Citizenship and Solidarity in the European Union

From the Charter of Fundamental Rights to the Crisis, the State of the Art

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Introduction

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This book was born out of a question: where is the European project going?

What happens to the promises of respect for the inviolable and inalienable rights of the human person, freedom, democracy and equality proclaimed in the Preamble of the Treaty on the European Union under the current scenario of the deepest economic and social crisis of the last decades? How does the EU intend to show its attachment to fundamental social rights, in this time of an increasing precarious labour market, blurring of boundaries between employment and self-employment and demands of labour market deregulation? How can we further enhance the democratic and efficient functioning of the European institutions, when there is a growing distance between citizens and political elites? How is it possible to achieve the strengthening and the convergence of European economies and to promote economic and social progress, when all we hear from the European politicians are proposals of austerity programs that do not seem to be working?

Our first attempt to answer these questions took place in May 2012, at the International Conference on “Citizenship and Solidarity in the European Union – from the Charter of Fundamental Rights to the Crisis, the State of the art”, which took place at the School of Law of the University of Minho, Portugal.¹ This publication includes the papers in which the oral interventions were based and a conclusion based in the transcriptions of the questions posed by the debaters. The panels and panel members of the Conference included many well-known and respected scholars, from Southern and Northern Europe, as well as Brazil, in what turned out to be a vivid and fruitful debate about Europe, the European integration process, the attacks to the European social model and the economic and social crisis.

In the present crisis scenario, European multilevel democracy is at a crossroads. The European Union has been accused of having a democratic

deficit for decades, and now that it has become evident that the Euro problems may only be solved at supranational level, that deficit could undermine national democracies. Vital decisions need to be given back to citizens, or they risk losing all legitimacy. Legal perspectives and legal challenges of the multilevel democracy in the context of the crisis must be discussed. At the same time, recent sentences of the ECJ have started to develop the concept of a citizenship of rights; this process confronts the European legal order with the meaning and scope of citizenship: is its purpose only to support the economic freedom of movement of economically active citizens, or does it correspond to a uniform catalogue of rights and duties, typical of a Union based on the rule of law, in which fundamental rights perform an essential role?

Trying to answer some of these questions about European democracy and citizenship, Emilios Christodoulidis writes about democracy, solidarity and crisis, in a careful consideration of the meaning of the terms “citizenship and solidarity” in the current moment. He also asks what democracy do we want in Europe and how does the current crisis in the Eurozone help us to think about some of the proclaimed goals of European integration. Teresa Freixes tells us about the citizens’ legislative initiative, in an attempt to draw attention to the legal instruments that may help us build an effective citizenship of rights and Jonathan Tomkin tries to understand how it is possible to reconcile integrationist aspirations with budgetary realities. Dora Kostakopoulou describes the anatomy of civic integration in Europe and, finally, José Rubens de Moraes reflects about some of the similarities and differences between the European Charter of Fundamental Rights and the bill of rights of the Brazilian Constitution.

The crisis we are now facing started as a financial and economic crisis, it is not possible to think about solutions without addressing questions about competitiveness and development models. The problems that the European Union faces impose new challenges to the integration process, mainly in relation to the dimensions of citizenship and solidarity introduced by the Charter of Fundamental Rights. The European Union awakes to the necessity of economic governance based by principles of budgetary, financial, fiscal and social security convergence, aiming to promote competition and a unified and sustainable development of its regions, assuring the livelihood of the European social standard – something that a purely (and only) monetary governance cannot do. It seems inevitable the deepening of the federative components of the European integration – but through which instruments? Therefore, it is relevant to discuss, bearing in mind the basic notions of European citizenship and European solidarity, the sustainable solutions for the complexities of the problems we are facing, “without ever mistaking hardships for failures” – as wisely taught by Jean Monnet.
Trying to address some of these problems, Raúl Trujillo Herrera speaks about the questions raised by the free movement of workers in times of crisis, and Elaine Dewhurst warns us about the difficulties that will arise in an ageing Europe, and the need to encourage the full participation and citizenship of older people by re-writing age discrimination legislation. Nuno Piçarra poses the question of whether an area of freedom, security and justice may be regarded as a factor of development and competitiveness, and Marcílio Franca-Filho draws our attention to the relationship between these aspects and global administrative law. Analysing what have been the results of the monetary union so far, João Rodrigues makes a critique of the European political economy and, finally, Katarzina Gromek Broc writes about the prospects for social Europe.

