THE TRANSFORMATION OF CITIZENSHIP IN THE EUROPEAN UNION

This book examines the electoral rights granted to those who do not have the nationality of the state in which they reside, within the European Union and its Member States. It looks at the rights of EU citizens to vote and stand in European Parliament elections and local elections wherever they live in the EU, and at cases where Member States of the Union also choose to grant electoral rights to other non-nationals from countries outside the EU. The EU’s electoral rights are among the most important rights first granted to EU citizens by the EU Treaties in the 1990s. Putting these rights into their broader context, the book provides important insights into the development of the EU now that the Constitutional Treaty has been rejected in the referendums in France and the Netherlands, and into issues which are still very sensitive for national sovereignty such as immigration, nationality and naturalisation.

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THE TRANSFORMATION OF CITIZENSHIP IN THE EUROPEAN UNION

Electoral Rights and the Restructuring of Political Space

JO SHAW

University of Edinburgh
To the memory of Freda Shaw 1931–2004
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This book has been too long in the making. I owe readers, and those who have helped me over a long period of time, some explanation for its lengthy period of genesis. Its origins lie back in the mid-1990s, when Joseph Weiler invited me to present a Specialised Course on ‘European Citizenship’ at the 1995 Session of the Academy of European Law at the European University Institute in Florence. That presentation was eventually published in the *Collected Courses* of the Academy, and formed the basis for some other early works on citizenship which I make use of in Chapter 2. I was somewhat sceptical in the first instance about working on citizenship, but I am very grateful to Joseph Weiler for pushing me in this direction in the first place.

From an early interest in understanding how European citizenship had (or could have) what Antje Wiener has called a ‘constructive potential’ in the context of European integration and the project of polity-building in a non-state context, a project emerged specifically focusing on the implications of Article 19 of the EC Treaty. This provides for EU citizens resident in a Member State other than their own to be able to vote and stand in local and European Parliamentary elections, and constitutes the core of this book. Along the way, I was lucky enough to collaborate on a number of projects on citizenship topics with Antje Wiener which enabled me to sharpen my understanding of citizenship as an element of polity-building. On the subject of electoral rights specifically, I collaborated with Richard Bellamy and Dario Castiglione on an ESRC-funded research project, ‘Strategies of Civic Inclusion in Pan-European Civil Society’ (L213 25 2022), which supported a Research Assistantship in 1999–2000 for Stephen Day (now of Oita University, Japan), with whom I have since gone on to publish a number of papers on electoral rights,¹ and on whose early empirical work on Germany, Austria, Estonia and the UK I rely heavily in this book. I am very grateful

to the ESRC for this support. Around the same time, I also started to collaborate with Anthea Connolly, who held scholarships to undertake PhD studies in the Department of Law at the University of Leeds, and later at the University of Manchester. Anthea voluntarily chose to attach her PhD project to the broader alien suffrage project on which Stephen and I were engaged, and she duly completed her PhD in 2003 at the University of Manchester: ‘The Theory and Practice of Alien Suffrage in the European Union’. She did extensive research on the historical basis of electoral rights for EU citizens in EU institutional discourses and practices and later collaborated with Stephen and me on the writing of a final project paper, drawing upon her own research; her excellent work is reflected at many points in this book.

More recently, after I had written what Neil Walker kindly described as a prospectus for a larger work (i.e. a book), I was grateful to receive further funding from the British Academy for a project which I now called a project on ‘Moulding and Managing the Boundaries of Suffrage’ (2003–5), which envisaged by that stage the preparation of a book manuscript. This, along with additional funding from the Heap Fund, School of Law, University of Manchester, permitted the part-time employment of a University of Manchester PhD student, Melanie Smith, who undertook case studies on Lithuania, Hungary and Romania, and work on the international law aspects of the protection of the political participation rights of non-nationals and of national minorities. Melanie prepared a paper for delivery at the Hart Workshop in 2004 on the Lithuania case studies, which we subsequently published jointly. Melanie (now of Cardiff Law School) is one of the three people, along with Stephen and Anthea, who have literally made this project possible. Without their work it would never have happened, and I hope that they feel that what I have produced in some way does justice to their professionalism and commitment.

The same monies which funded Melanie also supported case-study work which I undertook in Slovenia (in relation to which I am grateful for the assistance and collaboration of Felicita Medved), in Malta and in Ireland. In relation to the latter case study, I am particularly grateful to Fidèle Mutwarasibo of the Immigrant Council of Ireland. He brought to my attention for the first time the work going on in Ireland in 2004 to

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2 Connolly, Day and Shaw, 2006.
raise the profile of the electoral rights for non-nationals in Irish local elections, work to which he himself contributed so much. He also assisted me greatly in identifying and approaching interviewees, and generously shared with me his own work on the 2004 elections and non-national civic and political activists in Ireland.

For the final writing-up stage, I am grateful to three more institutions for their support. In June 2005, the European Science Foundation supported the holding of a workshop at the University of Edinburgh on ‘Citizens, Non-Citizens and Voting Rights in Europe’. I was lucky enough to be able to bring together an extraordinary group of experts on issues of citizenship, alienage and the rights of migrants for two intensive days of discussion. In this book, I refer to a number of thus far unpublished papers presented at that workshop. The School of Law of University of Edinburgh itself (and especially my colleagues in the Europa Institute) supported me by giving me time, through study leave, to work on the manuscript, and this was generously matched by an Arts and Humanities Research Council Research Leave, in the second half of the academic year 2005–6, which carried me through to completion.

