

CONTENTS

<i>List of Contributors</i>	page xvii
<i>Preface</i>	xxi
<i>Foreword</i>	xxv
<i>Table of Cases</i>	xxix
<i>Table of TEU, TFEU and CFR Provisions</i>	lii
<i>Table of the Provisions of Regulations 1612/68 and 492/2011 and Directive 2004/38</i>	lvii
<i>List of Abbreviations</i>	lix

Introduction 1

1	On Tiles and Pillars: EU Citizenship as a Federal Denominator	3
	DIMITRY KOCHENOV	
	I Decommodification of Personhood in the European Union?	3
	II The 'Federal Association of States and Citizens'	16
	III Market Citizenship: A Logical Impossibility	35
	IV Reintroducing Dignity into the Structural Fabric of the Legal System	44
	V Extending the Analysis: The Chapters That Follow	52
	VI On Tiles and Pillars: Predicting the Future	78
	PART I Citizenship within the EU Federal Context	83
2	The Origins and the Potential Federalising Effects of the Substance of Rights Test	85
	MARTIJN VAN DEN BRINK	
	I Introduction	85

- II The Protection of the Substance of Rights in the Case Law of the ECJ 87
 - III The substance of EU Citizenship Rights 90
 - IV Reinforcing the Vertical Dimension of EU Citizenship 92
 - V The Substance of Which Rights? 95
 - VI Conclusion 106
- 3 Some Reflections on Member State Nationality:
A Prerequisite of EU Citizenship and an Obstacle to Its
Enjoyment 107
- MACIEJ SZPUNAR AND MARÍA ESTHER BLAS LÓPEZ
- I Introduction 107
 - II Globalisation, Europeanisation and Member State
Nationality 108
 - III Some Reflections Concerning Nationality as an Obstacle to the
Enjoyment of EU Citizenship 120
 - IV Conclusion 124
- 4 The European Federalisation Process and the Dynamics of
Fundamental Rights 125
- JOSÉ LUÍS DA CRUZ VILAÇA AND ALESSANDRA
SILVEIRA
- I Introduction 125
 - II Waiting for a Federal Big Bang? Revisiting the Federalising Process
Theory 128
 - III Delimitation of Competences and Federative Balance 133
 - IV Fundamental Rights and Sense of Community 136
 - V Conflicts of Competence and System Survival 142
 - VI Conclusion 145
- 5 Recasting EU Citizenship as Federal Citizenship: What Are
the Implications for the Citizen When the Polity Bargain
Is Privileged? 147
- NIAMH NIC SHUIBHNE
- I Introduction 147
 - II The EU as a Federal Polity 149

- III Recasting EU Citizenship Case Law as Federal Citizenship Case Law 160
- IV EU Citizenship as Federal Citizenship: The Value Added – and the Value Lost 168
- V Conclusion 176
- 6 Transfiguring European Citizenship: From Member State Territory to Union Territory 178
LOÏC AZOULAI
- I From Metonymy to Metaphor 178
- II From European Territory to Social Integration 182
- III From Social Integration to the Territory of the Union 193
- IV Conclusion 202
- 7 Earned Citizenship – Understanding Union Citizenship through Its Scope 204
ELEANOR SPAVENTA
- I Introduction 204
- II From the Market to the Market: The (Ir)Relevance of the Inactive Citizen 206
- III *Ruiz Zambrano* and the Substance of the Rights Test – A Hasty Retreat and a Problematic Doctrine 209
- IV Earned Citizenship 219
- V Normative Justifications and Moral Imperatives 221
- VI Conclusions 223
- 8 European Citizenship and Its New Union: Time to Move On? 226
DANIEL SARMIENTO AND ELEANOR SHARPSTON
- I Introduction 226
- II Free Movement and Its Limits: When the Court Said ‘Enough’ 228
- III Citizenship and Rights 231
- IV Citizenship and Democracy 235
- V Citizenship and the Rule of Law 238
- VI Conclusion: From a Market-Based Citizenship to Constitutional Citizenship: A Task for Citizens, Not Only Courts 241

9 Going *Home*? ‘European’ Citizenship Practice Twenty Years After 243

ANTJE WIENER

- I Introduction 243
- II Citizenship Practice Theory – A Heuristic Device 249
- III Renegotiating Normativity: Who Has Access to Contestation? 259
- IV Conclusion 267

