

# **WHEN A COUNTRY IS NOT A HOME: THE NUMBERED (EU CITIZENS) OTHERS AND THE QUEST FOR HUMAN DIGNITY UNDER BREXIT**

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## Abstract

EU citizens living in the United Kingdom and EU citizens-qua-UK nationals living in other Member States following the referendum on the UK's continued membership of the EU on 23 June 2016 became 'the numbered' others. Their identities were redefined overnight not by them, but by state authorities and their co-EU citizens. In this chapter, I trace the process of Othering of EU citizens, which had started several years before the referendum in 2016 and unravel the key moments, forces and strategies that made it possible by utilising a discursive theoretical approach. I argue that the quest for EU citizens' rights in the UK under Brexit, just like the quest for migrants' rights, is a quest as much for the realisation of the fundamental status of Union citizenship as for the effectiveness of the principle of respect for human dignity.

## 1. Introduction

Elias Canetti, the winner of the 1981 Nobel Prize for Literature, published a play entitled ‘The Numbered’ in 1984.<sup>1</sup> The ‘Numbered’ were citizens of an oppressed society who did not bear any names and were wearing lockets around their necks which supposedly included information on the years they had to live. This information was only accessible by the Keeper of the Lockets. One day, a citizen decided to rebel against the tyranny of unbearable determinism and broke his locket. To his amazement, he discovered that the lockets, which supposed to keep secretive information about life and death, were empty. In discovering this fact, the ‘Numbered’ regained their right to live.

‘You have empty lockets hanging round your necks. The lockets are empty. You have not even the years that you think you have. You have nothing. Nothing is certain. The lockets are empty. Everything is as uncertain as it ever was. He who desires to die, can die today. He who does not desire it, dies nonetheless. The lockets are empty. The lockets are empty,’<sup>2</sup> protested Fifty, a character in the play.

EU citizens living in the United Kingdom and EU citizens-qua-UK nationals living in other Member States following the referendum on the UK’s continued membership of the EU on 23 June 2016 became ‘the numbered’. Their identities were redefined overnight not by them – they continued to work, live and behave in the way they had done for years – but by state authorities and their co-EU citizens.

Excluded from participating in the referendum on the UK’s continued membership of the EU, notwithstanding their legitimate interests as employees, self-employed and service providers, taxpayers, members of the publics and stakeholders in the future of the countries they called ‘homes’, the way they were perceived and treated by the native populations, political elites, authorities and the media changed dramatically. They became Others against their will and despite their contributions over decades or years. The change was noticeable everywhere in the United Kingdom, even in metropolitan London.

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<sup>1</sup> Elias Canetti, *The Numbered: A Play* (London: Marion Boyars Publishers LTD, 1984).

<sup>2</sup> *Ibid*, at p. 86.

Animosity, resentment and even violence directed at them were reported frequently in the press.<sup>3</sup> Hate crime increased dramatically as well.<sup>4</sup>

For several months following the referendum the numbered were bystanders and invisible in the political arena despite the fact that their legal position was under threat; on the official exit day, they would no longer enjoy their EU citizenship rights in the UK and UK nationals living in EU Member States would lose their EU citizenship rights. NGOs were set up to articulate the concerns of the numbered, such as, inter alia, ‘the 3 million’ in the UK and ‘British in Europe’,<sup>5</sup> and to campaign for citizens’ rights.

It was nearly a year following the referendum that the issue of the arbitrary loss of EU citizenship rights became an articulated political issue and an official concern.<sup>6</sup> By that time, unfortunately, a discourse on a ‘natural’ cancellation of rights had become normalised. The Annex to the Recommendation for a Council Decision authorising the opening of negotiations for an agreement with the United Kingdom of Great Britain and Northern Ireland stated that: ‘...safeguarding the status and rights of the EU27 citizens and their families in the United Kingdom and of the citizens of the United Kingdom and their families in the EU27 Member States is the first priority for the negotiations because of the number of people affected and of the seriousness of the withdrawal for them’.<sup>7</sup> In the withdrawal negotiations, agreement was reached on many citizens’ rights provisions in a Joint Report of December 2017 and, subsequently, in Part II of the Draft Withdrawal Agreement of March 2018 (Article 8-35).<sup>8</sup> But these did not guarantee the existing EU law-derived rights of the numbered. The option of retaining EU citizenship rights for UK nationals abroad was ruled out on the basis of the existing Treaty provisions

