

## **Homo objectus, homo subjectus and Brexit**

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### **1. Introduction**

When the result of the British referendum on EU membership was confirmed, on the morning of 24 June 2016, the people in the United Kingdom woke to an altered nation. Citizens of the European Union who had for decades lived as equals with citizens of the UK felt the ground shift beneath their feet: from equal legal citizen-subjects, they were *becoming* different and foreign. The objectification of the ‘other’, as an outsider without equal entitlement or claim to the laws of the nation-state, had even before the Brexit vote been a reality for persons living in the UK without citizenship, permanent status or access to citizenship, namely those who were without documentation and legal immigration status. Their ‘irregular’ position in the nation-state falls between the gaps of legal categories that look to citizenship as recognition of status and subjectivity under the law. The EU citizen in a post-referendum Britain likewise risks being left in such an ‘irregular’ space.

Previously recognised as subjects of the law, these individuals have the threat of non-recognition within a national law that sees them as outsiders, as objects objectified by their condition. In other words, homo subjectus is transformed into homo objectus. Yet the anticipated transition of homo subjectus into a rightless homo objectus can only take place in an unambiguous way if all the movers and actors of its initial (subject) and terminal (object) situations are the same. This is even more the case if the activity of the social life that constitutes status – including work and economic, social reproduction – is only recognised through formal

legal distinctions and these are allowed to be the sole demonstration of democratic participation. If, on the other hand, all those affected by the outcome of the Brexit vote, in this particular example, who had been precluded from taking part in it could embrace a status of *homo activus* and take part in shaping the subsequent unfolding of the event, then we could end up with multiple events or multiple endings.

To this end, we argue that the relationship between *homo subjectus* and *homo objectus* is neither predetermined nor inevitable. It is, rather, interrupted by *homo activus*. The *homo activus* opens up processes that are unknown but which offer the possibility of democratic participation reflective of the individuals who are living and working in a given territory, in the United Kingdom, away from predetermined subjectivities and restrictive categories of identification.

## **2. Homo objectus, homo subjectus and conditioning events**

In 1920 Alfred North Whitehead published a companion book to his previous work, *An Enquiry concerning the Principles of Natural Knowledge*. It was entitled, *Concept of Nature* and included a chapter on ‘Objects’.<sup>1</sup> In this chapter, Whitehead mapped the relation between objects and events and in so doing he used the term ‘ingression’. He wrote, ‘I am using the term ingression to denote the general relation of objects to events. The ingression of an object into an event is the way the character of the event shapes itself by virtue of the being of the object. Namely, the event is what it is because the object is what it is; and when I am thinking of this modification of the event by the object, I call the relation between the two “the ingression of the object into the event”’.<sup>2</sup>

The ingression of objects into events is more visible in political life than in nature. This is because political life becomes crystallised in institutions, practices and policies following events

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<sup>1</sup> *Concept of Nature* (Cambridge: Cambridge University Press, 1920).

<sup>2</sup> *Ibid*, p. 144.

that modify relations and turn objects into subjects.<sup>3</sup> Events could also undo meaningful relations and transform subjects into objects. In both cases, institutions, law and policies are undergoing fundamental change. For instance, the entry into force of the European Communities Act in 1972 made UK and EU nationals the subjects of rights derived from European Community law. Free movement, one of the four fundamental freedoms,<sup>4</sup> became the cornerstone of the building of an internal market and an EU-wide citizenship<sup>5</sup> anchored on mobility and with this the desirability of crossing borders with a view to creating new opportunities for individuals and more prosperity and openness for communities.

The application of the new legal order to the United Kingdom made individuals holders of rights that authorities in the UK and other Member States had to recognise and to respect. Human mobility was no longer viewed as a nuisance or a problem. Instead, it was seen as a positive and enriching socio-political and juridical reality. It had to be actively encouraged and promoted as a source of great strength for the economy, society and the individual. It is true that mobility has always been differential; in the main it is 'privileged' EU citizens who have taken advantage of their free movement rights. But its regulation and promotion by a supranational body, such as the European Union, supersedes national autonomy over the grant of entry and residence rights to EU citizens and their family members and, recently, the residence rights of third country national parents of children who are EU citizens.<sup>6</sup>

The UK's 1974 referendum on the continuation of its EC membership did not alter this legal reality. The decision in favour of continued membership led the then Prime Minister, Harold Wilson, to state in the House of Commons that 'the historic decision has been made...We

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<sup>3</sup> See the introduction by S. Bardutzky and E. Fahey on 'Framing the Subjects and Objects of EU Law'.

