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Questioning European citizenship: the issues of dual nationality and voluntary secession

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Abbreviations

AG: Advocate General

ANC: Assemblea National Catalan

App.: application

Art.: article

Brits: Britons

CEU: Central European University

CFR: Charter of Fundamental Rights

ch.: chapter

CIESAS: Centro de Investigationes y Estudios Superiores en Antropologia Social

CMLR: Common Market Law Review

DNR: Donetsk People's Republic

ECHR: European Convention of Human Rights

ECI: European Citizenship Initiative

ECJ or CJEU: European Court of Justice or Court of Justice of the European Union

ECN: European Convention on Nationality

ECSC: European Coal and Steal Community

ECtHR: European Court of Human Rights

edn.: edition

EEC: European Economic Community

EFTA: European Free Trade Association

ELJ: European Law Journal

ELR: European Law Review

EMU: European Monetary Union

ESCR: Economic Social and Cultural Rights

EU: European Union

EUI: European University Institute

GDP: Gross Domestic Product

GDR: German Democratic Republic

GMOD: Global Migrant Origin Database

HR: Human Rights

HM: His or Her Majesty

Ibid.: Ibidem

ICCPR: International Covenant of Civil and Political Rights

ICJ: International Court of Justice

IDEA: Institute for Democracy and Electoral Assistance

ILEC: Incumbent Local Exchange Carrier

L.: Law

LEQS: LSE “Europe in Question” Discussion Paper Series

LGBT: Lesbian, Gay, Bisexual and Transgender

LNR: Luhansk People’s Republic

MS: Member States

NATAC: The Acquisition of Nationality in EU MS Rules, Practices and Quantitative Developments

NGOs: Non-Governmental Organisations

No.: number

NY: New York

NYU: New York University

OCT: Overseas Countries and Territories

OECD: Organisation for Economic Cooperation and Development

OJ: Official Journal of European Union

p.: pages

para.: paragraph

PIC: Peace Implementation Council

RSCAS: Robert Schuman Centre for Advanced Studies

SFRY: Socialist Federal Republic of Yugoslavia

SNCBs: Special Non-Contributory Benefits

SNP: Scottish National Party

TEC: Treaty of European Community

TFEU: Treaty on the Functioning of European Union

TNCs: Third-Country Nationals

UAE: United Arabic Emirates

UNDHR: Universal Declaration of Human Rights

UK: United Kingdom

UN: United Nations

US: United States

vol.: volume

WWII: Second World War

"[T]hat is the miracle of Union citizenship: it strengthens the ties between our States and us (in so far as we are European citizens precisely because we are nationals of our States) and, at the same time, it emancipates us from them (as far as we are now citizens beyond States)."
AG P. Maduro, Opinion on the Rottman case (2010)

"*Un miracle, selon l'énergie du mot, est une chose admirable (...). On exige donc que la doctrine soit appuyée par les miracles, et les miracles par la doctrine*"
Voltaire, Dictionaire philosophique (1764)

Introduction

The goal of this dissertation, using the words of Scheppele, "is not a prediction, in a social-scientific sense, but comprehension"[1]. While this elaborate thesis is not a definitive comparative study of the Union citizenship, it will identify four areas of future research: the implementation and interactions in the legislation of different countries, including new Member States (MS) and accession countries; the policy formation processes that lead to membership reforms; the quantitative measures of how welcoming or unwelcoming the regime is to newcomers, emigrants with outside connections, and kin minorities; and, on these solid empirical foundations, systematic comparison on policy changes towards best practices to understand their rationale. Through this approach, we can address the institutional and conceptual question that matters: what is the true inclusive settlement's future citizenship governance of multilayered and multicultural conception of perpetual allegiance?

By focusing explicitly on national citizenship[2], we will discover a framework of nested and interacting memberships that can let us fully appreciate the distinctive and radical impact that EU allegiance portrayed. We will first consider domestic citizenship rights in the Marshallian division of political, civil, and social freedoms, on which is based also the supranational status civitatis. Experts of political theory emphasize the political element which deals with the involvement in the exercise of political power as a representative or voter in the body. In comparison, the civil element is composed of individual freedoms, including the person's liberty to free speech, thought, and faith. Finally, the social element represents the modicum of economic welfare and security fully shared in the social heritage of civilized life. In addition to the acquisition of allegiance by way of automatic descendants or by birthplace, there are explicit ethnic criteria regarding the naturalization, which similarly apply to the civic europeaus sum.

Central to the establishment of the sovereign government of nation-states[3] the status of EU citizenship's importance has significantly increased is in its functional dimension of rights[4], such as the social right to

[1] Scheppele K., "Constitutional Ethnography: An Introduction", *Law & Society Review* (2004) vol. 38 p. 391.

[2] Emulating French legal terminology, the term "citizenship" meaning state membership will indistinguishably be used with the word "nationality" meaning the ethnic origin of an individual.

[3] For some people, especially in international relations, it refers simply to the sovereign state, while for others means the coincidence of the legal notion of state with the socio-cultural concept of nation.

[4] Which relevant limitations extend to the power of MS regarding the grant of withdrawal of nationality as a result of automatic loss of Union citizenship as illustrated in Miller D., "The Case for Limits" in Andrew I. Cohen & Christopher Heath Wellman (edn.), "Contemporary Debates in Applied Ethics" *Malden, Blackwell* (2014) p. 193-206.

access education, and belonging to a particular national community. In the attempt to define the adjunctive supranational membership, we will firstly underline its federal character, followed by its transnational and extraterritorial features. The status of EU citizenship as national membership was initially determined by those substantive limitations and exceptions restricting the de facto enjoyment of EU citizenship rights, also known as the *Zambrano* doctrine. Expatriates and emigrants were traditionally excluded from cases that jurisdictionally fell into the scope of equal treatment under EU law[5]. However, modern democratic citizenship based on duties is no longer conceivable[6].

Inserting EU decorative citizenship, the Court viewed federalism in the perspective of the internal market as mandated by the Treaty text[7]. This is the only legal basis available to the European Court of Justice (ECJ or CJEU) to legitimate its reasons. Only when federalism is seen in the context of its goals can its true nature be seen[8]. Despite such minimalist characterisations, the Union citizenship has matured as an institution, due to the ECJ, owing to several essential interventions on legislative initiatives throughout the previous ten years, among which the most important in our analysis is the Citizenship Directive 2004/38[9].

A strong connection exists between integration and immigration policies, especially regarding aliens[10] who stay for a more extended period. This is clearly visible in the EU legislative measure to support the integration of TCNs[11] in the societies of MS. Indirectly, integration may be one of the conditions that

[5] Principle that ensures the principles of supremacy and direct effect, according to which MS can set aside any national law at odds.

[6] Kochenov D., "EU Citizenship Without Duties", *ELJ* 20 (2014) p. 482-498. In compliance with Art. 28(1) Directive 2004/38, these limitations are now imposed only on grounds of severe public policy, security, and health.

[7] Weiler J. in Kochenov D., "The EU Citizenship emerging from the last ten years of academic debate: beyond the cherry blossom and the moon?", *The International and Comparative Law Quarterly* 1 (2013) vol. 62 p. 97: "The problematic aspect of this jurisprudence is precisely in that it fails to reflect the conceptual transition from the free movement based on the market to a freedom based on citizenship".

[8] Diamonds M., "The Ends of Federalism", *Publius* 3 (1973) p. 129-152.

[9] European Parliament and Council Directive 2004/38/EC, OJ L 158/77. Directives 68/360, 73/148,72/194, 75/34, 75/35, 90/364, 90/365, 93/96, and 64/221 were repealed with effect from April 30th, 2006.

[10] With this term are intended indistinctly third country nationals (TCNs), migrants, asylum seekers, and refugees. For a deeper analysis Baldwin-Edwards M., "The emerging European immigration regime: some reflections on implications for southern Europe", *Journal of Common Market Studies* 35 (1997) p. 497-519.

[11] To the generally inclusive approach in terms of access to the residence and equal rights opposes Baubock R., "Why European Citizenship? Normative Approaches to Supranational Union", *Theoretical Inquiries in Law* 8 (2007) p. 485: "Several arguments can be advanced against giving TCNs direct access to EU citizenship. First, it would remove a lot of the pressure to introduce minimum standards for MS nationality. Already possessing EU citizenship would also give TCNs less incentive to naturalize, which would not help their integration in MS where they live. Finally, it would create two groups of

TCNs must meet to access equal treatment and social rights in MS. Unfortunately, however, this attitude is not always respected, especially in cases of dual citizens.

Historically international law opposed the unneeded complexity caused by dual nationality and a contradiction because as, at least theoretically, no one could be a servant of two masters. However, even skeptics would have to admit the truth of "multiple memberships in various overlapping and interlocking communities formed on various levels of governance"[12] have significant consequences for both philosophy and practice of citizenship. Recent developments, like the 1997 European Convention on Nationality (ECN), recognize its value, for example, to help women pass on their membership more effectively and to make it easier for immigrants to integrate without being forced to renounce their previous nationality. Most European countries, traditionally emigrant nations, are now more likely to accept residents of other countries who have numerous external nationalities, facilitating its transmission to their descendants. On one side, these countries permitting dual nationality encourage migrants' integration in the host MS, strengthening the link between migrants and their state of origin. On the other side, the fear that double citizens would maintain ultimate loyalty to the sending country remains, devaluing the new status civitatis to purely opportunistic reasons for privileged immigrants. At the same time, embedding problems of diplomatic assistance and double voting.

Nevertheless, the regulations that determined the initial citizenry in partitioning or seceding countries produced the European Republica composita, which transformed former internal migrants into foreign migrants of contested legitimacy and uncertain membership[13]. Despite this run of applications for membership, the allegiance of the state in which they were not citizens or who had not granted them permanent residency was acquired by many nationals. An attempt of a policy to change its position or affiliation is territorial rescaling will be studied among the broader constellation of policies. In the word of Baubock[14], this theory can be considered "as an ensemble of distinct polities that are jointly involved in determining the political status of individuals or of a territory, which essentially defines the vertical hierarchy between state and region and the horizontal distinction between in and out." Since not all MS

European citizens since those not holding a MS nationality are not represented in the Council but only in the European Parliament".

[12] Meehan E., "Political Pluralism and European Citizenship" in Lehning P.B. and Weale B. (edn.), "Citizenship, Democracy and Justice in the New Europe" *Routledge* (1997) ch. 5 p. 67-83.

[13] Brubaker R., "Citizenship Struggles in Soviet Successor States", *International Migration Review* 26 (1992) p. 269-291.

[14] Baubock R., "A Multilevel Theory of Democratic Secession" in Arrighi J.-T. and Stjepanovic D. (edn.), "Migrating Borders: Territorial Rescaling and Citizenship Realignment in Europe", *Routledge* (2020) ch. 2.

gave their citizens the option to naturalize, a "rebellious" movement for independence was started by successor states to resettle boundaries. Some of these secessionist movements were violent, as in the case of Catalonia and the Baltic states, while others were more peaceful, as in the case of Scotland and the Basque region.

The 1991 restitution laws explicitly included former citizens who resided in the Baltic area to migrate to other EU MS. A similar restored nationality law was applied, for instance, to all pre-1940 Estonian and Latvian (dual) citizens and their descendants[15]. So, for the first time in over 50 years, the Baltic people could establish their own governments and political systems, free from the control of the Soviet Union. In this period, it is worth mentioning the dissolution of the Yugoslavia and the Moldova conflict in Transnistria, but above all will be studied the recent upheaval of independence declared by the Republika Srpska, South Ossetia, and lastly Ukraine, considering the role that the Union had in the process.

The secession also had implications for the broader debate around self-determination referenda. The most well-known are the ones of Scotland and Cataluña, which later brought more movements for greater autonomy, such as in the Basque, Bavaria, and Flanders nationalist minority groups. The main issue of Scotland, in the aftermath of Brexit, is that any move toward independence requires a preliminary negotiation process with the UK government before beginning to negotiate with the Union. So, even if the Scottish Parliament has the authority to hold an independence referendum, the UK government must still approve it, which has already stated that it would not agree. The Catalan coalition is trying to develop similar negotiations with the Spanish government. However, contrary to the UK, the Spanish government does not recognize either a right to secede nor the right of self-government as it would breach the unity enshrined in the Spanish Constitution. This case study will draw a comparative analysis of the advantages and disadvantages that regional disintegration brings within the EU; to finally predict the outcome that will prevail in the future.

[15] Most problematic in the Baltic states, in particular Estonia and Latvia, because in the process created many stateless persons. On this point, Aasland A. & Flotten T., "Ethnicity and Social Exclusion in Estonia and Latvia", *Europe-Asia Studies* 53 (2001) p. 1023-1049.

1. The foundational conditions over the meaning of domestic citizenship

Before exploring the practices of EU citizenship, we should primarily focus on the concept of national membership and state-like policies[16]. The multivalent term "citizenship" implies contested concepts of socio-political membership of different communities (and not just states), which extend beyond national citizenship[17]. Although membership is ascribed in large part internally by national law, these terms must be used with particular care, especially when dealing with cases of states in Central and Western Europe. Here, nationality has historically a quite different meaning compared to the "legal bond having as its basis a social fact of attachment and the juridical link between a person and a state" used under international law[18].

While some authors encompass the basic characteristics of citizenship in the relationship between duties, rights, identity, and participation, others posit it as a legal standing that bestows obligations and rights on a political collective, along with a collection of moral traits necessary for a decent citizen's character.

The Westphalian citizenship[19] is normatively attractiveness for its underspecified nature, which includes different forms of classification. The various theories of membership include the republican model of civic participation; the liberal concept which focuses more on individual rights; and the communitarian perspective of identity[20]. As a social concept and specific category of rights three factors can be combined to constitute citizenship: community membership, formal endowment with rights outside of the liberal

[16] Such as the so-called "Fortress Europe" argument, for which MS veers towards the collective of repressive measures for outsiders.

[17] However, these usages are not shared by all authors who, use nationality in a different sense in some quotations. For Held D., "Democracy and Globalization", *Global Governance* 3 (1997) p. 251-267 means "a reciprocity of rights against, and duties towards the community", while Soysal Y.N., "Citizenship, immigration, and European social project: rights and obligations of individuality", *The British Journal of Sociology* 63 (2012) p. 1-21 highlights the rights and identity of "modern citizenship", and Wiener A., "European Citizenship Practice: Building Institutions Of a Non-state", *Routledge* (1998) ch. 1 p. 1-18 isolates the vital constitutive role of "citizenship practice to focus on the integrative power of legal rights, access in the welfare state and belongings responsibilities that make up a citizenship practice".

[18] Art. 2 ECN considering ICJ, *Liechtenstein v. Guatemala* http://www.icj-cij.org/docket/files/18/2674.pdf (1995), that will be discussed later.

[19] Fraser N. in in Shaw J. (edn.), "The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space", *Cambridge University Press* (2007) ch. 3 p. 21: "as a politically dominant imaginary that mapped the world as a system of mutually recognizing sovereign territorial states". States remain the archetypical bounded communities, albeit the boundaries between them are becoming increasingly blurred, as will be examined in Chapter 4.

[20] van Gunsteren H., "Four Conceptions of Citizenship" in van Steenbergen B. (edn.), "The Condition of Citizenship", *Sage Publications* (1994) ch. 4 p. 36-49.

paradigm, and legal status[21], subjected to the corresponding obligations and summarised as a "shared fate of equals"[22]. Baubock also suggests two "orders of membership": the "nominal citizenship" which complements the pattern of territorial sovereignty to uphold democracy and stability by adhering to the formal inclusivity concept; and the "societal membership" accorded to non-national migrants without the need for a legal citizenship. This semi-citizen condition, in which territoriality and residence replace nationality, is often defined in modern migration literature as denizenship[23]. On the contrary, ethnizenship is granted to minorities of co-ethnic descent living abroad, which includes financial support for maintaining, for example, minority culture and language[24]. This quasi-citizenship differs from extraterritorial or external membership, which indicates the residents outside the EU country, who might have multiple allegiancies or not, and communities of emigrants' descendants, who are increasingly acquiring the nationality of their ancestors without actual migration[25].

To complicate matters even further, certain groups of "almost-citizens", are often historically connected to the host state. For this reason, they have a status known as enhanced denizenship, which gives them practically all the same privileges as resident nationals, including the opportunity to vote and to access to public office, coupled with complete protection from expulsion[26]. In this subcategory, the right to participate in the political sphere becomes detached from the acquisition of formal membership.

The consequences of these developments in citizenship theory have brought a new form of "post-national citizenship" which has acquired transnational features. This is due to the delinking of the matter of rights

[21] Meaning the autonomy of the citizen, described as a status negativus by Jellinek G., "System der Subjektiven offentlichen Rechte", *Mohr Siebeck GmbH & Co. K* (1905).

[22] de Somers M., "The Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights", *Cambridge University Press* (2008).

[23] Situation in which civil and political rights are strongly protected even though not fully included in the political community as described by Hammer T., "Democracy and the Nation State: Aliens, Denizens and Citizens in a World of International Migration", *Avebury, Aldershot* (1990). For a detailed critical overview, Lequette Y., "La nationalité française dévaluée" in "L'avenir du droit. Mélanges en homage à François Terré", *Dalloz-Puf-Juriscalsseur* (1999) p. 349-351.

[24] On this subject Baubock R., "The Trade-off Between Transnational Citizenship and Political Autonomy" in "Dual Citizenship in Global Perspective, From Unitary to Multiple Citizenship", *Palgrave Macmillan* (2007) ch. 4 p. 88 and "The Rights and Duties of External Citizenship", *Citizenship Studies* 13 (2009) p. 475-499.

[25] For a thorough overview, see Collyer M., "Citizenship, Extraterritorial", *International Encyclopedia of Human Geography* (2020) p. 235-239 and, at the supranational level, Dumbrava C., "External Citizenship in EU Countries", *Ethnic and Racial Studies* 37 (2014) p. 2340-2360.

[26] Groenendijk K., "The legal integration of potential citizens: Denizens in the EU in the final years before the implementation of the 2003 Directive on long-term resident third country nationals" in Baubock R., Ersboll E., Groenendijk K., and Waldrauch H., "Acquisition and Loss of Nationality Vol. 1: Comparative Analysis, Politics and Trends in 15 European States", *Amsterdam University Press* (2006) ch. 9 p. 385-404. Ibid. note 15.

from the sole domain of a single nation in a significant manner, as well as the delinking of access and belongings to a lesser level. Although these forms of memberships offer an alternative to the bounded version of status civitatis, empirically closer to the reality of life, it is not enough to label "transnational" complex citizenship practices of diasporic groups. But it is essential to specify the circumstances in which the membership boundaries seem less permeable to exogenous influences, such as the case of acquisition and loss of formal nationality. In this way, the pitfalls of "hyphenated citizenships", such as sexual or ecological citizenship, can be avoided. Therefore, post-national citizenship restricts to specific new institutional forms of participation which cross or transgress state boundaries and are based, wholly or in part, on supranational or international legal structures and interactions between multiple national institutions.

