EUROPEAN UNION CITIZENSHIP: THE JOURNEY GOES ON

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Abstract

European citizenship has matured owing to the European Court of Justice's tactical interventions in-between Treaty revisions and developments, such as the adoption of the Charter of Fundamental Rights of the European Union, which was proclaimed in Nice in December 2000, and the entry into force of Directive 2004/38 on 1 May 2006. In addition, it features centrally on the Commission's policy agenda, as attested by the designation of 2006 as the European Year of workers' mobility, the conversion of the European Union Monitoring Centre on Racism and Xenophobia into a fundamental Rights Agency (1 March 2007), the adoption of a Community action programme to promote active European citizenship, and the follow-up 'Europe for Citizens' programme which will run until 2013. These programmes seek to promote the active involvement of citizens in the process of European integration. In this chapter I examine the institutional development of Union citizenship and the ways in which the Court has utilised its wide-ranging transformative potential. In many respects, European citizenship constitutes a unique experiment for stretching social and political bonds beyond national boundaries and for creating a pluralistic and multilayered political community in which diverse peoples become associates in a collective experience.

Keywords: Constructive European Citizenship, European Court of Justice, citizenship based on domicile, connexive citizenship, valuing social membership

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We often suppose that things are the way they are for a reason. Yet when it comes to the free movement of persons and the development of European Union citizenship, which was established by the Treaty on European Union (1 November 1993), we have little hope of understanding how much things have changed over the last fifty years of European integration and why laws are what they are without an examination of the consistent and principled interventions of supranational actors, such as the Court, the Commission and the Parliament. True, by reaching back to the past through the lens of fifty years of developments one might be tempted to apply the modernist theme of linear progression to this picture, thereby pinpointing a line from the establishment of an embryonic European citizenship by the Treaty of Rome[1] to the introduction of European citizenship and to more ambitious future developments, such the formation of a European demos and a European public sphere.[2] But in reality such an exercise would be futile. This is not only because it would not present a tale of the past in all its complexities. Nor is it merely because it would have to bracket the 'bumpiness' of the integration process. It is also due to the fact that the picture of linear progression would have to conceal the very thing that matters most in understanding the present edifice of free movement of persons and Union citizenship; namely, the multiplicity of possible histories, of 'might have beens'.

For example, when European citizenship was introduced, most scholars viewed it as a purely decorative and symbolic institution, and a mirror image of pre-Maastricht 'market

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[1]For early accounts, see A. Durand,'European Citizenship' (1979) 4 *European Law Review* 3-14; A. Evans, 'European Citizenship: A novel Concept in EEC Law' (1984) 32(4) *American Journal of Comparative Law* 674-715.

[2] See J. H. Weiler, 'Does Europe Need a Constitution? Reflections on Demos, Telos and the German Maastricht Decision' (1995) 1(3) *European Law Journal* 219-58; G. de Burca, 'The Quest for Legitimacy in the European Union' (1996) 59(3) *Modern Law Review* 349-379; D. Curtin, *Postnational Democracy: The European Union in search of a political philosophy* (The Hague: Kluwer, 1997); C. Closa, 'The Concept of Citizenship in the Treaty of European Union' (1992) 29 *Common Market Law Review* 1137; 'Supranational Citizenship and Democracy: Normative and Empirical Dimensions', in M. La Torre (ed.), *European Citizenship: An Institutionalist Challenge* (The Hague: Kluwer, 1998); E. Meehan, *European Citizenship* (London: Sage, 1993); T. Kostakopoulou, 'Towards a Theory of Constructive Citizenship in Europe' (1996) 4(4) *Journal of Political Philosophy* 337-358; T. Kostakopoulou, 'European Citizenship and Immigration after Amsterdam: Silences, Openings, Paradoxes' (1998) 24(4) *Journal of Ethnic and Migration Studies* 639-656; U. Preuss, 'Two Challenges to European Citizenship' (1996) XLIV *Political Studies* 534-552; J. Shaw, 'The Many Pasts and Futures of Citizenship in the EU' (1997) 22 *European Law Review* 554-572; A. Wiener, 'Assessing the Constructive Potential of Union-Citizenship - A Socio-Historical Perspective' (1997) 1(17) *European Integration On-line Papers* (http://eiop.or.at/eiop/).

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citizenship'.[3] And although constructivist approaches highlighted the transformative potential of European citizenship,[4] the majority view was that it would only be relevant to 'favoured EC nationals', that is, to a minority of European citizens who possess the necessary resources required for intra-EU mobility[5] and that it could not induce real institutional change.

And yet, institutional change has occurred. European citizenship has matured owing to the European Court of Justice's tactical interventions in-between Treaty revisions and developments, such as the adoption of the Charter of Fundamental Rights of the European Union, which was proclaimed in Nice in December 2000, and the entry into force of Directive 2004/38 on 1 May 2006. In addition, it features centrally on the Commission's policy agenda, as attested by the designation of 2006 as the European Year of workers' mobility,[6] the conversion of the European Union Monitoring Centre on Racism and Xenophobia into a fundamental Rights Agency (1 March 2007),[7] the adoption of a Community action programme to promote active European citizenship,[8] and the follow-up 'Europe for Citizens' programme which will run until 2013. These programmes seek to promote the active involvement of citizens in the process of European integration.[9] In this chapter I examine the institutional development of Union

[3] M. Everson, 'The Legacy of the Market Citizen', in J. Shaw and G. More (eds.), *New Legal Dynamics of European Union* (Oxford: Oxford University Press, 1995); J. d'Oliveira, 'Union Citizenship: Pie in the Sky?', in A. Rosas and E. Antola (eds.), *A Citizens' Europe: In search of a New Order* (London: Sage, 1995); P. Lehning, 'European Citizenship: a mirage?', in P. Lehning and Albert Weale (eds.), *Citizenship, Democracy and Justice in the New Europe* (London and New York: Routledge, 1997) 175-199.

[4] T. Kostakopoulou, 'Nested "Old" and "New" Citizenships in the European Union: Bringing Forth the Complexity' (2000) 5(3) *Columbia Journal of European Law* 389-13; T. Kostakopoulou, *Citizenship, Identity and Immigration in the European Union* (Manchester: Manchester University Press 2001); A. Wiener, *Building Institutions: The Developing Practice of* European Citizenship (Oxford: Westview, 1998); J. Shaw, 'The Interpretation of European Union Citizenship' (1998) 61(3) *Modern Law Review*.