<sup>4</sup> The other three freedoms are free movement of goods, capital and services.

<sup>5</sup> The Maastricht Treaty (1 November 1993) institutionalised European Union citizenship and declared that 'every person holding the nationality of a Member State shall be a citizen of the Union'; formerly Article 8(1) EC, then Article 17(1) EC on renumbering and now Article 20 TFEU.

<sup>6</sup> Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091; Case C-200/02 *Zhu and Chen* [2004] ECR I-9925; Case C-34/09 *Zambrano*, Judgment of the Court of 8 March 2011.

look forward to continuing to work with [our partners] in promoting the Community's wider interests and in fostering a greater sense of purpose among the Member States'.<sup>7</sup> That event thus did not change the homo juridicus status of EU nationals. In contrast, the Brexit outcome of the referendum on 23 June 2016 gave rise to the prospect of EU citizens becoming former subjects of EU law rights and thus objects when the withdrawal agreement between the UK and the European Union enters into force.

Of course, critics might argue here that the transformation of homo subjectus into homo objectus owing to active conditioning events is neither a new nor an unexpected development. States have not hesitated to denationalise even their own citizens under the shadow of oppressive ideology and/or fear about their continued security. For example, a century ago, France withdrew the French nationality of 'citizens of enemy origin' (in 1915).<sup>8</sup> Belgium proceeded to denaturalise non-patriotic citizens in 1922 while Italy denaturalised dissidents on the ground that they were 'undeserving of Italian citizenship' in 1926.<sup>9</sup> Austria and Germany enacted similar laws in 1933 and 1935, respectively. Following such events, the homo juridicus status of citizens was erased; they were relegated outside the scope of the law and were given a non-recognised status objectus. As Chief Justice Warren noted with respect to processes of denationalisation in the US in the late 1950s, such events result in 'the total destruction of the individual's status in an organised society'.<sup>10</sup>

Although events may not always be effective and the forces of change are not always eruptive and thus clearly visible, one must not lose sight of how easy it is for political life to change direction and to transform equals into unequals<sup>11</sup> and 'unwanted objects'.<sup>12</sup> In such cases,

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<sup>7</sup> Cited in D. Dinan, *Ever Closer Union: An Introduction to European Integration* (Houndmills: Palgrave, 1999), 74.

<sup>8</sup> Bill to Revoke Naturalisation in France, *The Law Times*, Vol. 188-21, 2 January 1915.

<sup>9</sup> For more detail on denaturalisations, see <http://www.newworldencyclopedia.org/entry/Naturalization>.

<sup>10</sup> *Trop v Dulles*, 356 US 86, 101 (1958).

<sup>11</sup> I have borrowed this from D. Kostakopoulou, 'Ideas, Norms and European Citizenship', (2005) 65(2) *Modern Law Review* 233-67.

new practices are invented, new policies are devised and new documents are produced. Not long ago, developments in Eastern Europe showed the ‘ingression’ of subjects into events and their transformation into objects. Former citizens, who were Russian speaking, became non-citizens in the newly independent countries of Estonia and Latvia in 2004 and, in 1992, 18,000 permanent residents originating from other republics of the former Yugoslavia, mostly of non-Slovene or mixed ethnicity, were ‘erased’ in Slovenia, that is, they were removed from the register of permanent residents thereby becoming quasi foreigners.<sup>13</sup> This meant that the status of EU citizenship was not available to them.<sup>14</sup> In addition, Hungary’s contemplation of granting external or extra-territorial citizenship to persons of Hungarian origin living in non-EU states, such as in Serbia, Montenegro and Ukraine, thereby altering unilaterally the personal scope of EU citizenship, gave rise to concern.<sup>15</sup>