Following Bosniak's rationale, distinctions on allegiance must be added to the modern citizenship list. Processes of globalization, Europeanization, and subnational change all contributed to transforming citizenship into a status without the more substantial legal dimension of responsibilities interrelated to identity, solidarity, and belongings. The duties of "globally oriented national citizenship," that are closer to the Greek and Roman roots, are distributed to given groups based on certain characteristics such as ethnic origin, gender, religious affiliations, or disability. Today, we can instead witness the general constitutional trend that departs from the negative legalistic understanding of membership used to depriving people of rights but rather empowering them.

1.1. "The right to have rights"[27]

The main empirical object of our attention in this first part is the "nestedness" of national polities to delineate outsiders and insiders within the more general legal context of EU integration, with all of its benefits and limitations. The broader "citizenship package", mainly founded on the idea of equal treatment and the freedom of movement, comprehends the Marshallian triad of political, social, and civil or liberal rights.

[27] Kochenov D., "The Right to Have What Rights?", *ELJ* 19 (2013) 502-503, following the famous Hanna Arendt's comment in "The Origins of Totalitarianism", *George Allen & Unwin* (1967) p. 296, for which the core of citizenship consists in the "right to have rights", namely the right to be recognised as belonging to a community.

The "hallmark" of citizenship is the right to vote that enables citizens to participate, through the medium of elected representatives, in exercising the political power. This vertical right is one of the most outstanding formal legal indicia since its practice may indirectly affect or decide its content. Historically, the criterion for allocating political rights of participation, primarily passive and active electoral rights[28], has by far been the official one of nationality. Especially since that governments are less likely to have tight nationality laws thanks to the gates to nationality. Many of them were unable to participate in politics, either entirely or partially, although living and being born inside the confines of any given nation as refugee and minority populations separated from their "homelands".

Although it is inclusive on the inside, citizenship is exclusive on the outside. Between citizens and non-citizens, there is a theoretically unique, legally significant, and ideologically fraught distinction. We must distinguish states that may develop electoral voting rights to all non-nationals, or those that extend certain rights on the basis, for instance, of a historical connection with another country[29], from those which reserve all electoral rights to nationals. The non-nationals of the first category are those without a formal legal nationality of the state where they reside or without having ethnic or civic implications whenever the national identity is not recognised under international law. In the second category, these aliens are privileged when they are horizontally permitted by the Treaties or the Association agreement to vote and stand for office in the local elections held by the host MS[30]. This right is generally granted only by a minority of states and under certain conditions above and beyond EU law, as in the case of long-term residents[31]. Most often, "for everyone who claims to enjoy global citizenship, there are many more who are shut out of every aspect"[32]. In the third category, those electoral rights are commonly limited or

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[28] Art. 22(1) of the Treaty on the Functioning of the European Union (TFEU) provides that: "Every citizen of the Union residing in a Member State other than the one of which she is a national shall have the right to vote and stand as a candidate in municipal elections *under the same conditions as nationals of that State*".

[29] i.e., electoral rights in UK national elections are given to Commonwealth and Irish citizens. And with European Court of Human Rights (ECtHR), *Mattews v. United Kingdom*, (1999) App. No. 24833/94, the Court of Strasbourg required the UK to institute voting rights in European Parliament elections for citizens of Gibraltar.

[30] e.g., Turkish nationals are lawfully residents in an MS. In special cases of the European Parliament and occasionally in regional elections, nationals' rights are devolved to state-level authorities based on a federal system of government. Shaw J. "Migration and Citizenship Rights in Europe: European Citizens' Attitudes", *Quaderni FNE Collana Osservatori* 21 (2005) in "The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space", *Cambridge University Press* (2007) ch. 1 p. 4 on how that favor electoral rights are France (82%), Italy (74%), Germany (72%), Poland (56%), Czech Republic (45%) and Hungary (32%).

[31] This factor of affinity to a group is considered strong enough for political equality by someone lacking a formal badge of national membership.

[32] Schuster L. and Solomos J., "Rights and Wrongs across European Borders: Migrants, Minorities and Citizenship", *Citizenship Studies* 6 (2002) p. 37-54.

denied to TCNs and undocumented migrants because they fall beyond the boundaries of national citizenship[33].

However, in practice, at the national level, it is hard to distinguish clearly between the rights of citizens and non-nationals[34]. The latter often enjoy more rights than the former, except for access to employment in the public service. This doesn't mean that immigrants have equal citizenship with nationals, with or without formal nationality. It remains up to MS to decide whether to confer voting rights, also to expatriate's resident in a third country or elsewhere in the EU to preserve their connection with the home state[35]. The whole field of policy relating to the integration of immigrants presents challenges to the European Commission since there is no unequivocal competence to create or to encourage persuasive common basic principles on the integration of MS in the current Treaties[36].

Reflecting the same type of systematization of rights seen for national allegiance, first and foremost, we must consider the political sphere[37]. At the core of membership in a national political community are participation rights[38] and electoral rights. They principally comprehend the right to vote and run for office (Art. 20(2)(b) in conjunction with Art. 22 TFEU) in municipal and, above all, European elections[39], sometimes even for citizen living in another MS. These exclusive rights, also known as free movement rights, exclude TCNs but include second-country nationals, considered the right to reside freely in any other MS, to be equally treated as nationals, transferring rights, privileges, and identities between a state of nationality and a state of residency.

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[33] Art. 63 of the Council Directive 2003/109/EC concerning the status of TCNs who are long-term residents OJ L16/44. This third category includes France, Germany, Austria, Greece, Italy, and Poland, although the recent political campaigns to institute electoral rights and political participation for foreigners.

[34] For Bosniak L., "The Citizen and the Alien: Dilemmas of Contemporary Membership", *Princeton University Press* (2006) ch. 4 p. 77-101 this phenomenon of semi-citizenship can be identified as "alien citizenship" to highlight the large number of aliens excluded from electoral rights.

[35] Art. 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR).

[36] Council Document 14615/04 (Presse 321).

[37] Mouffle C., "Citizenship and Political Identity", *The Identity in Question* (1992) p. 28-32: "European citizenship cannot be understood solely in terms of legal status and set of rights, important as they are. It must mean identifying with a set of political values and principles constituting modern democracy".

[38] Art. 11(4) TEU and 24(1) TFEU along with Art. 25 and 26 CFR also include the European Citizens' Initiative (ECI), an entitlement that allows the association of MS and produces common interests of individuals across borders.

[39] According to the Council Directives 93/109/EC OJ L329/34 on the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in an MS of which they are not nationals and the one of 94/80/EC OJ L368/38 on the exercise of the right to vote and stand as a candidate in municipal elections by citizens of the Union residing in an MS of which they are not nationals. e.g., ECJ, C-650/13 *Delevigne*, EU:C:2015:658.

Among the "non-exclusive citizenship rights" traditionally connected to nationals of the MS for Community law, the right of access to documents produced by the European Parliament, the Council, and the Commission (Art. 42 European Charter of Fundamental Rights [CFR]), the right to complain to the European Ombudsman regarding improper behavir by Union institutions (Art. 228 TFEU and 43 CFR), and the right to petition the European Parliament[40] (Art. 228 TFEU, 44 CFR and Art. 215(15) of the Rules of Procedure of the European Parliament) in one of the official languages (Art. 24 TFEU) entitle those who are natural or legal residents or who have their registered offices in a MS to exercise EU fundamental rights[41]. As previously mentioned, TNCs may be included in this narrative of transnational derivative rights when they have a family relationship with a European citizen. This link embraces, for example, the autonomous right to entry and to remain in the host MS even after the dissolution of the family relation in qualifying circumstances.

The so-called equal treatment rights that are "attached" to membership are, for instance, welfare benefits and public services, which include health care and education, as well as the prohibition against nationality-based discrimination. Also, these rights are central to supranational citizenship. In the tension between universal and particular, citizenship appears as a "badge of personhood" based upon an irreducible and enforceable commitment to equality, commonly used to delineate the inside from the outside. At present, this principle of equality is a genuinely exclusive citizenship right of EU nationals. It can be granted to TCNs when it is indirectly derived, always in limited circumstances, from a mobile citizen of the Union, such as a family member exercising free movement rights[42]. In fact, with widespread agreement about its contours, the social rights serve to equalize the situation citizens of the EU who reside in an MS other than the one for which they are citizens of that state's nationality. Among them, we can find the right of the primary carer[43] to access the welfare distribution. Even if not explicitly

[40] First introduced in the 1953 European Coal and Steel Community Treaty (ECSC) is unrelated to the exercise of free movement rights, by Advocate General (AG) Tizzano Opinion in ECJ, C-145/04, *Spain v. United Kingdom* (Gibraltar) and C-300/04 *Eman and Sevinger* (Aruba).

[41] According to the Portuguese "incostitutionalidade" legal theory, these rights must be protected at the highest available level in a system of constitutional pluralism. The current trend of the right of nationality is towards the recognition as a Human Right (HR), as will be illustrated later based on Chan J.M.M., "The Right to a Nationality as a Human Right: The Current Trend towards Recognition", *Human Rights Law Journal* 12 (1991) p. 1-14.

[42] Regulated by the Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of a MS OJ L158/77.

[43] Historically developed in feminist theory as illustrated by Daly M. and Lewis J., "The Concept of Social Care and the Analysis of Contemporary Welfare States", *British Journal of Sociology* 51 (2000) p. 281-298, since never defined by the EU institutions until ECJ, C-413/99 *Baumbast and R v Secretary of State for the Home Department,* EU:C:2002:493.

mentioned in the Treaties, it is implied in a significant cross-section case law[44]. And the special right of diplomatic[45] or consular protection in a non-EU MS (Art. 20(2) in combination with Art. 23 TFEU), which is the aggregation sums of mutual state interests defined by borders, which strictly connects to the right not to be subjected to exile.

Finally, in tandem with international HR laws, operate liberal rights. At various times, have been challenged issues raised by minority ethnic groups with the internal badge of national allegiance, who experienced social exclusion or prejudice for which they are not "full" citizens in practice. Private international law tries to solve these dissonances when the differing conditions of recognition bring to conflict of laws. The EU civil rights comprehend the right of free movement[46], which is destined to be the fundamental status of nationals of the MS[47], and the right to stay in the country of nationality[48]. On the positive facet, the paradigm right to freely move across national borders represents the crucial cornerstone to realize an "ever closer union" between citizens and European institutions, as enshrined in the 2001 Laecken declaration. Pre-Maastricht, this right protected the interests of mobile Union citizens, as workers and their families, and other categories such as self-employed[49], students[50], and retired persons. On the negative side, it protects the right to remain. The latter is the subject of particular attention

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[44] Among which ECJ, C-60/00 *Carpenter*, EU:C: 2002:434, C-310/08 *Ibrahim*, EU:C:2010:80 and C-480/08 *Texeira*, EU:C:2010:83.

[45] Ex-situ intervention by the state of nationality of the injured person, who calls for diplomatic action or other peaceful measures of resolution (Art. 1 of the Draft Articles on Diplomatic Protection), as opposed to the in situ consular assistance, which entails the support of national consular organs to individuals' personal affairs, when both present in the territory of the third country (Art. 5 and 36 of the Vienna Convention on Consular Relations).

[46] AG Jacobs Opinion in ECJ, C-168/91 *Kostantinidis v. Stadt Altensteig,* EU:C:1992:504 para. 46.

[47] Or at least should be "when nationals of MS are exercising their rights of free movement and residence", in compliance with Directive 2004/38/EC (especially relevant in cases concerning residence and work permits). ECJ, C-184/99 *Rudy Grzelczyk v centre public d'Aide Social d'Ottignies-Louvain-la-Neuve*, EU:C:2001:458 para. 31, which in French is translated as "vocation à être", differently from the following judgments in the English working language, which employed "is intended to be".

[48] Also known as the right not to be displaced arbitrarily in cases of armed conflict protected by the Additional Protocol II of the Geneva Convention, or the right of housing rooted in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). In the framework of forced migration, see Stavropoulou, "The Right Not To Be Displaced", *American University Journal of International Law and Policy* 9 (1994) p. 689-749 and McFadden P., "The Right To Stay", *Vanderbilt Journal of Transnational Law* 29 (1996) p. 1-45.

[49] Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity OJ L180/28.

[50] Art. 10 of the Preamble to Council Directive 2004/28/EC on citizens' free movement rights OJ L136/04, which replaced the Council Directive 93/96/EC OJ L317/59 on the right of residence for students adopted in ECJ, C-209/03 *R. Bidar v. London Borough of Ealing, Secretary of State for Education and Skills*, EU:C:2005:169.

because it is reinforced as a subsidiary remedy but weakens by the "externalizing" discontent with national policies[51].

This "inflationary tendency" due to a combination of Treaty provisions and judicial intervention constructs a language of rights with legitimizing and integrative force. This phenomenon also introduces different values into the Community's legal and policy-making processes. Compared with any other citizenship in the contemporary world, membership in the EU conditions on a self-sufficient rational market endorsement. So the conduct of unethical behaviours, such as crossing state boundaries to conduct business inside the internal market, is shielded by the European HR standards. Nevertheless, before going through the impact of the Union's citizenship, we should offer prima facie a brief overview of how domestic nationality can be granted and stripped off. These modes are noteworthy because they will also return when dealing with the European status civitatis and dual membership since they are based upon nationality laws.

1.2. Citizenship acquisition

By breaking down the notion of citizenship into diverse categories, it is now necessary to elucidate briefly on the different possibilities to acquire the status civitatis, in general, to go through the grant of EU citizenship. The most common processes of gaining allegiance are through ius sanguinis, ius soli, and naturalization.

In several European countries, the preferential and primary channel is citizenship by blood, for which the parents' nationality is transmitted to their children, even if adopted. On the contrary, citizenship "by the ground" is granted automatically to everyone who has born between the boundaries of a particular MS. Finally, regular naturalization can be obtained through long-term residence in a host MS, generally for employment or retirement reasons, or through an integration test, in which the candidates have to prove their cultural homogeneity with language proficiency, the legal and constitutional knowledge of that country and, sometimes, the absence of a serious criminal record or a sufficient income.

[51] de Witte F., "Sex, Drugs & EU law: the recognition of ethical and moral diversity in Europe", *CMLR* 50 (2013) p. 1545-1578.

Other types of acquisition meet the needs of citizens, like asylum-seeking having a refugee status or people born abroad on ships or planes, complicate these procedures further. These variations include the ius doni or ius pecuniae, for which access to nationality comes from temporary golden visas and passports or might even be allowed via investment. However, to grant citizenship by investment, the person must have spent at least five to ten years residing in that nation. This modality differs from residency by investment since the latter requires investors to actively work in the organization actively, employing local professionals. These manners include also the ius culturae, which envisaged a minimum level of cultural background people may obtain allegiance. Even though it is generally conceded to minors before twelve who have regularly attended at least five years of training schools. In addition to these membership acquisition, there are also special immigration programs or employment legitimizations.

Born out of the urgent need to combat nationalism's divisive tendencies, European citizenship[52] represents an instrument capable of widening integration and simultaneously stands as an object of social closure[53]. The new EU status civitatis enshrined in the 1992 Maastricht Treaty (Art. 18-21 TEC) as a symbolic addition of a distinctive European identity, that does not replace national allegiance[54]. The Union citizenship is supplementary[55] to the national one since as the open-textured Art. 20 TFEU (ex Art. 17 TEC) clearly states, "Only those persons holding the nationality of an MS are citizens of the EU". Or to be more accurate, a MS national is a Union citizen under EU legislation. This statement reaffirms the language of the Maastricht Treaty's Declaration No. 2, which was recently codified in ECN Art. 3 announcing that "each State shall determine under its own law who are its nationals". The Declaration

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[52] In Marshall T.H., "Citizenship and Social Class", *Pluto Press* (1992). It comprises of the fundamental human equality connected to the idea of everyone belonging to a community with the same rights (XVIII century phase according to the rationally tiered growth model, democratic rights initially started as civil rights).

[53] According to the classical definition of Brubaker R., "Citizenship and Nationhood in France and Germany", *Harvard University Press* 23 (1993) ch. 1 p. 21: "Its exclusionary essence exacerbates based on kinship, race, ethnicity, and even gender and social class, even if often justified by the need for social cohesion".

[54] "Sympolity" element of supranational citizenship, as coined by Magnette P., "Citizenship: The History of an Idea", *European Consortium for Political Research* (2005) ch. 1 p. 16, as opposed to the critical vision offered by Kostakopoulou D., "Nested "Old" and "New" Citizenships in the European Union: Bringing Forth the Complexity", *Columbia Journal of European Law* 5 (2000) p. 389, who defines it as "Neither a neat nor a consistent entity, but rather a continuum of possibilities and therefore almost an infinite source of potential disagreement". And similarly, Preuss, "Problems of a Concept of European Citizenship", *ELJ* 1 (1995) p. 267-281 describes it as an opportunity rather than an entity.

[55] Under the European Council declaration at Edinburgh and Birmingham, which finds a concrete expression in the amended Art. 17 of the 1997 Treaty of Amsterdam, the purpose of EU citizenship is to provide an additional level of rights and protection, not to take the place of national membership.

asserts that MS nationality "shall be settled solely by reference to the national law of the Member State concerned"[56].

The Herren der Verträge (Masters of the Treaties) are, in theory, able to choose the access requirements for acquiring (and renouncing) nationality and to indirectly affect the personal purpose of application of Community law due to the derived nature of the Union loyalty. In the third Chapter, we will see how this complementary status distinguishes from the dual national one, common in federal states. Nevertheless, given that each citizen is de jure and de facto shared between the EU and the MS of their nationality, the Union status represents nothing more than a structural vignette in the "view of the cathedral"[57]. This metaphor explains why, despite Art. 20 TFEU overtly provides a bidimensionality to the citizenship of the Union; there are still nationals of MS that are not yet EU citizens[58]. This concept of bidimensionality will return in the fourth Chapter to show how state succession causes foreigners to experience "quasi-loss" or the legal status civitatis of the Union being void ex tunc.

However, based on these reasons, the initial reaction to the emergence of EU membership was temperate. Early observers criticized the Union citizenship as a decorative and "empty normative shell"[59] attached to the necessary, albeit insufficient, criterion of nationality. The "two steps forward, one step back" situation changed in the late 1990s, when the Court started interpreting citizens' rights extensively by manners of perspective dynamism, in addition to the accomplishment of the single market program. Prima facie, the expansion of citizens' rights was witnessed a fortiori, in the defence of the political rights of Union nationals in situations not requiring the cross-border element[60]. Secondly, the right to acquire EU allegiance via state nationality strengthens to maintain free movement guarantees after naturalization[61]. Thirdly, protection against extradition to third states was reinforced, emphasizing the

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[56] It was eliminated after the Lisbon Treaty went into effect.