[5] This is because they are either active economic actors or self-sufficient and in possession of sickness insurance under the 1990 three residence Directives (90/364, 90/365 and 90/366, which was replaced by Directive 93/96). The European Parliament and Council Directive of 29 April 2004 *on the right of citizens of the Union and their Family Members to move and reside freely within the territory of the Member States* (2004/38/EC*)*, which repeals the above mentioned Directives, introduces three separate categories of residence rights and establishes an unqualified right of permanent residence after five years of continuous legal residence in the host Member State; OJ 2004 L 158/77 (30 April 2004).

[6] The European Year was launched in Brussels on 20-21 February 2006. See also the Commission's Communication on action for skills and mobility, COM(2002) 72 final.

[7] Council Regulation 168/2007 establishing a European Union Agency for Fundamental Rights [2007] OJ L53/1. See also the Commission's Communication to the Council and the European Parliament, *The Hague Programme – Ten Priorities for the next five years*, COM(2005) 184 final.

[8] Council Decision 2004/100/EC of 26 January 2004, establishing a Community action programme to promote active European citizenship, OJ L30, 4./2/2004. The programme has awarded grants to a number of organisations that promote civic participation in the EU over a three year period (2004-2006).

[9] Proposal for a Decision of the European Parliament and of the Council, of 6 April 2005, establishing for the period 2007-2013 the programme 'Citizens for Europe' to promote active European citizenship; COM(2005) 116 final. The main aims of the programme are to enhance interaction among European citizens and civic participation, with the aim of promoting intercultural dialogue and a sense of European identity. Three types of action have been envisaged; namely, 'active citizens for Europe', 'active civil

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citizenship and the ways in which the Court has utilised its wide-ranging transformative potential. In many respects, European citizenship constitutes a unique experiment for stretching social and political bonds beyond national boundaries and for creating a pluralistic and multilayered political community in which diverse peoples become associates in a collective experience.

MARKET CITIZENSHIP AND BELONGING

The establishment of the institution of European Union citizenship gave rise to mixed reactions. It is true that most scholars and policy-makers view European citizenship as a purely decorative and symbolic institution.[10] There existed several reasons for this. First, the content of European citizenship was rather limited. European citizenship was premised on the pre-existing Community law rights of free movement and residence and, with the exception of electoral rights at local and European Parliament and the right to diplomatic and consular protection when travelling abroad, did not add much new to existing Community law. In addition, the TEU's citizenship provisions did not include any reference to the duties owed by European citizens. For sure, if one juxtaposes such a modest content to that of national citizenship, which often embraces the Marshallian triptych of civil, political and social rights and responsibilities, one may legitimately conclude that European citizenship was nothing more than a pale shadow of its national counterpart.[11]

Secondly, whereas national citizenship premises citizens' claims and entitlements on the basis of a historically developed, rich notion of membership in a national community, European citizenship appeared to comprise a core of economic entitlements primarily designed to facilitate market integration.[12] Scholars pinpointed, for instance, that Union citizenship was the mirror image of pre-Maastricht market citizenship; that is, it reflected a loose and fragmented form of mercantile citizenship designed to facilitate the European integration.[13] Thirdly, unlike national

society in Europe' and 'together for Europe', and the proposed budget for the implementation of the programme is EUR 235 million. In addition, the 'fundamental rights and citizenship' programme will run during the period 2007-2013 and has a budget of EUR 93.8 M.

[10] Everson, 'The Legacy of the Market Citizen', in Shaw and More (eds), *New Legal Dynamics of European Union* (Oxford University Press, 1995); J. d'Oliveira, 'Union Citizenship: Pie in the Sky?', in Rosas and Antola (eds), *A Citizens' Europe: In search of a New Order* (Sage, 1995); T. Downes, 'Market Citizenship: Functionalism and Fig-leaves', in Bellamy and Warleigh (eds), *Citizenship and Governance in the European Union* (Continuum, 2001) 93.

[11] See d'Oliveira, *loc cit*, n 6, 1995; 'European Citizenship: its meaning its potential', in Dehousse (ed), *Europe after Maastricht: An Ever Closer Union*? (Beck, 1994).

[12] Everson, *loc cit*, n 6, 1995.

[13] Vink, *loc cit*, n 3, 2003.

citizenships, which reflect strong national identities and the horizontal ties of belonging to a nation, European citizenship had a weak affective dimension.[14]

Finally, although the establishment of a supranational citizenship in 1992 showed that citizenship can no longer be confined within the national-statist setting, the nationality model of citizenship prefigured European citizenship. Union citizenship has been conditioned on the tenure or acquisition of national citizenship (Article 17(1) EC). Making European citizenship derivative of national citizenship does not only give prominence to the nationality principle, but, perhaps more worryingly, subjects membership to the European public to the definitions, terms and conditions of membership prevailing in national publics. As the Declaration on Nationality of a Member State, annexed to the Final Act of the Treaty on European Union, expressly stated, 'the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned'. Similar declarations were adopted by the European Council at Edinburgh and Birmingham. The Birmingham declaration confirmed that, in the eyes of national executives, Union citizenship constitutes an additional tier of rights and protection which is not intended to replace national citizenship – a position that found concrete expression in the amended Article 17(1) at Amsterdam.[15] The European Court of Justice has by and large upheld the international law maxim that determination of nationality falls within the exclusive jurisdiction of the Member States, despite the anomalies that this creates in the filed of application of EC law and its exclusionary implications with respect to the rights of long term resident third country nationals. In *Micheletti*, the ECJ confirmed that determination of nationality falls within the exclusive competence of the Member States, but it went on to add that this competence must be exercised with due regard to the requirements of Community law,[16] and in Kaur it stated that 'it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality.[17] This, essentially, means that persons who are legally recognised to be nationals of a Member state should be able to exercise their rights to free movement without impediments imposed by additional regulations adopted by other Member States.