Human vulnerability increases when political events lead to authoritative decisions and policies that undo, or threaten to undo, legal rights and that unsettle human lives. In such cases, the temporal happening is not simply a process, but is also a variation in so far as it alters legal realities. The latter manifests itself in the removal of rights protection.<sup>16</sup> This is noticeable in the UK following the announcement of the outcome of the EU membership referendum on 23 June 2016. As both the status of homo subjectus and the practices associated with that status are to be

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<sup>12</sup> Peg Birmingham, *Hannah Arendt and Human Rights. The Predicament of Common Responsibility* (Bloomington, IN: Indiana University Press); Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001); Dora Kostakopoulou, *Citizenship, Immigration and Identity in the European Union: Between Past and Future* (Manchester: Manchester University Press, 2001).

<sup>13</sup> In 1999, the Slovenian Constitutional Court declared the erasure unlawful and unconstitutional; Case number U-I-284/94 at <http://odlocitve.us-rs.si/en/odlocitev/AN01683>.

<sup>14</sup> Instead, imperfect solutions were sought in the lesser status of quasi-civic citizenship entailed by Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third Country Nationals who are Long-Term Residents in the EU (OJ L 16/44 of 23 January 2004) and the EU anti-discrimination directives (Directive 2004/43/ EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin [2000] OJ L 180/22 and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16). Yet, the panoply of rights afforded by these Directives is imperfect and partial.

<sup>15</sup> Article 16 of the Hungarian Constitution establishes the state’s responsibility to support Hungarians living abroad, but the 2001 legislation granted them limited access to the Hungarian labour market thereby falling short of awarding state nationality.

<sup>16</sup> Compare Hannah Arendt, *The Origins of Totalitarianism* (New York: Houghton Mifflin Harcourt, 1976).

negotiated following the activation of Article 50 TEU, EU citizens living permanently in the UK as well as UK nationals living in other EU Member States are struggling to come to terms with the unexpected transition from recognised subjects to objects of governmental negotiations and actions. As a consequence, there has been a surge in naturalisation applications in the UK and certain Member States.

Making EU citizenship conditional on domicile for a period of five years in the territory of the EU would make the social fact of community membership a true determinant of belonging and provide an answer to the insecurity of UK nationals living in host Member States. Although this may be deemed to be a radical proposal unlikely to meet with national executives, it has been proposed and defended since the 1990s and has featured on policy agendas at the European level.<sup>17</sup> However, this proposal would not assist EU citizens living in the UK who would have to opt for either naturalisation or for permanent leave to remain in the United Kingdom.

While naturalisation might furnish a secure and fully recognised status for certain EU citizens, one cannot sidestep the fact that their transition from subjects to objects of governmental negotiations and actions has happened without their consent and involvement since they were excluded from taking part in the referendum on 23 June 2016. The new reality will thus be constructed in their name but without them. Their gradual disassociation and their ensuing non-recognition are acts ‘done to them’.<sup>18</sup> They have no power to contest this development and to object to their de-citizenisation and reclassification as either third country nationals or EU nationals living in a third country. A decision taken by a transient majority in late June 2016, therefore, effectively shatters individuals’ lives, the life horizons they have built following

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<sup>17</sup> It was suggested by the European Union’s Migrants Forum in its proposals for the revision of the TEU at the 1996 IGC. For early normative justifications of this policy option, see D. Kostakopoulou, ‘Towards a Theory of Constructive Citizenship in Europe’, (1996) 4(4) *Journal of Political Philosophy*, 337-358 and R. Rubio-Marin and J. Monar’s contributions in M. La Torre (ed.) *European Citizenship: An Institutional Challenge* (The Hague: Kluwer, 1998).

<sup>18</sup> Bauman observed that the other ‘becomes an irrelevant presence, a non-recognised being, a non-admitted existence’; ‘Effacing the Face: On the Social Management of Moral Proximity’, *Theory, Culture and Society*, Vol. 7 (1990), 5-38, at 25. See also Emmanuel Levinas, ‘La Trace De L’Autre’, translated by A. Lingis, *Tijdschrift voor Philosophie* (September 1963), 605-23.

decades of residence, socio-economic and (partial) political membership in the host Member States and the future of their families.

