] an offence against the liberty of the subject and a menace to the prosperity of the nation" (Lister & Pia, 2008; Marshall, 1950, p. 11). The recognition of the right of choosing both occupation and place of work came through the formal acceptance of a fundamental change in attitude. Society outgrew the ancient feudal laws, and the rights were changed from varying across towns, to becoming national (without this local variance). The courts promoted and registered the advance of the principle, slowly "installing the heresy of the past as the orthodoxy of the present" (loc. cit.). At the beginning of the 1800s these rights were seen as axiomatic, and when the statute itself was repealed in 1814 it was seen as "[...] the belated recognition of a revolution which had already taken place" (loc. cit.).

Step by step legal developments like the ones aforementioned came to form a shared status of citizenship. Civil rights came into being through changing custom and attitudes combined with the change in the common law. This is also why Marshall attributed the courts as the complementary institution to that of civil rights. By the beginning of the nineteenth century the principle of economic freedom was unquestioned. The rights of free men (not women) had been established. Servile labor became free labor, people moved to towns and cities, and citizenship became a national instead of a local institution because the "status of freedom

⁶ See George (1936)

became universal” (Marshall, 1950, p. 12).⁷ These rights of free men were introduced to new regions where peasants for centuries had been excluded. Through sharing these rights people became more equal before the law, and Marshall referred to them collectively as civil rights: the liberty of the person; freedom of speech, thought and faith; the right to own property; the right to conclude valid contracts; the rights to justice; and the right to follow the occupation of one’s choice in the place of one’s choice (ibid., p. 12). This strengthened the rule of law, and reflected the liberal and capitalist spirit of that time. The development of civil rights as Marshall described it revolved around the changes in custom and statute and the courts’ continued additions to common law. It is here we find Marshall’s indirect reference to rights becoming nationally harmonized, in the sense that pulling citizenship up to the national level contrasted the local variance that had previously produced inequalities in individual freedom.

But where civil rights patched up the defects in individual freedom, they lacked democratic value in that political influence was denied to a large part of the population. First there was the exclusion of women from political power, which in practice made them second-class citizens because society lacked political rights. Second, though people were free and equal before the law on paper they could not necessarily choose their lawmakers through voting. Civil rights enabled you to do so in principle, in the sense that you were given political rights according to merit: “You were free to earn, to save, to buy property or to rent a house, and to enjoy whatever political rights were attached to these economic achievements” (Marshall, 1950, p. 13). Lack of economic means meant lack of political rights. The remedy for this shortcoming began in 1832 and marks the start of Marshall’s description of the second set of rights of citizenship: political rights.

3.2 Political Rights

Marshall’s depiction of political rights is tightly packed with historical descriptions (Marshall, 1950, pp. 12-13). He argued that political rights were the offspring of civil rights, fixing defects in the democratic distribution of rights that was inherent in a citizenship only consisting of civil rights. This development did not happen over night, however, and it is in these developments that we find the same transition of rights going from having local variance to becoming national rights, equal to all. Political rights had local variance due to the existence of second-class citizenship, because political power was distributed according to

⁷ As we shall see, some were still excluded from the status of citizenship.

economic merit, because there was unequal distribution of political power geographically (rotten boroughs), and due to the exclusion of membership of parliament for certain groups, by criteria, like workers and Catholics; all shortcomings of a civil rights based citizenship. Within the system of parliament and local governments these unfortunate consequences made political power dependent on who you were, whether you had to work for a living or not, and where you lived. To investigate how these factors changed more thoroughly, let us start with the early period of political rights.

By the beginning of the nineteenth century citizenship had become a general status as civil rights had gradually transitioned to being nationally harmonized through the courts. But unequal distribution of this status was still there in practice, as you were granted political rights according to economic achievements. The democratic value of civil rights was therefore limited because the social elite still dominated political society; the door was still barred from the inside by economic status and the exclusion of “second-class” citizens. This is the beginning of the introduction of political rights, which consisted of the “granting of old rights to new sections of the population” (Marshall, 1950, p. 12).

Throughout this century, political rights were gradually expanded to a larger segment of the population. The Reform Act of 1832 granted access to parliament to new cities and regions that had sprung up, and also loosened the economic requirements regarding who could vote and who could not (Marshall, 1950, p. 13). This Reform Act still left about 4/5 of the adult male population unable to vote, but it was nonetheless a start of a national harmonization of political rights. Further expansion included the abolishing of property qualifications for becoming a Member of Parliament (MP) and the introduction of payment of MPs in 1911 (UK Parliament, n.d.c). These developments point to why Marshall attributed parliament and local governments as the complementary institutions to political rights.

In 1918, manhood suffrage was adopted, shifting the status of citizenship from economic to *personal*. Men were now not only free, but they were also free to choose their own lawmakers by voting or running as a candidate themselves. Political influence came to be a right shared by all regardless of financial status, and attached to citizenship the “...right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body” (Marshall, 1950, p. 8). It could seem that political rights saw their culmination in 1918, but Marshall was clear in his argument that the

development was still going on in his own time, as plural voting was abolished only the year before he published his essay (*ibid.*, p. 13). It was a process of a continuing harmonization of political rights at the national level.

This transition also included the enfranchisement of women and the abolishment of rotten boroughs. The first was an important step in the harmonization of political rights, as this further removed the concept of second-class citizens by including a larger segment of the population, making political rights more universal. National institutions of parliament and local government complemented the development of these rights (Marshall, 1950, p. 8). Rotten boroughs were remnants from feudal times, which meant that some small districts were overly represented in the unreformed parliament because they used to be bigger. Wealthy individuals could easily claim these rotten boroughs (UK Parliament, n.d.b). Consequentially, there was an unequal distribution of political power by geographic location; political influence depended on where you lived. The abolishment of these boroughs removed this aspect of local variance of political power, and harmonized political rights at the national level.

There was also variance within the local communities, as working-class people and minorities like Catholics were refused political rights up until the nineteenth century (UK National Archives, n.d.). This discrimination made political rights dependent on who you were. In total, the discriminations towards certain groups or individuals produced inequalities in political influence that varied according to where you lived (rotten borough) or your status as an individual (worker/catholic/woman). Their removal constituted an important development in the national harmonization of political rights and the development of citizenship itself. Parliament played a vital role in this harmonization, as it was a complementary institution “[...] concentrating in itself the political powers of national government and shedding all but a small residue of the judicial functions which formerly belonged to the Curia Regis [...]” (Marshall, 1950, p. 9). It was a necessary institution for channeling the political rights of those it represented, and could do so with increased power. Marshall doesn’t address this local/national transition directly, yet his description of the transformation of political rights show a process of equalizing political influence at the national level by removing factors that in combination produced variance in political influence at the local level. It brought political rights closer to its ideal of a full measure of equality.

British citizenship had now started the development of a national harmonization of civil rights, adding to it the same processes in the development of political rights. But the enjoyment of these two sets was still not guaranteed. Marshall delicately describes this situation by arguing that a: “A property right is not a right to possess property, but a right to acquire it, if you can, and to protect it, if you can get it. But, if you use these arguments to explain to a pauper that his property rights are the same as those of a millionaire, he will probably accuse you of quibbling” (Marshall, 1950, p. 13). Even if you were given a right, it did not mean you had the economic capability to enjoy them. This also went for equality before the law, because even if civil rights brought you closer to realizing justice the costs of litigation could frighten any person of limited means to not go to court at all. The 1846 establishment of the County Courts to provide cheap justice remedied this somewhat, but the problems associated with an unequal distribution of rights did not stop there. There were also shortcomings in the enjoyment of free speech, because even if you possess it, what “[...] if, from lack of education, you have nothing to say that is worth saying, and no means of making yourself heard if you say it” (Marshall, 1950, p. 21). As such, your civil rights were not enjoyable in practice. This argument also applied to the enjoyment of political rights, because society needed an educated electorate to be healthy to make use of their political power (Marshall, 1950, p. 16). To remedy this, social rights were introduced. Social rights are often linked intimately with the emergence of the welfare state and public education. People who did not have the means to enjoy existing rights granted by citizenship *should* be given the opportunity to do so.

3.3 Social Rights

To understand the emergence of social rights we need to backtrack to the eighteenth century, because Marshall recognized that there were social rights even then. These were not there to even-out inequalities in society, because they actually conflicted with, and lost the battle to, citizenship. From feudal times these social rights had local variance. Their original source was rooted in membership of local communities, the town, guilds and functional associations (Marshall, 1950, pp. 9, 14). This produced local variance in the administration of social rights, variances that in turn were eroded by economic change until nothing remained but the Poor Law, an example of a kind of social right prior to civil and political rights. The difference between this anachronistic Poor Law and the modern social rights shows how the civil and political rights from the two previous centuries came to define the essence of social rights. To

examine how this is the case we turn to the clash between the Poor Law and the civil rights of the eighteenth century.

The Poor Law consisted of anachronistic remnants from Elizabethan legislation, a system Marshall called “utterly obnoxious to the prevailing spirit of the times” (Marshall, 1950, p. 15). The Elizabethan heritage was a legal system that was put in place not to change the social order, but to preserve it with a minimal amount of change. The Poor Law (and its amendment called the Speenhamland system) guaranteed minimum wage and family allowances, combined with the right to work or maintenance. It also placed ill, destitute and poor people in workhouses (ibid., p. 14). This way of working out social inequalities was based on adjusting real income to the social needs and status on the citizen, which was incompatible with the capitalist-oriented perspective of a market value for labor (ibid., p. 15).

In 1834 the Poor Law was forced back as a competitive economy was replacing a planned one, and it “renounced all claim to trespass on the territory of the wages system, or to interfere with the forces of the free market” (UK Parliament, n.d.a). Instead, it offered relief to those who were unable to support themselves. As a result the social rights came in direct opposition to citizenship as it were, for in practice it was an alternative to them, “[f]or paupers forfeited in practice the civil right of personal liberty, by internment in the workhouse, and they forfeited by law any political rights they might possess” (Marshall, 1950, p. 15). The Poor Law did little to help the equality of men, as it “[...] relieved industry of all social responsibility outside the contract of employment [...]” (Marshall, 1950, p. 21). Before the reform in 1834 the Poor Law was administered locally in more than 15.500 parishes. The central government did not interfere much with the local affairs of these parishes, so it was up to the local township to give relief to the poor and collect the rates (Green, 2010). Here we can see that Marshall recognized the existence of social rights in the Poor Law before the emerging civil rights and political rights came into play; but saw these were of a different kind. The social rights emerging in the twentieth century, however, showed us the kind of social rights created as a result of the blemishes of civil and political rights. It demonstrates that there can exist social rights before civil and political rights come into being.

There were other social rights that were divorced from citizenship. For example the Factory Acts limited working hours for women and children, implying that they needed protection because they were second-class citizens (Marshall, 1950, p. 15). At first the actual carrying

out of this Act varied from factory to factory, as reluctant mill owners didn't want to have their profits reduced. But a few years after the government issued inspectors to check the factories, however, the law was generally obeyed (Nardinelli, 1980, p. 743). Despite providing better working conditions for those it touched, the law was still contrary to the egalitarian principles of citizenship. Therefore, the social rights of this time were incompatible with citizenship because making use of them made you an outcast separated from the community of citizens. Social rights were in practice more of a social prison.

Marshall claimed that social rights, in its initial phase, were knocked back and did not catch up until around the time he gave his lecture on citizenship and social class (Marshall, 1950, p. 17). The development of civil and political rights alongside capitalism promoted an economic individualism in which real income was dependent on the market and not social status. At first the advancement of social rights was in conflict with the capitalist system of an unregulated wage, and was in Britain a system that lagged behind as a remnant of the old ways where real income was attached to social status. But after a while, civil and political rights weren't enough to dam up the inequalities produced by capitalism,⁸ and social equality as a derivative of natural rights came into being (Marshall, 1950, pp. 21-22).

The first real step towards the reestablishment of social rights came in the nineteenth century, with the right to education. Marshall argued that the health of a society depended on an educated electorate, and that education was therefore a public duty (Marshall, 1950, p 16). Right to education was also a prerequisite for civil freedom for Marshall: as a necessary stepping-stone to the enjoyment of civil and political rights. It was an inherent right of an adult to have been educated, even if it was compulsory by the end of the nineteenth century.

Then followed the emerging thought of having a welfare safety net, lessening the burden on the social class that drew the short end of the capitalist straw. The realization of the importance of social rights was therefore not clear in the eighteenth and nineteenth centuries, and it wasn't until the twentieth century that it "gained equal membership with the other two elements in citizenship" (Marshall, 1950, p. 18). Marshall explained that the privileges previously held by the social elite were gradually being brought into the reach of the many, who were "encouraged to stretch out their hands towards those that still eluded their grasp" (ibid., p. 15). In time, social rights became incorporated into citizenship, a way to make

⁸ In fact, Marshall saw civil rights as supporting capitalism and inequality (Marshall, 1950, p. 20).

society more equal instead of being “content to raise the floor-level in the basement of the social edifice, leaving the superstructure as it was” (ibid., p. 28). This entailed a transition of social rights, becoming harmonized into a national system of welfare and public education. In Marshall’s essay we find that these rights were originally rooted in membership of village community, the town and the guild. It is not until social rights were championed as a remedy for the shortcomings of civil and political rights and made into a national institution that we find the modern welfare and education systems that Marshall talked about. Marshall didn’t depict these emerging social rights as a culmination in the development of citizenship; instead his description shows the continuous development of rights. His definition of social rights is worth quoting at length:

“By the social element I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society” (Marshall, 1950, p. 8).

Its vagueness has been criticized and interpreted in different ways, though most of these connect his definition to the welfare state and education. In this thesis I do the same.

3.4 Summary of the Marshallian Paradigm

Marshall pointed to logical transitions in the development of citizenship. Civil rights came first, granting freedom and equality before the law and complementing the capitalist spirit of the times. These rights were then nationally harmonized in common law by the courts. In this stage, lack of political rights produced second-class citizenship, unequal distribution of political power, political power according to economic merit and the denial of membership of parliament. Political rights were then introduced, and through a national harmonization of these rights by a national parliament, these shortcomings were remedied. But even with universal suffrage and representation in parliament, there were still no guarantees that neither the civil rights nor the political rights could be enjoyed because of economic inequalities and lack of education. To remedy this, social rights—originally embedded in membership of the local village, town, guild and functional associations—were nationally harmonized by the creation of a national welfare and education system.

Each of these three sets contained rights that were nationally harmonized, and each succeeding set of rights remedied the shortcomings of the rights that preceded. But as Mann (1996) pointed out, the British case is only one peculiar historical example. I make no claim

that all citizenship forms follow this recipe, but rather that different stacking of the sets of rights may have different consequences. Marshall himself described this in the example of the Poor Law, a social right absent the presence of civil and political rights. Thus, it is possible to create models of the most probable of constellations of rights; doing so enables us to create a counterfactual thought experiment that can be tested empirically. This will allow us to study the development of rights in EU citizenship without cherry picking. In other words, these models can be used to consider the consequences on the EU if, for example, the supranational harmonization of social rights succeeded civil rights (instead of political rights).

To point back to the introductory quote of this chapter, the ideal of citizenship is to introduce a “fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed” (Marshall, 1950, p. 18). In other words, the equality of citizens was bettered by increasing the enjoyment and array of rights and the number of people who were granted these rights, gradually turning citizenship into a national status, shared equally by all. The purpose of Marshall’s paradigm for this thesis is to identify such a sequence of sets of rights becoming supranationally harmonized through complementary institutions. The next chapter connects Marshall’s analysis to the making of Marshallian models that can be applied to study the development of EU citizenship.

4. From Marshall to European Union Citizenship – A Method of Analysis

The previous chapters gave an outline of Marshall's underlying principles in each set of rights. Civil rights of free men were augmented by political rights, and social rights came to grant people the right to make use of them. Each of these rights went from being local and varied to becoming more harmonized at the national level. I will now outline the necessary premises for using these underlying principles to create models that show the expected development of European Union citizenship if it were to follow different combinations of such processes. This means explaining the concept of arranging rights and the harmonization of these in a different order, setting criteria for how I will place rights into sets, as well as identifying if complementary institutions have restricted Member State variance and consequentially harmonized these rights at the supranational level. The way I will test these will be discussed after they are presented.