In *Chen*, the European Court of Justice criticised the restrictive impact of such additional conditions for the recognition of nationality of a Member State. It ruled that the United Kingdom had an obligation to recognise a minor's (Catherine Zhu) Union citizenship status even though

[14] See the Commission's third report on Union citizenship; COM (2001) 506 final.
[15] Bull. EC 10-1992 I 8.9. The Amsterdam Treaty added the statement that 'Union citizenship shall complement national citizenship' to Article 8(1) EC (Article 17(1) on renumbering).
[16] Case C-369/90 *Micheletti and Others v Delegacion del Gobierno en Catanbria* [1992] ECR I- 4329.
[17] Case C-192/99 *R v Secretary of State for the Home Department, ex parte Kaur* [2001] ECR I-1237, para 19.

her MS nationality had been acquired in order to secure a right of residence for her mother Chen, a third country national, in the United Kingdom. Since Catherine had legally acquired Irish nationality under the ius soli principle enshrined in the Irish Nationality and Citizenship Act 1956 and had both sickness insurance and sufficient resources, provided by her mother, the limitations and conditions referred to in Article 18 EC and laid down by Directive 90/364 had been met thereby conferring on her an entitlement to reside for an indefinite period in the UK.[18]

For all these reasons, scholars and commentators concluded that European citizenship was simply a symbolic and decorative institution. But a rival, constructivist perspective viewed European citizenship as a marker of a wider socio-political transformation. Existing constraints and limitations were seen as invitations for institutional modification. What was important was that citizenship had migrated into a supranational setting which called into question the maintenance of nationality as a proxy for defining political community and opened up opportunities for building a political community on purely political grounds. In other words, the main deficiency of the European Union, namely, the lack of a primordial substratum and/or cultural commonalities was, in the view of constructivists, its principal advantage and the main reason for its normative appeal. Form this point view, European citizenship constituted a unique experiment for stretching social and political bonds beyond national boundaries and for transforming traditional conceptions of political belonging.

THE CONSTITUTIONAL METAMORPHOSIS OF EUROPEAN CITIZENSHIP RIGHTS

Although the introduction of European Citizenship had led to a conceptual metamorphosis of the Community rights of free movement and residence,[19] the European Court of Justice initially invoked this institution in order to confirm existing law. In the period 1993-1997, European citizenship was thus used as supplementary basis in order to confirm precedent. The first opportunity for institutional change arose in the *Martinez Sala* case in 1998. In this case, the ECJ held that lawful residence of a Community national in another MS is sufficient to bring her within the scope of ratione personae of the provisions of the Treaty on European citizenship. Since Sala had been authorised to reside in Germany, the requirement of the 1985 Federal Law that a Community national had to produce a residence permit in order to receive a child-raising

[18] Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department*, Judgement of the Court of 19 October 2004.
[19] COM(93) 702 Final, 21/12/93. See also Advocate General Leger's opinion in Case C-1214/94 *Boukalfa v Federal Republic of Germany* [1996] ECR I-2253.

allowance, when that state's own nationals were not required to produce any document of that kind, amounted to unequal treatment prohibited by Article 12 EC. In other words, Sala was entitled to receive non-discriminatory treatment on the grounds of nationality as a European citizen lawfully residing in another Member State. By putting 'flesh on the bones of European Union Citizenship', the Court displayed its capacity to attach a new constructive meaning to the status of citizenship of the Union, thereby overriding the interests of Member States.[20] More importantly, it did so by calling into question the link between the existence of citizen status and economic activity or self-sufficiency.[21] In *Elsen* the Court highlighted further the importance of Union citizenship,[22] by ruling that, although MS retain the power to organise their social security schemes, they must, nonetheless, comply with Community law and the Treaty provisions on Union citizenship.

In 2001 the ECJ continued to strengthen citizens' rights. The political climate was favourable for constructive interpretations of Union citizenship owing to the adoption of the EU Charter of Fundamental Rights in Nice (7 December 2000)[23] and the Commission's proposal for a Directive on the right of citizens and their family members to move and to reside freely within the territory of the MS.[24] The draft directive, which explicitly referred to the 'new legal and political environment established by citizenship of the Union',[25] suggested a 'phased' approach to the disentanglement of residence form economic activity, whereby non-active economic actors would have to satisfy the self-sufficiency and possession of sickness insurance conditions in the first four years of residence in the host state. Thereafter, non-active economic actors would enjoy a permanent and unqualified right of residence and 'virtually complete equality of treatment'.[26] Permanent residence would thus entail security of residence by providing immunity from expulsion and access to social welfare in the host MS.[27]

Capitalising on this climate, in *Grzelczyk* Advocate General Alber stated that: 'Citizenship of the Union took on greater significance, in contrast to the perception of individuals as purely economic actors which had underlain the EC Treaty. The conditions on which freedom of movement may depend are now no longer economic in nature, as they still were in the 1990

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[20]S. O'Leary, 'Putting Flesh on the Bones of European Union Citizenship' (1999) 24 *European Law Review* 68-79.
[21]As the Advocate General stated, 'the limitations in Article 8a itself concern the actual exercise but not the existence of the right'; Case C-85/96 at para 18.
[22] Case C-135/99 *Ursula Elsen v Bundesversicherungsanstalt fur Angestellte*, Judgment of the Court of 23 November 2000.
[23] [2000] OJ C364.
[24] COM (2001)257 Final; Brussels 23.5.2001.
[25] COM (2001) 257 final, para 1.3 of the explanatory memorandum.
[26] Ibid Article 14.
[27] Ibid Articles 26 and 21(1).

directives. The only 'limitations and conditions' attached to freedom of movement now are imposed on grounds of public policy, public security and public health'.[28]

Grzelczyk, a French national studying physical education in Belgium, who during his first three years of his study had supported himself through various jobs, applied to the CPAS for payment of minimex, a minimum subsistence allowance paid in Belgium. This would enable him to complete his university studies. CPAS granted Grzelczyk the minimex. However, when the CPAS applied to the Belgian state authorities for reimbursement of the payments, the application was declined on the ground that Grzelczyk was not a Belgian national. Mr Grzelczyk challenged this refusal before a Labour tribunal. Rejecting the minimalist perspective associated with the model of market citizenship (section 1), the ECJ stated that 'Union citizenship is destined to be a fundamental status of nationals of the MS, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for'.[29] Since Union citizens can rely on Article 12 EC in all situations that fall within the material scope of the EC Treaty (*Sala*), Article 12 EC, read in conjunction with Union citizenship, led the Court to rule that students studying in another MS and facing temporary economic difficulties can rely on the non-discrimination clause in claiming social advantages. Indeed, it can be argued that a certain degree of financial solidarity between nationals of a host MS and nationals of other MS must be recognised, particularly in cases of temporary economic difficulties. In such cases, beneficiaries would not be an 'unreasonable' burden on the host MS.

Grzelczyk gave the Court the opportunity to advance the normative debate on the meaning and implications of Union citizenship, by calling into question the link between economic activity and residence in certain circumstances (i.e., temporary economic difficulties). This gave 'a strong appearance of case law moving away from the grant of particular rights to particular groups of (economic) actors and instead embracing a powerful mission of protection of individual rights'.[30] By so doing, it initiated a wider learning process, since students who face temporary economic difficulties would have to be seen as associates and 'belongers' to the host community, rather than as strangers and a problem. This was re-affirmed in the *Bidar* case in 2005.[31] In *Bidar*, the Court departed from earlier case law which excluded students from the grant

[28] Case C-184/99 [2001] ECR I-6913 at para. 52.

