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1 Questions of European citizenship

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To mark the twentieth anniversary of the Maastricht Treaty, 2013 will be the European Union (EU) Year of Citizens. But what does it mean – what can it mean – to be a citizen of Europe? What restrictions, opportunities and challenges does the idea of European citizenship convey? It would be quite reasonable to respond to these questions with other questions. What do you mean by citizenship? And what version or idea of ‘Europe’ do you have in mind? In this book we encourage such questions; it matters to all the authors of this volume that we question common assumptions about these key terms. We feel that too often such concepts are taken to have a narrow reference. The role of this introductory chapter is to outline and to defend our questioning stance, and to describe some of the key positions from which we seek to pose questions. We introduce a number of ways in which European citizenship might be, and has been, approached, and discuss what is at stake in the choices we make between alternative approaches.

In recent decades, a book on European citizenship would probably *not* have prompted much questioning about what the phrase was getting at. Today, European citizenship is taken above all to mean citizenship of the EU. All citizens of the twenty-seven member states of the EU are additionally entitled to citizenship of the Union (something that passports of EU member state nationals make clear). While it had been discussed and debated for a number of years prior to that, European citizenship in this specific and dominant sense of citizenship of the EU (or ‘EU citizenship’, for short) became a formal legal status in the Maastricht Treaty of 1993. Subsequent treaties – Amsterdam (1999), Nice (2003) and Lisbon (2009) – have entrenched EU citizenship as a bundle of rights built around ‘free movement’ and ‘non-discrimination’ between and across EU member states.

This legal status has been, and continues to be, subject to wide-ranging debates. The Lisbon Treaty states that European citizenship is ‘additional’ to citizenship of EU member states (the previous key term was ‘derivative’). Should it in time become the primary political identity of citizens of EU

member states? How the ambiguities between national and Union citizenship play out, legally and politically, remains contested and contentious in a range of fields. There are debates as to whether the notion of citizenship can really apply at all to the EU, which, so it is argued, is not a nation-state and therefore does not rest upon the strong bonds or feelings of belonging that normally underpin citizenship. Can it really *be* citizenship without an effective, and affective, European ‘demos’, or a group of people with strong, shared convictions about their primary collective loyalties? Further, the status and rights of people who are not citizens of EU member states but who are (long- or short-term) residents in the EU, often referred to as ‘third-country nationals’, continues to be the subject of legal dispute. Each of these debates is complex, both technically and politically.

In a poignant if not urgent manner these questions have also been raised by the recent financial (and legitimacy) crisis that began in 2008, which revealed the limitations and possibilities of the European integration project and its idea of EU citizenship. These questions and debates certainly find their place in this book. Responses to such issues continue to shape the contours of belonging in the EU, which is the world’s most developed supranational political entity. The book is founded, however, on the conviction that an important new dimension is needed in debates on European citizenship. This dimension is not offered instead of existing perspectives, but rather alongside and within them in ways that both modify and broaden them. This new dimension is captured by the notion of ‘enacting European citizenship’. As the words suggest, we seek to draw attention to *acts* of citizenship: claims to multiple legal and political forms of access to rights, or recognition, made by a myriad of actors, be they formal EU citizens or not. We seek also to highlight cases and styles of enacting and contesting European citizenship which may be disaggregated in space, may arise from unexpected or surprising sources and pose distinctive challenges to conventional understandings of European citizenship. To put it another way, whatever limitations and possibilities of EU citizenship may have been intensified and revealed by the recent financial crisis, from our perspective, these limitations and possibilities have been questioned and exposed by what we call ‘enactments of European citizenship’ ever since the coming into effect of the Maastricht Treaty.

In studying the enactment of European citizenship, we intervene in varied ways in debates about EU citizenship but also seek to raise fundamental questions such as those posed above. This introductory chapter outlines five overarching themes that characterise wider sets of debates on European citizenship – sometimes by commission, at other times by omission. These five overarching themes are ways of approaching, or

thinking about, European citizenship. Only one of them, albeit a complex and important one, concerns EU citizenship as such. The five themes clarify the broader context within which debates about European citizenship must be located. They are:

- (1) Europe as an abstract idea. How do we understand Europe in the broadest sense – as a project? A set of characteristic ideals or symbols?
- (2) The question of European citizenship. How do we approach European citizenship as a concept and practice that has wider resonance than EU citizenship but nonetheless is bound up with it?
- (3) European citizenship *as* EU citizenship. What are the limits of EU citizenship as it is enacted at present and what are its possibilities for challenging and broadening the ways in which it is analysed and interpreted?
- (4) European citizenship and human rights. How do we approach the relations between human rights regimes and citizenship rights when investigating European citizenship? For example, is the theoretical distinction between human rights and citizenship rights being undermined by practical, institutional and political developments?
- (5) European citizenship and democracy. How does enacting European citizenship impact on European democracy? What contribution, if any, does employing the frame of *enactment* make to deepening and enhancing democratic politics in Europe?