First, why would a different order of appearance of rights matter enough to justify the need for several models? This is an important question that needs to be addressed, as it constitutes the basis for making different models. Marshall's sequence of rights started with civil rights, and the subsequent rights were a product of the shortcomings of the former one. All of these sets of rights took time to develop (Marshall, 1950, p. 27). For example, a society starting with social rights and lacking political and civil rights would perhaps look something like a strong socialist or fascist state, as Mann (1996) suggested. If the next set of rights were civil rights, we would perhaps see freedom and equality being granted to a small segment of the population through a court, gradually expanding these rights to more people. Adding political rights then would expand political rights to a larger segment of the population administered by a parliament. The end could perhaps be somewhat similar, yet the path taken would be completely different, and hence the order of appearance of rights matters.

Second, what criteria can I set to recognize rights as belonging to a Marshallian set and harmonizing at the supranational level? With the logic underpinning Marshall's analysis, I have defined criteria that I will use to identify and generate expectations about sets of rights and their supranational harmonization through complementary institutions. The overarching ideal of citizenship, as Marshall put it, was the enrichment of the stuff of which the status is made, and an increase in the number of those on whom the status is bestowed, so that the urge forward is a fuller measure of equality (Marshall, 1950, p. 18). I expect European Union

citizenship to have this goal as well, to offer a citizenship granting more rights to more and more individuals. I also expect European Union citizenship to have explicit rights that can be categorized into any of the three sets Marshall identified. The models themselves are removed from Marshall in the empirical sense, as I focus on the underlying principles that can help me identify such rights. I also expect there to be institutions to complement these sets of rights, restricting Member State variance over time, and therefore gradually harmonizing the sets of rights. The following paragraphs define the criteria that will be used as indicators for identifying the sets of rights and their supranational harmonization. I begin by identifying the criteria for civil rights.

Civil rights, in Marshall's case, made citizens free and equal before the law, and I would expect the civil rights of EU citizenship to do the same. This will be the general criterion that I can use to recognize a right as belonging to this set. More specifically, I expect these rights to fall along the lines of: liberty of the person; freedom of speech, thought and faith; the right to own property; the right to conclude valid contracts; the rights to justice; and the right to follow the occupation of one's choice in the place of one's choice. Bear in mind that additions and subtractions can be made to this list according to the above general criterion. Before civil rights were harmonized in Britain, there was no uniform set of rights. Looking to whether there is an overarching legal system that can prevent Member State variance is a key indicator for recognizing the existence of supranationally harmonized civil rights. If there are no supranationally harmonized civil rights, the above rights will be subject to Member State variance. For example, EU citizens could find equal access to justice within a Member State, but not across Member States in the form of a shared status of European Union citizenship. As a complementary institution to civil rights I will look to the European Court of Justice (ECJ), in the same manner that Marshall explicitly linked civil rights to the courts of justice (Marshall, 1950, p. 8). The courts played a vital role in developing civil rights through common law in the British case, and I would expect the ECJ to play the same role. The models will therefore present the ECJ as the complementary institution, through which case law will supranationally harmonize civil rights.

Political rights contribute to a fuller measure of equality of status by granting the right to participate in the exercise of political power, contributing to the equalization of political influence. It involves the right to vote and stand as candidate for a parliament in the political community in question, this parliament passing laws and representing the people through

elections. Before these rights were introduced in Britain, citizenship without political rights was second-class citizenship, with an unequal distribution of political power geographically, where political power was distributed according to economic merit, and where segments of the population was excluded from parliament due to qualifications. These were shortcomings that contributed to local variance in political influence, and using these as criteria can help me recognize the extent of a supranational harmonization of political rights. I expect the development of political rights in European Union citizenship to involve the process of a strengthening of the European Parliament (EP) as the complementary institution to political rights.

Lastly, Marshall defined social rights as “[...] the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society” (Marshall, 1950, p. 8). In this thesis I connect social rights to welfare and education systems, and I will look to any institution that has harmonized these at the supranational level. I will also identify social rights in its role of enabling the enjoyment of civil and/or political rights. The reason for this is because none of the models will present EU citizenship as starting with social rights—as I consider this highly unlikely.

The geographical areas that I analyze are not local towns or constituencies and national institutions, as in Marshall’s analysis, but Member States and supranational institutions. The expected trend in all the models will be that each set of rights is moving towards becoming more harmonized and supranational through a complementary institution, even if at a very slow pace. It is still the same overarching process Marshall spoke of that the sets of rights are moving towards fuller measure equality, only a level above his. The criteria for each set of right stated above can help me identify the extent of this supranational harmonization.

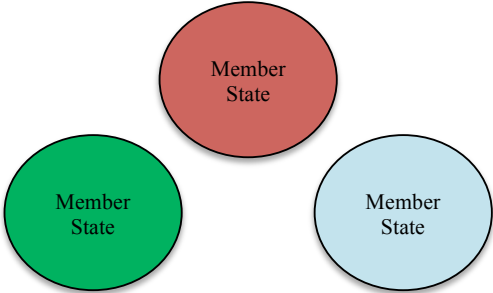
Regarding this relationship between the national and the supranational as analogous to Marshall’s contrast between the local and the national, it is also worth noting that EU citizenship is a derivative of national citizenship. Despite this the European Court of Justice claimed that “[...] Union citizenship is destined to be the fundamental status of the Member States [...]” (Case C-184/99). It is reasonable then to interpret this to be the Court’s intended aspiration for EU citizenship. Also, as Kochenov has noted, recent cases point to the possibility of a more substantial EU citizenship (Kochenov, 2011b, 2012). It is possible we

are witnessing the same type of process in a slow supranational harmonization of rights at the EU level. Also, as Olsen (2007, p. 41) notes, citizenship does not appear *ex nihilo*, and there should be a development and evolution possible to analyze. Marshall's work is a tool for doing just that, and will be applicable whether or not the EU has a symbolic and additional citizenship or not, because EU citizenship is *a* citizenship in development.

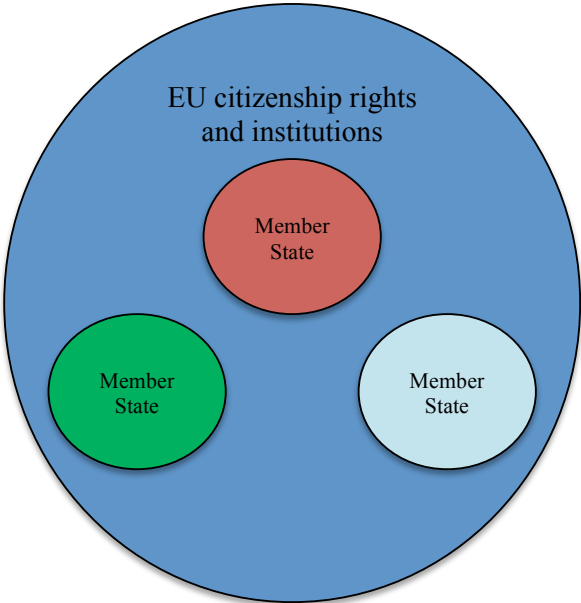
In the models that follow, I have taken the critiques of the aforementioned authors to heart; I use these models to identify the development of European Union citizenship, not create an inferable theory of supranational citizenship. The Marshallian paradigm is used merely as a tool to study the development of rights in EU citizenship. I am not looking for exact empirical similarities either. For example, it is not useful or relevant to look for an exact modern equivalent of an Elizabethan Statute of Artificers. The models presented later contain logically-founded expectations generated from different constellations of sets of rights, and also the expected transitions of these to becoming more supranationally harmonized through complementary institutions. Each of the three sub-chapters presenting the models ends with a table presenting a short summary of the model and the relevant criteria. The argument in my thesis is that the sets of rights of EU citizenship is going through this same process in development, with Member State variance of rights declining through the harmonization of supranational rights through complementary institutions. This development will be tracked with the above criteria in mind, and can be illustrated as follows:

Figure 4.1 The Process of Supranational Harmonization of Rights:

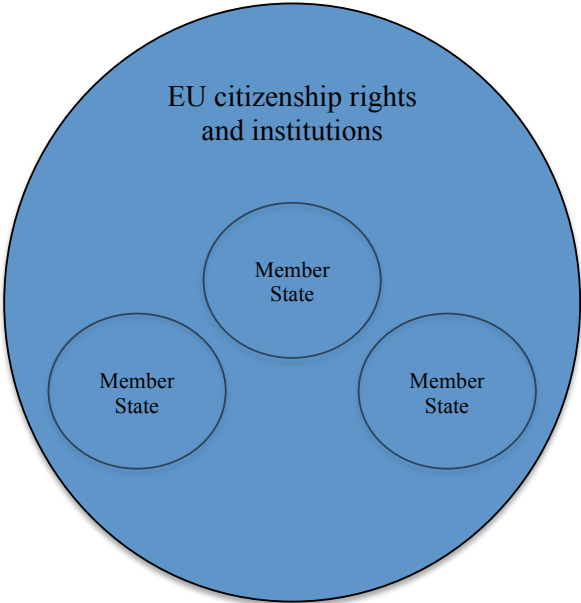
1. Member State variance in civil, political and/or social rights.



2. EU citizenship rights are introduced with complementary institutions, but these rights have not yet been harmonized between the Member States.



3. European Union rights, through their institutions, go from having Member State variance to being harmonized at a supranational level.



4.1 Models of EU Citizenship

With this in mind we can continue with the creation of Marshallian models. What kind of evolutionary sequence would one expect European Union citizenship to have had? What would we expect it to look like with different evolutionary sequences? This chapter is devoted to modeling such sequences, starting with one similar to Marshall's analysis of Britain. It also considers alternative models, should this original Marshallian "chain" be broken. In general all of these models depict certain expectations about the effects on EU citizenship if the building blocks of rights were stacked and supranationally harmonized in different ways. They make no attempt to predict how far along the road EU citizenship is in any one of these models.

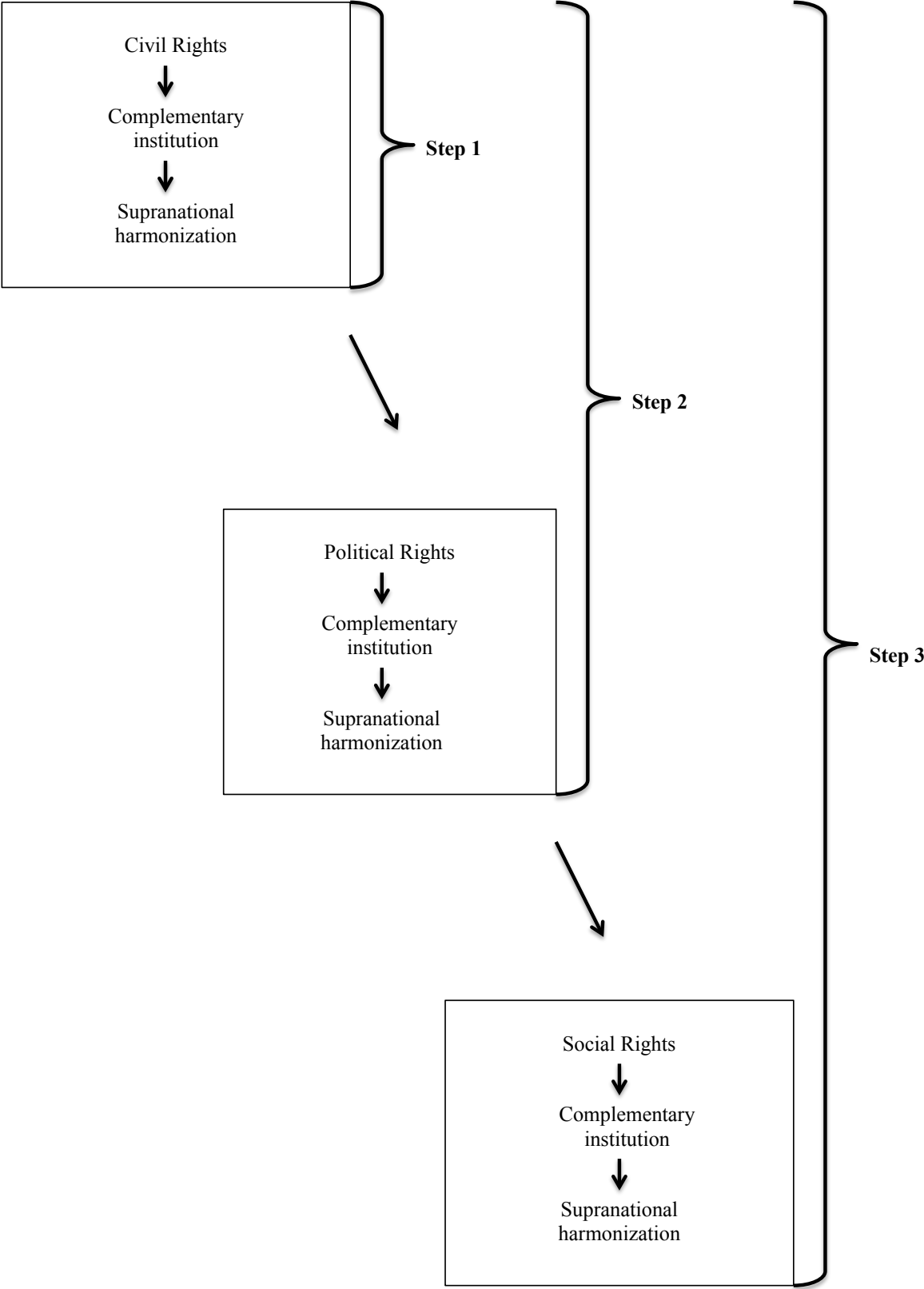
Considering the scope of this thesis and the six possible models that are possible to make with three non-repetitive sets of rights in different orders, I will need to limit our focus to those that I think are most probable. The models below therefore include only those models that start with either civil or political rights. There are four reasons for this. Firstly, social rights were the last set Marshall identified in his tripartite system, giving me reason to assume that this might be the same in the evolution of EU citizenship. The second reason is provided by Mann (1996), who identified isolated social rights as belonging to fascist and socialist regimes (and recognizing the fact that the EU doesn't belong to either of these two regime types). The third reason is the knowledge that the EU is built upon liberal economic foundations, which for all intents and purposes can be compared to Britain's starting point in the eighteenth century. The fourth reason is a comment made by Soysal (1994, p. 131), connecting the Marshallian paradigm and the development of EU citizenship, in which she argues that social rights were present before the emergence of political rights. She does not address this within the context of supranational harmonization through complementary institutions, yet it introduces the possibility of a model where social rights are not the first nor the last set of rights to be introduced. For these reasons I narrowed my opinion about which sequences were the most probable to the following three models:

Table 4.1 List of Models

Model	First set		Second set		Third set
#1	Civil	→	Political	→	Social
#2	Civil	→	Social	→	Political
#3	Political	→	Civil	→	Social

Each model contains three steps, one for each set of rights added. In each step I address the expected array of rights, the benefits and shortcomings of these, as well as the expected transition of these rights from national and varied to becoming more supranationally harmonized. The first step of every model therefore contains an isolated version of a set of rights. The second step shows the expected consequences of adding another set of rights, a remedy to the shortcomings in step one. This means presenting the new set of rights, with benefits and shortcomings, going from Member State variance to becoming more supranationally harmonized. The third step repeats this process, showing the expected consequences of the addition of a third set of rights on the established framework of both the first and the second step. For example, the first model will depict EU citizenship within the same framework as Marshall identified for Britain: i.e., that civil rights came first, followed in turn by political and social rights. Figure 4.2 on the following page illustrates this.

Figure 4.2 Example of a Marshallian Model:



After generating these models I will have the necessary tools to apply the Marshallian paradigm to the European Union, and see which model of evolutionary sequence is closest to empirical events. Having laid down the foundations for making models, we start with the first model, depicting the Marshallian “chain”, in which the sequential order is similar to the British case.

4.2 Model 1: Civil – Political - Social

The Marshallian chain pictures the order of rights starting with civil, adding in turn political and social rights. This is perhaps the most expected development, since civil rights in Britain were spurred by capitalist growth, which is comparable to the EU’s emphasis on economic development. As the above criteria stated, I would expect these rights to grant freedom and equality before the law, complementing the capitalist spirit of the EU. I expect the European Court of Justice (ECJ) to be the complementary institution to these rights.

In *step one* of this model I expect European Union citizenship at first to grant few civil rights to a small segment of the aggregated population of the Member States, and I expect a steady increase in the number of these rights and an expansion of the status of citizenship to include more people. The true test of these rights would lie in whether the ECJ (as the complementary institution) attempted to harmonize them supranationally. Reduction of Member State variance of civil rights depends therefore on the Court’s power to pull such issues out of Member States’ hands and instead make civil rights a supranational issue. In Marshallian terms, this can be seen as the shedding of a former (feudal) layer, where “[t]here was no uniform collection of rights and duties with which all men [...] were endowed by virtue of their membership of society” (Marshall, 1950, p. 8). The point here is that a developing supranational court increases the uniformity of civil rights in opposition to local (national) variance. I’m not arguing that Europe before the EU was a feudal society.