[29] *Grzelczyk*, above n 84 at para 31. Under the Commission's proposed directive, on completion of a four-year educational course in a MS, the self-sufficiency conditions attached on the residence of students would cease to apply, thereby enabling former students to stay on in the host state and to receive social security entitlements on the same basis as nationals (Articles 7 and 8(4)).

[30] S. Weatherill, *Cases and Materials on EU Law* (Oxford: Oxford University Press, 2003) 490.

[31] Case C-209/03, *Bidar v London Borough of Ealing*, Judgment of 15 March 2005.

social assistance, by ruling that, as Union citizens, students who have demonstrated 'a certain degree of integration into the society of the host state' can claim maintenance grants.[32] But the Member States are also entitled to ensure that 'the grant of assistance does not become an unreasonable burden'. Even though the requirement of demonstrating 'a certain degree of integration' is not sufficiently clear, the Court has, nevertheless, indicated that a reasonable period of lawful residence[33] and the ensuing immersion in a web of interactions in the host state[34] generates an entitlement to non-discrimination and equal treatment in the social field. The Court thus ruled in *Trojani* that a lawfully resident non active economic actor is entitled to a social assistance benefit on the basis of Article 12 EC,[35] whereas in *Collins*, the absence of a genuine link between a jobseeker and the employment market of the host state invalidates an entitlement to a jobseeker's allowance.[36] In both cases, however, the principle of proportionality must be respected and the application of a residence requirement is open to judicial review.

In *D'Hoop* the Court highlighted that Union citizenship forms the basis of rights to equal treatment, irrespective of nationality,[37] and noted that it would contravene EC law if a citizen received in her own Member State treatment less favourable than that she would otherwise enjoy had she not availed herself of the right to free movement.[38] However, in *De Cupyer* the Court upheld the proportionality of Dutch measures which conditioned an entitlement to unemployment allowance on actual residence in the Netherlands on the ground that the effective monitoring of the employment and family situation of unemployed persons could not have been achieved by less restrictive measures, such as the production of documents or certificates.[39]

In *Carpenter* the Court displayed a truly innovative approach. Mrs Carpenter, a national of the Philippines and the spouse of a UK national, challenged the deportation order issued by the Home Secretary. She claimed a right of residence in the UK on the grounds that her deportation would impede her husband's right to provide and receive services in other Member States, since

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[32] In Bidar's case, a subsidised student loan.
[33] Ibid. See also Case C-456/02 *Trojani v CPAS* [2004] ECR I-7573, para 43. The ECJ refers to 'lawful residence in the host MS for a certain time or the possession of a residence permit'.
[34] Bidar had completed his secondary education in the UK; note 34 above.
[35]Ibid.
[36] C-138/02 *Brian Francis Collins* [2004] ECR I-2703. Similarly, the taking up of residence abroad is not a satisfactory indicator of a loss of connection with one's home Member State which is demonstrating its solidarity with the applicant by granting a civilian war benefit to him/her; Case C-192/05, *K. Tas-Hagen and R.A. Tas*, Judgement of the Court of 26 October 2006.
[37] Case C-224/98 *Marie-Nathalie D'Hoop v Office national de l'emploi* [2002] ECR I-6191.
[38] Compare also C-258/04 *Ioannidis*, Judgement of 15 September 2005. Ioannidis was denied a tideover allowance on the grounds that he had completed his secondary education in another Member State. See also *Pusa*, n. 55 below.
[39] Case C-406/04 G. *De Cuyper v. Office national de l-emploi*, Judgment of the Court of 18 July 2006. Compare also Case C-365/02 *Lindfors* [2004] ECR I-7183 and Case C-403/33 *Schempp v Finanzamt Munchen V* [2005] ECR I-6421.

she was looking after his children from his first marriage. The UK authorities maintained that, since Mr Carpenter was a national of the UK living in the UK, the cross-border dimension required under Community law was absent. But the Court did not agree with the UK Government's submission.[40] Mr Carpenter was carrying out a significant proportion of his business abroad, thereby activating his right to provide services enshrined in Article 49 EC. The latter 'could not be fully effective if Mr Carpenter were to be deterred from exercising it by obstacles raised in his country of origin relating to the entry and residence of his spouse'.[41] Article 49 EC read in light of the principle of respect for family life, which is recognised by Community law,[42] must thus be interpreted as precluding Carpenter's deportation.[43]

Carpenter is a remarkable case of judicial activism; a derivative right of residence has been implied from a Treaty article (Article 49 EC), thereby overriding restrictive national immigration rules.[44] By emphasising the principle of respect for family life, the Court established a normative hierarchy that could not but influence and guide future interpretive choices. Indeed, on 25 July 2002 the ECJ had to adjudicate on the legality of restrictive state measures on the movement and residence of third country national spouses of Community nationals. These issues had been raised in proceedings between the Movement Against Racism, Anti-Semitism and Xenophobia ASBL (Mouvement contre le racism, l'antisemitisme et la xenophobie ASBL, (MRAX)) and the Belgian State. More specifically, MRAX challenged the legality of a Circular of the Ministers for the Interior and Justice of 28 August 1997 on the grounds that it contravened the Community directives on the movement and residence and the principle of respect for family life, which is protected by Community law. Drawing on *Carpenter*, the ECJ emphasised the importance of ensuring protection of the family life of Community nationals. It ruled that a number of state practices, such as sending back to the border third country national spouses of Community nationals who do not possess the necessary entry documents (i.e., an identity document or visa), denying them a residence permit or ordering an expulsion order on the grounds that they were 'illegal' entrants or residents, are disproportionate and unlawful under Community law.

The Court's stance on the mobility rights of third country national family members of Union citizens shows that European judges do not faithfully serve the interests of the Member

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[40] Case C-60/00 *M. Carpenter*, Judgment of the Court of 11 July 2002, paras. 28-30.
[41] Ibid at para 39.
[42] On this, see the provisions of the Council Regulations and directives on the free movement of employed and self-employed persons as well as Article 8 ECHR.
[43] Carpenter's deportation could not be justified on public order or safety grounds.
[44] G. Barret, 'Family Matters: European Community Law and Third Country Family Members' (2003) 40 *Common Market Law Review* 369-421, 406.