Each of these themes is picked up, through a variety of cases and approaches, in the chapters that follow. In this respect, they are framing devices for the contributions in each chapter. In this chapter, we outline the themes briefly in order to characterise important threads in the larger debates which we seek to influence.

Europe as an abstract idea

The first issue concerns the very meaning of Europe. If we simply refer to Europe as a geographic continent we misunderstand its broader spheres of existence and influence. If we refer to it merely as a post-war integration project we then misunderstand its deeper lineages and trajectories. 'Europe' is both geographically and historically a complicated concept and experience. Following Walker (2000) we may not only ask where but also when Europe became what it is. It is perhaps appropriate to consider Europe an adventure, as Bauman (2004) suggests. In this view, 'Europe' is neither limited to its geographic continent nor to an immediate historical period, but has been a 'mission' (Bauman 2004: 9). Yet, considering Europe as a mission or an adventure misses an important dimension if we include only such institutions as rule of law, democracy and rights and

exclude colonialism, orientalism and imperialism (see Woolf 2003). Jürgen Habermas, for example, emphatically considers ‘Christianity, capitalism, natural science and technology, Roman law and the Napoleonic Code, the bourgeois urban lifestyle, democracy and human rights, and the secularization of state and society’ as exclusively European ‘achievements’ (2006: 44). Although Habermas admits that these achievements ‘have spread across other continents’ and that they are ‘no longer the exclusive property of Europe’ there is a sense in which they were ‘originally’ European and were replicated elsewhere. Both Mignolo (2003) and Chakrabarty (2000) have argued that such dissemination of European institutions would have been impossible without colonisation and orientalism. As Chakrabarty suggests, assuming that these institutions are European ‘achievements’ without reference to elsewhere invokes a peculiar historicism (‘first in the West, and then elsewhere’) that also renders Europe itself in mystical terms (2000: 6). Mignolo draws our attention to how, since the sixteenth century, dominant histories of Europe provided isolated and insular accounts of a particular continent becoming ‘Europe’ without emphasis on its relations (2003: 317). The point here is not to suggest that European colonialism and orientalism were inexorable events but to insist that ‘Europe’ cannot be contained within its geographic boundaries and historical periodisations without cost to understanding its historical and contemporary resonances. If Europe is an adventure, it has been a global one and we have to attend to its implications. It is inaccurate to assume that what happens in and to Europe remains in and of Europe.

One contemporary manifestation of this theme is borne out in Chapter 4 by Rumelili and Keyman, who illustrate ways in which a number of Turkish citizens have effectively enacted themselves as European citizens without Turkey being a formal member state of the EU. That they have done this primarily through the European Court of Human Rights is only part of the story. The other and perhaps equally instructive part is that they have also done so by effectively creating a European public concerned, for example, with the injustices suffered by Kurdish people in Turkey, through mass and social media, rights groups, consultancies, clinics and other instruments. It is also borne out by Chapter 7 (Aradau, Huysmans, Maciotti and Squire), Chapter 8 (Çağlar and Mehling) and Chapter 9 (Atger), whose authors in different ways illustrate how the Roma, despite being European citizens, have been treated as though they are Europe’s ‘others’.

There are then, as Balibar (2009: 3–4) argued, several Europes (or, we might say, ideas of Europe) – geographic, historical, political, symbolic – all of which are relevant to exploring its potentialities as a project. Derrida (1992: 29) once urged that ‘... it is necessary to make ourselves the guardians ... of a Europe that consists precisely in not closing itself off

in its own identity and in advancing itself in an exemplary way toward what it is not, toward the other heading or the heading of the other'. In this view, an idea of Europe that is worth defending is one of dynamism and a ready openness to change.