With the ECJ gradually harmonizing civil rights supranationally, I would expect to see more civil rights added, including liberty of the person, freedom of speech, thought and faith, and granting citizens the rights to conclude valid contracts and to own property. Perhaps most protruding would be the right to choose the occupation of one’s choice in the place of one’s choice, as the EU was originally an organization designed for economic integration and cooperation between nation states. If the ECJ gained momentum in this manner I would also

expect case law that demonstrate the practice of these laws being supranational, rather than being left up to each and every Member State.

Regarding the shortcomings stated in the criteria above, Marshall's description of isolated civil rights was one resulting in second-class citizenship, unequal distribution of political power across constituencies, political power distributed according to economic merit and the exclusion of segments of population from parliament due to qualifications. Political power depended on who you were, whether you had to work for a living or not, and where you lived. These are the indicators I would look for if political rights haven't been harmonized supranationally. Though the following examples don't provide an exhaustive list, it could mean that some individuals or groups could be excluded from political power as second-class citizens by Member State decree, because no supranationally harmonized system would be there to prevent it. It could mean that there would be no EU citizenship law to prevent the denial of voting rights or candidacy for elections for reasons of residence, economic standing, personal attributes⁹ or any other particular criteria decided by each Member State. It would also mean that political power would vary with Member State nationality.

Lack of social rights in the first step of this model would also create unequal access to the enjoyment of civil rights. Social welfare and education would be subject to Member State control, making some more capable of enjoying their civil rights than others at the aggregated level. For example, freedom to work with what you want wherever you want does not mean that you actually can if you are unemployed and lack the economic means to actually travel to another country where your work is needed. Having property rights does not guarantee you property, and the right to justice does not mean you can afford the costs of litigation. This would render certain aspects of the civil rights hollow, and make it more of a symbolic citizenship. Without formal social rights stated in the Treaties, or an institution to administer such benefits, welfare and education would concern the national level, resulting in a high degree of Member State variance.

For all intents and purposes, step one in this citizenship would be an economic one, as political influence would not go further than Member States allow and there would be no harmonized social rights at the supranational level. This leaves the development of EU citizenship to happen through the ECJ working as a catalyst for harmonizing the civil rights at

⁹ E.g. skin color, gender or religious belonging.

the supranational level. In sum, if civil rights were the only set of rights in EU citizenship, it would be an economic one, void of democratic value and economic equality. The Member States would decide political rights, and the political power of citizens could depend on Member State nationality.

Step two would see political rights added to the mix, to resolve these shortcomings. These rights would gradually grant all citizens political influence regardless of Member States' particular laws, removing second-class citizenship. I would also expect the equalization of the value of votes for every citizen regardless of residence so that elections would not be affected by Member State variance. The only criteria for gaining political rights would be that you are a EU citizen. The decision of membership would not be up to each Member State, but harmonized at the supranational level. The supranationalisation of political rights depends on a functional European Parliament that can embody and administer these rights by representing the people, passing laws and holding elections. Citizens of the Union would have equal access to the EP, be it through voting or candidature.

In step two, EU citizenship would still lack social rights. In step one, the lack of social rights meant no guarantees for the enjoyment of civil rights, and in step two the same goes for political rights. Though political influence would no longer be decided by economic merit directly, lack of education could tip the scales in favor of those Member States with highly developed education systems. For example, free education in France as opposed to costly education in Poland could mean a higher level of French political influence at the EU level. The same goes for welfare, where individuals in countries with highly developed welfare systems would have more resources to involve themselves in politics at the EU level. Some individuals could then be rendered less influential than others at the aggregated level.

Social rights would then be introduced as *step three*, to remedy the above issues with the enjoyment of civil and political rights. Such social rights would grant welfare and education at the supranational level, and enable those who otherwise couldn't, to work with what they want in the Member State of choice. In practice this would mean that it would be just as easy for a Polish person to move to and work in France, as it would be for a French person to do the same. It would offer citizens economic support for the costs of litigation (if any) and basic welfare needs regardless of national citizenship; unemployed Poles in France would receive the same rights to welfare as the French. I would also expect the limiting of Member State

variance in education systems. This would increase the democratic value of each citizen, giving more people the possibility of political influence and informed voting. We would see social rights accompanied by an institution(s) harmonizing a supranational welfare and education system that would restrict Member State variance in these areas.

In sum, model one consists of three stages. The first stage depicts the expectations of a EU citizenship starting with only civil rights harmonizing at the supranational level. In that case it would start with a narrow set of rights granted to a small segment of the population, these rights increasing in number over time and expanding to include larger segments of the population, enforced by the ECJ. This citizenship would carry with it shortcomings of political rights in the shape of second-class citizenship, unequal distribution of political power, political power distributed according to economic merit and the denial of access to the EP. To remedy this political rights are made supranational, complemented by the European Parliament. With added political rights, more people can enjoy the benefits of citizenship. Yet some lack the resources to enjoy these civil and political rights. Social rights are therefore introduced to remedy this shortcoming, so that the enjoyment of these rights isn't prevented by the denial of welfare and education.

Table 4.2 Model 1: Civil – Political - Social

	Step 1: Civil Rights	Step 2: Political Rights	Step 3: Social Rights
Summary	Gradual addition of civil rights, expanding to include a larger segment of the population. Shortcomings in the shape of second-class citizenship, unequal distribution of political power geographically, political power according to economic merit and qualifications for entering parliament. Social rights depend on being granted membership. No guarantee for costs of litigation.	Grants all citizens equal political influence regardless of Member State law. Lack of social rights does not guarantee the enjoyment of political or civil rights, and some would be able to enjoy them more than others.	Supranationally harmonized welfare and education systems enables more people to enjoy their civil and political rights. The EU covers the costs of litigation.
Rights	<ul style="list-style-type: none"> - Liberty of the person. - Freedom of speech, thought and faith. - Right to work with what you want where you want. - The right to conclude valid contracts - The right to own property 	<ul style="list-style-type: none"> - Right to vote in elections. - Right to stand as candidate for elections. 	<ul style="list-style-type: none"> - Right to welfare. - Right to education. - Right to the covering of costs of litigation.
Institution(s)	European Court of Justice	European Parliament	Institutions for supranational welfare and education

4.3 Model 2: Civil – Social - Political

The second model expects a different appearance of rights than the original Marshallian chain presented in the previous model. The *first step* in this model starts with civil rights, like in the first model, followed by social and political rights respectively. The first step of this model is similar to that of the first step in model 1, where more rights are introduced to include a larger segment of the population of the EU Member States through the ECJ, with shortcomings of political rights as well as in the actual enjoyment of civil rights due to the lack of social rights. Because of this I skip straight to step two of this model.

Step two of this model adds social rights to the civil rights from step one. These are introduced to remedy the shortcomings in the actual enjoyment of civil rights as well as to increase equality for those who are granted EU citizenship. I expect this might happen through the supranational harmonization of welfare and education to strengthen the civil rights and economically-centered function of Union citizenship. This would, perhaps most importantly, enable citizens to work with what they want in whatever Member State they want, providing citizens who would otherwise be unable to enjoy this right with the economic support to do so. The supranational harmonization would also grant people access to a due process regardless of economic standing, country of origin or place of residence—giving support for the costs of litigation or any other economic barrier that might result in one citizen being unequal before the law. The supranational harmonization of social rights through the development of a supranational welfare and education system that could restrict Member State variance in these rights would grant a fuller measure of equality.

The most striking shortcoming in this form of citizenship would be the lack of political rights, resulting in political rights varying from Member State to Member State. Issues of second-class citizenship and denial of access to candidature at the EP could lead to discrimination against selected groups. There would not be an equal opportunity for citizens to vote, pass laws and run for candidature as political rights would be decided by Member States and not the EU. The lack of political rights would also make the development of EU citizenship happen primarily through the Court, and not through a shared right of choosing lawmakers who could pass bills through a democratic process. Again, the shortcomings of second-class citizenship and the unequal distribution of power may come in other forms suggested by these examples.

The *third step* in this model adds supranational political rights as a remedy for the shortcomings of the system of combined civil and social rights. This means giving democratic value to the system, enlarging the segment of the population to enjoy the political rights of EU citizenship. The ability to vote and stand as a candidate, and through this pass bills at a supranational level through the European Parliament, would increase political influence for those who were previously denied the right to vote or to stand as a candidate. The end result of this model would be similar to that of model 1, yet the stacking of rights produces a different pathway. In this case the beginning is the same, and we see the expected effect of adding social rights as enabling more people to enjoy their given rights. The lack of supranationally harmonized political rights would possibly deny these rights to certain groups or individuals. The third step added political rights in order to expand the enjoyment of the rights granted EU citizenship as well as granting people equal political influence at the aggregated level.

Table 4.3 Model 2: Civil – Social - Political

	Step 1: Civil Rights	Step 2: Social Rights	Step 3: Political Rights
Summary	Gradual addition of civil rights, expanding to include a larger segment of the population. Shortcomings in the shape of second-class citizenship, unequal distribution of political power geographically, political power according to economic merit and qualifications for entering parliament. Social rights depend on being granted membership. No guarantee for costs of litigation.	Supranationally harmonized social rights enables citizens to enjoy their civil rights. The EU covers the costs of litigation. There would still be problems of second-class citizenship, unequal distribution of political power for economic or geographical reasons, as well as possible exclusion from candidature to the EP.	Problems with second-class citizenship, unequal distribution of power and denial of candidature to the EP are removed. A supranational EP administers elections.
Rights	<ul style="list-style-type: none"> - Liberty of the person. - Freedom of speech, thought and faith. - Right to work with what you want where you want. - The right to conclude valid contracts. - The right to own property. 	<ul style="list-style-type: none"> - Right to welfare. - Right to education. - Right to the covering of costs of litigation. 	<ul style="list-style-type: none"> - Right to vote in elections. - Right to stand as candidate for elections.
Institution(s)	European Court of Justice.	Institutions for supranational welfare and education.	European Parliament.

4.4 Model 3: Political – Civil – Social

The third model shows the expected outcome of a sequence of rights where political rights appear first, followed by civil rights and then social rights. The political rights are the *first step*—starting the process of supranational harmonization and restricting Member State variance through the European Parliament. Citizens would also be able to have political influence by voting and standing as candidate for the EP. This right will be harmonized and administered by the EP and transferred entirely to a supranational level. There would from the start be no problems of second-class citizenship, unequal distribution of political power by economic merit or national belonging, and no denial of candidature for the EP.

Because of a lack of universal civil rights, however, there wouldn't necessarily be a universal status of citizenship. Membership would be granted only through unanimous agreement of the Member States, because there would be no substantial supranational court to pull such matters out of their hands. There would also be no guarantee that any rights at all would be adhered to, for the same reason. This would render EU citizenship a symbolic addition to that of Member State citizenship, because any conflict between the supranational and national level would result in Member States ignoring EU citizenship. Political influence could also be rendered hollow if Member State refused to ratify a bill passed at the European Parliament. Member States could still discriminate against their citizens on the grounds of national legislation, without worrying about EU jurisdiction. The right to political influence wouldn't vary from Member State to Member State, but the rights connected to membership would.

This citizenship would also lack any social rights, and therefore offer no welfare or education systems at the supranational level to remedy inequalities between Member States. Political influence would then perhaps be greater for those with resources—granted through education and welfare—to involve themselves in politics at the supranational level than for those without it. The most obvious result of this is, perhaps, that political change at the EU level would be in favor of those with resources, but it would also be very slow as there is no way that a Member State can be forced to follow the political process. Varying acknowledgement of the EU's political rights in different Member States would grant some citizens greater political influence at the EU level, depending on their nationality. Lack of a supranational system of education and welfare could further limit political influence to a minority within a minority of the Member States, enhancing inequality. Furthermore, any rights granted through membership would not be accompanied by the guarantee of enjoying these. If the Member

States agreed to letting people cross their borders if they chose to work there, this wouldn't mean that a Member State couldn't make laws that lowered wages for migrants, relative to that of nationals. Levying an extra fee for migrant students could for example hinder the right to education in any Member State.

The *second step*, the introduction and supranational harmonization of civil rights through the ECJ, would remedy some of these shortcomings. The ECJ would, through continued development in case law, move rights from being varied among Member States to being harmonized as a standard of supranational citizenship. Such a development would increase the substance of EU citizenship, as Member States would no longer be the guarantor of citizens' rights. It would remove from Member States the possibility of discriminating against individuals or groups based on national legislation. As a result, political influence would be more equal and more people would in practice be included in a shared status of EU citizenship.

If lacking social rights, a citizenship of civil and political rights would not guarantee the enjoyment of these. Varying levels of social security and education systems at the Member State level would produce varied political influence, as those with the resources to involve themselves in politics would still be granted more political influence. Lacking social rights would also hinder the enjoyment of civil rights for some. For example, some would be practically excluded to work wherever they wanted, as they lack the resources to do so, and some would not benefit from a formal right to equality before the law because of the costs of litigation.

To remedy this, *step three* would see the introduction of social rights to the mix. This would entail the harmonization of an education system and a welfare system at the supranational level, to which all Member States would have to adhere. This would remedy unequal access to civil and political rights, as more citizens would be able to enjoy these regardless of country of origin and economic status. In terms of the enjoyment of political rights it would mean that political influence to a lesser extent would be dependent on what Member State the citizens are born in. In terms of the enjoyment of civil rights I would expect EU citizenship to remove the problem of costs of litigation and give support to persons wanting or having to travel across borders to work. Again, the end result might be the same as in the previous models, but this stacking of rights presents a completely different journey.

Table 4.4 Model 3: Political – Civil - Social

	Step 1: Political Rights	Step 2: Civil Rights	Step 3: Social Rights
Summary	Political rights, but not necessarily a shared status of citizenship. Large Member State variance in welfare and education, and possibilities for discrimination.	The ECJ would, through continued development in common law, move rights from being varied among Member States to being a harmonized standard of supranational citizenship.	Social rights enable people to enjoy both their civil and political rights.
Rights	<ul style="list-style-type: none"> - Right to vote in elections. - Right to stand as candidate for elections. 	<ul style="list-style-type: none"> - Liberty of the person. - Freedom of speech, thought and faith. - Right to work with what you want where you want. - The right to conclude valid contracts. - The right to own property. 	<ul style="list-style-type: none"> - Right to welfare. - Right to education. - Right to the covering of costs of litigation.
Institution(s)	Institutions for supranational welfare and education.	European Court of Justice.	European Parliament.

4.5 Testing the Models

The next chapter lays the empirical foundation for testing the above models for fit. My objective is to see which model best fits recent history, as it applies to the EU’s citizenship development. I will first provide the justification for the time period I’ve chosen to cover, and then for the data I have decided to use to identify the sets of rights and their supranational harmonization through complementary institutions.

The time frame set for the empirical study of EU citizenship is between 1951 and 2013. I argue, like Maas (2005) that the process of introducing European citizenship started as early as with the Paris Treaty, and not at Maastricht, because this is where integration starts (Maas, 2005). As Olsen (2007, p. 41) demonstrates, there is no reason to treat European Union citizenship as having appeared *ex nihilo*. Although one could consider the Rome Treaty as the first step towards a European Union and the Maastricht Treaty to be the birth of EU citizenship, the Treaty of Paris introduced the first indirect rights that were later a part of EU citizenship. The Treaties also represent the start of citizenship in the sense that they represent

the agreement of integration between Member States. Because of this, the time frame of this thesis starts with the Paris Treaty and goes up until 2013.

Marshall claimed that the sets of rights took time to develop, and considering Marshall's analysis covered approximately 250 years as compared to EU citizenships' development of 70 years (maximum), there is reason to assume that EU citizenship to a large extent can be analyzed within a Marshallian paradigm within this shorter time period (Marshall, 1950, p. 27). Within this given time frame, the EC/EU has over time introduced new Member States; a variable that I will not be taking directly into consideration in this analysis. I will concentrate on analyzing the supranational harmonization of rights through institutions at the aggregated population of the Member States at any given time.