In addition to the gradual process of ‘othering’ that happens without their consent in the place of their residence, they also experience a temporal violence. They become distanced in time; they are aware that official discourses redefine them as ‘unwanted’ due to their ‘foreign’ nationality, but, at the same time, their inability to uproot themselves, to live anywhere else and to establish new life horizons creates a ‘uchrony’, that is, a world of no time. While in the past, they could easily oscillate between the past and the future, their memories and their expectations and dreams, the flow of this process has now been seriously disrupted. The disruption is not only caused by the absence of a political commitment guaranteeing them security of residence and thus by the ambiguity of the future; it is also caused by the fact that in the temporal process of going backwards and forwards they can no longer contemplate a smooth transition from the past to the present and to the future. There has been a disruptive and path-altering ‘interval’, that is, a new reality brought about by an accidental happening, namely, the Brexit referendum decision. Because the succession of ‘tomorrows’ cannot slide smoothly into the past, EU nationals living in the UK and UK citizens living in the EU experience disorientation and distress.

Nevertheless, a national identity is just one of the ‘multiple constituents’ of selfhood.<sup>19</sup> To ignore this reality would be tantamount to disregarding the concreteness of human beings and thus the concern and respect they deserve.<sup>20</sup> While it is so true that for centuries peoples’ lives have been monopolised, and to a large extent, disregarded by all sorts of elites, monarchical, ecclesiastical and state elites as well as political parties, one cannot expect that in the 21st century people will merely observe their lives drifting away according to collective currents. Nor should

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<sup>19</sup> J. Dewey, *Human Nature and Conduct* (Mineola, New York: Dover Publications, 2002 [1922]), at 138. Here I have drawn on D. Kostakopoulou, ‘When EU Citizens Become Foreigners’, *European Law Journal*, Vol. 20(4) (2014), 447-463.

<sup>20</sup> I. Kant, *Groundwork of the Metaphysics of Morals* (trans. H.J. Paton) (New York and London, 1964[1948]); R. Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977); *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985).

they be expected to be willing to exchange their real lives as EU citizens for the imaginary ones which their own states of origin or residence may harbour for them. For in these lives, forged over years and often decades, ‘there is too much of them and too little of their country of origin’.<sup>21</sup>

### **3. Recreating democracy: homo activus**

There exists a visible democratic deficit in the forthcoming transformation of homo subjectus into homo objectus caused by the Brexit referendum decision. All those profoundly affected by it in the UK were not allowed to take part in the referendum, while more than a few British expatriates in other Member States encountered problems in registering their votes. From a pragmatic point of view, one might be inclined to advise the acceptance of the new situation and counsel flexibility in coping with its implications.

Yet, self-governing societies do not merely accommodate events; they display determination and inventiveness in enhancing democratic practices and refusing to dismantle democratic legal orderings which regulate the lives of millions of human beings. In this respect, although one is more often than not tempted to conclude that an event, be it political or otherwise, has one determinate ending, political inventiveness and an activist approach to law and politics may require us to contemplate the possibility of multiple endings.<sup>22</sup>

We recall, here, an observation made by Rikker: ‘...if all the movers and actors of the initial situation are not in the terminal situation, then the event ends more than once, so that there are really as many events as endings. This means that it is impossible to generalise about events with multiple endings because the scientist does not know which of these events to include in the

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<sup>21</sup> The phrase is borrowed from G. Santayana, *Middle Span: The Background of My Life* (London: Constable, 1947), at 7.

<sup>22</sup> It is possible that an event may never have an end if the end in view becomes absorbed by its multiple and diffuse implications.



generalisation. Similarly, if movers and actors other than those in the initial situation are in the terminal situation, then the event must begin more than once, with similar consequences for generalisation.<sup>23</sup>

In other words, the anticipated transition of homo subjectus into a rightless homo objectus can only take place in an unambiguous way if all the movers and actors of its initial and terminal situations are the same. If, on the other hand, all those affected by the outcome, who had been precluded from taking part in it, could embrace the status of homo activus and take part in shaping the subsequent unfolding of the event, then we may end up with multiple events or multiple endings. Similarly, a different evaluation of the implications of an event and its relation to a different set of circumstances or situations would give us a different ending. What is suggested here is not a process of manipulation of the passage of time. We suggest an interruption in order to prevent injustice and to preserve the freedom of relating to, and co-operating with, human beings without discrimination on the ground of nationality.

