

Introduction

Abstract The book aims to explain the problems faced by European citizens in the UK and by UK citizens residing in member states of the European Union (EU) after Brexit. Particular emphasis is laid on freedom of movement and rights relating to residence. A conceptually solid approach is suggested so as to disentangle the various aspects of the question. No matter its shape, Brexit will need to imply changing the territorial scope of application of the EU Treatises. This will bring changes to the personal sphere of validity of EU law. The citizenry is expected to shrink in size and change in composition, and some parts of it will be left in potentially vulnerable positions.

Keywords European citizenship · Brexit · United Kingdom · Freedom of movement · Right of residence · EU law

The referendum on 23 June 2016 triggered a wave of concern on matters political, constitutional, international and more. There are many issues surrounding the procedure of exiting, when the UK will do it, about the constitutionally legitimate procedure to do so, about the drafting techniques of the treaties, in parallel or subsequently, that Article 50 will require on exit and future relations, and how the Brexit withdrawal Treaty may be enforced, what happens if the UK changes its mind during the negotiations, and more.¹

The question asked here is: What are the consequences that Brexit may entail for the regulation of nationality and migration, taking into consideration European Union (EU) citizenship? The book investigates European citizenship after Brexit, in light of the functionalist theory, that is, a general theory that develops an epistemologically strong account of the concept of *status civitatis* (Mindus 2014a, b; Cuono 2015). Such a theoretically informed inquiry is warranted for a number of reasons and enables relevant policy suggestions.

As things currently stand, outcomes of negotiations cannot be foreseen. Focus here will be on determining what resources, if any, are available to the legal scholar regardless of what may happen in negotiations. Therefore, this study is made under the assumption of a non-negotiated withdrawal.

Many have, of course, pointed out the unlikelihood of non-negotiated withdrawal. Yet, I will operate under this assumption, or the assumption of a withdrawal treaty making no mention of free movement rights, which for the present purposes would amount to the same thing. I have chosen to operate under this assumption because the question of remedies in the absence of an agreement is relevant since there is no guarantee that any future agreement would have terms that are favourable to all affected groups and/or that any agreement would claim comprehensiveness. The political likelihood of determinate negotiational outcomes is therefore secondary to establishing the legal situation that would prevail in absence of agreements to come. Knowing what negotiations can do helps us assess the quality of the output of these.

So without engaging in predictions about what is likely to happen politically or in the negotiations, the book aims to explain the problems faced by European citizens in the UK and by British citizens resident in member states of the EU after Brexit. Particular emphasis is laid on freedom of movement and rights relating to residence. This allows the reader to understand the legal complexities affecting those who, on both sides of the UK border, have relied on free movement in making their life choices. The book suggests adopting a conceptually solid approach so as to disentangle the various aspects of the question because, no matter its shape, Brexit will need to imply changing the territorial scope of application of the EU Treatises.² This will bring changes to citizenship, that is, the 'personal sphere of validity of the legal order' (Kelsen 1945). The citizenry is expected to shrink in size and change in composition, and some parts of it will be left in potentially vulnerable positions.

The study presented here looks at what extra-negotiational legal resources are available for freezing rights of the people involved. Can rights be frozen? Which rights? Whose rights? Under what conditions? For how long? Sources of international law and EU law, including guidelines from lesser-known sources and doctrinal instruments, are taken into consideration. The conclusion is that some rights of some of the people involved will be frozen, but that the legal grounds for doing so suggests that Union citizenship is not what the European Court of Justice and most scholars claim it is.

Sources of international and EU law also help us answer the following question: Who gets to withdraw Union citizenship? It is a complex and debated issue. The various options are presented, discussed and the consequences of loss of Union citizenship are fleshed out, as well as the anticipated consequences for both the UK and for EU member states. Different venues for challenging the loss of status are also presented and discussed, as well as the options available for the EU to ‘save’ its status. Once the allocation of competence to withdraw European citizenship is established, we move on to looking at what limits there are to what the UK can do to protect itself against abuse of multiple citizenships and what member states are allowed to do to UK citizens resident in their territories.

The book is structured in seven chapters, including the present introduction. [Chapter 2](#) presents the status of European citizenship and connected rights. [Chapter 3](#) narrates the problem of legal uncertainty afflicting second country nationals in the UK and British citizens turning from expats to post-European third country nationals. The reader who feels comfortable in mastering the legal complexities affecting those who have relied on free movement in making their life choices can move on to the next chapter. [Chapter 4](#) starts by explaining why a theoretically informed inquiry is needed and then moves on to describe the theory. It also delineates three ways in which it applies to Brexit. These three directions of inquiry are developed in the remaining part of the book. [Chapter 5](#) focuses on the intension of Union citizenship: Which rights can be frozen? [Chapter 6](#) determines the extension of Union citizenship: Who gets to withdraw the status? The key finding is that while member states are in principle free to revoke the status of Union citizen, former member states are not unbounded in stripping Union citizens of their acquired territorial rights. In the final chapter ([Chapter 7](#)) some conclusions as to the nature of Union citizenship are drawn, and policy suggestions concerning how to

regulate matters pertaining to nationality and EU citizenship are summed up. The study offers performative evidence of the policy relevance of the general theory of citizenship that is sketched out in [Chapter 4](#).

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It is dedicated to my favourite European citizen, Livia.

NOTES

1. See in general the 2016 debates on <https://ukconstitutionallaw.org>.
2. Articles 52 TEU and 355 TFEU which establishes the territorial scope of application of the Treaties, merely list each Member state *eo nomine*.

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