To test the expectations in each model regarding the sets of rights themselves, I will look to the Treaties from the start of the European Coal and Steel Community (ECSC) to the Lisbon Treaty in 2007 as the main sources of information. It is in these Treaties that we can find reference to both implicit and explicit rights granted to the European Union public. I will track these and place them into the categories of civil, political and social rights, based on the criteria established in Chapter 3. The testing of the criteria also needs to be augmented by sources that can indicate whether or not these rights have been harmonized—or whether the process of harmonization has been started—at the supranational level through complementary institutions that restrict Member State variance. These sources will consist of the scholarly debate in political science and law, case law of the ECJ, the Treaties from Paris to Lisbon that include the addition of rights, and information about the EU retrieved from its websites.

To identify the supranational harmonization of civil rights there must first be explicit civil rights stated in the Treaties, as these represent the contractual agreement between Member States. Second there have to be cases where EU law regarding citizenship is supreme to that of Member State law. If it is not above national legislation, EU citizenship cannot be said to have been supranationally harmonized, as it will be subject to Member State variance of civil rights. If this is the case, I will search for case law that solidifies the civil rights of citizens, constantly expanding the status of citizenship and the array of civil rights. Though it would be interesting to see whether EU citizenship law has had a widespread normative effect on

Member State decisions about legislation,¹⁰ a study of soft power is beyond the scope of this thesis. The name of the EU has changed over time, yet the sets of rights are ultimately connected to the European Union as it is today, so unless it is necessary to distinguish between these different names in different periods I will use the EU as a common term for them all.¹¹

To empirically test the criteria set for political rights, I will also look for explicit rights stated in the Treaties on the same grounds as with civil rights. By going through the Treaties I will also see if these have been augmented over time. In order for political rights to be supranationally harmonized, the European Parliament must have substantive power and representation in order to represent the people, pass laws and administer elections. I will look to the scholarly debate for evidence of any type of second-class citizenship, unequal distribution of political power and restrictions for candidature for the EP. By tracking these developments I can see whether political rights are expanding and becoming supranationally harmonized, or if these rights result in various applications of political rights in different Member States.

As for social rights I will also look for any explicitly stated rights in the Treaties, and whether more rights are added over time. But even if there were social rights explicitly stated in the Treaties, Member State variance could be present if there were no institutions to complement and harmonize the practice of these. This would mean that welfare and education policies are decided in full by each sovereign Member State, and not a supranational body. I will look to the scholarly debate to identify if there are any such substantial bodies that have contributed to a supranationally harmonized welfare and education system in the EU.

The next chapter examines these empirical developments with the above in mind. I will start by presenting the development of rights found in the Treaties, and then continue with the empirical data on the supranational harmonization of each set of rights.

¹⁰ For example, Mazey (1998) claims that equal opportunities legislation on behalf of working women was a direct consequence of EC level judicial and legislative activity. The origin of this was the second-feminism in the late 1960s and early 1970s, and she highlights the Commission and the Court as catalysts for this systemic shock delivered to the Member States' national policies. Though of limited material effect, Mazey still argues that EC equality directives have contributed by providing legal means of redress in cases of sex discrimination.

¹¹ It can be noted that the Paris Treaty introduced the European Coal and Steel Community (ECSC), the Rome Treaty the European Economic Community (EEC), but that these were merged into the European Community (EC) with the Merger Treaty in 1967. The EC was again renamed in the Maastricht Treaty, the European Union (EU) being its current name.

5. The Development of Rights in European Union Citizenship

This chapter is divided into two parts. The first part runs through the development of stated rights in the Treaties ranging from the Paris Treaty in 1951 to the Lisbon Treaty in 2007. The Treaties that did not introduce new rights for EU citizenship will not be taken into account in this chapter. The rights will be categorized into sets and put in chronological order in a table at the end of the chapter according to the criteria set in Chapter 4. The second part deals with the process of supranational harmonization of these sets of rights in EU citizenship, addressing the development of the complementary institution and their restriction of Member State variance. As we will see, this empirical data will point in the direction of model 1 as being the one closest in fit, though there is also the possibility that a model combining model 1 and 2 would fit even better. In order to understand this more clearly, we start with the introduction of rights as they are found in the Treaties.

5.1 The Treaties from Paris to Lisbon (1951-2007)

The Treaty of Paris from 1951, also known as the Treaty establishing the European Coal and Steel Community (ECSC Treaty), marked the first steps towards European integration. It focused on civil ‘rights’ or rather benefits, and “activated the issues of citizenship” as Olsen puts it (Olsen, 2012, p. 18). It only gave indirectly-stated civil rights to a small segment of the aggregated population of the Community: individuals who were coal and steel workers moving across political borders for the purpose of labor. In this embryotic stage EU citizenship was connected “[n]ot to a formal membership, but to participation as a prospective individual activity, sectorally defined and circumscribed” (loc. cit.). The ECSC Treaty aimed to organize the free movement of coal and steel and free access to sources of production, promoting economic and political cooperation (Paris Treaty, 1951; European Union, 2010c).

The Paris Treaty made no explicit reference to the rights of citizens of the Member States, but rather sought to impose restrictions on Member State behavior that would lead to the discrimination of coal and steel workers on the basis of nationality, abnormally low wages and in certain cases wage reductions (Paris Treaty, 1951, Articles 68-69). States could, if in need of workers, be forced to adjust their immigration rules so that foreign eligible workers could be employed. The potency of this right was enhanced by the ECSC’s will to increase competitiveness through the reduction of state subsidies, its prohibition of aids or special charges and restrictive practices made by the Member States (Paris Treaty, 1951; European Union, 2010c). This early stage of EU integration was focused on economic cooperation

between States, and the civil ‘rights’ derived from these were arguably a by-product of this strategy.

The Rome Treaty of 1958 started the first few changes to this most careful beginning of EU citizenship, introducing explicitly-stated civil rights and social provisions. Though still on the path of harmonizing economic policies in the Member States, Article 48 establishes the right of free movement for workers,¹² nesting within this principle certain civil rights: the right to accept offers of employment, to move freely and stay within the territory of the Member States for this purpose (under the laws of that State), and to remain in the territory of a Member State after having been employed there (Rome Treaty, 1958). It also prohibited any discrimination on the grounds of nationality and the rights of establishment, but these were not stated as explicit rights. The sectorial narrowness of the Paris Treaty was removed, as rights were now connected to workers moving across political borders and not solely to workers in the coal and steel industry. ‘Citizenship’ was thus expanded to a larger segment of the aggregated population of the Member States. Member State variance was furthermore removed through the Rome Treaties’ abolishing of existing framework and future laws opposing these rights (ibid.).

However, the activation of these rights was still conditional upon the crossing of political borders, making any application of this quasi-citizenship quite limited. As Olsen (2012, p. 20) notes regarding the changes from the Paris to the Rome Treaties: “[a]gain, the prevailing image is one of a focus on citizens as workers and producers”. There were no challenges to the sovereignty of Member States in decisions regarding citizenship in the Rome Treaties (Olsen, 2007), and there were no explicitly-stated political rights. The period between the Rome Treaty and the Maastricht Treaty did not carry with it new rights in the form of Treaties. The development of rights is, as we will see in the next chapter, largely attributed to the supranational institutions. I continue with the Maastricht Treaty.

European Union citizenship became official in the Maastricht Treaty in 1992, and with its entry the reach of EU law went from including 2,3 percent of the Member State nationals to 100 percent (Kochenov, 2012, p. 19). This is the first time reference to explicit rights connected to the status of EU citizenship was made: Article 8 states that “Citizenship of the Union is hereby established,” declaring the citizen’s right to these rights and their state of

¹² No longer just coal and steel workers.

subjection to the duties imposed by the Treaty itself. The rights included in this Treaty include the right to freedom of movement, the right to vote and to stand as a candidate at municipal elections in the Member State as well as European Parliament elections, the right to diplomatic/consular protection in a third country in which his/her state is not represented, and the right to petition the European Parliament and the Ombudsman. These rights weren't made ad hoc, but were to a large extent the result of the development of citizenship thus far. The Maastricht merely codified them, making them formal rights (ibid.). We still see the dominance of civil rights, yet there were also a few explicitly-stated political rights. There were no *explicitly* stated social rights connected to EU citizenship in the Maastricht Treaty.

There were still preconditions for the successful use of citizenship rights, covered in a separate part of the Treaty; the freedom to cross internal borders. The new civil and political rights introduced in the Maastricht Treaty were seen as "limited" (Sykes, 1997, p. 148). With the Maastricht Treaty workers fell within the ambit of EU law when they moved residence, not only jobs. The approach by the ECJ for treating cases as falling within the scope of EU law (thus activating the rights of EU citizenship) became being either economically active or crossing political borders (Kochenov, 2012, pp. 19-20). This issue will be covered more in detail in the next section, as we will see the cross-border paradigm possibly giving way to a more harmonized universal status of citizenship through case law.

With the Amsterdam Treaty came the addition of two explicitly-defined rights. The first was added to article 8d, stating the right of any citizen of the Union to "write to any of the institutions or bodies referred to in this Article or in Article 4 in any of the languages mentioned in Article 248 and have an answer in the same language" (Amsterdam Treaty, 1997). What is interesting about this right is that this is the only explicitly stated right so far that can be categorized as a social right. It touches upon the Marshallian notion of being able to "share to the full in the social heritage" (Marshall, 1950, p. 8), and it facilitates the enjoyment of political rights for more people. The second right, added to Article 191a, was that "[a]ny citizen of the Union, and any natural or legal person residing in or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents[...]" (Amsterdam Treaty, 1997). This political right also broadened the public access to the machinery of the European Union by the status of being a citizen. In Article 1, the Treaty asks the Member States confirm their attachment to the fundamental social rights as defined in the European Social Charter and the Community

Charter of the Fundamental Social Rights of Workers signed in 1961 and 1989 respectively, but these were not binding (Amsterdam Treaty, 1997).

The Treaty of Lisbon is an amendment to both the Rome Treaty and the Treaty of Maastricht, and it explicitly lists the rights of EU citizens. An addition to this list is the Citizens' Initiative stated in Article 8b (Lisbon Treaty, 2007). This is the latest invention in the improvement of political rights, calling on the European Commission to make a legislative proposal if a total of one million EU citizens from a quarter of the Member States sign up¹³ (European Commission, 2012). Added to this is a minimum requirement of signatories from each Member State, proportional to the number of Members of the European Parliament elected in each Member State multiplied by 750. The over arching-idea is that a direct participatory aspect will bring the Union closer to its citizens, and to strike a judicious balance between rights and obligations (EP & Council Regulation No 211/2011). The reason for establishing a minimum number of Member States from which citizens must come is to ensure that an initiative is representative of a Union interest.

The Lisbon Treaty also made the Charter of Fundamental Rights binding from 2009, as this was not the case when it was introduced in 2000 (Charter of Fundamental Rights, 2000). This Charter gives certain rights to everyone within the Community, yet the rights belonging to citizenship are still exclusive, and the rights in the Charter are of a more human rights' character. This means that the situation of third country nationals is improved, but not in terms of becoming citizens of the EU. Kochenov & Plender (2012, p. 371) argue that the Charter of Fundamental Rights as a source of rights for citizens has yet to be defined by the ECJ, and that "[...] EU citizenship, *not the Charter*, is likely to be the main trigger of protection of fundamental rights in the Union" (emphasis not added). They argue that the Charter can provide the basis for creation of principles through the ECJ, but that it is limited in scope relative to that of EU citizenship. Lenaerts seems to follow this argument by saying that the Charter rights may not define the scope of application of the Treaty provisions on EU citizenship (Lenaerts, 2013, p. 570). Hence it seems that the Charter does not represent a replacement of citizenship rights, but rather adds rights of a human rights' character, keeping EU citizenship exclusive and intact. Below is a table summarizing the rights stated in the Treaties from Paris to Lisbon categorized into sets.

¹³ Which today means 7 Member States.

Table 5.1 Table Summarizing the Rights Stated in the Treaties from Paris to Lisbon.¹⁴

Treaty	Right	Civil	Political	Social
Treaty of Paris (1951-1957)	Non-discrimination because of nationality (for workers in coal and steel industries, later all citizens)			
Treaty of Rome (1957-1965)	Free movement of persons and services, regardless of nationality.			
	To accept offers of employment actually made.			
	To move freely within the Member States for the purpose of employment.			
	To stay in a Member State for employment according to the respective Member State law.			
	To remain in the territory of a Member State after having been employed.			
	Equal pay for men and women.			
	Right of establishment.			
Maastricht Treaty (1992-1997)	To move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect.			
	To vote and to stand as a candidate at municipal elections in the Member State in which he resides whether he is a national of that Member State or not, under the same conditions as the nationals of that State.			
	To vote and to stand as a candidate in elections to the European Parliament, whether he is a national of the Member State he resides in or not.			
	To protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.			
	To petition the European Parliament.			
	To apply to the Ombudsman.			
Amsterdam Treaty (1997-2007)	To access to European Parliament, Council and Commission documents.			
	To use any recognized community language and to have an answer in the same language.			
Lisbon Treaty (2007-)	Citizens' Initiative			

Explicitly stated as a right		Stated as a right, but doesn't apply to employment in the public service.		Not explicitly stated as a right	
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¹⁴ Each right is placed into a set, based on the criteria defined in Chapter 4. The sets are mutually exclusive.

5.2 Supranational Harmonization of Sets of Rights

Having identified the sets of rights in the Treaties we can turn to each one and study the degree to which these have been supranationally harmonized through complementary institutions. There is a mountain of information regarding the development of rights and policies in the European Union, and going through the detailed historical development from 1951 to 2013 is beyond the scope of this thesis. The academic debate does, however, point to an overarching development sufficient to test my models. The following sections are based on this scholarly debate. The first section deals with the supranational harmonization of civil rights, focusing on ECJ case law. The second section goes through the harmonization of political rights, looking to the expansion of powers of the European Parliament and whether the criteria set in Chapter 4 for recognizing the lack of harmonized political rights are present.¹⁵ The third section continues with civil rights, focusing on the empirical evidence for the supranational harmonization of welfare, an education system, and whether citizens enjoy an entitlement to coverage of the costs of litigation. We start with the European Court of Justice, and the massive steps it has taken since its inception in 1951, as a complementary institution to civil rights.

5.2.1 Supranational Harmonization of Civil Rights

When it was created in 1951, the Court of Justice did not enjoy legislated power to trump national courts, and therefore we cannot speak of any of these civil ‘rights’ transitioning to becoming supranationally harmonized, regardless of verdicts. This form of ‘citizenship’ was an economic one, granting benefits to the small segment of the aggregated population that fell within its scope. In these early years of the EU development, the legal experts’ initial mission of harmonizing national legislation experienced setbacks (Vauchez, 2010, p. 6). The legal powers of the ECJ were seen to be unworthy of attention in comparison to the Commission and the Council, and so the job of comparative lawyers to write down a common core of European Law was not funneled through the case law of the ECJ. Supranational harmonization was mostly expected to fall within the capacity of the Commission.

This changed in the mid-1960s when the ECJ, through case law, started to expand its powers through broad interpretation of the scope of the rights stated in the Treaties (Jacobs, 2007; Olsen, 2012). Starting in 1963 and continuing into the 1970s and beyond, the ECJ, “in a series

¹⁵ These are: second-class citizenship, political power distributed according to economic merit, unequal distribution of political power geographically, and unequal access to European Parliament due to qualifications.

of landmark decisions, established several doctrines that fixed the legal relationship between Community law and member state law and that rendered that relationship indistinguishable from that found in the constitutional order of federal states” (Weiler, 1994, pp. 512-513). The cases of *Van Gend en Loos* and *Costa v ENEL* are often highlighted as having special positions in this regard (Jacobs, 2007; Vauchez, 2010; Olsen, 2007). These two cases represent what Vauchez (2010, pp. 1-2) refers to as a unique moment of revelation of Europe’s nature, framing the ECJ as the locus of Europeanization. They created a direct link between European institutions and individuals, a link that was not present in the founding Treaties (Olsen, 2007). These two cases represent the start of the supranational harmonization of the civil rights through the ECJ.

In *Vand Gend en Loos*, the Court stated that “[i]ndependently of the legislation of Member States, community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage” (Case 26/62). This introduced the principle of direct effect, where individuals were given the ability of take advantage of their rights and invoke European acts directly before national and European courts. This would turn into a constitutive principle of the EU polity (Vauchez, 2010). In the *Costa* case verdict the ECJ stated that “[t]he transfer by the states from their domestic legal system to the community legal system of the rights and obligations arising under the treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the community cannot prevail” (Case 6/64). This established the supremacy of EU law.