Successive desk officers working on electoral rights matters within the European Commission have been exceptionally helpful over the years, notably Salla Saastamoinen and Michal Meduna. I would like to thank the many interviewees we have spoken to, and here I can speak not only for myself, but also for Anthea, Melanie and Stephen. Most have asked not to be identified other than by reference to the position where they worked. Colleagues too numerous to list have responded with patience to my persistent requests for information or for help in locating a document or unravelling some conundrum which was puzzling me. Without their willingness to help, this book would be immeasurably poorer (although, perhaps, somewhat thinner!). Inevitably, there has been material which I have collected over the years which I have so far been unable to use. I do not see the present volume as the closure of my attempts to understand the theory and practice of EU electoral rights, in their wider political context; on the contrary, I hope to be in a position to publish a number of further, smaller works, which draw upon some of the unused case-study material and delve into areas which have been omitted from this volume, as well as to develop a broader perspective on the transnational political practices of EU citizens and residents more generally.

As I have brought the manuscript to completion, I have built upon the discussions on citizenship issues I have had over the years with Dario Castiglione, Richard Bellamy, Alex Warleigh, Chris Hilson and other
participants in the ESRC ‘Civic’ project, as well as with Miriam Aziz, Daniel Halberstam, Miguel Poiares Maduro, Damian Chalmers and Sybilla Fries. I have given papers or presentations which have shaped my thoughts in locations as diverse as New York (Fordham Law School), Michigan Law School, Lisbon (on several occasions and at several locations), Oslo (Arena), Florence (EUI), Turin (ECPR), Toronto (ECSA Canada), Vienna (EURCIT), Budapest (IMISCOE), Stirling (SLSA), Cambridge (CRASSH and the Law Faculty), Oxford (Law Faculty), Durham (DELI), Zagreb (Faculty of Law), Dubrovnik (Advanced Course on EU Law) and Ljubljana (Peace Institute). I have benefited greatly from comments and criticisms encountered on these occasions.

In writing the book, I have relied heavily upon a number of colleagues to read sections of the manuscript and to save me from a whole variety of possible infelicities. In no particular order, I would like to thank John O’Dowd, University College Dublin, for his compendious knowledge of Irish constitutional law; Rainer Bauböck of the Austrian Academy of Sciences and the European University Institute, who commented on the very first draft paper which Stephen Day and I delivered in Vienna in 2000; Neil Walker of the European University Institute and the University of Edinburgh, for his comments on ‘Sovereignty at the Boundaries of the Polity’; Antje Wiener of Queen’s University Belfast, for her reading and comments which helped to put the whole manuscript in its broader context; Erika Harris of the University of Liverpool and Istvan Pogany of the University of Warwick for guidance on citizenship in Central and Eastern Europe; and Zenon Bańkowski of the University of Edinburgh, for some helpful comments on citizenship issues more generally. However, I wish to pay particular tribute to two busy colleagues at the University of Edinburgh who found time to read the entire manuscript and make comments upon it: Christina Boswell and Neil MacCormick. Without such colleagues able and willing to give their time in that manner, the academic profession would indeed be a much poorer one. I alone, of course, remain responsible for any (undoubted) remaining infelicities or misinterpretations. This is perhaps inevitable considering the wide-ranging (and often rapidly changing) legal and political ground which the book covers, and I would be happy to hear from any readers who are unhappy about how I have presented some issue or question, or who wish to point out some egregious error or omission. The law is stated as I understood it on 1 November 2006, although the book fully anticipates the accession of Bulgaria and Romania to the EU on 1 January 2007.
Finally, I would like to thank my family for bearing with me. Leo Shaw has been with me throughout, but during the time it has taken me to complete the project has mutated from primary school child into university student. As mother and son, it is hard to say whether we give each other more stress or more support. Sometimes it seems to be both simultaneously. But, along the way, we have certainly had some fun, and learnt quite a lot together. More recently, Alfred Thomas has been close by, and he has helped me to relax and put the work in its place, when necessary, by providing distraction and tender care. Most importantly, however, I would like to dedicate this book to the memory of my mother, Freda Shaw, née Baxter (1931–2004). My mother studied Modern Languages in the late 1940s and early 1950s at the University of Reading and went on to spend a ‘year abroad’, in the days before SOCRATES, in Clermont-Ferrand in central France. But, even before going to university, she was a pioneering participant in the early exchanges which developed in the post-war years between the West Riding of Yorkshire, where she was born and brought up, and Lille in northern France. She maintained an enduring attachment to the people of northern France whom she met and became friends with, attachments which extend across our family and their families, and which have lasted beyond her death. While I perhaps owe my interest in the law to my father, I certainly owe my interest in the languages and cultures of other European states primarily to my mother. I am very sad that she is not here, today, to see what I tried to build, with the help of others, on the basis of these ideals of transnational exchange and cooperation.


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