

PART III

EU Constitutional Democracy:
Pistes de Reflection for the Future



Beyond Rhetoric: Education for Democratic Citizenship in the European Union

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Introduction

In the current state of constitutional democracy, the need for citizenship education appears to be a matter of consensus. Yet, the *what, why* and *how* questions require clarification and critical reflection, especially with regard to the EU level of governance. The stakes are high. The Brexit referendum convincingly illustrates the structural consequences to which the gap with the citizens may lead, both for the Member State and for the EU as a whole. The causes of the ‘Leave’ vote are complex and cannot simply be attributed to the failure to learn about the EU at school. Yet, it is thought provoking that in the Eurydice study on ‘citizenship education themes, as recommended in national curricula’ (2012), some columns for the UK (though not for Scotland) were left empty, namely those relating to European identity and belonging, and European history, culture and literature.¹

Taking democracy seriously means that citizens in the EU must be empowered to participate and this requires education. Citizenship education is both timeless (practised in Ancient Athens and Rome) and topical (responses to radicalisation, populism, or fake news). An often repeated aphorism is: ‘We are not born as a citizen, we are educated to be a citizen.’² John Dewey states that ‘democracy has to be born anew every generation, and education is its midwife.’³ Robert Dahl

*This text is based on my doctoral dissertation (University of Luxembourg). *Education for Democratic Citizenship and the European Union: Legal Foundations for EU Learning at School* (Luxembourg Legal Studies, Baden-Baden, Nomos, forthcoming 2019).

¹ Eurydice, *Citizenship Education in Europe* (2012) 30. Eurydice, a network of 42 national units in 38 States (including all EU Member States) provides information on national education systems.

² eg, R Maxwell, ‘Citizens Are Made, Not Born: How Teachers Can Foster Democracy’ in *Citizens in the Making* (ASCD, 2017).

³ J Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (New York, Macmillan, 1916) 9.

emphasises 'enlightened understanding' by citizens as one of the substantive criteria for democracy.⁴ In the same vein, Václav Havel writes: 'A moral and intellectual state cannot be established through a constitution, or through law, or through directives, but only through complex, long-term, and never-ending work involving education and self-education.'⁵

Because of the sensitivity of the field, the first step in this chapter is to identify relevant normative instruments concerning citizenship education and to point out standards on Education for Democratic Citizenship (EDC). In the next step, the need to move beyond rhetoric is highlighted, elements for the integration of an EU dimension in EDC are proposed and suggestions for future action made.

Looking through the prism of EDC standards offers fresh perspectives on EU citizenship, since it is not mobile EU citizens who are centre stage, but static citizens, ie, the large majority of citizens who live at home in their country of origin and have become EU citizens due to its membership of the EU (Article 9 TEU). What is their 'enlightened understanding'?

Normative Instruments Concerning Citizenship Education

UN Instruments

In response to the dramatic use made of education under totalitarian regimes and its effect in two world wars, education was central to the 1945 UNESCO Constitution ('since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed').⁶ The authors of the 1948 Universal Declaration on Human rights (UDHR) repeatedly emphasised the importance of mentioning the aims of education.⁷ Article 26 UDHR proclaims that everyone has the right to education and immediately specifies four aims to which education shall be directed, such as the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms, and the understanding, tolerance and friendship among all nations, racial or religious groups. The aims of education were confirmed and developed in subsequent international agreements. The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and the 1989 Convention on the Rights of the Child (CRC) added the further aim that education shall prepare the child for effective

⁴ RA Dahl, *Democracy and its Critics* (New Haven, CT, Yale University Press, 1989) 108–14.

⁵ V Havel, *Summer Meditations* (P Wilson trans, New York, Vintage Books, 1992) 20.

⁶ Preamble.

⁷ Reports of the Commission on Human Rights in the Drafting of the Universal Declaration of Human Rights, eg, SR 67 and 68.

participation and responsible life in a free society (Articles 13(1) and 29(1)). The aims of education are an essential part of the international right to education. The child's right to education is not only a matter of access to education, but also of content.⁸ The binding character of the aims follows from a textual interpretation (education 'shall be directed to', not 'should') and is confirmed by a reading in the light of the *travaux préparatoires* and by the practice of the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.⁹ Education is an empowerment right, to which obligations correspond.¹⁰ Article 29(1) CRC includes the individual right to quality education, directed to the aims listed. The curriculum must be of 'direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs'.¹¹ On a contemporary interpretation, the right to education includes a right to education for democracy and human rights education.¹²

Council of Europe Instruments

The 2010 Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (hereafter the Charter on EDC/HRE), adopted by the Committee of Ministers, is a regional continuation of the work at UN level. It transposes the aims of quality education – including education for democracy and human rights education – to the European context.¹³ After the fall of the Berlin Wall, EDC had become a central preoccupation in Europe. The values of democracy, the rule of law and human rights were at the basis of the commitment of the 47 Council of Europe Member States to the EDC project and of 'the standards they are setting themselves to achieve'.¹⁴ Based on the expertise of many actors and work over decades, the Charter on EDC/HRE is a milestone within an impressive body of instruments on EDC. It contains a commonly accepted concept of citizenship education, more precisely labelled as 'Education for Democratic Citizenship'

⁸ UN Committee on the Rights of the Child, General Comment No 1, Art 29(1): The Aims of Education, Doc CRC/GC/2001/1, para 3.

⁹ KD Beiter, *The Protection of the Right to Education by International Law* (including a systematic analysis of Art 13 of the International Covenant on Economic, Social and Cultural Rights (International Studies in Human Rights 82, Leiden, Nijhoff, 2006) 469.

¹⁰ Art 2 ICESCR; Arts 4 and 43 CRC; UN Committee on Economic, Social and Cultural Rights (ComESCR) General Comment No 3, paras 2, 5, 7.

¹¹ General Comment No 1, above n 8, para 9; see also paras 1, 2 and 22. Further UN ComESCR, General Comment No 13: The Right to Education (Art 13), Doc E/C12/1999/10, para 1.

¹² See, inter alia, UN General Assembly Resolution 71/8 Education for democracy (17 November 2016) Doc A/RES/71/8/; Office of the UN High Commissioner for Human Rights, 'The Right to Human Rights Education: A compilation of provisions of international and regional instruments dealing with human rights education'.

¹³ Recommendation CM/Rec(2010)7.

¹⁴ Explanatory memorandum to CM/Rec(2010)7, para 24.

and ‘Human Rights Education.’ The outcome is not simply knowledge, but the empowerment of learners.¹⁵ Central to the Charter are EDC components c-1-2-3:

‘Education for democratic citizenship’ means education, training, awareness raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower them [c-1] to exercise and defend their democratic rights and responsibilities in society, [c-2] to value diversity and [c-3] to play an active part in democratic life, with a view to the promotion and protection of democracy and the rule of law.¹⁶

A necessary complement of EDC is Human Rights Education (HRE), as democracy based on majority opinion must at the same time respect human rights to protect minorities. HRE aims ‘to empower learners to contribute to the building and defence of a universal culture of human rights in society, with a view to the promotion and protection of human rights and fundamental freedoms.’¹⁷ Because EDC and HRE are so intensely intertwined,¹⁸ the use in this chapter of the term ‘EDC’ presupposes HRE as well. The Charter on EDC/HRE expresses the European consensus on the concept, the objectives and principles of EDC and HRE (hereafter EDC standards). EDC/HRE is a lifelong learning process in which formal, non-formal and informal learning have a part to play.¹⁹ In formal learning, EDC/HRE is provided in schools, ie, learning in a structured way leading to certification. Member States should include EDC and HRE in the curricula of primary and secondary schools, in general, as well as in vocational education and training, and ensure its relevance.²⁰

The recent challenges of radicalisation, terrorism, and the influx of migrants have led to renewed commitment to EDC. In 2016, the Standing Conference of the Ministers of Education agreed on the strategic objective: ‘To make the preparation for lifelong active democratic citizenship of all learners in education and training a hallmark of the quality of European education systems and an essential part of our response to the challenges Europe is facing.’²¹ This corresponds to the concept of quality education as recommended by the Committee of Ministers in 2012 (and consistent with the UN approach): quality education, inter alia, ‘promotes democracy, respect for human rights and social justice’ and ‘enables pupils and students to develop appropriate competences, self-confidence and critical thinking to help them become responsible citizens.’²²

¹⁵ Compare civics is ‘the didactic transmission of factual information about constitutions and institutions,’ I Davies, ‘Political Literacy’ in J Arthur, I Davies and C Hahn (eds), *The SAGE Handbook of Education for Citizenship and Democracy* (London, Sage Publications, 2008) 9, 382.

