

# 1. EU citizenship and the puzzle of a European *political* union

**Sandra Seubert**

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## INTRODUCTION

Is European citizenship the consequent advancement of a purposeful dynamic in European integration – the ‘crown on its head’ – or, to the contrary, a sign of presumptuousness and ultimately the failure of self-proclaimed standards? So far there seems to be no clear-cut answers to these questions.

In its current state the European Union (EU) provokes much negative political reaction among its citizens, with populist activism challenging more broadly than ever before its policies and the integration process. Euroscepticism is not a new phenomenon, but in the past it has mainly been restricted to more or less fringe left- or right-wing parties. Euroscepticism is now winning considerable support among large parts of the population in several member states. As the Brexit decision has indicated, ‘Europe-friendly’ (or at least ‘Europe-tolerant’) citizens do not use their right to vote, while anti-European activism brings citizens to the ballot box. Conversely, interest in and attention of European issues have increased during the crisis and moved to the centre of national election campaigns. Pro-European social movements have emerged, and chances for a re-politicisation of European issues are opening up.<sup>1</sup> Since disintegration of the Union has become a real possibility, attention to institutional as well as structural problems can no longer be postponed and, understandably, new debates on reforms of the Union’s architecture are flaring up.<sup>2</sup>

The project of European integration is aimed at fundamental innovation in the realm of political relations: a federation of states, overcoming their historical hostilities by voluntarily increasing their economic and social interdependencies, opening up their borders and reaching out to connect democracy and human rights on a new level of political organisation. The EU has become quite successful in promoting this aim; and yet, paradoxically, this has now become its problem: the more the EU complies with this

rationale of transnational integration, the more deficient becomes the legitimacy drawn from its international organisation of political authority.

This chapter relates the debate on EU citizenship to discussion on the further development of a political union that accommodates the self-proclaimed standards of democracy. It argues that below the official discourse on EU citizenship there are deep dilemmas at work (1). So far EU citizenship is caught in a double tension: a tension between the political language of citizenship and the economic logic of free movement on the one hand; and a tension between the rivalling legitimacy demands of international and supranational forms of political cooperation on the other. The path of expanding European citizenship by embedding the European market through judicial activism has proven to be limited in its success without a political counterpart on the supranational level (2). It is argued that such a political counterpart is necessary in order to address problems of justice that arise from the systemic and social interdependencies of the integration process. But proposals that try to tackle the conundrum of European democracy, accounts of EU *democracy*, have so far to a large extent failed to address the EU as a context of *transnational* justice (3). For the future of EU citizenship, the extent to which the EU succeeds in appropriately channelling pan-European conflicts of wealth disparities and redistribution will prove to be decisive (4). With regard to EU citizenship, the choice is between a weak, integrated status and a strong(er), differentiated status. Both alternatives carry their own particular risks.

## 1. POLITICS OF LEGITIMATION: THE DISCOURSE ON EU CITIZENSHIP

Many of the central and most enduring struggles in the history of politics have taken place in the “language of citizenship” (Tully, 2014: 3). As the democratic revolutions of the 18th century and later struggles of social movements for inclusion and recognition indicate, citizenship – with its core being the political right to vote – was, for much of its history, something that people fought for. But when national leaders, consenting to the *Treaty of Maastricht* in 1992, called ‘Union citizenship’ into being, there were hardly any grass-roots movements for European citizenship. There was no prior authorisation on the part of the European population, no statement that could be interpreted as their common will to join together and form a polity. Nevertheless, from the beginning there were proponents intent on pushing the project of European integration in this direction (Shaw, 2007: 38) who faced conflicts and struggles – the sources of which have still not petered out.

Which particular struggles were being encountered when the EU decided to take up the language of citizenship? When the project of European integration was increasingly deemed to be suffering from a deep sense of malaise and public disaffection in the late 1980s, the establishment of EU citizenship with the Maastricht Treaty carried hopes for strengthening the EU's legitimacy. Yet, from the beginning EU citizenship was a disputed concept. For some this introduction was "little more than a cynical exercise in public relations" (Weiler, 1998a: 10). In this sceptical view, the language of citizenship contains a promise that the EU is far from being able to fulfil. For one thing, EU citizenship was introduced as a complementary 'extra', leaving national citizenship itself untouched.<sup>3</sup> For another, Union citizenship rights seemed mostly to reiterate already existing rights of free movement: the four freedoms of goods, services, capital and labour that constitute the Common Market. Thus it appears as nothing more than 'old wine in new bottles'.

