

1. Introduction: being a citizen in Europe

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1.1 CITIZENSHIP AS TERRITORIAL AND SOCIAL MEMBERSHIP

People living in Europe belong to different concentric or overlapping territorially defined communities: neighbourhoods, cities, nation-states and the European Union, and not to forget the world population. They can also belong to various other groups or categories: (extended) families, friends, colleagues, genders, age groups, ethnic groups, the employed or the unemployed, students or pensioners, the healthy, the sick or the disabled, as well as language or religious communities. These communities and categories define multiple identities, which engender rights, duties and responsibilities. Over time some of these have come to be defined in law.

Membership of *territorially* defined communities is referred to as citizenship. This term – as well as related ones in other European languages (*citoyenneté, burgerschap, Bürgerschaft, ciudadanía, cittadinanza, cidadania, cetatenie, medborgarskap*) – stems from the term ‘city’, ‘burg’, ‘fortress’, that is, a walled and protected territory. Inhabitants of this walled territory had freedom (‘*Stadtluft macht frei*’), which furthered independence and individualism. However, not everybody within the city walls was a ‘citizen’. Alongside the territorial definition, citizenship has always had a social construction of membership, which included and excluded some groups. For example, the beggar within the city walls was not part of the citizens. For those who were included, the right to freedom and independence was always combined with duties and responsibilities. Walls provided protection, but had to be built, maintained and defended. Duties such as serving in civic militias, guarding walls and dykes, providing labour and paying taxes were required in order to guarantee the continued protection of these rights. Such rights and duties stabilised mutual expectations between people and developed into customs. Eventually they became enacted into law, in order to increase transparency and predictability and ensure equality.

Citizenship has been (and often still is) portrayed as a distinctive characteristic of European nation-states and one of its major legacies to human civilisation. 'The concept of European Union citizenship lies at the heart of the EU's unique polity. The challenges that the EU faces in making EU citizens more aware of their rights and obligations and in seeking to overcome the persistent shortcomings related to the exercise of EU citizens' rights and obligations' were at the centre of the call for the EU Project FP7 SSH Call 2012 Activity 5 Challenge: *Exercise EU Citizenship: Removing Barriers*, of which this book is one outcome. In the following chapters, citizenship will be studied in its interdependence between rules and practices, or between law and society. Legal rights are the outcome of societal and political processes, and, in turn, subsequently structure and influence them. Legal rules and social practices develop over time in a closely-knit interrelationship with one reinforcing the other. To address the dynamics between legal rules and societal practices, the differentiation of citizenship rights across domains and categories of citizens, and the existence and effects of multiple barriers to the exercise of citizenship rights, this book has brought together a multi-disciplinary team from all over Europe to combine their expertise. As citizenship has both normative and empirical dimensions – another expression of its multi-dimensional character – the authors of this book represent normative disciplines, such as law and philosophy, as well as empirical sciences, such as sociology, political science, history, economics and policy studies.

In Chapter 2, Sandra Seubert and Oliver Eberl address citizenship as a territorially and socially bounded concept. At the European level, bounded citizenship meets transnational rights, which challenges the traditional understanding of modern democratic citizenship. With the 'nationalisation of citizenship' in the 19th century citizenship refers to a coherent status with particular rights and duties based on collective identity, for those within the bounded territory of the nation-state. Democracy promises freedom and equality to all members of the democratic community. The main challenge of EU citizenship is that it detaches citizenship from the national, but so far does not offer a clear substitute on the transnational level. The authors conclude that the picture of EU citizenship is twofold. EU citizenship stands for a unique expansion of citizenship rights, but at the same time it seems to involve the dissolution of citizenship: the disaggregation of the different dimensions of citizenship, collective identity, political membership, access to social rights and benefits. As such it re-introduces the link between economic and political citizenship that the modern welfare state was supposed to overcome. This affects its democratic character.

There are not only different historical traditions in the Member States, but also different trajectories in the history of European political ideas.

These traditions and trajectories influence different models and approaches to citizenship. Rather than studying citizenship as a homogeneous concept, this book acknowledges its heterogeneous character in several respects.

1.2 CITIZENSHIP AS A MULTI-LAYERED CONCEPT

First, in Europe, concepts of local, national and EU citizenship exist side by side. It is a multi-layered phenomenon. Historically one distinguishes concepts of citizenship before and after the French Revolution. Before the French Revolution, guilds and local citizenships were dominant. Guilds and local citizenship have suffered bad press over the last two centuries, as monopolists (or monopsonists) tried to capture rents on protected markets for raw materials, labour and consumer products. This paradigm is now under scrutiny and being revised, not least because there is enough evidence to suggest that the strict rules were not necessarily stringently applied (Epstein and Prak, 2008; Minard, 2007). The parallels with modern practice come to mind. Historical studies can help us to unravel the underlying mechanisms of such behaviour and weigh the costs and benefits of systems of protected interests, which are an important dimension of citizenship.

Much of the current debate focuses on the access to rights. One school argues that rights were limited to a relatively limited group of individuals, who used citizenship and other institutional mechanisms to exclude women, religious minorities and the working classes from the economic means to increase their own welfare (for example, Ogilvie, 2007). Others have argued that rules and regulations that may have looked harsh on paper were actually poorly enforced. Guild monopolies, for example, were very difficult to monitor, especially in large cities. Preferential treatment of relatives did not prevent outsiders from accessing the guilds. In fact, these 'revisionists' argue, guilds and similar institutions helped to overcome frictions in labour and other markets, and may – on balance – have turned out to be beneficial (Epstein and Prak, 2008).

