1. Introduction

1. ORIGINAL CHOICES

There is much in this world that is partial, and because partial, apparently unjust, incorrect and fallible. But there is one thing we cannot overlook; namely, that from birth to death we live in a relational world, consisting of nature, things and other human beings, be they close or distant. Our relations with nature, things and ‘others’ make us who we are and shape how we live. In other words, it would not be an exaggeration to observe that our world, this earthly world, is a world of conjunctions – it is not a world of disjunctions.

Cosmopolitan thought has always asserted this. The Cynic Diogenes of Sinope saw himself as a citizen of the world (a *kosmopolitis*); he believed that a person’s local origin and group membership could not extricate his or her moral affiliation with more universal aspirations and humanist concerns. The Stoics also mapped the multiple worlds persons inhabit simultaneously: the local or particularistic world into which persons are thrown by birth and the wider world of human aspirations.¹ Seneca described the latter as truly ‘great and truly common’² – an idea that regained currency in the 18th century owing to Kant’s writings³ and in the 20th century following the devastation caused by two world wars.

But the Cynics or the Stoics or Kant himself did not prescribe the setting up of an actual political organisation to defend and promote ‘the other (humanistic) world’. In the first quarter of the 20th century, von Coudenhove-Kalergi believed that it was possible to do so in the context of Europe. By establishing a ‘Pan-European Union’, Europe could be unified. In 1923 von Coudenhove-Kalergi set a pan-European mass movement in motion and published his book, entitled *Pan-Europa*. According to him, Europeanism

¹ The School was founded by Zeno of Citium in the early third century BC.

² David Held, ‘Principles of Cosmopolitan Order’, in G. Brock and H. Brighouse (eds), *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005) 10–27. See also Martha C. Nussbaum ‘Kant and Stoic Cosmopolitanism’ (2002) 5 *Journal of Political Philosophy* 1–25.

³ See his *Perpetual Peace: A Philosophical Sketch* (Konigsberg: F. Nicolovius, 1795).

would prevent the decline of Europe and the establishment of a federal European Union would guarantee peace, security and prosperity.⁴ The key to von Coudenhove-Kalergi's Pan-Europe was democracy; Pan-Europe would be open to liberal democratic states.

Interestingly, Pan-Europe excluded both Russia and Britain. The former country had opted for another political system while the latter 'had grown out of Europe' and had become an entity in its own right.⁵ Being aware that Britain is part of Europe, von Coudenhove-Kalergi believed that the relations between Pan-Europe and Britain should be based on cooperation and mutual defence guarantees. While a defence alliance was necessary to protect Europe from external threats, primarily from Russia, internal conflicts and the devastating defence expenditure of European states, which thwarted economic recovery, would be minimised by increasing multilateral cooperation and creating a 'common market' without internal customs barriers.

That was the hour of democratic cosmopolitanism. The vision was that nationalism and perpetual conflicts over territory and borderlines would be superseded by European unity, further economic and political integration and the diffusion of democratic principles. A 'Magna Carta of all European Nations' would ensure the protection of national minorities⁶ and for small concessions of sovereignty all countries would prosper economically in a union of lasting peace. A more rational politics would succeed the disturbing and destructive display of human passion and political evil.

Eventually, von Coudenhove-Kalergi's vision became a reality. The Coal and Steel Community established by the Treaty of Paris in 1950 became a European Community in 1957 and a European Union in 1993, when the Treaty on European Union entered into force. Mobility of all 'factors of production', that is, of goods, capital, services and people, was chosen to be the foundation of the common market initially and the single market in the mid-1980s. The rights of workers and work-seekers to cross territorial borders and live and work in the territories of other Member States became enshrined in a new institution of EU citizenship, which was established by the Treaty on European Union (in force on 1 November 1993).⁷ Union citizenship also embraced the mobility of students, pensioners and persons of

⁴ Richard Nikolaus von Coudenhove-Kalergi, *Pan-Europa* (New York: Alfred Knopf, 1926).

⁵ Ibid 36, 41.

⁶ Ibid 166.

⁷ Treaty on European Union [1992] OJ C191/1, in force on 1 November 1993 (TEU).

independent means.⁸ It is true that the exercise of this freedom, as opposed to its formal existence, is subordinate to economic imperatives,⁹ but it is equally true that such (non-universal) mobility contributes to economic prosperity, inter-societal and trans-societal connectivity and the betterment of individuals and their families. In other words, it had, and still has, transformative effects for persons, groups, societies and countries.