¹⁶ Para 2(a).

¹⁷ Para 2(b).

¹⁸ Para 3.

¹⁹ Para 5(a)–(c).

²⁰ Para 6.

²¹ Securing Democracy through Education, para 13, see also paras 20, 31.

²² Recommendation CM/Rec(2012)13 of the Committee of Ministers to member States on ensuring quality education, para 6(d)–(e).

In 2016, the Charter on EDC/HRE was included in a Compendium of the most relevant Council of Europe texts in the area of democracy.²³ Support for its implementation comes from the Reference Framework of Competences for Democratic Culture, launched in 2018 as a means of responding to the call for quality education.²⁴

The right to education in the European Convention on Human Right (ECHR) contains no indications as to quality education, but rather focuses on equal access to existing educational facilities (Article 2, Protocol 1).²⁵ Yet, the European Court of Human Rights (ECtHR) considers that the state is responsible for quality education and requires that, in fulfilling its educational functions, it takes care to convey the information or knowledge included in the curriculum in an objective, critical and pluralistic manner, with no aims of indoctrination.²⁶

EU Instruments

EDC standards square with the basic tenets of the EU legal order.

First, as to *EU primary law*, EDC standards relate to the EU's foundational values of democracy, respect for fundamental rights and the rule of law entrenched in Article 2 TEU. A combined reading of Articles 10(3) TEU and 165(2) TFEU confirms the link in EU primary law between citizenship and democracy on the one hand, and education on the other. The similarity in the wording of provisions inserted into the TEU by the Lisbon Treaty in 2009 is striking. Article 10(3) TEU provides that '[e]very citizen shall have the right to *participate in the democratic life of the Union*'. At the same time, a sentence added to Article 165(2) TFEU (which is the legal basis for EU education policy) states that in education matters, Union action shall be aimed at '*encouraging the participation of young people in democratic life in Europe*' (last part of fifth indent).²⁷ Admittedly, this extra sentence figures in an indent on youth policy, thus not on formal (school) education. Yet, Article 165 has to be read as a whole. Participation of young people in democratic life in Europe is undeniably an objective of EU education policy. This corresponds to the EDC objective of empowerment 'to play an active part in democratic life' (component c-3).

The Treaties further stipulate that the EU shall cooperate with the Council of Europe in general (Article 220 TFEU) and on education in particular (Article 165(3) TFEU). In the 2007 Memorandum of Understanding between the

²³ Secretariat, CDDG(2016)Compendium, Ch E.

²⁴ *Reference Framework of Competences for Democratic Culture*, Vol 1 (2018) 16.

²⁵ *Belgian Linguistic Cases* No 1474/62 et al (ECtHR 23 July 1968) para 3; B Vermeulen, 'Right to Education (Article 2 of Protocol No 1)' in P Van Dijk et al (eds), *Theory and Practice of the European Convention on Human Rights*, 4th edn (Antwerp, Intersentia, 2006) 899. Some aims in Art 17 European Social Charter revised (1996).

²⁶ Case No 5095/71 *Kjeldsen* (ECtHR 7 December 1976) para 53; Case No 15472/02 *Folgerø* (ECtHR 29 June 2007) para 84(h).

²⁷ My emphasis.

Council of Europe and the EU, the EU recognises the Council of Europe as setting the benchmark for human rights, the rule of law and democracy, and EDC and HRE are named among the shared priorities and focal areas for cooperation.²⁸ In this context, logically, the EU acknowledges EDC standards and actively supports the implementation of the Charter on EDC/HRE.²⁹

Just like the right to education in the ECHR, the right to education of the Charter of Fundamental Rights of the European Union (CFR) is silent on aims of education (Article 14). However, this right is to be interpreted in the light of the ICESCR and the CRC (international agreements to which all Member States are party, Article 53 CFR). A contextual argument for an interpretation of the EU right to education in the light of the UN compulsory aims of education is to be found in the UN Convention on the Rights of Persons with Disabilities, a Convention to which the EU has acceded and which is therefore part of EU law.³⁰ Article 24(1) of this Convention replicates the terms used with regard to the right to education in the ICESCR: education shall be directed to, *inter alia*, enabling persons with disabilities ‘to participate effectively in a free society’. It suggests that the EU right to education cannot be narrowly interpreted as only relating to educational rights in cross-border situations.³¹

Secondly, EDC standards are expressed in *EU secondary law*. The 2018 Recommendation of the Council on key competences for lifelong learning, based on Article 165 TFEU, states that the Member States should support the right to quality and inclusive education. High quality education provides opportunities to develop eight key competences. One of them is the citizenship competence, ie, ‘the ability to act as responsible citizens and to fully participate in civic and social life, based on understanding of social, economic, legal and political concepts and structures, as well as global developments and sustainability’.³² Other EU legal acts, too, reflect various aspects of EDC standards. Despite disparities in terminology (citizenship education, citizenship competence, civic education), the EU clearly works within the EDC paradigm. The recent challenges of radicalisation leading to violent extremism have, moreover, brought citizenship education to the fore. Critical thinking skills are emphasised. In 2015, in response to terrorist attacks, the EU Ministers of Education and the Commissioner for Education adopted the Paris Declaration on Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education.³³ A 2015 Council

²⁸ Memorandum of Understanding between the Council of Europe and the European Union (2007) paras 10, 14, 36.

²⁹ See interventions of the EU Commissioner for Education in the first and second review cycle of the Charter on EDC/HRE, below n 41.

³⁰ Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, [2010] OJ L23/35.

³¹ Compare G Gori, ‘Article 14: Right to Education’ in S Peers et al (eds), *The EU Charter of Fundamental Rights: A Commentary* (Oxford, Hart Publishing, 2014) 419.

³² [2018] OJ C 189/1.

³³ 17 March 2015. A Working Group is active.

resolution on encouraging the political participation of young people in democratic life in Europe refers to 'citizenship education' without defining it, but it reflects the same objectives and principles as EDC.³⁴ In 2016, the Council and the Representatives of the Governments agreed that human rights and citizenship education represent powerful means of promoting common values and invited the Member States to promote citizenship education and to enhance social and civic competences.³⁵ In the 2017 European Pillar of Social Rights, the European Parliament, the Council and the Commission, devote the very first provision to education: 'Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market'.³⁶ Enabling full participation in society is consistent with the EDC aim of empowerment for participation (c-3) and echoes the aim of education in the ICESCR of 'effective participation in a free society'.

Some normative instruments relate to EU learning at school and citizenship education. In the 2013 Erasmus+ Regulation, the Parliament and the Council recognise the role of education in promoting active citizenship, participation in democratic life, and European values.³⁷ In the 2016 European Parliament resolution on Learning EU at school, all the components of the EDC concept are present, some of them literally.³⁸ The objectives of the 2018 'Council Recommendation on promoting common values, inclusive education, and the European dimension of teaching' include a stronger European identity and a better understanding of the Union and its Member States.³⁹

Beyond Rhetoric: Critical Reflections

Words have value. The power of speech may drive human behaviour. The many normative instruments attest to a broad consensus on the aims of citizenship education. Yet, what happens beyond rhetoric? Everyone is in favour of citizenship education (who would advocate having uneducated citizens?) Unfortunately, commitments often remain limited to lip service.

³⁴ [2015] OJ C 417/10, paras 18 and 34.

³⁵ Conclusions on the prevention of radicalisation leading to violent extremism, [2016] OJ C 467/3.

³⁶ Commission Recommendation (EU) 2017/761 of 26 April 2017 on the European Pillar of Social Rights, [2017] OJ L113/56.

³⁷ Regulation 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions 1719/2006, 1720/2006 and 1298/2008, [2013] OJ L347/50, Arts 4, 11(1)(a), 14(1)(a), recitals 16, 19 and 20. See also Council Regulation establishing the 'Europe for citizens' programme for the period 2014–2020 [2014] OJ L115/3, Arts 1–3, 6, recitals 1, 3, 4 and 19.

³⁸ [2018] OJ C 58/57, paras 10 and 15.

³⁹ [2018] OJ C 195/1, para 6, recital 18.