PART II EU Citizenship Rights and the Vertical Division of Powers in the EU 269

10 The Political Side of EU Citizenship in the Context of EU Federalism 271

FEDERICO FABBRINI

- I Introduction 271
- II EU Citizenship and Political Rights 273
- III Extending EU Citizens’ Electoral Rights: Promises and Pitfalls 277
- IV Federalism, Citizenship and Democracy 281
- V The Case Law of the ECJ and the Development of EU Citizens’ Political Rights 285
- VI Treaty Reform: Between States’ Consent and Popular Will 289
- VII Conclusion 292

11 Reframing Public Health Governance: From Risk to Citizenship and Participation 294

MARK L. FLEAR

- I Introduction 294
- II Framing EU Public Health Governance as a Matter of Risk 297
- III Reframing EU Public Health Governance as a Matter of EU Citizenship 308
- IV Conclusion 315

- 12 The Federal Implications of the Transformation of the Market Freedoms into Sources of Fundamental Rights for the Union Citizen 316
ALINA TRYFONIDOU
- I Introduction 316
 - II Morality Issues 319
 - III Direct Taxation Cases 325
 - IV Right to Receive Healthcare Services and Goods in the Territory of Another Member State 329
 - V Immigration Control and Family Reunification Rights of Migrant Union Citizens 333
 - VI Analysis 337
 - VII Conclusion 340
- 13 Perspectives on Social Citizenship in the EU: From *Status Positivus* to *Status Socialis Activus* via Two Forms of Transnational Solidarity 341
DAGMAR SCHIEK
- I Introduction 341
 - II Towards Transnational Social Citizenship 343
 - III The EU as a Case Study for Transnational Social Citizenship 354
 - IV Conclusion 368
- 14 A Citizenship Right to Stay? The Right Not to Move in a Union Based on Free Movement 371
SARA IGLESIAS SÁNCHEZ
- I Introduction 371
 - II Territorial Rights: Right to Stay, Right to Remain, Right Not to be Displaced 373
 - III The Citizenship of the Union and the Transformation of the Right to Stay 377
 - IV The Right to Stay in One's Own Country: An EU Citizenship Right or a Fundamental Right? 387
 - V Concluding Remarks 392

- 15 *'Scelestus Europeanus Sum'*: What Protection against Expulsion Does EU Citizenship Offer to European Offenders? 394
MICHAL MEDUNA
- I EU Citizenship and Public Order – Introduction 394
 - II A Tale of Four Institutions 397
 - III Federalising Potential of EU Citizenship 407
 - IV Future of the public Policy / Security Derogation – Conclusion 413
- 16 EU Sexual Citizenship: Sex Beyond the Internal Market 417
ULADZISLAU BELAVUSAU
- I Introduction 417
 - II Sexual Citizenship: Normative Investigation 419
 - III EU Sexual Rights: Three Bricks at the Foundation of Sex in the Union 427
 - IV Conclusions: Mobile Citizenship and Sex Mobilisation via EU Law 441
- 17 EU Citizenship and the European Federal Challenge through the Prism of Family Reunification 443
STANISLAS ADAM AND PETER VAN ELSUWEGE
- I Introduction 443
 - II A Fragmented Legal Landscape 446
 - III The Undesirable Effects of Fragmented Legal Regimes 452
 - IV Tackling Reverse Discrimination? 456
 - V Rights' Protection from the Perspective of Comparative Federalism 462
 - VI Conclusion 466
- 18 The Right to Stay at Home: A Basis for Expanding European Family Rights 468
GARETH DAVIES
- I Introduction 468
 - II The Right to Stay at Home 469
 - III Life without Family 474
 - IV Difficult Family Members 481
 - V Conclusion 487

- 19 EU Citizenship and the Right to Care 489
NATHAN CAMBIEN
- I Introduction 489
 - II The Right to Care as a Trigger for More Extensive Protection in ECJ Case Law 490
 - III The Legal Foundations of the Right to Care in EU Law 491
 - IV Defining the Limits of the Right to Care 498
 - V Concluding remarks 506
- 20 Union Citizenship and Disability: Restricted Access to Equality Rights and the Attitudinal Model of Disability 509
CHARLOTTE O'BRIEN
- I Introduction 509
 - II The EU as Driver for Member States' Attitudinal Model 512
 - III The EU as Cheerleader for Member States' Attitudinal Model 528
 - IV Altering the Federal Dynamic and the Functional Direction: The EU as Potential Protector 535
 - V Conclusion 536
- 21 Data Privacy Rights and Citizenship: Notes on Federalism All the Way Up 540
BILYANA PETKOVA
- I Introduction 540
 - II The Importance of Privacy in the European Legal Order 542
 - III National Institutions' Impact on EU Data Privacy: Toward Privacy Federalism All the Way Up? 545
 - IV The Intersection of Data Privacy and Citizenship Rights 556
 - V Conclusion 559
- 22 The Federal Entrenchment of Citizens in the European Union Member States' Criminal Laws: Or How EU Citizenship Is Shaping Criminal Law 561
HANNEKE VAN EIJKEN AND TONY P. MARGUERY
- I Introduction 561
 - II The Need to Protect a Federal Citizenship beyond the Cross-Border Logic as a Rationale for the AFSJ 564