The reason why these two cases have such an impact on the development of European Union citizenship is because they revealed a unified legal order where EU norms have direct effect and prevail over national norms. They also paved the way for the subsequent process of Europeanization through development of case law. These two cases, according to Vauchez, offered Euro-implicated jurists a possibility to “untie the development of European law from direct political supervision” and instead tie it more to the developments of ECJ case law (Vauchez, 2010, p. 20). They started the process of making EU law supreme to that of national law, and show the first steps in the ECJ as a complementary institution providing a legal framework above the national level, restricting Member State variance. With this, the ECJ was at the time the only complementary institution that had taken its first infantile steps in the process of supranational harmonization.

The 1970s saw the start of case law that created an “amœbous citizenship-like status”, which would eventually lead to the codification of rights in the Maastricht Treaty (Kochenov & Plender, 2012, p. 374). From this period on, we see the creation of rules that would eventually form the rights codified in the Maastricht Treaty. In the mid-1970s the state of EU law was one of restricted application. Member States could decide who would possess the supranational status (as it was at the time), and to fall within the scope of EU law a ‘citizen’ would have to be economically active (work) and invoke a cross-border situation (travelling across a political border for work-related reasons). This paradigm of case law—treating citizens as market citizens crossing borders—continued throughout the 1970s and well into the new millennia. Because of this paradigm, the Maastricht Treaty proved to be a challenge for the ECJ’s balancing of the old established common law and the political status of citizenship in the new Treaty (*ibid.*, pp. 375-379).

Although Maastricht provides the status of official rights, this first chapter in a formal European Union citizenship should be seen as a more symbolic and decorative status rather than a supranational citizenship—it added little of value to the pre-Maastricht regime of free movement rights (Kostakopoulou, 2008). It was deemed to be a “mercantile citizenship designed to facilitate the European integration” (*ibid.*, p. 625). Kochenov & Plender (2012, pp. 374-375) argue that the Maastricht Treaty merely codified the pre-existing quasi-citizenship practice, initially thought to provide little beyond this. But it still stated rights that Member States had agreed upon, and these rights were in language disconnected from the previous mercantile view of citizens as developed by ECJ case law.

The post-Maastricht era has therefore seen a tension between seeing citizenship as an internal market ideology and the citizenship logic enshrined in the Treaties (Kochenov & Plender, 2012, p. 370). On the one hand there was the traditional approach found in the pre-Maastricht citizenship, in which cases fell under the scope of EU law if they were cross-border and contained economic activity. On the other hand was citizenship as a personal status, disconnected from these two factors. The latter would increase the amount of cases that would fall within the ambit of EU law. Until recently, the pre-Maastricht paradigm was held up by the ECJ (*ibid.*).

After the Maastricht Treaty, the Court chose to stretch the notion of rights instead of sticking to the old market-oriented interpretation of the Treaties. In the development forward, the

“meaning of the notion ‘cross border situation’ came to be so technical that it has virtually nothing to do with borders anymore” (Kochenov, 2012, p. 28). The barrier of “internal situations” that before had stood in the way of the jurisdiction of the ECJ has now been eroded, and we are witnessing a seemingly infinite potential of enlargement of the application of EU citizenship law through ECJ case law, and in this development “[t]he Court seems to use its older decisions as a springboard in a continuous move forwards leaving the latest decision behind when a new jump is made” (Tamm, 2013, p.33). Kochenov & Plender (2012) see the past twenty years as the inevitable buildup to moving beyond treating citizens as market citizens. In the period of time after the Maastricht Treaty the reach of the ECJ expanded exponentially, and the status of citizenship has to date been constantly strengthened and widened by ECJ case law.

There are a myriad of cases within these twenty years that show this shift, yet there are some the legal debate has marked as particularly important or groundbreaking.¹⁶ In *Michelleti* (Case C-369/90) from 1992, the ECJ overruled Spain in wanting to deny an Argentine-Italian dentist his rights of establishment on the basis that he was Argentinian (d’Oliviera et al., 2011). This was the start of a development of case law that would supranationally harmonize civil rights and restrict Member State variance on the grounds of EU citizenship. Such a development is also traced in the legal debate as continuing in cases such as *Baumbast* (Case C-413/99), *Martínez-Sala* (Case C-85/96), *García Avello* (Case C-148/02) and *Bidar* (Case C-209/03) (d’Oliviera et al., 2011, p. 151).¹⁷ In 2001, *Kaur* (Case C-192/99) repeated this formula, yet the ECJ did not infringe upon the national law of the UK even if given the opportunity (d’Oliveira et al., 2011; Kochenov & Plender, 2012). Yet that very same year, in *Grzelczyk* (Case C-184/99), the ECJ stated that Union citizenship was “destined to be the fundamental status of nationals of the Member States”. The ECJ seemed to be tugging the application of EU citizenship in different directions. This leads us to more recent developments.

In the past three years there are three cases that have been deemed as representing a tectonic shift in the scope of EU law, and challenged the old market-based vision of European law (Kochenov, 2011b; Kochenov & Plender, 2012). These are the cases of *Rottmann* (Case C-135/08), *Ruiz Zambrano* (Case C-34/09) and *McCarthy* (Case C-434/09). In *Rottmann*, the

¹⁶ See also: Jacobs (2007), Kochenov & Plender (2012), and Tamm (2013).

¹⁷ For more information about these cases and their consequences see Jacobs (2007), d’Oliveira, de Groot & Seling (2011) and Kochenov & Plender (2012).

Court placed EU citizenship above German citizenship, and required Germany to take EU law into account. Janko Rottmann was an Austrian national who escaped prosecution in Austria by moving and naturalizing in Germany. When the authorities in Germany discovered this, they moved to deprive Rottmann of his fraudulently-acquired citizenship. The Court became involved because naturalization in Germany had lost Rottmann his Austrian citizenship, and the withdrawal of his newly-acquired German citizenship would also deprive him of his European Union citizenship. The verdict landed in favor of Rottmann. What's most interesting about this case is that the Court made no reference to the traditional scope of cross-border relations—even while having the opportunity to do so since he moved from Austria to Germany—and that it thus contested German law directly against EU law and international law. It made Rottmann a EU citizen before a German citizen (Kochenov, 2011b, pp. 75-80). EU law was now applicable to cases of loss and acquisition of membership (Kochenov & Plender, 2012). d'Oliveira asked the question: “Is Union citizenship the crowbar that will break open the nationality law of the Member States?”, and with the Rottmann case—which invoked EU law on the grounds of EU citizenship and overruled national law—I concur with Kochenov by answering in the affirmative (d'Oliveira et al., 2011, p. 139; Kochenov, 2013, p. 115). “Consequently, virtually any instance of loss (and, necessarily, also acquisition of a Member State nationality is potentially covered by EU law, thus making the ECJ in the words of Gareth Davies, ‘the final arbiter’ in citizenship cases” (Kochenov, 2013, p. 115).

Rottmann is not the only case that has stretched the application of EU citizenship law. The second case in the trio mentioned above, *Ruiz Zambrano* (Case C-34/09), saw the first application of EU law in the complete absence of a cross-border situation, which up until then had been the traditional way in which cases fell within the ambit of EU law. Mr. Zambrano moved from Colombia to Belgium with his wife and child—who were Colombian nationals—but was denied his application for asylum. But the decision included a *non-refoulement* clause, throwing the family into “legal limbo” (Kochenov, 2011b, p. 80). This legal limbo appeared because while they did not have to leave the country, they were not entitled to social security in Belgium and could not take up employment. Zambrano still found work, paid his taxes, and had two more children who became Belgian nationals. When he lost his job, he was denied social security to provide for his family by Belgian authorities—a clear example of reverse

discrimination since his children were Belgian nationals.¹⁸ The ECJ found that his situation was within the scope of EU law, because denial of social security to the benefit of his children—who were Union citizens—would deprive them of their genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union (See par. 74 of Case C-34/09; Kochenov, 2011b, pp. 80-86). Without any reference to a cross-border situation, this case fell within the ambit of EU law because it deprived Union citizens of the enjoyment of their rights. Together with *Rottmann*, *Zambrano* established a new approach by the ECJ, in which the focus is on “Member State interference with the rights of EU citizens” (Kochenov, 2011b, p. 86).

The last case in this trio is *McCarthy* (Case C-434/09). Shirley McCarthy attempted to create a cross-border situation to obtain a residence permit for her Jamaican husband who did not meet the family reunification criteria of UK law, in which case the UK would have to give it to him. McCarthy had never worked outside the UK, but she attempted to invoke a cross-border situation by getting her Irish nationality recognized. Securing Irish citizenship, she claimed that her husband was the family member of a migrant citizen (Kochenov, 2011b, pp. 86-91). The attempt was unsuccessful, but the Court indicated that it was ready to use both the traditional cross-border approach to jurisdiction as well as a new *Rottmann/Ruiz Zambrano* approach. The latter approach therefore doesn't need the presence of a cross-border situation for EU citizenship law to be invoked, opening new ways for the EU to involve itself in national affairs. According to Kochenov, these cases have changed the legal paradigm in the union, with implications for EU citizenship as well as the sovereignty of the Member States, possibly going beyond the traditional scope of ECJ jurisprudence of cross-border situations (Kochenov, 2011b, pp. 55, 66, 68, 86).

These recent developments possibly represent a rapid supranational harmonization of civil rights, connecting rights to a personal and universal status of citizenship and not one based on being economically active and travelling across political borders. This continuing development of case law towards an interpretation closer to what is stated in the Treaties, has led Kochenov to argue that “[...] at this stage, the ECJ has made it absolutely clear that EU citizenship does not *per se* have market-oriented aims and also plays an important role in the

¹⁸ Reverse discrimination is a situation that occurs if EU law is not applicable to internal situations in Member States, resulting in giving Member States the opportunity to discriminate against their own nationals. This is a point I will return to when discussing the harmonization of political rights and second-class citizenship in the next section.

lives of those who are not economically active in the context of the Internal Market” (Kochenov, 2012, p. 14). The ECJ is constantly broadening, and with a development of supremacy of EU law that stretches back to the 1960s, it falls within reason that in any applicability of EU law on the basis of citizenship that causes conflicts with Member State law, “EU law prevails” (Kochenov, 2010, p. 16).

Today, Kochenov argues that the ECJ has contributed to a “rounding up of the circle”, altering the essence of the Member State nationalities it is derived from (Kochenov, 2010, p. 2). The Member States have lost their ability to discriminate on the basis of nationality or privileging their own nationals. They cannot freely banish any citizen permanently without the ECJ being the final arbiter of such a process,¹⁹ and they have lost their ability to decide who will reside and work in their territory and who needs to be sent away (Kochenov, 2011a). The ECJ is now starting to check nationality decisions of the Member States against EU law (Kochenov, 2012, pp. 23-24).

The developments summarized show the supranational harmonization of civil rights, starting in the early 1960s. Since the Maastricht Treaty, these developments have skyrocketed through the ECJ, using case law as a springboard to further harmonize a supranational set of civil rights. Let us now backtrack to 1951 and follow the supranational harmonization of political rights through the European Parliament. This section will also deal with the indicators mentioned in the models for seeing if these rights have been supranationally harmonized, without which we would see: second-class citizenship, political power unequally distributed geographically, political power distributed according to economic merit, and qualifications for candidature in the EP.

5.2.2 Supranational Harmonization of Political Rights

The European Parliament (EP) was introduced alongside the ECJ in the Paris Treaty (1951), then called the Common Assembly. The role of the Assembly was one of “scrutinizing, controlling, and if deemed necessary, censuring a supranational institution, the [High Authority]...” (Rittberger, 2005, p. 73). It was seen as having few powers and little influence, and at the time there was no universal suffrage to elect this Assembly directly (Olsen, 2012; Wiener, 1998). The Assembly, with only a controlling power, was referred to as a “talking

¹⁹ Banishing a EU citizen permanently from a Member State is prohibited (Kochenov, 2010, p. 15).

shop” (Rittberger, 2005, p. 1). It was seen as marginal to the development of European integration, consisting only of delegates from national parliaments having solely consultative powers (Hix, Raunio & Scully, 2003, pp. 191). This view of the EP as a powerless forum lasted up until the 1970s (Corbett, Jacobs & Shackleton, 2003). In its earliest days, the Assembly consisted of parliamentarians delegated by their respective national parliaments, and they thus held dual mandates (Shaw, 2007, p. 102).

In 1960, the EP proposed a uniform electoral procedure by direct universal suffrage, but this was dropped (Shaw, 2007, p. 103). Instead, the supranational harmonization of political rights started in earnest in the 1970s. At the time, the scope of EU law regarding political rights was limited, as Member States were free to determine who was to be granted a supranational status through national law, the rights associated with this status was cross-border in nature, not universal and personal (Kochenov & Plender, 2012, p. 379). Only a small segment, still, was granted rights on the foundation of market integration. Those who were not economically active and travelling across political borders for work-related reasons were excluded from the benefits of membership. Then came the budget treaties of Luxembourg in 1970 and Belgium in 1975, which gave the EP increased powers over the Community budget, a power they used when they rejected and amended the budgets in 1979 and 1982 (Corbett, Jacobs & Shackleton, 2003, p. 354). This increased the power of the EP, which still continues today, and marks the beginning of the enabling of the EP to start harmonizing political rights.

The increased power to the EP was followed by a discussion in the mid-1970s about a directly-elected European Parliament. The initial work done by the EP on this issue “argued strongly for the establishment of a *uniform* procedure for such elections. This would mean that European elections ought to be held according to common rules in all member states” (Olsen, 2012, p. 42). This was not adopted, but the prospect of universal suffrage gained momentum. Poor economic conditions spurred debates about a political union and the democratic problem of continuing integration into the EC without proper representation (Olsen, 2012, pp. 42-43). Another reason for the resurgence of the debate around direct elections of the EP was because the increase in its power during the 1970s demanded democratic representation (Shaw, 2007, p. 104). The Paris Summit in 1972 also saw the starting of a political union, even if these early initiatives proved largely empty (Shaw, 2007, p. 99).

The Council approved of direct voting rights for European citizens in 1976, and the first election was held in 1979 (Olsen, 2012, p. 43). This marked an important step in the supranational harmonization of political rights, though its effect was modest. It provided European citizens formal access to participation through the vote, but nationals of the Member States resident in another Member State were denied this unless national law said otherwise (Shaw, 2007, p. 105). Member State sovereignty was still in the driver seat as “voting rights were clearly circumscribed through the electoral systems on the national level” (Olsen, 2012, p. 44). But it was still a huge step in the supranationalization of the European Parliament, as it paved “the way to the more rapid rate of change that came later” (Corbett et al., 2003, p. 356). The inherent problem with this system was the apparent shackles that bound the EP in their lack of ability to decide EU legislation or policies, or elect a government (ibid.).

In the 1980s the attempts made in the 1972 Paris Summit were picked up again “as ideas about political union constructed around a notion of citizenship were revitalized” (Shaw, 2007, p. 99). From there grew debates about special rights for nationals of the Member States, not just workers. However, the actual realization of political rights across all Member States was approached with caution, as there was little faith in the Rome Treaty’s legal power to grant political rights to the nationals of the Member States at the time (ibid., p. 101). With the Single European Act in 1987 came the co-operation procedure²⁰ and the assent procedure,²¹ giving the European Parliament more legislative powers and making it easier for the Council to accept legislative proposals from the EP rather than reject them (Corbett et al., 2003; Rittberger, 2005; Hix & Høyland, 2013). With this, the EP started to become more than the advisory body it had been up until that point. The lack of power it had in comparison to the Council and the Commission was still evident, and some still dismissed it as a purely advisory body (Meehan, 1993). Since then the powers of the European Parliament have grown substantially, and it started to challenge the role of the national parliaments, thus contributing in the supranational harmonization of political rights. Debates regarding the extent of voting rights, the uniformity of the electoral systems and whether political rights were to be fundamental continued throughout the eighties. They were not, however, formally implemented until Maastricht in 1992 (Shaw, 2007).

²⁰ This gave the Council the power, with support of the Parliament and acting on a proposal from the Commission, to adopt a legislative proposal through a qualified majority. This was repealed in the Lisbon Treaty of 2007.

²¹ Requiring Parliament assent on certain decisions made by the Council of Ministers.

With the Treaty of Maastricht came an increase in the EP's power, as it gave the EP the right to a vote of confidence vis-à-vis the Commission and the right to codecision (Corbett et al., 2003). This right enabled MEPs to reject Council positions, in effect giving them veto power (Hix & Høyland, 2013). By 2003 the EP was seen as having significant legislative and executive investiture/removal powers “and all the trappings of a democratic parliament that flow from such powers: powerful party organizations, highly-organized committees, a supporting bureaucracy and constant lobbying from private interest groups. Indeed, given the EU's separation of powers system—where a majority in the EP is not tied to supporting the Commission of the Council—it is reasonable to claim that the EP is one of the world's more powerful elected chambers” (Hix et al., 2003, pp. 191-192).