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<sup>3</sup> See, for example, ‘Dutch woman with two British children told to leave the UK after 24 years’, The Guardian, 28 December 2016. It is worth mentioning here that the GQR poll conducted by the TUC in June 24-27 2016 revealed that ‘Leave’ voters were mainly concerned about the free movement of EU citizens and migration figures: <https://gqrr.aoo.box.com/s/xb5sfzo19btsn74vawnmu7mm033plary>.

<sup>4</sup> It was recently reported that hate crime has increased; 71,251 incidents took place in England and Wales in 2018; ‘Revealed: big rise in public racism since Brexit vote’, The Guardian, 21 May 2019, p. 1.

<sup>5</sup> ‘British in Europe’ has been campaigning for the protection of the rights of UK citizens resident in the EU 27 post Brexit; <https://britishineurope.org>.

<sup>6</sup> It was reported that the Secretary of State for International Trade had described EU nationals in the UK as one of the ‘main cards’ in Brexit negotiations; The Guardian, 4 October 2016.

<sup>7</sup> The Annex is available at [https://ec.europa.eu/info/sites/info/files/annex-recommendation-uk-eu-negotiations\\_3-may-2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/annex-recommendation-uk-eu-negotiations_3-may-2017_en.pdf).

<sup>8</sup> Commons Library Briefing 8269, ‘Brexit: the draft withdrawal agreement’, 26 March 2018.

which make EU citizenship conditional on the possession of Member State nationality (Article 20 TFEU) while EU citizens in the UK would automatically be reclassified as EU citizens living in a third country and thus subject to national migration legislation. In this respect, their re-classified status would have to be regulated by temporal conditionalities; that is, it would have to depend on the date of their arrival in the UK date thereby resulting in a gradation of rights before, during and after the UK's transitional period.<sup>9</sup>

Accordingly, the numbered became spectators of a policy of 'othering' which was beyond their control and comprehension since it simply disregarded their right to live in security and dignity in the country they called home. The threat of the involuntary loss of rights and equal status affected deeply their identity.<sup>10</sup> In fact, it could be argued their identity was essentially confiscated as their rights to their own past, their own time, their own life and their own future were progressively eroded.

A considerable number of 'the numbered' experienced this trauma; many published stories of mistreatment and personal accounts of anxiety and trauma as a result of being in limbo.<sup>11</sup> A considerable number also decided to depart the UK thereby creating labour shortages in many sectors of the economy and society, including the national health service and universities,<sup>12</sup> citing the presence of a hostile climate in society and discrimination in their treatment. The continuing uncertainty over their futures combined with the very real prejudices of the people which brought racism and xenophobia into the open have been cited as the main determinants of exit.<sup>13</sup> Most of them were reporting that they could

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<sup>9</sup> Such a re-classification has been a recurring phenomenon in citizenship and migration legislation. Changes in the legal categories often result in re-classifications and thus to loss of rights and/or status. Governments tend to justify such practices by invoking the necessity of bureaucratic re-evaluations of legal categories.

<sup>10</sup> Experts were keen to explore the role of international law in protecting EU citizens' rights. Arguments invoking 'acquired' or 'vested' rights under Article 70(1)(b) of the Vienna Convention on the Law of Treaties (VCLT) were raised but with no success since acquired rights apply only to the rights and obligations of states, not individuals. For a discussion on this, see Chapter 6: The protection of EU rights as acquired rights, Lords EU Committee, Brexit: Acquired Rights, 10th Report of Session 2016-17, 14 December 2016.

<sup>11</sup> The reader could access over 150 testimonies of EU citizens in the UK in the volume entitled 'In Limbo: Brexit Testimonies from EU Citizens in the UK'. It was edited by E. Remigi et al and was published by Byline Books (2<sup>nd</sup> edition) in 2018.

<sup>12</sup> '96% drop in EU nurses registering to work in Britain since Brexit vote', The Guardian, 12 June 2017; 'Fear of Brexit brain drain as EU nationals leave British Universities', The Guardian, 3 June 2017.