In substantial terms EU citizenship appeared initially to be nothing more than a mirror image of pre-Maastricht 'market citizenship' (Everson, 1995; D'Oliviera, 1995). When the provisions were so poor compared with those usually associated with citizenship, and when there was no real intention to enlarge substantially those rights that citizens of the member states already had, why open Pandora's box at all? Political support for the introduction of EU citizenship came from a left-liberal power constellation which, in the process of preparing the new Treaty, urged member states and the European Commission not to restrict themselves simply to economic and monetary union (EMU), but to address the democratic deficit of the European legal framework. This power constellation, which included initiatives from the European Parliament, was assembled around the aim of challenging the internal market dispositive and argued that the idea of the European Union required an integrative space in which European citizens play a central and fundamental role. The legal positivation of a European citizenship status was in the end the result of a compromise in which those who pushed the agenda forward managed to build support against much resistance.<sup>4</sup> One explanation why EU citizenship remains so thin and fails to match many of the most central elements of citizenship is that this was the price the political supporters had to pay for accomplishing their aim: the content was watered down, and the challenge to the internal market dispositive thus limited (Buckel, 2013: 93).

No doubt the establishment of EU citizenship added a formal dimension to changes in transnational social relations that had been going on long before. The genesis – market integration – influenced and is still influencing the conceptual core of EU citizenship: *mobility rights* based on diminishing the importance of national borders. On the one hand this

mirrors the strong systemic impulse of European integration: creating a realm of peace and prosperity by opening up national economies, making them more and more interdependent. Yet, on the other hand, bringing together rights of free movement in a European citizen-status now marked a certain political ambition that had accompanied the European project from the beginning. Apart from the rights to mobility, the Treaty introduced the political rights of active and passive suffrage at a local level as well as at the level of elections to the European Parliament. Thus it reaches out to the normative core of democratic citizenship: political rights.

Nevertheless, the main content of European citizenship is not a complete scheme of political status or social protection, but a certain right to equal treatment by other political communities.<sup>5</sup> In order to be covered by EU law a Union citizen has to exercise his/her right of free movement. If he/she has always resided in a member state, it does not apply. Thus, on the one hand, there are guarantees of political participation in local and European elections which point to the core of democratic citizenship rights; but, on the other hand, these rights are situated uncomfortably with unrealised promises of unconditional free movement and residence. In this respect member states have always been careful to keep enough room for discretion. Thus free movement rights, insofar as they are not only to do with *entering* but also *residing* in a country, are restricted to those who are unlikely to become “a burden on the host country’s social assistance system”.<sup>6</sup>

From the beginning EU citizenship has been caught up in the tension between the political language of citizenship and the economic logic of free movement (Eleftheriadis, 2014: 779). On the one hand, a citizenship status was introduced in which the actualisation of rights is to a large extent dependent on economic status (being a worker or being economically self-supporting). On the other hand, the economic logic was not adapted ‘all the way down’. What was understood as a European common market place – that the free circulation of goods necessitates a European Common External Tariff toward the rest of the world – was not applied to the political realm: internal movement and residence requiring a common European membership policy (Weiler, 1998b: 4–5). To date there is still no ‘communitarisation’ of granting citizenship, or even a harmonisation of member state conditions for making such granting possible. The exclusive gate-keepers remain the member states. Although the four freedoms encompass goods, services, capital and labour/persons, it has been perfectly well understood that free movement of *persons* is a different issue: freedom of movement for persons affects the composition of the social entity that is the collective reference point of citizenship – the *demos*. This friction has not been appropriately addressed until today.

Tension between the political language of citizenship and the economic logic of free movement is mirrored in the discourse on EU citizenship, within which modernisation theoretical optimists and pessimists are divided. Pessimistic positions bring into question the assumption that an increasing interdependence between national economies and the introduction of a common market leads unavoidably to a spill-over into cultural and political integration within an ‘ever closer Union’ (Treaty of Rome). The fact that so far the introduction of European citizenship was driven by a top-down approach to political integration gives reasons to question this idea of a spill-over. Since the financial crisis, doubts about the general compatibility of economic and political rights in the EU have spread. Perhaps it has been a ‘great illusion’. For instance, Wolfgang Streeck (2014) argues that the celebrated European Union was never more (and in the current shape could never be more) than an economic and currency union. The effort to stabilise this currency union undertaken in the crisis has created a level of friction among the member states which is unprecedented in the post-war era. Rather than a vision of European democracy, we are threatened by a technocratic-authoritarian imposition of a capitalist mono-culture. According to this position, EU citizenship – celebrated by the Commission as “the corner stone of political integration” (EC, 2012) – itself constitutes a barrier to the further development of *democratic* citizenship in the EU.

By contrast, modernisation theoretical optimists stress that EU citizenship has planted expectations regarding the kind of political entity that the EU is or aspires to become. Ulrich K. Preuss puts it in a nutshell:

the mere association of the idea of citizenship with the European Community seems to promise its transformation into a polity whose constituent elements are no longer only the member states . . . the exciting and challenging quality of European citizenship is the underlying claim that political participation – the activist element of the concept of citizenship – is not necessarily confined to the nation-state, but is also a constitutive element of a transnational polity. (Preuss and Requejo, 1998: 15)

What the pessimistic view on EU citizenship neglects is the constructive power of legal concepts, which do more than just reflect existing social practices (Kostakopoulou, 2008). They also shape expectations, and thereby have a slow but steady transformative impact on citizens’ views as well as understandings of the political world in which they live. This is why EU-citizenship, contrary to sceptical interpretations, has always had more than a mere symbolic and decorative function. It is pointed out that the political institutions of the EU, including the institution of EU citizenship, incorporate an ‘embedded normativity’: democracy, rule of

law, human rights, responsible government and so on are supposed to be the ‘discursive codes’ of political institutions that stem from the common constitutional traditions of the EU member states (Eriksen, 2014). Even if a tension is granted, rather than an either/or market or *polis* alternative, the situation is better described as a ‘Jekyll and Hyde’ constellation, with Jekyll being the ‘Kantian’ and Hyde being the ‘managerial mindset’ – two forces in perpetual struggle on the European scene (Brunkhorst, 2014: 31–59).