EP elections were carried out by different means in different Member States both before and after Maastricht (Meehan, 1993; European Parliament, 2013a). As such, the political rights were not made supranational, but were still nested at the national level: There were no hints towards a harmonization of national electoral systems at the time around the Maastricht Treaty (Martiniello, 1997).²² The uniform procedure has not yet been agreed upon by the Member States,²³ and as of today the Member States are free to decide how the Member of the European Parliament (MEP) elections are to be held, within certain democratic criteria (European Parliament, 2013a).²⁴

The Amsterdam Treaty extended the scope of co-decision for the European Parliament, and gave the right to confirm or reject the President of the Commission. “It is a clear recognition that the Parliament is no longer a non-identified political object, but has become part of the political process at European level in a way it was not in 1986. The old times have most definitely gone” (Corbett et al., 2003, p. 364). According to the EP official website, the subsequent Lisbon Treaty represented almost a doubling of EP power, now being on an equal footing with the Council in deciding the vast majority of EU laws and bringing over 40 new fields under the procedure for co-decision (European Parliament, 2013b). It also introduced a

²² Although Council Directive 93/109/EC (1993) grants the citizens voting rights, there are limitations for elections to European Parliament: a Member State in which the proportion of non-national EU citizens exceeds 20 percent of the total electorate, can restrict the vote as well as a candidate on the basis of how long they have resided there (ibid., Article 14). In practice this refers to Luxembourg only, which restricts voting rights for non-nationals to those who have resided there for five of the last six years, and candidature to those who have resided there for then of the last twelve years (Shaw, 2007).

²³ For an overview of variations in the ballot structures for EP elections, see Farrell & Scully (2007, p. 78).

²⁴ These are: equality of the sexes, a secret ballot, a voting age of 18 (except Austria, where it's 16), direct universal suffrage and proportional representation.

unified budgetary procedure, where the EP now has a say in all areas of EU expenditure (Hix & Høyland, 2013, p. 173).

The Treaty of Lisbon also introduced the right of citizens' initiative. All who are old enough to vote in EP elections are eligible to start or vote on an initiative, but to start one there must be at least seven different people from seven different Member States. These seven people form a committee responsible for managing the initiative throughout the process. The maximum lifetime of an initiative is one year, so that the subjects of the initiatives remain relevant (European Commission, 2011). Once the requirement of one million required statements of support is collected, national authorities in each country represented must separately verify the statements. Organizers will be invited to meet the Commission to explain their initiative in detail, and are also given the opportunity to present it at a public hearing in the European Parliament. After an examination of the initiative, the Commission will issue a formal response of whatever action it takes (if any) and why.

It would appear that political rights are well on their way to becoming harmonized through the EP, but others are not as confident in their newly found powers. In accord with the Maastricht Treaty, the European Parliament is only to be 'consulted' once during the procedure of legal initiative made by the Commission, it "has no right of co-decision and can only propose amendments", and the Council of Ministers can veto the implementation of legislation (Shaw, 2007, p. 129). Moravcsik (2005, p. 369) has little confidence in the EP's powers, as he deems it as "weaker than national counterparts", and its elections are "apathetic affairs, in which a small number of voters act on the basis of national rather than EU concerns". Sharing this view are also Føllesdal & Hix: though recognizing the rise in EP powers since the 1980s, they still see the EP as a weak institution compared to the Council. The majority of EU legislation is passed under the consultation procedure, where the EP has "only a limited power of delay" (Føllesdal & Hix, 2006, p. 535). Hix & Høyland argue that the Nice and Lisbon Treaties did not see any major increases in EP legislative power (2013, p. 173). Also, as Kochenov asserts regarding the citizens' initiative, it is not binding, and its actual effect as a political right is debatable: "The possibility of active participation in politics at the European level proper is minimal – quite an obvious reality which no window-dressing in the form of non-binding citizens' initiative can hide. Moreover, the ECJ does not even treat electoral rights as EU fundamental rights, as the case-law abundantly demonstrates" (Kochenov, 2012, p. 17).

The above leaves doubts about the extent to which political rights are harmonized, but the developments from 1957 still point to an undeniable growth in EP powers with the veto power, its appointment and dismissal powers over the Commission, its budgetary powers and its increased legislative powers since the Treaty of Amsterdam (Zweifel, 2002, p. 823). Its status is therefore debated, yet compared to the situation in 1951 the EP has clearly gained powers and contributed to the beginning of a supranational harmonization of political rights as a complementary institution. To further assess the status of harmonization of political rights we turn to the shortcomings I would expect to be present if they weren't harmonized.

In the models generated in Chapter 4, I identified the consequences from a lack of harmonized political rights at the supranational level. I expected supranationally-harmonized political rights to remove the following: second-class citizenship, an unequal distribution of political powers geographically, political power being distributed according to economic merit; and restrictions on entering the European Parliament. The presence/removal of these shortcomings would show the extent of which political rights have become harmonized at the supranational level. Let us go through each of these criteria, starting with the identification of four types of second-class citizenship.

Second-class citizenship has been an issue for EU citizenship since its inception, and is perhaps its biggest challenges other than its apparent democratic deficit (which will not be addressed here). In its initial phase in the Paris and Rome Treaties, second-class citizenship fell upon those who did not fit within the migrant worker paradigm. Through the workings of the EP and discussions about a political community in the 1980s, an attempt was made to solve this particular problem in the Treaty of Maastricht, expanding citizenship to all nationals of Member States. But as mentioned, the traditional case law of mercantile citizenship by the ECJ has continued well into the new millennium, and it is not until recently that we have seen a moving away from this paradigm of treating citizens as “market citizens”.

Second-class citizenship is also created at the national level as a consequence of EU citizenship, because third-country nationals (TCNs) are excluded from this status, though affected by EU law. This widens the gap between TCNs and Member State nationals. “They live in the same Union as EU citizens and equally contribute to its flourishing, yet the legal protections applicable to them in EU law are minimal indeed” (Kochenov, 2010, p. 22). The

voting rights for TCNs are still not harmonized between the Member States (Shaw, 2007).²⁵ Naturalization processes also differ; for example, it takes longer for a TCN in Italy to naturalize than an EU citizen (10 years, compared to 4 years) (ibid., p. 2). Kochenov (2011a) implies that TCNs are worse off relative to EU citizens, as TCNs are subject to national law and have no additional rights.

The lack of national voting rights for EU citizens is also contributing to a notion of second-class citizenship, or at the very least dilemmas in the acquisition of political rights. The reason for this is that in order to gain the political right of voting in another Member State you need to forfeit those connected to your current Member State. “The restriction of voting rights through privileging the national level in terms of access to them thus points to a conception of citizenship which was political, yet evidently constrained in its extension” (Olsen 2012, p. 44). Kochenov sees this as a barrier to wider political inclusion in the EU polity. Moreover, national elections are most relevant for the supranational harmonization of EU citizenship because they are the basis on which the Council of Ministers, as the main legislative body, is formed. Meehan identifies this as the creation of a second-class citizenship (1993, p. 149-150).

A fourth type of second-class citizenship is evident in the paradoxical problem of reverse discrimination. Reverse discrimination happens when a particular Member State can discriminate against its own nationals residing in that state, because of the situation being strictly internal and not accessible to EU citizenship law. According to Kochenov (2011a, p. 334), the principle of non-discrimination is not directly connected to the status of citizenship, and it has to be activated separately from it. There are therefore some cases that do not fall within the scope of EU law because they are deemed wholly internal. This means that EU citizens residing in another Member State can be better off than nationals of that particular Member State (Kochenov, 2010). “More EU citizens stay in their own Member States, caught by reverse discrimination by virtue of possessing the nationality of that, not some other Member State. This is a high price to pay for the exclusive access to the ballot at the national level” (ibid., p. 19-20). Kochenov argues that reverse discrimination “makes it clear that possessing the nationality of the Member State of residence can make one worse off” (Kochenov, 2011a, p. 335). With the recent expansion of ECJ powers through case law and through cases such as *Rottmann*, there is reason to believe that the problem of reverse discrimination might be mitigated in the future.

²⁵ For an overview, see tables A1 and A2 in the Appendix.

Regarding the shortcoming in the distribution of political power, there have been from the beginning problems with representation at the European Parliament. Both before and after the introduction of universal suffrage there were inequalities of voting power (Taylor & Johnston, 1978; Fowler, Polhuis & Pain, 1983). Even with the introduction of a one-person-one-vote-system, the situation still remained that “[t]he larger the country the poorer its representation” (Taylor & Johnston, 1978, p. 62). At the aggregated level, there is still an unequal distribution of political power in the relative worth of one vote from a citizen of a smaller state to that of a larger state (Kincaid, 1999). With the enlargement at the turn of the millennium, the Nice Treaty redistributed the seats in the EP, and the EP is made up of 754 Members elected in 27 Member States—these seats are shared out proportionately to the population in each Member State (European Union, 2007; European Parliament, 2013c). The scholarly debate has not devoted much attention to this aspect of representation, however.²⁶ This could be because uneven distribution of political power can be necessary to protect minorities in nation states—or in this case smaller Member States—and is therefore not considered a major problem.

The shortcoming of political rights being distributed according to economic merit is not an issue today. The initial phase of EU citizenship the benefits of membership were granted to those who fell within the category of worker-migrants. This would have resulted in political rights being distributed according to economic merit, but at the time there were not substantial political rights to speak of at the supranational level. There is therefore no reason to speak of political rights remedying this defect of civil rights, because the democratic deficit limited any political rights whatsoever. When universal suffrage was introduced, this potential problem was removed. The introduction of universal suffrage and the right to stand as candidate for EP elections also removed the problem of qualifications for parliament, as these positions were originally occupied by MPs of the Member States, holding a dual mandate.

With the debatable powers of the EP, the problems of second-class citizenship, and since the shortcomings of a market based civil rights citizenship have not yet been remedied, it seems that the ECJ is the powerhouse institution propelling the progress forward. The supranational harmonization of political rights has started, but the extent to which they are harmonized is

²⁶ The issues that have attracted more attention are: that EU decisions are made primarily by national ministers in the Council and the Commissioners, that the EP is too weak, that citizens are not able to vote on EU policies except in periodic referendums on EU membership or Treaty reforms, that the EU is too distant from its citizens who consequently cannot understand the EU, and that as a result of all of this the EU adopts policies that are not supported by a majority of citizens (Hix & Høyland, 2011, p. 132).

debatable. Let us now backtrack once again to the beginning of the EU project in the 1950s, and track the process of supranational harmonization of social rights.

5.2.3 Supranational Harmonization of Social Rights

The road to supranational harmonization of social rights is a bumpy one, as there are continuous developments, setbacks, and also varying opinions about the scope of social policy in the European Union. In my models I expected social rights to be supranationally harmonized by an institution(s), which introduced an overarching welfare and education regime, thus Member State variance. Using this as strict criteria, it is difficult to say that such a process has taken place. This does not mean that there has not been any developments at all, but rather that these developments have happened on the premises of a mercantile citizenship. To clarify, we need to look at the development of the social dimension of EU citizenship from its inception. The first part concerns mostly the development of supranational social policy, especially welfare policy and the role of the worker citizen in receiving social rights, and the last part concerns that of the development of a supranational education system and the cost of litigation.

It is clear that the rights stated in the embryonic stage of EU citizenship—in the Paris and Rome Treaties—were mainly civil rights, and these had not yet been transitioned to the supranational level through the European Court of Justice. Together, the Paris and Rome Treaties introduced civil rights that were directed to “worker citizens”, or “market citizens.” In terms of social rights (or rather, provisions), the period from this embryonic stage up until 1973 was what Mosley (1990, p. 149) called one of “benign neglect”, where the economic factors dominated any considerations, and there was little action (ibid.; Lange, 1993). The harmonization of social rights was first discussed during the Treaty of Paris and the subsequent Treaty of Rome, but there were no explicit statements about common policies in either of them (Meehan, 1993). It was a period where Member States made their own social policy, and attempts at social harmonization (mostly French) were rejected and abandoned up until the 1970s (Mosley, 1990; Rye, 2004). The social provisions in the Rome Treaty did not grant any institutions the specific *power* to secure social rights for all, but rather enabled the Council to provide social security to facilitate the free movement of workers (Rome Treaty, 1958, Articles 52-58). Complementing these social provisions were two institutions: the Economic and Social Committee (ESC) and a European Social Fund (ESF).

The ESC consisted of representatives of various categories of economic and social activity from each Member State, appointed by the Council. It was only given an advisory capability in the Treaty of Rome (1958, Articles 193-198). The role of the ESC was closely scrutinized by Lodge & Herman, who questioned whether its existence could be justified, because its role in decision making “appears to be invisible” (Lodge & Herman, 1980, p. 266). The ESF was made to improve the employment opportunities for workers and raise their standard of living (Treaty of Rome, 1958, Articles 123-128). Administered by the Commission, it was to help ensure productive re-employment by vocational training and resettlement allowances. This would benefit workers who had their employment reduced or temporarily suspended. The ESF was greatly expanded in the 1970s, and was in the beginning of the 1990s the “largest EC activity in the area of labour market and employment programs” (Mosley, 1990, p. 151). According to Mosley it has, however, had a reputation for being a source of finance for nationally-decided programs, and, as we shall see, the prospect of a supranational harmonization of social rights in terms of welfare and education is still a long way off.

The Treaty of Rome tasked the Commission to give opinions in matters of the co-operation of Member States in the areas of employment, labor law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents, the right of association and collective bargaining. The Treaty also introduces the principle that men and women should receive equal pay for equal work (Treaty of Rome, 1958, Articles 118-199). Still, the period up until the 1970s left the EU as a coordinator of social policy, not a harmonizer of supranational social rights (Hantrais, 2007).

Needs for social rights were first recognized in the 1970s (Mosley, 1990). Insofar as intervention was made regarding social provisions, these at first only concerned the improvement of the position of workers (Syrpis, 2007). The argument against any distortion upon the rules of free competition weighed so heavily that in the years to come, the extensive harmonization of social policy was jettisoned (Hantrais, 2007). Yet in this apparent no-mans land for social rights, the ECJ strengthened the principle that different genders should receive equal pay for equal work as soon as the political climate in the 1970s allowed it (Lampin, 2009; Mosley, 1990). In the late 1970s and 80s there emerged action programs and binding legislation to promote equal opportunities for men and women (Hantrais, 2007). This promotion of gender equality for workers “has become one of the Union’s success stories in social policy” (Lamping, 2009, p. 501), and can be seen as the modest beginning of a

supranational harmonization of social rights, even if not at all directly creating a supranational welfare system. What was mainly left of social policy from this period was the “co-ordination of social security systems to facilitate freedom of movement for workers within the Community [...] and [...] the activities of the European Social Fund” (Mosley, 1990, p. 150). As will be discussed later, this appears to be an example of social rights introduced in the absence of supranationally harmonized political rights, as presented in step two of model 2.

The Single European Act contained social provisions, just like the Rome Treaty, yet “the role of the broader social dimension in the creation of a single market [was] not explicit within the [...] Treaty” (Addison & Siebert, 1991, p. 598). The Single European Act (SEA) did not do much in the area of social policy, though the following Community Charter of the Fundamental Social Rights of Workers was seen as the social dimension of the SEA (Hantrais, 2007). The Community Charter was adopted by 11 of the 12 Member States in 1989 (the UK being the exception), providing social rights for workers. Mosley (1990, p. 156) named this the “centerpiece of the Commission’s ‘social dimension’, as it called for minimum standards in major areas of labor law. It addresses “[...] issues as Sunday work, annual leave, part-time employment, minimum pay, work safety, child labour, social security, union membership and collective bargaining” (Mosley, 1990, pp. 156-157). The Community Charter was not binding, however, and it left the implementation to each Member State (Sykes, 1997). According to Addison & Siebert (1991, p. 623) “[...] the Charter does not offer an effective means of achieving the expressed goal of social equality”. The end result was very little intervention in the social area by the European Community (Lange, 1993).

With the signing of the Maastricht Treaty in 1992, Lange (1993, p. 29) was not optimistic about the prospects for a supranationally harmonized social policy in Europe, as the “[...]interests of governments, the fragmentation of social interests, and the policy-making rules of the Community itself militate against anything so broad in the social dimension”. He anticipated the social dimension of the EU to still be dominated by national political economic processes, not a supranational one. There was also the issue of new Member States having completely different welfare systems based on national political agendas, which proved an obstacle to a harmonized welfare system. Each wave of membership coming into the Community made “harmonization of social protection systems a more distant goal” (Hantrais, 2007, p. 37).