States, as Garrett had argued.[45] Nor would it be correct to say that the ECJ's strategic interventions are confined to policy areas that have low costs for MS. The cases examined above show the ECJ did not hesitate to procure institutional change in key areas of 'high politics' drawing on the normative dimensions of Union citizenship and a favourable organisational climate. Its activist stance reflects its interest and capacity to provide principled solutions to problems, thereby advancing a constructive understanding of Union citizenship.

In *Baumbast*, the Court went beyond the predictive confines of settled law in order to bring about institutional change. It did not only derive a new right of residence for a parent who is the primary carer of a child studying in a host MS (Article 12 of Council Reg. 1612/68), but it also ruled that Article 18(1) EC has created directly effective rights enforceable in national courts.[46] Although the German and UK Governments submitted that Article 18 (1) did not create a directly effective right because it was not intended to be a free-standing provision, the ECJ relied on the normative weight of Union citizenship, and ruled that:

'…As regards, in particular, the right to reside within the territory of the Member States under Article 18(1) EC, that right is conferred directly on every citizen of the Union by a clear and precise provision of the EC Treaty. Purely as a national of a Member State, and consequently as a citizen of the Union, Mr Baumbast therefore has the right to rely on Article 18(1) EC'.

Any limitations and conditions imposed on that right must be applied in compliance with the limits imposed by Community law and in accordance with the general principles of that law, in particular the principle of proportionality. As such, they 'do not prevent the provisions of Article 18(1) EC from conferring on individuals rights which are enforceable by them and which the national courts must protect'. Such an interpretation further weakened the link between economic status and the right to free movement and reflected broader normative aspirations for a constructive understanding of European citizenship that eventually found their way into juridicopolitical reform ten years after the establishment of this institution. As an institutional designer in a complex environment, the ECJ believed in the coherence and viability of the constructive meaning of Union citizenship it was trying to realise, since European citizenship ought to be other than it was. By so doing, it paved the way for what would follow.

In 2003 the Court continued to utilise Union citizenship in a radical way. In *Garcia Avello*, a refusal of the Belgian authorities to register a child of dual nationality with the surname of both parents, following the Spanish pattern of entering the mother's maiden name in addition to the patronymic surname of the father, constituted discrimination on the grounds of nationality

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[45] Garrett, n 90 above.

[46] Case C-413/99 *Baumbast, R v Secretary of State for the Home Department*, Judgement of the Court of 17 September 2002.

prohibited under Articles 12 and 17 EC.[47] And although the Belgian Government submitted that the immutability of surnames is conducive to the social order and integration of non-Belgian nationals into the Belgian society, the Court dismissed this argument, by stating that the children, who enjoyed the status of EU citizens, should not suffer discrimination in respect of their surname and that the Belgian practice was neither necessary nor appropriate for promoting the integration of non-Belgian nationals.

In *Pusa* Advocate General Jacobs stated that, far from being limited to a prohibition of direct or indirect discrimination, Article 18 EC applies to non-discriminatory restrictions, including unjustified burdens.[48] Following the ECJ's jurisprudence, non-discriminatory restrictions involve measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty and can only be justified if they are based on overriding considerations of public interest and are proportionate (*De Cupyer*).[49] In *Tas-Hagen* the Court utilised the non-discrimination model by stating that Dutch legislation on *benefits for civilian war victims 1940-1945* which required that beneficiaries were resident in the Netherlands at the time of the submission of their application was 'liable to dissuade Netherlands nationals' from exercising their rights under Article 18(1) EC and 'constituted a restriction'.[50] Indeed, 'the opportunities offered by the Treaty in relation to freedom of movement cannot be fully effective if a national of a Member State can be deterred from availing himself of them by obstacles raised to his residence in the host Member State by legislation of his State of origin penalising the fact that he has used them'.[51] And although the restriction can be justified on the ground that the obligation of solidarity could only apply to civilian war victims who had links with the population of the Netherlands during and after the war, residence abroad was not a sufficient indicator of ones' disconnection from the society of the Member State granting the benefit. The requirement of residence in the Netherlands therefore did not meet the test of proportionality. Similarly, in *Morgan and Bucher* the Court ruled that national law which stipulates that education and training grants for studies in another MS can only be awarded for studies which are a continuation of education or training pursued for at least one year in the MS awarding the grant is liable to deter citizens of the Union from exercising their fundamental rights under Article 18(1) EC. In this

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[47] Case C-148/02 *Garcia Avello v Etat Belge* [2003] ECR I-11613.
[48] Case C-224/02 *Heikki Antero Pusa v. Osuuspankkien Keskinainen Vakuutusythio* [2004] ECR I-5763.
[49] See note 42 above.
[50] Case C-192/05 *K. Tas-Hagen, R. A. Tas v. Raadskamer WUBO van de Pensioen – en Uitkeringsraad*, Judgment of the Court of 26 October 2006, para. 32.
[51] Ibid, para 30.

respect, it constitutes an unjustified restriction on the free movement of Union citizens.[52] By moving beyond the discrimination model, the Court has thus managed to provide effective protection to Union citizens who have taken advantage of the opportunities afforded by the Treaty but have been placed at a disadvantage by legislation of their state of origin.

On the same day that the Court delivered its judgment in *Pusa*, the Directive *on the Right of Citizens and their Family Members to move and reside freely within the territory of the Member States* was adopted.[53] The Directive remedied the sector-by-sector, piecemeal approach to free movement rights by incorporating and revising the existing Directives and amending Council Regulation 1612/68.[54] Building on the rights-based approach characterising the rights of free movement and enhancing it by giving concrete form to the principle that residence generates entitlements, the Directive gave further substance to Union citizenship by establishing an unconditional right of permanent residence for Union citizens and their families[55] who have resided in the host MS for a continuous period of five years. The right of permanent residence entails a right of equal treatment with nationals in areas covered by the Treaty which will be extended to family members who are not nationals of a MS and who have the right of residence or permanent residence. In light of the typology of residence rights established by the Directive, shorter periods of residence exceeding three months entail a right of residence for Union citizens and their family members if they: a) engage in economic activity; b) have sufficient resources and comprehensive sickness insurance cover in the host Member States as non-active economic actors and c) are enrolled at a private or public establishment, have comprehensive sickness insurance cover and are self-sufficient in order to avoid becoming a burden on the social assistance system of the host MS. More importantly, a novel provision of the Directive provides that as long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host MS they should not be expelled, thereby incorporating the ECJ's ruling in *Grzelczyk*.[56] This provision attests Union citizenship's capacity to change our understanding of community membership and to prompt a rethinking of the meaning citizenship itself with a view to creating more inclusive forms of political association. Finally, for short periods of residence for up to three months, Union citizens shall have the right of residence without any conditions or any formalities other than the requirement to hold a valid identity card