[57] Craig P., "Integration, Democracy and Legitimacy" in Craig P. and de Burca G., "The Evolution of EU law", *Oxford University Press* (2011) ch. 2 p. 28-29.

[58] i.e., the inhabitants of the Faroe Islands are Danes and not Union citizens.

[59] Shaw J., "Citizenship of the Union: Towards a Post-National Membership?", EUI *Collected Courses of the Academy of European Law* (1995) p. 295.

[60] i.e., ECJ, C-650/13 *Delvigne*, EU:C:2015:648.

[61] i.e., ECJ, C-221/17 *Tjebbes*, EU:C:2019:189 and C-165/16 *Toufik Lounes v. Secretary for the Home Department* EU:C:2017:862.

connection to the state of nationality[62]. Finally, free movement guarantees extend to family relations, which were traditionally excluded[63].

This generous interpretation by the EU legislature and the CJEU has been recently substituted by more restrictive judgments, based on the Citizenship Directive, which is increasingly dominating over secondary Union legislation. This "two steps back, one step forward" trend indicates a potential limitation on the autonomous powers of the MS in determining the (concession and) relinquishment of membership and, subsequently, a regression in Union citizenship as such.

Five important judgements of the Court of Luxembourg have been delivered in the last three years on access to social assistance benefit for inactive EU citizens. In *Brey*[64], *Dano*[65], *Alimanovic*[66], *Garcia-Nieto*[67] and *Commission v. UK*[68], drastically changed the landscape concerning social solidarity. In 2013 *Brey* allowed MS to establish appropriate limitations on the social assistance programs provided to the Union citizens who are not workers and whom the host MS's social assistance system is not unreasonably burdened by. While all these cases (*Dano*, *Alimanovic,* and *Garcia-Nieto*) centered on the identical German SBG II challenged benefit derived from the Social Code[69], which limits access to social allowances to EU citizens who migrate to Germany in order to seek employment or social benefits. Finally, in *Commission v. UK,* the Court expands further the restrictive interpretation of equal treatment between Union members and those of its own by allowing the MS to make access to security child

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[62] i.e., ECJ, C-182/15 *Petruhhin*, EU:C:2016:630.

[63] i.e., gay marriage in ECJ, C-673/16 *Coman*, EU:C:2018:385 or Muslim adoptions in ECJ, C-128/18 *SM*, EU:C:2019:248.

[64] ECJ, C-140/12 *Brey*, EU:C:2013:565. For a more profound investigation, Minderhoud P., "Case Note under ECJ 19 September 2013, C-140/12, (Brey)" No. 84, *Rechtspraak Vreemdelingenrecht* (2013) p. 511-13.

[65] ECJ, C-333/13 *Dano*, EU:C:2014:2358. For which the court stated, favoring the financial interest of MS over free movement, that "The status of citizen of the Union is destined to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to enjoy within the scope ratione materiae of the EU Treaty the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard". AG Wathelet Opinion in ECJ, C-333/13 *Dano*, EU:C:2014:384.

[66] ECJ, C-67/14 *Alimanovic*, EU:C:2015:597, for which the benefits at issue cannot be considered financial in nature, but rather as social aid in accordance with Art. 24(2) of Directive 2004/38.

[67] ECJ, C-299/14 *Garcia-Nieto*, EU:C:2016:114, a far-reaching decision on the equal treatment of jobseekers following *Alimanovic* judgment.

[68] ECJ, C-308/14 *European Commission v UK*, EU:C:2016:436, which builds on the reasoning in *Dano* to restore the discrimination of national measures without any discussion of fundamental rights.

[69] Ceiling effect demonstrated in Gustafson P., "More Cosmopolitan, No Less Local: The Orientation of International Travellers", *European Societies* 11 (2009) p. 25-47.

benefits and child tax credit conditional upon having a right to reside and falling under Regulation 883/2004 on Special Non-Contributory Benefits (SNCBs).

Nonetheless, this jurisprudence is only the evident result of the historical evolution of EU nationality. To understand its consequences is, therefore, necessary to introduce the process that brought to the actual modern citizenship of the EU, which has as a condicio sine qua non the nationality of a MS.

1.3. The Europe of citizens: from the old market membership to the new socio-political status

Even though Union citizenship can offer a real added value beyond national membership, supranational status is still one of the most debatable topics in EU law. Starting from the most valuable political sphere, the freedom of posted employees to roam around the European Economic Area (EEA) has always been discussed since the negotiations of the 1957 European Economic Community (EEC) Treaty of Rome[70] until the 2004 enlargement to Eastern and Central Europe. However, the conflict over having the right to enter and ultimately stay on state territory tends to be overshadowed by the broader debate on migration and asylum. Consecutive to the fact that the Union citizenship is challenged by various judgements that put an end to years of legal contestations about the transnational access to social benefits by economically inactive citizens[71] and about the immigration status of family members[72] from third parties[73]. Even though all recent cases repeat the invocation of citizenship of the Union as a "fundamental status for nationals of the MS", an evolutive pattern can be drawn starting with the narrow definition of market citizenship and ending with a new real, social, or political membership more focused on the individual.

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[70] Recital 1 of the preamble of the present TFEU: "Union citizenship embodies the historical mission of "ever closer Union among the peoples of Europe" intended as the union of many" as described by Professor Weiler J., "The Constitution of Europe. "Do the new clothes have an emperor?" and other essays on European integration", *Cambridge University Press* (2005) p. 327.

[71] The ground-breaking examples of post-Maastricht jurisprudence: ECJ, C-85/96 *Martinez Sala*, EU:C:1998:217 and ECJ, C-184/99 *Grzelczyk*, EU:C:2001:458.

[72] Protected in Art. 7 CFR and 8 European Convention of Human Rights (ECHR), they comprise the spouse, registered partner, and descendants who are either under the age of twenty-one or dependent, as well as those of the spouse or partner and dependent on relatives in the ascending line as defined in Art. 2 of the Citizenship Directive, if the host MS's law treats the civil partnership as being equivalent to marriage.

[73] The seminal cases of ECJ, C-413/99 *Baumbast*, EU:C:2002:493 and ECJ, C-34/09 *Ruiz Zambrano*, EU:C:2011:124.

As Lenaerts remarks, a move beyond regarding EU citizenship as a fifth freedom when referring to the internal market is indispensable[74]. However, the main query to be analysed considering citizenship (Part II TFEU) as a service recipient rooted in the EU internal market (Title IV Part III TFEU Art. 3) is, in its interrelationship with the Union[75], the potential reappearance of the safeguard mechanism in the content of a unilateral decision to discriminate against workers.

At the service of economic integration and to protect the bearer against the negative externalities of the financial project, market citizenship has been developed. In this case, the most in need of protection will not be able to benefit from any rights since the apolitical market rationale will make them invisible in the eyes of the law in the first place, de facto throwing them outside the ambit of citizenship and making equality inapplicable. For this reason, Somek first outlined three ways of liberalization from the market: wealth, entrepreneurship, and the attainment of collective control enables the society to tame the market forces[76]. The status civitatis of the Union, when regarded from the economic lens, being a component of the single market project, makes true emancipation through collective control impossible.

Indeed, the unquestionable necessity to separate the embryonic form of EU nationality from the market, the methods used to shape the application of Union legislation on a daily basis, cannot disappear[77]. As de Sousa rightly notes, the two paradigms of internal market and EU structural citizenship preserve various principles, including market integration and respect for human dignity, which is enshrined inter alia in Title I of CFR.

To be more precise, it is rock-solid to affirm that if there is no connection between citizenship and Europe as a whole, there is no meaningful idea of EU status. By contrast, the internal market is built on the assumption of cross-border movement on the MS territories ephemerally united as one. Nowadays, failing to notice the inherent tension between citizenship and the market is to distort the structural

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[74] Lenaerts K., "EU Citizenship and the European Court of Justice's "Stone-by-Stone" Approach", *International Comparative Jurisprudence* 1 (2015) p. 1-10.

[75] The 1992 Decision on EU citizenship annexed to the Danish Act of Ratification of Maastricht Treaty and then incorporated in the Treaty of Amsterdam: "The provisions of Part Two of the Treaty establishing the European Community relating to citizenship of the Union give nationals of the MS additional rights and protection as specified in that Part. They do not in any way take the place of national citizenship. The question of whether an individual possesses a MS's nationality will be settled solely by reference to the national law of the MS concerned".

[76] Somek A., "The Argument from Transnational Effects: Representing Outsiders through Freedom of Movement", *ELJ* 16 (2010) p. 315.

[77] Plender K. and Kochenov D., "EU Citizenship: From an Incipient Form to an Incipient Substance? The Discovery of the Treaty Text", *ELR* 37 (2012) p. 369-396.

coherence of the Treaties. This ethical blindness results from ignoring that free movement is not a tool for macroeconomic adjustment through "biographical solutions"[78] but rather a fundamental individual right to choose whether to move or not.

For this reason, this prima facie approach followed the constituent and consolidation phases. In the first one, the Court sought to realize an expansive vision of the varied character of the civis europaeus sum to adaptively stabilize specific rights beyond those explicitly conferred by secondary legislation (Art. 288 TFEU)[79]. Therefore, in the second phase, the market-citizen or Marktburger[80] became even less relevant. Nevertheless, to this day, citizenship judgements constitute one of the most compelling ECJ case laws, which include the proportionality principle and the Directive 2004/38/EC on the rights of citizens of the Union (more predictable for economically inactive people).

Finally, with its return to market membership, the actual reactionary phase of the CJEU, tallying on the additional nature of the legal standing within the EU, is constituted by a retreat from its original vision in support of a simple interpretation. The latter confirms the significance of the previously established national bond of belonging. This trend reflects the limits of economic integration, locating the responsibility for the most vulnerable individuals in society within the state of origin[81]. Therefore, the result taking the reactionary path means accepting that the Union is not challenging established links, working in a way to advantage of the few and excluding the many[82]. In a liberal society, individuals can only be free if the ties that bind are tenuous and formal[83].

After fifty years of derogations from free movement and twenty of Union membership, the Luxembourg Court considers that national authorities can now be trusted to decide correctly and to properly protect

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[78] Whose reach is restricted by the specific Protocol 30 on the Application of the CFR to Poland (declaration 61 on morality and family law) and UK (2007), which works as an opt-out from substantial parts of the Charter. For an in-depth analysis Bernard C., "The "Opt-Out" for the UK and Poland from the Charter of Fundamental Rights: Triumph of Rhetoric over Reality?" in Griller S. and Ziller J. (edn.), "The Lisbon Treaty: EU Constitutionalism without Constitutional Treaty", *Springer* (2008) ch. 3 p. 266-276.

[79] Borghi V., "One Way Europe? Institutional guidelines, emerging regimes of justification, and paradoxical turns in European welfare capitalism", *European Journal of Social Theory* 14 (2011) p. 321-341.

[80] According to Ipsen H., "Europaisches Gemeinschaftsrecht", *J.C.B. Mohr Tubingen* (1972), represents the primary actor participating in the common market.

[81] Spaventa E., "Earned Citizenship-Understanding EU citizenship through its scope" in Kochenov D. (edn.), "Eu Citizenship and Federalism", *Cambridge University Press* (2018) ch. 7 p. 204-223.

[82] Falk R., "The Decline of Citizenship in an Era of Globalisation", *Citizenship Studies* 4 (2000) p. 5-18.

[83] In line with the Kantian view of liberalism Joppke C., "Immigration and the Identity of Citizenship: The Paradox of Universalism" *Citizenship Studies* 12 (2008) p. 533-546.

all EU citizens under the supervision of national judiciary. As it will be deeply explained in the section relating to Brexit, in responding to the leave result of the plebiscitary referendum, the remaining twenty-seven MS underlined the need to better accommodate Union residents' desires to live, learn, work, travel around freely, and flourish on the continent. These objectives must be obtained jointly with the benefit of the rich European heritage, under the 2016 Bratislava Declaration, which improves communication between the EU institutions, the MS, and the EU citizens.

Consistent with the idea of demoicracy, it is noteworthy that the "deprivation effect" of rights attached to the status of citizen is causing a de facto loss or a more than serious inconvenience[84]. If the CJEU has generally accepted the norm that the MS has alone authority to determine nationality, despite the irregularities and exclusionary implications to long-term-resident TCNs, *Kaur* states 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"[85].

1.4. Loss of national citizenship: McCarthy and Zambrano cases

As hitherto perceived, in the "golden days", citizenship's core function was the capacity to exclude at the level of autonomous legal status[86]. Equality is among citizens, and those who are not are entitled to nothing. Even denaturalizing someone or depriving a non-citizen of fundamental citizenship rights earned de facto via participation in a living community can be avoided by the fear of rights being revoked. Additionally, the Union eliminates the legal relevance of MS's ability to control the migration of Union citizens in accordance with the principle of non-discrimination based on nationality[87].

The current situation, epitomized by the economic crisis in Europe coupled with the rise in Euroscepticism and populism in several MS was especially remarkable in the access to social benefit

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[84] Cheneval F. and Schimmelfenning F., "The Case for Demoicracy in the European Union", *Journal of Common Market Studies* 51 (2013) p. 334-350.

[85] ECJ, C-192/99 *R v. Secretary of State for the Home Department ex parte Kaur*, EU:C:2001:106 para. 19.

[86] Unlike aspirational citizenship, which encourages social change in favour of the inclusion of outsiders like TCNs, and citizenship as a social fact, which examines the empirical foundations of citizens' rights and draws attention to their accompanying limitations.

[87] In Art. 21(2) CFR, the idea of equality and the ban on discrimination based on nationality is viewed as a dubious foundation (Art. 18 TFEU). This article is exceptionally fundamental to the asylum context and for the lex specialis instruments enshrined in Art. 45(2) and 49 TFEU. i.e., ECJ, C-186/87 *Cowan*, EU:C:1989:47.

areas for the size of the inflow of people after Eastern enlargement[88]; the lack of knowledge on the extent to which EU citizens claim benefits and the scale of politicizing EU migration.

Within the history of European integration, the Brexit referendum on September 14th, 2016, represents par excellence the most severe backlash, the result of covert integration because of its nature and effects, people could potentially lose the status civitatis granted by Art. 17 TEC[89]. It was in January 2013 that Prime Minister David Cameron, in his speech to regain control of borders, promised a plebiscitary election on the question of membership in the EU, triggering Art. 50 TEU on the withdrawal proceeding. The ex-lege and en mass automatic revocation due to exiting of England adds ground for (involuntary) lapse of Union status[90]. Once again, the major cause of concern was the access of EU nationals to the welfare state through the habitual residence social security eligibility requirements for both residents and nationals of the EU.

As a result, while conservative British nationals have been able to pass this threshold due to their nationality and place of residence, non-national EU citizens have been required to prove their "right to reside" in accordance with Directive 2004/38, which requires them to be employees or self-employed. Even though they were the most affected, along with UK citizens residing abroad, they were disenfranchised. The results of widespread consultation represented a further challenge in European citizenship's narrative of transnational rights, despite being opposed by the majority of voters and leading to political battles, social upheaval, and legal snags, international governments' decisions ultimately held to political ransom[91].

Specifically, always in the British scenario, *McCarthy*[92] set the boundaries to the formula of "primary and individual right of free movement" and stresses the fact that the latter is only applicable in

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[88] Strumia F., "Brexiting European Citizenship through the Voice of Others", *German Law Journal* 17 (2016) p. 109-116. For instance, after a Eurostat press release reporting that the UK had granted the most significant number of EU naturalizations between 2002 and 2010, UK Immigration Minister Damian Green declared that "these statistics show why we must tighten our immigration system and look to be more selective about whom we give British citizenship to", *Daily Mail* (2010).

[89] ECJ, C-135/08 *Janko Rottmann v. Freistaat Bayern*, EU:C:2010:104 para. 51.

[90] Regarding the firm legal basis and the principle of tempus regit factum, for which must not enact the inability retroactively. To prevent someone from losing their nationality owing to an already-initiated act, a suitable temporary provision must be created in a disproportional, discriminatory, or unpredictable manner.

[91] Similarly, to the denial of recognition in the Swiss free movement referendum saga of 2014. For a critical perspective, Martiniello M., "The limits of consultative politics for immigrants and ethnic immigrant minorities" in "Political and Social Participation of Immigrants through Consultative bodies", *Council of Europe Publishing* (1999) p. 77-89.

[92] ECJ, C-434/09 *McCarthy*, EU:C:2011:277. AG Kokott Opinion in C-434/09 *McCarthy*, EU:C:2010:738 : u-turn situation in which an EU citizen of a different nationality who moves to that same MS than family members do those of a fellow national who, after being accepted into the host MS culture, has never utilized his freedom to free movement by means of

extraordinary cases, such as when a "good Union citizen"[93] is forcibly removed from the Union's entire territory. This example fits because Mrs. McCarthy was a UK national who, being the primary carer of her disabled son, also acquired Irish citizenship. This "randomness" doesn't either justify any MS to apply measures that prevent her from exercising her right to free movement and the accompanying right for her TCN husband to dwell in the MS or that have the effect of denying her the real enjoyment of the substantial rights given by her status.

The Court of Luxembourg in *McCarthy* qualified the potential breadth of the *Ruiz Zambrano* test[94], which is worth mentioning not only because it represents a pivotal ruling for the immigration status of TCNs family members but also as an institutional challenge of EU allegiance intrinsically linked to national membership. Focusing on one MS only, this case can be studied for the inability of Mr. Zambrano to exercise his EU citizenship rights of residence and work in Belgium without any cross-border element. The CJEU crucially held that "any measure that deprives (EU citizen minors) of the genuine enjoyment of the substance of the rights attaching to the status of the EU citizen is prohibited by Art. 20 TFEU". This crucial logical progression in the Court's effort to gradually broaden the definition of EU membership was perceived as a vital extension ratione personae beyond the purview of Union nationals themselves[95]. The Zambrano parents didn't fall under the protection of Art. 20 TFEU, even if primary carers of their children, because the rights enshrined in that provision are awarded only to those who are nationals of an EU MS. In the ECJ's short reasoning, however, this rule wasn't applied rigidly but "by reason of the situation's nature and its consequences"[96] of the loss of allegiance, balancing the opposing principles to determine the optimum extent[97]. Nevertheless, in the chapters that follow, we will go over Zambrano's extensive discussion once more.

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genuine residence, returning to his MS of nationality is treated less favorably than an EU citizen of a different nationality who moves to the same MS.

[93] A tighter bond than one might anticipate from their legal standing distinguishes Europeans who deserve protection, as opposed to the deviant and non-integrable bad citizens. In the case at stake, Mr. Zambrano was willing to obtain work and pay taxes to establish organic social connections.

