



Breathing Room for Democracy: The Restriction of Political Participation in EU Citizenship through Economics

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Abstract. Ever since its conceptualization, the initiators of the European project have struggled to strike the right balance between economic and political spheres. One dimension through which the Union has attempted to instill a sense of belonging is European Union citizenship. However, this paper argues that the governance of EU citizenship in the political-legal sphere have resulted in its continued relegation to economic dimensions, which may adversely impact the democratic health of the European Union. The first section will outline the role of political participation in EU citizenship as expressed in EU law, and point to the ways in which economic dimensions are overemphasized. The second section will describe the ways in which democracy is jeopardized by the depoliticization of EU citizenship, as well as EU policymaking in general. The paper will conclude by pointing to the potential pitfalls implied by an overly economic lens of citizenship when it comes to the democratic future of Europe.

Key words: EU citizenship, political participation, democracy, citizenship rights, neoliberalism

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INTRODUCTION: DEMOCRATIC HEALTH IN POST-2008 EUROPE

Democracy within the European Union has been a popular yet contested topic ever since the birth of the European project, both in popular discourses and the academic sphere (Kauppi, 2017; Warleigh-Lack, 2003; Fabbrini, 2005). Even though issues like policy development and the competences of supranational institutions have often led to heated debates, there seems to be a measure of consensus with regards to the importance of political participation for a healthy democracy, both in the EU and outside of it. This paper will argue that the limited room for political participation in the conceptualization and practice of European Union citizenship (hereafter EU citizenship) has potentially adverse implications for the continued health of democracy within the European Union. Through the overemphasis on the economic dimensions of EU citizenship and the restriction of the associated civic rights to particular economic statuses, the Court of Justice of the European Union (hereafter CJEU) as well as other European institutions have shaped the character of EU citizenship to be limited in its capacity to encourage democratic developments within the EU (Everson, 2013).

The first section will outline the role of political participation in EU citizenship, as expressed in legal provisions as well as CJEU case law, and point to the various ways in which economic dimensions are overemphasized in both sources. The second section will describe the ways in which democracy could be and has been jeopardized by the depoliticization of EU citizenship, as well as EU policymaking in general. The paper will conclude by pointing to the economic-political axis that has been at the center of many, if not most, debates about the competences and supposed roles of the European Union, paying particular attention to the potential pitfalls implied by an overly economic lens of citizenship when it comes to the democratic future of Europe.

POLITICAL PARTICIPATION IN EU CITIZENSHIP: A BRIEF LEGAL HISTORY

EU citizenship was originally conceptualized in Article 8 of the Maastricht Treaty, which also refers to the Council of the European Union's ability to «adopt provisions with a view to facilitating the exercise of [those] rights.»² These rights include the right to vote and stand in both municipal and European parliamentary elections, the right to diplomatic or consular protection, the right to petition the European Parliament and apply to the Ombudsman, and

² Consolidated Version of the Treaty on European Union [1992], OJ C 191, art. 8A(2).

most famously, the right to move and reside freely within different Member States.³ There are some additional mechanisms for citizen participation as well, such as the European Citizens' Initiative and the right to participate in consultations of the European Commission. Rights like diplomatic protection and standing in European parliamentary elections are doubtlessly important and have been significant in their own right; in other words, the political dimensions involved in the notion of EU citizenship are far from null and void (Saward, 2013). Moreover, the very idea of a non-national citizenship of a complementary nature carries some political significance, regardless of whether this post-national citizenship succeeds in guaranteeing a comprehensive set of rights or whether it creates a feeling of supranational belonging (Shaw, 2019).

However, it was clear from the very beginning that EU citizenship showed a tendency towards economic dimensions before any social or political rights. The preeminence of economic factors in citizenship can be traced as far back as the Treaty of Rome, which prohibited discrimination based on nationality, but only among workers for issues of employment and wages; this prohibition was therefore specified in economic dimensions despite its socio-political connotations (Baquero Cruz, 2018, p. 90). By limiting the protection against discrimination to workers, one could argue that «nationals of the Member States were only considered as a means to pursue further political and economic ends,» leaving many economically inactive citizens unprotected when facing discrimination on grounds of nationality (Baquero Cruz, 2018, p. 91).

