Constituting European Citizenship
Struggles for Political Empowerment in the EU

Sandra Seubert

Abstract: The constituted legal status of "Union citizenship" has added another democratic static to the European Union's institutional architecture but it is not yet a status of full political empowerment. What is missing is a citizen-centered opening-up of the (technocratically disguised) *European* level as a political arena. This article argues that the idea of European citizenship can function as a normative reference point for struggles of political empowerment and institutional reform. Democratic innovations such as sortition-based citizens' panels organized within the framework of the *Conference on the Future of Europe* have a socializing function, paving the way for a European-wide public debate on issues of common concern and opening up a chance of (re)appropriating the European Union's institutional structure as a political space. But in order to support lasting democratic transformations they must be backed up by institutional reforms that make European political rights more effective.

Keywords: constitutional renewal, democratic innovation, democratic legitimacy, European citizenship, political empowerment

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Although a European citizenship status was introduced in the Maastricht Treaty in 1992, taking on a citizen-centered perspective on the European Union (EU) is still a provocation: it challenges the state-centered vision of the Union and potentially disrupts the EU's legitimatory basis. The struggles around the Conference on the Future of Europe (CoFoE) are just a recent example to illustrate this: Even though European citizens' panels formulated determined reform proposals, particularly regarding democratic restructuring, the power to unleash or stop a procedure for Treaty change ultimately rests with the European Council.[1] The future of European democracy is currently stuck in a power struggle between European institution in which citizens are once again pushed to the back seat (Seubert 2023).

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In light of various challenges urging the EU to act in concert and renew the legitimatory basis for its far-reaching political decisions, this proves a risky path. Given tendencies of democratic backsliding in several EU member states limits of "democratic intergovernmentalism" as response to crises have become obvious, raising doubts about the normative view that national governments are central in representing their people's interests (Wolkenstein 2020). It is worth remembering that embedding the nation state in a multilevel system has been a means of taming state sovereignty and making it "safe for democracy" (Eriksen 2014: 45). The concept of "Union citizenship" plays a crucial role in this respect. It has added another democratic static to the EU's institutional architecture and was deliberately created to counter-balance a state-centered perspective (Besson and Utzinger 2008; Bogdandy 2022: 237–239). Although the EU still fails in enabling citizens to play an appropriate role in the democratic life of the Union – with the "citizen paradigm" the process of European integration embodies a normative reference point for political empowerment and transformative political action (Kochenov 2013).

In what follows the transformative potential of European citizenship will be considered in a dual sense: On the one hand, with regard to the already *constituted* status of "Union citizenship", which – although insufficient – has given the "citizen paradigm" a legal anchor in the political world. On the other hand, with regard to ongoing citizenship practices of contesting, *(re)constituting* and eventually transcending the current status. The aim is to analyze and understand current empirical dynamics, and at the same time to relate them to theoretical reflections on transformations of citizenship in transnational perspective. The discussion starts with historical and conceptual considerations on a citizen-centered approach, giving reasons why this approach is normatively attractive in the European context. The following section turns to the legally established status of "Union citizenship" and examines its missing political link. The third section takes up the question of what kind of participatory reform could contribute to citizens' empowerment on a European scale and discusses the ambivalences of top-down approaches. It is concluded that democratic innovations such as those initiated within the CoFoE's framework have a "citizenization" function and indeed the potential of empowering European citizens as political agents. But this will only have lasting transformative effects if new forms of citizen participation are backed up by institutional reforms that promote citizens' experience of political rights as possibilities for action.