[94] ECJ, C-34/09 *Gerardo Ruiz Zambrano v. Office national de l'emploi*, EU:C:2011:124.

[95] Laenarts K. and Kochenov D., "A Real European Citizenship: A New Jurisdiction Test: A Novel Chapter in the Development of the Union in Europe", *Columbia Journal of European Law* 18 (2011) p. 55-109.

[96] See note 136.

[97] Compare ECJ, C-133/15 *Chavez-Vilchez and Others v. Raad van bestuur van de Sociale verzekeringsbank and Others*, EU:C:2016:659.

1.5. Domestic nationality as a conditional tool for European supra-state

National identity is necessarily "primary" to offer clues about the conditions required for supranational[98] and even more for global citizenship. According to the French nation-state model, membership canonized by Marshall becomes the meta-narrative of EU allegiance. On the other hand, the free society realized in Europe was constructed on the basis of differentiated civic, political, and social rights controlled by an enlightened type of government (Habsburg system). Nevertheless, most of these models can be subsumed under three major paradigms: the individualistic stance, which concentrates on legal guarantees for the rational pursuit of the citizen's interests, and historically links to market regulations (liberal theory); the political one, which puts forward the ideal active participation of all in public debates (democratic theory); and the collective identity statement, which connects the status civitatis to a common culture and tradition (universalist theory).

In the attempt to define a demos beyond the nation, membership in the Union emerges as a concept that thematizes the problem of social integration in Europe on a transnational and post-national levels. EU status civitatis, like any other nationality, fulfils the functions of providing a social basis for transnational institutions and defining what is shared by those included in the social space covered by the institutions of the Union. On the one side, this political experiment is based on an allegiance that abstracts from the ethnic component of being national. This necessary but not sufficient prerequisite of transnationality is demonstrated by the burgundy-red European passport that, even if it replaces all the single domestic ones, explicitly verbalizes different cultures[99]. On the other, the Union allegiance is also post-national institutionalizing the idea of an encompassing citizenship regime that encloses national membership and provides proper space for a multiplicity of identities[100].

Citizenship, citoyenneté, Staatsburgerschaft, or however it may be translated, is certainly a crucial concept since it not only defines the relation of adherence between the individual and his or her country but also links the political, economic, and cultural spheres at horizontal and vertical levels. The multi-

[98] Turner B.S., "Citizenship and social theory", *Sage Publications* (1993).

[99] i.e., The German passport emphasizes the state in distinction to its citizens. At the same time, the Italian one warns its bearers not to disregard the importance of this official document, and the French one tries to prevent situations in which the French state is expected to subsidize its citizens abroad.

[100] Held D., "Principles of cosmopolitan order" in Brock G. and Brighouse B., "The Political Philosophy of Cosmopolitanism", *Cambridge University Press* (2005) ch. 2 p. 10-28 points to extending cosmopolitanism because "Individuals with multiple identities do not necessarily show loyalty only towards the nation, where the majority values, knowledge, and norms have been mixed with political cultures" as successively explained in Chapter 3.

layered States of Europe are considered a political community that manages the portfolio of entitlements of its citizens. For these complexities, all areas of citizenship social practices require a set of rules, rights, and obligations separating insiders from outsiders, as defined by European institutions.

The principle of belonging to a state is regarded as "truly national" when it comes from ethnocultural descent[101]. At the same time, the administrative practice of naturalization essentially serves to homogenize after birth the substantial criteria of language, custom, and even religion. In addition to those, supranational nationality is conferred at birth. Notwithstanding these modalities of access to subjecthood, denationalization can also occur without the conditions compelled by the Citizenship Directive, especially after the pressure caused by the controversial UK Brexit vote. The revocation of allegiance, apart from cases of acquisition of another nationality, is either a punishment for disloyalty or crimes of higher order, accompanied by physical expulsion, or a protection of the state's vital interests in a consistent manner with EU liberal principles[102]. In light of England's decision to leave the Union, the best example is *McCarthy*.

However, the more the legal framework set by the European institutions is superimposed on national legislation, the more issues on residence, immigration, welfare entitlements, and labour within Europe modify the social conditions of the Union's nationality within MS. Coping with the persistent feelings of being attached to the original country, the EU citizenship, as a "compound democracy", combines elements of indirect and direct membership. The first one represents the citizenry of the Union because of national status civitatis, whereas the second one derives directly from the policy process of the EU[103].

The Union conceives its constitutional legal status as a minimalistic derivative sum of MS nationals' basic rights of political participation, welfare entitlements, and educational benefits, as contained in the 1992 Maastricht Treaty. Although local rights complement the citizenship of the Union, the latter becomes autonomous when increasingly decouples from the territorial nation-state and co-exists with domestic nationality. To enforce the predominant European growth, the constitutional position of the CJEU stepped in to offer an expansive dynamic interpretation of the membership's rights. As a starting

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[101] Ibid. note 13.

[102] Gibney M.J., "Should Citizenship Be Conditional? The Ethics of Denationalization", *The Journal of Politics* 3 (2013) vol. 75 p. 646-658.

[103] Cotta M and Russo F., "Europe à la carte? European citizenship and its dimensions from the perspective of national elites" in Best H., Lengyel G. and Verzichelli L., "The Europe of Elites: A Study into the Europeanness of Europe's Political and Economic Elites", *Oxford University Press* (2012) p. 14-42.

point national court, in *Zambrano*, *Micheletti*[104], and *Rottmann*, the Court of Luxembourg emphasized the substantial doctrine of the genuine enjoyment of citizenship rights.

To conclude, a feasible Union allegiance is found in a multifaceted collective identity which, structurally similar to the plural form of national status, reflects the precious heritage of regions' diversity, the continuous change of internal boundaries among competing nation-states, and its flows from Eastern Europe to Western frontiers. This shared cultural and historical heritage that the Union is proud of is demonstrated by the entrenched motto "united in diversity". The pluralism of EU people unites the civic values of social justice and respect for HR, the educational skills for a shared future, and the universal standard based on rights that reflects the necessity to protect the rule of law and the democratic political system.

So, the contemporary notion of status civitatis shifted from the exclusive distinction of a privileged group to the continual, more instrumental inclusion of new members into the expansive global demos[105]. Moving from the margin of domestic nationality to the centre transformative potential of the European civis sum is now possible. The focal point to remember in the next classification of supranational membership models is the non-linear path of the EU allegiance, which flexibly transcends nation-state external democratization to encounter multiple citizenship-related constructs and opens toward other citizens, societies, and cultures worldwide[106].

[104] ECJ, C-369/90 *Mario Vincente Micheletti v. Delegacion del Gobierno en Cantabria*, EU:C:1992:295

[105] In compliance with the 2007 Commission's report on Integration and Cohesion: "The changes in people, their backgrounds and our experiences are what have come across as the strongest influences on our views about integration and cohesion. This reflects the need for communities to become increasingly comfortable with these social processes of thinking locally and acting globally".

[106] Urry J., "Globalisation and citizenship. Unpublished paper, Department of Sociology, UK", *Lancaster University* (1998).

2. The constructive potential of Union citizenship functionalist theories

The primary aspiration of the EU nationality, as one of the supporting pillars of the new political project, is to directly ensure the freedom to live and move wherever inside the host MS's borders. Union citizenship has a sui generis status to link legal stances with factors affecting access and the economy. This minimal ontological commitment of EU allegiance serves as a middle-term[107], which, according to the history of Scandinavian legal realism, is structured by various endogenous and exogenous influences. Their best example of combination is found in the ECJ case law, which defines the equal treatment, a precondition of residence's illegality[108], or the integration exception[109] for foreigners; the HR in the CFR, criticized as inconsistent with citizens' rights[110] but particularly relevant for TCNs; and the non-contributory social benefit[111].

The discussion at the international level is frequently framed by presumptions drawn from national order and citizenship. Theorizing scholars debated over most of the 21st century on the transformative potential of EU status civitatis. For instance, Baubock has identified three approaches to give shape to Union membership: "statist", which corresponds to the principles applied in contemporary federal democracies; "unionist", which concentrates on strengthening the citizenship of the EU by making it more inclusionary for European residents (since the former was dismissed as politically unfeasible), and "pluralist", the

[107] Treated as "a technique of presentation" or a "vehicle of inference", investigating the conditions surrounding lawful acquisition is possible. and deprivation as well as the conditional consequences connected to the consistency of such a status civitatis.

[108] In the words of Wollenschlager F., "A New Fundamental Freedom beyond Market Integration: Union Citizenship and its Dynamics for Shifting the Economic Paradigm of European Integration", *ELJ* 17 (2011) p. 1-14.

[109] As defined by de Vries K., "The Integration Exception: A New Limit to Social Rights of Third-Country Nationals in European Union Law?" in Thym D. (edn.),"Questioning EU Citizenship: Judges and The Limits of Free Movement and Solidarity in the EU", *Hart Publishing* (2017) ch. 13 p. 267-286 and postulated in the recent judgments ECJ, C-579/13 *P&S*, ECLI:EU:C:2015:369 and joint C-443/14 and C-44/14 *Alo & Osso*, ECLI:EU:C:2016:127.

[110] Per Shuibhne N.N., "Union Citizens and Fundamental Rights" in Thym D., "Questioning EU Citizenship Judges and the Limits of Free Movement and Solidarity in the EU", *Hart Publishing* (2017) ch. 11 p. 209: "Rights like the freedom of expression or religion today are granted to individuals because they are human and not because of their status".

[111] Main concrete implications in *Martinez Sala* (AG La Pergola Opinion in C-85/96 *Martinez Sala*, EU:C:1997:335) and *Baumbast* (AG Geelhoed Opinion in C-413/99 *Baumbast and R v Secretary of State for the Home Department*, EU:C:2001:385 para. 93)

most realistic approach which emphasizes the autonomous value of both national and supranational allegiances[112].

However, to give a more detailed overview of the types of cosmopolitan citizenships[113], at the occurrence based on the full membership in national communities, it is interesting to concentrate specifically on the federal citizenship towards the access to fundamental rights, which the notion of extraterritorial and transnational status civitatis will follow. Finally, to conclude with, denizenship characterizing the ius domicilii, but which will be shortly discussed in this section to give the other EU nationalities paths a proper space.

Henceforth, the Treaty of Maastricht introduced this new common status, which was built upon the earlier 1972 Paris and 1973 Copenhagen Summits, underlines the evolution of the free movement acquis moving towards some federal Europe via incipient forms of citizenship. The character of the EU legal status is, in fact, federal since its core horizontal features[114] and its vertical aspects[115] are like other federal memberships. The first elements can be found in the relationship between the Union national and the MS through the freedom to travel, to live anywhere, and to be treated equally regardless of country. While the latter identifies the connection between EU citizens and EU institutions through access and voting rights pertaining to and being enforceable against the entire transnational polity.

From another point of view, some individuals might have a partial status, as in the case of extrazens people born outside the Union who (already have) the ability and desire to get supranational citizenship through non-residence provisions are those who were born outside the Union, or have the EU allegiance from a MS but reside outside the latter. Even though the definition of this type of nationality should be given with caution, it is important to mention because of the increasing circular legal and mobility

[112] Under the last approach, the sovereignty of MS is constrained without reversing the present hierarchy between nationality and EU legal status, which is meant to be complementary by Baubock R., "Why European Citizenship? Normative Approaches to Supranational Union", *Theoretical Inquiries in Law* 8 (2007) p. 467, 483-484.

[113] According to Held D., "Democracy and the Global Order: From the Modern State to Cosmopolitan Governance", *Polity Press* (1995), "It is associated with the development of an orientation of openness to other citizens, societies, and cultures across the globe".

[114] Preliminary and incomplete achievement according to Schuck P.H., "Citizenship in Federal Systems", *American Journal of Comparative Law* 48 (2000) p. 195, 216.

[115] Culmination of federal citizenship as the emancipation of the market logic according to Schronberger, "European Citizenship as Federal Citizenship", *European Review of Public Law* 19 (2000) p. 62, 79.

trajectories between EU and non-EU countries, which are creating contingent flows of external citizen population worldwide.

The long-term process of European integration through law [116], which is the typical instrument for effectively modifying the social and economic realities, is reinforced with social or transnational citizenship. Accepting that there are a few privileges associated with being an EU member that create a direct connection between the citizen and the Union, the European nationality is primarily transnational in substance[117]. The EU social status, as opposed to civic and liberal nationality, consists of the guarantee by the institutions of rights for the many on the basis of receptive[118] and participatory solidarity[119]. This classification is also adopted in the case of multiple citizenships in overlapping and multi-layered social spaces. EU's specific model of regional economic integration guarantees decisive equal treatment, relying on the actual interaction to prevent (EU) migrants from undercutting local minimum standards and merciless competition with locals[120]. Besides the usual processes of governments copying other countries' citizenship laws, the regional integration implies cooperation on a stable basis.

To define denizenship at the supranational level, it is mandatory to observe the Citizenship Directive 2004/38/EC, which draws a distinction on the freedom of movement within a Member State for EU citizens and their living relatives freely [121] according to the length of residence and a flexible application of the economic residence criteria. For the first three months, any citizen may live in any MS of the Union without making any claims to be supported by the host state social assistance or formalities other

[116] Deutsch's "Transnationalist thesis" in "Crossing Borders, Claiming a Nation", *Duke University Press* (2010) p. 1 as the upshot of his earlier thesis on nationalism. For a critical view, Shaw J. and Hunt J., "Fairy Tale of Luxembourg? Reflections on Law and Legal Scholarship in European Integration" in Phinnemore D. and Warleigh-Lack A. (edn.), "Reflections on European Integration: 50 Years of the Treaty of Rome", *Palgrave* (2009) ch. 6 p. 93-94.

[117] Magnette P., "How can one be European? Reflections on the Pillars of European Civic Identity", *ELJ* 13 (2007) p. 664-679 and on the same line, Shaw J., "Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism", *Working Paper* RSCAS 2010/14.

[118] More arduous to expand to EU levels and to adapt to transnational membership, which precedes positive law on Union citizenship, than participatory solidarity. The archetypical form consists of benefits from the public purse as in ECJ, C-333/13 *Dano*, EU:C:2014:384.

[119] Traditionally, in the field of labor relationships, such as trade unions that allow workers to threaten collective action, and for this reason frequently referred to as industrial citizenship. The typical example is, in fact, the combination of workers in trade unions as illustrated in ECJ, C-341/05 *Laval un Partneri*, EU:C:2007:809 and ECJ, C-438/05 *Viking Lines* EU:C:2007:772.

[120] Magnette P., "How Can One Be European?", *ELJ* 13 (2007) p. 664-672.

[121] Restated in Art. 45(1) of the CFR (see, e.g., ECJ, C-162/09 *Lassal*, EU:C:2010:592) and from which the rights in Regulation 492/2011 OJ L141/1 stem. The explanation of Art. 45 of CFR, following Art. 52(2) of the same Charter, confirms that free movement rights are fundamental rights within the limits set out in the Treaties, as stated in ECJ, C-543/12 *Zeman*, EU:C:2014:2143.

than the requirement to hold a valid identity card or passport[122]. After five years of continuous and legal permanent residence[123], EU members enjoy equal status to nationals without other conditions. Between the intervals of three months and five years, EU citizens and their families can stay, conditional on having a valid document to register before the competent authorities, who will release a registration certificate, or a residence card once proven to have health insurance and sufficient resources. Otherwise, becoming an "unreasonable burden on the social assistance system of the host MS"[124] or failing to comply with such formalities will constitute a rejection, which does not necessarily mean deportation or expulsion.

The treatment for those who pertain a status positivus et socialis activus differs from the economically inactive persons. Economically inactive Union citizens are required to have sufficient resources[125] and comprehensive health insurance for stays of more than three months, with the exception of EU workers, self-employed individuals, and people who have stopped being economically active but still hold worker or self-employed status in accordance with Art. 7(3) of Directive 2004/38.

In line with the social security coordination regime, the residence model converges employing the "habitual residence" [126] location to establish the state responsible for providing social assistance in a strict version of the residence-based equality. That makes us distinguish between temporary visitors and residents who relocate their centre of interests enduringly[127]. In nations like Sweden and the Netherlands, obtaining permanent residency is a politically motivated procedure. Courts have played an important role in various European countries, including France and Germany, in the process of recognizing permanent

[122] Art. 6(1) Residence Directive 2004/38/EC. Only with ECJ, C-408/03 *Commission v. Belgium,* the Court confirmed that it was impermissible for a MS to issue automatic deportation orders to a national of a MS resident on its territory who had failed to produce the necessary documentation of their absence of employment.

[123] Art. 24(1) of the Free Movement Directive 2004/38/EC, also confirmed in ECJ, C-378/1, *Onuekwere,* EU:C:2014:13, and Art. 11(4) of the Long-Term Residence Directive 2003/109 OJ L16/04.

[124] Article 7(1) Citizenship Directive 2004/38/EC imposes the requirements of comprehensive sickness insurance and sufficient resources, operationalized in case law. And by Recital 16 of the same Directive 2004/38, given the absence of a clear definition, MS has some flexibility (always considering the impossibility of setting a minimum income level below which presumes that the person does not have sufficient resources) depending on the length of the benefit provided, the citizen of the EU's personal circumstances, and the total amount of maintenance aid received. However, after six months of looking for work, they lose their worker status and revert to being unemployed individuals eligible for social assistance.

[125] Even if it is not yet certain, it can be included in future earnings as shown in ECJ, C-86/12 *Alopka*, EU:C:2013:645. For a statement, Minderhoud P., "Sufficient Resources and Residence Rights Under Directive 2004/38" in "Residence, Employment and Social Rights of Mobile Persons: On How EU Law Defines Where They Belong", *Intersentia* (2016) ch. 4 p.47-73.

[126] The component is the right to stay as defined in Art. 3 of Protocol No. 4 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in ECJ, C-90/97 *Swaddling*, EU:C:1999:96.

[127] Examples of recent derogations from the permanent residence regime are found in ECJ, C-348/09 *P.I.*, EU:C:2012:300 or C-145/09, *Tsakouridis*, EU:C:2010:780 and C-400/12 *M.G.*, EU:C:2014:9.

residency for aliens. And in between, there are Belgium, Italy (1998), Portugal, and Spain (1996), which, although the impetus towards ius domicilii[128] is political, rely upon a large degree of jurisprudence because of the Long-term Residence Directive.

2.1. The kernel of federal citizenship: the existence of a single people at federal level

The godfather of European integration, the Czechoslovak Count Coundenhove-Kalergi[129], first envisioned the "United Europe" of the future by drawing on the example of Switzerland. The European Federal Association of States and Citizens was created to serve the (market) citizens by providing directly enforceable supranational rights. The unique and most accepted symbolic representation of the Union's legal nature is the anthropocentric Federal Union[130], which was also the final purpose of the Plan Schumann. Kalergi's idea was to bring tamed cooperation-oriented constitutionalism to MS, by limiting the democratic, economic, and, most recently, monetary decisions.