That is not to say that economic dimensions are unimportant for the enjoyment of Union citizenship – in fact, the EU Citizenship Report 2020 shows that a majority of respondents believe that free movement benefits the economy of their respective countries.⁴ However, further exploration of the right of free movement, arguably the most famous right associated with EU citizenship, quickly reveals that beneficiaries are characterized by their economic activity: those who may benefit from this right are jobseekers, EU nationals working in another country or returning to their home country after working abroad, and family members of any of the above. The rights of students, retired people, and otherwise economically non-active people “may differ somewhat.”⁵ On a more fundamental level, several authors have pointed to

³ Ibid.; art. 8A(1), art. 8B, art. 8C.

⁴ European Commission (15 December 2020), *EU Citizenship Report 2020 Factsheet*, <https://doi.org/10.2838/500391>

⁵ European Commission (n.d.), *Free Movement – EU Nationals*, Employment, Social Affairs & Inclusion, <https://ec.europa.eu/social/main.jsp?catId=457>

the inherent problems in building a notion of citizenship primarily on economic pillars. Shaw (2019) has argued that, as Baquero Cruz' example of nationality discrimination shows, EU citizenship does not truly acknowledge an individual's political agency or general humanity, but rather bases itself on the granting of specific rights that are usually primarily economic in nature. Since the ratification of the Maastricht Treaty, there have been various attempts to make EU citizenship more inclusive towards non-economically active citizens (e.g. retirees, students, the unemployed), most notably through Council directives (Guild, Rotache, & Kostakopoulou, 2013).⁶ However, these directives still present a conceptual view of European citizens as either working or not-working, productive or not productive, rather than individual citizens with political-legal autonomy regardless of their occupational status. With limited space allocated for political rights, it follows that EU citizenship is mostly defined by the granting of economic rights, rather than a recognition of the political and legal autonomy of all Union citizens regardless of degrees of economic activity.⁷ The imposition of conditions for access to certain rights, whereby their granting becomes dependent on the category of persons one belongs to (i.e. workers, students), precludes the utilization of general «Europeanness» as a qualifying principle for the enjoyment of such rights; as a result, it is perhaps unsurprising that such rights have not drastically improved feelings of belonging or the creation of a new European identity (Wiener, 1997, p. 549). In short, the rights understood as comprising Union citizenship rights are «exceedingly limited and rather specific, and hardly comparable with domestic conceptions of citizenships,» be it through their limited political scope or through their complementary nature vis-à-vis national citizenship (as was made clear immediately upon its introduction in the European *acquis communautaire*, EU citizenship can only be attained by nationals of sovereign Member States; therefore, «it is prima facie the Member States who determine... who are their nationals,» as Shaw (2019) puts it). One glaring omission is the right to vote in national elections in host Member States, which many scholars believe to be an important component of a more holistic Union citizenship (Kostakopolou, 2019; Evas & Liebert, 2013; Wiener, 1997, p. 534). Additionally, while the right to vote in European parliamentary elections is guaranteed in the Maastricht Treaty, the practical exercise of this

⁶ For instance through Council Directive 90/364/EEC on the right of residence [1990], *Official Journal* L180; Council Directive 90/365 on the right of residence for employees and self-employed persons who have ceased their occupational activity [1990], *Official Journal* L180; Council Directive 90/366 on the right of residence for students [1990], *Official Journal* L180.