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A Citizen-Centered Approach: Historical and Conceptual Reflections

As a modern conception, citizenship is traditionally theorized as a bounded legal status guaranteeing political equality and participation, embedded in hierarchically structured states and organized within national territorial units. As such it is considered a conceptual cornerstone of liberal democracy and frequently framed along the Marshallian Triassic of civil, political, and social rights (Marshall 1964). Taken together, these rights are supposed to form a full membership status in a political community. This conception of citizenship is increasingly put into question. Post-national approaches to citizenship have criticized privileges of national membership for their exclusionary potential and argued why, in a globalizing world, rights of migrant, aliens and *denizens* need to be protected by an International Human Rights Regime as well as more permeable citizenship arrangements (Soysal 1994, Benhabib 2016). Not only is the *nation* as primary social reference group for claims of equality and justice put into question, but the democratic character of national boundaries more generally: In light of social and economic processes, shaping people's lives which routinely overflow territorial borders it becomes necessary to rethink *who* can legitimately make *what* claims to being included in decisions that affect them (Bauböck 2018; Fraser 2008).

A citizen-centered approach tries to answer these questions by putting the political subject center stage without primarily linking it to national boundaries (Beck and Grande 2010; Offe and Preuβ 2016). In the European context, a citizen-centered perspective envisages citizens as primary subjects of the EU's political order and expects them to be empowered as agents of change. The normative attractiveness of such an approach lies in its potential to open up a path for transcending the EU's state-centered structure (Benhabib 2016; Hoeksma 2023). So far, the EU is based on intergovernmental treaties, and attempts to change this (e.g., the Convention Procedure of 2002–2003) have not been successful. At the same time, member states have established a European citizenship status and have committed themselves, at least on paper, to further develop this status (Art. 25, TFEU). Contrary to dominant state-centered perspectives, the "citizen paradigm" ought not to be considered as a simple add-on to European (economic) integration but rather as its essential foundation (Bogdandy 2022: 72–74; Kochenov 2013; 2017). Counterbalancing the excesses of state sovereignty and taking human beings as "primary units of moral concern" (Held 2010: 230) has been the underlying thinking behind

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the project of European integration since the Schuman Declaration. It is this tradition to which a citizen-centered perspective links.

Despite its origins in market integration (see following section) the establishment of EU citizenship contains a political message: it questions the traditional perspective of citizenship as national citizenship and raises the expectation of moving beyond a state-centered logic of political inclusion. The "citizen paradigm" implies a transformative perspective on citizenship and political identity. In contrast to intergovernmental perspectives (e.g., Bellamy 2019) this transformative approach has no reason to assume that common identities could not emerge on a transnational scale if structural conditions and individual attachments change. What distinguishes the EU from the global context though is the fact that it has developed a particular, legally constituted institutional environment. Its institutional underpinning might so far be insufficient, but after all it provides a "minimum institutional requirement" for democratic change (Eriksen and Fossum 2018). The failed Constitutional Convention of 2002–2003 has not only transferred much content but also a procedural tool into the Lisbon Treaty, namely the legal provisions of changing the "rules of the game". The "Convention Method" provided in Art. 48, TEU, envisages publicly accessible consultation with a deliberative, rational and inclusive character and thus represents an alternative model to government conferences (Liebert 2019: 87–97). Despite high hurdles of consensus, it describes a decisive pathway toward citizen participation. By linking up to this perspective the CoFoE represents a first step toward including citizens in deliberations about the future of European democracy on a pan-European scale.

In Search of the Political: EU Citizenship's Missing Link

The EU is the only regional political entity in which a transnational citizenship status has been legally constituted (Maas 2017). It guarantees citizens of EU member states particular rights independent of nationality. Nevertheless, EU citizenship is a status that was granted from above rather than struggled for from below. Since its introduction in the Maastricht Treaty 1992 it is a disputed concept, and until now critics continue to doubt that it is worth the name (Menéndez and Olsen 2019). Since EU citizenship is politically underdeveloped and lacks major characteristics of democratic and social citizenship as inherited from the traditions of the member states calling it "citizenship" might contribute to further hollowing out the concept which is already under pressure in the post-national constellation (Shachar et al. 2017).