Beyond the statuses of 'subject' and 'object' lies the possible ingression of homo activus into events with a view to shaping them in ways that enhance the democratic way of life. For, as Dewey has observed, 'everything which bars freedom and the fullness of communication sets up barriers that divide human beings into sets and cliques, into antagonistic sects and factions, and thereby undermines the democratic way of life'.<sup>24</sup> Homo activus thus takes part in producing the 'coming time'. This is not the same as the process of becoming a subject or an object. Instead, it is a creative process; a movement that forces us away from an oppositional subject versus object binary, towards another way of being. Homo activus makes things happen, creating thereby the conditions of possibility for becoming and unbecoming. By engaging with the world, interrupting, contesting, questioning, rethinking and effectuating change, as well as failing to do so, homo activus challenges the subject or object positions devised by those in

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<sup>23</sup> William Rikker, 'Events and Situations', *The Journal of Philosophy*, Vol. 54 (3) (1957): 57-70, pp. 61-2.

<sup>24</sup> Dewey's address in New York City on 20 October 1939, entitled 'Creative Democracy: The Task Before Us', p. 4.

power, changes the direction of events, the surrounding environment and his/her personal experiences. He/she is an agent of socio-political change.<sup>25</sup>

#### **4. Homo activus and irregularity**

Homo activus is not a status that needs to be sought out or created. Nor are EU citizens the only non-UK citizens living and working as homo activus in Britain. Persons considered to be migrants without ‘regular’ status, whether due to pending asylum applications, suspended work permits or awaiting residency permits, are considered to be objects of immigration law. Yet, these so-called ‘irregular’ migrants are persons who are, and have often been for years, active in their communities and workplaces. Recognition of their participation and activity is denied within a legal architecture that relies on holding citizenship for a person to be a subject of the law.<sup>26</sup> To be recognised as a legal subject, with an active claim and access to the law, a person is often reliant on recognition through citizenship. When that person can affirm that he/she is a citizen of the nation-state, or deservingly/legitimately on the path to securing citizenship, then from this status follows a claim to the law of the nation-state and access to the nation’s justice system. With reference to the Aristotelian construction of ‘subject’, Costas Douzinas looks at the legal subject as split between *subjectum* and *subjectus*.<sup>27</sup> The citizen is meant to have both: *subjectum* is the subject of the law and *subjectus* is the subject to the law. However, this binary split is not enough to characterize the recognition that is withheld from ‘irregular’ migrants for they are neither *subjectus* nor *subjectum*. In other words they are the rejects, the others, the foreigners-without-a-

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<sup>25</sup> See the chapter by Damjan Kukovec in this volume.

<sup>26</sup> Legal architecture refers to the regime of nation-state centred law ... not only the English legal system, but the processes whereby an individual can have access to justice, such as access to legal representation, access to legal advice and education, and the power to affirm legal entitlements that are afforded to persons in a given nation-state.

<sup>27</sup> C. Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford, Portland: Hart Publishing, 2000), 183. Douzinas further notes, ‘We think of the subject as the exclusive vehicle of freedom, perhaps because the split is no longer fully apparent as it was in pre-revolutionary Europe; the *subjectum/subjectus* dyad has been fully internalised and the law, self-given and externally imposed, already inhabits and conceals itself in the recesses of the self.’ Douzinas, 226.

name. Thus, so long as legal status, namely citizenship status, is the arbiter of identity and belonging, the legal recognition of persons without determined legal immigration status is suspended. This renders these individuals ‘irregular’, where recognition of their participation as subjects of the law is denied, as is their access to the rights and status afforded to legal subjects. Instead, they are objects – bodies broadly labelled as ‘migrant’ and practically excluded from the community of the nation-state. Their existence as homo objectus is enacted through the practice of a legal system that looks for citizenship as identification, and their prospects of achieving status as homo subjectus are slim, particularly as borders are reinforced.