Indeed, there appears to be an idea of Europe shared (or safeguarded) by, for example, Bauman, Habermas, Derrida and Balibar – despite their differences – that centres upon Europe as an open idea, symbol or potentiality, rather than as a unified and closed project. This idea of Europe as an open-ended idea or symbol expresses in part an openness to different geographical and historical imaginaries, perhaps through connecting to 'other' geographical and historical imaginaries 'elsewhere'. Such an idea stands in contrast to the creation of what is now euphemistically called a 'fortress Europe', with an intense security apparatus intended to create impermeable European borders; a clear vision of a closed Europe, that persists despite (we would argue) the practical impossibility of its realisation. The idea of an open Europe can also be opposed to messages conveyed by another euphemism, 'third-country nationals' (TCNs), which arguably plays the role of papering over the EU's inability to negotiate with member states to extend rights to immigrants. This euphemism prompts into being an image of Europe without immigrants, the only democratic polity in the world without immigrants. Instead it has 'TCNs', which can be seen as a legal category that misrecognises immigrants. This is well illustrated in Chapter 8 (Çağlar and Mehling) and Chapter 10 (Rajaram and Arendas) where those who have been treated as Europe's 'others', despite residency and participation in the life of member states, face formidable challenges to becoming or remaining 'European'.

The implications of this openness for European citizenship are considerable. As Costa (2004: 212) has argued, if there is to be a European citizenship, the complex juridical and institutional space that constitutes Europe cannot be imagined as a closed space. If there is to be an effective European citizenship that neither copies nor reproduces nation-state citizenship, decouples nationality and citizenship and opens up new political possibilities and ways of becoming European, as Kostakopoulou (2007) and Besson and Utzinger (2008) suggest, it cannot so readily be imagined as a conventionally constituted and bordered juridico-political space (whether that space is represented by the EU or any other arrangement). If this idea of Europe as open is one of the starting points of our investigation, then what are its implications for thinking about European citizenship?

The question of European citizenship

We have already intimated that it is misleading – though certainly a common feature of the relevant debates – to reduce European citizenship to EU

citizenship. The larger set of European institutions that provide ‘additional’ rights to citizens of its constituent states, along with some citizens of some other states outside Europe, are complementary and overlapping but are not all a part of the EU. They include, for example, the Council of Europe (CoE) with its European Court of Human Rights, the Schengen Agreement with its distinct regulations concerning free movement, the European Economic Area (EEA) with its distinct coordination of economic policies, and the European Free Trade Association (EFTA) with its own binding conventions. If one adds to these the EU customs union, the euro zone (where a single currency, the euro, exists) and the Organization for Security and Co-operation in Europe (OSCE), it is readily apparent that institutional ‘Europe’ is a complex entity consisting of a variably overlapping assemblage of institutions, treaties, arrangements, organisations, governments, authorities, associations and geographies. It is important to emphasise that each arrangement includes a different group and number of European states. The cultural and social boundaries that constitute ‘Europe’ in each of these arrangements are different, as are its geographic and political boundaries. All this forms an intricate assemblage of jurisdictions, frontiers, zones and borders with different scopes and competences. It is therefore important to differentiate the EU and its citizenship regime from the rights and obligations that arise from the complex assemblage of institutions that make up the European juridico-political space. The EU belongs to, and perhaps even dominates, this assemblage, but does not determine it.

Given this complexity, we might think that researchers and commentators are perhaps justified in simplifying things by using the term ‘European citizenship’ when strictly they mean ‘European Union citizenship’. Yet eliding the complexity not only does a disservice to our understanding of how citizenship regimes emerge and change but also misrecognises that form of political subjectivity called European citizenship (Bellamy *et al.* 2004; Bellamy *et al.* 2006b; Hansen and Hager 2010; Maas 2007). ‘European Union citizenship’ is just one – albeit dominant – regime among several that guarantees and confers rights in Europe today (Kostakopoulou 2007; Shaw 2007b).

Some key dilemmas of policy and politics that have arisen in EU constitutional development have prompted questions about the EU’s capacity to be the type of entity that can contain or foster a profound sense of European citizenship. French philosopher Raymond Aron’s (1974: 653) declaration that ‘... there are no such animals as “European citizens” [and that] there are only French, German, or Italian citizens’ is often considered a decisive moment crystallising what is at stake with European citizenship. Yet, contra Habermas (1996: 502) and Keane (2008: 1), we do not think that Aron would have been surprised by the language of the Maastricht Treaty (1993) or the Lisbon Treaty (2009) which established European citizenship or,

more accurately, EU citizenship as derivative of (from Lisbon, ‘additional to’) and dependent on member state citizenship. What perhaps would have surprised Aron today is the active role the European Court of Justice (ECJ) has taken in entrenching and extending rights of EU citizenship by developing non-discrimination on grounds of nationality and mobility rights through case law. But whether this made EU citizenship (let alone European citizenship) more political is questionable (Bellamy *et al.* 2006a: 10; Besson and Utzinger 2008: 191). Besson and Utzinger (2008: 194) suggest that if the ECJ has not made EU citizenship more political it may have ‘... triggered a shift from nationality to residence as a criterion for the acquisition of certain national citizenship rights’. This certainly has political consequences as Chapter 9 (Atger) illustrates.