Facts on Citizenship Education in Member States

The Charter on EDC/HRE leaves an important margin of appreciation to the Member States. The Committee of Ministers bears in mind that Member States are responsible for the organisation and content of their educational systems and lets the implementation of the Charter rely on a system of self-evaluation.⁴⁰ Every five years, a Council of Europe report and a conference assess the impact.⁴¹ All the Member States which replied to the 2016 questionnaire on the implementation of the Charter (40 of 47) reported that concrete measures had been taken to promote EDC/HRE in accordance with the objectives and principles of the Charter and almost all governments could foresee further action to promote it. A main finding was that there is a shared working definition of EDC/HRE in 31 countries.⁴² However, challenges are striking. The quality of EDC actually provided varies considerably between and within the Member States.⁴³ The majority of Member States have not yet developed criteria for the evaluation of the effectiveness of EDC/HRE programmes (asked in paragraph 11 Charter on EDC/HRE).⁴⁴ Member States do not always explicitly refer to EDC and HRE in their education laws, policies and strategic objectives (compare paragraph 5 Charter on EDC/HRE) and responded 'none' to 'scarcely' with regard to vocational education and training, and higher education.⁴⁵ A large majority of the respondents reported inconsistencies between policies (which include EDC/HRE in the curriculum) and practice (marginal implementation in schools).⁴⁶ While governments pointed to a lack of support among education professionals or referred to the educational autonomy of educational institutions, civil society organisations indicated that EDC was not a priority among decision-makers.⁴⁷ The 2017 report concludes that, with a view to the long term, EDC/HRE must be given greater political and pedagogical priority, potentially making the provision of EDC/HRE mandatory at least in formal education.⁴⁸

In the same vein, the 2016 International Civic and Citizenship Education Study (based on questionnaires for pupils) highlighted considerable differences

⁴⁰ Recommendation CM/Rec(2010)7, preambular para 13, Appendix, paras 4, 11 and 14.

⁴¹ First review cycle (2010–12), Conference 'Human Rights and Democracy in Action: Looking Ahead' (Strasbourg, 29–30 November 2012); second review cycle (2012–17), Conference, 'Learning to Live Together: A Shared Commitment to Democracy: Conference on the Future of Citizenship and Human Rights Education in Europe' (Strasbourg, 20–22 June 2017).

⁴² Learning to live together: Council of Europe Report on the state of citizenship and human rights education in Europe (2017) 51–52, conclusions 77, 80.

⁴³ Secretary General, State of democracy, human rights and the rule of law – a security imperative for Europe (2016) 97. Further Learning to live together, above n 42, 29.

⁴⁴ Learning to live together, above n 42, 20, 53, 71.

⁴⁵ Government Replies to the 2016 CoE Questionnaire EDC/HRE, Q11, also Q 31. Learning to live together, above n 42, 67, figure 7 (trend in decline).

⁴⁶ Learning to live together, above n 42, 16–17, 64.

⁴⁷ *ibid* 18, 98. See also 77 on the lack of feedback from national parliaments (only half the countries). This contrasts with the priority they say they attach to EDC/HRE policies.

⁴⁸ *ibid* 7.

across and within countries.⁴⁹ In 2017, Eurydice studied official recommendations, national strategies or action plans on citizenship education in Europe and reported that the great majority of Member States confine themselves to short texts or general aims for citizenship education; far fewer set specific objectives or learning outcomes.⁵⁰

In short, while a consensus exists on the aims of citizenship education, an implementation gap has to be acknowledged.⁵¹

Facts on EU Learning at School

Learning about the EU in schools is fragmented. Authors report on patchy rules in curricula in mainstream education. The 2013 report on 'Learning Europe at school' concluded that Member States differ widely as to the aspects of the EU they expect to be taught in schools.⁵² The European citizenship dimension, in particular, is rarely clearly defined. The 2016 International Civic and Citizenship Education Study found that pupils' opportunities to learn about Europe vary substantially across Europe. Teaching most often concerns European history, but far less European political and economic integration.⁵³ Eurydice reported in 2017 that '[a]s many as eight EU member states do not have an international dimension in the curriculum of secondary education' and that in most countries the curriculum for vocational training does not mention the EU at all.⁵⁴ The bEUcitizen project (barriers to EU citizenship) concludes a study of seven Member States by stating that all countries display a very similar approach with regard to the European dimension of citizenship: 'it is a highly neglected area within the national curriculum'; European citizenship education seems to be in its infancy.⁵⁵ Curriculum designers do not fully realise the implications of EU membership. While optional courses or ad hoc actions provide extra EU learning for specific groups,⁵⁶ the quality of the EU dimension in mainstream citizenship education – reaching

⁴⁹ W Schulz et al, 'Main Findings and Implications for Policy and Practice' in *Becoming Citizens in a Changing World* (Cham, Switzerland, Springer, 2018) 201, 202 (also in the European report).

⁵⁰ Eurydice, *Citizenship Education at School in Europe* (2017) 45–46. In several Member States, citizenship education is currently in the process of revision, 10.

⁵¹ See, from 2005, C Birzėa, 'EDC policies in Europe: a synthesis' in *All-European Study on Education for Democratic Citizenship Policies* (CoE, 2005) 29.

⁵² Commission, *Learning Europe at School* (ICF GHK, 2013).

⁵³ B Losito et al, *Young People's Perceptions of Europe in a Time of Change ICCS 2016* 2016 Education Report (Cham, Switzerland, Springer, 2017) 14–15.

⁵⁴ Eurydice 2017, above n 50, 67, also 29, 58, 65. See also European Parliament resolution Learning EU at school, above n 38, recitals J–L.

⁵⁵ See WE Bakker et al, *The Quest for a European Civic Culture: The EU and EU Citizenship in Policies and Practices of Citizenship Education in Seven EU Member States* (Utrecht University Repository, 2017) 3, 64. The Netherlands, Croatia, France, Germany, Ireland, Spain and Hungary focus on factual and institutional EU knowledge, rather than promoting EU values and training skills needed to exercise EU citizenship rights and to form active, participating EU citizens.

⁵⁶ Europe Days, European Youth Parliament, Back to School, eTwinning, EPAS, ...

the large majority of citizens – appears largely unsatisfactory.⁵⁷ Not only do the teachers (trainers) themselves often lack essential knowledge about the EU, but so do the trainers of the trainers. Even scholars in the field of citizenship education sometimes fail to clearly distinguish between the EU and the Council of Europe or between EU citizens and immigrants.

The EU civic deficit, the disconnect between the EU and its citizens, has cognitive, affective and behavioural dimensions. Fragmented learning about the EU in schools is relevant to the civic deficit (at least) in its cognitive dimension. Studies invariably reveal a lack of knowledge about the EU. A 2018 Eurobarometer survey found that 59 per cent of Europeans feel that they understand how the EU works (subjective knowledge), yet only 18 per cent answered questions on the EU correctly (objective knowledge).⁵⁸ Poor understanding can easily become ambivalence, irritation about ‘Brussels’ or hostility. Negative referendum results and low turnout rates at the European Parliament elections are significant. Only 27 per cent of the 18–24 year-olds voted in the 2014 elections.⁵⁹

If one of the basic challenges to be resolved by the EU is how to bridge the gap with its citizens, citizenship education must move beyond rhetoric. A huge number of pupils leave school at age 18 with impressive knowledge about science or literature, but in relative ignorance of the EU. The high impact of the EU on the daily life of citizens contrasts with the low importance attached to EU learning in many schools.

Uncertainties on ‘EU Citizenship Education’

To move beyond rhetoric, reflection is needed, in particular, on the question of what citizenship education means for citizens as EU citizens. What does the international right to education, directed at effective participation and responsible life in a free society, imply for citizens living in the EU? What is the impact of EU citizenship on compulsory educational aims, the hallmark of quality education? Quality education is ‘adapted to the requirements of modern, complex societies’ and ensures that pupils’ ‘full potential as citizens is developed’.⁶⁰ Should ‘citizenship education’ and ‘EU citizenship’ be linked at all?

⁵⁷ See also P Ferreira, C Albanesi and I Menezes, ‘European Identity and Citizenship in Textbooks/Educational Media’ (2018) 17 *Journal of Social Science Education* 2; and five country reports in this special issue, uncovering gaps and differences. Earlier, H Walkenhorst, ‘Problems of Political Education in a Multi-level Polity: Explaining Non-teaching of European Union Issues in German Secondary Schooling’ (2006) 14 *Journal of Contemporary European Studies* 353; A Keating, ‘Educating Europe’s Citizens: Moving from National to Post-national models of Educating for European citizenship’ (2009) 13 *Citizenship Studies* 135.

⁵⁸ eg, Standard Eurobarometer 89 (June 2018) 132.

⁵⁹ Young voters’ turnout at the 2019 elections: figures not yet available. Global turnout: 42,61% (2014) and 50,62% (2019).

⁶⁰ CM/Rec(2012)13, above n 22, paras 2 and 23.