2. THE RIGHTS' REVOLUTION

The Court of Justice and other EU institutions, such as, *inter alia*, the European Commission and the European Parliament, progressively over the decades of European integration sedimented a culture of progressivism, that is, a rights' revolution to aid citizens and their families. They have been convinced that greater connectivity among people, groups, societies, cultures and layers of governance has beneficial effects for persons, communities and political units. It creates a sense of inclusion and belonging in a diverse community of law (*ius*) and politics. It makes European societies more open and more respectful of diversity, changes national administrative structures and makes politics more democratic, more pluralist and more public service-, rather than power-, oriented.

State discretion and control over the entry, residence, employment and political participation at local and regional levels of EU citizens have been limited by EU law. The ultimate philosophy underpinning both primary law and secondary legislation, such as the Directive on the rights of citizens of the Union and their family members to move and to reside freely within the territory of the Member States,¹⁰ has been a rights-based one. The Court of Justice has elevated EU citizenship into a constitutional norm and a fundamental status.¹¹ By so doing, judges have responded positively to citizens' needs and expectations. They have made a difference to their actual life-worlds. But, as is often the case, their decisions are not always welcomed by national states and

⁸ Council Directives 90/364 on the right of residence (OJ L180/26), 90/365 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ L180/28); and 90/366 on the right of residence for students (OJ L180/28). The latter was replaced by Directive 93/96 (OJ L317/59). European Parliament and European Council Directive of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004/38/EC) repealed the above-mentioned Directives; OJ 2004 L158/77 (30 April 2004).

⁹ See Article 21 Treaty on the Functioning of the European Union (TFEU).

¹⁰ See n 8 above.

¹¹ Case C-184/99 *Grzelczyk v. Centre Public d'Aide Sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193.

their administrations, thereby fuelling state actors' disapproval of what they perceive to be judicial policy-making. Notwithstanding such reactions, EU citizenship has become a 'Eurozenship', that is, a coherent legal status which is different from national citizenship and permanent residence.

Within the socio-political and legal space of EU citizenship, 'local' worlds and particularistic identities can simultaneously coexist and merge into wider moralities that do not tolerate discrimination on the grounds of nationality and disrespect for human beings. EU law-based rights coexist with international human rights and the European Union's fundamental rights enshrined in its Charter and prevent the closure of national territorial democracies, restrictive access to rights and disrespect for the human person.¹² For many, this change has been viewed as a promoter of post-national allegiances and thus the seedbed for different sensibilities and forms of transnational solidarity.

After all, a polity organised around different principles and ideas is likely to have different dynamics and can generate different experiences. The bond that ties peoples, groups, units of governance and states together is based on cooperation underpinned by law and political principles. Doing things together and being committed to a united Europe that cares for the lives and future of EU citizens and their particularistic worlds have propelled the drive for 'an ever closer Union',¹³ which is united in diversity, democracy and non-discrimination. By the end of the 1990s there was a general feeling that a new age was coming, connecting all states, nations and peoples, whose real achievements would be cosmopolitan and of international application. Such an age would foster the solidarity of mankind and would deepen political cooperation.

3. THE NATIONALIST HOUR

Generalised expectations for a new and more benign age were short lived. International terrorism, wars in the Middle East and global economic crises, coupled with the sovereign debt crisis in Europe, created storms worldwide in the new millennium. These storms, in turn, generated a fertile ground for the reassertion of nationalism and political discourses of authoritarian populism. Economic austerity policies and demands for protectionist communities and societies gained prominence. States and their nationalist leaders sought to domesticate aspects of globalisation, at least discursively, by exaggerating the degree to which things are, and can be, disconnected and by constructing

¹² It was signed on 7 December 2000, was amended on 12 December 2007 and became legally binding following the entry into force of the Treaty of Lisbon (OJ C83, 30 March 2010).

¹³ Article 1 TEU.

‘Others’ and enemies. Minorities became prosecuted, liberties became curtailed, fences, walls, detention camps and refugee camps multiplied and state leaders did not hide their efforts to shift democracy away from its foundations of inclusion, diversity and tolerance. The present age is so uncertain and unsettled that it makes people uncomfortable to live in. Ugly passions, divisions and disrespect for human beings have given rise to confusion which seeks to capture the mind and heart of the average individual. This intellectual climate has infiltrated the European Union.

