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Citizenship and Higher Education

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ABSTRACT

Education has long been seen as a universal value, crossing borders and overcoming societal divisions. The right to higher education is accordingly granted to everyone under international law. Nevertheless, citizenship – understood as a legal status of being a citizen of a given state – has to this day important consequences for one's access to higher education and/or rights granted in this context. This applies equally to EU citizenship as an example of a supranational citizenship (→ *EU citizenship*). On the other hand, higher education might also open new pathways to citizenship acquisition. Hence, the legal frameworks of citizenship and higher education, while seemingly distinct, intersect in many dimensions. Further, the notion of 'citizenship' – understood not as a legal status, but in socio-cultural terms – features frequently in discussions about the aims and organisational principles of higher education. While such discussions reach beyond law, they might both inform and be informed by legal provisions. This entry sketches the nature of these intersections, drawing on both doctrinal and theoretical debates.

KEYWORDS

Higher education, students, student mobility, highly skilled migration, supranational citizenship, academic citizenship

1. Citizenship, law, and higher education: status, access, rights

I. Introduction

Higher education has always had a global aspiration, with student and staff mobility an important feature of the sector since the creation of the first European universities in the 11th and 12th centuries (see De Ridder-Symoens [1991] or biographies of thinkers such as Peter Abelard, Thomas Aquinas or Erasmus of Rotterdam). Yet, citizenship – understood as the legal status of being a citizen of a given state – continues to shape one's access to higher education and/or rights granted in this context. At the same time, higher education can also open new pathways to citizenship acquisition. This illustrates that the legal frameworks governing citizenship and higher education intersect in many different dimensions. Beyond issues of legal citizenship, the socio-cultural notion of 'citizenship' informs broader debates about higher education's aims and ways of working, intertwining with discussions about legal rights and obligations. Drawing on both doctrinal and theoretical debates, this entry explores these interconnected themes and the nature of their interactions.

II. Citizenship and (laws on) access to higher education

Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the main provision of international law that guarantees the right to education, including higher education. The right is granted to *everyone* (Article 13(1) ICESCR). According to Article 13(2)(c) ICESCR, 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education'. This means that access to higher education shall be provided without discrimination, including arguably that of non-citizens. Nevertheless, access to higher education for non-citizen students – with further distinction possible between those who moved for the purpose of studying specifically and those already resident in the country for other purposes – continues to rise controversies. For example, Article 22(2) of the Convention Relating to the Status of Refugees includes relatively weak guarantees to grant refugees treatment 'as favourable as possible' and 'not less favourable than that accorded to aliens generally in the same circumstances'. On the other hand, Article 3(e) of the Convention against Discrimination in Education stipulates that states undertake to offer 'foreign nationals resident within their territory the same access to education as that given to their own nationals'. This phrasing notwithstanding, the drafters considered that 'a distinction had to be drawn between access (as a principle) and the practical modalities, which could be different' (Daudet and Eisemann [2005] at 21). Indeed, such 'practical modalities' – including fees, study loans, or other types of funding – have become an area where one's citizenship can have important consequences for access to higher education (Kotzmann [2018] at 36-37).

Non-citizen students are often charged higher fees than citizen students and have little or no access to funding programmes available to the latter (e.g., Canada, the Netherlands; see also the remarks on EU citizenship below (Section IV)). This is usually justified by arguments about the resource-intensive nature and public subsidization of education (e.g., Tannock [2018] on

such debates and their legal framework in the UK). These arguments intersect then with general discussions about the legality of introducing or increasing fees in higher education. The matter has been disputed in many jurisdictions under different legal frameworks and with varying outcomes (see, e.g., the overview in Gilchrist [2018]; Beck [2022] on the developments in Germany, which generally provides relatively equal access to higher education for international students). For example, regarding fees for foreign students specifically, the European Court of Human Rights' reasoning in the case *Ponomaryov v Bulgaria* (about fees in secondary education as such) has been said to suggest 'that there may be some flexibility for states in relation to citizenship or resident status' as higher university fees for non-citizens were 'considered fully justified' by the Court (Kotzmann [2018] at 36-37). Nevertheless, the human rights framework provides an opportunity structure for legal mobilisation against fees in higher education, both in general and for international students in particular (e.g., Beck [2022] at 249).

Access to higher education for foreign students – one of the major themes in the debates about what 'responsible' or 'sustainable' internationalisation of higher education should look like – may be restricted also for other reasons. The increasing numbers of international students have prompted new legal proposals to introduce quotas for foreign students for all or selected programmes in popular countries of destination (e.g., Australia, Switzerland). Further, security issues may have impact on (access to) higher education as well, both for students and staff alike. Rising geopolitical tensions have led to several legal initiatives allowing governments to influence the enrolment or employment of (certain) foreigners in sensitive areas of study or research, for example by requiring screening of candidates and executive approvals. Early examples of such measures include laws introduced in the US in the aftermath of 9/11 terrorist attacks in 2001. Such laws have been recently discussed in several other countries (e.g., the Netherlands). Debates about these and related proposals highlight the challenges of balancing access, security, academic freedom, non-discrimination, and other competing interests – both in terms of legal requirements and policy design.

Even when admitted to higher education, non-citizen students might at times face other issues unknown to their citizen counterparts. Due to the strict conditions of study visas, these might concern for example a restricted access to benefits or a limited ability to work, possibly having significant impact on their educational experience (Tran and Hoang [2020]). Because of this, the non-citizen status of international students has been said to enable not only their 'official discrimination' but also their 'unofficial Othering' (Tran and Hoang [2020] at 602, see also → *Citizenship and "the Other"*).