In general, 'citizenship education' is intended to educate individuals to be active, informed and responsible citizens.⁶¹ Since the 1992 Maastricht Treaty introduced EU citizenship into the Treaties, it seems natural to extend the expression 'citizenship education' by adding 'EU', and to consider 'EU citizenship education' to be the education of individuals to become active, informed and responsible EU citizens, thus taking citizenship of the Union and the rights attached to this status since the Maastricht Treaty as the substance (Articles 20–24 TFEU). However, this approach is unsatisfactory. It is both reductive, seen from the EU perspective, and excessive, seen from the Member State perspective. This approach does not go far enough, inasmuch as the EU citizen is more than what 'citizenship of the Union' and the rights attached to that status imply.⁶² At the same time, this approach goes too far, inasmuch as it may suggest that EU citizenship is a new citizenship to be forged by EU citizenship education in order to replace national citizenship. The aim of EU citizenship education should not be to create a new breed of citizens loyal to the EU while neglecting national allegiances. Using the term 'citizenship education' in relation to the EU may be confusing. For some, 'EU citizenship education' awakens high expectations of cultivating a sense of EU identity and feelings of belonging. For others, it leads to suspicion and the fear that it will only further undermine national sovereignty and the nation state. Citizenship education is traditionally associated with states and as such cannot be transposed to the EU.⁶³

EU citizenship education needs to find a balance. On the one hand, the sphere of the Member States must be safeguarded, national identities and the division of competences between the EU and the Member States must be respected (Articles 4 and 5 TEU). Thus, the Convention on the Rights of the Child includes among compulsory educational aims the development of respect for the child's own cultural identity, language and values, and for the national values of the child's own country (Article 29(1)(c)). On the other hand, Member States must respect EU law. As *Herren der Verträge*, they have chosen to transfer competences to the EU in the Treaties and the EU exercises public power together with them. This inevitably has consequences for citizenship education and requires EU learning. 'EU citizenship education' should therefore not be understated, nor overstated (nor over-stated, modelled on the State).

It is worth noting that EDC in the Charter on EDC/HRE is not defined by reference to the state. EDC is about empowering learners 'to exercise and defend their democratic rights and responsibilities *in society*, to value diversity and to play an active part *in democratic life*, with a view to the promotion and protection of democracy and the rule of law'.⁶⁴ The International Covenant on Civil and Political

⁶¹ Eurydice 2017, above n 50, 9.

⁶² See below.

⁶³ Some similar aspects as in N Walker, 'Postnational Constitutionalism and the Problem of Translation' in JHH Weiler and M Wind (eds), *European Constitutionalism Beyond the State* (Cambridge, Cambridge University Press, 2003).

⁶⁴ Above n 16.

Rights proclaims that every citizen shall have the right and the opportunity to take part in ‘the conduct of *public affairs*’ (Article 25).⁶⁵ The ICESCR asks education to ‘enable all persons to participate effectively in a free *society*’ (Article 13(1)). As Weiler writes: ‘Democracy is not about States. Democracy is about the exercise of public power – and the Union exercises a huge amount of public power.’⁶⁶ EDC should reflect this, while respecting the specific characteristics of the Union. The German Constitutional Court has emphasised that the EU is not a state and that it should not be compared to one for its democratic legitimisation. Participation of Germany in the EU does not mean that a federal state is coming into being, but is about ‘an *extension* of the constitutional federal model by a supranational cooperative *dimension*’.⁶⁷ Applying this reasoning to EDC, the national EDC model needs an *extension* by a supranational *dimension*. It is in an adaptation perspective that an EU dimension should be incorporated into national EDC in order to adjust it to the EU multilevel system of governance. EU citizenship is additional to national citizenship and does not replace it (Article 9 TEU). In parallel, an EU dimension should be added to national citizenship education, not replace it. Therefore, it is better to use the expression ‘the EU dimension of EDC’ instead of the expression ‘EU citizenship education’.

What should be the content of this EU dimension?

The Way Forward: Educating EU Citizens in the Spirit of their Constitutions

A Composite Constitutional System

In the constitutional democracy of the European Union, the integration of an EU dimension into EDC should mirror the Treaties and the CFR, interconnected with Member State constitutions. Since constitutions lay down the basic choices for society, it is not only legitimate, but also necessary to educate citizens in the mindset of their constitutions. Thinkers throughout history have confirmed the principle that education must be linked to the constitution. Aristotle strongly encouraged the education of citizens in the spirit of their constitution: ‘There is no profit in the best of laws ... if the citizens themselves have not been attuned, by the force of habit and the influence of teaching, to the right constitutional temper’.⁶⁸

⁶⁵ See also UNGA Res 71/8, above n 12, education for democracy aims at ‘the empowerment of citizens and their participation in political life and policymaking at all levels’.

⁶⁶ JHH Weiler, ‘United in Fear: The Loss of Heimat and the Crises of Europe’ in L Papadopoulou, I Pernice and JHH Weiler (eds), *Legitimacy Issues of the European Union in the Face of Crisis: Dimitris Tsatsos in memoriam* (Baden-Baden, Nomos, 2017) 366.

⁶⁷ BVerfG, 2 BvE 2/08 (*Lissabon*) 30 June 2009, Absatz-Nr (1–421) para 277 (emphasis added).

⁶⁸ R Curren, ‘A Neo-Aristotelian account of education, justice, and the human good’ (2013) 11 *Theory and Research in Education* 231. Further D Heater, *A History of Education for Citizenship* (Abingdon, Routledge, 2004).

Condorcet (a philosopher at the time of the French Revolution who devoted much thought as to how to educate the newly born *citoyen*) affirmed that

a constitution based on true freedom, where all social classes enjoy the same rights, cannot survive if the ignorance of some citizens does not enable them to understand its nature and limits, obliges them to express views on what they do not know; such a constitution would destroy itself after a few storms and degenerate into one of those forms of government which cannot preserve peace in the midst of an uneducated and corrupted people.⁶⁹

A constitution is incomplete without corresponding citizenship education. So are the Treaties and CFR, which function as the constitution of the European Union. The fact that the Treaties and CFR have been agreed and ratified by all Member States in accordance with their constitutional requirements (Article 54 TEU) confirms their soundness as a pillar for EDC. The requirement of *objectivity* in education is thereby satisfied (ECtHR).⁷⁰ Contesting the validity of the Treaties and the CFR as an objective and stable basis for an EU dimension of EDC would be tantamount to denying the very essence of EU membership. Moreover, these sources express the specific characteristics of the Union briefly described by the ECJ in Opinion 2/13,⁷¹ to be respected when applying EDC standards. They relate to the constitutional structure of the EU, ie, the principle of conferral of powers (Articles 4(1) and 5(1)(2) TEU) and to the institutional framework (Articles 13–19 TEU). Furthermore, specific characteristics arise from the very nature of EU law, stemming from the Treaties as an independent source of law, with primacy over the law of the Member States, and many of its provisions having direct effect. The legal structure of the EU is based on the fundamental premise of a shared set of common values (Article 2 TEU), recognised by the Member States, and justifying the mutual trust between the Member States. At the heart of the legal structure are fundamental rights (CFR). The pursuit of EU objectives is entrusted to a series of ‘fundamental provisions’ including those on EU citizenship, free movement, and the area of freedom, security and justice. They relate to the process of integration and the *raison d’être* of the EU itself.⁷²

Functioning as the *Grundnorm* in the EU legal order and protecting fundamental rights, the Treaties and CFR operate as a constitution. The ECJ qualifies the Treaties as ‘the basic constitutional charter’⁷³ and frequently uses the

⁶⁹ Condorcet, *Cinq mémoires sur l’instruction publique* (digital JM Tremblay edn, 1791), Premier Mémoire, IV. He was influential throughout the 19th and 20th centuries.

⁷⁰ Above n 26.

⁷¹ *Opinion 2/13, EU Accession to the ECHR* EU:C:2014:2454, paras 165–76, 179 ff.

⁷² Paras 170, 172.

⁷³ Case 294/83 *Les Verts* EU:C:1986:166, para 23; Joined Cases C-402/05 P and C-415/05 P *Kadi* EU:C:2008:461 para 281; *Opinion 2/13*, above n 71, para 163; Case C-621/18 *Wightman* EU:C:2018:999, para 44.

adjective ‘constitutional’, for example, constitutional principles, – significance, – status, – guarantee, – structure.⁷⁴ EU primary law expresses the ‘constitutional consensus’.⁷⁵ Status as EU *primary* law, at the top of the hierarchy of norms in the EU legal order, is relevant for citizens. It gives numerous EU rights and principles entrenched status. If EU primary law sources are the basis on which the legal order of the EU is constructed, shaping the society in which EU citizens live, then, a fortiori, they must be sufficiently strong to have consequences for citizenship education.