<sup>13</sup> For a very recent example see I newspaper, 27 March 2019, 'We are leaving. Brexit has brought racism into the open', p. 9. It was also reported there that in the year to the end of June 2018, 145,000 EU nationals had left Britain, an 18% increase on the previous year.

no longer recognise the country they called home and that society had changed. Deportations of EU citizens also increased. The overall message has been that EU citizens simply do not matter or that they are unwanted because ‘the country had been swamped with Europeans’.<sup>14</sup>

It is worth mentioning here, however, that EU citizens living in the UK were not alone in experiencing traumatic realities. Verena K. Brändle, Charlotte Galpin, Hans-Jörg Trenz studied anti-Brexit mobilisation particularly by young Britons and found that the Brexit vote was accompanied by a sense of bereavement.<sup>15</sup> Defending their European identity, British nationals protested against populist narratives of nationhood and belonging and expressed grief over the loss of their EU citizenship rights. According to Brandle et al, the pro-EU mobilisation showed that for most British people, questions of identity and belonging are experienced in a much more diffuse and ambivalent way and that a significant number of people value their European belonging.

While the EU Treaties and the entanglement of EU citizenship with state nationality did not permit the continuation of EU citizenship rights following the UK’s withdrawal from the European Union, international human rights law gave credence to the argument that the loss of EU citizenship could be seen to be a breach of human rights in so far as individuals were forced to abandon an essential part of their social identity and to accept adverse effects in their professional and private lives. The ECtHR’s judgment in *Kuric v Slovenia* certainly lends strong support to this argument.<sup>16</sup> In written evidence to the Lords EU Justice Sub-Committee in November 2017, Caoilfhionn Gallagher QC and Susie Alegre of Doughty Street Chambers argued that Article 8 of the European Convention on Human Rights, that is, the right to respect for private and family life, would be triggered by the loss of EU citizenship on

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<sup>14</sup> There were exceptions: Mr Sadiq Khan, the Mayor of London, one day after the referendum tweeted: ‘My message to the Europeans living in London – you are welcome here#LondonIsOpen’. The overall change in the political and social environment resulted in changes in EU citizens’ cognitive view of the world thereby altering their identities.

<sup>15</sup> ‘Brexit bereavement – European identity as a case of anti-populist counter-mobilisation’, Verena K. Brändle, Charlotte Galpin, Hans-Jörg Trenz, paper submitted for the conference on Brexit, Copenhagen 2017 (typescript with the author).

<sup>16</sup> Judgment of the Grand Chamber of the European Court of Human Rights on 26 June 2102. The Grand chamber found that the erasure of non-Slovene citizens from the registry of the Slovenian Government following its independence in 1991 had not been carried out in accordance with the law and had a serious impact upon the private life of the applicants. The legal vacuum in the independence legislation which had deprived the applicants of their legal status was an unjustified interference with private life.

the part of UK citizens. What was not argued at that time, however, was that the process of Othering of EU citizens in the UK was also affecting their fundamental rights under the ECHR (Article 8), the UDHR (Article 12) and the EU Charter of Fundamental Rights (Articles 1 on human dignity and 7 on respect for private and family life, respectively).

In this chapter, I wish to trace the process of Othering of EU citizens in the UK and to unravel the key moments, forces and strategies that made it possible. I should mention at the outset that it is not my intention, here, to provide an account of the negotiations between the UK and the EU and to examine the provisions of the Withdrawal Agreement, the ratification status of which continues to remain uncertain at the time of writing.

In tracing the process of Othering of EU citizens living in the UK, I adopt a discursive theoretical approach and argue that the quest for EU citizens' rights in the UK under Brexit, just like the quest for migrants' rights, is a quest as much for the realisation of the fundamental status of Union citizenship as for the effectiveness of human dignity. My institutional recommendations drawn from the Othering of EU citizens in the UK, as far as EU citizenship is concerned, are thus twofold. First, I would suggest the incorporation of Article 1 of the EUCFR on the protection of human dignity within Part Two TFEU, that is, within the Union citizenship provisions. Such an amendment would not only give more substance to Union citizenship and would need no connecting factor with EU law for its applicability, but it would also link Part II TFEU with Article 2 TEU which includes respect for human dignity as a foundational value of the European Union. Secondly, I would suggest the incorporation of Article 7 of the EUCFR within the ambit of EU citizenship in order to protect individuals and their familial relations. The right to respect for private and family life is a universal human right and fundamental for the exercise of EU citizenship rights by all within a Union which aims 'to promote peace, the values and the well-being of its peoples'.<sup>17</sup> I conclude the discussion in the final section with some related