Despite its origins in market integration, the concept of Union citizenship has been continually expanded since its introduction. To a large extent this resulted from judicial activism by the European Court of Justice (ECJ), which, with backing from its case law, pushed from a basically market-related citizenship towards an understanding of rights that are not directly linked to the market and economic activity (Besson and Utzinger, 2008: 191–2; Buckel, 2013: 94–153). With reference to the non-discrimination principle, the rights relating to EU citizenship have gradually been extended to non-economically active people. This has led to social additions, a transformative framing of economic rights and freedoms. It is obvious that this dynamic has not only changed the quality of EU citizenship, but that it also has the potential to put long-established suppositions of modern citizenship into question. It indicates very clearly that in the light of social processes that transcend state boundaries, the modern state as nation-state is no longer the only appropriate framing for the recognition of rights and reflections on citizenship. But the more the status of EU citizenship is given an expansive drive which eventually leads to a transformation of national citizenship, the more the problem of the European Union’s incomplete political integration comes to the fore. The transnationalisation of social rights for non-economically active persons has remained to a large extent a juridical argument (Buckel, 2013: 165–7). Although the ECJ’s judicial activism was able to stimulate a discursive break with neoliberal governance, the Court was limited in its attempt to re-embed the European market.<sup>7</sup> A juridically induced social union without a political counterpart has been unable to stir institutional or even structural transformations. It cannot substitute for active political mobilisation.

## 2. BARRIERS TO EU CITIZENSHIP, BARRIERS TO EU INTEGRATION

A typical feature of the official discourse on EU citizenship is a conflation of citizenship with rights. Many Policy Briefs and Citizenship Reports recommend EU citizenship as a cure for the problem of disaffection towards

the European construct by extolling the rights that come along with it. Year after year they have stressed ‘more rights’, ‘better rights’ – all in the hope of bringing the citizens ‘closer to the Union’.<sup>8</sup> From a more comprehensive perspective on citizenship this conflation itself is the problem. It leads to a multiplication of citizenship language – speaking of citizenship when only a certain category of rights is meant (for example, ‘financial citizenship’) – thereby hollowing out its democratic core. No doubt, rights are central to citizenship, but only if they are linked to the principal source of legitimation: the citizens of the polity.

The seriousness of the notion of citizenship as the cornerstone of democratic politics indicates that there are deeper dilemmas at work. EU citizenship is of fundamental importance for the Union: it goes to the very heart of its political legitimacy. Although the EU is not a state, it enjoys powers unprecedented in any other transnational entity.<sup>9</sup> Exactly what the nature of the polity is that enjoys these powers is still an unanswered question.<sup>10</sup> The ambivalent paths of European integration have led to an unclear terrain in which citizenship is hard to position.

The EU emerged from cooperation among European democratic states, which from the outset has been of a unique nature: its aspiration exceeds what is typical for an international organisation, namely cooperation among states for a certain purpose. This peculiarity most notably shows firstly in its core aim of ‘ever closer Union’ among the peoples of Europe, as initially put down in the *Treaty of Rome* (1957). Thus the *sui generis* character of European integration lies in combining the international, supranational and transnational dimensions of politics in a new way: European integration is a project of international actors (states) that voluntarily establish a common supranational political organisation aiming at ever closer transnational social and economic integration in order to create a realm of peace and prosperity by opening up national economies, making them more and more interdependent.

In a constitutional sense the institutional structure of the EU is based on a division of power between European institutions and the member states (Hurrelmann, 2015). The EU possesses powers only where competences have explicitly been delegated to it through the treaties. In accordance with the *Lisbon Treaty* of 2009, the EU’s political process is determined mainly by the relationships between four institutions: the *European Council*, the *Council of the European Union*, the *European Commission* and the *European Parliament*. In the European Council the heads of state and government determine the content of European treaties by consensus. Thus it follows the logic of an international organisation in which states cooperate on an equal basis. The European Council is the EU’s highest constitutional organ, and holds the highest political authority. Although not involved in EU law-making directly

(which is with the Council of the EU, or *Council of Ministers*), it establishes who decides what in the EU. By determining the treaties' contents, the European Council decides not only which policy areas should be dealt with in EU politics and which should remain part of national politics, but also which decision procedures should apply in which policy areas.<sup>11</sup>