- III To What Extent Does EU Criminal Law Affect EU Citizens? 568
- IV The Impact of EU Citizens' Rights on Criminal Law 573
- V Conclusion 582

23 The Right of EU Citizens to Diplomatic and Consular Protection: A Step Towards Recognition of EU Citizenship in Third Countries? 584

PATRIZIA VIGNI

- I Introduction 584
- II The Right to Diplomatic and Consular Protection 586
- III The EU as International Defender of EU Citizens 604
- IV Conclusion 610

PART III Broader Implications and Limitations 613

24 Individual Rights, Interstate Equality, State Autonomy: European Horizontal Citizenship and Its (Lonely) Playground from a Trans-Atlantic Perspective 615

FRANCESCA STRUMIA

- I Introduction 615
- II Federalism and the Discourse of Citizenship in the US and the EU – Act I 617
- III Federalism and the Discourse of Citizenship in the US and the EU – Act II 625
- IV EU Horizontal Citizenship 631
- V Post-National Citizenship and Political Citizenship in the EU: A Horizontal Perspective 636
- VI Conclusion 641

25 EU Citizenship and Fundamental Rights: Contradictory, Converging or Complementary? 642

DOMINIK DÜSTERHAUS

- I Introduction 642
- II A Contradiction? Citizenship and Fundamental Rights 643
- III Fundamental Rights and Member State Action 647
- IV On the Protective Potential of Citizenship Rights 650
- V Links to the Rights: Triggering Rules in the Field of Citizenship 656

VI Protecting the Citizens: The Limits of Interpretation	661
VII Conclusion	664

26 Reverse *Solange*: Union Citizenship as a Detour on the Route to European Rights Protection against National Infringements 665

JOHANNA CROON-GESTEFELD

I Introduction	665
II EU Fundamental Rights Protection against Member State Violations – Current Proposals	667
III Union Citizenship as a Door-Opener for Rights Protection?	671
IV The Reversibility of the <i>Solange</i> Approach	676
V The Danger of Reverse Results	680
VI Conclusion	683

27 Union Citizenship Re-Imagined: The Scope of Intervention of EU Institutions 685

JOŽE ŠTRUS

I Introduction	686
II Circumstances Establishing the Link with EU Law	687
III Negative Effect on the exercise of Union Citizenship Rights: A Central Connecting Factor with EU Law?	693
IV The Right Institutions for the Job: The Role of EU and National Institutions in Ensuring the Effectiveness of Union Citizenship Rights	700
V Conclusion	704

28 Frontiers of EU Citizenship: Three Trajectories and Their Methodological Limitations 705

DANIEL THYM

I Introduction	705
II Frontiers of Union Citizenship	706
III Methodological Background	707
IV Aspirational Citizenship	710
V Citizenship as a Legal Creation	717
VI Citizenship as a Social Fact	724
VII Conclusion	728

29	EU Citizenship and Its Relevance for EU Exit and Secession	731
	PHOEBUS L. ATHANASSIOU AND STÉPHANIE LAULHÉ SHAELOU	
	I Introduction	731
	II Withdrawal <i>in Toto</i> of a Member State from the EU – Concept and Consequences	733
	III Secession of Part of the Territory of an EU Member State – Concept and Relevance of Public International Law in an EU Context	735
	IV The Concept of EU Citizenship and Its Relevance in EU Exit or secession scenarios	740
	V EU Citizenship as a Non-Legal Consideration in EU Exit or Secession Scenarios	747
	VI Concluding Remarks	749
30	Epilogue on EU Citizenship: Hopes and Fears	751
	KOEN LENAERTS AND JOSÉ A. GUTIÉRREZ-FONS	
	I Introduction	751
	II The Idea of ‘ <i>Demoicracy</i> ’	753
	III The Right to Move as an EU Citizen in the Light of <i>Demiocracy</i>	757
	IV <i>Ruiz Zambrano, Delvigne</i> and the EU Constitutional Balance	762
	V Concluding Remarks	779
	<i>Index</i>	782