#### ***4.1. The nation-state, citizenship and legal recognition***

Citizenship under the law tends to universalise belonging.<sup>28</sup> As an indicator of belonging and membership, citizenship poses as if it was an attainable legal status for all persons within a territory, one that ‘irregular’ migrants have in one way or another failed to achieve. The possibility of losing rights as citizens, a reality for many EU citizens living in the UK as Brexit is implemented, reinforces the ostensible value and importance of citizenship as an arbiter of subjectivity. Nevertheless, like ‘migrants’ before them, persons losing their status and subjectivity continue to live and work and thus continue to be active beings. Their activity as homo activus is unhindered by subject or object distinctions since activity and participation is the defining feature of status as opposed to legal, formal, subjectivity. Democracy, recreated through homo activus, does not exist if the action and activity of all individuals in a given space and territory is taken into account, recognised, and reckoned with. Such a democracy would entail a law that is in process of becoming and unbecoming, rather than aimed at securing subjectivity, however precariously. A law that is in process of becoming and unbecoming is one that explicitly takes

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<sup>28</sup> J. Fudge, ‘Precarious Migrant Status and Precarious Employment’, *Comparative Labor Law and Policy Journal*, V. 34(1) (Fall 2012), 110, in reference to Jean Cohen, ‘Changing Paradigms of Citizenship and the Exclusiveness of the Demos’, *International Sociology* (1999): 245-268.

into account all persons who constitute the community governed by it, because communities emerge as a result of the interactions and relationships that are happening on a daily basis in all spheres, from economic markets to neighbourhoods, from workplaces to homes.<sup>29</sup>

The possibility of thousands of citizens formally losing their status as a consequence of the Brexit vote may force the informalisation of status and employment of EU citizens in the UK. In other words, the practices and activities of these individuals may be pushed into less regulated and more insecure forms of work and residency. For instance, informalisation into more precarious, short-term or seasonal forms of work in agricultural, hospitality, fashion/clothing and food sectors as well as consultancy, including high-waged consultancies, where individuals are working as ‘migrants’ rather than as citizens.<sup>30</sup> The informalisation of work and status renders former subjects irregular – they are suspended, precarious, ostensibly distinct from the fixed, settled, subjectivity of UK citizens. Yet this irregularity is not a complete dismissal of their presence or activity, it is a suspension where quasi-legal or semi-legal regulatory practices are exercised with little accountability. Moreover, there is no explicit determination of ‘irregularity’, rather a quiet conformity or non-conformity with what is considered to be ‘good’ behaviour of citizen-subjects.<sup>31</sup> Like citizenship’s tendency to universalise belonging, there is a pervasive belief within modern legal thought that if only the law is applied ‘correctly’ and ‘effectively’ then justice, order, and the rule of law will prevail. However, if that effective and correct application is practically impossible because of citizenship demands, then is the homo activus outside the law? In other words, is there an order that exceeds status under the law? Individual lives can be, and are, subjugated, but rather than see the loss of a particular subjectivity as a transition from

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<sup>29</sup> For more on such a rethinking of law and sociality, see A. Tataryn, ‘Labour and Migration in the ‘Suspended Step’, in T. Mulqueen & D. Matthews, *Being Social: Ontology, Law, Politics* (Counterpress, 2015), 90-100.

<sup>30</sup> F. Welter, D. Smallbone and A. Pobol, ‘Entrepreneurial activity in the informal economy’, *Entrepreneurship & Regional Development* Vol. 27 (5-6) (2015), 292-306 ; Z. Slavnic, ‘Political Economy of Informalisation’, *European Societies* Vol. 12(1) (2010).

<sup>31</sup> B. Anderson, *Us & Them: The Dangerous Politics of Immigration Control* (Cambridge University Press, 2013).