Virtually every federation in the world is characterized by an intricately layered citizenship arrangement, expressly articulated or not, and the EU is no exception. The integrative federalism proposed by Lenaerts[131] points out the legal heritage of freedom, prosperity, and unity of citizens. Union nationals endow the European Republica composita with legitimacy through their supposed democratic engagement and control, recapping in return the benefits of integration, prosperity, and peace.

The recognition of diversity and solidarity is also a core value of federalism. The latter split membership into affiliation, entitlement, and participation levels. The citizenship of the Union reflects the substance of the federal EU in federal unions by aggregation[132] in the free movement right between the states and the responsibility of the former to treat the residents of the sister state equally with their own citizens.

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[128] Where there are no justifiable grounds for unequal treatment, citizens and non-citizens should be treated equally, also known as the principle of personhood (less clear for seasonal employees and people with temporary visas). For a parallel with U.S. citizenship, see Schrauwen, "Sink or Swim Together?", *Fordham International Law Journal* 23 (1999) p. 778.

[129] Coundenhove-Kalergi R., "Paneuropa", *Herold Wien* (1923).

[130] As a coming-together of states for the greater well-being of the individual in Stepan A., "Federalism and Democracy: Beyond the U.S. model", *Journal of Democracy* 10 (1999) p. 19-34.

[131] Lenaerts K., "Federalism: Essential Concepts-The Case of European Union", *Fordham International Law Journal* (1997) p. 773: "In a federal form of government, both the rules laid down by the central authority and by the component entities are aimed at affecting the legal sphere of individuals".

[132] Koslowski R., "A Constructivist Approach to Understanding the European Union as a Federal Polity", *Journal of European Public Policy* 6 (1999) p. 561-563.

Nevertheless, the most salient feature of the inter-state dimension of federal allegiance is its implication for dual nationality of the same person at the statal and the federal level[133]. This character is considered, along with the primary intention a constant effort on the part of the central authority and the component entities charged with exercising their powers of self-containment.

In response to internal pressures for disintegration of the federation, certain MS, including Belgium, Italy, and Spain, have taken sui generis approaches to devolution and regional autonomy involving the decentralization of national power. Despite the fact that numerous countries in Central and Eastern Europe joined the EU in 2004, emerged out of the ashes the failed federation of the Baltic States and the unique feature of the newly acquired supranational citizenship: the shared competence. However, this peculiar characteristic also depends on having MS nationality, which is thought to be separate from domestic membership. Applying federalism's logic is one approach to make sense of the Court's seeming turn to the right.

Some examples of this exclusionary tendency as a procedure for the Court to amend its mistakes, primarily on decentralization and on a more specific sub-dynamic of the restoration of the nation, can be seen in citizen-centric judgments of *Alarape* and *Tijani*[134] or *Rahman*[135]. In these cases, the leeway for entry and residence rights (Art. 45 or 56 TFEU; directly based on Art. 20 TFEU or derived from Art. 21 TFEU) respectively is highlighted for certain family members and the new citizenship law test based on genuine residence for up to and more than three months.

In this sense, the recent caseload is re-allocating responsibility solely to Union citizens within the state of origin, leaning more towards limiting rather than enriching free movement[136]. The rights-containing impulse of the Court's citizenship case study induces the Treaties' membership clauses to refer to rights as well as constraints and restrictions. As the last arbiter of EU powers and due to numerous methods, like the conferral of rights, the Court of Justice must consistently earn the confidence of MS and national Supreme Courts. However, it is up to the ECJ to persuade citizens of the Union that what is done makes sense morally and legally.

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[133] e.g., *U.S. Term Limits, Inc. v. Thornton* in Schonberger C., "European Citizenship as a Federal Citizenship", *European Review of Public Law* 19 (2007) p. 61-64.

[134] ECJ, C-529/11 *Alarape and Tijani*, EU:C:2013:290.

[135] ECJ, C-83/11 *Rahman*, EU:C:2012:519.

[136] Shuibhne N.N., "EU Citizenship as Federal citizenship: The Value Added-and the Value Lost" in Kochenov D., "EU Citizenship and Federalism: The Role of Rights", *Cambridge University Press* (2017) ch.5 p. 168-174.

And at the heart of a possible reinvention of EU status in pectore[137], as a potential federal denominator, there is the doctrine of the "substance of (fundamental) rights". *Ruiz Zambrano* has extended the idea that MS and EU should not impinge on substantive core rights to the Union nationality case law[138].

2.2. Opening the floodgates argument: the federative model of protection of fundamental rights

In the words of O'Leary[139], HR and citizenship are characterized by a contradiction since the first are universal, inclusive, and egalitarian, the latter instead evolved as an exclusive privilege for the members of the polity. The trivialization of the legal citizenship status, used as a door-opener for policing respect of rights at the national level and as an abuse of power, stems from a closer match between the authority in question with the actual society it governs. For example, the contemporary humiliation of Jewish, Russian, and Ukrainian minorities in Latvia and Estonia is based on the denial of membership to support the exclusion from rights that didn't work equally well. Most of the previously protected "citizenship" rights were eventually extended to the minority as "human" rights[140] due to pressure from international agencies.

Realizing the rights is necessary for both determining the status and the fundamental rights' extent, and proportionately recognizing limitations[141] as provided by law. To secure the attainment of a legitimate objective, the 2000 Nice's Charter proclaims that rights must be carefully accommodated in accordance with the Treaty's framework and, since the 2007 Lisbon Treaty, in the primary legally binding source of the law of the CFR (Title V, Art. 50-54 CFR section II). The scope of application of the CFR is a clear sign of MS' willingness to guarantee an open space of public deliberation along with the practical impact on citizens' lives on a case-by-case basis.

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[137] Meehan E., "Citizenship and the European Community", *Sage Publications* (1993).

[138] Schutze R., "Three "Bills of Rights" for the European Union", *Yearbook of European Law* 30 (2011) p. 131-140. For a critical point, Spaventa E., "Seeing the Wood Despite the Trees?", *CMLR* 45 (2000) p. 27-30.

[139] O'Leary S., "The Relationship Between Community Citizenship and the Protection of Fundamental Rights in Community Law", *CLMR* 32 (1995) p. 21-36.

[140] Lazowski A., Dagilyte E., and Stasinopoulos P., "The importance of Being Earnest: Spelling Names, EU Citizenship and Fundamental Rights", *Croatian Yearbook of European Law & Policy* 1 (2015) p. 1-45.

[141] Not going beyond what is necessary as defined in ECtHR, C-20/12 *Giersch*, EU:C:2013:411.

In this interplay between Union allegiance and effectively integrated fundamental rights' minimum level of protection[142], the CJEU can frame the dispute for the applicability of the Nice Charter[143]. Alternatively, there might be either an odd "Charter silence"[144] in the sentence of the Court or a substantive outcome consistent with the ECHR. Notwithstanding the wording of Art. 6(1) Treaty on the European Union (TEU), the CFR's rights granted to EU citizens appear to be exempt from final clauses; the Treaties have "higher rank" vis-à-vis the Charter[145].

Protecting EU nationality without protecting the nationals' fundamental rights is impossible unless bound to result in a legal aberration. Accordingly, the scope of application of EU HR is defined, primarily based on a connection with EU law, even when the exclusive or shared competence has not yet been exercised. Art. 51(1) of the 2000 Charter is addressed to "institutions, including when they act outside the EU legal framework, bodies, offices, and agencies of the Union with due regard for the principle of subsidiarity and to the MS only when they are implementing Union law". In other words, Art. 51 CFR seeks to introduce antidotes to expanding European powers under the pretext of protecting fundamental rights, preventing them from being interpreted as an implicit recognition of new capabilities for the Union. For this reason, is taking place a doctrine according to which it is essential to define the substance of supranational allegiance based on HR recognized in the Treaties.

In this matter it is appropriate the proposal of von Bogdandy to "reverse Solange" in MS, which maintains its independence in defending fundamental rights so long as it may be assumed that they uphold the core principles of HR outlined in Art. 2 TEU, as a sort of "Union rescue mechanism"[146]. Consequently, including fundamental rights within the substance of EU allegiance, those rights would prompt not only the abolition of limitations of Art. 51 CFR, but also a federalization of fundamental rights for which Union citizens via national courts would be able to challenge ECJ by simply invoking the Nice Charter[147]. Nonetheless, in liberal democracies, HR has been progressively decoupled in recent years from the

[142] According to Van der Brink, "EU Citizenship and EU Fundamental Rights", *Legal Issues of Economic Integration* 39 (2012) p. 104: "to protect the individual and the "constitutional core" of the EU".

[143] ECJ, C-40/1 *Iida*, EU:C:2012:692 in contrast with the conventional approach adopted by the AG Trstenjak Opinion. For further information, see Reynolds S., "Exploring the "Intrinsic Connection" between Free Movement and Genuine Enjoyment Test: Reflections on EU Citizenship after Iida", *ELR* 38 (2013) p. 376-392.

[144] In exercising free movement rights retained by TCNs in a host state consider ECJ, C-218/14 *Kuldip Singh and Others*, EU:C:2015:476.

[145] Ibid. note 41.

[146] AG P. Maduro Opinion in C-380/05 *Centro Europa* 7, EU:C:2007:505 para. 20.

[147] Reding V., "Speech on the 4th Report on the Application Charter".

citizenship status. This trend follows the belief that people, regardless of their status civitatis, should be protected against abridgement of those rights.

2.3. Among the constellation the EU extraterritorial citizenship

The contradiction of internal inclusivity grounded in exclusionary behaviour has underlined the special status of extraterritorial citizenship, which varies the rights associated with it. In some cases, it refers to a "diaspora engagement", covering a broad and relatively undifferentiated group of people that goes beyond citizens. This partial supranational status is restrictive but not as narrowly as excluding benefits like investment advantages and election rights at the national level.

Extraterritorial citizenship in the context of the Union allows individuals to return to their country of origin and continue to be treated equally with other citizens, but above all, to experience a growing number of such rights from overseas[148], as the receipt of pensions and welfare benefits. Furthermore, this type of legal status includes a substantial catalogue of rights, growing in number partly due to the active and fundamental role played by the ECJ. Among others, the rights to stay and work in the territory and not to be deported were gradually de facto extended in the 1960s. This extension includes workers not earning enough for self-subsistence, as long as the work was "effective and genuine" (*Levin*), and economically inactive Union nationals lawfully residing in a host MS (*Martinez Sala*), as well as women and other (indigenous[149]) minorities. The increasing set of rights, previously regarded as a crucial component of national sovereignty, citizenship is now a possibility for any settled resident of any contemporary liberal democratic state. From this status, with rights come inseparably the "duties" of nationality, that in many liberal democratic jurisdictions saw a speedy recess. Differently from Estonia, Ukraine, and Israel, in liberal democratic countries, there is neither conscription nor harassment of dual

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[148] The "Union territory" serves as the focal point of their social and personal lives, except the Overseas Countries and Territories (OCT) as well as Outermost Regions having a special position within Denmark (the Faroe Islands and Greenland), Finland (Aland), France (French Polynesia, New Caledonia, Wallis-et-Futuna, Saint Barthelemy, and Saint-Pierre-et-Miquelon), the Netherlands (Curacao, Aruba, Saba Bonaire, Sint Eustatius, and Sint Maarten), Portugal (Azores and Madeira), Spain (Canary Islands, Melilla, and Ceuta) and UK (Guernsey, Isle of Man, and Jersey). e.g., MS territory associated with the free movement of Union citizens is mainly governed by EU law as in ECJ, C-300/04 *Eman and Sevinger*, EU:C:2006:545.

[149] For instance, full Australian citizenship to aboriginals through the processes of de-ethnicization, which approves of immigration, naturalization, and the re-ethnicization of nationality law (usually supported by the political right), increasing the willingness of states to confer citizenship on nationals who left the territory, as in the case of the Canadian "ethnic paradox".

citizens. Stop repeating ideological mantras about the unity of the demos and political community and stop ignoring the roles that such duties play in the actual societies where they are practiced if the civic virtues that the state promotes are meant to suppress the recognition of minority groups[150].

The size, characteristics, and motivations of extrazens[151] have received very little investigation, and as a result, their use of freedom of movement tactics to acquire and transmit EU citizenship over generations and space is also understudied. The scarce information available for European countries in 2011 is illustrated in Table 1[152]. According to the University of Sussex Global Migrant Origin Database (GMOD), 15.3 million Union citizens were residing outside the EU as of the 2000 and 2001 censuses (3.1% of the population of the EU27 as of the time)[153]. As shown in the last three columns, more updated data is provided for six countries from official resources. The most recent statistics on EU citizens living abroad, which makes up an average of 8% of the resident population, is 30–60% greater than the GMOD 2001 database. Therefore, the total population of this group living outside the EU may range from 20 to 25 million across all EU nations. In other words, the proportion of non-EU residents who live in the Union is fairly similar to the size of the collective of EU external people.[154].

[150] Or even the majority, as in the case of the South-African apartheid “homeland”, providing bogus citizenship from black puppet republics like Transkei and Bophuthatswana, which are not recognized.

[151] Primarily because these new citizens are recognized as nationals by law from birth. However, further study is still required, particularly on the connection between the status of having multiple nationalities and its legal implications for immigrant assimilation and international business.

[152] Mateos P., “External and Multiple Citizenship in the European Union. Are “Extrazenship” Practices Challenging Migrant Integration Policies?”, CIESAS *Research Center* (2012). “Total Population” and “Non-EU immigrants” (year of reference) sourced from Eurostat (2012b); “Naturalised (98-2010)” sourced from Eurostat (2012a); ‘Emigrants (GMOD 2001)’ sourced from Parsons et al., (2007). “Nationals abroad”, instead are sourced from official statistics and “Ancestry based descendants” from the French Ministry of Foreign Affairs (2007); El Nuevo Mercurio (2009); c) Bundeszentralle fur politische bildung (2010); Sebők L., (2010); Ministerio del Interno (2010); Tintori (2009); Observatorio da emigracao (2011); Observatorio da emigracao (2009); INE (2012b); El Pais (2003); Sriskandarajah and Drew (2006).

[153] This compiles migration stock statistics from censuses worldwide: all "migrants" reported may not be citizens of their country of birth because the "origin" of a migrant is determined by a mix of nationality and country of birth.

[154] This estimate increases to 150-250 million whether those outside the EU who are eligible to apply for citizenship by ancestry are considered candidates.

			Non-EU immigrants			Emigrants (GMOD 2001)		Emigrants (recent sources)		
								Nationals abroad		
Country	Year	Total population	Non-nationals	Foreign Born	Naturalised 98-2010 (Cumulative)	All	Residents in Non-EU/EEA	count	% of pop	Ancestry based descendants
Austria	2011	8,404	555	771	295	471	184	-		-
Belgium	2011	10,951	414	855	502	471	125	-		-
Bulgaria	2011	7,505	30	55	41	924	765	-		-
Cyprus	2011	804	62	89	24	182	61	-		-
Czech Republic	2011	10,533	281	264	41	368	127	-		-
Denmark	2011	5,561	221	356	131	242	92	-		-
Estonia	2011	1,340	195	195	56	188	117	-		-
Finland	2011	5,375	105	157	58	367	79	-		-
France	2011	65,048	2,485	5,162	1,842	1,794	859	2,000[a]	3%	31,000[b]
Germany	2011	81,752	4,571	6,445	1,689	4,078	2,503	10,000[c]	12%	15,000[c]
Greece	2011	11,310	803	938	55	932	543	-		-
Hungary	2011	9,986	82	145	85	407	215	-		52,000[d]
Ireland	2011	4,481	69	122	43	987	323	-		-
Italy	2011	60,626	3,235	3,629	375	3,294	1,669	4,100[e]	7%	60,000[f]
Latvia	2011	2,230	370	298	131	235	191	-		-
Lithuania	2011	3,245	32	175	6	325	186	-		-
Luxembourg	2011	512	30	29	18	47	7	-		-
Malta	2011	418	10	15	8	113	74	-		-
Netherlands	2011	16,656	339	1,419	491	788	433	-		-
Poland	2011	38,200	32	312	20	2,075	1,328	-		-
Portugal	2011	10,637	345	597	89	1,983	843	3,587[g]	34%	31,000[h]
Romania	2009	21,414	-	102	17	1,058	465	-		-
Slovakia	2009/11	5,435	26	20	26	482	87	-		-
Slovenia	2011	2,050	77	207	31	109	58	-		-
Spain	2011	46,153	3,325	4,214	614	1,371	592	1,817[i]	4%	1,000[j]
Sweden	2011	9,416	352	901	481	302	110	-		-
United Kingdom	2011	62,499	2,425	4,910	1,688	4,202	3,312	6,050[k]	10%	51,950[k]
TOTAL EU27		502,540	20,473	32,382	8,858	27,794	15,347	27,554	8%	241,950

Table 1: Summary of available statistics of EU external citizens (thousands).

The underlying premise that external citizens are beyond the state's jurisdiction and the voluntary registration of consulates make extraterritorial allegiance very difficult to evaluate, according to a recent collection of research. Without moving, lineage access to EU citizenship results in a change in legal status (from A1-A2 or A1-A3) that makes it easier for subsequent migration movements to the Union (B2 and B3) while avoiding migration restrictions (B1). The "three-way migration" (routes A2-C2 or A3-B3), in which the nation of citizenship is utilized as a "springboard" to enter other countries, could

serve as an illustration.[155]. For this reason, Figure 1[156] deals with the return and circularity based on two methodological stances: the origin country view, which suggests using external citizens' registers, passport issuances, and emigration statistics (often unavailable or incomplete), or the destination country view, which proposes using statistics of non-nationals and foreign-born populations published by destination states.