As the historical Chapter 4 by Maarten Prak, Marcel Hoogenboom and Patrick Wallis illustrates, before the French Revolution the existence of local citizenship and the co-existence of local, regional and national concepts of citizenship were the norm rather than the exception. According to them, the EU is in a unique position to celebrate and support a plurality of citizenship forms and practices – transnational, national and local. The exchange of 'best practices' should be stimulated, which would support the development of new, complementary forms of citizenship.

Federal states display multi-layered features to some extent even today.

For example, in Switzerland people are still first a citizen of their canton and only secondly of the federation. They derive different rights from these identities or lack of them. Thus lawyers who have done their lawyer's exam in one canton until recently could not practise in other cantons. Studying such historical and contemporary models of federalism helps us identify workable solutions to some of the challenges currently faced by the EU in its attempts to further develop a European form of citizenship. Studying cases of eight countries, in Chapter 5 Mónica Ferrín and Francis Cheneval derive lessons to be learned for the EU on how to accommodate rivaling claims of citizenship and how to overcome problems of the multi-layered nature of citizenship constellation.

1.3 THE MULTI-DIMENSIONALITY OF RIGHTS

Second, the book also acknowledges that citizenship is heterogeneous in terms of the domains to which it applies. Although citizenship characteristically impacts a whole range of fields, most importantly political self-determination, the extension to economic, social and ultimately also cultural rights is important. As this book illustrates, citizenship can develop at a different pace in the various domains and this can create rivalries, tensions and complementarities (see Sybe de Vries and Frans van Waarden, Chapter 3). Citizenship rights and duties pertain to the various roles people have and relate to different societal domains. Several dimensions of citizenship can, therefore, be distinguished. A classic and familiar distinction is that between negative and positive rights. This is linked to the distinction between 'freedom from' and the 'freedom to' (Fromm, 1941 [1942]; Berlin, 1959). Negative rights are, for example, 'freedom from' something, usually constraints on freedom, for example, from terror, want, insecurity, the burden of corruption. Positive rights refer to the 'freedom to': marry, speak freely, vote, undertake, engage in contracts, invest, sell one's labour, and so on. Often, of course, positive freedoms can be redefined into negative ones. This is also the case with the four freedoms of the European Union. The freedom of movement of goods, services, capital and labour can be rephrased as a freedom from constraints on these movements. This is why this is often not such a useful classification.

Another classic distinction is that defined by T.H. Marshall (1984 [1950]) between *civil*, *political* and *social rights*. The EU Charter of Fundamental Rights uses this typology, but has added the category of *economic rights* (which, for Marshall, were particularly included in the civil rights). That is understandable, considering that the European Union was established as an economic community, and used to be the main pillar of the three

pillars when they were still distinguished. The four EU freedoms refer to economic mobility within and across the borders of Member States; to the traded input and output of economic enterprise, goods, services, as well as the components of production, capital and labour. Integration has in the first place been a negative economic one – abolishing all kinds of barriers to trade – and has produced a priority, if not a bias, towards economic liberalism in the EU.

The number of rights accorded to citizens by the EU has grown considerably, ever since the inception of the European (Economic) Community. Thereby the focus has always been on granting individual rights to EU citizens, without considering the importance of social embeddedness of citizenship rights for the realisation of a truly effective EU citizenship. This problem is thoroughly analysed by Marcel Hoogenboom and Trudie Knijn in Chapter 6, which discusses the economic, social, civil and political rights of EU citizens.

The EU has placed the emphasis on economic rights in particular. Economic rights refer to all rights pertaining to economic transactions that facilitate their conclusion in the interest of the partners, as well as the general public (growth, prosperity, income, employment). They include the freedom to exchange property, that is, the buying and selling of goods, services, capital and labour, as well as the freedom to contract. They also provide protection against the opportunistic abuse of information advantages or against abuse of other sources of power on markets, whether based on collusion, dominant market positions or other trade constraints. This is why the freedom to deal and contract is limited by the many conditions for trade and contracting. In general, economic rights aim to create fair trade practices based on relative equality or balance between transaction partners.

The fact that the EU has focused on economic rights of citizens is understandable given that establishing and maintaining the internal market was a core task of the European (Economic) Community and is one now for the European Union. Not only has it included them in a separate category in the Charter of Fundamental Rights, it also actively protects them (for example, as is the case with competition policy), or actively encourages consumers to claim them (for example, as is the case with airline passengers, who are kindly reminded by the European Commission on billboards at airports that they have the right to (and should) claim damages from airline companies in the event of delays).

In Chapter 7 Sybe de Vries and Elisabetta Pulice provide an overview of the development of economic rights in the EU and draw on examples from the areas of intellectual property rights, professional services, and consumer protection in relation to the digital single market. They observe

that the realisation of economic rights has been hampered by the complex multi-level context of the EU and the multi-layered governance of their protection, as well as the increasing rivalries between economic rights and other citizenship rights. They also emphasise the importance of the social embeddedness of economic rights.