A fundamental issue concerning European citizenship is whether it can be conceived without a European demos, ‘we, the people’ (Balibar 2004). Whether this demos is conceived in singular (*demos*) or multiple (*demoi*) terms, the issue remains whether there can be a European citizenship understood as not only a legal status but also a political identity, without fostering a social and a legal European conception of ‘we, the people’. This is perhaps even more crucial than (but certainly related to) the issue of the kind of polity Europe becomes: is it a federal, unified or cooperative Europe (Lacroix and Nicolaïdis 2010)?

Many scholars now agree that for a European citizenship to exist there does not need to be a corresponding demos (or even *demoi*) since it implies and presupposes sovereignty as the foundation of its constitution. If that is the case then how do we conceptualise European citizenship? If it is not to be either an additional or mimetic citizenship that replicates nation-state citizenship models, where do we look for alternatives and inspiration? As Chapter 11 (Saward) illustrates, a return to liberal, republican or communitarian theories of citizenship and democracy (themselves deeply embedded in the notion of citizenship as nationality or nation-state membership) is fraught with difficulty. If European citizenship was born of bourgeois revolutions of the eighteenth and nineteenth centuries, a new European citizenship is struggling to be born alongside the struggle to invent and foster new ways of becoming and acting like Europeans as members of an open assemblage that differs markedly from more strictly defined nation-states.

Clearly, the insistence on understanding the European juridico-political space as an open assemblage of overlapping, multiple, if contradictory and incoherent, arrangements (e.g. CoE, EU, Schengen, OSCE, EEA, EFTA) and the new kinds of enactments that this assemblage makes possible, have both theoretical and methodological implications.

European citizenship as EU citizenship

As we have seen, ‘European citizenship’ is a concept that provokes a varied set of historical, geographical and other references. Just one of the ways of understanding it is to take it as meaning ‘EU citizenship’. This way of regarding citizenship in Europe is largely taken for granted today. To cite just one example, Jenson (2007: 53) writes: ‘This article deploys the concept of citizenship regime to describe fundamental norms and the citizenship practices of the EU. Its goal is to participate in efforts to reanimate discussions of European citizenship.’ But despite its limitations, the equation of European citizenship with EU citizenship has produced a rich set of themes and debates upon which we seek to build across the book. In particular, we aim to add to achievements fostered by this specific focus so far by bringing something new to the table through the notion of enactment.

Looking at European citizenship *as* EU citizenship has led to a strong focus on EU citizenship’s development as a *legal status*, derivative from or additional to and complementary to formal or legal citizenship of the member states (Besson and Utzinger 2008; Kostakopoulou 2007, 2008; Shaw 2007a). Bounded by this fundamental understanding, a great many debates have ensued regarding the promise, scope, uneven development, negotiation and jurisdiction of this legal status. Thus, discussions and interpretations of ‘European citizenship’ have been driven by complex and detailed arguments regarding, among other things, the process of formalising EU citizenship in the Maastricht Treaty (Maas 2007); implementation dilemmas regarding freedom of movement that is central to the status (Carrera and Merlino 2008); the importance placed by this status on residency (rather than membership) (Besson and Utzinger 2008) and the implications this may have for the recognition of ‘third-country nationals’; and the potential for the status to become autonomous from member state citizenship (Kostakopoulou 2007).

In addition to such focused legal and political debate about EU citizenship, the existence of the status has prompted debate about ‘models’ of citizenship in and for the EU. These debates have energised political theorists rather than legal and socio-legal scholars, and have involved more fundamental debates about the character and potential of European citizenship (while nevertheless working within the frame of conflating EU and European citizenship). They have worked through three main models of citizenship: liberal, republican and post-national. A certain liberal model, seen in terms of the rights to free movement by citizens and limited social and voting rights, has come to be the dominant interpretation of the EU citizenship status. A certain republican model offers a critique of this liberal model, regarding the latter as ‘thin’ in

terms of content, expectations of and on citizens and emotive attachment to the collectivity from which citizenship derives. Thus, as Bellamy (2008) argues, EU citizenship can only be limited and derivative because there is no deeper sense of loyalty, attachment or belonging to the 'European Union' among citizens of member states. The elements of citizenship that republicans prize such as active commitment can only be realised within nation-states, or so the argument goes.