Political elites do not hesitate to engage in demagoguery and advocacy of fragmentation and polarisation in societies and the European Union. Motivated by political expediency, personal advantages and ambitions and autocratic sensibilities, their desired way forward is an epistrophe to a ‘muscular’ national state, ‘less Europe’ and the robust management of populations, be they autochthonous or allochthonous. They do not hesitate to politicise any grievance and even to call into question settled axioms of European integration. Conventional wisdom and political pragmatism cannot stall the new wind of doctrine which becomes acceptable because it uses, and appeals to, audiences’ feelings, beliefs or expectations. But, as Dicey eloquently observed in 1917, ‘nationalism has the tendency to stimulate among the inhabitants of a given country an intense desire for national power and thereby bring into existence a form of government, which is hostile both to the personal liberty of its own subjects and to the independence of other European states’.¹⁴

The present book is situated amidst such cross-currents. The chapters’ origin and content are located within such a long trajectory; the reader will be able to discern the optimism of the past as well as the anxieties and tensions of the present. More specifically, it contains a panoramic account of EU citizenship (Eurozenship) by bringing together the original choices and legal framework, its evolution, constitutionalisation and rights’ revolution, its complex interweaving with national citizenship and national politics as well as the challenges it faces in the light of the United Kingdom’s exit from the European Union. It acknowledges the present ‘wind of (nationalist) doctrine’¹⁵ but it also highlights the enduring qualities and appeal of EU citizenship. I have endeavoured to capture both the flexibility and fluidity of the process of building a European polity and connecting and empowering people by looking beyond counter moves and trends. Hence, the chosen title *EU Citizenship Law and Policy: Beyond Brexit*.

¹⁴ Albert Venn Dicey, *The Statesmanship of Wordsworth: An Essay* (Oxford: Clarendon Press, 1917) 102.

¹⁵ The term is borrowed from George Santayana, *Winds of Doctrine* (London: JM Dent and Sons Ltd., 1913).

Critics might observe that my normative standpoint and the forward-looking tone of the discussion underestimate the power of nation states and conventional beliefs and expectations. That would be a fair criticism. I must confess that I believe that ideology and conventional beliefs, feelings and expectations have a relatively short lifespan. This is not only because they are often incoherent and mutable. It is also due to the fact that they are at the mercy of time. That is to say, unexpected events, developments, elections and party politics and the intellectual climate often make them seem narrow-minded, wrong or simply irrelevant. A principled take on institutions and their social purposes, on the other hand, escapes the mercy of events and developments and orients both law and policy design to what serves human beings in their life-worlds. It is sheltered from the wind of doctrine. Designing and implementing a good citizenship law and policy thus has nothing to do with presenting ideas and crystallising practices that are familiar to people and thus acceptable to them. The test of a good citizenship and policy has less to do with acceptability and more to do with values, principles and practices that enhance human life by making persons less vulnerable. These are the normative tools deployed throughout the chapters in this book.

4. OUTLINE OF THE BOOK

In Chapter 2, which was published originally in the *European Law Journal* in 2007,¹⁶ the reader will be invited to concentrate on the closely reasoned design of an experimental Eurozenship and its relation to national models of citizenship, on the one hand, and forms of cosmopolitanism, on the other. The discussion critically examines minimalist, cosmopolitan and post-national conceptions of Eurozenship and weighs the merits of arguments in support of suggestions that it has had a weak transformative impact or has instilled a cosmopolitan orientation within national citizenship without threatening to replace it. The reasons why I believe Eurozenship cannot be reduced to a type of transnational citizenship are contained in the fifth section of the chapter, which outlines its constructive potential and future possibilities.

The experimental and constructivist reading of Eurozenship continues in Chapter 3, which examines its civil, political and social dimensions.¹⁷ There I discuss the rights and (future) duties that accompany this institution and criticise the ‘market bias’ underpinning the relevant literature. I argue that it is

¹⁶ Theodora Kostakopoulou, ‘European Union Citizenship: Writing the Future’ (2007) 13(5) *European Law Journal* 623–646.

¹⁷ The origins of this chapter lie in my ‘European Union Citizenship Rights and Duties: Civil, Political and Social’, in E. Isin and P. Neyers (eds), *Global Handbook of Citizenship Studies* (London: Routledge, 2014) 427–436.

not only a naïve economism that underpins the notion of ‘market citizenship’, but also a methodological individualism since the term ‘market citizens’ necessarily centres our mind to ‘asocial citizens’ and ‘floaters’, that is, individuals willing to cross borders in order to maximise their economic self-interest. Such conceptions are misleading and misplaced for a number of reasons and free movement of persons in the European Union cannot be thought of separately from its social, political and normative dimensions. If we are to understand what being an EU citizen means, we need to see individuals ‘in their fullness’ and not to focus on one aspect of their lives, namely, the economic one, prioritise this and then infer the rest. In addition, we must get a number of foci of inquiry into balance and integrate the civil, political and social dimensions of EU citizenship, on the one hand, and rights and (future) duties, on the other. In this way, EU citizenship emerges as an evolving whole of mutually interacting and interconnected parts and generative of new political realities and enriching associational bonds.