In national democracy the authority to change the constitution lies with the Parliament, the supreme legislative power that is, in principle, free to decide which policy area to utilise. However, the situation is different in the EU. Here the European Council of the heads of state and government, an internationally organised institution, holds the highest legislative authority which assigns responsibilities for the respective policy areas in EU politics. The European Council's superior position provides the EU with an *indirect* democratic legitimation, insofar as nationally elected governments determine the content of EU treaties and general direction of the policy process. But the source of political authority in the EU is still primarily based on consensus and compromise between *national* governments and not among *EU citizens*. EU citizens are represented in the European Parliament, which has limited competences and is authorised in 'second-order elections'.<sup>12</sup>

These arrangements are puzzling for the idea of EU citizenship. If the unique character of the European Union is the tendency to transcend its own character as an international organisation, how can citizenship in this ever-transforming political entity be defined? On the one hand, EU citizenship owes much of its genesis to the insight that the unitary, state-oriented model of citizenship tends to become inadequate in the course of European integration and global transformations of the social and political order in general. On the other hand, it is still an open question how this new form of transnational citizenship should be shaped. EU citizenship was introduced as a complementary 'add-on' to national citizenship, leaving the latter untouched. But EU citizenship has also developed an expansive dynamic which – although not replacing national citizenship – is gradually transforming rights, membership and participation in the multilevel European polity (Shaw, 2007). EU citizenship steers towards opening up the boundaries of citizenship by detaching entitlement to rights from the status of national citizenship. Being a national citizen no longer means being a member of *one* political community only, but of many layers of governance in the EU. Thereby it opens up a chance of re-imagining and anticipating new forms of political agency and subjectivity. The EU is supposed to be an example for new forms of mediating traditional dichotomies of 'insiders' and 'outsiders', and this provokes the question of whether and how a new type of transnational citizenship can and should re-integrate the different dimensions of citizenship that tend to be disaggregated in this constellation.<sup>13</sup> The crucial question is whether

or not EU citizenship can, by transcending the boundaries of national citizenship and adapting to different layers of membership, keep the promises of democratic citizenship – namely, freedom and equality under self-given laws.<sup>14</sup>

### 3. THE PUZZLE OF EUROPEAN DEMOCRACY: BETWEEN INTERNATIONALISM AND SUPRANATIONALISM

The challenge of defining the idea and the content of EU citizenship is highly dependent on the question of how a conception of a European multilevel governance system can accommodate the principles of democracy. This is a far-reaching question that cannot adequately be answered within the scope of this text. Even if one leaves aside those who are not convinced that democracy is the right standard by which to evaluate the legitimacy of the Union in the first place, those who *are* differ immensely on the definition and justification of democracy itself.<sup>15</sup> However, a minimal standard along the criteria of public control, political equality and individual rights to justification can be defended as a basis for further discussion (Lord, 2015b: 213–19). It is hard to see how an arrangement that leaves citizens with no, or no equal, political control over those representatives they have elected to make their laws could be described as ‘democratic’.

Paradoxically, the more successfully the EU complies with its rationale and transnational integration progresses, the more deficient becomes the EU’s legitimacy drawn from its international organisation of political authority. The more policy areas are ‘communitarised’ and the more far-reaching the consequences of EU decisions become for individual EU citizens’ life chances, the greater is the need for a *direct* and *transnational* democratic legitimation for the EU. To date the EU still operates on the basis of a double depoliticised decision-making process: seen *institutionally*, it is a technocratically initiated process monitored by the Commission in which national executives determine the course of EU politics (Brunkhorst, 2014); furthermore, and seen *substantially*, the scope of EU politics is limited by European treaties. They limit the topics that are negotiable in EU politics and, moreover, determine the EU’s political aims – especially with regard to the politics of EMU (Dawson and de Witte, 2016).

Conversely, establishment of the European Parliament and the steady expansion of its competences (Polin, 2014) are indicative of the increasing demand for a direct transnational democratic legitimation based on the EU citizenry’s electoral representation resulting from moving towards

the aim of an ‘ever closer Union’. With every new step of integration, transnational interdependence among the member states is growing, creating a need for political debate and discretion which is at odds with the depoliticised intergovernmental mode of decision-making in the EU. In particular, EMU has posed problems that seem to require European decisions with redistributive effects (Chalmers, 2012). However, for EU politics with redistributive effects, the indirect democratic legitimation that current EU decisions obtain as compromises between nationally elected governments is not sufficient (Scharpf, 2013).

Depoliticisation and the international structure of political authority in the EU gained their legitimacy from enabling stepwise peaceful integration among extremely heterogeneous nation-states, the course of which was largely agreed. This situation had already changed before the financial crisis and has accelerated ever since. Tacit consent for the course of integration has evaporated in light of the conflicts sparked off by the “regressively redistributive effects” of EU economic policy (Offe, 2015: 26). Euro-Europe is divided into the ‘core’ or ‘surplus’ countries (which profit not only from a single external exchange rate but also from high saving in interest payments) and the ‘periphery’ or ‘deficit’ member states which lack the monetary and budgetary measures to fulfil important state tasks, in particular welfare. While the depoliticised, internationally structured political system was a guarantor of European integration before the crisis, thereafter it has caused tensions that challenge the current institutional set-up and the traditional path of indirect democratic legitimation through state governments.