EU primary law and Member State constitutions are interconnected in various ways and cannot be adequately understood in isolation. The Treaties and CFR refer to Member State constitutions at several points⁷⁶ and, conversely, most Member State constitutions contain provisions related to the EU Treaties.⁷⁷ Education of citizens aiming at national constitutional literacy and impregnating national constitutional values should be interwoven with education for literacy with regard to the EU Treaties and the values they enshrine. Calliess describes a paradigm shift which requires more transparency and more interest from EU citizens in EU objectives. He defines the EU as ‘a federal type of multi-level constitutionalism, in which state sovereignty is reduced and the constitutional orders of the EU and its Member States are mutually interlocked’.⁷⁸ Therefore, if in the Aristotelian tradition citizens are to be educated in ‘the spirit’ of their constitution,⁷⁹ that should logically apply to the compound of Member State constitutions, the Treaties and the CFR. For Montesquieu, too, ‘the spirit’ of the law is central (*L’esprit des lois*). He argued that education must relate to the principle of government.⁸⁰ Today, this means that education must relate to the principles of multilevel government, whereby the spirit of the law is defined in Articles 1–6 TEU.⁸¹

⁷⁴ *Opinion 2/94* EU:C:1996:140, para 35; *Kadi*, above n 73, paras 285, 316; *Opinion 2/13*, above n 71 paras 158, 163, 165 and 177; *Wightman*, above n 73, para 45.

⁷⁵ K Lenaerts and JA Gutiérrez-Fons, ‘The Place of the Charter in the EU Constitutional Edifice’ in S Peers et al (eds), *The EU Charter of Fundamental Rights: A Commentary* (Oxford, Hart Publishing, 2014) 142.

⁷⁶ eg, Arts 4(2), 6, 42, 48, 49, 50, 54 and 55 TEU; Arts 25, 218(8), 223, 262, 311 and 357 TFEU; Arts 52(4) and 53 CFR.

⁷⁷ On the interdependency and reciprocal links, C Grabenwarter, ‘National Constitutional Law Relating to the European Union’ in A von Bogdandy and J Bast (eds), *Principles of European Constitutional Law*, rev 2nd edn (Oxford, Hart Publishing, 2010) 127; C Calliess, ‘EU-Vertrag (Lissabon) Art 1’ in C Calliess and M Ruffert (eds), *EUV/AEUV: das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta: Kommentar*, 5th edn (München, CH Beck, 2016) eg, Rn 46.

⁷⁸ C Calliess, ‘Europe as Transnational Law: The Transnationalization of Values by European Law’ (2009) 10 *German Law Journal* 1367, 1375.

⁷⁹ See above, n 68.

⁸⁰ Montesquieu, *De l’esprit des lois* (digital JM Tremblay 2002 edn, Barillot, 1748), Livre quatrième: The laws of education therefore will differ for each kind of government: in monarchies they will be concerned with honour, in republics with virtue, where there is despotism, they will aim at creating fear.

⁸¹ On the European spirit, also Schuman (Strasbourg, 16 May 1949).

The DNA of the EU: Foundational Values, Objectives and Principles

Articles 1–6 TEU set out the foundational values, objectives and principles of the EU. They are the DNA of the EU and should be central to all EU learning at school. EDC in schools should – to the extent possible – relate to the ‘intrinsic nature of the EU’,⁸² not to superficial information, such as the number of Members of the European Parliament or the date of accession of Bulgaria, to be learnt by heart and then forgotten. In order to empower EU citizens to exercise their rights and responsibilities, to value diversity and to participate in the democratic life of the Union (aims c-1-2-3), EDC should clarify and discuss the *raison d'être* of the EU and how each Member State participates in it (united in diversity). The self-perception of Member States and of their nationals is incomplete if it lacks the EU dimension, which forms part of their identity.

Foundational Values

Even if national values are the same as the ‘EU values’ in Article 2 TEU, there are additional challenges in striving to respect these values in a single area without internal frontiers with 500 million citizens. In one space encompassing 28 (27) Member States, 24 official languages, with great diversity of regions, cultures, traditions, religions, etc, additional EU content must be incorporated into national EDC to clarify and discuss the concrete significance of these values for citizens. Moreover, some values (or principles) are specifically EU related, such as the equality of Member States, or mutual trust between Member States. If mutual trust is a specific feature of the EU, it should be prepared for. Mutual trust should not just be proclaimed by the ECJ⁸³ as a legal postulate, leaving realities as they are, hoping for the best. For mutual trust to be deserved, a substratum should be built, notably by educating citizens in Member States in the common values on which the EU is founded, and according to the same (minimum) standards. Mutual trust requires more than informing national civil servants about fundamental rights. It requires EDC and HRE for the entire population, including in its EU dimension.

Foundational Objectives

As part of school curricula, the content of Article 3 TEU too should be discussed in classrooms, as a kick-off for participation in EU civil society, enhancing the growth of a European public space. Only if they are made aware of the EU objectives and the aim for added value, ie, the European ‘project’, can individuals guide the ‘process’ and the ‘product’ through democratic processes as responsible and

⁸² On the intrinsic nature, *Opinion 2/13*, above n 71 para 193.

⁸³ *Opinion 2/13*, above n 71 para 168; Case C-64/16 *Juizes Portugueses* EU:C:2018:117, para 30.

active EU citizens. The EU is an objective driven polity and should be understood as such and monitored by Europeans.⁸⁴

Foundational Principles

The Treaties define various systemic principles, which are the backbone of EU construction. They are essential to understanding the EU as a system and the place of one's own Member State in it, and are thus essential to empowering EU citizens. A central axis in the EU constitutional construction is the principle of conferral (Article 5(2) TEU). Citizens are often unaware of this principle, what may lead to excessive expectations, followed by disappointment if the EU does not (and cannot) deliver.⁸⁵ Other systemic principles relevant for EDC are contained in Article 5(3) and (4) (subsidiarity and proportionality); Article 4(2) and (3) (equality of Member States, respect for national identity, sincere cooperation); Article 6 TEU (fundamental rights, also in the CFR); Articles 9–12 TEU (democratic principles); Article 21 TFEU (free movement of citizens); and Articles 28, 45, 49, 56, 63 TFEU (internal market). A central tenet in EU learning, largely unknown, should be the principle of non-discrimination on grounds of nationality (Article 18 TFEU).

Educating citizens in the spirit of their constitutions corresponds to the EU principles of openness and transparency.⁸⁶ If these principles point by their very nature to the opposite of opaqueness,⁸⁷ EDC standards are part of the same current, but more 'upstream' by laying the foundations for a basic understanding of the EU. Prior EDC will increase the effectiveness of access to documents and strengthen accountability.

Education in an Objective, Critical and Pluralist Way, With No Aims of Indoctrination

Critical thinking remains crucial. While citizens are to be educated in the spirit of their constitutions (directed to the common good), the universal caveat with regard to citizenship education must be kept in mind: citizenship education should not become a despotism over the mind.⁸⁸ Citizens must not be trained in

⁸⁴ G Palombella, 'Whose Europe? After the Constitution: A Goal-based Citizenship' (2005) 3 *International Journal of Constitutional Law* 357; G Davies, 'Social Legitimacy and Purposive Power: The End, the Means and the Consent of the People' in D Kochenov D, G de Búrca G and A Williams (eds), *Europe's Justice Deficit?* (Oxford, Hart Publishing, 2015).

⁸⁵ See, inter alia, the ECI, below n 120.

⁸⁶ Arts 1, 10, 11, 16 TEU; Art 15 TFEU; and Art 42 CFR. Joined Cases C-92/09 and C-93/09 *Schecke and Eifert* EU:C:2010:662, para 68; Case T-540/15 *De Capitani* EU:T:2018:167.

⁸⁷ S Prechal and ME de Leeuw, 'Transparency: A General Principle of EU Law?' in U Bernitz, J Nergelius and C Cardner (eds), *General Principles of EC Law in a Process of Development* (Alphen aan de Rijn, Kluwer Law International, 2008) 202.

