REVIEW ARTICLE

The nature of citizenship

There is nothing natural about state membership.

Costica Dumbrava

Books reviewed:

1. Nationality, Citizenship and Ethno-Cultural Belonging. Preferential Membership Policies in Europe., by Costica Dumbrava, UK: Palgrave Macmillan, 2014, ISBN: 978-1-137-38208-5
2. Citizens’ Rights and the Right to Be a Citizen, by Ernst Hirsch Ballin, The Netherlands: Brill Nijhoff, 2014, ISBN: 978-9-004-22318-9
3. EU Citizenship, Nationality and Migrant Status. An Ongoing Challenge., by Kristīne Krūma, The Netherlands: Brill Nijhoff, 2014, ISBN: 978-9-004-25158-8

‘Citizenship’ is a highly politicised and at times emotional concept. Why are some entitled to it, and others need to ‘deserve’ it? Who is a good citizen and who is not? What does citizenship stand for in contemporary Europe? The authors whose works are discussed in this article embark on the challenging task of solving citizenship mysteries.

The analysis starts with the book by Costica Dumbrava. He strips the citizenship concept of many unnecessary meanings, and subsequently dissects it into three neat parts which separately make more normative sense than together. He does away with rhetorical questions, emotions and poorly defined ideas that cloud so many discussions on citizenship, which sometimes comes at a price of losing essential context. The second book reviewed, by Ernst Hirsch Ballin, takes the opposite approach: instead of simplifying citizenship and taking it apart to its basic components, it embraces the complexity of this phenomenon, putting different pieces of the puzzle together. Hirsch Ballin discusses citizenship as indivisible from the concepts of human rights, democracy and the rule of law. He makes a daring claim for every person’s right to the citizenship of the state where he or she is effectively at home. The third book, by Kristīne Krūma, is a detailed analysis of international, EU and Latvian legislation on citizenship and migration. She argues that while migration is strongly impacted by international and EU law, citizenship is still a concept largely enshrined in state sovereignty. She is cautious about theorising citizenship from the perspective of human rights, and insists on an approach that is sensitive to the needs of the state to regulate membership.

‘Nationality, citizenship, and ethno-cultural belonging. Preferential membership policies in Europe’ by Costica Dumbrava

One may get the impression, based on the title of the book, that the author is primarily interested in the ethno-cultural aspects of citizenship. This is only partially true. While the first two parts of the book discuss the ethno-cultural aspects of the rules on acquisition and loss of citizenship, the third, most interesting, part argues for separating legal citizenship (which the author calls ‘nationality’), political citizenship (the real ‘citizenship’, according to author) and ethno-cultural belonging from each other, into three different forms of membership. The author proceeds to design liberal-democratic normative criteria for access to each form of membership. His main message is that no membership criteria can suit all the three at the same time in a liberal democratic state.
Legal membership (nationality) needs to be granted to everyone subjected to the laws of the state, and the level of protection attached to it should be sufficient to justify state coercion. Individual’s consent is not necessary for granting nationality, justifying its attribution to children and its use to avoid statelessness, including voluntary statelessness.

Political membership, the citizenship proper, is based on consent, and salvages the ‘free association’ aspects of state membership. It provides the full range of political participation rights, and can be made conditional on a public declaration (oath) of intention to participate in the democratic project. No other prohibitive conditions can be placed on access to citizenship, and every national is entitled to become a citizen upon expressing consent publically.

Ethno-cultural membership can have very limited implications on access to rights in a liberal democratic state, and should certainly not entitle its members to political participation. In the words of the author, ethno-cultural memberships should resemble ‘the Organisation international de la Francophonie rather than the collective naturalisation policies of the Third Reich’ (Dumbrava, p. 139). Ethnic belonging and/or the ability to pass a stringent cultural integration test can be among the criteria for accessing ethno-cultural membership.