Prominent proposals to overcome the EU’s depoliticising structure are approaches of an EU democracy (Cheneval, 2013; Cheneval et al., 2015; Nicolaïdis, 2012). These approaches are reaching out for a conception of democracy that is tailored to the EU’s conditions. They seem attractive because they are distancing themselves from the alternative objectives of federalism and intergovernmentalism which have shaped the discussion so far. Models of EU democracy are essentially based on the assumption that national member states are the principal vehicles of democracy in Europe, and that they should also remain so in the future. From a democratic perspective the main distinction of the EU consists in the kind of association which turns to a common political order in order to rule its relations democratically.

Contrary to the notion of a uniform EU demos composed of individuals ready to confer equal rights on each other, the EU’s community is pluralist, comprising the existing *demos* of member states on the one hand and individual EU citizens on the other. From that perspective Kalypso Nicolaïdis defines the ideal of an EU democracy as:

a Union of peoples who govern together, but not as one. However much shared *kratos* or power to govern, we must contend with the plurality of *demoi*; but also crucially, however many *demoi*, we need a common *kratos* to define and deliver, through mutually agreed disciplines, the responsibilities we owe to one another. (Nicolaidis, 2013: 351–2)

Accordingly, the purpose of an EU democracy consists in simultaneously keeping intact national *demoi* as equal political subjects while encouraging their mutual opening and recognition in the joint handling of political issues at EU level. Democracy is an “open-ended process of transformation” based on a horizontal position of power between *demoi* (Nicolaidis, 2012: 254).

The distinguishing feature of EU democracy seems to be the application of democracy principles to the EU on condition that a sustainable equilibrium between the political equality of national *demoi* and the political equality of EU citizens can be achieved. But how should the EU be shaped institutionally in order to stabilise this equilibrium in the context of a democratic decision-making process? Fritz Scharpf rightfully acknowledges EU democracy as an attractive, normative concept – albeit with a problematic aspect: currently, the focus of democratic argumentation is directed towards emphasising the differences between an EU democracy and the concept of a democratic federation. In order to avoid giving the impression of making the case for a European federation, the EU’s status quo is implicitly affirmed and institutional changes rejected. This is problematic because the constitutional reality of the EU is a long way from the normative ideal of a democracy:

By focusing on European legislation, authors [of EU democracy] tend to downplay the constraints imposed on the plural *demoi* through negative integration and the supranational euro regimes, as well as the constraints imposed on effective political action at the European level through the multiple-veto system of the Community Method. (Scharpf, 2015: 400)

The apparent strength of the concept – circumventing the ‘putting in form’ that shaped the debates over the Constitutional Treaty – reveals at the same time a particular weakness: an indecisiveness with regard to how the balancing of power between different kinds of political subjects, national *demoi* and EU citizens should be institutionally shaped. Insofar as democratic approaches are rather status quo – that is, *inter-state* oriented – their potential for politicising increasingly explosive distributive conflicts *within* the EU is limited. The concept of democracy seems like an umbrella under which various, substantially different approaches can gather. Despite their common denominator, there is considerable room for disagreement with

regard to the question of how far the democratic control of the Union should be vested in national democracies and how far in the Union's own institutions. According to 'republican intergovernmentalism' the states' sovereignty ought to be preserved to the greatest possible extent because a "high degree of interdependence" as a precondition of cohesion still rests mainly *within* states, "between members of a political community" (Bellamy, 2015: 228). By contrast, transformative positions stress the promotion of transnational interests. For instance, Nicolaïdis (2103) points out the importance of transnational lists in elections to the EP, and underlines the denationalising potential of EU citizenship for moving towards new forms (and norms) of inclusion (also Besson and Utzinger, 2008: 197). The latter approaches are more open to institutional change, including transfer of further competences to the Union – which, as we shall see next, is an important issue if the EU is to be addressed as a context of justice.

#### 4. THE EU AS AN (EMERGING) CONTEXT OF JUSTICE

The framing of justice has for a long time been gripped by a "Westphalian political imaginary", which means it has been restricted to the modern territorial state (Fraser, 2008: 12). But in light of social processes shaping people's lives that routinely overflow territorial borders, re-framing contexts of justice has become a contested political issue. In the European context the Westphalian framing of justice is mirrored in the substantial division of labour between economic, regulatory policies as European issues on the one hand, and social, labour market and redistributive policies as national issues on the other. This division of labour that the treaties have expressed so far is currently being brought into question.