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 civilised being according to the standards prevailing in the society. The institutions most closely connected with it are the educational system and the social services. (1984 [1950], p. 249)

These are usually the rights of citizens vis-à-vis the government, which either provides such services itself (for example, education, welfare state programmes, other forms of social protection) using income from imposed levies or which has compelled societal actors (for example, pension funds, insurers, hospitals, homecare offices, schools, housing associations) to provide such services and has forced citizens to contribute financially to these provisions. Social rights can furthermore be subdivided into substantive and procedural/formal rights. Substantive ones are, for instance, the right to a minimum wage, to a 40-hour working week, to paid (religious) holidays, to social security, health insurance, a pension and so on. Procedural rights are the rights of workers, patients, tenants, students and so on to be organised in associations and unions, to strike and to engage in collective bargaining. In Chapter 8, Martin Seeleib-Kaiser discusses the development of social rights at the European and Member State levels. He examines the extent to which European social policy is largely limited to measures of social security coordination for mobile and migrant workers. Social rights continue to be primarily determined by decisions at the nation-state level. In light of the economic and subsequent sovereign debt crises, Seeleib-Kaiser pleads for bold action towards strengthening European social rights, such as a European Minimum Income Scheme.

Civil rights refer to the rights citizens have regarding each other in interpersonal relations and which, over time, have become recognised, registered, sanctioned and protected by the state, among other things in national civil codes. They concern issues such as birth, marriage, divorce and having children, property rights, inheritance, privacy, speech, behaviour in public places, deception, fraud, theft and aggression. Marie-Pierre Granger provides an overview of the development of civil rights within the EU in Chapter 9 and identifies a corpus of civil rights that should be associated with EU citizenship. The EU Commission stated in 2017 that 'The ultimate goal of EU citizenship is for all EU citizens to feel at

home wherever they are in the EU and to feel truly European, also when staying at home', 'sharing in a system of common values, which the Union upholds, including . . . human dignity, equality and human rights'. The author argues that this goal has been attained to some extent; however, the main limitations lie in the limited scope of application of EU law and the consequential limited ability of the EU to ensure that civil rights are respected in all of its territories. The author pleads for a broader definition of EU citizenship, which allows for a more meaningful protection of civil rights throughout the whole EU.

Political rights refer to rights of citizens in their ability to influence public authority. These include the typical political rights, such as freedom of speech and assembly, the right to political representation (that is, voting and being elected) as well as to petition and protection from arbitrary taxation. In a broader sense they may also refer to many issues regulated in public law, that is, in constitutional, administrative and criminal law, such as the rights to privacy of the home, defendants' rights, the right to appeal government decisions and so on.

Chapter 10 by Nir Kosti and David Levi-Faur postulates an overview of political rights, but prefers the concept of 'participation in political processes', rather than rights and duties of citizens. Traditional participation forms, such as voting and participation in parties, are distinguished from deliberative forms of participatory decision-making in the policy process. According to the authors, the EU has developed many new forms of participation. EU citizens have many more opportunities to participate in EU policy-making than ever before. Nevertheless, substantial barriers to empowering citizens at the EU level remain. They concern legal restraints, preferences for market mechanisms, emphasis on expertise and inefficiencies of participatory forms compared to traditional representative forms.

Sometimes the different categories of rights overlap. For instance, the freedom of movement of labour is also a civil right that allows citizens to stay and seek work in another Member State. The right to medical care in another Member State can be seen as a social (role of patient) as well as an economic (role of consumer) right.

Furthermore, rights can also differ in who is primarily responsible for providing and/or enforcing them. If the individual has to claim them actively (for example, property rights or the right to have contract partners abide by their contractual obligations) is it then the duty of the state to respect or provide them, as is the case with, for instance, the sanctity of the home or the right to security, or do just both parties bear responsibility? This distinction seems related to another dichotomy, made in the EU Charter of Fundamental Rights, between *rights*, which can be invoked by

individuals, and *principles*, which cannot. It is so far unclear which of the Charter rights qualify as principles. It has been submitted that most social rights or the rights included under the title ‘Solidarity’ belong to the category principles, but this has not yet been confirmed in the case law of the Court of Justice of the European Union. Nevertheless, this distinction has been heavily criticised in legal literature as it can affect various categories of people differently (Craig and de Búrca, 2015).

Citizenship entails not only rights, but also duties and obligations. The right to privacy is counterbalanced by the duty to respect the privacy of others, the right to protection against fraud by the obligation not to cheat others, the right to political representation by the duty to pay (taxes) and obey the law, the right to social benefits by the duty to contribute and to give something to society in return.¹

1.4 THE MULTITUDINOUS EFFECTS OF RIGHTS ON DIFFERENT CATEGORIES OF CITIZENS

Third, citizenship rights and duties affect various categories of citizens differently. An additional, useful distinction is, therefore, made between categories of subjects entitled to rights, often, but not exclusively, on the basis of ascribed status, that is, personal characteristics that are usually not chosen and/or difficult to change (unlike societal roles) such as: gender, race, place of birth, original nationality, very young or very old age, mother tongue, sexual orientation, religion, or the lack thereof, disability and acquired level of education. People from different categories and in different roles may have different requirements as to rights pertaining to access to various items such as: access to territory/public space, survival, safety and security, family life, health care, food, water, employment, income, education, information, respect, privacy, non-discrimination, the practice of religion, to be understood in their own language and so on.