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Conceptually, EU citizenship's cornerstones are the *right to mobility* and the *right to non-discrimination.* The relation of these corner stones is more conflictual than it might seem at first sight. Freedom of movement for persons has developed as one of the "four freedoms" – freedom of goods, services, capital and labor – constituting the common market and forming the basis of EU law (Barnard 2010; Kadelbach 2011). Having a right to free movement opens the door for border crossing, but it does not grant an unconditional right to residency. Insofar as free movement is not only to do with *entering* but also *residing* in a country, legal residency is dependent on being economically self-supporting. Hence, the right to move appears primarily as a right to be economically active, to seek employment or run a business, across the Union. This has given rise to the criticism that EU citizenship is nothing more than a "market citizenship" (Everson 1995; Shuibhne 2010).

Non-discrimination, on the other hand, expresses a right to equal treatment. No EU citizen in any EU member state shall be put in a position more disadvantaged than that of a national citizen.[2] In principle, the right to equal treatment expresses a move beyond the economic rationale. Persons can expect to be treated on an equal footing and be integrated in the society that is hosting them. But the political logic of equal treatment and the economic logic of free movement are not as easy to mediate as functionalist theories of "spill-over", that is, transmission of integrational thrust from the economic to the political sphere, might suggest. They rather get caught up in serious tensions (Offe 2015; Streeck 2013). Applying the rationale behind the "four freedoms" all the way down, would either have meant creating a European common marketplace and letting people circulate freely like goods without restrictions. Or it would have suggested creating a common *social space,* next to the market, in which the citizenship logic with its principle of (political and social) equality could have been fully displayed (Eleftheriadis 2014; Weiler 1997). Neither has been the case. Despite the apparent analogy of the "four freedoms" it has been perfectly well understood that the free movement of *persons* is a completely different issue than the free movement of goods. Especially because persons are *not* considered as a commodity traded across borders, they enjoy the right to equal treatment in their host state. Non-discrimination can thus be interpreted as an important element of *decommodification*: People cannot simply be regarded as "factors of production" to be shifted and allocated at will (Schieck 2017: 355–356).

With the non-discrimination principle, the European citizenship regime has established a tool for potentially guaranteeing equal treatment in a pan-European realm. But so far it has followed a logic of horizontal (rather than vertical) integration: opening national polities and their

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citizenship regimes to one another. EU citizenship entitles primarily to being treated in no other way than a national citizen in the respective state, that is, like an Italian in Italy, like a French (wo)man in France or like a Hungarian in Hungary. Being an EU citizen is thus deeply mediated through a national framing (Azoulai 2017: 179). As a consequence, EU citizenship constitutes only a *relative* status of equality and allows for unequal levels of protection on a European scale.

Nevertheless, EU citizenship embodies a normative innovation, which is that EU citizens have *political* rights, that is, passive and active voting rights on communal and European level on the basis of residency. These transnational political rights are granted without naturalization. Political rights can be considered the normative core of democratic citizenship: As entitlement to participating in a process of law-making political rights are the presupposition for the further democratic interpretation of all other rights (Habermas 1992: chap. 3). In particular, *European* voting rights thus potentially open-up the European level as a political arena. This might lead to the expectation that EU citizen's political rights might induce a direct – vertical – link to the EU's institutions. But the logic of horizontal integration and its national framing of access to full social and political rights so far hinders a distinctive identification with a *European* citizenship status, being anchored in a pan-European political space and related to a European society of shared practices and values. One reason is that the shift to a residence-based principle of access to political rights is not applied "all the way down": *national* elections are left out. Without national voting rights, the moving EU citizen has only limited possibilities of co-authoring precisely those laws that substantially underpin her status according to the non-discrimination principle. What is more, even European Parliament (EP) election procedures favor *national* rather than socio-economic or cultural cleavages. Although the EP is a *supranational* parliament, it is elected through 27 different *national* voting procedures along national lists. These procedures are dependent on national election laws and differ immensely (Shaw 2015). As a consequence, European issues still find it hard to get traction in the largely separate national debates. The emergence of a political identity as fellow European citizens is severely hindered, and this affects the effectiveness of EU citizen's political rights as equals.

