How do you analyze the present state of the European citizenship?

Statement Summary: ‘European’ citizenship practice is expanding from inside-based to outside-focused. The first three decades of developing the institutional terms of citizenship through politics and policy-making inside the European Union (EU) largely focused on access to and the internal implementation of citizenship rights through the courts and the respective levels of governance inside the EU. In the 21st century, citizenship practice also extends towards the outside of the EU. The change is best analysed by reconstructing citizenship practice and the way it targets rights, access and belonging. The change from inside towards outside citizenship practice involves bringing in new types of actors in the process of defending fundamental rights of individuals in a global context.

Background and Argument: While the literature in European integration studies and European Law has largely settled on referring to “European citizenship” when actually addressing citizens of the EU only, the term does actually indicate reference to citizens from all of Europe, i.e. including those from countries that are and those that are not members of the EU. I would suggest that as long as there remain European citizens outside the EU it is important to acknowledge the exclusiveness of the concept and indicate this by using inverted commas: ‘European’ citizenship (Wiener 1998). This distinction is not purely academic. It entails political clout and offers analytical reference to assess its future potential. After all, there is quite a gap in terms of rights, access and belonging – the three elements which constitute the meaning of citizenship historically – between the group of ‘European’ (visualise: burgundy coloured) passport holders and other European passport holders. While the former group has come to develop a ‘weak’ European identity as insiders of the EU, the latter group has often come to develop a ‘strong’ European identity as outsiders, as is demonstrated by changing opinion polls prior to and following enlargement processes (Harmsen 2001). Non-citizens who share the territory and social practice of day-to-day life with ‘European’ citizens, yet do not have access to the burgundy coloured ‘European’ passport, form a third group to add to the dynamics of contesting the meaning and reach of ‘European’ citizenship.
The way the concept is used, therefore, allows for understanding the distinct dynamics of ‘European’ citizenship practice, including the ongoing contestation over membership rights, access conditions and shades of belonging to the EU. Like the first move towards establishing a European citizenship policy in order to sustain the then European Economic Communities’ (ECC) standing in a world that was facing a global economic crisis in the 1970s (compare the 1973 Council document “On the European Identity” (1) and the ‘special rights policy’ and ‘passport policy’ as the two citizenship policy packages that would lead to the stipulation of citizenship in the Maastricht Treaty 20 years later, which were coined at the two crucial Paris summits in the early 1970s), I argue that the jostling over ‘European’ citizenship rights is still key to assessing the effectiveness of the EU’s standing in the world. After all the long and winded process of “routinizing” the relation between individuals and the emerging political authority beyond the state (Tilly 1975) will be indicative for the reach and effectiveness of Europe’s “normative power” (Manners 2002) in decades to come.

To demonstrate the importance of contested citizenship for European external politics (note the use of external politics, rather than ‘foreign policy’ which is often misunderstood as a single policy field with limited reach and a given set of actors and involved institutions), the following turns to recent legal practice at the European Court of Justice (ECJ). Most notably, this practice has added to the routinisation of citizenship practice by introducing the concept of “European citizenship” as a third category of citizenship next to the formal – yet rarely used – concept of “Union citizenship” that was first stipulated by the 1993 Maastricht Treaty and the concept of “national citizenship” which establishes citizenship rights for national passport holders. With this, the ECJ suggests, for the first time, a legally binding notion of belonging. This sustains the notion that 'European' citizenship has received some tail wind. The following elaborates on this argument based on two developments in the area of ‘European’ jurisprudence.

• The first is the ECJ’s judgement in the case Rottmann v. Freistaat Bayern (hereafter: the Rottmann case) (2) which deals with an internal EU matter of citizenship. In this case the Advocate General's (AG) opinion distinguished, for the first time, between three types of citizenship that co-exist in the EU. These are member state citizenship, Union citizenship, and European citizenship. According to AG Poiares Maduro the latter is explicitly identified as distinct from the former two. With regard to the specific case detail, this statement proposed to consider an individual a “European citizen” based on the spirit of belonging which had been generated through day-to-day social and cultural practices. This assessment bears the suggestion that to obtain a burgundy coloured passport documenting the status of ‘European’ citizenship, an individual does not necessarily need to be an EU member state passport holder. It is sufficient to be able to demonstrate having shared in ‘European’ citizenship practice for a – not yet specified – period of time.
• The second development is the ECJ’s judgement in Kadi and Al Barakaat (hereafter: the Kadi case) (3) which essentially sets claims for the reach and effectiveness of normative power originating from ‘European’ citizenship practice. While the impact of this case on the future of legal order/s on a global scale has been highly disputed among legal scholars (De Burca 2009), for political scientists it does shed light on quite dramatically different relationships on the global scale i.e. between non-state actors such as citizens, the EU and the UNSC. Based on these, new perspectives on the global mosaic of citizenship practice become visible. For example, the case sustains the notion of the EU as an autonomous normative order which bears on global politics (and possibly the global legal order). Effectively, the ECJ effectively stepped in to call for better fundamental rights protection on a global stage for all citizens by setting the example of actively supporting the implementation of fundamental rights protection including the right to be heard, the right to fair process and access to judicial review by providing such support for individuals who conduct their business in the EU. In the process it annulled Council Regulation 881/20024 which had imposed restrictive measures against persons and entities associated with Osama bin Laden, the Al-Qaeda network, and the Taliban. It is important to note that the ECJ stressed that it had no authority to call into question the lawfulness of UN Security Council resolutions. However, it also stressed that as long as the UNSC did not provide sufficient protection for fundamental rights of individuals, the EU’s own normative order had to provide that protection instead.