Dumbrava’s book is highly recommended to everyone with an interest in the boundaries of citizenship. It is a great tool for clarifying many confusions that surround debates on citizenship. It is written in accessible language, and is pleasantly concise. In addition to the elegant normative theory discussed above, the book also contains a highly valuable empirical descriptive part that surveys ethno-cultural rules in nationality laws of 38 states.

‘Citizens’ rights and the right to be a citizen’ by Ernst Hirsch Ballin

Hirsch Ballin’s book is a fascinating combination of an in-depth scholarly exploration of the concept of citizenship, and the author’s strong personal statement about inclusion and exclusion in contemporary Europe.

Right to the citizenship

The book’s most important contribution to the citizenship debate is its innovative interpretation of citizenship as a human right. The author argues for going beyond the Universal Declarations’ right of every person to ‘a citizenship’ (UDHR, Art. 15), and claims that every person has the right to ‘the citizenship’ of a state where he/she is effectively at home, the appropriate citizenship. There is great controversy about the existence and the usefulness of the right to a nationality under international law. Some human rights instruments, in particular on the avoidance of statelessness and on non-discrimination, contain legally enforceable obligations on states to provide, or not deprive of, citizenship in specific circumstances. Those instruments, however, cannot ensure that the citizenship provided is the citizenship that matches the life circumstances of persons concerned. Hirsch Ballin tries to remedy this drawback by arguing for a human right to not simply be a national of any random state, but to be a citizen of the specific state that corresponds to one’s personal life circumstances. This is a refreshing new way of looking at the connection between human rights and citizenship.

A utopia of inclusion

There is an urgent necessity in Europe to refocus the debates on immigration from the discourse of exclusion onto the discourse of inclusion, and to combat the negative image of the ‘Schrodinger’s immigrant’ who ‘lazes around on benefits whilst simultaneously stealing jobs’. Hirsch Ballin’s book makes an important contribution towards that goal, and applies the notions of morality, empathy and compassion to immigration. The image of an immigrant sketched in the book is rather idyllic:
Migrants have often been men and women who want to make a difference by not taking the background that they come from for granted but seeking out and entering into fresh connections – ‘exceptional people’, in other words, who are expected to contribute to more expansive, dynamic value communities in their arrival cities. (Hirsch Ballin, p. 130)

At the same time, the normative grounds for separating ‘good’ from ‘bad’ in immigration are not very well defined. The author states, for example, that sham marriages need to be controlled but the right to family life needs to be ensured (Hirsch Ballin, p. 39), without going into further details. He does not explain what, if anything, separates an ‘exceptional’ migrant, from a migrant who enters a sham marriage in order not to take ‘the background that they come from for granted’.

Hirsch Ballin’s book is very important for academics and practitioners in the field of citizenship. Unlike Dumbrava’s theory, it embraces the complexity of citizenship with all its academic, practical and emotional meanings. Hopefully, Hirsh Ballin’s work can serve as a compass for new directions in immigration and naturalisation debates.

**‘EU citizenship, nationality and migrant status: an ongoing challenge’ by Kristine Krūma**

In sharp contrast to Hirsch Ballin’s work, Krūma states that ‘nationality is not rooted in human rights. It is rather connected with the State and its people who have used their right to self-determination. Therefore, nationality is connected with national history, identity, and traditions’ (Krūma, p. 115).

The book combines elements of a very informative, thoroughly researched, textbook-like scholarship on nationality and migration internationally and in the EU (first two parts), and an arguably opinionated response to various critiques on the status of non-citizens in Latvia (third part). This article focuses mostly on the more controversial third part, but the reader should keep in mind that the critical remarks apply only to selected sections, and are not representative of the scholarly quality of the book as a whole.

**Nationality is a national business**

The book is a comprehensive analysis of interplay between international and EU standards on migration and citizenship. Krūma concludes that while migration, and particularly the rights of documented migrants, is heavily regulated by international and EU norms, the questions of nationality fall largely within the sovereignty of states.