III. Higher education and citizenship acquisition

Higher education can also play a role in the construction of legal frameworks on migration and citizenship acquisition. Historically, citizenship was often easier to obtain for people of certain professions associated with university education, e.g., doctors or lawyers (Goastellec [2021] at 135). Contemporarily, immigration regimes have become one of the instruments for the states to compete internationally for knowledge migrants (Shachar [2006]). This dynamic extends to laws on citizenship acquisition, as the prospective ease of obtaining citizenship might become

a factor in knowledge migrants' choices of a destination state (Shachar [2006]). While the concept of 'knowledge migration' should not be immediately equated with the possession of a higher education degree, these categories often overlap – be it formally (in national laws) or de facto. On the other hand, student visas often do not fully count towards residency requirements for naturalisation and do not entitle one to apply for citizenship (e.g., Germany). This notwithstanding, many countries put in place various facilitation programs allowing foreign students who graduated to stay in the country and look for a job (e.g., Brazil, France, the USA), prospectively opening paths to more permanent forms of residency and, eventually, naturalisation.

A further interesting instance of the intersections between higher education matters and laws on citizenship acquisition concerns the case of the Citizenship by Investment Programme of Antigua and Barbuda (→ *Investment citizenship*). One of the paths to citizenship envisaged under the Programme is an investment to the University of the West Indies Fund (see the Antigua and Barbuda Citizenship by Investment Act [2013] as well as Regulations to the Act and their amendments). The applicants' investment to the Fund is envisaged to finance a new campus of the University. Upon approval, the applicants are granted not only the citizenship of the country but also a one-year scholarship at the University of West Indies for one of the family members covered by the application. This option for citizenship acquisition is intended to simultaneously support higher education in the region.

IV. Higher education, quasi-citizenships, and EU citizenship

While non-citizens often have a restricted access to higher education, some might benefit from additional national or supranational legal regimes that grant them rights in this context. Several countries foresee statuses that have been described as 'quasi-citizenships'. Such statuses do not grant citizenship in a legal sense, entailing rather selected rights and benefits, but attest to a relationship with the issuing state and are usually available to people of a particular national or ethnic origin. They may also envisage that their holders (formally foreign citizens) can access higher education on conditions equal to citizens or privileged in respect to other foreigners. Examples of such statuses include the Pole's Card (issued by Poland, known also as the 'Polish Card') or the Overseas Indian Citizens status (issued by India).

On the other hand, supranational citizenship typically depends on national citizenship and 'coincides with a supranational entity organized around a collective purpose ...' (Strumia [2017] at 670). Since such supranational entities are usually created with economic objectives in mind, also higher education – providing qualifications desirable on the labour market – often falls within their sphere of interest. The example of the citizenship of the European Union – described as 'the most advanced instance of supranational citizenship' (Strumia [2017] at 681) – illustrates how supranational citizenship can become a source of more extensive rights in higher education (→ *EU citizenship*). The Court of Justice of the European Union has taken a stance on multiple issues touching, among others, upon the right to or conditions of financial assistance (see Dougan [2005]) or university quota systems and access to higher education for EU citizens (e.g., *Commission v. Austria*, Case C-147/03) [2005] ECLI:EU:C:2005:427). The

integration of higher education systems, including equal or otherwise privileged access to higher education, has also been on the agenda of several other supranational entities, e.g., the Southern Common Market (MERCOSUR) or the Caribbean Community (CARICOM).

V. Beyond the legal status: higher education and the academic citizen(ship)

Lastly, the notion of ‘citizenship’ can feature in higher education debates not as a legal status, but in reference to its cultural or social dimensions. Understood this way, ‘citizenship’ can inform debates about the aims and organisational principles of higher education. While these are rarely framed in reference to legal provisions directly, they might both inform and be informed by law. As such, citizenship (understood as a civic life in a democratic society, the performance of civic duties, or similar) is often discussed as one of the justifications for the right to (higher) education or aims thereof (e.g., Beiter [2005] at 26 for the right to education in international law; Martin [2022] for a political-theoretical discussion in the context of higher education). Viewed this way, ‘citizenship’ may feature in debates about both the institutional set-up of the sector and the content of teaching curricula (see also → *Citizenship and civic education*). In relation to these, the human rights framework has also been argued to provide principles to foster ‘inclusive citizenship’ in higher education (e.g., Osler [2012]).

The discussions about the nature of the civic mission of higher education can also inform further debates about the understanding of ‘academic citizenship’ (Macfarlane [2007] at 261-263). This notion, while defined in many ways, typically refers to the duties and ethical obligations of academic faculty (and sometimes also students) to contribute to the academic (and sometimes also broader) community. Matters pertaining to academic citizenship are not typically regulated by hard law (understood as legally binding instruments) directly. They are rather governed by educational or institutional policies, codes of conduct, or other types of professional norms applicable to the university communities. However, hard law – from constitutional provisions to employment laws – provides a basic framework for such codes or policies, e.g. regarding non-discrimination. On the other hand, some of such codes or guidelines might be described as ‘soft law’, potentially influencing the interpretation of hard law rights and obligations. In particular, widely accepted professional or ethical principles can be considered when determining the limits of academic freedom as a legal right (see also → *Citizenship and academic freedom*).

VI. Concluding remarks

The interplay of citizenship (law) and higher education (law) is multifaceted. National and international laws strive to embody the aspirations of higher education, realise the economic and social goals assigned to it, and reconcile them with other interests – at times prompting a differentiation between citizens and non-citizens. Beyond its understanding as a formal legal status, the ideals of ‘citizenship’ underscore further the aims and organisational principles of higher education, with potential consequences for how we think about legal rights and obligations. Ultimately, the controversies that emerge in such contexts emphasise the

significance of well-designed regulatory frameworks for higher education, both at its intersections with citizenship matters and beyond.

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