[52] Joined Cases C-11/06 and C-12/06 *Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren*, Judgment of the Court of 23 October 2007. See also Case C-76/05 Schwarzand Gootjes-Schwarz, Judgment of the Court of September 2007.
[53] Directive 2004/38/EC, OJ 2004 L 158/77.
[54] Articles 10 and 11 of Council Reg. 1612/68 were repealed with effect from 30 April 2006.
[55] The definition of a 'family member' includes a registered partner if the legislation of the host MS treats registered partnership as equivalent to marriage.
[56] Ibid, Article 14.

or passport. In sum, the new Directive on free movement creates the institutional preconditions for a constructive approach to citizenship, which is more inclusive than nationality-based models of citizenship, be they of either liberal or republican or of a deliberative nature.[57] For this reason, the Directive makes provision for the possibility to extend the period of time during which Union citizens and their family members may reside in the territory of the host MS without any conditions.[58]

Notwithstanding the language of universality and the transformative impact of Union citizenship, however, we should not lose sight of the institutional and structural conditions that underpin the distribution and exercise of citizenship rights. Union citizenship may have been presented as a 'de-gendered', 'de-raced' and 'classless' concept, but, in reality, its scope reflects gender, race and class differentials; it excludes long-term resident third country nationals and limits the rights of residence of non-active economic actors who are not self-sufficient and wish to reside in another Member State for more than three months,[59] be they women engaging in domestic work and care for dependent relatives, unemployed people, or persons who have not acquired the necessary skills due to institutionalised racial discrimination in education and labour markets. In addition, differential levels of protection against racial discrimination in national legislations often function as a disincentive for the cross-border movement of ethnic migrant citizens.

Nevertheless, European citizenship should not be regarded as a finished institution. Its content is flexible and dynamic. For instance, the ECJ did not hesitate to establish a right of residence for mothers who are the primary carers of children who entitled to reside in a MS because they are either Union citizens or enrolled on educational establishments.[60] And as earlier argued, in *MRAX* the Court had an opportunity to take issue with strict interpretations of the visa requirement for third country national spouses and the ensuing restrictive practices adopted by the Belgian state, and to highlight that the residence rights of such persons do not derive from states' authorization of their entry.[61] Instead, they are based on their family ties with Union citizens. In this respect, the extensive rights which Community workers and their families enjoy by virtue of Community law have not only ruptured conventional understandings of citizenship, but they have also set an important precedent for third country nationals and other excluded groups. Directive 2004/38 has strengthened citizens' rights. True, even though the 'fundamental and personal right

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[57] However, egalitarian processes co-exist with the practice of exclusion of long-term resident third country nationals from the personal scope of Union citizenship.
[58] Ibid, Chapter VII, Article 39.
[59] See the typology of residence rights entailed by the Directive 2004/38.
[60] See *Chen* (*loc cit*, n 21) and *Baumbast* (*loc* cit, n 52) respectively.
[61] Case C-459/99, Judgment of the Court of 25 July 2002.

of residence is conferred directly on Union citizens by the Treaty', for periods of residence exceeding three months, Member States may require Union citizens to register with the competent of authorities for the issuing of a registration certificate or a residence card. But a failure to comply with such formalities can never constitute a ground for deportation. As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host MS they should not be expelled. If they have to rely on such assistance, the MS concerned has to take into account a number of considerations, such as the temporary nature of their difficulties, the duration of their residence, the personal circumstances and the amount of aid granted before deciding to adopt an expulsion measure. And it is explicitly stated that an expulsion measure should not be adopted against workers, self-employed persons or job-seekers, who can provide evidence that they actively seek employment and that they have a genuine change of being engaged, save on grounds of public policy or public security.

Member states may restrict the freedoms of movement and residence of Union citizens and their family members on the basis of the above mentioned grounds, but as the ECJ has consistently stated, the latter must be strictly interpreted and comply with the principle of proportionality.[62] These grounds cannot be invoked by a MS in order to serve economic ends. Measures taken on these grounds, that is, decisions denying leave to enter or ordering expulsion, shall be based exclusively on the personal conduct of the individual concerned and may never be imposed automatically.[63] When limiting the fundamental freedoms of Union citizens, MS must verify and confirm that a Union citizen's personal conduct poses 'a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society'.[64] The same assessment must take place with respect to third country nationals who are spouses of Community nationals, for whom alerts have entered in the Schengen Information System for the purpose of refusing them entry. In commenting on the relationship between the Schengen Implementing Convention and the Community law provisions on freedom of movement for persons, the ECJ has stated that both the Member State issuing an alert and the Member State that consults the Schengen Information System state must first establish that the presence of a person constitutes a genuine, present and sufficiently serious threat affecting one of

[62] Case C-100/01 *Ministre de l'Interieur v Aitor Oteiza Olazabal*, Judgement of the Court of 26 November 2002; Joined Cases C-482/01 and C-493/01 *Orfanopoulos v Land Baden-Wurttemberg* [2004] ECR I-5257.
[63] See the Opinion of Adv.General Mazak in Case C-33/07 *Gheorghe Jipa*, delivered on 14 February 2008, para. 23.
[64] Case 30/77 *R v Bouchereau* [1977] ECR 1999. In *Jipa*, Advocate General Mazak stated that restrictions imposed by a MS on right of exit of one of its nationals in order to prevent that person from returning within a certain period to the MS from which he was repatriated due to his irregular residence can only be justified on the basis of the personal conduct of the person concerned.

the fundamental interests of society.[65] Clearly, a member state cannot order the expulsion of a Union citizen as a deterrent or a general preventive action. Previous criminal convictions cannot in themselves constitute grounds for deportation, but past conduct may constitute evidence of a present threat to public policy, particularly if the individual concerned is likely to reoffend. By insisting on a strict interpretation of the public policy derogations, the ECJ has circumscribed significantly the Member States' discretionary power over nationals from other Member States. By so doing, it has reduced the risk of possible 'scapegoating' of 'foreigners' in order to satisfy public opinion. Yet national administrative practices forcibly deporting Union citizens by reason of an enforceable criminal conviction continue to take place, even though they clearly breach Community law. According to Advocate General Stix-Hackl, 'the German practice of automatic deportation, without regard for personal circumstances, justified on the ground of its deterrent effect on other foreigners and in breach of the fundamental right to family life breaches Community law'.[66] The new citizenship directive goes a step further in the direction of enhancing security of residence for Union citizens by requiring Member States to take into account a number of considerations, such as, the length of one's residence, his/her age, state of health, family and economic situation, social and cultural integration and the extent of his/her links with the country or origin before taking an expulsion decision and by stipulating that the residence of Union citizens or their family members can only be terminated on serious grounds of public policy or public security.[67] In addition, long-term resident Union citizens and minors may not be ordered to leave the territory of a Member State, except on imperative grounds of public security.[68]