‘subject’ to ‘object’, attention to the active process of being may allow recognition of actors and activity that transgress and transform predetermined legal categories, such as those envisaged in the Brexit discussions. Saul Newman refers to this as an ‘anarchic dimension to life that exceeds and resists control’.<sup>32</sup> It is anarchic because it is a parallel life to law<sup>33</sup> – one that happens *in spite of law*.

This life exceeds the legal categories of ‘subject’ or ‘object’ of the law. As various acts of citizenship demonstrate,<sup>34</sup> recognition does exist beyond these frames if only our analysis steps beyond the limiting frame of formal citizenship and/or subjectivity to recognise such activity. For this reason, we suggest the homo activus as giving place to the existence that *is* in spite of formal legal categories and subjectivities, in spite of recognition through citizenship status. A post-Brexit United Kingdom will have to address this excess of formal legal categories, if previously recognised EU citizens risk becoming ‘irregular’ in that they will remain vital in their communities and economies but will be formally excluded from citizenship under UK law. The ingression of homo activus is, moreover, disruptive because the homo activus demands access to justice and access to rights in resistance to being silenced and marginalised.

The ingression of the homo activus brings to light how access to rights and justice is enacted. As Bridget Anderson’s work demonstrates, political and socio-economic factors facilitate recognised citizenship in what she calls a ‘community of value’ versus ostensibly holding citizenship.<sup>35</sup> In other words, the possible loss of formal recognition for EU citizens in the UK is less of a concern than having access to work, access to livelihood and access to justice, which is withheld for some citizens and non-citizens (‘irregular’ migrants) alike. Persons with a

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<sup>32</sup> S. Newman, *Post-Anarchism* (Polity Press, 2010), 18.

<sup>33</sup> E. Loizidou (ed.), *Disobedience: Concept and Practice* (Routledge, 2013), 120-121, with reference to Emma Goldman.

<sup>34</sup> See for instance Judith Butler and Gayatri Chakravorty Spivak, *Who Sings the Nation-State?* (London, New York, Calcutta: Seagull Books, 2010), 58-63; Engin Isin and Greg Neilsen (eds.), *Acts of Citizenship* (London: Palgrave Macmillan, 2008).

<sup>35</sup> B. Anderson, *Us & Them: The Dangerous Politics of Immigration Control* (Cambridge University Press, 2013).

precarious immigration status as well as persons in precarious work arrangements or who are marginalised due to factors such as disability, education, language or experience in the prison system often lack access to basic needs and justice.<sup>36</sup> They are ‘irregular’ in that they slip through the cracks of the legal and political system. In spite of existing rights under European laws, in practice, these are not individuals who are pursuing claims under courts of law, rather they are striving to maintain an income, a home and a livelihood. In the present climate in the UK individuals considered ‘irregular’ could include non-British EU citizens as well as those not considered to be *fully-citizen* (whether by virtue of their gender, age, disability, spent or unspent criminal convictions), together with non-national, migrant workers. These are all persons who can be excluded from accessing rights, protections and status, while still being included as necessary actors in communities and, more broadly, the economic market. The process of subject-turning-object by virtue of the changing legal status and citizenship of EU citizens in the UK thus requires an alternative analysis such as recognition of *homo activus*, which would encompass not only the changing status of EU citizens in the UK but existing marginalised and ‘irregular’ individuals, already active and yet denied recognition.

## 5. Conclusion

As is the case with almost all terms, *homo subjectus* and *homo objectus* are constructs. They are abstractions which make sense within particular settings and guide our thinking about these settings. These thought constructs become animated by the activities and experiences of ordinary actors, who, irrespective of how the state and the law will view them, will continue to live, act, cooperate, think, love and suffer in their daily lives. It is this common-sense reality that ultimately

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<sup>36</sup> B. Anderson, *Us & Them: The Dangerous Politics of Immigration Control* (Cambridge University Press, 2013), 4; B. Anderson, ‘What does “The Migrant” tell us about the (Good) Citizen?’ *Centre on Migration, Policy and Society Working Paper*, University of Oxford, 94 (2012), 1, 4.

leads individuals to defy the assumptions and classifications of governmental elites and to act as homo activus in a world of significance to them.