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<sup>17</sup> Article 3(1) TEU.

reflections on the *Migrant Manifesto* articulated by Tania Bruguera, a Cuban activist and artist, and other collaborators in 2011, which has been part of the Immigrant Movement International.<sup>18</sup>

## **2. Constructing EU Citizens' Otherness: From the progressive framing of the European Other to externally imposed alienation**

### **2.1 The Politicisation of EU Mobility in the United Kingdom**

EU internal mobility is not, and has not been, a mere functional prerequisite of the internal market. Since the early stages of European integration, it was explicitly linked with the broader normative vision of establishing a 'European economic and social community' and 'European citizenship' (- a notion explicitly mentioned by Lionello Levi Sandri, the Vice-President of the Commission in 1961).<sup>19</sup> The Treaty on European Union (in force on 1 November 1993) made European Union citizenship a reality. Building on that, the Court of Justice of the EU has pro-actively sought to shelter the various aspects of citizens' lives from discrimination on the grounds of nationality and to promote their integration into the fabric of the host society. It has done so by upholding family reunification rights, granting mobile EU citizens the same tax and social advantages that nationals of the host Member States enjoy and protecting them from differential conditions of employment and from dismissal. Both secondary legislation and the case law have also ensured that their children and their spouses had access to educational opportunities, housing and trade union participation. In other words, free movement and residence EU rules have sought to shelter EU citizens' lives from the disadvantages that accompanied, and continue to accompany, 'alienage'.

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<sup>18</sup> 'M 99 Tania Bruguera and Immigrant Movement International', in J. Lack (ed.), *Why Are We 'Artists'? 100 World Art Manifestos* (St Ives: Penguin Radom House, 2017).

<sup>19</sup> The Free Movement of Workers in the Countries of the European Economic Community, Bull. EC 6/61, 5-10, p. 6.

The Member States have had to accept the onward movement towards the opening of their societal and political membership circles and the obligation to refrain from discriminating directly or indirectly on the grounds of nationality against EU nationals and from posing unnecessary restrictions and unjustified burdens upon citizens' activities. This has not been an easy process: nationalism has always drawn internal differences in response to contact with the Other in order to demarcate the boundaries of communities and to construct narratives about nationhood and belonging. Pre-political or cultural definitions of the nation place non-nationals outside the boundaries of the national community and make a number of requirements for their (qualified) admission.<sup>20</sup>

In the UK, the Conservative Party has had a history of adopting populist nationalistic narratives in order to construct various migrant communities as alien to the British way of life and to demand their assimilation thereby gaining electoral advantage.<sup>21</sup> But EU law simply outlawed such primordialist and cultural conceptualisations of nationalism. After five years of continuous residence in the host Member State, EU citizens become permanent citizens entitled to enjoy complete equality of treatment. During the crucial phase between three months (their residence is unqualified during the first three months) and five years of residence, their presence becomes a theatre of conflict for a number of claims, such as states' right to maintain the integrity of their welfare systems and to shelter them from the claims of 'outsider insiders', on the one hand, and claims to equal treatment that EU citizenship law and policy has generated that have exceeded the liberalising trend of the free market ideology, on the other. It is in this domain that we often witness a resistance on the UK and of other Member States to recognise them as co-citizens and holders of a right to equal treatment. Work-seekers are thus often seen as 'burdens', as opposed to not yet fully active economic actors, and the economically weak parents of children born in the country and attending schools there may be ordered to leave by state authorities. In this war of narratives and competing claims, the EU citizenship right of free movement becomes reduced to a

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<sup>20</sup> D. Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2008); *Citizenship, Identity and Immigration in the EU: Between Past and Future* (Manchester: Manchester University Press, 2001).