A third perspective is that of the post-national, associated with Habermas (1998). From this perspective, we can conceive of a form of 'constitutional patriotism' where deep affective attachments are not required in order to constitute a citizenship regime in the EU: it is attachment to rights and a certain constitutional and institutional order (here, in the form of the EU) which matters, rather than primordial or emotional attachments to nation states.

Of course, there is much more to these debates, but the purpose here is to show how the status of EU citizenship has inflected debates on European citizenship. The value of the debates that have shaped understandings of European citizenship has been to explore the strengths and limits of differing conceptions of citizenship itself: how deep, how wide, how comprehensive must a regime of belonging be to be citizenship? And these broader debates have been reflected to a degree in socio-legal and legal discussions of the case-by-case, dispute-by-dispute development of the formal status of EU citizenship itself. Taken together, then, we have rich and varied debates that illuminate these issues of citizenship in general and what is at stake when citizenship is conceived, in one specific and crucially important way, as European citizenship.

We seek to bring a number of new and important dimensions to the debates. Firstly, by focusing on enactment rather than arrangements, we place more strongly under question the claims of courts (especially the ECJ) and member state governments to be the only driving forces in the shaping of European citizenship. People may and do act on, and act out, their conceptions of citizenship of Europe driven by concrete struggles in their everyday lives. Secondly, we aim to 'bring the political back in', especially in terms of individual and collective attachments to Europe, or the EU. By looking in detail at a range of acts and claims – for example, those of Roma people in three of the chapters that follow – we seek to account for those who are 'in but not of' the EU, along with those who are 'of but not in' (think here of Turkish citizens making claims on EU institutions). Certainly, prevailing debates do deal with these issues, especially with regard to the status of 'third-country nationals' resident in the EU, but we seek to be both more detailed and broader in looking at how groups enact themselves as European citizens.

Thirdly, we seek to highlight an element in these debates which is largely unspoken: the taking for granted of the space, including the borders, of 'Europe'. If European citizenship is equated with citizenship of the EU, then specific EU borders can be taken for granted. Understanding that European citizenship can be something wider or different can bring a wider resonance by examining the acts of a number of people and groups making claims on Europe. Fourthly, we introduce a neglected angle on the ways in which member states enact laws and procedures that makes deprivation of citizenship easier. This development renders member state citizenship, and by extension EU citizenship, an increasingly more tenuous and perhaps even precarious status. Finally, we also seek to recognise but go beyond 'models', highlighting the hybridity and multiplicity of ways of conceiving of citizenship of Europe which emerge through varied enactments of citizenship operating 'underneath' grand scale and abstract models of present and possible future polities.

European citizenship and human rights

A third overarching theme of the chapters in this book concerns the relationship between human rights and notions of European citizenship. Nowhere is the importance of this theme better illustrated than in the incorporation of human rights into EU citizenship norms as fundamental rights, brought about by the Lisbon Treaty (2009) coming into effect. By providing a Charter of Fundamental Rights, the Lisbon Treaty provides a rights framework that not only institutes a new identification and belonging but also, as Elspeth Guild (2010: 1) argues, 'transforms the relationship between the individual and the state through a different type of rights entitlement arising from and embedded in the EU'. The intriguing development here is that, as Guild says, 'the EU Charter of Fundamental Rights is neither part of a constitution in the traditional nation state sense nor an international human rights treaty even in the regional sense of the European Convention on Human Rights'. The Fundamental Rights framework incorporates a human rights regime into EU citizenship, and as Chapter 6 (Mantu and Guild) illustrate, it also transforms the sovereign rights of states of depriving citizenship.

Arguably, such incorporation had already been developing in practical terms, as Chapter 4 (Rumelili and Keyman), Chapter 8 (Çağlar and Mehling) and Chapter 9 (Atger) illustrate, through European Court of Human Rights (ECtHR) and ECJ engagement with a range of human rights repertoires. What is intriguing about the development of fundamental rights within the EU is a new light that it casts on a view that goes as far back as Edmund Burke (2001) on the fundamental incompatibility