

Book Reviews



Daniel Thym (ed.), *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Oxford, Hart Publishing, 2017), 344 p., ISBN: 9781509914685

It was a pleasure to read this edited collection on EU citizenship that brings together—via fifteen chapters—established and more junior scholars to explore the rights of EU citizens and third-country nationals (TCNs) via EU free movement law and wider European human rights law, encompassing the Strasbourg Court jurisprudence. The book promises and delivers a special emphasis on the interplay between laws regulating immigration, welfare rights and Union citizenship, by analysing political, legal and normative contestations of citizens' rights in Europe (p. 11–12). Such a focus clearly fills the gap in scholarly exploration in the field and is extremely timely for the pre-Brexit publication on social benefits and immigration policy.

In terms of research methods, *Questioning EU Citizenship* is strong, as it combines normative and doctrinal legal analysis with quantitative and socio-legal approaches, making it a methodologically diverse and rigorous publication in EU citizenship literature. Dora Kostakopoulou and Daniel Thym (Ch. 15) correctly observe that a mixed methods research provides for a more holistic approach for analysing this complex topic and area of EU law (p. 311). Via the rich contributions in the book, the Court of Justice is questioned not just as 'the master of EU law', but also as an 'actor in context' (p. 6–7, 312–315). Hence, quite rightfully, Kostakopoulou and Thym stress the need for the socio-legal method when addressing EU citizenship and identity questions: the wider social and political impact of legal rules should not be overstated, as integration through law can only go so far (p. 312–318).

The key focus of the book, stated in the Abstract, i.e. the interplay between third-country migration and Union citizenship law, is not immediately visible from all its chapters, as some contributions address it more directly than others. It most clearly stands out in part III The Citizenship-Immigration

Nexus. The other two parts are Rationalising Judicial Change (1), and Equal Treatment, Social Benefits and Human Rights (11). The rationale for dividing the collection in this way is elegantly and convincingly explained by its editor (p8), offering a logical framework for analysis of these key themes. Such themes include the judicial 'over-constitutionalisation' of EU law (starting with the excellent Susanne Schmidt's contribution) and the failure of European integration through law; how the Court of Justice navigates the complex EU legislation and national law nexus on welfare benefit access across borders; and the rights dimension of EU citizenship, extending beyond EU citizens to third country nationals.

Besides the themes that are visible in the book's table of contents, there are several underlying broader leitmotifs that stand out and run through, bringing the publication even closer together. Inevitably, many of the authors touch on the Brexit process that poses legal and political challenges for the future of EU citizenship (see the chapters by Suzanne Schmidt, Stephanie Reynolds, Francesca Strumia, Karin de Vries and Cliodhna Murphy). All these contributions represent women's voices that are often absent from the often male-views-dominated Brexit debate.

The solidarity leitmotif that the book's title alludes to and the practical shortcomings of the integration through law are explored by Daniel Thym (Ch. 6), who puts forward two original models of transnational citizenship: the residence and the integration model. He draws distinctions between social cohesion and nationalism (p. 116), situating citizenship identity within communities that are not necessarily nationalism driven. Thym convincingly explores why in the welfare benefits cases (*Martínez Sala*, *Grzelczyk*, *Baumbast*, *Förster*, *Dano*, *Alimanovic*) the CJEU did not rule based on the residence model, found in the Free Movement of Workers Regulation 492/2011 and the Social Security Regulation 883/2004, but instead focused its arguments based on the integration model, embedded in the Citizenship Directive 2004/38 and the Treaties (p. 117–119). Solidarity and case law analysis is also central in Paul Minderhoud's and Sandra Mantu's contribution (Ch10) that focuses on the five key judgments on social assistance access by non-economically active EU citizens (*Brey*, *Dano*, *Alimanovic*, *Garcia-Nieto*, *Commission v. UK*), raising challenging questions how to reconcile the CJEU's case law on the Citizenship Directive and the Social Security Regulation (p205). Drawing some parallels with Thym's integration model, Karin de Vries (Ch. 13) looks at the recent cases on TCNs' access on social rights, where the CJEU allowed member states to require evidence of prior integration, before granting such rights. She helpfully explores the links between national citizenship, solidarity and integration and provides sobering observations regarding welfare conditionality that is directly

linked to national integration policies (p. 270) and their interplay with the various EU directives that prescribe equal treatment to third-country nationals (p. 272–275).