The third part of the book is dedicated to questions related to multilevel constitutionalism and the European political identity. The expression “multilevel” in the European Union context, refers to the reflexive interaction of different legal orders living in the same political space – and it implies a systemic network to solve the common problems. This is an interconnecting model which derives from the trans-nationalization/trans-territorialisation of the legal problems and unfolds into a multiplicity of perspectives concerning the solution of those problems. This phenomenon is more visible in the field of fundamental rights, because their protection at the European Union level is dragged to the sphere of action of Member States whenever they apply EU law – and that standard of protection will co-exist with the standards of national Constitutions and of the European Convention of Human Rights, giving origin to a kind of “multilevel protection of fundamental rights”, that is directed by the principle of the highest level of protection (Article 53 ECFR). Therefore, the EU multilevel system is more sophisticated than other current federative systems. Then, being true that the “bills of rights” have consequences on the “federalizing process” (because it promotes the equalization of the citizens’ legal positions in the whole system), it is important to discuss if we are in the presence of an European political identity, able to mobilize the European citizens beyond the State.

With these subjects in mind, Bruno de Witte discusses the tensions in the multilevel protection of fundamental rights, namely the meaning of Article 53 of the EU Charter, while Francisco Balaguer warns us about the importance of reinforcing European constitutional law, which is part of the European identity, in order to effectively deepen citizenship and build a better model of integration. Leonard Besselink revisits the “maximum standard”, in a reflection about multiple political identities and Eva-Maria Poptcheva presents the right to consular protection as an example of the multilevel context of Union citizenship. Finally, in a more “global” approach, Marcelo Neves drives us through his theory of transconstitutionalism, with special references to Latin America.
Part four of the book is about equality and solidarity, the most forgotten promises of the integration process in this crisis framework. In fact, the principles of equal treatment and non-discrimination are at the heart of the European Social Model. They represent a cornerstone of the fundamental rights and values that underpin today’s European Union. The European Union has known significant achievements in the field of equal treatment and non-discrimination and its legislation has significantly raised the level of protection against discrimination and has acted as a catalyst for the development of a more coherent, rights-based approach to equality and non-discrimination. However, there is a huge dimension of equality that is usually forgotten in the European discourse on non-discrimination: economic (in)equality. In 2009 (and therefore not reflecting all the consequences of the austerity policies that followed the sovereign debt crisis), the overall at-risk-of-poverty rate for the EU-27 was 17%, but more than 28% of single females and 25% of the households composed of two adults and three or more dependent children were in that situation. The problem would be far worse without social transfers. For this reason, the debate on poverty has to be a debate on equality and solidarity policies, largely affected by the measures imposed to fight the economic crisis, which have seriously wounded fundamental rights and made income inequality skyrocket.

The authors challenged to think about these questions have chosen to address several different dimensions of social policies. Catherine Barnard writes about dismissal and EU law, while Donatella Loprieno describes many of the problems faced by migrants in (ir)regular situations during the economic crisis. Tamara Hervey debates health equality and human rights in the EU today, and Francine Mestrum makes interesting considerations about solidarity, poverty and social policies in the Europe of the 21st century. Dimitry Kochenov poses important questions in need of an answer about European citizenship, and José Castro Caldas examines the political economy of European deconstruction.

The book’s final part is about culture and diversity, which are fundamental elements of the European project and identity. According to the Treaties, the EU contributes to the development of culture(s) in Member States, respecting their national and regional diversities, but highlighting their common cultural background. There is an underlying idea of a common cultural matrix that allows for very different singular expressions. In this context, it is important to respect cultural diversity, while combining it with the construction of a unity that identifies Europeans. Maybe the biggest challenge is to know the other: surprisingly, Europeans know very little about each other. Therefore, getting to know other mentalities and behaviours is absolutely necessary to avoid undesirable nationalism. But how can we build a common feeling of belonging in Europe? Can
the European cultural policy be mobilizing enough? Through what kind of concrete cultural policies? On the other hand, and in what regards the issue of culture, it is also necessary to discuss the question of immigrants and their integration. The EU lacks a serious and common immigration policy that faces all the difficult questions. It is urgent to develop alternatives to the actual state of affairs, namely to measures that are serious violations of human rights, like the detention camps. What migration policies for the Europe of the 21st century?

Thinking about these questions, Domenico D’Orsogna writes about cultural diversity, citizenship and migration flows. Jesus Prieto de Pedro describes cultural diversity as both a political and legal challenge and the basis for humanism in our era, while Franco Gaetano Scoca examines the Italian model for the protection of diversity and the legal treatment of foreigners. In a more philosophical approach, Willis Guerra addresses the problem of hostile diversity in the contemporary world society and, finally, António-Carlos Pereira Menaut makes sharp remarks about European constitutionalism in 2012. Times are tough again, he warns us. May the papers and debates transcribed in this book foster and contribute to democratic debate, because only democracy and constitutional limits to the exercise of political and economic power will guide us out of these turbulent waters and allow us to recover the promises of the European project.