Unlike Hirsch Ballin, Krūma is sceptical about framing nationality as an independent concept under either international or EU law, or constructing nationality as a human right (Krūma, pp. 417, 422). She maintains that ‘no independent EU citizenship concept as such exists’ because ‘the primary competence of the Member States in determining nationality remains strong’ and the Court of Justice respects ‘national laws on acquisition of EU citizenship’ (Krūma, p. 418). According to the author, ‘EU citizenship can be qualified as instrumental or functional while national citizenship is a substantive concept’. (Krūma, p. 418)

**The controversial issue of ‘non-citizens’**

‘Non-citizens’ are a category of settled long-term residents in Latvia, with whom the state claims a special connection, yet not a bond of nationality. The status and rights of non-citizens are crucial for Krūma’s analysis of the situation in Latvia. The Latvian state claims that non-citizens are not stateless persons, and thereby tries to avoid its international obligations on statelessness vis-à-vis this group. The UN defines a stateless person as someone ‘who is not considered as a national by any State under the operation of its law’ (1954 UN Convention, Art. 1). Non-citizens of Latvia
fall neatly within this definition, as one of the eligibility requirements for this status is not to be a national of any state.

Unfortunately, the author does not rely on this UN definition to criticise the Latvian government’s assertion that non-citizens as not stateless, but instead expresses poorly argued support for the Latvian state’s position. Her claim that this position ‘has been accepted by international human rights monitoring bodies’ is questionable. The two reports referred to in support of this indeed mention the human rights situation of non-citizens, but express rather confusion about their status than an opinion on their statelessness.

UN High Commissioner for Refugees (UNHCR), the only UN body with a formal mandate on statelessness, considers non-citizens as stateless persons. The author acknowledges that, but does not assign decisive weight to UNHCR’s position, invoking instead the reports by UN bodies without a mandate on statelessness.

As a consequence, poorly informed conclusions on the compliance of Latvian legislation with international standards are made, namely that ‘[i]n general, Latvian citizenship provisions correspond to international law requirements’ (Krūma, p. 445).

As far as integration is concerned, the author generally promotes a ‘two-way’ approach (Krūma, p. 317), but when speaking of the non-citizens of Latvia specifically, she sometimes makes statements that support an assimilationist approach to integration.

For example, she implies that the exercise of cultural and linguistic rights by non-citizens hampers their integration. (Krūma p. 447). Also, the ECHR’s case law is reproached for disregarding the personal choice of non-citizens of whether ‘to apply for citizenship, integrate[...] into society or whether [to] have personal links outside the country’, (Krūma p. 445) where having personal links outside of the country is presented as irreconcilable with naturalisation and integration. In a discussion on the proposed referendum to make the Russian language one of the state languages, Krūma considers the fact that many people who speak Latvian language supported the initiative illustrative of ‘the failure of the integration’ (Krūma, p. 404).

The author argues that the ‘right to otherness and its scope should be carefully examined in each particular case, i.e. whether it is applied to a national, a migrant citizen, a person belonging to a minority, or an immigrant’ (Krūma, p. 454). Not all groups, therefore, have an equal claim to their right of being distinct. The EU should, according to the author, take that into account, by making ‘the role of non-discrimination stronger at the same time bearing in mind different statuses of persons, i.e. the EU institutions should also remain mindful of the historical and specific circumstances of each group of persons in national contexts.’ (Krūma, p. 454)

It seems that the conclusion is that the EU should tolerate discrimination based on ‘different statuses of persons’ if it is required by historical and specific circumstances in national contexts, which is a dangerously vague exception to the non-discrimination principle.

To be fair, Krūma is critical of the Latvian state’s integration policies that have not ‘shown more interest on a permanent basis and care for everyone to be able to become an integrated member of society’. She maintains that ‘integration conditions should be replaced by integration measures and the burden placed on Member States to provide facilities for integration rather than on third country nationals’ (Krūma, p. 319). But even then, she emphasises the exceptional nature of the situation of non-citizens, stating that ‘global communication, the mass media and propaganda from non-democratic regimes’ (Krūma, pp. 447–448) make it more difficult to change value perceptions that are required for integration.