A paradox of citizenship remains that while aiming to abandon inequality, the concept of citizenship also creates new inequality. The very concept of citizenship abolished societal differences. That was one of the French Revolution’s major achievements. All people in the city or state were formally equal in the eyes of the law and had equal rights and duties. Privileges for the lucky few were eradicated. In order to make the Revolution’s slogan – *liberté, égalité, fraternité* – a reality, all formal status categories were abolished. Furthermore, so too were their organisations, the ‘*corps intermédiaires*’ of the nobility, the clergy and the guild system; no subcategory of citizens, no privilege should henceforth come between the citizen and the state.

Yet citizenship itself created and formalised a new form of inequality. It made a distinction between citizens with rights and non-citizens without them. Furthermore, there is a difference between law and practice, between having formal rights and having the opportunity to exercise them in practice. As outlined in Chapter 2, the capacity to access such rights is likely to depend on the social and/or the economic position of individuals in society. Thus, classic socio-economic distinctions based on ascribed statuses such as gender, race, age or health, or achieved statuses based on education level, mastery of the dominant language, position on the labour market or prosperity are likely to affect the importance of, and access to, specific citizenship rights. These social and economic characteristics can, on the one hand, create specific barriers to the exercise of these rights. Conversely, in order to correct for inequalities stemming from such different social and economic positions, societies may have created specific rights for these categories. Affirmative action is a common example, that is, one's socio-economic position affects the translation of rules into practices – the ease of exercising formally given rights – and may raise specific barriers to the exercise of these rights. Conversely this socio-economic position may also have produced privileged access in order to compensate for disadvantages.

Among personal characteristics, the book analyses females and males, youngsters and the elderly, insiders (for example EU nationals) and outsiders (for example third country nationals). They are affected differently by the rules and regulations pertaining to citizenship.

Trudie Knijn and Manuela Naldini analyse gender and generational interdependencies and divisions in Chapter 11. They conclude that a double 'domestication' – national and in the private home – of gender and intergenerational citizenship rights results from dissimilar family laws and family policies in the Member States that are mostly beyond the scope of the EU. In addition to presenting various legal definitions of the family in Member States and the European care gap dilemma, it contains results of a study among young Europeans on their expectations regarding the intra-EU mobility and/or harmonisation of these rights at the EU level. This greatly contrasts with family policies of anti-European, radical right-wing political parties that proclaim re-nationalisation of citizenship rights, also presented.

Bridget Anderson, Vedrana Baričević, Isabel Shutes and Sarah Walker show differences between insiders (for example, EU citizens) and outsiders (for example, non-EU migrants) in Chapter 12. The study shows that there is a complex interrelationship between marginalised EU citizens and non-EU citizens. Insiders and outsiders are not in practice binary, but marked by shades of difference, by differential inclusion and exclusion.

EU citizens residing in an EU state of which they are not a citizen are, for instance, not necessarily totally included.

1.5 MULTIPLE BARRIERS TO EXERCISE CITIZENSHIP RIGHTS: THE SPECIFIC EXAMPLE OF LANGUAGE

Fourthly, these different categories of citizens may experience multiple barriers to the exercise of citizenship rights. In this respect, this book draws a distinction between legal barriers, such as contradictions and rankings between different kinds of rights on the one hand, and societal barriers, such as differences in political, administrative, legal and social institutions, financial constraints, administrative, or bureaucratic hurdles, a lack of solidarity across countries and linguistic barriers on the other. A number of these barriers have been identified and described in the various chapters of this book. If there is one thing that makes the European Union stand out from other federations and confederations, it is the enormous linguistic diversity. Of course, there are also other multilingual federations, such as Canada, Belgium, Switzerland and India, but apart from India, these have to deal only with a maximum of four different languages. The EU, in contrast, has recognised 24 official languages: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish. In addition, several regional languages are also recognised by the EU, such as Basque, Catalan, Galician and Welsh.

These cultural riches can be a practical handicap when it comes to claiming citizenship rights. The linguistic diversity reduces the capacity of citizens to communicate directly with each other – including even the members of the European Parliament, who have the right to speak in plenary sessions in their officially recognised language – and it makes for the absence of a collective public opinion and shared public forum. Apart from the *European Voice*, read only by Europeanists in Brussels, there is no newspaper that is read across Europe. That absence does not really contribute to the development of a collective and actively shared identity and hence a joint feeling of solidarity (see below).

This also creates many other practical hindrances. Documents, including rules and regulations specifying rights, duties and responsibilities, are phrased in different common and legal languages and may acquire (slightly) different meanings in these different linguistic contexts. They have to be translated, and in that process their meaning may be modified.

EU citizens travelling, working or living in other Member States experience difficulty in obtaining precise information regarding the rights and opportunities they have as consumers, workers, victims of crime, investors, or taxpayers, the administrative and legal procedures to follow, the documents to complete in order to claim their rights in a different linguistic environment and so on. Above all, it may leave them with a feeling of estrangement elsewhere in our great European 'nation'.