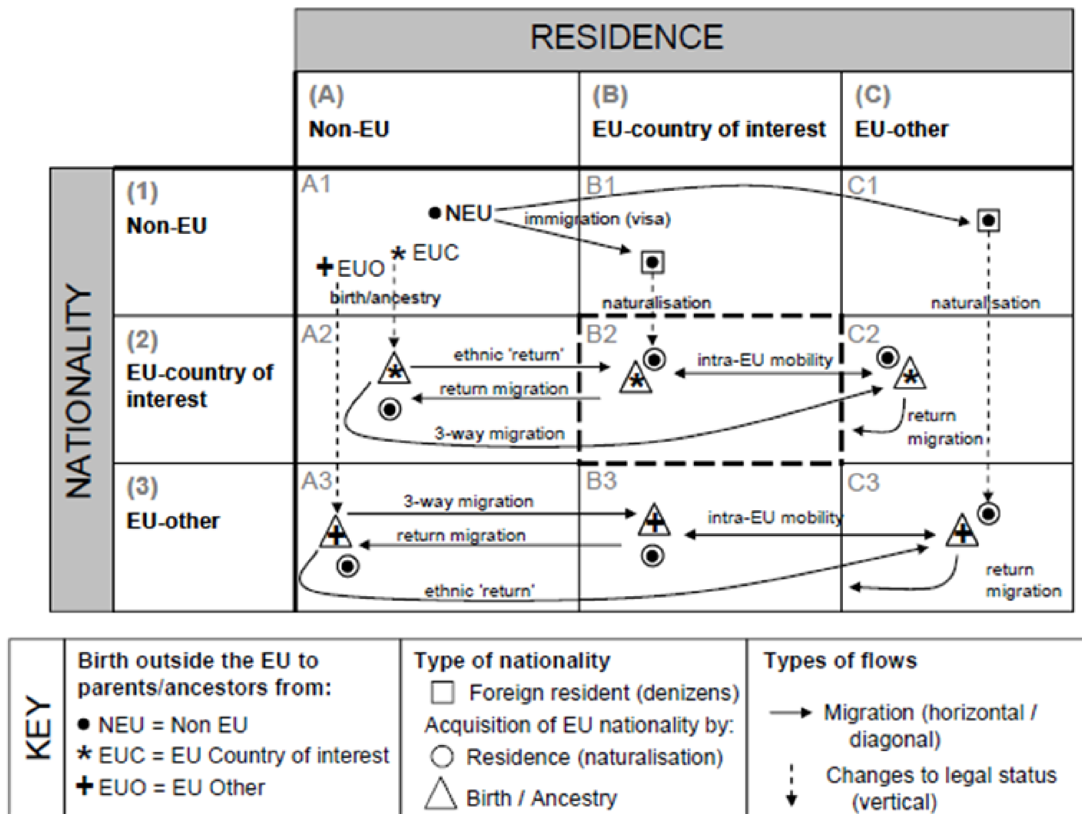

Figure 1: Diagram of extrazens migration trajectories around EU countries of interest.

[155] i.e., "Latin American Italians" coined by Tintori G., "The Transnational Political Practices of "Latin American Italians", *International Migration* 49 (2011) p. 168-188 to indicate the large number of Italian nationals living in Argentina (27%) as well as Spain (48% according to 2012 Institudo National de Estadistica http://www.ine.es/jaxi/tabla.do?path=/t20/e245/p04/a2011/l1/&file=00000009.px&type=pcaxis&L=1). And approximately a third of Argentinean-born migrants residing in the UK or in Spain possess an Italian passport (UK Labour Force Survey 2011 http://www.esds.ac.uk/government/lfs/).

[156] Ibid. note 152.

2.4. Disentangling the puzzle of EU citizenship[157]: transnational or social allegiance

"The ambiguity of Union membership is that in institutional practice, about ongoing disputes on transnational solidarity and political participation"[158], can be adopted both the model based on residence and on social integration (Art. 79(4) TFEU read in conjunction with Art. 5(2) TFEU), reinforcing the overall trend towards constant variation and conceptual indeterminacy. This subcategory of EU "citizenship beyond the state"[159] will deconstruct the continuous and forward movement as contrasted to the long-term habitation already scrutinized with denizenship and tied to cosmopolitanism.

Recently, the citizenship laws of some nations have changed to increase the economic integration of immigrants. Seeing access to the EU allegiance as a reward[160] of a socio-economic process, a change will depend on a country's specific conditions, such as the individual's capacity to acquire a specific knowledge of laws and customs, which may be associable with assimilation. Over the past few centuries, European states have invaded and occupied foreign cities and regions to create the possibility of various potential groups of people returning to Europe after their service there, much like it happens for officials and personnel who have gone abroad for business management or family development.

An additive index of "individual transnationalism"[161], which goes from 0 to 20, can be divided into strong, if the weight of that behaviour is about 15%, as when Europeans live, work, or study abroad for more than three months (international mobility); moderate, if the weight of the transnational behaviour doesn't exceed 10%, for instance when the national spend, usually holidays or owning a property abroad; and weak, when the behaviour corresponding to the maximum of 5% of the social behaviour, and that is the case of having friends or family abroad as well as regularly following news about another country. As a result, this multivariate analysis confirms that the average score is 3.04. Only 6.6% of younger male

[157] Wiesbrok, "Disentangling the "Union Citizenship Puzzle"?", *ELR* 36 (2011) p. 704-710 and Kochenov D., "The Puzzle of Citizenship and Territory in the EU: On the European Rights Overseas", *Maastricht Journal of European and Comparative Law* 17 (2010) p. 230-251.

[158] Anderson C., "Immigrants, citizenship and political action in Europe", *Journal of Political Sciences* 42 (2012) p. 481-509.

[159] Habermas J., "Citizenship and National Identity: Some Reflections on the Future of Europe", *Praxis International* 1 (1992) p. 1-19.

[160] "Naturalisation premium" is linked to an individual profitability calculation or potential employers' behavior. e.g., compare non-naturalized immigrants with foreigners who change their citizenship have greater employment and income levels.

[161] Kuhn T., "Experiencing European Integration: Transnational Lives and European Identity", *Oxford University Press* (2015).

interviewees in the upper class with higher educational qualifications and residents in large cities record scores over 10.

The concept of EU post-nationalism or "Vattelian" post-sovereign citizenship anchors in the principles of co-equality of "competing" national groups, trust, territory, and democracy, which represents "only one of the many "posts" of our present post-modern society"[162]. Furthermore, having transnational allegiance is a vague definition, but it can be adopted in other contexts. For instance, Spiro established causality between post-nationalism, which is the fall of the state brought on by a weakening of State-based identity and the emergence of non-State affiliations, and multiple nationalities, that accelerates this phenomenon[163]. This view of EU status civitatis challenges Marshall's citizenship theory in a transcendent community and undermines solidarity at the national level[164].

In an ever more mobile and interdependent world, transnational populations comprise a significant and growing share of many nation-states. Their flexibility and predilection for movement bring new challenges to the receiving state. Whereas a policy, such as multiculturalism or assimilation, is aimed to contain and perpetuate a population of national citizens. Policies corralled to transnational migrants are subject to regional and national political and economic frameworks, despite being stressed by distance and spatial variance.

2.5. Member States nationalities interactions: a convergence in citizenship's legislations

From this second Chapter, states are sovereign entities that have the power to make determinations on nationality[165], notwithstanding the power conferred to the Union. This order of formal membership is represented by Baubock[166] as a case of territorial sovereignty characterized by the features

[162] Englehardt T., "Talking 'Bout A Revolution", *The Nation* 13 (1999) p. 12-16.

[163] Spiro P.J., "Dual Nationality: A Postnational View", SSRN *Papers* (2006) p. 1-18.

[164] Kivisto P., "Conclusions: The Boundaries of Citizenship in a Transnational Age" in "Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship", *Palgrave MacMillan, Basingstoke* (2007) p. 277.

[165] In the Final Act of the TEU's annexed Declaration on Nationality of a Member State is 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".

[166] Ibid. note 112.

of “completeness” and “discreteness”, which states that no one is simultaneously under the control of more than one state and that everyone is at all times subject to the territorial sovereignty of a single state. He is one of the authors, along with Hansen and Weil, who contends, in terms of nationality law, that there is a growing convergence toward a simpler European "norm". More generally speaking, national traditions of citizenship are an indispensable set of structures influencing the trajectory of Union nationality. However, these pressures are not one way since the Union allegiance also impacted national status laws, encouraging the confluence in soft “reflexive” ways. In particular, the boundary between EU citizens and TCNs is exercising reciprocal influences upon patterns of national laws. It is enough to consider Art. 22 TFEU[167], for which MS can adopt modifications to membership provisions, developing the list of rights through a truncated treaty amendment procedure that avoids the need for an entire intergovernmental conference. Their leeway is still subject to the control of the Council, which acts unanimously on the Commission's proposal after consulting the European Parliament.

Having articulated that the citizenship of the Union is developing within a dense environment of mutual pressures and influences, the next logical step is to unravel this complex network of institutional forms. Despite the overwhelming complexity of laws governing the acquisition and loss of nationality[168], there is no clear-cut "European model" for allegiance law. The integration paradigm[169], on the one hand, highlights the acquisition of citizens’ rights linked to a political community; on the other hand, the residence model considers anyone residing abroad automatically an insider. For this reason, the first one is embraced in the doctrinal infrastructure of EU free movement law in light of the broader constitutional outlook, as demonstrated in *Forster* ruling[170], which grants equal access to study for EU citizens living abroad. This right, however, is conditional upon qualitative factors such as permanent residence status. We must consider three contextual factors to rationalize the move towards the integration model[171]. Firstly, Union law addressed cross-border movements of people mainly from the perspective of EU

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[167] Never invoked but which reinforces the developmental potential of the citizenship provisions in the hand of MS.

[168] Originated in the Acquisition of Nationality in EU MS: Rules, Practices and Quantitative Developments (NATAC) for the old fifteen Union States.

[169] Best practices adopted at the Office of the UN High Commissioners for Refugees and the UN Human Rights Committees.

[170] ECJ, C-159/07 *Forster*, EU:C:2008:630. For a more profound analysis, AG Mazak Opinion in C-158/07 *Forster*, EU:C:2008:399 para. 133-135.

[171] Cappelletti S., Seccombe M., and Weiler J., “Integration Through Law: Europe and the American Federal Experience. Vol. 1: Methods, Tools and Institutions”, *Yearbook of European Law* 6 (1986) p. 468-477 and for a critical assessment, Weiler P., “Deciphering the Political and Legal DNA of European Integration” in Dickinson J. & Eleftheriadis P., “Philosophical Foundations of European Union Law”, *Oxford University Press* (2012) ch. 6 p. 136-158.

nationality. Secondly, the distinction between Union membership and immigration law towards TCNs has constitutional implications, such as leaving the EU legislature more discretion. And thirdly, the CJEU responded to calls from national governments after intense reactions to *Metock*[172] and *Zambrano's*[173] rulings. It is also noteworthy to underline the Court's jurisprudence inconsistencies in the practice of precedent's citations, generally found in a neglectful handling and an uninformative reasoning style[174]. This critique is to outstand that our qualitative analysis suggests replacing the ECJ reference frame, based on genuine indicators, into an established case law, which is more consistent over time. A case of reinterpretation might be, for instance, *Commission v. UK* on the right to social benefits in the host MS for nationals of Europe. The quantitative analysis, from a different angle, accentuates the significant rise of abstract answers from the Court[175] to concrete questions posed by national courts.

As previously stated, many contributions concentrate on external contextual factors[176] of European integration, while others focus on endogenous ones. Nevertheless, the typical approach remains to eliminate the "aliens' problem" through citizenship acquisition, if not by first-generation immigrants, at least by the successive generations. A possible supranational response might be to break down the linkages between state, nation, and membership concerning intra-EU mobility. On a wider legal context, it was and must be cited a range of cases related to the free movement of persons. Our qualitative and quantitative analysis of caseload, mutually reinforcing factors of European status civitatis, can be divided into cases decided before *Ziowlkowski and Szeja*[177] and, after 2011, others "citizenship classics" that attracted immediate public attention as *Dano*, *Garcia-Nieto*, and *Alimanovic*, up to the most recent ones (after 2014).

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[172] ECJ, C-127/08 *Metock*, EU:C:2008:449.

[173] Ibid. note 94. In Azoulai L., "A Comment on the Ruiz Zambrano Judgement: a genuine European integration", EUDO *Observatory of Citizenship* (2011) is considered the apex of the rights-expanding trajectory when preserving a family's life inside a single MS, the Court specifically established a role for Union citizenship rights, although without explicitly citing Art. 8 CFR...

[174] de S-O-E Lasser M., "Judicial Deliberations: A Comparative Analysis of Judicial Transparency and Legitimacy", *Oxford University Press* (2019).

[175] Passing from 41% before 2011 to 89% now.

[176] e.g., Sadl U. and Sankari S., "The elusive influence of the Advocate General on the Court of Justice: The Case of European Citizenship", *Yearbook of European Law* (2016) p. 1-19 focus on a quantitative study of prominent citizenship cases, identifying a growing significance in following the advocate general's opinions and highlighting the link between the restrictive judgements and the professional background of the reporting judge or the AG himself.

[177] ECJ, C-424/10 and C-425/10 *Ziolkowski and Szja*, EU:C:2011:866 is the first case decided by the Grand Chamber with a negative outcome for individuals. For a statement AG Bot Opinion in C-424/10 and C-425/10 *Ziolkowski and Szja*, EU:C:2011:575 para. 36.

Starting with 2011 rulings of last resort, the latter are used only by the judges of Luxembourg in exceptional circumstances, they usually concern individual citizens in matters of residence and social advantages. Having increasingly been decided by a Chamber of five sitting judges with minimalistic reasoning, these judgements relied extensively on AG's opinions, especially when the latter have an impressive career in politics or civil service. This approach anchors to the theory of international adjudication, for which supranational courts' success depends mainly on external factors within the control of states, such as the case law, and internal factors within the power of the European tribunal, as the awareness and neutrality demonstrated by the audience, in addition to other indicators beyond the control of both states and jurists, as the cultural and political homogeneity of states.

After 2011 the main change in direction is the use of teleological interpretation to enable the enjoyment of the fundamental and personal right to freedom of movement and habitation as well as to strengthen those rights in light of the Citizenship Directive. Concerning the reasoning, the public policy argument prevails, especially in cases of real social consideration, as for economically non-active European migrants. Even though the public policy argument is based on fear of en masse migration without weighing the appropriate alternatives, the Court of Justice has persuasively justified the reinterpretation of Directive 2004/38. An example of undue public policy logic is when it is based on specific consequences only temporarily and spatially relevant: the so-called "slippery slope"[178].

However, this is only a tiny part of a bigger story involving global population movements, frequently sparked by an attempt to experience better economic prosperity and to escape ineffective government regimes, and a much wider frame for migration policies to view human conditions. The most problematic test that keeps proliferating around the world is, as a matter of fact, the multicultural approach to integration, fully reflecting the thinking behind nationality: presuming the virtually irremediable difference between societies disqualifies individuals who don't have a formal legal connection to the important legal entitlements and recognitions. So, it is not surprising to find in constitutional theory the status of nationality having "a wobbly pedestal of glory", considering the rivals physical and biological issues of the person[179]. In the next future will be managed the challenges of diverse communities with

[178] i.e., ECJ, C-333/13 *Dano*, EU:C:2014:384, in which the non-systematic discriminatory residence test does not contradict previous case law, is also mentioned in Schauser F., "Slippery Slope", *Harvard Law Review* 361 (1985) p. 399.

[179] Bosniak L., "Persons and Citizens in Constitutional Thought", *International Journal of Constitutional Law* 1 (2010) vol. 8 p. 929.

many different cultures and languages within Western European states[180], especially emerging in nations of Central and Eastern European countries. With the EU's expansion, the dissolution of the Soviet Union and the EU's political-economic integration process wedded together.

In the subsequent Chapter, we shall address the unique circumstance dual nationality and its extension[181] since it represents an innovation in diaspora politics and its attempt to send migrants, eager to stay in touch with remittance flows and skill sets[182], receiving them in the host MS to consolidate their hold on valued human capital. The unexplored and yet increasingly prevalent area of double citizenship is noteworthy, above all, for the challenge it creates with the superior principle of singular nationhood[183].

[180] As Linklater A., "Citizenship and Sovereignty in the Post-Westphalian State", *European Journal of International Relations* (1996) p. 66 remarked, "Western Europe is the most promising site for an experiment in creating political systems which no longer weld sovereignty, territoriality, citizenship, and shared nationality together".

[181] Today allowed in a range between 30-58% of the world's countries mainly for the large and circulatory migration flows, which grow the naturalization rate; in addition to increasing international marriages and, therefore, gender equality in citizenship transmissions, especially after the de-colonization and the end of a violent conflict among most nations.

[182] In the words of Jones-Correa M., "Seeking shelter: Immigrants and Divergence of Social Rights and Citizenship in the United States" in Hansen R. and Weil P., "Dual Nationality, Social Rights and Federal Citizenship in the US and Europe: the reinvention of citizenship", *Berghahn books* (2002) p. 232-259: "The money sent back to the sending country can promote stability there and can thus be seen as a form of foreign aid by the receiving country to the sending country or they may undermine democracy in the sending country because the financially strong entrepreneurs who decided to leave the country can exert a dominant influence over their country of origin".

[183] Brubaker R., "Nationalism Reframed. Nationhood and the National Question in the New Europe", *Cambridge University Press* (1996) ch. 1 p. 1-13.

3. Dual citizenship as a contender to EU citizenship?

"The existence of dual nationality can, in principle, be entirely relevant when assessing the legal position of Union citizens vis-à-vis their Member States of origin might, consequently, have become outdated" [184]. Double citizenship is therefore defined as an official legitimization by the state of citizens' capacity to perform tasks and claim protection in two or more different nations. It was realized, for instance, with Dutch of Moroccan origin[185] or German Turks[186], that if foreigners were staying permanently, they should have been fully integrated as citizens of a nation, which implies a common understanding of loyalty[187]. As an expected consequence of immigration, dual membership offered a promise of multiple identities, which better adapts to a new globalizing world.

Traditionally the consensus on dual allegiance, as expressed in bilateral or international agreements, as well as the status laws of single MS, was to be avoided[188] not just because against political adherence and identity but also to protect the authority of MS over its natural born citizens. That is why from the mid-19th century, states generally followed two unbreakable rules. In essence, the first one stated that acquiring a new nationality came with a price: relinquishing one's old nationality. While the second one clarified that, to specifically overcome the issue of double nationality, individuals on reaching maturity had to choose one of the two statuses; otherwise, they would have been expatriated. After the Second

[184] Shuibhne, N.N., "(Some of) The Kids Are All Right: Comment on McCarthy and Dereçi", *Common Market Law Review* 49, (2012) p. 349-380.

[185] ICJ, Tunis and Morocco Nationality Decrees Case (1923) and Advisory Opinion of Nationality Decrees Case in Tunis and Morocco" in "Encyclopedia of Public International Law", *Elsevier* (1997) p. 510-511.

[186] Exception to the prohibition of dual nationality under German law as illustrated by Kadirbeyoglu Z., "National Transnationalism: Dual Citizenship in Turkey" in "Dual Citizenship in Europe: From Nationhood to Societal Integration", *Ashgate* (2007) p. 128-132.