<sup>21</sup> Philip Lynch's book entitled 'The Politics of Nationhood: Sovereignty, Britishness and Conservative Politics' includes a wonderful explication of Enoch Powell's populist nationalism and the evolution of Euroscepticism within the Conservative Party (Houndmills, Basingstoke: Macmillan Press, 1999).



private impulse, a self-assertion colliding with the welfarist and national collectivist principles underpinning the host Member States.

EU citizens' legal positions were undermined in the main by two political parties, namely, UKIP and the Conservative Party. Both targeted them and their targeting coincided with the Labour Party's loss of power in 2010. Their Othering was progressively implemented by attempting a break with the established legal tradition of compliance with EU law rules during a decade<sup>22</sup> and the progressive construction of disentanglement. A process sequence of it allows us to discern three phases; namely, a) discourses about 'foreign' European criminality which became visible in the public arena since 2007/8 and were then realised in the law and policy on deportation, b) the 'welfare tourism' concern and the politicisation of intra-EU movement<sup>23</sup> which dismantled the culture of EU law based rights and culminated in a vote to leave the EU in the 2016 referendum, and c) the exclusionary impulse of the blending of populist anti-Europeanism with anti-migrant nationalism following the referendum on UK's EU membership on 23 June 2016. In the subsequent discussion I examine these three phases.

## **2.2 Politicisation and institutional sedimentation of the EU Other**

Although the Member States have used the public policy, public security and public health exceptions of the Treaty, as implemented by secondary legislation (now Directive 2004/38), to restrict free movement and to exclude EU nationals from entry and residence, the global economic crisis in 2008 provided a fertile ground for the dissemination of populist discourses in both the Netherlands and the UK, about the undesirability of the continued presence of 'foreign criminals' and EU citizens who had 'abused the hospitality and showed disrespect for the values' of the host community. This, in turn, led mainstream Conservative politicians to reconsider what public security might mean in the context of EU law and thus to limit the level of protection that could be provided to long-term resident EU citizens who committed criminal offences. The wider political environment of domestic unease due to austerity

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<sup>22</sup> Dora Kostakopoulou, 'What Fractures Political Unions? Failed Federations, Brexit and the Importance of Political Commitment' (2017) 42 *European Law Review*, 3, 339-352.

<sup>23</sup> The Conservative-led government attempted to recapture Conservative voters who had fled to UKIP.

and the migration-restriction targets of the Conservative electoral manifesto underpinned the eagerness of the UK's Home Office to expel EU citizens for minor offences which could not be legitimately included within the scope of the public policy exception and justified by the *Bouchereau* test developed by the Court of Justice of the EU.<sup>24</sup>

Concerns about the 'foreign criminality' of EU citizens were entangled with sustained negative depictions of EU citizens as welfare tourists and thus burdens on the UK's welfare system in 2012/13. When this intertwining happened, intra-EU mobility became clearly politicised and disenfranchisement ensued. Of course, limiting 'welfare tourism' had been featuring on the agendas of certain national governments for several years and the presence of protective legislation and case law did not always mean that EU rules are complied with in practice. While all this is true, one must also acknowledge that the UK Conservative-led government's propensity to question settled rules and to advance national protectionist arguments in order to exclude EU citizens or to limit their access to their legal entitlements. It is true that a 'right to reside test' as part of the assessment of habitual residence (the 'Habitual Residence Test') was implemented in 2004 requiring mobile EU citizens to submit compelling evidence that they met the criteria of being a qualified person. In March 2014, the UK removed the right of mobile EU citizens to access housing benefit and required a minimum earnings threshold in order to qualify as a 'worker' under the Citizens Directive. At the same time, the UK Home Office started using begging and rough sleeping as justifications for the deportation of EU citizens and Roma EU citizens were systematically targeted.