Language skills can be important to overcome barriers to the exercising of rights, in particular when one is in a Member State different from one's own nationality. It may be helpful if one masters at least one of the more important international languages. In the first place of course English, but French or German are also spoken in a large part of the EU's territory and not only in the countries where they are the native languages. Such language skills tend to be differentially distributed among different kinds of people. While it is not necessarily the case that the more highly educated have more and better language skills (very mobile labourers might do so as well, perhaps even better), there are certain categories, like the young, the ones active on the labour market, often males, who have more opportunities to acquire such skills.

Elena Ioriatti and Domenico di Micco address language as a cultural and practical barrier in Chapter 13. Attention is drawn to two categories of barriers in particular. First, barriers originating from the core values of the European Union, language diversity and EU integration, and second, barriers due to the incompatibility between national state language policies and EU freedom of language. It is concluded that since processes of overcoming language barriers affect matters of identity and culture, a pragmatic approach is needed, respectful of the value of linguistic diversity.

1.6 THE FUTURE OF EU CITIZENSHIP

1.6.1 A 'Rights Revolution'?

Starting with the French Revolution and reinforced by the period of industrialisation, social unrest and the creation of some new basic rights such as universal suffrage, the last two centuries have created a veritable 'rights revolution', as it has been called in American literature (Epp, 1998). Rights have been extended to increasingly more categories of persons and to more roles that they may occupy. The American civil rights movement (where this term emerged) helped extend the rights that whites already had to African-Americans. Similarly, rights had earlier been extended from the elite to the masses (for example democratic rights), from capital to labour,

from males to females, from the healthy to the disabled, from adults to children, and from natives to immigrants.

More rights also mean more interests, more categories of people who have something to lose or to gain, to protect or to attack. Take the vested interest of pensioners, once the right to a universal pension had been established in law and implemented in the social reality of a nation-state. It would be political suicide for a party to propose abolishing or even insignificantly reducing this right. The existence of ‘outsiders’ who do not have access to certain rights yet, but who see others having them, gives the former an incentive to claim similar rights. It is unclear whether there is a ‘rights revolution’ and, if so, in which domain of rights this occurs in particular. From this perspective it seems that we have become used to the idea that the government can and should protect us from all kinds of risks and evils. ‘Pech moet weg’ (Dutch for ‘bad luck should go’) was the title of a recent book on this revolution of rising expectations regarding protection against all kinds of risk and evil (Mertens et al., 2003). First, we gained protection against threatening foreign armies or nasty criminals, then protection against the ills of industrialisation and now even protection against the possible threat of bird flu in Asia or compensation for damage caused by the weather. Will we eventually guarantee each other the right to decency, happiness, even the right to be safe from bad luck? Some of these rights exist already informally, in custom, practice and commonly understood and shared norms. However, the tendency is to formalise an ever-increasing number of these rights and to codify them either in statutory or case law. Others argue on the contrary that establishing new rights does not necessarily mean more empowerment in basic terms. They criticise a hollowing out of fundamental rights, for example the political right to vote, which tends to become meaningless under the ‘TINA’-imperative of austerity politics. In the current context, it is important that the more rights that have been recognised socially, politically and legally, the greater the risk of clashes, contradictions and conflicts between these various rights. The right to protection against terrorism and the right to privacy form a relatively recent example. This plurality of rights – and of the interests connected to them – not only occasions legal clashes, but also offers the potential of social and political conflict (which is further explored in Chapter 3 by Sybe de Vries and Frans van Waarden, as stated above).

1.6.2 Clashes between Different Priority Rankings: Which Rights are Considered More Important?

If solved non-violently – through the institutional channels of the democratic constitutional state referred to above – these clashes between

rights, implying trade-offs, require choices to be made and priorities to be set, often by means of political compromise. Nation-states have done so throughout their political and legal histories, either in the form of conscious, intentional and explicit choices – enacted in formal legislation – or in the form of a gradually evolved tradition or custom, which developed from small events and cases over a longer period of time. The rankings of rights are products of each country's specific history of state formation, of the incidences, constraints, emergencies and crises, such as war or revolution, experienced by its national community. Often, rights were not acquired easily. Citizenship is the outcome of social and political struggle and conflict. Lack of certain rights has stimulated the emergence of new political movements, parties and ideologies. Their dominance in crucial periods has also affected the outcome of the choices made in the trade-offs. Social democracy has, therefore, been dominant in Northern Europe (especially Scandinavia), Christian democracy in the Germanic countries and Southern Europe, while France is characterised by *étatisme* and the UK by a mild form of liberalism. These differences have produced quite distinct patterns of relations between the individual and the state, and hence in citizenship in these countries. The hierarchy of rights that resulted from these histories therefore differs between nation-states. Each country's rights ranking tends to become part of its national cultural values and finds expression in its national political-legal institutions, such as constitution, case law, public services, family law or the specific nature of its welfare state programmes.

Traditionally, the Netherlands has given high priority to the freedom of religion. This is understandable given Dutch religious pluriformity. According to the axes that Stein Rokkan (1975) used to explain patterns of state formation, societal segmentation and political party formation, the Netherlands is located at the mid-range in Europe on one of these axes, given its distance from Rome. This has resulted in pillarisation, subsidiarity and the proportional distribution of public resources among different societal groups. In contrast, the French live with the republican heritage of the French Revolution, emphasising equality and *citoyenneté* and maintaining a strict separation between church and state. This difference regarding the role of religion in state matters surfaces when concrete issues are at stake, such as whether Christian schools can discriminate against homosexuals, Christian political parties against women or whether burqas worn by Muslim women ought to be forbidden.