[187] By Frank T.M., "The Empowered Self. Law and Society in the Age of Individualism", *Oxford University Press* (1999) ch. 4 p. 62: "Multiple loyalty, in itself, is not especially remarkable. It has been the rule rather than the exception in Western civilization. In the early Mediterranean empire, as in the more recent Ottoman and Habsburg empress, multiple loyalty references were imposed on persons by virtue of who they were and where they lived. They were not freely chosen. What is remarkable is the extent to which a person's loyalty system today, for the first time in history, has become a matter of personal choice".

[188] Criticized by U.S. President T.D. Roosevelt as a "self-evident absurdity" and a legal anomaly were comparable "To the sin of polygamy in a Christian moral order, which should at least minimize, if not totally prevented", in the words of Liebich A., "Citizenship in Its International Dimension" in Liebich A., Warner D. and Dragovic J., "Citizenship East and West", *Kegan Paul International* (1995) ch. 2 p. 25-39. The principle contained in the first chapter of the 1963 Strasbourg Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (https://coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/043/declarations). As statelessness shall be avoided in compliance with Art. 5-9 of the 1961 Convention on Reduction of Statelessness Persons.

World War and the Cold War, the number of dual citizens increased in the absence of uniformity among various nationalities, and more MS tolerated it[189]. This open approach to dual citizenship was stimulated by the increased legitimization of individual rights in the HR convention, the gender equality of citizenship via the mothers[190], and the decision to end conscription in numerous states.

Dual nationals' rights must be protected by Union legislation for them to live in Europe forces MS, as indirectly recognised in *Micheletti*[191] and *Garcia Avello*[192], to verify the other identity of those whom they had rightfully considered their own. In 1992 *Micheletti* well-known pre-Union citizenship judgment of concerned a dentist having double nationality, Argentinian and Italian ex iure sanguinis, who asked for a permanent residence certificate in Spain. The CJEU was asked to make a preliminary determination regarding the interpretation by the Tribunal Superior de Justicia of Cantabria on Art. 3, 7, 52, and 53 of the old EEC Treaty and of the Council Directive 73/148, which were against Art. 9 of the Spanish Civil Code[193]. The ECJ, in its obiter dictum, held that "Though under international law, it is for each MS, *having due regard to Community law*, to lay down the conditions for the acquisition and loss of nationality", by Art. 5 ECN, which will be the future basis further to curtail the competence and autonomy of each MS. By imposing an additional requirement that is solely necessary for the recognition of that nationality with a view to exercising the basic freedoms guaranteed by the Treaties, the legislation of an MS cannot limit the outcomes of the award of nationality to another MS.

The Court of Luxemburg's view was consistently supported in its evolution of case law, such as the 2003 ruling of *Garcia Avello*, where the dual nationals successfully claimed the right to register the immutable

[189] The 1997 ECN remains neutral. While US and UK recognized dual nationality long ago, the EU combated double membership because it distracted the attention from the still acute problem of statelessness. However, in ECJ, C-136/78 *Ministère Public v. Auer*, "There is no provision of the Treaty which, within the field of application of the Treaty, makes possible to treat nationals of a MS differently according to the time at which or the manner in which they acquired the nationality of that State".

[190] Before the 1957 UN Convention on the Nationality of Married Women, reinforced by the ECN, the common practice was women's denationalization and citizenship exclusion. On this point, Vogel U., "Is Citizenship Gender-Specific?" in Vogel U. and Moran M., "The Frontiers of Citizenship", *Basingstoke* (1991) ch. 3 p. 58-85 and "Marriage and the Boundaries of Citizenship" in "The Condition of Citizenship" (1994) ch. 7 p. 76-89.

[191] Ibid. note 104. For a deeper analysis of the freedom of establishment, see d'Oliveira J., "Case C-369/90, M.V. Micheletti and others v. Delegation del Gobierno en Cantabria, Judgement of 7th July 1992", *CMLR* (1993) p. 623-637.

[192] ECJ, C-148/02 *Carlos Garcia Avello v. Belgian State*, EU:C: 2003:539. AG Jacobs Opinion in C-148/02 *Garcia Avello*, EU:C:2003:311 para. 61. Or on the same limping legal situation ECJ, C-353/06 *Grunkin and Paul*, EU:C:2008:559.

[193] Under this, according to international law, the citizenship that is given precedence in situations involving several nationalities is that of the country that the person previously called home before entering Spanish territory (in this example, Argentina).

surnames in Belgium concerning the format established by Spanish law[194], the tenet of social order justified by the goal of fostering individual equality and integration. This judgement showed that it suffices a national measure liable to cause serious inconvenience to a person exercising one of the privileges that come with being an EU citizen, independently on the cross-border link required for the "impeding effect". The CJEU ruled that a person with the nationality of an MS who is residing in another country but has a connection to Community law cannot have such nationality invalidated since their children have lived in Belgium since birth. Due to the fact that they simply recognize one nationality without imposing any restrictions, for instance, additional enjoyment of fundamental rights outlined in the Treaties, where the nationality is acknowledged.

The position of the ECJ was confirmed in 2010 with *Rottmann*[195], in which the Court went further on the concession of another nationality under the conditions instituted for the deprivation (Austrian as well as European citizen) and acquisition of (German) nationality by fraud. The CJEU asserted that the decision to withdraw naturalization is amendable judicial review conducted in accordance with EU law emphasizing the requirement of proportionality in the context of nationality rules. As a result, Germany and its residents have a unique bond of solidarity that affects the core of citizenship rights. It serves as the foundation for the nationality tie established by the development of a civitatis status in law. Without giving an autonomous residence permit or any other kind of authority to stay, the MS is still required to aggressively seek out the aid of identity documents for TCNs.

In the same line of case law, there is *Ruiz Zambrano*, in which nationality of the Union might assume significance regardless of migration and integration[196]. As previously illustrated, in the case, two Colombian refugees sought to demonstrate their right to live in Belgium by claiming that their children were Belgian citizens. Since Mr. Zambrano and his wife had no right of residence under Belgian law[197], for the first time, the CJEU extensively conferred rights of residence, including the right to stay at home,

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[194] The national measure could only be justified if it was founded on objective considerations and was proportionate to the legitimate aim pursued because it had the effect of denying Union citizens the genuine enjoyment of the substance of rights conferred by that status or of restricting the exercise of the right to free movement and residence within the territory of the MS.

[195] Ibid. note 89 para. 33.

[196] Process which may take decades to complete but which allows the CJEU and the Union to be involved in a sensitive part of national political life. For a general discussion, van Eijken H. and de Vries C.E., "Another Route into the Promised Land? Being European Citizen after Ruiz Zambrano", *ELR* 36 (2011) p. 704-721.

[197] As a result, causing the children and Union citizens to flee the country returning to Colombia or another third country outside the EU, in which they would have faced the same legal constraints on the residence, independently of their parents' residence permit.

and to work to the TCNs parents who are Union citizens. However, they had never used their right to free movement. The reasoning presumably is that if one cannot be in the EU, then one can hardly move around within it. And this rule is not confined only to minors but also adults, as *Dereçi*[198] makes clear.

The identity of an EU national and the role of the ECJ are essential in influencing the granting and withdrawing of Union nationality, notwithstanding its decreasing importance, due to Europeanisation and the successful development of the internal market. Today, supranational citizenship has cultural aspects and implications for identity, which also sticks together with nationality but is grounded in two different demoi simultaneously, based on different subjective factors. Among the cases in which nationality[199], even if the prerequisite of actual EU citizenship status, can be considered as an obstacle to the enjoyment of double nationality when the forfeiture of MS allegiance is the result of naturalization or long-term residence and reverse discrimination shortcomings[200], which are the products of vertical division of competences inherent to the interactions between different legal orders in Europe.

3.1. Sources to grant double nationality

Before outweighing the advantages and disadvantages of double allegiance, it should first be concisely reviewed the three principal means to obtain EU status: by birthplace, blood, or voluntary naturalization.

As for domestic citizenship, to get the right of ground[201] is sufficient to be born within the boundaries of a particular MS regardless of the parents (ius soli). Plus, EU membership by descent, as the name

[198] ECJ, C-256/11 *Dereçi*, EU:C:2011:626. The CJEU held that a deprivation effect might only arise regarding the right to move where "The Union citizen has, in fact, to leave not only the territory of a MS of which he is national but also the territory of the Union as a whole".

[199] In compliance with Art. 1 of 1930 Hague Convention on Certain Questions Relating to the conflicts of Nationality Law, its determination regards an exercise of sovereignty through the traditional methods of preference for the forum nationality (i.e., Belgium, Germany, Italy, Macedonia, Poland, Russian Federation, Spain, and Turkey) and the principle of the closest connection, especially in specific domains of family law, takes into account long-time habitual residence in the past, the nationality of a spouse or other family member or the registration of a particular nationality in a public register.

[200] e.g., ECJ, C-64 and 65/96 *Uecker and Jacquet*, EU:C:1997:285. For an assessment, see Tryfonidou A., "Reverse Discrimination in Purely Internal Situations: An Incongruity in a Citizens' Europe" in "Legal Issues of Economic Integration", *Walters Kluwer* (2008) vol. 35 ch. 3 p. 43-67 and Shuibhne N.N., "Free Movement of Persons and the Wholly Internal Rule: Time to Move on?", *CMLR* 39 (2002) p. 731-771.

[201] The law of soil is an important factor in measuring the openness towards immigrants and potential dual citizens. In fact, all EU countries that allow citizenship by birthplace traditionally draft more inhabitants into the army and allow dual nationality. e.g., France, which grants citizenship to anyone upon thirteen who has lived in the country for five years or whoever has completed postgraduate studies at a French University after two years of residency. However, this automatic double ius soli (i.e., the Netherlands, Portugal, and Spain) is not unconditional since it can be restricted if the parents have not

indicates, can be automatically inherited by the children's parents, grandparents, or great-grandparents, even up to the third generation[202] (ius sanguinis). Finally, Union citizenship can be directly acquired by (discretionary) naturalization[203] through a rigid process of integration test or a prolonged residence in an immigration country (i.e., traditionally France and the Netherlands) that permits double legal status to the child of mixed-nationality marriages or civil partnerships when they reach maturity. For other variations[204], as in the apposite case in which the parents have different nationalities, worth what was already explained for the acquisition of national allegiance[205]. Summarily, more restrictions are placed on multiple citizenships, and vice versa, the more these principles are put into practice.

Even if Table 2 condenses all kinds of access to EU nationality with the different methods adopted for each MS, for the sake of convenience in treatment, it will be assessed in detail only the more frequent situations of dual status civitatis acquired by birth and subsequently by emigrant ancestry. Most commonly second nationality by origin concerns those who voluntarily sought benefits of the citizenship of any foreign state thanks to an EU national ancestor, who has passed his citizenship rights to the child, even if the latter never lived in that EU country.

Constantly remembering the difference between EU citizenship and residence-based laws, the loss of a supranational membership due to naturalization[206] or demanding proof of renunciation of the original nationality differs from the deprivation of privilege's diplomatic protection. Though justified from a national and international law perspective, the conscription commands for naturalization procedures,

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lived in that country for three to five years, as in Belgium. For an exhaustive analysis, Koslowski R., "Migrants and Citizens. Demographic Change in the European State System", *Cornell University Press* (2000).

[202] e.g., Bulgaria, Croatia, Germany, Greece, Ireland, Italy (L. No. 555 of June 1912), Poland, Latvia, Lithuania, and Luxembourg technically through the reclaim pathway, even if there is no standard EU procedure or law. For a critical opinion Baubock R., "Why European Citizenship? Normative Approaches to Supranational Union", *Theoretical Inquiries in Law* 8 (2007) p. 473.

[203] Applications are arbitrarily accepted or rejected without an appeals process, as in Austria, Germany, Greece, Italy, Portugal, and the UK. Even if it may grant a facilitated or special procedure, this doesn't mean that such power is abused automatically as inconsistent.

[204] For a thorough exposition Howard M.M., "Variation in Dual Citizenship Policies in the Countries of the EU", *Immigration Review* 39 (2005) p. 697-720.

[205] In particular concerning the cases of citizenship by culture (i.e., Italy law No. 132 of 2018) and citizenship-for-sale, which is also applicable to TCNs on a fast-track basis (i.e., Bulgaria for 400,000 €, Greece for 250,000 €, Malta from a donation of 650 million to 1,1500,000 € and Cyprus for 2 million € or 300,000 € residential property investment). A slower path towards ius pecuniae is the residency by investment, though few countries settle for solely passive investment in real estate or government funds. i.e., Spain, Portugal (250,000-400 million € after five years of residence permit), Greece, Germany, Italy, Ireland (1 million € invested for at least three years), and Latvia.

[206] Obtaining the work visa, a Blue Card granted to those who have worked for at least five years in an EU MS or to those who have been married to an EU citizen for at least three years.

amplify the nonsensical nature of this outdated logic of underscoring the European integration project[207]. In this regard it was even suggested this behaviour as a potential infringement of the fundamental EU right to free migration would arise when a national of a MS loses her nationality and her EU membership because of living in another country for a particular period[208].

Country	**Ius soli**	**Naturalisation**	**Ius sanguinis**	**Residence requirement**	**Method**	**Other conditions**	**Period of application**	**Dual citizenship**
Austria	No	No	Yes	10 years	Regular naturalisation registration		Any time	No
Belgium	Yes	Yes	Yes	Parents in country for 10 years	Registration or automatic	Double ius soli with parents' consent at 12	18-30 years old	Yes
Denmark	No	No	Yes	7 years	Declaration		21-23 years old	No
Finland	No	Yes	Yes	5 years	Declaration		21-23 years old	Yes (2003)
France	Yes	Yes	Yes	5 years	Registration or automatic declaration	With parents' consent at 13; by request at 16; automatic at 18	After the age of 13 years old	Yes
Germany	Yes (2000)	Yes	Yes	15 years, including 6 in education, 4 in secondary education	Registration	Absence of criminal conviction and sufficient knowledge of German		Until 23 foreigners' children are not permitted dual citizens
Greece	No	No	Yes	10 years	Identical to regular naturalisation	Considered second generation status		Yes
Ireland	Yes	Yes	Yes	4 years	Automatic at birth			Yes
Italy	No	Yes	Yes	Continuous since birth	Declaration		Majority	Yes (1992)
Luxembourg	No	No	Yes	10 years	Similar to regular naturalisation	Assimilation and absence of criminal record	After 18 years of age	No

[207] Martin D.A., "New Rules on Dual Nationality for a Democratizing Globe: Between Rejection and Embrace", *Georgetown Immigration Law Journal* 14 (1999) p. 1-45.

[208] de Groot G.R., "Towards a European Nationality Law", *Electronic Journal of Comparative Law* 8 (2004) p. 1-37.

Netherlands	Yes (1984)	Yes	Yes	Continuous since birth or 5 years of lawful residence	Declaration	Possibility of double ius soli and language proficiency	18-25 years old	Yes de facto, naturalised citizens t keep prior citizenship
Portugal	Yes	Yes	Yes		Declaration	Parents must be resident 10 years	Any time	Yes
Spain	No	Yes	Yes	1 year	Declaration	Double ius soli	18-20 years old	No
Sweden	No	Yes	Yes	5 years or 2 for citizens from Nordic countries	Declaration		21-23 years old	Yes (2001)
UK	Yes	Yes	Yes		Automatic	Parents must be permanent residents	21-23 years old	Yes

Table 2: Stances towards citizenship in the Union.

3.2. Devaluation of "conationality" as overlapping allegiance

In the EU, discrimination against people is only permitted against individuals who have the nationality of their MS of residence. The control of the legal, social, and political status is insufficient in and of itself to qualify as a ratione materiae subject of EU law. The same negative consequence can be obtained from divergent MS rules on dual nationality, especially in the case of plurinational citizenships, in which states almost always grant automatic preference to their members.

In the last few years dual status quo became a divisive issue in politics as well as in academic discussion because of the increasing number of those who held such allegiance in three or more countries and because of the steady high volume of immigration that challenged the territorial congruence between states and citizens in Europe. Thus, the most prosperous state loosened their requirements to give up citizenship in their home countries or of their parents, in which they continue to be interested, as the norm rather than the exception if the naturalized in another country or even refused double nationality, excluding all other aliens. The concern regarding the growth of coalitions against a total and exclusive dedication to naturalizing immigrants is still stressed today. This formal status contradicts the significant membership characteristics as commonly interpreted as adherence to a single, independent, and

sovereign state[209], which assumes responsibility for defending the rights of its citizens, also diplomatically, excluding the fraudulent cases of abuse (1995 Nottebohm judgement[210]).

The issue of multiple voting rights[211] is frequently brought up in public debates when they are exercised in two or more countries aggregated in different national and supranational elections. Although the increasing rise in dual nationals over the past few decades has been established, it is challenging to obtain accurate estimates because MS typically register only their citizens, and people with double or multiple allegiances generally keep quiet to avoid administrative problems. Dual citizenship can be a real trap if the status civitatis in the country of residence is revoked, for instance, due to a criminal offence. It is increasing the concern for illiberal traditional and religious practices[212], above all in the aftermath of September 11th, 2001. This growing fear of immigrants from Muslim countries obtaining sensitive information made it easier for the dual passport holder to be deported.

Another big drawback consists in the double obligation each individual must simultaneously comply with each of the MS, except when it brings to a conflict of laws. Art. 5 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws explicitly states that "within a third State, a person having more than one nationality shall have the same rights as if he had only one. The state shall identify solely in its territory either the nationality of the country in which he is habitually and predominantly resident or the nationality of the country with which in the occurrences he appears to be the most closely related". This last paragraph links to the so-called non-responsibility rule, widely accepted in international law, which the government acknowledges as having dual legal status but does not, on principle, support because "it may limit the government efforts to assist citizens abroad or to offer consular assistance, especially if incarcerated". Nonetheless, in recent years, this rule has been replaced

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[209] Mauss M., "The Gift", *Cohen &West* (1966).

[210] ICJ, *Liechtenstein v. Guatemala* (1995), later confirmed in the C No. A-18 Iran-US Claims Tribunal. Nottbohm ruling, which followed Art. 3 ECN, concerned a German national who, in the 1939 had acquired Liechtenstein nationality through naturalization ex iure pecuniae (thereby losing German nationality) while habitually resident in Guatemala. The Court had to decide whether his newly acquired nationality had to be recognized by Guatemala under international law so that Liechtenstein could exercise diplomatic protection on his behalf against Guatemala. As a belligerent state (Germany) national, Nottebohm had not only had his property seized but had also been expelled by Guatemala to be deported to the US. The Court concluded that a genuine link with Lichtenstein was lacking and that Nottebohm had applied to Liechtenstein nationality "to enable him to substitute for his status as national of a belligerent State that of a national of a neutral State, with the sole aim of thus coming within the diplomatic protection of Liechtenstein". For a critical view, Glazer J.H., "Affaire Nottebohm (Liechtenstein v. Guatemala), A Critique", *Georgetown Law Journal* 44 (1955) p. 313-325.