The above developments clearly show that European Union citizenship matters. By invalidating ethnicity as a boundary marker and diluting the traditional link between the enjoyment of citizenship rights and the possession or acquisition of state nationality, European citizenship has enabled Union citizens to escape the closure of territorial democracy and to enjoy a wide range of associative relations across national boundaries. But the transformative potential of European citizenship does not stop at this point. European citizenship enriches the political imagination by bringing forth an alternative conception of community; namely, one that is based neither on ascriptive membership nor on the liberal notion of consent. Europe's deep diversity and the contestation surrounding its shape and future lead us to view the EU as community that is

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[65] Case C-503/03 *Commission v Kingdom of Spain*, Judgement of the Court of 31 January 2006.
[66] See the Advocate General's Opinion in Case C-441/02 *Commission v Federal Republic of Germany*, 2 June 2005.
[67] Article 28(1) of Directive 2004/38.
[68] Article 28(3) of Directive 2004/38.

held together by the concern and willingness of its various constituent units to participate in the collective shaping of the process of European integration and in institutional design. Such a conception of community does not only allow for disagreements and conflicts, but also shows that a sense of community can be created and sustained even though its members have different views about its nature and future.

In such a constructed and flexible community, European citizenship cannot be an institutional reflection of pre-existing, pre-political views about community membership and identity. Instead, it becomes a catalyst for the formation of a civic and reflexive European identity. As Preuss has remarked, 'citizenship does not presuppose the community of which the citizen is a member, but creates this very community'.[69] True, this perspective contradicts liberal nationalist perspectives by refusing to make the existence of a fully fledged, unified and bounded European demos the precondition of European democracy and citizenship. But its main advantage is that it accurately reflects the constructed nature of the European polity. European citizenship thus becomes a project to be realised as the 'grand conversation' about the political restructuring of Europe goes on.

Because European citizenship is seen as an issue of institutional design, it carries within it an ethical responsibility; the responsibility to be nourished by institutions, practices, rules and ideas embodying a commitment to social transformation, democratic reform and respect for the Other. In 1996 I used the term constructive citizenship in order to denote not only the constructed (as opposed to natural and objective) nature of European citizenship, but also its potential for new transformative politics beyond the nation-state.[70] One crucial feature of constructive citizenship is that it postulates a vision of inclusion and equal democratic participation in a community where difference is valued and appreciated - and not simply tolerated. Such a conception of citizenship embodies a novel and more flexible conception of demos: it separates the demos from ethnic and cultural commonalities and reconfigures it as a political process of participatory enactment. It is widely acknowledged that the European demos in formation can not be built on some form of tangible homogeneity among the European peoples or on mythical foundations.[71] Nor does it require some form of cultural conformity or a hegemonically imposed universalism as a requirement for admission. Rather, it can only be conceived of as a genuinely heterogeneous European public. By the latter, I mean a public that does not seek to level out differences or to

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[69] Preuss, 'Citizenship and Identity: Aspects of a Political theory of Citizenship', in Bellamy et al (eds), *Democracy and Constitutional Culture in the Union of Europe* (Lothian Foundation Press, 1995) p 108.
[70] Kostakopoulo*u*, *loc. cit*, n 18, 1996.
[71] But compare Smith, *loc cit*, n 11, 1992.

absorb other identifications and allegiances, but is committed to 'the pursuit of multiple connections of respect across persisting differences'.[72]

This has implications for citizenship theory and practice. Although nationality has been taken to be a proxy for political community, the free movement provisions of the Treaty, coupled with the grant of local electoral rights to Community nationals in the state of their residence, have severed the link between nationality and the enjoyment of equality of treatment and rights. Interestingly, the boundaries of national citizenship have not been relaxed 'from within' as to allow Community nationals to obtain citizenship via naturalisation, but they have been 'ruptured from outside' through the conferral of rights which are enforceable before national courts. Such developments have made domicile a more suitable criterion for membership in the European demos, than possession, or acquisition, of Member State nationality.

Domicile is based on ascertaining certain factual conditions from which an intention to make a particular territory the hub of one's interests and life can be deduced. As such, it is considerably less exclusionary than the nationality principle, since it would include as participants and respected members all those who have made a particular territory their home, the centre of their economic life, pay taxes, and are affected by state policies, and participate in a whole web of social interactions which undoubtedly generate expectations. If EU citizenship were conditioned on domicile, third country nationals, who have been residing on a lawful and permanent basis in the territories of the EU for five years, would have been transformed into European citizens. Several institutional actors have campaigned long and hard for such a reform, arguing that EU citizenship needs to be disentangled from state nationality and affirm itself as a true supranational institution, if it is not to be robbed of democratic quality and substance.

Despite the inclusionary effects and normative appeal of this reform, it is true that national executives see it as an anathema. This owes much to the resilience of nationalism which portrays the exclusion of non-national residents from the democratic process as a necessary counterpart to national membership. Liberal nationalism and contractarian moral theory have indeed been premised on the assumption that national societies are self-sufficient and self-enclosed schemes of social cooperation the membership of which is by and large confined to co-nationals. Accordingly, the exclusion of non-national residents from the rights and benefits of citizenship is seen as a necessary consequence of community's process of self-definition. But this assumption is deeply flawed. It is based on an odd circularity, whereby aliens are by definition

[72] Connolly, 'Cross-State Networks: A Response to Dallmayr', (2001) 30(2) *Millennium* 349. But a standard critique of cosmopolitanism has been that its tendency to view 'the 'people' as a flexible category; on this, see Hutchings, *International Political theory* (Sage, 1999), p 173.

outside the community by virtue of a prior self-definition of the community which separates ‘us’ and ‘them’, privileges ‘us’ over ‘them’ and , more importantly, screens out the various lines of connections and ties of interdependence between ‘us’ and ‘them’. If I am correct on this, then political exclusion and the transformation of democracy into ethnarchy might not be necessary consequences of a community’s right to democratic self-determination, but, instead, they may be contingent consequences of a contestable model of democracy which is rooted in the modern statist world and is, therefore, in need of correction in this millennium. The fact that Community nationals are free to choose their civic home within the European Union, have rights in the workplace and society of the host state and take part in local governments and European Parliament elections in the Member state of their residence lends credence to the above argument. Since the boundaries of the community have been extended to include nationals of other Member States, there is no a priori reason to justify the preservation of quasi-nationalist trappings on the institution of Union citizenship. And although one understands the political pressures and the intergovernmentalist logic underlying the restrictive personal scope of Union citizenship, such a compromise can only come at the expense of furthering the development of European citizenship.