Countries with a liberal tradition, such as the UK and the US, or where liberal parties have ruled for a long time, have emphasised a general right to freedom from constraints, individualism and entrepreneurialism. When it then comes to distributing benefits by the government, allocation and

rewards tend to be merit-based, as in the cases of educational scholarships or welfare state provisions. In contrast, countries that have granted a higher priority to 'freedom from want', for example, because they have been ruled by social democrats for a long time, tend to have student scholarships or welfare state provisions that are more often need-based. In another dimension, countries with a familiaristic tradition, such as the Christian democratic ones, tend to prioritise kinship obligations above individual rights for women, have less-developed provisions for childcare and lack legal recognition of homosexuality and reproductive rights (abortion).

Of course, the hierarchies of rights, established over time and following fierce conflict, are not set in stone; they can be modified or even turned upside down as incidental crises and scandals increase the importance and priority of various rights. With the rising fear of terrorism (due to new bombing technologies, but also the concern about individual human lives as a result of ICT technology providing instantaneous access to footage and reporting concerning terrorism), the importance of privacy has been sidelined somewhat. People would appear to have a relatively high level of trust in their states nowadays, which allows the state to know so much about the individual lives of its citizens.

1.6.3 Institutional Differences

Nation-states differ not only in the rankings of different values, but also in the nature and structure of their public institutions, which have a function in guaranteeing and providing these rights: the political system, the public administration, the judiciary. These are expressions of another body of law: constitutional and administrative law.

First of all, different political systems (for example, electoral rules, party systems, development of civil society organisations, incidence of corruption) may imply differences in the access to politics and in the responsiveness of politics/politicians to voters.

Secondly, legal institutions (duration and complexity of court procedures, importance of written documents versus testimonials in court, rights of defendants, costs of litigation, organisation of the legal profession (advertising and contingency fees allowed; existence of legal aid)) and legal culture (litigiousness, adversarialism and legalism) are likely to affect access to justice. For a case study of the major differences between the neighbouring Member States of Germany and the Netherlands, see Van Waarden and Hildebrand (2009); see also CEPEJ (2006) and European Union Agency for Fundamental Rights (2011). In order to increase access to justice in economic cases, the CJEU has extended the possibility for (small) companies to obtain legal aid. The case commenced

in Germany where, according to German law, companies had no right to legal aid in legal proceedings; this was, however, contrary to the Charter of Fundamental Rights (Case C-279/09, *DEB*).

Thirdly, differences in the structure and culture of the public administration will affect the responsiveness and access of the administration to citizens' claims to rights. Relevant variables here could be: the rights of citizens to appeal government decisions (that is, the development and elaboration of administrative law), the fragmentation of the bureaucracy and cultural values regarding power distance and hierarchy in the various European countries. For example, greater power distance and respect for hierarchy and titles may make citizens more hesitant to initiate claims.

Fourthly, another important issue is the structure and strength of civil society organisations, such as trade unions and public interest associations. These can aid citizens in their claims to rights towards politics, the judiciary and the public administration.

Fifthly, an increasing number of countries have special institutions in or around the state that aid citizens in claiming specific rights. One example is that of the Ombudsman, found in many polities. Another example is constituted by the rise of national human rights institutes, hearing claims of discrimination and other violations of human rights. These institutions themselves express different social, legal and political values and rights, as well as their rankings. Distrust of the state and/or of political leaders has led some countries to institute increasing numbers of checks and balances on central political or legal (or economic) power. In others, the checks and balances remain limited. As a consequence, the opportunities to appeal national government decisions are more limited.

The historical experience of nation-states has been important here too. In states where some basic checks and balances were established early on, including (embryonic) forms of democratic participation – such as in the UK (Magna Carta), Switzerland, or the Netherlands – the number and power of checks and balances remained limited. In contrast, countries that suffered long monocratic or even dictatorial rule eventually developed extensive checks and balances. A classic case is Germany, with both a strong vertical separation of powers (federalism), as well as a well-developed horizontal *trias politica*: a very powerful system of judicial review – both concrete and abstract – and two powerful parliamentary chambers. One of the chambers owes that power to a direct representation of the regional governments, thus giving them a direct say in federal policies. Furthermore, a highly legalistic legal culture (Blankenburg, 1989; 1997; 1998; Blankenburg and Bruinsma, 1994; Van Waarden and Hildebrand, 2009), including a hierarchically structured bureaucracy – which in a way is the translation of legalism into the state organisation – creates a great deal

of procedural protection for citizens. However, the effect on the protection of rights can be contradictory. The complexity of the legal and bureaucratic systems can be an opportunity, but can also present a challenge to citizens trying to claim their rights.

1.6.4 True to the European Motto: *In Varietate Concordia* (Unity in Diversity)

Diversity is so far mostly seen in negative terms, as a source of problems, as a hindrance to the exercising of European citizenship rights – multiple rights that could frustrate or conflict with each other, multiple levels of state and society that compete and dominate each other, multiple categories of people that cause inequality in the actual application of equal rights to different categories of people.