The 1990s, however, did see some developments in the supranational harmonization of social policy in the European Union, even if rudimentary and deficient compared to well-established welfare states in the EU. The Maastricht Treaty contained an annex, “Agreement on Social Policy”, which took up the principles set in the Community Charter a few years earlier (Hantrais, 2007). This agreement removed references to harmonization of social systems in the Rome Treaty and replaced it with specific objectives regarding working-related issues and social protection. The agreement was given a complementary role to the Community in areas of health and safety at work, gender equality and the integration of people excluded from the labor market (ibid., p. 11). It introduced a shift from unanimity to qualified majority voting on a number of issues of social policy, and it was to dictate the social agenda (Hantrais, 2007; Lange, 1993).²⁷ But even combined, the Community Charter and Agreement on Social Policy did not signal an ability to create an overarching social polity for the EU (Hantrais, 2007).

The green and white papers on European social policy in 1993 and 1994 were prepared for the next phase in in the EU’s social policy and “aimed to preserve and develop a European social model” (Hantrais, 2007, p. 13). Though workers rights still had top priority, the papers addressed the establishment of social rights of citizens as a constitutional element in the Union. The white paper on growth turned attention towards education and training systems aimed at employment issues. With the Treaty of Amsterdam the British joined the Agreement on Social Policy, and it was incorporated into the Treaty.²⁸ The Charter of Fundamental Rights²⁹ introduced rights for Europeans, extending the “boundaries of social policy beyond the workplace to the reconciliation of family and professional life, the protection and care of children and older people, social and housing assistance, preventive health care, and religious belief and practice” (Hantrais, 2007, p. 17). Yet as mentioned, the legal implications of this Charter in case law is still not clear, and these social rights are not linked to EU citizenship explicitly.

At the turn of the millennium the much debated ‘open method of coordination’ (OMC) was introduced, in which the Commission and Member States act together to first exhort, then pressure other member states to “achieve the desired social and economic outcomes from commonly approved objectives” (Threlfall, 2007, p. 278). Threlfall argues that laws regarding

²⁷ Issues still requiring unanimity: social security and social protection of workers, protection of workers made redundant, representation and collective defense of workers and employers, conditions of employment for third-country nationals, and financial contributions for job promotion (Hantrais, 2007, p. 11).

²⁸ The UK did not sign.

²⁹ Sidelined with the Treaties when the Lisbon Treaty was signed.

work have been harmonized to the extent that citizens now “experience living or working in the EU as if they were in a single country” (ibid., p. 274). Directives regarding specific worker rights continued to be introduced after the Maastricht Treaty (ibid.). Contrary to this Moravcsik (2005) argues that the scope of social rights is highly exaggerated, and that both social welfare and education are areas that remain essentially untouched by the EU. The exchanging of information, benchmarking policies and evaluation of results present in the OMCs has shown very modest substantive results on national policies. He also points out that the EU does little taxing, that its “tax” is transfers from national governments, and that the distributing of these funds are limited to a small range of policies (ibid., p. 368). Because welfare and education are highly fiscal sectors of social policy dependent on direct taxation, they remain within the Member States, and the role of the EU is mainly through regulations.

Doubts about a European social welfare state are shared by Lampin (2009), as the EU hardly has any tools to engage in a top-down harmonization. He argues that the national welfare states will remain the primary institutions of social policy, yet they will continue to be affected by EU restrictions. The social policy of the EU is mostly concentrated on fundamental employment rights and employment policy, meant to support the market-integrative aspect of the Union. Harmonization of social policy has to some extent occurred when it’s coupled with the economic policies, where the Commission has made use of its qualified majority voting and the ECJ has backed this up. The ECJ has had a special role in harmonizing the social policy of the EU, as it has played the role of a substitute legislator with wide-ranging powers and plunged into the “political vacuum left behind by the non-decisions of governments in the area of social policy alignment” (Lampin, 2009, p. 504). In this regard, the principle that holds the most promise is perhaps the principle of non-discrimination present in the Treaties since Rome. This principle, if interpreted like in *Sala* (Case C-85/96), could grant social rights on the basis of claiming a right to not be discriminated against on the basis of nationality (Kostakopoulou, 2007). Initially, the principle of non-discrimination was wider in the exact wording than other rights, as it was not directly attached to the migrant worker paradigm (Olsen, 2007). Previously, the activation of this principle depended on cases falling within the ambit of EU law. With the *Rottmann* case opening up new possibilities for the activation of EU law outside of cross-border situations, the principle of non-discrimination might prove more useful for the benefitting of social rights (Kochenov, 2011b).

The implications of the post-Maastricht paradigm is varied and uncertain. Kleinman (2002, p. 219) does not see any decline in national welfare, but rather recognizes the “continued diversity in the extent, form and content of European welfare states”. The focus of EU social policy remains focused on the labor market (ibid., p. 221). Bazant & Schubert (2009, p. 513) conclude that there is no such thing as a European welfare model. Some argue that the central characteristics of EU welfare continued to be one of plurality, a “high level of differentiation and variance between Member States” (Schubert, Hegelich & Bazant, 2009, p. 3). Scharpf (2002) argues that European social policies are still impeded by the diversity of national welfare states, diversity which the Organized Methods of Coordination (OMCs)³⁰ cannot solve, and Schall (2012) recognizes that the vast differences between Members States results in these continuing to be the claimants of welfare. The apparent outcome of this development is a collection of very diverse Member States who have limited their sovereignty in certain social policy areas, mostly related to the rights of workers. Threlfall (2007) agrees with this, writing that as far as social policy at the EU level is concerned, the binding regulations touch upon working conditions rather than welfare and education systems, the latter being a concern for national policy. The supranational harmonization of social rights is therefore to be found within this field, and so I turn to the harmonization of a supranational education system.

The developments in the field of education systems have largely been within the realm of vocational education and training—higher education falling within this category. The EU has limited involvement in education at the national level (Kleinman, 2002, p. 221). The Treaties of Paris and Rome make no mention of general education as a part of social policy, but instead mention vocational education and training (VET) as a way to strengthen the economic integrative aspect of the Union (Ertl, 2006). The EU interpreted higher education as a part of vocational education. This was to become the general tendencies of EU policy up until today. General education was left outside the competence of the Union, but the ECJ embraced VET through initiatives in the 1970s and case law in the 1980s. The EU took some small steps in the mid-1970s in prioritizing education as a means for employment, but cooperation in the field of general education began in earnest in 1974 with the creation of the Education Committee, composed of Member States’ Ministers of Education and the Commission (Ertl, 2006; Hantrais, 2007). This signaled a wish to undo the division between general education and VET. But regardless of the intent, the “impact on Community policies on national

³⁰ A policy where the EU sets timetables for implementations—implementations that in turn are evaluated.

systems of education and training was limited because of the modest and fragmented nature of Community projects, and also because the unclear legal foundations allowed the Member States to interpret and implement Community policies selectively” (Erlt, 2006, p. 9).

The Maastricht Treaty dealt with general education explicitly for the first time, but the role of the EU was to be a supportive, supplementary and cooperative one (Ertl, 2006, p. 10). The competences of the EU was again left at VETs, the result being decentralized administration and the setting up of national programme agencies in the Member States. The Maastricht Treaty excluded supranational harmonization as a price for including education at all, since some Member States were reluctant to harmonize education systems. After Maastricht, there continued a programme-approach to the education policy, and the OMC was also to be utilized here as part of a modest harmonization strategy. Through this system, Member States set timetables for implementing policies of education; these are followed up and evaluated (Ertl, 2006). The effect of these has been somewhat humble, as Member States have not been in a hurry to implement them due to their unwillingness to surrender national autonomy, and there are still differences between Member States in the length of compulsory schooling (Ertl, 2006; Hantrais, 2007). As concluded by Kleinman (2002, p. 224), “welfare will continue to be mainly a national and subnational responsibility. There is no prospect of a European welfare state taking over the financing, regulation and delivery of health care systems, social protection, schools and colleges [...] from member-state governments”.

There have been developments in the harmonization of higher education systems, however. The explicit introduction of education in the Maastricht Treaty was followed up in the Amsterdam Treaty, which moved higher education closer to center stage (Corbett, 2012, p. 43). The Bologna Declaration was signed by 29 European countries in 1999, aiming at creating a European Higher Education Area. It aimed to facilitate the mobility of students, graduates and higher education staff and offer broad access to high-quality higher education (Bologna Process, 2009). The Copenhagen Declaration, with the intent of enhancing cooperation in VET was signed in 2002 (Ertl, 2006, p. 14). Erlt argues that EU policy-makers have managed to revitalize failures in this field from the 1980s and 1990s (*loc. cit.*). Brennan & Andreu (2012, p. 114), however, point to inequalities produced by the Bologna Process, in which the access and persistence of students with fewer economic resources is hindered. In some aspects, therefore, it conflicts with notions of equality and social justice.

Lastly, the introduction of social rights to civil rights (in the models) carried with it the expectation of covering the costs of litigation. This would strengthen the enjoyment of civil rights by making citizens equal before the law in practice, and keep legal rights from becoming an economic issue. As of today there is no guarantee that the EU will cover the costs of litigation for EU citizens. “Litigation costs in civil and commercial matters are governed by national legislation and costs are not harmonized at the EU level. Thus, costs vary from one Member State to another” (European e-Justice Portal, 2012a). There is the possibility of applying for legal aid, a right enshrined by the European Convention on Human Rights and the Charter of Fundamental Rights. Legal aid is separated into two categories, national disputes and cross-border disputes. The first requires that you apply for legal aid under the national regulations. For the second, a Council Directive establishes minimum common rules to legal aid for cross-border disputes (Council Directive 2002/8/CE). This Directive leaves the judgment of whether a person is eligible for legal aid up to the Member States. If legal aid is granted, it covers the entire proceedings as well as the costs of enforcing the verdict. According to a report on the costs of litigation, this does not provide for minimum standards for access to, or levels of, legal aid; “It does not deal with the broader issues of the actual costs of litigation” (Report for the European Commission, 2006, p. 21). The Directive applies to EU citizens, but also citizens of other countries who regularly reside in one of the Member States and cannot afford litigation, referring to the non-discrimination principle. There is no EU legislation on legal aid for cross-border criminal cases (European e-Justice Portal, 2012b). The current legal framework as proclaimed in the Directive has yet had little impact (Report for the European Commission, 2006). As costs for litigation seems to vary across Member States, there is as of today no complete harmonization of this social ‘right’, though it can be seen as a modest beginning.

In sum, there is little evidence that we now have a supranationally harmonized welfare and education system. According to the criteria set in the models, in order for a supranationalization to happen and Member State variance to be restricted, there would have to be explicitly-stated social rights regarding welfare and education that are binding upon the Member States, as well as coverage of the costs of litigation. No such rights are explicitly stated in the Treaties, and the development of social rights between 1951 and 1992 does not point in the direction of supranationally harmonized social rights. It is therefore highly debatable whether one can speak of there being signs of such a process for EU citizens.

Mosley (1990) regards the social dimension of the EC as failing in providing homogeneity in social security systems; he even argued that differences in social security systems may even have been greater in the 1990s than they were just after the Rome Treaty. Mosley's assessment of the development of social rights in the pre-Maastricht era is summed up neatly as he wrote in 1990 that "[t]he existing institutional diversity in social security systems, labour law and industrial relations is an insurmountable barrier to a harmonization strategy within the EC for the foreseeable future. 'Downward' harmonization would be unacceptable to countries with generally higher standards of social security, and 'upward' social harmonization is beyond the financial capacities of the poorer countries and is rejected by their governments" (Mosley, 1990, p. 162).

Added to this, the infrequent reference to social rights in the Treaties up until Lisbon does not inspire confidence in the development of social rights since 1951. There have been developments that benefit workers, especially so for the equal pay for men and women, and in a broad sense these steps can be interpreted as a start of a process of supranational harmonization. This development, starting in the 1970s, did not set a foothold, and civil rights is still the dominant set of rights through the powerhouse that is the ECJ. Today there is no official entitlement of EU citizens to have the costs of litigation covered in the ECJ, and there is no right to harmonized education at the supranational level.

The empirical data summing up the rights in the Treaties and analyzing the supranational harmonization of these will now be juxtaposed with the models presented in chapter 4.

6. Discussion

I argue that the empirical developments of Chapter 5 are closest in fit to model 1, depicting the Marshallian “chain” in which civil rights came first, followed by political rights and social rights in that order. This is following the strict criteria of the models. If we relax these criteria, the empirical events fit a model combining the expectations of model 1 and 2, the latter depicting the development if social rights preceded political rights. Let us start with discussing the common ground of these two models: the first step depicting civil rights.

Civil rights were introduced already in the embryonic stage of EU citizenship in the founding Treaties of Paris and Rome, and were also the first set of rights to begin harmonizing at the supranational level through the case law of the ECJ in the 1960s. The expected consequence of this, as stated in the models, was an array of rights—constantly expanding in number—granted to a small segment of the aggregated population, and that the status would expand to include larger segments of the population. The principle of these rights would be to make citizens free and equal before the law, more specifically: liberty of the person, freedom of speech, thought and faith, right to work with what you want and where you want, the right to conclude valid contracts and the right to own property. I expected the process of harmonizing these rights to happen through case law, in which the ECJ would establish supremacy over Member State law, creating a universal status of citizenship at the EU level. The shortcomings of this type of citizenship was expected to be second-class citizenship, political power distributed according to economic merit, unequal distribution of political power and qualifications for entering the European Parliament. I also expected there to be no harmonized social rights, offering no welfare and education or support for the costs for litigation. To a large extent, these expectations were met.

First of all, the initial period of EU citizenship—dominated by economically-centered civil rights—granted benefits to a small segment of the aggregated population of the Member States: migrant workers travelling across political borders. In the Rome Treaty, civil rights were the only rights that were explicitly stated. Following this, the ECJ took the first step towards harmonizing these rights at the supranational level in the 1960s when they in *Van Gend en Loos* and *Costa* established the direct effect and the supremacy of EU law. These two cases provided the foundation for the expansion of the status of citizenship that we are witnessing today, *Rottmann* and *Zambrano* being the latest and most prominent examples of this. It is therefore safe to say that the civil rights were the first set to start a process of

supranational harmonization. The number of rights has increased since 1951, and civil rights is also today the most dominant set of rights in the European Union through the extensive power invested in the ECJ. In recent years, the development of case law has shaken the bedrock of national sovereignty, and is potentially establishing a harmonized civil rights citizenship at the supranational level and expanding the number of cases to fall within the ambit of EU law.

The expectations regarding the shortcomings of this type of citizenship were also to a large extent confirmed. A lack of political rights in the form of second-class citizenship proved to be both present and persistent throughout the existence of EU citizenship. It was initially present in the market-based citizenship in the early Rome and Paris Treaties, but it is also evident today in the denial of voting rights in national elections for EU citizens, the exclusion of TCNs from political influence, and the problem of reverse discrimination. There was also an unequal distribution of political power geographically across the Member States, as the larger states suffered from poorer representation. This does not necessarily pose a problem that nationals of Member States otherwise wouldn't face at the national level, and the scholarly debate has devoted its time to other and more pressing issues. In the early stages of the Union the MEPs were dually mandated MPs at national parliaments, and there were therefore requirements for candidature. But the early European Parliament did not have much power, and there was no problem of political power being granted on the basis of economic merit, because falling within the mercantile scope of EU citizenship did not grant you any political rights at all. This expectation is therefore rendered irrelevant. Political rights were largely the responsibility of Member States in this period, as there was no directly-elected European Parliament. There were social provisions, not rights, introduced in the early Treaties, yet these were made to support the market-integrative aspect of the European Union at the time and were not harmonized supranationally. Lack of social rights undermines the existence of civil rights in EU citizenship, because lack of a supranationally harmonized welfare and education system and lack of support for the costs of litigation theoretically hinders the full enjoyment of civil rights.

As for the expected rights to be introduced in this type of citizenship, these did not develop entirely as expected. They were not introduced in the particular interest of making people free and equal before the law, but rather in the interest of market integration, from which the rights introduced arguably were by-products. The specific rights mentioned above did not

correspond to my expectations, apart from those related to work. The rights I did expect can be found in the Charter of Fundamental Rights, but these rights are separated from the status of EU citizenship, and sidelined along with the Treaties.