The book by Krūma is interesting for two types of audiences. It is useful for a reader who is new to the issues of citizenship and migration, as it contains a well-written comprehensive account of the state of art in international and EU law on nationality and non-asylum immigration statuses. For more advanced readers, the description and analysis of the situation in Latvia can be of great interest. The extensive description of nationality laws and policies in Latvia, including the relevant
case law, is unique in the Anglophone literature. At the same time, some views expressed by the author on Latvian policies regarding non-citizens should be approached critically.

**Common themes**

All the three books make valuable contributions to the contemporary debates on citizenship in Europe. They approach the topic from different angles and backgrounds, have different goals in mind and reach different conclusions. Together they shed light on how citizenship is understood in Europe nowadays. In this last part, a few of the most interesting common themes are discussed.

**Defining citizenship**

The word ‘citizenship’ tends to be used with different meanings. Each author, therefore, had to establish what citizenship and nationality mean within the context of their work, in terms of formal definition and in the broader theoretical context.

Dumbrava minimises the meaning attached to each terms, and thus aims at maximum clarity. He defines citizenship as political membership, and nationality as legal membership.

Hirsch Ballin, unlike Dumbrava, engages closely with different ways of understanding citizenship, and reconciles several of its meanings to create his normative framework. For him, citizenship is about democracy and human rights, about identity and urbanisation, about media and the economic crisis, about shared culture and solidarity. The unity and inter-dependence of his normative reference points is a central theme in Hirsch Ballin’s work. He states on several occasions that ‘democracy and the rule of law are not available separately’, that democracy and human rights are inter-dependent and mutually reinforcing, and that democratic constitutionality and human rights require the recognition of the right to citizenship.

Krūma’s takes as a starting point the European Convention on Nationality, which defines nationality as ‘the legal bond between a person and a state and […] not […] the person’s ethnic origin’. However, the understanding of nationality as ethnicity sometimes creeps into her text, for example, when discussing the advantages of enabling ‘Latvian nationals to register as citizens without losing their other nationality’ [emphasis added].

The meanings of ‘nationality’ and ‘citizenship’ diverge in scholarly works. Restricting them by establishing binding definitions would be unproductive, but it is important for authors who work in this field to be clear and consistent about the meanings they attribute to core terms.

**Is there a human right to citizenship?**

Here, the authors clearly disagree. Hirsch Ballin makes the strongest claim to citizenship as a human right, and as ‘a personal entitlement to a progressive realization of fundamental rights’. He constructs a human right to the specific citizenship of a state where a person is effectively at home. Krūma claims that ‘[t]here is no general right to nationality under international law’, and she does not find it useful to discuss nationality in the framework of human rights. In Dumbrava’s work, the issue of human rights is less central; but he confirms the states’ collective obligation to ensure that every person is a ‘legal member’ of at least one state, and the entitlement of every legal member to political membership upon the mere expression of consent.

Citizenship as a human right remains controversial, and all the three books inspire numerous follow-up questions. It is interesting to note here that the European Convention on Human Rights, unlike the American Convention on Human Rights, does not contain a right to a nationality. Is citizenship less of a human right on our continent compared to our cross-Atlantic neighbours?
What about the irregular migrant?

The most challenging questions on the boundaries of citizenry occur in combination with the migration debates. While there is a broad agreement in Europe that those who comply with immigration rules should be offered the opportunity to naturalise after prolonged residence, what about those who violate the immigration laws?