⁸⁸ A large amount of literature: see, eg, B Crick, 'The Presuppositions of Citizenship Education' (1999) 33 *Journal of Philosophy of Education* 337; E Callan, 'Citizenship and Education' (2004) 7 *Annual*

uncritical obedience, preventing them from thinking outside the box. Constitutions are living documents and may evolve in response to the live issues in civil society. The relationship between constitutions and education is dynamic and dialectical: the constitution influences education and, in the long term, education may influence the constitution.⁸⁹ A basic understanding of constitutional norms enables informed participation by citizens at moments of constitutional change, for example, EU Treaty changes. At present, Article 2 TEU contains the constitutional core values, the ‘*Verfassungskern*’ of the EU (Calliess), the ‘overlapping consensus’ (Rawls).⁹⁰ Freedom of education has to be balanced with respect for the core values, which is not an easy task.⁹¹ Some Member States’ constitutions explicitly limit freedom of education by requiring allegiance to the constitution.⁹²

The requirement of the ECtHR that education should be conveyed in an *objective, critical and pluralistic* way, with no aims of indoctrination,⁹³ can be satisfied by taking EU primary law as a pillar of objectivity⁹⁴ while using the case method to allow critical thinking and pluralism. Stories based on well-selected cases of the European Court of Justice, SOLVIT, or the media, can trigger the interest of pupils and make EU learning attractive. Beyond rhetoric, case teaching shows how EU constitutional theory works in practice and illustrates the importance of the EU dimension for citizens. In specific cases, foundational values, objectives and principles may compete and require balancing. This allows interesting debates with pupils in classrooms, even at school level. Pupils realise that no situation is one-dimensional and that problems seldom have simple solutions. They learn to consider the positive and negative aspects of the options available. Case teaching may build a preventive shield against populism and one-liners.⁹⁵

Relevant Content for the EU Dimension in EDC in Mainstream Education

What are the effects of a combined reading of EDC standards and EU constitutional law? EDC standards recommend that Member States provide *every person* within

Review of Political Science 71; M Nussbaum, ‘Teaching Patriotism: Love and Critical Freedom’ (2012) 79 *University of Chicago Law Review* 213; B Schaffar, ‘Changing the Definition of Education. On Kant’s Educational Paradox Between Freedom and Restraint’ (2014) 33 *Studies in Philosophy and Education* 5.

⁸⁹ E Reilly, ‘Education and the Constitution: Shaping Each Other and the Next Century’ (2000–01) 34 *Akron Law Review* 1; E Beaumont, ‘Education and the Constitution: Defining the Contours of Governance, Rights, and Citizenship’ in M Tushnet, MA Graber and S Levinson (eds), *The Oxford Handbook of the US Constitution* (2015) 968.

⁹⁰ Calliess, ‘Europe as Transnational Law’, above n 78, 1368, 1371; J Rawls, *Political Liberalism*, 2005 edn (New York, Columbia University Press, 1993) Part II (IV).

⁹¹ See, eg, Case No 21787/93 *Valsamis v Greece* (ECtHR 18 December 1996) on a compulsory school parade on the Greek National Day.

⁹² Germany Art 5(3) Basic law; Greece Art 16(1); Cyprus Art 20(1).

⁹³ Above n 26.

⁹⁴ Text to n 70.

⁹⁵ VL Golich, ‘The ABCs of Case Teaching’ (2000) 1 *International Studies Perspectives* 11, 12, 14.

their territory with the opportunity of EDC/HRE.⁹⁶ In order to give *all* learners the opportunity of adequate EDC, corresponding to the constitutional system, an EU dimension should be incorporated in compulsory levels of *mainstream* education, and in adapted levels of difficulty in primary and secondary education. The final years of secondary education are a particularly valuable time for exercising critical thinking. Mainstream education includes all curricula, not only specialised curricula and not only curricula targeted at the more gifted pupils before they attend university. It also includes vocational training.

A 2017 Eurobarometer survey reports:

A large majority (89 per cent) agree national governments should strengthen school education about rights and responsibilities as EU citizens. More than eight in ten also agree that learning about European matters, such as the functioning of the EU and its institutions, EU history or European culture, should be part of compulsory school education (83 per cent).⁹⁷

The rights and obligations of EU citizens can be screened as to their relevance for concrete content of the EU dimension in mainstream education according to four criteria: (i) do they provide additional content to national EDC? (ii) is this content significant, ie, relating to foundational (EU primary law) values, objectives and principles? (iii) do they invite critical thinking? and (iv) do they affect the large majority of EU citizens, including static citizens?⁹⁸ Not only must classic EU citizenship rights be considered (attached to the status by Articles 20–24 TFEU), but – importantly, and explained below – the democratic participation rights of EU citizens (Title II TEU), and in general, all rights and obligations which flow from EU law (EU rights). In a joint reading of EU law and EDC standards, these rights feed into the EU dimension in EDC components c-1-2-3 (the three empowerment aims).⁹⁹

Democratic Participation Rights of EU Citizens

That the Treaties see EU citizens as political actors is clear from the democratic participation rights in Articles 20–24 TFEU. Yet, the hard core for the EU dimension of EDC is Title II TEU, which connects the democratic principles governing the Union with EU citizenship. In legal terms, nationals of a Member State are ‘citizens of the Union’ (Article 9 TEU). In reality, they are human beings, people living in a country which is an EU Member State: they are simply citizens *in* the Union.¹⁰⁰

⁹⁶ Charter on EDC/HRE, para 5(a).

⁹⁷ Flash Eurobarometer 455, European Youth (January 2018).

⁹⁸ See the analysis in K Grimonprez, *The European Union and Education for Democratic Citizenship* (Luxembourg Legal Studies, Baden-Baden, Nomos Verlag, forthcoming 2019).

⁹⁹ Above n 16.

¹⁰⁰ See also J Shaw, ‘Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism’ in P Craig and G de Búrca (eds), *The Evolution of EU law* (Oxford, Oxford University Press, 2011) text to fn 152.

The democratic participation rights attributed by EU law provide essential content for the EU dimension in components c-1 and c-3 of the EDC concept. Whatever their limitations, the citizens' rights of participation in the democratic life of the Union form part of the EU structure reflecting concerns as to 'effective political democracy' (in line with *Matthews v UK*).¹⁰¹ If democracy is a chain of legitimation from those governed to those governing, EDC in schools is the first link of this chain.¹⁰²

The Right to Participate in the Democratic Life of the Union

Article 10(3) TEU is essential for mainstream EDC: '[e]very citizen shall have the right to participate in the democratic life of the Union' and '[d]ecisions shall be taken as openly and as closely as possible to the citizen'. It describes an authentic citizenship right, defined as a right conferred by virtue of the status of citizen of the Union.¹⁰³ It is noteworthy that this right is drafted in the same style as the citizenship rights listed in Articles 20–24 TFEU ('Every citizen ... shall have the right to'). The link between Title II TEU and the citizenship rights in Articles 20–24 TFEU is guaranteed, moreover, by the European citizens' initiative, inserted into Article 11(4) TEU but with a legal basis in Article 24 TFEU. Since it is not included in Articles 20–24 TFEU, the right to participate in the democratic life of the union is often neglected as a citizenship right by scholars and in reports. It deserves much more attention.

The right in Article 10(3) TEU can be interpreted as an overarching right, relating to both representative and participatory democracy. Institutions and scholars use it in both contexts.¹⁰⁴ The right to a citizens' initiative, to petition the European Parliament or to refer to the Ombudsman are expressions of the general right in Article 10(3) TEU.¹⁰⁵ Article 10(3) TEU acquires further substance when read in conjunction with EU law provisions on the institutions.

The Right to Vote for the European Parliament

The right to vote for the European Parliament (Articles 10(1)(2) and 14(3) TEU, 39(2) CFR, *Delvigne*)¹⁰⁶ constitutes obvious learning content for the EU dimension

¹⁰¹ In line with Case No 24833/94 *Matthews v UK* (ECtHR 18 February 1999) para 52.

¹⁰² HCH Hofmann, GC Rowe and AH Türk, *Administrative Law and Policy of the European Union* (Oxford, Oxford University Press, 2011) 146.

¹⁰³ Compare K Lenaerts and JA Gutierrez-Fons, 'Epilogue on EU Citizenship: Hopes and Fears' in D Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge, Cambridge University Press, 2017) 752.

¹⁰⁴ See, eg, European Parliament Resolution of 11 November 2015 on the reform of the electoral law of the European Union [2017] OJ C 366/7, recital U; S Smismans, 'Regulating Interest Group Participation in the European Union: Changing Paradigms between Transparency and Representation' (2014) 39 *European Law Review* 470, 604; M Ruffert, 'EU-Vertrag (Lissabon) Art 10' in C Callies and M Ruffert (eds), *EUV/AEUV: das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtsharta: Kommentar*, 5th edn (München, CH Beck, 2016) Rn 11–12)

¹⁰⁵ Case C-589/15 P *Anagnostakis* EU:C:2017:663, para 24.