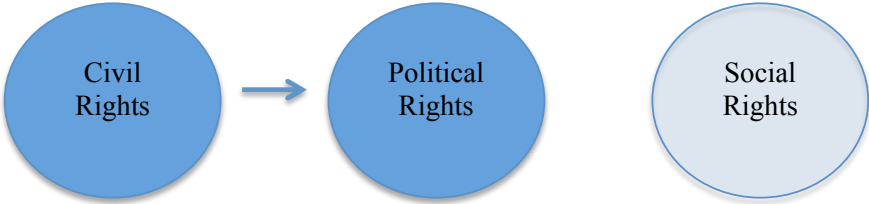
The start of European Union citizenship can therefore be explained by a Marshallian analysis represented in model 1 and 2, as most of these expectations were met. Some shortcomings of civil rights are still present, which indicates that the other sets of rights have not come as far in the supranational harmonization as civil rights. This brings us to where the paths of models 1 and 2 split: one expects political rights to come next, the other social rights.

As mentioned earlier, Soysal (1994) pointed out that social rights preceded political rights in EU citizenship, and to a certain extent this argument holds water. The social provisions in the early Treaties complemented the civil rights aspect of EU citizenship (as model 2 would lead us to expect) by promoting the right to travel across political borders for work. But the continued development of these social provisions—not explicitly stated rights—points to a period of neglect of social rights, followed by a period of non-harmonization at the supranational level. Added to this are the institutions directly connected to social rights in the Treaties of Paris and Rome, which only played an advisory role and have since done little to harmonize social rights supranationally. There were vague signs of a harmonization of social rights in the 1970s with the promotion of gender equality by the ECJ, but this modest start did not expand the notion of supranational social rights on a grander scale. Today there are no entitlements for EU citizens to have the costs of litigation covered. Although they can apply for legal aid in cross-border situations, the granting of this depends on Member State law (instead of being based on a harmonized system). There is not much support for an argument about the existence of harmonized social rights in EU citizenship.

Using the strict criteria mentioned in the models, it is therefore more likely that we are witnessing the introduction of political rights as the second step, and that these have been introduced to remedy the shortcomings of civil rights mentioned above. With the growth of the power of the EP and the introduction of universal suffrage, the right to stand as a candidate, explicit political rights stated in the Treaties since Maastricht, and the recently introduced citizens' initiative, we can more easily speak of the start to a supranational harmonization of political rights. Though some of the inherent shortcomings of civil rights still remain, political rights have made possible a more democratic political union, where the

European Parliament—employing universal suffrage and the right to candidature without criteria—represents the European public.³¹ We cannot speak of a completely harmonized system however, as there are still differences between Member States’ election processes, as well as several forms of second-class citizenship. Altogether, this is closest in fit to the Marshallian “chain” of model 1.

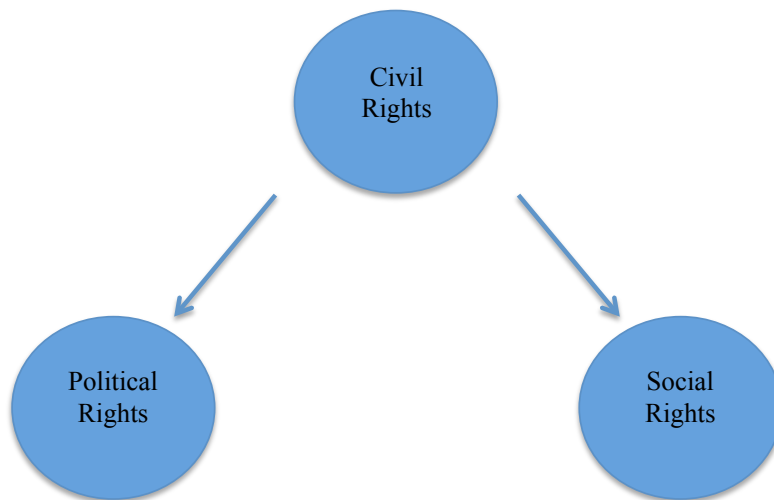
Figure 6.1 The Marshallian Chain (without harmonized social rights)



At the same time, there are indications in the development of social rights that these complement civil rights, and not political rights. Looking to step two in model 2, with social rights succeeding civil rights, I expected social rights to support civil rights and the market integrative aspect of citizenship. There is evidence in support of this step: the facilitation of migration for workers, the right to equal pay for men and women, the development of vocational education and training programs and the Bologna Process are the most prominent social policies in the EU. Regardless of the extent of supranational harmonization of welfare and education, we see the start of a process of social rights remedying the shortcomings of civil rights without complementing supranationally harmonized political rights. After all, the lack of a harmonized education system (as it is today) can still theoretically keep people from enjoying their political rights because it is designed to promote civil rights. Therefore it can be argued that political rights have not yet been supranationally harmonized to the extent that social rights can be granted to support the enjoyment of these. Thus, it is possible to envision a new model with civil rights coming first, followed by a second step in which political and social rights separately and independently branch out from civil rights, remedying its shortcomings. With this model we would perhaps get even closer to capturing the empirical development of European Union citizenship.

³¹ Leaving the issue of voter turnout aside.

Figure 6.2 Convergence of Model 1 & 2



This becomes an even more probable model when we take a closer look at the extent of the supranational harmonization of political rights. The most important indicator is the expectation in model 2 that without an institution to harmonized political rights, the development of rights would primarily happen through the ECJ. With the EP being criticized for being powerless—this has arguably been the case since the 1960s and especially so in the last two decades—as we now see the ECJ as the dominant force for the development of citizenship.

In conclusion, using the strict criteria of the models, the European Union is following the Marshallian “chain” of sequential evolution, in which civil rights come first, followed by political and social rights in that order. In relation to the steps of this model, EU citizenship finds itself at step 2: gradually harmonizing political rights. Social rights have not yet been harmonized to the extent that we are witnessing the creation of a supranational welfare and education system. Relaxing the strict criteria points to a convergence of models 1 and 2 as a possibly better fit than model 1. The combined model would show both political and social rights separately branching out of the civil rights dominated citizenship, trying to remedy its shortcomings independently.

The close fit between the theoretical models and the empirical developments strengthens my argument that Marshall’s method can be used as a blueprint for studying citizenships regardless of the level in which it is nested (national or supranational). The indication that the development of rights in EU citizenship fits the Marshallian chain of sequential evolution

should not be interpreted as a claim that this is the necessary order of development of sets of rights in all citizenships, nor that harmonized social rights inevitably will come. Rather, it enables us to identify the development of rights in citizenships without cherry picking, as we can use the underlying logics to produce counterfactual thought experiments.

7. Conclusion

In this thesis I have studied the development of rights in European Union Citizenship: one of the most politically-ambitious projects of modern Europe, in which half a billion people are granted an array of rights through a shared status. To study the development of these rights I applied a method based on one of the most influential studies on contemporary citizenship, “Citizenship and Social Class”, by T. H. Marshall. Marshall’s value is mostly recognized in his categorization of rights into three sets: civil rights made people free and equal before the law, political rights granted people the right to participate in the exercise of political power, and social rights granted welfare and education so citizens were equally capable of enjoying their civil and political rights. In Marshall’s case these sets evolved across three centuries (from the eighteenth to the twentieth) in that particular order, each remedying the shortcomings of the former. Civil rights mitigated the inequalities produced by the lack of a uniform set of rights at the national level, political rights mitigated the problems of second-class citizenship and inequalities in political influence across Britain, and social rights enabled more citizens to enjoy the previous two sets of rights in practice. Added to this, and less evident in the post-Marshallian debate, was a transition of these rights from being local and varied, to becoming harmonized at the national level. This restriction of local variance was brought on by complementary institutions connected to each set of rights: the courts to civil rights, parliament and local government to political rights, and the welfare and education system to social rights. My research questions were:

Has European Union citizenship experienced a logical buildup of sets of rights similar to the one in Marshall’s analysis? Have these sets of rights gone through an equivalent process of becoming more harmonized at the supranational level through complementary institutions, thus restricting Member State variance?

To answer the research questions I drew out the underlying logics of Marshall’s analysis and established criteria that enabled me to identify the sets of rights, their shortcomings, what they remedied and what complementary institutions I would expect to harmonize the sets of rights. This made it possible to create models of the expected development of European Union citizenship. The main difference between Marshall’s analysis and mine was that where he studied the transition of rights from being varied across constituencies to becoming nationally harmonized, I studied this transition going from Member State variance to becoming harmonized at the supranational level.

I argue that Marshall's method for studying citizenship provides an ideal blueprint for studying the development of rights in EU citizenship. Nevertheless, the application of Marshall's method in the creation of these models was also affected by his critics. Rees (1994), Soysal (1994) and Mann (1994) point to cases where the sets of rights came in a different order. Taking these criticisms to heart I made three models (or counterfactual thought experiments), each depicting a different constellation in the order of sets of rights. In the first model I generated expectations about the supranational harmonization of rights in the EU if civil rights appeared first, followed by political rights and social rights (the Marshallian "chain"). I then broke this chain, as the second model depicted social rights following civil rights instead of political rights, and the third model showed the expected development if political rights came first and social rights last.

These counterfactual thought experiments were in turn tested empirically by analyzing the development of rights connected to European Union citizenship from 1951 (the Paris Treaty) until 2013. The empirical data collected was based on the rights stated in the Treaties from Paris (1951) to Lisbon (2007), the scholarly debate in law and political science relevant to testing my models, case law of the European Court of Justice, and information about the EU retrieved from its websites.

When juxtaposing the empirical events with the models, my findings indicate that the development of European Union citizenship is closest to the Marshallian "chain" of sequential evolution, in which civil rights came first, succeeded by political rights and then social rights. This is true, if we follow the criteria of the models strictly. EU citizenship is arguably in a state similar to step two in this model, in which the process of a supranational harmonization of political rights has started, and with no signs of the same process for social rights. This is because the set of civil rights without a doubt was the first set to begin harmonization, through the case law of the European Court of Justice. From the 1960s and after, the Court has established the direct effect and supremacy of EU law over that of national legislation, and with *Rottmann* the ECJ is creating a status of citizenship that is universal and not a part of the pre-Maastrich market-integrative paradigm. The political rights started their supranational harmonization in the 1970s with the continuing expansion of EP powers and with the introduction of universal suffrage for EP elections. There is still progress to be made, as there is evidence of several forms of second-class citizenship. There are developments within the realm of social rights, yet these are complementary to civil rights

and not political rights. In addition, they have not been supranationally harmonized in the shape of an overarching welfare and education system. Following the criteria of the models strictly, this places EU citizenship as something similar to step 2 of model 2. These findings answer both my research questions in the affirmative.

Yet this development also points to the possibility of a new model, in which the Marshallian chain is broken. Since the social rights created have indeed complemented civil rights—and the market integrative aspect of these—without complementing political rights, this indicates that both social and political rights are simultaneously and independently branching out from the civil-rights based citizenship, trying to remedy its shortcomings. As such, there is a possibility that the stacking of the sets of rights in European Union citizenship isn't exactly the same as the one in Marshall's analysis, yet that it is still going through an equivalent process of sets of rights becoming more harmonized at the supranational level through complementary institutions.

These findings demonstrate the applicability of Marshall's method of analysis for studying citizenship, and I hope to have substantiated its usefulness for future research on any type of citizenship. This perspective has helped identify and analyze the development of sets of rights in EU citizenship, as well as the central actors gradually supranationally harmonizing these rights at the EU level. It demonstrates the expected benefits and shortcomings when stacking these sets of rights differently, a knowledge that for future policy decisions can prove to be vital in developing EU citizenship towards a fuller measure of equality, an enrichment of the stuff of which the status is made, and an increase in the number of those on whom the status is bestowed. I hope that this study can contribute not only in the fields of research and policy-making, but also to significant knowledge for the half a billion people touched by this status, as it shows the development of rights that has led to the current European Year of Citizens. Lastly, I hope that it may breathe new life into Marshall's contribution to theories of citizenship, and show the value of his method of analysis as a blueprint for studying citizenships.

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9. Appendix

Table A1: Summary of the position on non-national voting in the ‘old’ Member States^a

(Members before 2004):

	Local Elections		National elections including regional/state elections		COE ^b ?
	EU citizens	TCNs	EU citizens	TCNs	
Austria ^c	Yes	No	No	No	No
Belgium ^d	Yes	Yes	No	No	No
Denmark ^e	Yes	Yes	No	No	R
Finland ^f	Yes	Yes	No	No	R
France	Yes	No	No	No	No
Germany ^e	Yes	No	No	No	No
Greece	Yes	No	No	No	No
Ireland ^h	Yes	Yes	UK Citizens	No	No
Italy ⁱ	Yes	No	No	No	R
Luxembourg ^j	Yes	Yes	No	No	No
Netherlands ^k	Yes	Yes	No	No	R
Portugal ^l	Yes	Some	No	Some	No
Spain ^m	Yes	Some	No	No	No
Sweden ⁿ	Yes	Yes	No	No	R
UK	Yes	Commonwealth citizens	Some	Commonwealth citizens for all elections	S

a: As of October 2006. Sources include: Groenendijk *et al.*, 2000; Blais *et al.*, 2001; Waldrauch, 2005; and the Council of Europe website, <http://conventions.coe.int>.

b: Signed (S) or ratified (R) the Council of Europe’s Convention on the Participation of Foreigners in Public Life at the Local Level.

c: Third country nationals voting at local level proposed in city level legislation in Vienna and Graz; the Viennese local law was declared unconstitutional by the constitutional court in a judgment of 30 June 2004.

d: Constitutional amendments in place to allow third country national voting in local elections after 2001. Change instituted in 2003.

e: Third country nationals’ rights in local elections include county elections (regarded as part of local self-government); country is part of the Nordic Council which recognizes reciprocal rights.

f: Country is part of the Nordic Council which recognizes reciprocal rights.

g: Third country nationals excluded from franchise by interpretation of concept of *Staatsvolk* by Federal Constitutional Court.

h: UK citizens may only vote in elections for the lower house, the *Dáil*. However, in the event of reciprocity by another Member State, Ireland could extend electoral rights in these elections to nationals of that state, under the existing legislation.

i: Italy has not yet adopted a constitutional amendment to permit third country nationals to vote in local elections.

j: Third country nationals only have the right to vote, and not to stand. Legislative change in 2003.

k: Third country nationals may not vote in provincial elections.

l: Local and national election voting rights for third country nationals on the basis of reciprocity; thus far includes Brazil, Cape Verde, Argentina, Israel, Norway, Peru, Uruguay and Venezuela at local level, Brazil at national level.

m: Reciprocity basis in principle, but thus far only Norway; hence the provisions could be regarded at present as largely symbolic.

n: Third country national rights in local elections include county elections (regarded as part of local self-government); the country is part of the Nordic Council which recognizes reciprocal rights.

o: Irish, Maltese and Cypriot citizens for all elections (the latter two are part of the Commonwealth); all EU for ‘regional’ elections to the devolved assemblies/parliament.

Source: As presented in Shaw (2007, p. 78-79, Table 3.1)

Sources for a:

Groenendijk, K., Guild, E. & Barzilay, R. (2000) The Legal Status of Third Country Nationals Who Are Long-Term Residents in a Member State of the European Union, Council of Europe Community Relation Series, Strasbourg, August 2000.

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Table A2: Summary of the position on non-nationals voting in the post-2004 Member States:

	Local elections		National elections including regional/state elections		COE ^{a?}
	EU citizens	TCNs	EU citizens	TCNs	
Bulgaria ^b	Yes	No	No	No	No
Cyprus	Yes	No	No	No	S
Czech Republic ^c	Yes	No	No	No	S
Estonia ^d	Yes	Yes	No	No	No
Hungary	Yes	Yes	No	No	No
Latvia	Yes	No	No	No	No
Lithuania	Yes	Yes	No	No	No
Malta ^e	Yes	No	No	No	No
Poland	Yes	No	No	No	No
Romania ^f	Yes	No	No	No	No
Slovenia ^g	Yes	Yes	No	No	No
Slovakia	Yes	Yes	No	No	No

a: Signed (S) or ratified (R) the Council of Europe's Convention on the Participation of Foreigners in Public Life at the Local Level.

b: Joined the EU only as of 1 January 2007.

c: In relation to the possibility of third-country nationals voting, the reciprocity principle has been enacted but not yet applied.

d: Third country nationals cannot stand as candidates.

e: Reciprocity principle is used in principle but only applies to the UK in local elections.

f: Joined the EU only as of 1 January 2007.

g: Third country nationals cannot stand as candidates.

Source: As presented in Shaw (2007, p. 80, Table 3.2)