⁷ Opinion of 30 September 2010, *Zambrano*, C-34/09, EU:C:2010:560, paragraph 3.

right continues to be fraught with difficulties, as evidenced by the European Commission's update reports on «progress towards effective EU citizenship.»⁸

Additionally, most of progress that had been made to extend citizenship-based protections towards economically inactive persons was effectively reversed by the 2014 *Dano* case (C-333/13; Peers, 2015; Carter & Moritz, 2018). This decision generated much debate because of its seemingly unjustifiable break with precedent, appearing to prioritize national economic preferences over comprehensive protection of all EU citizens (Baquero Cruz, 2018, p. 124; Peers, 2015; Carter & Moritz, 2018). The CJEU concluded that «those entering a state but never intending to work and contribute have *no European right* to claim equal access to funds» (emphasis added; Schmidt, 2019, p. 205) served to fuel fears of so-called welfare tourism, and put the extension of citizenship rights to economically active persons in the future into considerable danger (Blauberger & Schmidt, 2014; Tepperová, Zouhar, & Wilksch, 2017).

The final nail in the coffin for a broader and more democracy-friendly conceptualization of EU citizenship is the CJEU's tendency to connect fundamental rights to market freedoms, rather than viewing them as rights that are relevant as such (Trstenjak, 2015). As De Sousa (2014) states, the CJEU has attempted to protect fundamental rights by viewing market freedoms themselves as fundamental rights, claiming that Union citizenship has changed the normative underpinnings of market freedoms so that they must be considered as fundamental rights. Additionally, as the CJEU has “privileged the free movement of people by comparison to other freedoms” as far back as the 1983 migrant worker case C-152/82 *Forcheri*, where free movement of workers was referred to as a fundamental right,⁹ it seems that it is easiest to enjoy the economic freedoms associated with EU membership when actively engaging in (economic) cross-border movements (De Sousa, 2014, p. 500). The interpretation of market freedoms as fundamental rights (and vice versa, considering fundamental rights as tied to market freedoms) is problematic because the granting of such rights is limited to economically active market participants (Sciarra, 2002).¹⁰ Additionally, it is interesting to note that many cases associated with ‘social’ rights (i.e. C-184/99 *Grzelczyk* about minimum income for students; C-456/02 *Trojani* about the free movement of workers) are usually still concerned with financial

⁸ European Commission (2020), *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM(2020) 731 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0731&from=EN>

⁹ Judgment of 13 July 1983, *Forcheri*, C-152/82, EU:C:1983:205, paragraph 11.

¹⁰ Market freedoms are also quite distinct in their manner of application; see Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2016], *Official Journal* C202, art. 114 and 115.

compensation or another monetary asset, e.g. benefits, grants, and wages; in such cases, the enjoyment of social rights tends to be expressed in terms of entitlement to financial compensation.¹¹ This is perhaps not surprising, considering the economic nature of many of the European apparatus' competences – non-monetary options for settling such cases, including more far-reaching ones like changes to national legislation, are usually simply not within the European Union's mandate (Van Kersbergen & Verbeek, 2007). Although the CJEU is not a strictly “economic” court, it has been suggested that the Court's blurry distinction between fundamental rights and market freedoms is a result of the ongoing and complicated development of the EU's identity – though many advocate for a stronger political union, it is hard to deny that much of the core of the Union lies within the economic sphere (Marks & Steenbergen, 2004). At the same time, member states have relegated much of their capacities for monetary policymaking to European Union bodies, which limits their immediate ability to ensure citizens' rights through economic means, thereby further complicating the question of which authority is responsible for granting these rights. In other words, the persistent debates about the extent to which the Union should be able to undertake more non-economic activities must be considered in light of the wider history of the European Union and its intended goals.

Advocate General Sharpston summarizes this conflation succinctly in his Opinion on C-34/09 *Zambrano*, questioning whether «...the exercise of rights as a Union citizen [is] dependent – like the exercise of the classic economic ‘freedoms’ – on some trans-frontier free movement...? Or does Union citizenship look forward to the future, rather than back to the past, to define the rights and obligations that it confers?»¹² Considering the case law that has been mentioned so far, as well as the argument that fundamental rights are overly tied up in its old connections to market freedoms, this paper suggests that the current notion of Union citizenship has fallen squarely in the former category. True citizenship that goes beyond the granting of thin economic rights «requires the protection of fundamental rights at the European level regardless of the existence of a cross-border element» (De Sousa, 2014, p. 500). If the rights associated with Union citizenship are to ever go beyond their economic origins, they must be conceptualized within a notion of citizenship that can stand independently from its traditional association with market freedoms (De Cecco, 2017).