Such policies and practices were often justified on the basis of the alleged need to tame the discursive power of populist nationalist parties and groups which were politicisers of all issues that could arouse anti-migrant sentiment in a difficult economic climate. The media also picked up those negative messages about EU migration and intensified them following 2012 when transitional labour market

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<sup>24</sup> Case 30/77 R v *Bouchereau* [1977] ECR 1999. For a detailed analysis, see Dora Kostakopoulou, 'Co-creating European Union Citizenship: Institutional Process and Crescive Norms', in C. Barnard et al (eds.), (2012-2013) 15 *Cambridge Yearbook of European Legal Studies*, 255-282.

restrictions were being lifted for Romanian and Bulgarian workers.<sup>25</sup> Romanians, in particular, were not represented fairly. They were associated with criminality and economic poverty in the media<sup>26</sup> and were depicted as ‘socio-political and cultural “problems”’.<sup>27</sup>

Mr David Cameron, the British Prime Minister, who had promised a referendum on the UK’s continued membership of the EU in 2013 thereby succumbing to pressures from the Eurosceptic wing of the Conservative Party, proceeded with its realisation following his re-election in 2015 and the ‘renegotiation of the UK’s relationship with the EU’. By 2015, EU citizens as a whole had been officially redefined as migrants and in certain right-wing newspapers as immigrants. The potential destabilisation of their personal lives and the erosion of the culture of European Union law rights were under way. The discursive construction of EU citizens as welfare burdens was prevalent in Mr Cameron’s ‘demands’, such as an ‘emergency break’ on intra-EU mobility and the imposition of more controls on EU citizens. Under the shadow of a possible Brexit, the Court of Justice did not hesitate to adopt a stricter interpretation of the Citizenship Directive.

In *Dano* general exclusions from social benefits for economically inactive mobile EU citizens in Germany were deemed to be lawful while on 15 September 2015 the Grand Chamber ruled that Germany lawfully denied certain social assistance benefits to four Swedish nationals, Ms Alimanovic and her three children, who were born in Germany, who had only temporary employment for less than a year and were not looking for employment.<sup>28</sup> The climate within which the European judiciary operated at that time necessitated the signal that the EU mobility regime does not condone ‘benefit tourism’. On 25 February 2016, the Court of Justice reinforced this message by ruling that an

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<sup>25</sup> Alex Balch and Ekaterina Balabanova, ‘Ethics, Politics and Migration: Public Debates on the Free Movement of Romanians and Bulgarians in the UK, 2006–2013’ (2014) 36 *Politics*, 1,19–36.

<sup>26</sup> Dora Vicol and William Allen, *Bulgarians and Romanians in the British National Press: 1 Dec 2012 - 1 Dec 2013*. Migration Observatory report, Oxford, COMPAS, University of Oxford, 2014. [http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Report-Bulgarians\\_Romanians\\_Press\\_0.pdf](http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Report-Bulgarians_Romanians_Press_0.pdf)

<sup>27</sup> Bulgaria and Romania joined the EU in 2007 following the 2004 EU enlargement which included the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia.

<sup>28</sup> Case C-333/13, *Dano*, Judgment of the Court of 11 November 2014, Case C-67/14, *Alimanovic*, Judgment of the Court of 15 September 2015. For a detailed analysis, see Herwig Verschueren, ‘Preventing “Benefit Tourism” in the EU: A Narrow or Broad Interpretation of the Possibilities offered by the ECJ in *Dano*?’ (2015) 52 *CMLRev.*, 363.

economically inactive citizen can be automatically excluded from entitlement to social assistance during the first three months of residence in the host Member State.<sup>29</sup> Unlike its previous case law, the Court's formalist reasoning in *Dano*, *Alimanovic* and *Garcia-Nieto* indicated that the new economic and political landscape propelled both judicial restraint and the imposition of limitations in the scope of transnational financial solidarity.<sup>30</sup>

Regardless of such concessions on the part of the Court of Justice and the other European institutions which accommodated many of Mr Cameron's demands, the EU referendum campaign was dominated by UKIP's anti-European and anti-migrant messages as well as misinformation and propaganda. On 23 June 2016 51% of the people voted in favour of leaving the EU, which the Conservative Party quickly interpreted as a mandate to end the free movement of labour by exiting the single market and limiting the rights of resident EU citizens and their families. At that moment, EU citizens had officially become "foreigners". Possessing the nationality of another Member State became a good enough justification for discrimination, mistreatment, hostility in workplaces, towns, cities and neighbourhoods and for their portrayal as "burdens" and deportable "outsiders."