¹⁰⁶ Case C-650/13 *Delvigne* EU:C:2015:648, para 44.

of EDC in mainstream education. Voting in elections for the European Parliament is central to the image of active EU citizenship. The right involves more than ticking a box in elections. From the perspective of *substantive* democracy,¹⁰⁷ EU citizens need to be empowered to participate meaningfully in elections at EU level. For a non-negligible group of nationals, paradoxically, the *EU* dimension of voting in European Parliament elections needs to be explained. These elections should be more than popularity tests of national politicians or parties.¹⁰⁸

The Right to Vote for the National Parliament and its EU Dimension

The right to vote for the national parliament is based on national law and voting primarily means taking part in the democratic life of the *Member State*. However, voting in national elections is at the same time indirect participation in the democratic life of the *Union*, because Member State parliaments and governments are important actors at EU level and Member States' democracies are interdependent.¹⁰⁹ The Commission puts it succinctly: 'Full participation of EU citizens in the democratic life of the EU at all levels is the very essence of Union citizenship'.¹¹⁰ Article 10(2) TEU is the basis for what is commonly referred to as the dual structure of democratic legitimacy in the Union: citizens are directly represented at Union level in the European Parliament (to which the Commission is accountable) and Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, who in turn are themselves democratically accountable to their national parliaments or to their citizens.¹¹¹ Undeniably, these specific features of democracy in the EU system should be explained and discussed with pupils.

The role of national parliaments in the EU underscores the EU dimension of the relationship of citizens with their own Member State. National parliaments 'contribute actively to the good functioning of the EU' in the six ways described in Article 12 TEU and in accordance with Protocols 1 and 2. Article 12 illustrates how EU democracy depends on Member State democracy. If national parliaments are empowered to act in the democratic life of the Union, citizens must be empowered to choose representatives fit for this purpose. Domestic votes have important cross-border repercussions. The whole of Europe attentively follows

¹⁰⁷ A Rosas and L Armati, *EU Constitutional Law: An Introduction* (Oxford, Hart Publishing, 2018) 140.

¹⁰⁸ See also European Parliament Resolution of 11 November 2015 on the reform of the electoral law of the European Union [2017] OJ C 366/7, para L.

¹⁰⁹ See also I Pernice, 'Editorial: Nationale Wahlen sind Europäische Wahlen' (2017) 12 *Europäische Zeitschrift für Wirtschaftsrecht* 441.

¹¹⁰ Commission, 'EU Citizenship Report 2013: EU citizens: your rights, your future' COM(2013) 269, 5.

¹¹¹ A von Bogdandy, 'The European Lesson for International Democracy: The Significance of Articles 9 to 12 EU Treaty for International Organizations' (2012) 23 *European Journal of International Law* 315, 325; Commission Recommendation (EU) 2018/234 of 14 February 2018 on enhancing the European

(and sometimes holds its breath) when national elections take place in Germany, France, Italy, Poland, Greece, Spain, or Hungary, just to cite some examples. Elections for national parliaments and national presidential elections have a crucial EU dimension.¹¹² They determine whether more Eurosceptic or Europhile political parties will come to power and who will be the actors in the European Council and the Council.

Dual democratic legitimacy calls for an EU dimension to EDC in both tracks of legitimacy. On a simple view, national EDC prepares young citizens for democracy at Member State level, focusing on elections for the national parliament, and the EU dimension of EDC prepares them for democracy at EU level, focusing on elections for the European Parliament. In the EU's integrated multilevel system of governance, however, the reality is more complex. First, an EU dimension must be added to national EDC to strengthen EU democracy. To the extent that Member States are actors in the EU political process, the quality of democracy at EU level is contingent on the quality of democracy at national level,¹¹³ which is contingent on EDC. Second, paradoxically, adding an EU dimension to EDC is also needed to strengthen national democracy. National parliaments are supposed to represent the will of the citizens. What is the credibility of representatives in national parliaments who act at EU level (or fail to act) if they have been chosen by citizens lacking understanding of EU matters? How legitimate is the mandate given directly by citizens to their parliaments, and indirectly to their governments, to act at EU level, if these citizens have no understanding of the *raison d'être* of the EU or of the EU issues on which the national actors must adopt a position? Legitimacy presupposes minimal insight on the part of nationals as to the involvement of their country in EU matters and on EU foundational values, objectives and principles. As economic actors in the market, citizens can only conclude a contract if they are informed about its constitutive elements and conditions. The consumer has a right to be informed. Before the consumer can be bound by a contract, the trader has an obligation to provide clear and comprehensible information.¹¹⁴ As political actors, citizens do not enjoy such protection. No adequate prior information seems to be required for the social contract.¹¹⁵ Even fake news and false promises can lead to valid votes. Therefore, at least, all reasonable efforts must be made to provide quality EDC in schools, including the EU dimension, to equip nationals with a basic preliminary understanding of the system in which they live and to develop their

nature and efficient conduct of the 2019 elections to the European Parliament [2018] OJ L45/40, see however (11); BVerfG (n 67) para 36.

¹¹²eg, after parliamentary elections in Italy: 'Italian crisis felt in Spain and wider EU', available at: euobserver.com/economic/141934.

¹¹³See also R Bauböck, 'Still United in Diversity? The State of the Union Address' (Florence, 5 May 2017): 'The value of EU citizenship depends on the quality of democracy in the member states'.

¹¹⁴See, inter alia, Art 5(1) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, [2011] OJ L304/64.

¹¹⁵On the social contract see, eg, J Rousseau, *Du contrat social ou Principes du droit politique* (1762).

critical agency. The task of democracy is to educate citizens who can think critically in political campaigns and take responsibility for their votes.¹¹⁶ On a reading of EU and national law in the light of EDC standards, this requires the incorporation of an EU dimension into EDC, reinforcing both tracks of representative democratic legitimacy.

Rights and Opportunities in Participatory Democracy

In between elections, EU citizens can blog, twitter, protest, make their voices heard on the internet.¹¹⁷ In addition to the participation rights in Article 24 TFEU, they can use the further tools for participation provided by Article 11 TEU as a means of participatory democracy. Participatory democracy gives citizens a voice. The EU dimension of EDC gives them an informed and more influential voice. Productive interaction with officials of EU institutions – be it through interest representation, consultations, dialogues, or other participatory opportunities – require prior EU knowledge and understanding. The social activist who understands the principle of conferral and the scope of EU competences in employment and social policy, will be better equipped to argue with EU institutions than one who describes the unfair situations in his region and makes – for the EU – unattainable claims. Future electricians, decorators, hotel managers, IT technicians, etc need to understand the EU dimension of their professional activities in order to defend the interests of their sector. Introduced to the relevant EU rules, they will be better armed to take up the challenges at EU level and to resist the temptation to withdraw to the stance of the individual in the nation state, only capable of a limited response to the issues of globalisation. They will participate more effectively if the citizenship education they have received at school is not limited to the nation state, but has introduced them to the systemic principles of the EU. In order to increase the visibility of particular interests and to play a confident role in the EU's participatory governance, citizens and their representatives need to be empowered. Otherwise, the 'dialogues' or 'consultations' risk being nothing more than camouflaged top-down communication and information sessions by EU institutions.¹¹⁸

The Right to a European Citizens' Initiative

That EU citizens are supposed to have an understanding of the principle of conferral and of the Treaties, is also clear from the European citizens' initiative (ECI).

¹¹⁶ J Oelkers, 'The European Crisis and Education for Democracy' (2017) 22 *The European Legacy* 832.

¹¹⁷ I Krastev, 'Democracy of Rejection' in L Van Middelaar and P Van Parijs (eds), *After the Storm: How to Save Democracy in Europe* (Tielt, Belgium, Lannoo, 2015) 149.

¹¹⁸ L Bouza García, 'How Could the New Article 11 TEU Contribute to Reduce the EU's Democratic Malaise?' in M Dougan, N Nic Shuibhne and E Spaventa (eds), *Empowerment and Disempowerment of the European Citizen* (Oxford, Hart Publishing, 2012) 272. See also J Mendes, 'Participation and the

The ECI concerns ‘matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties’ (Article 11 TEU). A condition for registration is that the proposed ECI ‘does not manifestly fall outside the framework of the Commission’s powers to submit a proposal’.¹¹⁹ A huge number of citizens’ initiatives fail to clear this hurdle.¹²⁰ Information and communication strategies are foreseen to remedy the unsatisfactory use of the ECI.¹²¹ Education might be more effective. The EU dimension in EDC should include learning about the ECI, an opportunity for explaining the Treaties and the principle of conferral.