Touching on the transnational citizenship and the nationality leitmotifs, Ettore Recchi (Ch. 7) uses sociological and psycho-geographical knowledge approach to investigate whether the free movement can foster a sense of 'Europeanness'. He looks at the nation-building theory of Karl Deutsch (p. 137–142) and concludes that, sociologically, the local-cosmopolitan polarisation among EU citizens continues to grow, challenging the very core and the individually perceived value of the free movement (p. 148). Similarly, Ferdinand Wollenschläger (Ch. 9) tracks the development of EU citizenship since the Maastricht Treaty and, taking job seekers and the economically inactive as case studies, argues that we are now in EU citizenship consolidation era, with the Court taking the back seat on Article 21 TFEU. Questioning why such a change in the Court's approach may have occurred, Urska Sadl and Suvi Sankari (Ch. 5) shift our attention from case law onto the Court itself: using quantitative approach, they query the internal composition and the professional background of the Court's Judges and Advocates General, finding that the CJEU changed frame of reference in the post-*Dano* cases on EU welfare citizenship (p. 100–102).

The broad theme of EU citizenship's human rights dimension finds its roots in Dimitry Kochenov's contribution (Ch. 3) that casts a more philosophical global look into the evolution of 'citizenship' as a legal status and as a personhood paradigm: why dealing with *citizens* is perceived morally less challenging than dealing with *humans* (p. 46–47)? He criticises EU citizenship as a market-based concept from which very few EU citizens can benefit (p. 50–56). Like Kochenov, Stephanie Reynolds (Ch. 4) reflects on the transformation of EU market citizenship to the free movement concept, also doubting whether it could be considered as a personhood status, grounded in human rights (p. 73–74). These concerns chime closely with the human rights dimension of Union citizenship, explored by Niamh Nic Shuibhne (Ch. 11), who via the Charter case law analysis proposes a more integrated approach between the EU Charter and EU citizenship law (p. 225, 230–34, 238–39), legitimating the EU's constitutional credibility.

In a compelling way Francesca Strumia (Ch. 8) challenges the narrative of free movement as a migration-only issue (juxtaposed to the notion of EU citizenship) that is often used by national populist movements or policies (Brexit). She discusses and compares the rights of EU citizens and third country nationals in EU law and observes that international law gives an unfettered right for Member States to determine their own migration policies (p. 153).

Considerations on how certain member states monetize EU citizenship by offering 'golden passports' provide a good example on such 'nationalisation' of EU free movement rights (p. 156–157). Hence losing transnational citizenship due to Brexit leaves a vacuum between national and international rules, which may or may not offer some protection to people who will lose EU citizenship status (p. 166–167).

These stark differences in EU citizens' and TCNs' rights' protection also are highlighted by Sara Iglesias Sánchez (Ch. 12), who looks at the EU competences and via the rigorous black-letter-law analyses the various EU law provisions, with an aim to identify the types of right holders, based not only on their nationality, but also on their residence/work/migration/legality status. Like Strumia, she is concerned that the EU migration and asylum law often has a 'limited general treatment clause' (p. 256), drawing the gap between the rights of EU citizens and TCNs. Seemingly in attempt to bridge this gap, Clíodhna Murphy (Ch. 14) questions whether the ECtHR jurisprudence on residence security and equal treatment enshrines the 'membership without borders' paradigm (p. 288), as opposed to the legally construed nationality membership. She worries that incoherent judicial reasoning and the potentially stigmatizing messages by the ECtHR may lead to incoherent judicial practices at national level, in effect resulting in more freedom for executive national bodies, allowing for deportations (p. 302).

Finally, Kostakopoulou's and Thym's (Ch. 15) suggested 'alternate takes' of EU citizenship's future offer a glimpse of hope. While it may be a shame that these forward-thinking original arguments have not been explored in a little more detail, they finish this excellent collection on a positive, albeit still critical, note (p. 319–322).

Stylistically, the book is very engaging and a pleasure to read. Its chapters cross-reference ideas expressed by other contributing authors, making it a coherent whole. One stylistic criticism could be that there are few instances of masculine language that refers to an EU citizen as 'he', even where the analysed cases involve women (p. 206). This could have been addressed during the editorial review process, perhaps by using 'they', 's/he' or other conventions that are more inclusive.

Overall, *Questioning EU Citizenship* is a strong contribution to the field, both in terms of scholarly endeavour and methodological rigour, and should be in the library of every EU citizenship and migration scholar.

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