

WestminsterResearch

<http://www.westminster.ac.uk/westminsterresearch>

**Unity in Adversity: EU Citizenship, Social Justice and the
Cautionary Tale of the UK by Charlotte O'Brien
Creutzfeldt, N.**

This is the author formatted version of the following book review: Creutzfeldt, N. (2019) Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK by Charlotte O'Brien . Journal of Law & Society. 46 (4), pp. 697-698. doi:10.1111/jols.12198 , which has been published in final form at:

<https://dx.doi.org/10.1111/jols.12198>.

This article may be used for non-commercial purposes in accordance with Wiley Terms and Conditions for Self-Archiving.

The WestminsterResearch online digital archive at the University of Westminster aims to make the research output of the University available to a wider audience. Copyright and Moral Rights remain with the authors and/or copyright owners.

Whilst further distribution of specific materials from within this archive is forbidden, you may freely distribute the URL of WestminsterResearch: (<http://westminsterresearch.wmin.ac.uk/>).

In case of abuse or copyright appearing without permission e-mail repository@westminster.ac.uk

BOOK REVIEW

Winner of the SLSA Hart Book Prize 2019

UNITY IN ADVERSITY: EU CITIZENSHIP, SOCIAL JUSTICE AND THE CAUTIONARY TALE OF THE UK by Charlotte O'Brien (Oxford: Hart, 2017, 304 pp., £50 (hbk))

O'Brien starts her very well-written book with a powerful argument: the EU is inadequate to deliver social justice. Her study finds that 'market citizenship endorses a system of law-as-lists, rather than law-as-justice, in which EU nationals must conform to anachronistic and patriarchal economic categories on a list.' These patterns, she argues, exclude those who do not serve the market economy (e.g. children, lone parents, carers, disabled people and poorly paid and exploited workers). With a focus on welfare rights, O'Brien claims that the EU and its welfare law is an mirror of the single market - it is indifferent to social justice principles. Economic categories are at the forefront of the 'Directive 2004/38 and therefore absolves member states from having to engage in questions of social justice when dealing with EU nationals.' Market citizenship, she goes on to argue, therefore is guided by existing discriminatory power imbalances and indifferent to social justice. O'Brien uses the UK as her case study and shows that reforms made in 2014, targeting EU nationals 'form a programme of declaratory discrimination on the grounds of nationality.' Through a persuasive account of case law throughout her book, O'Brien argues that EU market citizenship created an exclusion.

This book draws upon the findings of the *EU Rights Project* - a legal action project funded by the ESRC. O'Brien tested *EU law and EU citizenship in action* through a robust socio-legal inquiry. She conducted an advice-led ethnography; parallel ethnography; expert interviews; and focus groups with advisers. The case studies chosen highlighted that equal treatment on the grounds of nationality is an illusion. She found that, amongst other things, administrative obstacles (poor decision-maker understanding, problematic decision-maker guidance, and a 'refuse fist, ask questions later' approach) seemed to be exacerbated by ongoing legal reforms.

The book is organised on the premise that welfare, social justice and citizenship are inextricable interlinked. It is made up of ten chapters, Chapter 2 discusses EU welfare law and sets out the research methods (legal action research). Chapter 3 discusses direct discrimination by way of a case law narrative on the grounds of nationality in domestic welfare regimes. Chapter 4 argues for giving children's rights more weight in free EU movement law. Chapter 5 highlights how individualism and an associated political agenda is chosen over a focus on the activation agenda. Chapter 6 analyses the regime imposed on EU nationals in the UK, considering equal treatment claims. Chapter 7 looks at the problems attempting to invoke social security regulation legislation. Chapter 8

highlights administrative hurdles encountered during the *EU Rights Project*. Whilst O'Brien makes a compelling case for market citizenship being inadequate for the realisation of social justice, chapter 9 argues that social justice is possible. O'Brien argues that 'the language of responsibility-centric, competition-based fairness' need to be challenged and 'to resurrect concepts of needs, social responsibility and egalitarianism.' EU market citizenship entails ideological, legal and administrative obstacles to social justice. O'Brien concludes that equal treatment on the ground of nationality is an illusion. The economics of the market alienates and discriminates against the already disadvantaged (children, women and disabled people). The UK 'embarked on a programme of declaratory discrimination creating declaratory obstacles to movement, issuing discriminatory statements that would be frowned upon on in a private employment context e.g., and expressing a clear intention to reduce free movement [...]' (p.267). The social justice deficit - the very premise of market citizenship is discriminatory by default.

O'Brien uses the UK as a case study to highlight the toxic politics of free movement which then percolated the administrative culture. She argues that the administration of welfare cannot be disaggregated from the government's own message and guidance to decision-makers. Also, the government scapegoats EU nationals is closely connected to the public vote to leave the EU. If market citizenship shapes our ideas of fairness, personhood and fundamental rights and lays claim to our construction of morality itself, what kind of society do we want Europe to be?

At the time of writing this review (August 2019) the UK is facing an unclear path, heading for Brexit at the end of October. The questions O'Brien poses in her excellent book are even more pertinent. What will happen to the exposed narratives of manufactured (welfare) rights that reward well-off and instrumentalize the poor? Is our longing for the EU (and the UK) to be able to provide us with a better image of collective responsibilities and equal welfare rights a myth? What will happen to regulations that have grown to be a part of our national architecture of discrimination and injustice? We urgently need a law-as-justice approach that O'Brien advocates for in her book.

This book is an excellent example of how law can echo oppressive and unjust behaviours and thereby build discrimination into our everyday justice system. This needs to be addressed and changed so we can move towards social justice and protect those who need protection most. This book is a must-read for all engaged in politics, social rights, and EU law and policy. It is an eye-opener to the reality of neo-liberal developments.

NAOMI CREUTZFELDT
University of Westminster, UK