In the process of European integration two crucial choices have been made that have far-reaching effects on the interdependencies of states, affecting citizens across borders: first – concerning the systemic dimension of integration – the introduction of the Euro as a common currency; and, second – concerning the social dimension – the introduction of *Union citizenship* as a common legal status. With regard to the former there is considerable evidence that the Euro creates a dynamic towards increasingly more economic and political coordination and, accordingly, a greater need for democratic legitimation on a transnational level. In public discourses the Euro regime is frequently presented as a *Sachzwang* (inherent necessity), although it was a *choice* from which further choices were likely to follow. Step by step, further coordination is needed: the Euro area needs a bank union, a fiscal union and ultimately a fully fledged political union

(Cheneval, 2015). Mere coordination of national fiscal policies cast in a *Stability Pact* is difficult, if not impossible, to achieve if there are great imbalances between the economies involved. The current crisis of democratic legitimacy appears to be the price that the EU now has to pay for the lack not only of citizen involvement in such far-reaching decisions but also of general public attention. Thorough public debate on the implications of this new interdependency could have prevented a situation in which Euro-area citizens now perceive the crisis to be an outcome that others have inflicted on them. The expectation that output legitimacy of growth, stability and prosperity would compensate for the lack of input legitimacy reveals a very risky strategy.

The other choice that has an expansive normative impact on the dynamics of European integration is the institution of 'Union citizenship'. Transnational free movement rights (that constitute the core of EU citizenship) have far-reaching economic and social effects. As a legal institution Union citizenship supports the further opening up of national borders: once people are making use of their individual mobility rights they build up new transnational economic and social ties. This potentially transforms the composition of the European demoi – they become more plural and diverse. Traditional national arrangements tend to be structurally insensitive in this regard. They barely take into account the relationship between citizens across borders exercising their free movement rights. In principle, EU citizenship can be interpreted as a way of dealing with the moral and legal insufficiencies that domestic political systems produce in the context of a common market. As Floris de Witte outlines, the EU expresses three claims of justice, thereby mitigating deficiencies within national communities: first, by allowing for free movement extending the capacity of citizens to live good lives beyond their own member states;<sup>16</sup> second, by providing rights to equal citizenship via the non-discrimination principle (which means access to social rights, but not full electoral rights) on the basis of residence; third, by being sensitive to demands of justice that affect domestic redistributive justice (leaving competences in welfare policies with the nation-states) (de Witte, 2015: 51–9).

The problem with these three claims is that there is a fundamental asymmetry between the institutional arrangements that produce and stabilise norms of justice (which have remained on the national level) and the nature of the relationships between citizens that give rise to claims of justice (which increasingly takes place across borders). Although the EU as an economic and monetary union has established relationships of mutual dependence that – as the current crisis demonstrates – cannot be turned back without plunging national economies into chaos, a discourse of justice barely expands beyond the structures of the nation-state. Conversely,

national citizens push their governments to make the non-discrimination principle more restrictive, which means excluding non-nationals from welfare entitlement (very much a feature of today with the rise of right-wing populism). Questions of justice are deeply political and politicised. They afford a mediating process that is structured through political institutions and in which communicative power can encompass what is socially connected to transnational socio-economic conflicts and social groups (de Witte, 2015: 211; Brunkhorst, 2014: 168–71). But the EU lacks the democratic and institutional preconditions for legitimately producing norms of justice. The absence of a strong political system explains the occasional desire of the ECJ to answer such political questions. But the Court tends to be more sensitive to *functional* than *normative* dimensions of justice, stabilising national solidarity systems instead of evaluating their appropriateness in a pan-European perspective. According to de Witte (2015: 51), what has evolved in the EU so far is a “tiered concept of justice” which is inherently unstable. Having no competences of its own to underpin EU citizenship rights substantially, for instance through welfare state regulations, EU law is parasitic upon the existence of domestic welfare entitlements.

## 5. A NEW CONFIGURATION OF CITIZENSHIP?

If the tiered concept of justice is inherently unstable what does this mean for the concept of citizenship that is related to it? So far Union law protects solidaristic rights granted under national citizenship in order to protect these ties from erosion by virtue of rights granted under Union citizenship. This accepts different levels of protection according to the relative ‘worth’ of national citizenship. It also preserves the (primarily) national frame of solidarity. The question is, thus, how to transcend the pursuit of justice and the respective institutional arrangements of the nation-state and re-integrate them on a European level. One suggestion for re-integrating claims of justice is a ‘relational approach’, guided by the question of which exact social commitments warrant access to which social benefits.<sup>17</sup> The argument is based on the assumption that it is the “daily, quotidian social interaction between citizens and their communal reproduction of social norms within a certain territory that generate commitments of solidarity and that warrant access to welfare rights entitlements” (de Witte, 2015: 129).