The price of the new political and social environment was twofold, namely, growing hostility towards EU citizens and their EU law-derived rights and deep societal divisions. Disunity in society and the erosion of the EU citizenship status made EU citizens experience their everyday lives as a battlefield: at any point in time one could be confronted with abuse and/or rising hostility.<sup>31</sup> They avoided reading non-British newspapers on their mobile or talking in their home language on the tube, many were stopped by strangers in the streets and told to 'go home' and that they 'do not belong here' while others were suspended from work on false and malicious allegations designed to destroy their reputation and careers. Blogs and reports in the media provided a panorama of the disruptions of the integral space of human relationships and democratic life which led many to leave the UK. Social relations could not

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<sup>29</sup> Case C-299/14, *Garcia-Nieto and Others*, Judgment of the Court of 25 February 2016.

<sup>30</sup> Daniel Thym, 'The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens' (2015) 52 CMLRev., 17.

<sup>31</sup> An interesting read was 'Our rudeness to European allies is shameful', Max Hastings, *The Times*, 31 October 2018.

withstand the strain; they became fractured as bigotry was raising its ugly face. At the same time, anti-migrant sentiments were associated with a new-found freedom on the part of the indigenous population; the freedom to 'say or to do what they wanted' without restraint and without being accountable. Those EU citizens who resolved to live on had to face an increasingly hostile anti-EU-migration public discourse and public attitudes which often made it difficult for them to cope with the demands of ordinary life at work and at home. The Government's unwillingness to confirm the security of their status for a lengthy period of time coupled with the anti-EU tone of politics transformed the numbered EU citizens into a precariat and undoubtedly reduced their sense of well-being in everyday life.

Otherness was painful; the numbered EU citizens had to confront every day experiences taking place under an externally imposed reality which was not only very different from the numbered's own realities (- and as such difficult to cope with) but also questioning their self-understanding of their past lives and realities to the extent of making them look illusionary and, thus, unreal. As the anti-migration and anti-EU rhetoric intensified and the irrational mood of taking back control from imagined enemies was spreading, it was getting increasingly difficult for EU citizens to negotiate a safe space away from the national 'collective hallucination' on the one hand, and the emotions generated from the depreciation of their identity and their contributions to society and economy and their wounded dignity, on the other. In the eyes of the nativist majority and in accordance with the reductionist and disassociative understanding of political community characterising populist nationalism, they were simply the numbered Others. Nothing else.<sup>32</sup>

Having discussed the political and media discourses on Othered EU citizens, the populist nationalist rhetoric and the 'forcible ethnisation' of the population in the UK, however, one cannot but wonder how a progressive political narrative could be articulated in such a way that makes a

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<sup>32</sup> Ortega y Gasset has correctly observed in connection with 'extremism as a way of life' that '...Here is the formal and inevitable sense in which desperation becomes extremism. Extremism is that way of life in which one tries to live only on one extreme of the vital area, with a subject, in a dimension or with a theme that is purely peripheral'; *Man and Crisis* (London: George Allen and Unwin, 1957) chapter 9, p. 45. He continued on page 152 by arguing that 'all extremism inevitably fails because it consists in excluding, in denying all but a single point of the entire vital reality. But the rest of it, not ceasing to be real merely because we deny it, always comes back and back and imposes itself on us whether we like it or not'.

powerful case for valuing and respecting human beings instead of perceiving them as Others, that is, enemies or welfare tourists or unreasonable burdens. This is the main focus of the subsequent section.

### **3. Human Dignity and the Migrant Manifesto of 2011**

Throughout history, as both a membership category and a formal institution, citizenship has been raced, ethnicised as well gendered. Unlike citizenship, however, human dignity has no race, gender, ethnic identity or nationality. Otherwise put, human dignity knows no Otherness. In this respect, Article 1 of the EU Charter of Fundamental Rights which states that ‘Human dignity is inviolable. It must be respected and protected’ applies to everyone in the EU without distinction, subject, of course, to the jurisdictional delimitation of Article 51 EUCFR, as interpreted by the CJEU.<sup>33</sup> The unacceptable treatment of EU citizens resident in the UK during, and following, the referendum of 23 June 2016 makes it imperative for European Union institutions to insert Article 1 EUCFR in Part II TFEU thereby signalling that respecting the dignity of Union citizens qua human beings is an unconditional requirement in the EU.