EU citizenship continues to be perceived as "thin". The deeper reason is the persistent missing link between European institutions and a segmented European society. In order to consider political rights conveyed by a status as possibilities for *action,* citizens have to consciously appropriate them and explore common interests. The extension of voting rights alone is insufficient to really empower European citizens. Voting rights

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must be complemented by other rights, for example, the right to form a European Party or a European right to associate (inexistent so far). They must also be embedded in civic practices which prepare opinion formation, articulation of conflicts etc. As long as EU citizenship is left without social anchoring, the EU remains the "abstract Universal" (Colliot-Thélène 2016: 143). Opportunities for forming political subjectivity are missing, and a pan-European sphere of public debate hardly ever emerges. But as the history of democracy in Europe shows, such a sphere is indispensable for political empowerment and the formation of democratic institutional structures (Habermas 1990).

In what follows we turn to the question of what kind of participatory reform might change this. Are the EU's multiple crises likely to promote a dynamic of disintegration or do they alternatively have the potential to release a push for European democracy: for citizens' political empowerment, (re)appropriating a European public space, and (re)claiming constituent power for a yet to be constructed political community?

Enacting European Citizenship

Although the EU already has a constituted institutional environment what is still missing is a citizen-centered opening-up of the (frequently technocratically disguised) *European* level as a political arena. The consequences have been extensively discussed: the lack of possibilities for contestation *within* the EU quickly translates into structural contestation *of* the EU (de Witte 2018; Mair 2013). This in turn provokes European institutional actors to retreat to a "protective logic" to push back anti-European or even anti-democratic forces (Norman 2021). In the wake of democratic backsliding in several European member states questions about the EU as a "militant democracy" have been raised, but this defensive perspective hardly includes participatory means for giving citizens a say on the future of Europe (Theuns 2023). Since the former "permissive consensus" (Hooghe and Marks 2008) has vanished, the EU is increasingly perceived as a context in which the emergence of a democratic public has become ever more important though (Bremberg and Norman 2023). Recent challenges, as different as they are (climate change, the COVID-19 pandemic, the Russian aggression against Ukraine) have demonstrated the need for taking care (and deciding more democratically) about European public goods (Spector 2023). They promoted an extraordinary feeling of being involved in a "community of shared fate" (Williams 2009).

The CoFoE was arguably initiated to seize the exceptional opportunity of promoting democratic renewal and restructuring, creating a

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European public space and giving people a chance of experiencing the European citizenship status as a possibility for action.[3] As a transnational participatory experiment the CoFoE is embedded in broader trends of involving ordinary citizens in the political process to improve efficiency and legitimacy of democratic governance.[4] With its multilingual digital platform, the European citizens' panels and the plenary, the CoFoE has established a three-level, pyramid-shaped structure. In particular its sortition-based citizens' panels constituted innovative spaces for deliberation on a European scale. The European citizens' panels functioned as "minipublics", elaborating on four (predetermined) subject matters for which policy recommendations were to be formulated and delivered in a Final Report. To this end citizens were supposed to interact with representatives of the three "constituent" European institutions (the European Commission, the EP, and the European Council) in the plenary, qualified as the "deliberative constituent place".[5]