¹¹ Judgment of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458; Judgment of 7 September 2004, *Trojani*, C-456/02, EU:C:2004:488.

¹² Opinion of 30 September 2010, *Zambrano*, C-34/09, EU:C:2010:560, paragraph 3.

DEPOLITICIZATION AS A THREAT TO DEMOCRATIC HEALTH

What do any of these legal proceedings have to do with democracy? Thus far, the evidence presented in this paper in light of the overrepresentation of economic dimensions in Union citizenship has mostly been concerned with the legal sphere, be it in the form of the representation of individuals in case law or the interpretations of fundamental rights as market freedoms. However, this paper does not approach the law as the root of the problem described – rather, the law must be considered as inherently intertwined with other phenomena. This last section will demonstrate the relevance of a depoliticized, economic perspective on EU citizenship for the health of democracy in the European Union.

The developments described above not only limit future conceptualizations of EU citizenship, but are also problematic in other ways; for instance, the focus on economics in the form of market capitalism paves the way for deepened inequalities, which in turn may lead to the construction of different models of public and political participation among elites vis-à-vis the general population (Rodan, 2018, p. 1). Such parallel developments of, and attitudes towards, political participation in different social groups could negatively impact the accuracy of popular representation in democracies and exacerbate societal polarization, both at the national and European level. Additionally, in her assessment of national and intergovernmental approaches to economic hazard, Everson (2013) describes how the 2008 financial crisis led the political realm to deny responsibility for economic uncertainty, instead relying on the resilience of the *homo economicus* – in other words, the individual citizen, «to the degree that the whole sum of human actions may be made reducible to economic operations» (p. 112). Following Wiener's (1997) argument that the *practice* of citizenship by individuals is highly important for the *enjoyment* of citizenship, the placing of responsibility upon individuals requires broad access to participation in both economic and political spheres. Unfortunately, political participation is lacking for many (be it through the failure to include national-level voting in EU citizenship legislation or through individual circumstances that prevent participation, e.g. language); moreover, as has been made clear in this paper, economic participation as a primary marker for citizenship is conceptually and practically problematic.

CONCLUSION: PITFALLS FOR DEMOCRACY IN AN ECONOMIC UNION

Following the logic that European integration follows a trajectory marked by ups and downs, one could assume that Union citizenship, which has always been complementary in

nature vis-à-vis national citizenship, cannot be expected to be held to the same standards, e.g. a legal basis that is not tied to economics, but rather a more universal concern for social and cultural rights and identity (Strumia, 2013). Either due to the economic origins of the European Union or the careful distribution of competences between EU institutions and Member States, perhaps it is not realistic to expect Union citizenship to be as comprehensive as national citizenship? From a purely pragmatic standpoint, this would seem to be a logical counterargument – however, the EU is not a passive body, but an active entity that has developed its own stance towards citizenship over time. It has become clear that the EU has come to view citizenship as one of its priorities after the economic bones of the Communities had been properly established; it is therefore not surprising that scholars are quick to identify the «failure of Union citizenship beyond the single market» (Thym, 2019, p. 102; Shuibhne, 2010). Therefore, the goal of reaching Union citizenship must not be dismissed as impossible by design; however, careful consideration of the means through which this goal may be achieved is necessary.

Moreover, as democracy has been identified as one of the most salient issues on the future agenda of the EU by both internal and external parties (Von der Leyen, 2019; Mair & Zielonka, 2012; Carp & Matiuța, 2020), it has become more important than ever to carefully consider the impact of factors like EU citizenship and its practice on political participation across all layers of society. Continuing to define the responsibilities and the membership of the European Union in mostly economic terms is certainly understandable considering the financial and political circumstances of recent years (Herrmann, 2014; Everson, 2013); however, as this paper has endeavored to show, it poses a significant threat to the future health of democracy in the European Union.

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