Krūma extensively analyses migration, but explicitly excludes irregular migration from her work. Dumbrava takes migration altogether out of the scope of his study, but his theory begs migration-related questions. He maintains that everyone who is affected and coerced by the laws of a state should be a legal member, i.e. a national. Irregular migrants are heavily affected by the laws of the state of residence, should they automatically be made into nationals? Moreover, one could argue that any person in the world is affected (and coerced) by immigration restrictions of any state; to the extent these restrictions affect their ability to enter that state. Dumbrava's theory can thus lead to a somewhat absurd conclusion that everyone should automatically become a national of every state that enforces any form of immigration control.

Migration is central to Hirsch Ballin's work, but he is somewhat evasive about the rights of migrants who violated immigration laws to citizenship. By arguing for the right to the citizenship of a state where the person is 'effectively' at home, he implies the practical and factual nature of one's residence, rather than the legal formalities, but he does not make that explicit. He even makes a strategic use of brackets in order not to address differences between documented and undocumented migrants, when stating that '[h]aving been a (legal) resident for a sufficiently long period can be a precondition for obtaining citizenship'.

The discussions on naturalisation of migrants are much easier to conduct when the rules on immigration control are not questioned, or alternatively, a migrant is assumed to comply with these rules. Perhaps one of the most challenging and at the same time the most urgent questions that remain unanswered by all the three authors is whether an irregular migrant who broke normatively unjustifiable immigration rules has a claim to citizenship.

Ethnicity, history, culture and language

There is a clear aversion among all the three authors towards ethnicity as a condition to access citizenship. Hirsch Ballin devotes a significant part of his book on highlighting how ethnic segregation in citizenship policies led to atrocious crimes. Dubmrava explains from the normative liberal democratic standpoint why ethnicity is not a defensible criterion for admission to legal and political memberships. Even Krūma, who emphasises strongly the states' need to regulate membership rules freely, defends the current Latvian nationality policies by arguing that they are not ethnically motivated, implying the undesirability of ethnicity as a criterion for citizenship. There is indeed a broad agreement among European scholars that ethnicity proper should not influence access to citizenship.

Opinions diverge, however, when we speak of those aspects of group identity that can be appropriated by a newcomer, such as knowledge of history and shared values. Dumbrava considers that these criteria can only be applied to ethno-cultural membership, and should not interfere with legal and political belonging. Hirsch Ballin emphasises the need for some social cohesion within a polity, but distinguishes between a shared constitutional culture ('[c]onsitutional identity of a democratic constitutional state') which a new aspiring member should accept, and 'cultural brainwashing', which needs to be avoided. Citizenship is *not* equated with a particular culture but *is* based on shared values' according to Hirsch Ballin. Krūma does not theorise in detail on acceptability of integration measures, stating that those do not lend themselves well to legal analysis (Krūma p. 405), but defends on multiple occasions the states' needs to protect their identities. The latter justify requiring knowledge of history, and changes in value perceptions of aspiring members.
Lastly, we see some agreement among all the three authors on the acceptability of requiring language knowledge, albeit perhaps for different reasons. For Dumbrava, such a requirement is only defensible for access to political membership, and only to the extent it is necessary to ensure participation in the democratic process. Hirsch Ballin might be expecting more language knowledge from a naturalisation candidate, as he emphasises the importance of active interaction among citizens, social cohesion and solidarity. Krūma defends the right of a state to require language knowledge at naturalisation, but states the tests should not be so complicated that the state's own integration objectives are endangered.

**Conclusion**

Debates on nationality, citizenship and migration are not new to legal and political scholarship, yet keep reincarnating in the rapidly changing political climate of Europe, demanding new responses to old theoretical and practical challenges. The three authors whose works are discussed in this article designed their own approaches to these important issues, starting with the definitions, developing normative frameworks and applying those to contemporary problems in Europe. Citizenship as a human right is an important common theme; its role in normative justifications for any kind of restrictions on access to citizenship remains relevant. In my opinion, the most important challenge posed to citizenship is irregular migration. Can the normative standards for access to citizenship and access to the territory be connected and reconciled? All the three authors come very close to this question, but do not fully engage with it, leaving tangible theoretical gaps that can hopefully be filled by future research.

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