Whether this kind of arranged settings open up spaces for bottom-up enactments of citizenship is a controversial issue (Chambers 2017; Farrell and Suiter 2019; Landemore 2020). As argued by Cristina Lafont, deliberative minipublics can have an "anticipatory" benefit, in particular if the public does not have any opinion at all about the issues in question, but the stakes are too high for the citizenry to remain ignorant. This is particularly relevant in the EU: minipublics can provide a preview of what an overarching perspective would look like once citizens learn to adopt a European (instead of purely national) perspective (Lafont 2020: 156–159). In line with the transformative perspective on citizenship and political identity outlined earlier, citizens' panels could thus prepare the path for the perception of the Union as a political arena, stirring a European-wide public debate on certain policy issues. According to Lafont, citizens' panels must be followed-up by a "macro deliberative strategy" (ibid.: 134), that is, link up to the general public and integrate the spontaneous self-organization of civil society. Only if they manage to involve the citizenry in the debate on various levels, national as well as local, by providing information, public visibility, media coverage can they help the many (and not only the selected few) to develop a considered judgment. What is more, only if recommendations are taken up by decision-making bodies and prove to have a sustainable effect on policy-making can they really contribute to empowering citizens as political subjects and support lasting democratic transformations. Otherwise, they are prone to becoming just another epistemic "short cut" and be abused as a top-down instrument of technocratic governance.

Evaluations of previous events suggest that citizens in randomly selected citizen-fora at European level become open to discussing policies

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from an overarching perspective, because they are likely to make particular social experiences (Fishkin 2011: 183–189). By including stories, claims and actors that have not been part of the picture before, firm reference points become fluid, and affiliations that appeared self-evident are put into question (Isin and Saward 2013). In the CoFoE's Final Report citizens report this transformative experience several times and mention the need for improving knowledge and communication about the EU (as well as combat misinformation).[6] Although initiated from above, sortition-based minipublics have a socializing dimension beyond the concrete policy issues that are debated. In the European context, this particularly concerns the perception of the collectivity, the perspective on the social reference group of which the citizen is part.

European citizens' panels can potentially teach to adapt the perspective of a Union citizen. Nevertheless, democratic procedures that are set up from the top are ambivalent: On the one hand, *existing* (European) institutions can promote democratic innovations and potentially help to channel contestation and transform citizenship agency into real power of change. But at the same time there is a constant danger of co-optation; constituted powers might make strategic use of the procedural set-up and usurp citizens' input. The concept of "governance-driven democratization" (Warren 2014) identifies this ambivalence quite aptly: set up from the top with the aim of strengthening the legitimacy of established institutions by helping to produce better informed and reasoned solutions, the perspective remains functional and focused on elite-led forms of participation. In contrast, an alternative "democracy-driven" approach characterizes forms of participation that emerge from collective action among civil society activists aiming at reforming existing institutions and deepening democracy based on bottom-up mobilization of social movements (Bua and Bussu 2021). Both concepts can merge: In the context of bottom-up mobilization, institutional and civil society actors might share some common goals. Progressive forces in both realms might join together and attempt to foster participatory decision-making and reform existing institutions. The effect can be a momentum in which attempts for a revolution from *within* institutions meet with mobilization from "below", that is, activist citizens struggling for change. This can have unintended consequences: Once democratic procedures are set up, even if they come from the top, they can "strike back" because citizens can invoke them to demand change (Alemanno and Nicholaidis 2021: 6).

To a certain extent, this was the case in recent dynamics preceding the CoFoE. In light of multiple crises, there has been unprecedented mobilization around Europe: on the one hand, an increase of anti-European emotions, most visible in the rise of Eurosceptic populist parties, but

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on the other hand, pro-European political activism, expressing concern about a potential disintegration of the Union. To counteract a dynamic of disintegration, institutional actors themselves felt the need to take action and initiate a reform debate. In an atmosphere of rising Euro-scepticism, a spirit of democratic renewal appeared, further promoted by interventions from a multiplicity of actors, active politicians (best known is the appeal for a "European renewal" by the French President Macron in 2019) as well as academics demanding fundamental European reforms (e.g., Piketty et al. 2017). In the course of these events, new pro-European social movements have been founded, some of which have been turning into movement *parties* (like Diem25 or VOLT – the latter proclaiming itself as the first really European *transnational* party).[7] These initiatives and appeals have raised public awareness and contributed to a dynamic that has eventually found resonance in European institutions. When announcing the intention to lance the Conference on the Future of Europe, EU Commission President von der Leyen explicitly referred to European citizens demanding greater involvement in the way politics are shaped.[8]

Bringing European Citizens Back In

Mobilizations around Europe have recently contributed to a momentum in which attempts for a revolution from *within* institutions met with mobilization from "below". The CoFoE took up this dynamic of rupture by embarking on an innovative democratic experiment of transnational citizen participation. But to what extent can citizen panels such as those initiated within the CoFoE's framework truly contribute to empowering EU citizens in a sustainable way? To what extent can this kind of citizen participation prepare the pathway to more fundamental reforms?