From this it also follows that Community nationals’ partial franchise in the Member State of their residence must be reconsidered with a view to extending their political participation to national parliamentary elections. Some might argue, here, that admission of Union citizens to the ‘national community’ of citizens would undermine the distinction between nationals and aliens and dilute the national character of parliamentary elections. Others might be quick to point out here that such a reform might undermine national interests. Although such objections are reasonable from the standpoint of liberal nationalism, they need reassessment in light of the current state of European integration and the coordinated efforts to devise a European security policy. As noted above, in the eyes of European and national laws, Community nationals are neither ‘aliens’ nor ‘strangers’ who have settled within a state ‘without any interest in the country or its institutions’.[73] The recent Citizenship Directive 2004/38 has given concrete form to the principle that residence generates entitlements and had added further substance to Union citizenship, by establishing an unconditional right of permanent residence for Union citizens and their families who have resided in a host Member State for a continuous period of five years. Accordingly, limiting the political rights of permanent resident Union citizens, who are already members of the demos at the local level and permanent members of the community, hinders

[73] Compare Justice Fields’s statement in *Chae Chan Ping v United States* (The Chinese Exclusion Case), 130 US 581, 595-596.

democratic participation and deprives Community nationals of effective voice in the legislative forum.

Critics might argue, here, that Union citizens would be deprived of their right to consent to be part of national publics if they are automatically allowed to vote at national elections. However, this argument appears to overlook the fact that Union citizens are free to choose whether they will exercise their rights in the Member state of their residence, and a decision to do so would unequivocally demonstrate their consent. True, this might affect their voting rights in the Member State of their origin. But since several Member States do not permit their own nationals to vote or to stand as candidates if they reside abroad, Union citizens would welcome full enfranchisement in the Member State of their residence. The absence of political will seems to be a realistic impediment for such a reform. But reforms almost never emerge naturally; instead, they are the product of hard negotiation and political activism.

The possibilities of extending the demos at both the national and European levels by allowing Union citizens to vote at general elections in the member state of their residence and making long term resident third country nationals Union citizens respectively point to an alternative conception of citizenship; namely, citizenship as a network good. Existing definitions of citizenship (e.g. citizenship as status, citizenship as rights, citizenship as practice and citizenship as identity) embrace the idea that citizenship implies and flows from active connections, be they vertical, that is, between the individual and the state, or horizontal, that is, between the individual and the community (the nation) which endows him/her with identity, or both. The European Union legal order has extended the network and new connecting lines have been developed between individuals and normative orders beyond the nation-state. More importantly, individuals, in both their personal and corporate identities, can shift subject positions and activate their link with a normative system (i.e., the human rights regime or the EU) when their link with another normative system either is blocked or fails to yield a desirable outcome. Individuals are thus no longer locked within a single, unified and finite network commanding unqualified allegiance. Rather, they are members of and participants in multiple associative networks to which rights and obligations are attached. In addition, citizens are not only embedded within webs of interactions and reciprocal relations among other units, persons, and groups exhibiting mutual concern about the future of social co-operation, but their identities are also produced within such webs of social relationships.

The principle of domicile can best embody the conception of citizenship as a network good. Whereas national citizenship denotes formal membership to a nation state to which a person owes allegiance, domicile indicates the various connections and bonds of association that

a person has with a political community and its legal system from which rights and obligations flow. In this respect, domicile could either reflect the special connection that one has with the country in which (s)he has his/her permanent home or the connection one has with a country by virtue of his/her birth within its jurisdiction or of his/her association with a person on whom (s)he is dependent. As already noted, national citizenship has traditionally disregarded or downplayed the connections that resident non-nationals may have with a juridicopolitical system, even though they are subject to its laws and as much a part of the public as birthright citizens. By putting emphasis on the national cum political nature of citizenship, it is thus ill equipped to capture the complexity of membership, which results in individuals taking on an identity within a community by virtue of the social facts of living, working and interacting there, and the endemic variegation of human interaction. Yet the latter facts can no longer be disregarded in the 21st century. As earlier noted, a political community that is ostensibly committed to those ideals must ensure that all those consistently and permanently affected by laws and rules have a say in the political process of decision-making and are recognised as full and equal members. And although any democratic community has a legitimate interest in limiting political participation to persons who are concerned about its future and are committed to its welfare, residence, participation in the web of socio-economic interactions for an indefinite period of time and contribution, be it monetary or otherwise, are good evidence of this sort of commitment. In this respect, artificial distinctions based on the political formalities of membership which result in widespread exclusion from political participation tend to corrode the democratic credentials of political cultures.

V. Conclusion

The foregoing discussion has highlighted the importance of embracing a process-based and reflective orientation to the study of European Union citizenship. Instead of seeking to establish, and to defend, the primacy of a specific level of citizenship, thereby importing either consciously or unconsciously an ideological bias, it is much more fruitful to start from the assumption that European Union and national citizenships are interdependent and to examine their interaction and gradual transformation. In so doing, we do not have to deny that national attachments are important to people. But equally, we can no longer afford to ignore the effective transformation of migrant workers into Union citizens endowed with wide rights of equal treatment in the Member State of their residence and the growing stature of Union citizenship. Nor do we need to bracket their peculiarities, or otherwise conclude that the institutional differences of national and

supranational citizenships have little importance. Rather, by resisting speculative thinking about larger issues, such as whether the new developments entail the demise of national citizenship or the transcendence of the nation state paradigm, we are in a better position to understand the evolving nature of both citizenships, to venture in uncharted territories and even to gain a glimpse of what the future might bring. For, as I argued in the preceding section, European Union citizenship has made it possible to think 'the impossible'; that is, to rethink and transform citizenship. Thinking citizenship anew, reassembling the broken parts of the triptychon 'nation, culture and belonging' on more critical terms[74] and institutionalising a better citizenship model, that enhances the life chances of ordinary citizens by eliminating unnecessary forms of discrimination and the hardship they create, are thus the relevant and important issues for regional as well as statist governance.

[74] I borrow this from Somers, 'Rights, relationality and membership: rethinking the making and meaning of citizenship', (1994) 19(1) *Law and Social Inquiry* 63.

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