Engaging in such interactions generates rights based on ‘communitarian solidarity’. At the same time it is possible to bar mobile EU citizens from access to social benefits if such citizens do not meet criteria of reciprocity

that are specific to a certain social entitlement. The resulting ‘transnational communitarian solidarity’ does not have significant normative substance, but is rather a procedural instrument in opening up national citizenship, infusing it with the relational commitment that permeates the process of European integration. The consequence of these reflections is an idea of EU citizenship as ‘procedural citizenship’ (de Witte, 2015: 130–39). Procedural citizenship means that the status of an EU citizen entitles its holder to nothing more (but also nothing less) than access to the variety of ‘communitarian solidarity’ arrangements existent in the different member states.<sup>18</sup>

The same strategy – recognising that the status of an EU citizen remains thin (or procedural) but interpreting this as a strength rather than a weakness – can also be found in the concept of ‘composite citizenship’ (Van Eijken, 2015: 233–8). This concept, which is related to the idea of multilevel constitutionalism, envisages an EU citizen as a ‘composite legal subject’, a status with different qualifications that can be activated at different levels of rights and responsibilities. EU citizens have constitutional rights – even if not fully fledged. They are substantiated by national (and local) government layers. Both the procedural and the composite approach are contextual insofar as they aim to guarantee that “the development of justice in the EU remains sensitive to its own limits and does not stretch domestic commitments of solidarity too far” (de Witte, 2015: 212). With regard to social rights, this system creates differences; but it leaves the substantive choice of how to govern their social security systems with the member states (thus, it does not drive 500 million EU citizens under one system of transnational solidarity). “Union law demands equal access, but the substance of the social rights is derived from the member states” (Van Eijken, 2015: 236).

This is exactly what has proven to be the specific problem: in the pan-European context of austerity politics in which economic asymmetries between ‘core’ and ‘periphery’ create huge discrepancies of gains and losses, this division of labour between different levels has lost legitimacy and is itself in need of justification. The contextual approach, which aims to leave political struggles over the distribution of resources on the level of the member states, apparently accommodates for democratic principles. But its democratic promise does not transcend the Westphalian framing. The Euro regime generates growing volumes of conflict for which there is no appropriate institutional outlet (Offe, 2015: 27).

While a contextual approach is sensitive to the social and cultural preconditions of national welfare systems, it is insufficient with regard to wealth disparities *between* member states. Thus it is unlikely to address fully the requirements for transnational solidarity. Wealth disparities

between member states, which form an important reason for intra-EU mobility, might be profitable for the markets; but for citizenship they pose problems. The EU lacks instruments to support member states in need. Structural funds such as the *European Social Fund*, although part of an inter-state solidarity arrangement (Kleger and Mehlhausen, 2014: 98), are not designed to deal with asymmetrical shocks or reverse negative economic cycles (Seeleib-Kaiser, 2018). That is why the EU Commission in summer 2016 took the initiative of conducting a consultation on the introduction of a Social Rights Pillar within the oversight body *acquis communautaire*, with the rationale of “overcoming the crisis and looking beyond, and moving towards a deeper and fairer EMU” (EU commission, 2016: 3). This signals awareness of the problem, but is under the current institutional arrangements rather toothless: the suggested framework provides neither instruments for the EU to support member states in need nor social rights for EU citizens at the EU level.<sup>19</sup>

## 6. CONCLUSION

The future of EU citizenship is dependent on the further development of a political union that is able to channel pan-European conflicts of wealth disparities and redistribution. The current system presumes a formal equality between member states which – substantially – is to a large extent non-existent. This affects the equality of rights, and thus also the ‘constitutional nature’ of EU citizenship (Van Eijken, 2015) – at least if the reference point is the tradition of modern democratic constitutionalism. Even if the rights of EU citizens have a compositive character (which implies a dynamic interaction between different layers of the local, the national and the European), this does not answer the question of to what extent differentiated statuses can plausibly be subsumed under one common *citizenship* regime.

This question becomes even more pressing in light of scenarios for differentiated integration, which is on the agenda since one option in dealing with the increased need for cooperation and regulatory activities during the ongoing crisis is to move towards a closer fiscal and political union – with the Eurozone going ahead.<sup>20</sup> With regard to EU citizenship, this implies a choice between a weak, integrated status for all or a strong(er), differentiated status for some. Both alternatives have their particular risks. A closer political union in the form of a ‘federal Eurozone within an inter-governmental EU’ would increase the need for democratic scrutiny, and potentially trigger democratic reform (Beneš and Braun, 2014: 13–15).<sup>21</sup> Leaving aside the tricky questions of whether and how the institutional

design of a federal Eurozone could be integrated into the existing treaty arrangements, any model of differentiated integration, while strengthening cohesion of the ‘core’, would lead to watering down the idea of EU-wide citizenship. However, it is obvious that the development of any political union is dependent on the measures that are introduced to solve the Eurozone crisis. In this situation deepening and enlarging might not work well together. As a temporary derogation, substantiated citizenship rights among the core that move towards deeper cooperation in economic and social policies would increase the motivation for those outside to join, and save the concept of a transnational EU citizenship from being further hollowed out.