Yet these sources of problems can also be sources of solutions; the liabilities can also be assets and the challenges of the past and the present may create opportunities for the future. Multiplicity and diversity can be a source of enrichment, aesthetically, but also practically. The varieties of – and confrontations and collaborations between – layers of state and society, of categories of people, cultures, values, languages, supported by a diversity of citizenship rights, could induce and fertilise inspiration, creativity and innovation. They could produce creative solutions to newly emerging problems. Protecting the rights of diverse communities, people and cultures means that non-mainstream ideas may survive more easily, which could offer creative solutions to new problems in the future. As in biology, diversity is a strategy for risk diversification and survival.

This would imply that the EU has an interest to nurture the diversity in communities, people, cultures, languages, values, rights, ideas found within its territory and it seems as if it has achieved just that. With its motto *In Varietate Concordia* (Unity in Diversity), proclaimed by the European Parliament on 4 May 2000, the European Union has chosen to distinguish itself from the United States of America, which in 1782 chose the motto *E Pluribus Unum*. While the US wanted to realise ‘Out of many, one’, the European Parliament chooses to find unity while nurturing diversity. Diversity was immediately respected by choosing a neutral language, Latin, to formulate the original text of the motto. This language, European in origin, but no longer spoken and hence not the cultural property of any community in Europe, was a neutral choice among the 24 formally recognised EU languages and the 95 different minority languages spoken across the territory of the EU (www.eurominority.eu). This linguistic diversity is, incidentally, symbolic for the cultural richness of Europe, but also for the practical problems that it experiences and that

citizens may experience when they try to exercise their European rights in other Member States.

Yet, as a result of the internal dynamic of constitutional and legal systems, discussed above, the direction of the development of citizenship arrangements, nationally and internationally, has been towards greater uniformity. Fundamental EU rights, in particular the four freedoms and now also the rights enshrined in the EU Charter of Fundamental Rights, frequently conflict with the diversity of rights, rules and rankings in the Member States. EU directives require uniform transposition and enforcement across the EU, which has implied the approximation not only of legislative standards, but also of institutional arrangements for enforcement. Haverland (1998) has shown this for the European packaging waste directive, which forced the Dutch Government to abolish successful public–private partnerships, closely linked to national institutional traditions. EU citizenship itself is destined to become a sort of highest common denominator of the citizenship arrangements in the Member States. At the same time, it is becoming the most aggressive competitor to those national arrangements. As a result, tensions and outright conflicts have begun to emerge over the predominance of one or the other form. Such tensions can be – and often are – seen as the inevitable by-product of a painful, but necessary process.

This book takes a differentiated view. Some authors plead for a stronger central role of the EU, in particular with regard to the social and systemic dynamics of the single market and the constitutionalising EU law, which has created ever more interdependencies among European citizens. Others think that Europe's diversity is precisely what makes the EU interesting *and* successful. That diversity ought to be reflected in its citizenship arrangements. Past and present societies – for example the Dutch Republic of the Seven United Provinces in the 17th century or the Swiss Confederacy today – suggest that economic prosperity, social well-being, democratic institutions and indeed citizenship can be combined in more heterogeneous arrangements that respect the multi-dimensionality of citizenship itself, as well as the multi-layered constitution of those states. For this position, the Dutch and Swiss examples provide important clues for the alternative development of EU citizenship, beyond uniformity and competition with national citizenship, but instead offering complementarity with the various systems in force in the Member States.

In Chapter 14 Wieger Bakker and Marlot van der Kolk take an alternative perspective. There is no blueprint or strategic plan for fostering the further development of EU citizenship. Therefore, it is uncertain what EU citizenship will look like in the future. Based on the research done within the bEUcitizen project, four conceivable future scenarios are presented.

These scenarios reflect the uncertainties regarding whether Europe, more precisely the EU, will develop in one direction or another. They are supposed to serve as an input for the discussion on these questions.

1.7 CONCLUSION

‘Still united in diversity?’: this was the title of the 2017 ‘State of the Union Address’ by Rainer Bauböck (2017) at the annual conference at the European University Institute in Florence. While the motto ‘united in diversity’ has always expressed an aim rather than an accomplishment, doubts about this promise have recently been increasing. In the economic and subsequent sovereign debt crisis, not to mention the so-called ‘refugee crisis’,² the European Union has not provided a convincing impression of its capacity for collective action. The rise of right-wing nationalism and Euroscepticism seems to indicate severe doubts regarding the functionality and legitimacy of the existing institutional architecture, as well as the project of European integration in general. For a long time the executive-driven piecemeal integration of Europe could be justified as a success story. The European legal order substituted violence and threats as means of inter-state conflict resolution with bargaining and legal adjudication. Likewise, the creation of a common European market fostered national welfare to the benefit of all Member States. EU citizenship was introduced as a complementary ‘add-on’ to the diversity of national citizenship-regimes, leaving the latter in principle untouched, but nevertheless having consequences for these regimes. For the founding generation the legitimising narrative of peace and prosperity associated with the European project was naturally convincing, but it lost power over time. Tacit consent for the course of integration has evaporated. The economic and financial crisis reveals deep divisions among EU Member States. There are strongly diverging interests between creditor and debtor states and harsh disputes between advocates of austerity politics and of debt-relief. For six decades, the Union has moved forward by extending its membership – the Brexit decision is a discontinuity in this respect. In this situation ‘differentiated integration’ seems to be a more likely scenario than deeper integration, but differentiation unavoidably raises the question: what would remain as the common project, a shared mission, in which all Member States could participate?³ For European citizenship this provokes the question of how much (substantial) differentiation a citizenship-regime can tolerate without betraying the normative basis of equality.