EU citizens are moral equals and should not be treated disrespectfully. Nor should they be demoted to rightless persons and object of the arbitrary choices made by state elites or a (slim) political majority. Such a Treaty amendment could be procured during the next IGC which would revise the Treaties in conjunction with a simultaneous decision to incorporate the right to respect for private and family life (Article 7 EUCFR) within the ambit of EU Citizenship provisions. A European Union based on the rule of law and constitutional values cannot allow its citizens and their family members to be subject to xenophobia, racism, abuse, disrespect, contempt and hatred, in short, to all those unacceptable manifestations of Othering which took place in the UK under Brexit. EU citizenship has evolved beyond free movement and thus it is not enough for individuals in the EU to proclaim: ‘I move and thus I am

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<sup>33</sup> Case C-617/10 *Aklagaren v Hans Akerberg Fransson*, Judgement of the Court of 7 May 2013. See also Case C-619/18 *Commission v Poland*, Judgment of the Court of 24 June 2019.

an EU citizen'. EU citizens should be able to say: 'I am an EU citizen and must be treated with respect, dignity and in a non-discriminatory way'.<sup>34</sup>

It is worth mentioning here that human dignity has inspired the work of Tania Bruguera, a Cuban artist and activist. Bruguera has sought to bring migrants' rights within the scope and ambit of human dignity by launching the Immigrant Movement International in New York in 2005. As an international NGO, the movement organises events and campaigns, provides legal advice and hosts workshops and conventions. During a convention in November 2011, the 'Migrant Manifesto' was drawn.<sup>35</sup> It is a short document consisting of ten articles and makes a powerful case for human empathy, international connectivity, fundamental rights and respect for human dignity. Accordingly, the manifesto strongly counsels against the downgrading, or limiting the visibility, of the contributions of migrants to societies, economies and politics, and the prevalence of moral double standards, hypocrisy and racism at the expense of people's humanity. Due to space limitations, I would like to cite here four articles of the Manifesto which capture nicely counter-Othering objectives and practices and are apposite to the predicament of EU citizens living in a country (the UK,) which they previously called 'home', as follows:

- 1. We know that international connectivity is the reality that migrants have helped create, it is the place where we all reside. We understand that the quality of life of a person in a country is contingent on migrants' work. We identify as part of the engine of change.*
- 2. We are all tied to more than one country. The multilaterally shaped phenomenon of migration cannot be solved unilaterally, or else it generates a vulnerable reality for migrants. Implementing universal rights is essential. The right to be included belongs to everyone.*
- 3. We have the right to move and the right to not be forced to move. We demand the same privileges as corporations and the international elite, as they have the freedom to travel and to*

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<sup>34</sup> Compare Case C-168/91 *Konstadinidis* [1993] ECR I-1191 and in particular para 46 of A. G. Jacobs's Opinion delivered on 9 December 1992 which stated that EU nationals are entitled to say 'civis europeus sum' and to invoke that status in order to oppose any violation of their fundamental rights.

<sup>35</sup> n. 17 above, pp. 468-460.

*establish themselves whenever they choose. We are all worthy of opportunity and the chance to progress. We all have the right to a better life....*

*10. We witness how fear creates boundaries, how boundaries create hate and how hate only serves the oppressors. We understand that migrants and non-migrants are interconnected. When the rights of migrants are denied, the rights of citizens are at risk.*

The above provisions place the migrant condition within the ensemble of ordinary human experiences and thus (de)construct it as the human condition or to be more precise as what being human and behaving decently mean. Policies, practices and laws exist for human beings and should be designed and appraised on the basis of their functionality to advance human beings' rights and the quality of their associated life. In fact, the ultimate yardstick for assessing any institution or policy or ideology is the effect produced on the conduct of the people who live under them and, in this respect, the Brexit project attracts only negative scores. It has brought into surface the most undesirable human passions, prejudice and resentment on the part of the majority and the governing elites and I am not quite sure whether 'the numbered' Others, that is, resident EU citizens, will ever forget the trauma of their externally imposed alienation. A generalised sentiment reported in the press again and again is that even if all matters concerning their 'settled status' are settled, something has profoundly shifted in their relationship with the country they called 'home'.