Outlook: While the Rottmann case directly addresses citizenship in a most innovative way, the Kadi case brings fundamental rights of individuals in as an adjacent norm that is quite meaningful for the normative impact of citizenship. These two developments now need to be juxtaposed by empirical work on test cases that involve policy areas that require a solid development of ‘thick’ citizenship generated by a shared feeling of belonging. The test would be, for example, successful reference to common fundamental norms and organising principles such as ‘solidarity’ and ‘burden-sharing’. These norms are quite useful for finding out whether citizenship has moved on from the level of internal policy implementation towards a thicker degree that couches the external politics of the EU as a normative power on the global stage. The most promising areas for such research include, first, border politics and the contested achievement of the Schengen area without internal border controls which is currently challenged by a number of border issues (compare e.g. the activity of FRONTEX, the Warsaw based EU agency to deal with issues of EU border security (4) especially on the southern and south-eastern frontiers of the EU but also, most recently, in Denmark). Second, financial politics offer a test of these norms based on the way supporting measures to overcome the banking crisis are reflected by the EU citizenry.
In your opinion, how will the situation likely evolve over the next five years?

Statement: The developments sketched above need to be monitored closely over the next five years. Much will depend on a return of some intellectual (even academic intellectual!) involvement in the public debate about Europe by those who are able to mobilise the “politics of memory” (Assmann 2006, Esser 2011), drawing on their involvement in or detailed study of the key concepts and ideas of European integration.

Background and Argument: The debate about the future of Europe which had been triggered by Joschka Fischer’s Speech in Berlin 2000 (5) did stir the public. However, the focus on constitutionalism had been taken too far by a group of perhaps overly eager politicians of the “European Convention” (6) who tried pushing for a constitution when ‘European’ citizens were barely ready to see the relevance of the Nice Treaty for many day-to-day practices from border free travelling and business towards the protection of their fundamental rights. That is, experience that reaches back to the first decades of citizenship practice since the early 1970s matters crucially, as it is able to refer to ideas in context and thus appreciate the meaning and possibilities connected with concepts such as the Schengen area, the Eurogroup, ‘European’ citizenship, and so forth, as these do not always seem all too obvious to the less historically informed public. Bringing citizenship practice to bear, as some of the major ECJ cases now do, may support such a return to a publicly addressing ‘European’ issues. The key point for such a turn is not ‘teaching’ citizens what they are expected to do (compare Habermas’s more recent contributions to German broadsheets) (7), but ‘demonstrating’ what is at stake in the case of non-Europe quite like Helen Wallace once urged Europeans to do (Wallace 1998).

What are the structural long-term perspectives?

Statement: European citizenship is here to stay. If handled carefully, it will provide the driving force for establishing and maintaining a sustainable normative order which is sophisticated enough to refrain from Eurocentrism while maintaining and defending core European values.

Argument: This depends however on the EU's ability to maintain its decidedly non-state polity approach. The proof of the pudding lies in the way the EU moves on towards establishing signposts and finding its way through the new politics of external citizenship practice. This would involve close observation of the way in which the EU responds to global constitutional changes (as addressed above by the contested powers of the UNSC), on the one hand, and the way the EU is responding to the current crises in the areas of border politics and financial politics, alike, on the other.
Notes:

(1) For the document, see http://aei.pitt.edu/4545/1/epc_identity_doc.pdf.
(3) C-135/08 Janko Rottmann gegen Freistaat Bayern
(4) See: ECI, Cases C-402/05P and C-415/05P, 3 September 2008
(5) For details, see http://www.frontex.europa.eu/
(6) See: From Confederacy to Federation: Thoughts on the Finality of European Integration* speech by Joschka Fischer at the Humboldt University in Berlin, 12 May 2000.
(7) For details of the European Convention visit: http://european-convention.eu.int/

References:


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