The discussion of what ‘unity in diversity’ might mean for European citizenship could profit from the past philosophical debate about justice

and the 'politics of difference' (Young, 1990). This debate was also about the value of diversity. However, a major point was to distinguish between two categories of differences: variations that are valuable as expressions of human diversity – this might be language, and a specific cultural heritage – and differences that are an effect of power asymmetries and oppression – such as class, race and gender (Fraser, 1997, pp. 203–204). With regard to the egalitarian ideals of democracy, the first category of differences can be affirmed for the sake of pluralism, while the second category should be eliminated for the sake of justice. This distinction between two categories of differences would also apply to a 'politics of diversity' in Europe. Under conditions of considerable wealth disparities and in the absence of sufficient EU-wide solidarity arrangements, the opportunities to take advantage of rights to free movement are unequally distributed. This allows the relatively well-off countries to take advantage of free movement of labour without symmetrically bearing the costs. In a context in which economic and social spheres are decoupled, 'protection of diversity' may well mean conservation of wealth disparities and increasing inequality. Diversity might be protected wherever it does not endanger equality. However, collective action and 'harmonisation' are required when freedom and equality of European citizens are at stake.

In light of social processes shaping people's lives that today are likely to cross territorial borders, questioning traditional, national contexts of justice has become an important political issue (Fraser, 2008). In the European context, the national 'Westphalian' framing of justice is particularly problematic. It is mirrored in the substantial division of labour between economic, regulatory policies as *European* issues on the one hand, and social, redistributive issues as *national* issues on the other hand. This division of labour that the Treaties have expressed so far is currently being questioned.⁴ Due to the common market and the common currency, Europe has emerged as a transnational context of justice, but public awareness for this problem has only recently begun to develop. Citizens feel that the traditional idea of national sovereignty is evaporating but, without a clear substitute in sight, they tend to retreat to the nation-state, which seems to reappear as the only active agent capable of dealing with problems of justice. This creates a dilemma: the cosmopolitan, pro-European elite have difficulties in convincingly explaining why membership of this Union is worth promoting. Disadvantaged citizens from prosperous Member States tend to be in favour of putting an end to European integration, whereas less well-off citizens in the Union's deficit countries demand redistributive policies *within* the Union, which most of their prosperous counterparts are likely to refuse. It becomes painfully obvious that European citizens are not yet members of a solidly political Union, but that they are still

primarily members within a Union of states, where national interests are played off against each other.

What can 'moving beyond barriers' mean in this situation? As suggested in the 'Call' for this project, EU citizenship is facing barriers that ought to be removed. Several of these barriers are outlined above and analysed in depth in the chapters of this book: different historical traditions of citizenship in the Member States, limited access to rights for different categories of persons, rivalry of different rights and levels of governance, practical barriers such as bureaucratic hurdles and linguistic diversity. Yet how can they be removed? Moreover, should they always be removed? There is another aspect in the question about barriers, which is related to deeper dilemmas. This relates to the intellectual context in which the idea of 'removing barriers' arises. The implication that barriers are bad and removing them is good seems to be too simplistic a conclusion. This is already a provocative picture in the field of economics and it becomes even more problematic when transferred to the political realm. With regard to EU citizenship, it becomes even more complicated. What is needed to gain support for a transnational model of citizenship is first and foremost the construction and legitimization of new frames of reference for the deliberation of social and political conflicts. It is unlikely that this constructive challenge can be appropriately addressed in the language of 'barriers' alone. We touch here on the issue of positive rights, rights empowering collective action, as well as the developing of a self-understanding as citizens. The creation of effective political rights as an expression of collective autonomy cannot, therefore, be comprehensively expressed with the idea of 'removing barriers'. The character and current state of European citizenships seem to mirror this tension perfectly well. EU citizenship stands for a unique expansion of citizenship rights, but at the same time it seems to signal its dissolution. It contributes to a disaggregation of the different dimensions of citizenship, collective identity, political membership, and access to social rights and benefits. EU citizenship is a move beyond national barriers, but as far as it is likely to reintroduce a link between economic and political citizenship, which the modern welfare state was supposed to overcome, it constitutes a barrier to its democratic character. Furthermore, EU citizenship is substantially limited in so far as it does not offer protection for breaches of citizenship rights within Member States outside the reach of EU law. Therefore, the future of European citizenship is intimately connected to the future of European democracy and the future of the rule of law.

NOTES

1. A reflection on citizenship duties is provided for in Komárek (2018).
2. Which is in fact a humanitarian crisis *and* a crisis of democracy (Brunkhorst, 2016), proof of the Dublin system's complete failure.
3. As reflected as a scenario in the White Paper on the Future of Europe, issued by the European Commission in March 2017.
4. See, for example, Chapter 7 in this book as well as Dawson and De Witte (2016).

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