## NOTES

1. For example, social movements such as *Pulse of Europe* which started from Frankfurt am Main in Germany in November 2016, has grown rapidly and assembles citizens in an increasing number of cities in (and even outside) the EU. Others include the *Democracy in Europe Movement 2025 (DiEM 25)* and *Demokratie in Bewegung*. Perspectives for a political re-transformation of Europe are discussed in Chalmers et al. (2017).
2. See for example, White Paper (EC, 2017). Debates on the political reform of the Union are confronted with a deep paradox. On the one hand, it is pointed out that “what needs to be done is almost impossible to carry out” (Offe, 2015: 41–2). On the other hand, since it has become so obvious that the EU cannot continue as before if it stays loyal to its normative promises, a “window of political opportunity” for a basic overhaul of the system might open up (Scharpf, 2015: 397). In a similar mode, Jonathan White argues that a perception of shared crisis might be a precondition for a successful constitutional moment (White, 2015: 313).
3. Article 8 of the Maastricht Treaty states: “1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. 2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.” Article 8a continues: “1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.”
4. The initiative, which, besides the European Trade Union’s Association, also included some civil society actors and pan-European intellectuals, was pushed by South European member states, with the Spanish Prime Minister, Felipe González, as an important promoter (Maas, 2007: 46–50).
5. The non-discrimination principle laid down in the Treaty of Maastricht demands that no EU citizen in any member state of the EU shall be put in a position more disadvantaged than that of a national citizen or a third-country national. One might argue that this provides a pathway for adding social rights to the status of EU citizenship. But the quality of social rights is relative to the level of protection in the respective membership (for a discussion see below).
6. EC, Memo/1/1041 ([http://europa.eu/rapid/press-release\\_MEMO-13-1041\\_de.htm](http://europa.eu/rapid/press-release_MEMO-13-1041_de.htm)).
7. Niam Nic Shuibhne (2015) currently detects a distinctive shift in the jurisdiction of the ECJ that can be interpreted as a partial roll-back from previous judicial activism: a hegemonic attribution of supremacy to secondary law vis-à-vis the Union’s legal order. This strengthens again the discretion of national law, in particular with regard to social

- rights. Sonja Buckel (2013: 167) argues that while anti-discrimination is so central to EU law, discrimination due to class (implicit in the current status quo) is not on the citizenship agenda.
8. Weiler (1998b: 14) calls this the ‘bread and circus politics’. Current examples range from abolishing roaming charges to other everyday life issues such as cross-border taxation formalities. Important as they might be, it seems as if the Commission is extolling these advantages like a salesperson. They are supposed to convince people about the attractive *output* of European integration.
  9. Among these are: 1) to enact norms which create rights and obligations for the member states and their nationals; 2) to take decisions with major impacts on the social and economic orientation of public life; 3) to engage the Community by international agreements with third countries; and 4) to spend significant amounts of public funds (Weiler, 1998b: 19).
  10. As Christopher Lord observes (2015a: 3), EU scholars have so far confirmed the joke remark by the former President of the European Commission, Jacques Delors, that the EU is an “unidentified political object”.
  11. The policy areas assigned to the EU are dealt with by different procedures. Some areas (for example, the Common Foreign and Security Policy) are acted upon inter-governmentally by the national ministers in the Council of the EU. In other areas (most importantly, the single market and EMU) the *ordinary legislative procedure* applies. Here the European Parliament functions as a (co-)legislator and is on a par with the national executives in the Council of the EU.
  12. For the limited role of the European Parliament in the EU’s institutional architecture see Seubert et al. (forthcoming).
  13. A ‘disaggregation of citizenship’ is effected by institutional developments that unbundle the three constitutive dimensions of citizenship – namely, collective identity, the privileges of political membership and the entitlements of social rights and benefits (Benhabib, 2006: 45). According to Seyla Benhabib, this is a global dynamic but holds true in particular for the EU.
  14. For a reflection on these promises and their inherent tensions, see Seubert and Eberl (2018).
  15. The key points of this discussion are presented in Lord (2015b).
  16. This ethical description of free movement rights (pursuit of the ‘good life’) tends to play down the systemic dynamics of free markets operating between states and societies with huge discrepancies of wealth and prosperity. In this context labour is a factor of production, and leaving one’s country of origin is often more a material necessity than an ethical choice. For a general moral discussion of free movement rights, see Carens (2015).
  17. This approach, developed by Floris de Witte (2015: 123–39), can be interpreted as a further elaboration and a refinement of the ECJ’s ‘real link’ doctrine (Van Eijken, 2015: 129–34).
  18. Procedural citizenship claims might in practical terms lead to endless case law in which judges have to consider the character of a particular social benefit as well as the kind and depth of social interaction a person claiming access can prove – a problem that is considered by de Witte himself when he discusses the ‘temporal proxy’ solution used by the Union Legislator in Directive 2004/38 (de Witte, 2015: 138).
  19. The consequence is that under these conditions it remains almost impossible for average mobile jobseekers from Central and East European, as well as South European, countries to access substantial social rights (Seeleib-Kaiser, 2018).
  20. This fits with scenario 3 of the latest White Paper, which says: “A group of countries, including the euro area and possibly a few others, chooses to work much closer notably on taxation and social matters. Greater harmonization of tax rules and rates reduces compliance costs and limits tax evasion. Agreed social standards provide certainty for business and contribute to improved working conditions. Industrial cooperation is strengthened in a number of cutting edge technologies, products and services, and rules on their usage are developed collectively” (EC, 2017: 20).

21. Most important in this proposal is a common EU budget capable of fulfilling cycle-correcting tasks and financed by own sources of sufficient size.

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