Given the blockages that arise from the current state-centered structure of authority, there are good reasons to be skeptical (Patberg 2024). Governance-driven democratization is inherently ambivalent; it involves the danger of co-optation by constituted powers but it might also help to transform citizenship agency into real power of change. As previously argued, sortition-based minipublics on concrete policy issues can be a useful catalyst for stirring a pan-European public debate, giving citizens a chance of appropriating the EU's institutional structures as a political space. They have a socializing dimension and can thus serve a "citizenization" function. Nevertheless, in order to kick-off a European-wide democratic restructuring this kind of citizen participation must link up to the general public, in particular national public spheres, and integrate the spontaneous self-organization of civil society. It must also be backed up

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by other institutional reforms that make European political rights more effective.

The *constituted* legal status of "Union citizenship" is not yet a status of full political empowerment. But the *idea* of European citizenship, as laid down in the Treaties, expresses the normative expectation of accomplishing a meaningful political status – an entitlement to create and shape a polity in which citizens are the constitutive political subjects. Institutionally encouraged enactments of citizenship are needed, paving the way for a public democratic debate about reforming European institutions. To this end, EU citizens could in principle take advantage of the EU's constituted institutional environment. The failed Constitutional Convention of 2002/03 has transferred a procedural tool into the Lisbon Treaty, namely the legal provisions of changing the "rules of the game". The "Convention Method" provided in Art. 48, TEU, envisages publicly accessible consultation with a deliberative, rational and inclusive character (Liebert 2019: 87-97) and could – as a follow-up of the CoFoE – function as an extraordinary pacemaker for a European public sphere. Nevertheless, for the time being, the Convention Procedure leaves institutional authority structures untouched; ultimately the power to unleash (or stop) the whole process is located in the Council. To move beyond this constituent circle is the task ahead. The revival of authoritarian nationalism does not make things easier, but as it stands, moving back and forth between experimental innovations and more substantial reforms seems the most promising way forward to achieve a more bottom-up democratization of the EU.

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Dr. **Sandra Seubert** is a professor of political theory at Goethe University Frankfurt. E-mail: seubert@soz.uni-frankfurt.de

NOTES

1. https://op.europa.eu/en/publication-detail/-/publication/ee68abe6-3dc5-11ea-ba6e-01aa75ed71a1/language-en. https://futureu.europa.eu/); Alemanno et al. 2021; Alemanno 2022.
2. The *European Court of Justice* (ECJ) has contributed to gradually expanding the rights relating to EU citizenship (critically Schmidt 2018) but has recently been engaged in a partial roll-back (Shuibhne 2015).

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3. Habermas has identified this need for democratic catching up already in his Treatise on the Constitution of Europe (2011).
4. For an overview on these "democratic innovations" see OECD 2020.
5. For a detailed reconstruction and discussion of the CoFoE's participatory architecture see Alemanno 2022. Note that "constituent power" is ambivalently associated with the already constituted powers as well as with the newly established "plenary".
6. For instance, proposal 37, p. 80: "Guaranteeing a minimum level of education on the EU and especially its democratic processes, including the history of European integration and European citizenship".
7. https://citizenstakeover.eu/; Diem25 (with national election wings, e.g., in Germany: https://bewegung.jetzt/bewegung; VOLT: https://www.volteuropa.org.
8. https://op.europa.eu/en/publication-detail/-/publication/ee68abe6-3dc5-11ea-ba6e-01aa75ed71a1/language-en.

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