EU Rights and Obligations

Reading EDC standards jointly with EU law, citizens should be empowered to exercise all rights and responsibilities flowing from the EU level of governance.¹²² The rights which EU citizens (in various capacities) derive from EU law are not thin, pale, or uncertain. EU citizenship is broader and more significant than is often perceived. The perception still persists that EU citizenship is in essence a matter for mobile citizens, relating to the equality of treatment of citizens who move to another Member State.¹²³ Yet, EU citizenship should not be reduced to the legal status generating citizenship rights. All the nationals of Member States are EU citizens (Article 9 TEU). EU law impacts on their daily life. In addition to democratic participation rights, the list of rights which EU citizens – including static citizens – derive from EU law is *quasi* endless. They include all rights based on the direct effect (and primacy) of EU law, combined with the right to effective judicial protection; equality rights; fundamental rights when situations fall within the scope of EU law (also at home); rights related to free movement of goods and services in the internal market (at home); rights based on national law implementing EU directives (interpretation of national law in accordance with directives; autonomous EU concepts); rights in the area of freedom, security and justice; rights in fields of EU harmonisation (eg, with regard to health, safety, or

Role of Law after Lisbon: A Legal View on Article 11 TEU’ (2011) 48 *Common Market Law Review* 1849, 1850.

¹¹⁹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative, [2011] OJ L65/1, Art 4(2)(b).

¹²⁰ Opinion of the European Economic and Social Committee on The European Citizens’ Initiative (review), [2016] OJ C 389/35 para 3.10.2: around 40% declared inadmissible at the registration; Commission, ‘Report on the application of Regulation (EU) No 211/2011 on the citizens’ initiative’ COM(2018) 157 final: in 2018, 22 initiatives refused, 48 registered.

¹²¹ Commission Staff working document Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the European citizens’ initiative SWD(2017) 294 final, eg 58.

¹²² All learners should, including third-country nationals living in the EU.

¹²³ See discussions in F de Witte, R Bauböck and J Shaw (eds), ‘Freedom of movement under attack: Is it worth defending as the core of EU citizenship?’ 2016 EUI Working Paper RSCAS 2016/69; kick-off contribution of M Ferrera in M Ferrera and R Bauböck (eds), ‘Should EU Citizenship Be Duty-Free?’ (2017) EUI Working Paper RSCAS, 2017/60.

food control); rights concerning working time; consumer rights, such as rights protecting against unfair terms in consumer contracts; privacy rights and rights in the digital single market; environmental rights, etc. EU obligations, too, flow from EU law and arise as a corollary to many rights.¹²⁴ EU law thus provides essential content for EDC, needed to empower citizens to achieve the aims c-1-2-3. Learning about EU rights, such as equality rights, creates the opportunity to discuss EDC component c-2, valuing diversity.

The question as to whether EU citizenship is sufficiently mature to call for adaptation of citizenship education can be reversed: how mature is national citizenship education without an EU dimension, when one observes the present state of EU law and its impact? EU law has become an essential part of national legal orders and has led to additional rights and obligations for EU citizens. EDC must keep pace with EU law.

Conclusion and Suggestions

EU Member States share the consensus on EDC standards. As members of the Council of Europe, they have consistently participated in the bodies adopting normative instruments on EDC. It is legitimate to expect them not only to pay lip service to these standards. When honouring the right to quality education of their citizens, they cannot neglect EDC, either in its national aspects, or in its consequences of EU membership.

When applying EDC standards as to constitutional democracy in the European Union, EDC must be provided in a way consistent with the Treaties and CFR. They reflect the way EU citizenship is evolving.¹²⁵ The 1992 Maastricht Treaty inserted EU citizenship into the Treaty and connected it with a limited list of citizenship rights. The 2009 Lisbon Treaty connected EU citizenship with the provisions on democratic principles in Title II TEU. Ten years later, the time has come to connect EU citizenship and democratic principles with EDC standards in mainstream education. Recent challenges, such as populism and radicalisation, build momentum. To create a Union based on the values of Article 2 TEU going beyond a market rationale, the European public space needs an educational substratum.¹²⁶ EDC aims to empower citizens 'to exercise and defend their democratic rights and responsibilities in society'. To move beyond rhetoric, rights and obligations

¹²⁴ eg, Case 43/75 *Defrenne* EU:C:1976:56; Case C-281/98 *Angonese* EU:C:2000:296; Case C-101/01 *Lindqvist* EU:C:2003:596; Joined Cases C-569/16 and C-570/16 *Bauer and Willmeroth* EU:C:2018:871; Case C-337/07 *Altun* EU:C:2018:63.

¹²⁵ See S O'Leary, *The Evolving Concept of Community Citizenship: From the Free Movement of Persons to Union Citizenship* (European Monographs 13, Alphen aan de Rijn, Kluwer Law International, 1996).

¹²⁶ cf the central question 'Wie entstehen Öffentlichkeiten in der transnationalen Konstellation?' in C Calliess and M Hartmann, *Zur Demokratie in Europa: Unionsbürgerschaft und europäische Öffentlichkeit* (Tübingen, Mohr Siebeck, 2014) 150.

under EU law should be part of the core content of the EU dimension in EDC. Incorporating an EU dimension in EDC furthermore empowers citizens to value diversity and to participate in democratic life in their double role of national citizens and EU citizens, strengthening the dual democratic legitimacy of the Union and enhancing its social legitimacy.

To help them make the EU more democratic and EU citizenship more enlightened, the Member States themselves have an important tool in their hands: they are responsible for the content of teaching and the organisation of education systems (Article 165(1) TFEU). They are invited to take more action to provide quality education, which, in the present state of EU law, is no longer conceivable without an adequate EU dimension in EDC.

The EU has the supporting competence to encourage Member State action by providing incentives and making recommendations, thus contributing to the development of quality education, the European dimension in education and encouraging young people to participate in democratic life in Europe (Article 165 TFEU).¹²⁷ While respecting Member States' competences in education, the EU should offer more concrete guidance for the EU dimension of EDC. Council of Europe materials can be adapted to the specific EU context and made available in all EU languages. Given the close interdependence of the Member States' and the EU's democracy, a common EDC reference framework must be established.¹²⁸ It could be recommended at EU level, with proposals for specific objectives and learning outcomes for the EU dimension in keeping with the Treaties and CFR. This recommendation on EDC would be a major contribution to the realisation of the European Education Area. Because teachers are multipliers, the EU dimension in teacher training must also be promoted, as a prerequisite for the EU dimension in school education (through funding or EU labels of excellence).¹²⁹ A school-friendly version of selected provisions of the Treaties and CFR should be made available as a basis for EDC, just as the ECHR, the Convention on the Rights of the Child, and some Member State constitutions have been drafted in simplified forms for educational purposes.¹³⁰ Finally, some inspiration for EU action which respects Member State competence might be drawn from Germany, where education is *Länder* competence.¹³¹ The *Bundeszentrale für*

¹²⁷ K Grimonprez, 'The European Dimension in Citizenship Education: Unused Potential of Article 165 TFEU' (2014) 39 *European Law Review* 3.

¹²⁸ cf n 24, adapted to the EU.

¹²⁹ On teacher training for EDC, see Charter on EDC/HRE paras 7 and 9. At present insufficient, see Learning to live together, above n 42, 53, 61, 69–70, 87.

¹³⁰ See: www.coe.int/en/web/compass/european-convention-on-human-rights; www.unicef.org/rightsite/files/uncrcchildfriendlylanguage.pdf. In Germany, D Hesselberger, *Das Grundgesetz: Kommentar für die politische Bildung* 13th edn (Bonn, Bundeszentrale für politische Bildung, 2003); brochure *Das Grundgesetz Über den Staat* (einfach Politik, 2016, Bundeszentrale für politische Bildung); in Denmark, *My Constitutional Act, with Explanations* 12th edn (Folketinget, 2014).

¹³¹ See, eg, Recommendation of the Standing Conference of the Ministers of Education and Cultural Affairs on the promotion of human rights in schools, Resolution of 4 December 1980 in the version of 14 December 2000 (to note para 4: 'textbooks must take account of the content of this

politische Bildung supports citizenship education in the *Länder* (in cooperation with *Landeszentralen*).¹³² In a comparable way, an EU Agency for Education for Democratic Citizenship could support Member States, inter alia, by providing information and educational materials for EDC and its EU dimension.¹³³

recommendation'). See also the 1978 Recommendation *Europa im Unterricht*, amended in 1990 and updated in 2008 (*Europabildung in der Schule*).

¹³² See: www.bpb.de/die-bpb/138853/our-mission-and-activities.

¹³³ Compare EACEA (Education, Audiovisual and Culture Executive Agency) manages EU funding for education, culture, audiovisual, sport, citizenship and volunteering.