Having examined the material scope of Eurozenship and the developments towards a meaningful EU social citizenship and a welfare European Union, the tone of the discussion becomes more pessimistic as we look at the ‘edges’ of this institution in the subsequent chapter. Contradictory processes of inclusion and greater equalisation coexist with exclusionary logics which cannot be side-stepped. These would have to be addressed in assessments of Eurozenship’s present state and its future evolution. A focus on three key manifestations of state sovereignty, namely, the erasure of citizenship status, the expulsion of EU citizens and deportation law and practices, and the disappearance of individuals owing to extraordinary rendition, sheds light on the edges of EU citizenship and the undesirable effects of untrammelled state power on the lives of individuals. Probing into the moments when EU citizens are treated as aliens or foreigners,¹⁸ and the troublesome ambiguities, tensions and limitations surrounding them, reveals the gaps in the protection of EU citizens and the constraints that stand in the way of change in the institutional scheme of things.

The emphasis then shifts onto two little-discussed aspects of EU citizenship, namely, the right of EU citizens to diplomatic and consular protection when travelling abroad (Chapter 5) and the connections between EU citizenship and fundamental rights (Chapter 6). In both chapters I provide chronologies and typologies for the development of rights protection. The arguments in these chapters lead to a better understanding of the rights’ revolution mentioned in

¹⁸ I wrote this chapter before the Brexit referendum of 23 June 2016. The work commenced as part of a Jean Monnet-funded project in 2010 and was published in 2014 20(4) *European Law Journal* 447–463. It captured the moment of the official redefinition of EU citizens as migrants in the UK.

the previous section and to the gradual transcendence of political blocks to change. The reader will be invited to appreciate phased approaches and stages in overcoming political objections to the strengthening of both Eurozenship rights and fundamental rights and to gain an insight into the internal and external obstacles that might impede their further development in the future.

Chapter 7 substantiates some of these political objections by focusing on the nationalist hour in the United Kingdom and on Brexit. EU citizens living in the United Kingdom and EU citizens-qua-UK nationals living in other Member States following the referendum on the UK's continued membership of the European Union on 23 June 2016 became 'the numbered' others. Their identities were redefined overnight not by them, but by state authorities and their co-EU citizens. EU citizens settled in the United Kingdom will be requested to apply for either UK nationality or permanent leave to remain. The same applies to UK nationals residing in other Member States who will lose their EU citizenship status. Unexpectedly, 3.9 million EU citizens have been transformed into 'guests' or 'foreigners' in communities they call 'their own'. Although naturalisation in the state of residence might be seen to furnish a secure and fully recognised status for EU citizens, I argue that it is not an adequate policy option. The conceptual differences between national and EU citizenships are immense. In the chapter I discuss the advantages and disadvantages of possible citizenship templates and propose an 'EU protected citizen' status for EU citizens. I argue that such a legal category realises the fundamental status of Union citizenship and the principle of respect for human dignity.

In Chapter 8 I use the new political reality of Brexit in order to think imaginatively about the future of Eurozenship as an institution. There are ways of rising above the challenges of Brexit and the nationalist wind of doctrine. Eurozenship does not have to continue to be exclusively conditioned on the possession or acquisition of Member State nationality. There are ways of designing its relative disentanglement or its autonomy from nationality. That would be the truly cosmopolitan option and the beginning of a reconfiguration of politics in the European Union. Keynes once said that we are ruled by ideas¹⁹ and, unfortunately, some of these ideas create self-reinforcing distortions of perception which impede innovation and experimentation in socio-political and communal life.

In the concluding chapter, I reflect on the enduring appeal of Eurozenship as an institution and a practice. I argue, there, that it has set important moral and axiological standards which enhance the protection of rights, rule of law, and the accountability of national political and administrative authorities, and

¹⁹ John Maynard Keynes, *The General Theory of Employment, Interest and Money* (Basingstoke: Palgrave Macmillan, 1935) 383.

ensure the openness of societies against the backdrop of prejudice, racism and xenophobia and narrowness in social interaction. In my opinion, this is, perhaps, the intellectual victory of Eurozenship over staged oppositions to it and Brexit and the legacy it has created in Europe. It has enhanced human and societal flourishing by providing institutional opportunities for relating to others in meaningful and non-discriminatory ways and promoting greater connectivity and openness in societies and human souls. It has given us indirectly a different philosophy of life and a new paradigm of political community and citizenship.