[211] i.e., not granted to dual citizens residing abroad in Greece and Ireland.

[212] i.e., Islamic fundamentalism, forced arranged marriage, and honour killings.

by the principle of "real and effective nationality", according whereby a person's claim might likewise be made against a MS of which the individual is a citizen if the connection with the claimant State is prevalent, and it is not done to obtain illegitimate benefits. The dominant and effective nationality is based on a genuine strong factual link such as the flexible common, or in its absence, the last habitual residence of the individual[213], his primary areas of interest, his connections to his family, his involvement in public life, and his sense of loyalty for a certain nation.

Therefore, the Court might scrutinize which nationality is more effective to identify the appropriate law when a person has two or more nationalities. This argument connects to the issue of loyalty. On the same inside cover of the (US) passport, we can observe restrictions on double commitment: "Under certain circumstances, you may lose your citizenship by performing any of the following acts: naturalizing in a foreign state, taking an oath or making a declaration to a foreign state, certain service in the armed forces of a foreign state, accepting employment with a foreign government, or formally renouncing the citizenship before a consular official". Furthermore, granting a second nationality can be disadvantageous for the possibility of double taxation and individuals seeking the state's diplomatic protection.

Using dual legal status, combined with the discrimination against migrants based on their origin occurs because of the favoured nationality policy for some groups living outside the EU[214]. Plus, an intrinsic issue stands in the procedure. Starting from the assumption that all people with EU MS nationality automatically have EU citizenship, technically there are twenty-seven different methods to accomplish it.

Finally, the concern that national allegiance may lose its worth is linked to dual membership, due to the need for more consensus on whether its acquisition represents a prerequisite for a completed socioeconomic and civic integration process. Consequently, many European nations have tightened language and other integration criteria, including those that have historically considered citizenship as a

[213] Adopted in most cases, such as divorce in Italy, in compliance with the preamble of Regulation No. 1259/2010 that refers to nationality as a tying element for the application of state law and the issue of how to handle situations involving numerous ethnicities, in strict compliance with EU basic principles. Although this criterion has not yet entirely displaced nationality and domicile (UK and Ireland) as illustrated by Rogerson P., "Habitual Residence: The New Domicile?", *International and Comparative Law Quarterly* 49 (2000) p. 86-107.

[214] Margiotta C. and Vonk O., "Nationality Law and European Citizenship: The Role of Dual Nationality", EUDO *Working Paper* RSCAS 2010/66. For instance, the major issues in France and Germany are non-institutionalized racism and xenophobia, as illustrated in Koopmans R., Statham P., Giugni M., and Passy F., "Contested Citizenship. Immigration and Cultural Diversity in Europe", *Minnesota University Press* (2005).

way to integrate people (i.e., the Netherlands), likewise the conformity to a state-defined appropriate behaviour or the knowledge of the society[215]. On this basis, we will go throw the possibilities of a recession of the previous nationality, particularly in the already jeopardized Brexit scenario.

3.3. Loss of EU membership after UK cessation: aut aut?[216]

Supranational citizenship, considered as a social fact or a legal creation, has enormous potential relevance for EU exit and secession, as respectively occurred with Brexit, which found its alter ego in 1948 Ireland's detachment from the British Commonwealth[217], and the Scottish secession referendum.

In addition to the pertinent problem of the court-driven non-majoritarian decision-making that strengthened the relevance of the only (or first?) country to "exit" from the Union[218], there are questions arising from the UK's withdrawal from the EU. For example, aside from Irish nationals, who are allowed to reside and work in the UK thanks to the Common Travel Area, the EU Settlement Scheme implemented in the UK post-Brexit establishes the right of British people to remain in the Union and vice versa in a preliminary agreement. Similarly, Scotland was affected by the deliberation of Britain to separate from the EU, but with the opposite effect of preserving Union status civitatis[219].

Nevertheless, the decision of Britons to reject EU law is not that unexpected since, for decades, they were the least willing to call themselves "Europeans". This lack of solidarity translated into little public support in EU institutions when they endeavour to impose redistributive policies or pool MS resources.

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[215] Citizenship tests, a longstanding practice in US and Canada, are now standing in Denmark (2002), France and Netherlands (2003), Greece (2004), the UK (2005), and Austria and Germany (2006).

[216] Hobolt S.B., "The Brexit Vote: A Divided Nation, a Divided Continent", *Journal of European Public Policy* 23 (2016) p. 1259.

[217] Mansergh N., "The Unresolved Question: The Anglo-Irish Settlement and its Undoing 1912-1972", *Yale University Press* (1991).

[218] According to the Office for National Statistics 2018, nearly 10% of people living in Britain were not natives.

[219] As it will be better stressed in section 3 of Chapter 4, one horn of this dilemma will be the next referendum on the independence of Scotland to enjoy the Union freely.

Who would trust to belong in a supranational membership space after the acrimonious breakup of the EU and the UK, which may lead to the loss of rights across borders? In *Kaur's* case[220], unlike *Rottman*[221], a TCN recognized in the UK as a citizen of England and its colonies could not rely on the Union status because it did not fall under the personal purview of British residents allowed to live there. The CJEU ruled that a person's rights under Community law if they met the requirements for British nationality were not violated by the declaration regarding the nationality of the UK. Following the Brexit outcome, the Court, acting as an agent of institutional change in individual rights, didn't abandon its agenda of citizenship reconstruction. Instead, it continued to build the institutional stature of Union nationality sequentially with normative integrity and compositional logic, even expanding the range of rights enjoyed by EU citizens and reinforcing the protection afforded by MS. On top of that, through the ECI mechanism, which followed the Brexit referendum, to protect the status of Brits for European purposes, an associate citizenship was proposed by UK's negotiator David Davis to give all British nationals the possibility to opt out the loss of EU membership[222]. After the transitional time stipulated by the Withdrawal Agreement to determine EU status has expired, citizens and family members must have lived continuously in England for at least five years. Otherwise, applying for a pre-settled legal status is possible, which gives fewer rights in some areas. If, within December 31st, 2020, the EU and UK Trade and Cooperation Agreement did not fulfil the requirements, it would not have been protected access to the labour market, healthcare, education, and benefits as well as secondary family reunion rights, applying for a visa in advance.

For Great Britain, home to a large number of immigrants from former colonial possessions Western liberal and humane principles have had an impact on and dual nationality was of no concern. The UK's current policy still pursues this attitude since Britons naturalizing abroad are free to acquire a second or third allegiance without informing the Home Office, which doesn't keep statistics on dual membership nor make efforts to relinquish previous citizenship(s)[223]. British nationality, along with a second one, is

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[220] Ibid. note 83.

[221] Ibid. note 193. AG P. Maduro in C-135/08 *Rottmann*, EU:C:2009:588 para. 17 and 23. On this point Bartoloni M.E., "Competenza degli Stati in materia di cittadinanza e limiti posti dal diritto dell'Unione europea: il caso Rottmann", *Diritti umani e diritto internazionale* (2010) p. 423-429.

[222] Not dissimilarly from Denmark. However, this proposal was removed by EU institutions.

[223] This is also demonstrated by the indifference of the public's liberal view of double nationality as illustrated by Hansen R., "The Dog that didn't Bark: Dual Nationality in the United Kingdom" in Hansen R. and Weil P., "Dual nationality, Social Rights and Federal Citizenship in the U.S. and Europe: The Reinvention of Citizenship", *Berghan Books* (2002) ch. 9 p. 179-190.

unquestionable when dealing with a child born in England of a dual national or a foreigner permanently resident in the UK and holding contemporaneously another status by parentage, or the status is acquired by birth abroad to a UK citizen born in Great Britain, in addition to the case of a foreigner naturalizing in the UK.

However, the situation cannot be defined without little doubt after 2016. The plebiscitary deliberation which made the UK exit from the EU revealed a division between mobile and immobile citizens: the latter disproportionately supporting the “leave” campaign. This contrast proved that at the root of the European problem, there is a self-identification issue rather than some financial alchemy or constitutional engineering. As a result, UK citizens now have certain freedoms of movement restricted. Namely, they lost the right to seek dual status in an EU country unless they apply for a second residency or citizenship by investment scheme, obtaining a second passport in turn[224]. From November 2023 onward, Europe is no longer a visa-free zone for British nationals. So ETIAS is the mandatory electronic travel document for citizens of countries and microstates of the Schengen zone for tourism, business, or medical causes. In the case of double citizens, once again, the long-term authorization, valid for three years and multiple entries, will depend a lot more on travellers’ nationalities[225]. The holder of a second European passport[226] exempt them from the ETIAS application, differently from those dual citizens who do not belong to any country that signed the Schengen agreement.

Many Europeans living in England have a solid interest in curbing opportunities to fool England’s intention to exit. In so doing, many are opting for the more palatable solution of keeping their European membership as a safety measure along with the British passport. Consequently, many Brits have been digging through their family trees to try to apply for another visa. For instance, this raised the demand for Irish passport applications to 50%[227] in the first eight months of 2016 and, at the same time, shortened passport forms in local offices. Another positive development followed on October 10th, 2017, when the

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[224] Talent passport for Business Investor category or residency via financially independent individuals. Smooth procedure in Caribbean countries, such as Saint Lucia or Dominica, Malta, Portugal, Spain, and Vanuatu.

[225] They can stay up to ninety days in a one hundred eighty days with the ETIAS iVisa online standard or (super) rush process, which includes paying a fee through a credit or debit card.

[226] Back-up passport is generally acquired by regular international travellers who require to visit restricted visa (e.g., UAE imposes restrictions for travellers having travel stamps from Israel) or conflicting countries (e.g., Muslim-dominated nations. i.e., a UK citizen visiting Pakistan or Afghanistan for business).

[227] The most popular choice since Ireland has highly welcoming rules on granting citizenship to individuals with Irish heritage. Otherwise, people with no Irish ancestry can always sign into the foreign births register. For a deeper examination, De Mars S., Murray C., O’Donoghue A., and Warwick B., “Brexit-ing Northern Ireland: The Challenges Ahead”, *DeliBlog* (2016).

Dutch government struck an agreement allowing its nationals living in the UK to take up dual citizenship post-Brexit, though vice versa, the position of Britons living in the Netherlands remains unresolved. Although the UK government has promised a streamlined process for helping most Union members presently residing in Great Britain, "premium" second citizenship seems to be the best deal. The latter, in fact, equally holds for millions of British people and others from other EU MS living in England to reap the innumerable advantages of dual nationality in terms of freedom, chances for employment, security, or status.

3.4. Embracing dual nationality as a hampering integration

The success of Union citizenship today[228] has impacted many situations resulting from exercising fundamental freedoms. For instance, a citizen's origins could be in a MS of which they are not citizens, or they could be nationals of one or more nations that they have never lived in[229]. They may also hold several nationalities or reside in two or more nations while maintaining real professional and social ties to each of those nations. In terms of identity, citizens with double nationality probably feel European members[230] in the sense that they consider their Union status as potentially more important than any MS nationality as such[231].

For first-generation diasporas migrants, the original passport is a symbol of membership in another country than that of residence, for which the renunciation of the other nationality, about the naturalization, represents a real obstacle. Second and third-generation dual members are also an essential asset in the quest for unrestricted mobility, jobs, education, and social security benefits. The presence of large numbers of non-resident nationals asking for external long-distance voting (to run) for the European Parliament has to be understood within the state's political and historical setting[232] and the interests of the political weight of the population of the diaspora spanning from the denial (Morocco, Cyprus, Greece,

[228] 49% of all countries allow bipatrides under certain conditions, such as the dual membership recognition that Argentina agreed only with Italian and Spanish nationals.

[229] AG Szpunar Opinion in C-202/13 *McCarthy and McCarthy Rodriguez*, EU:C:2014:345.

[230] Close to 2/3 of Europeans feel citizens of the EU after a 6-point rise since autumn 2013. The feeling of EU citizenship has now reached its highest level in the standard Eurobarometer survey of 2010 (EB73).

[231] Kochenov D., "Double Nationality in EU", *ELJ* 17 (2011) p. 323-343.

[232] Especially those with vast expatriate communities with a potential to influence electorate outcomes.

Ireland, and Malta) to be a mandatory obligation (Ecuador) or to be eligible in limited groups for the first and second chamber (Italy, France, Denmark, Portugal, and Spain).

Furthermore, civic citizenship[233] may aid immigrants in coming to feel themselves as respectable, capable members of society. Well-integrated bicultural nationals may participate in the development and peace cooperation as conflict mediators between citizens and newcomers and across borders. Especially in this age of mobility, widening dual allegiance ceremonies rather than merely granting rights to non-citizens, can more effectively enhance civic and political engagement. Through the dual EU status, it is possible to access excellent quality universities without extra tuition or a student visa, even during the Erasmus exchange program. Professional medical coverage on a national level can also be granted through the European Health Insurance Card that, although the different publicly funded healthcare[234] systems (Art. 35 CFR), is mainly free of charge. Similarly, the double nationality permits the owner to buy a property in any EU country that he or she chooses to live in. At the same time, the dual citizen can gain work perks by starting their own business, even applying for financial aid from an investment platform along with access to EU funds.

As Bloemrad writes, "Traditional citizenship is fundamentally illiberal in today's global world"[235]. Twenty years later, the need for reassessment remains the overall objective. Reassessment must include the relationship with EU allegiance and MS nationality against a background of globalization and European integration[236]. In fact, in a cosmopolitan world of immigrants, this subject cannot be avoided for countries of immigration and emigration. Considering the ius soli for immigrant children and the period of residency necessary for naturalization as important markers (of spouses, too), and the tolerance for double status, the laws on citizenship acquisition became more liberal. According to data gathered in 2007, the Organization for Economic Cooperation and Development (OECD) showed that administrative practices that were either liberal or restrictive and that eased the retention of original nationality all contributed to higher naturalization rates. It is also highly valued the political participation of dual

[233] Emphasized in 2003 the Commission of European Communities to enhance mutual tolerance, solidarity, and trust between migrants and citizens.

[234] Services and goods reimbursed by their home State as in ECJ, C-120/95 *Decker*, EU:C:1998:167 or ECJ, C-158/96 *Kholl*, EU:C:1998:171. For an in-depth investigation, Newdick, "Citizenship, Free Movement, Health Care", *CLMR* 43 (2006) p. 1645-46.

[235] Bloemrad I., "Who Claims Dual Citizenship? The Limits of Post nationalism, the Possibilities of Transnationalism and the Persistence of Traditional Citizenship", *International Migrant Review* (2004) vol. 38 No. 2 p. 389-426.

[236] Rosas, "Nationality and Citizenship in a Changing European and World Order" in Suksi M. (edn.), "Law Under Exogenous Influences", *publication of Turku Law School* (1994) ch. 3 p. 33, 55.

nationals in the framework of the law of the nation where the immigrant is now residing[237]. Moreover, civic citizenship[238] may aid immigrants in coming to feel themselves as respectable, capable members of society. Especially in this age of mobility, widening dual allegiance ceremonies rather than merely granting rights to non-citizens, can more effectively enhance civic and political engagement.

Are now clarified the socially defining characteristics of citizenry, which allocate people into "in" and "out" groups[239]. Brubaker, in fact, by employing Weber's reasoning that one can only have an exclusive status if others do not; allegiance will address to the closed nature of nationality. This statement resulted in some disputes about the second nationality over HR[240]. The emerging regional and global fundamental rights regimes after WWII have led to a debate on post-national citizenship[241]. Unquestionably, double nationality has become considerably more acceptable due to international pressures based on individual human rights. Activist citizenship[242], in which nationals can contested states before injustices and inequalities, is sustained by the ideology of HR, focusing on individual claims, and contrasting the traditional ideal of passive citizens.

In our final points will look over the European trends, mostly Eastern and Central countries, towards emigration and, above all, immigration of dual nationals in order to capture the best multinational policies and to draw the future attitudes eventually.

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[237] Participation on a global scale could be advantageous for national integration, as in the case of Portugal, Germany, and the UK. Compare note 76 and note 116.

[238] Emphasized in 2003 the Commission of European Communities to increase tolerance, trust, and support among citizens and immigrants.

[239] Non-citizens, as mentioned earlier, were before women and enslaved people, now are illicit residents, as migrants' residents and asylum-seekers, as well as Lesbian, Gay, Bisexual, Transgender/Transsexual (LGBT), and prostitutes. i.e., ECJ, C-13/94 *P. v. S.*, EU:C:1996:170 and ECJ, C-117/01 *K.B.*, EU:C:2004:7. For a thorough overview of the EU sexual citizenship Evans D.T., "Sexual Citizenship", *Routledge* (1993).

[240] Janoski T. and Compion S., "Citizenship, Sociological Aspects of", *International Encyclopedia of Social & Behavioural Sciences* (2015) p. 655-661.

[241] Soysal Y.N., "Limits of Citizenship: Migrants and Postnational Membership in Europe", *Chicago University Press* (1994). Ibid. notes 162 and 163.

[242] Art. 9 Council Directive 2000/78/EC. For instance, in ECJ, C-81/12 *Asociatia ACCEPT*, EU:C:2013:275, litigious potential is accentuated.

3.5. From nationhood to personhood[243]: between emigrant and immigrant double membership

Viewing integration as an exclusive loyalty to a state, there is still room for intermediate conditions. However, following the first common basic principle of immigrant integration policy of the dynamic mutual accommodation of the two-way process applied to all immigrants and residents of the MS, citizens of the resident state must provide immigrants with a voice as equally eligible individuals in the democratic process and the creation of integration policies[244]. First, it is necessary to highlight the difference between emigrant and immigrant double citizenship. The former maintains and fosters greater cultural and linguistic linkages with persons who permanently dwell in another nation at a relatively little direct cost to the country of emigration. Whereas the latter envisages higher standards associated with a more liberal citizenship policy, which enables the naturalization of foreigners as citizens in the host nation.

One way of classifying MS according to their policies and perceptions of dual nationality is in terms of immigration policies addressed at the resident population; the emigration, trajectory to facilitate their naturalization; and the overlapping category in Central and Eastern Europe, which liberalization of dual allegiance aims at granting or restoring membership to diasporas and kin minorities groups[245] residing abroad.

According to the Eurostat of 2007, of the twenty-eight million non-nationals, current migration inflows is roughly nine million the amount of Union citizens residing in a different MS. All MS accept dual allegiance when it arises from the descent of parents with different nationalities or from the combination of the right of soil and the right inherited by blood, which incorporates diverse models of immigration as

[243] According to Kochenov, it represents the benchmark of inescapable normative individualism in contemporary case law in "Neo-Medieval Permutations of Personhood in the European Union", EUI *Working Paper* 2016/13. The shift from the preceding peoplehood underpinned some concerns related to the rise of neoliberalism and the demise of multiculturalism.

[244] Paramount goal of the 287th Council Meeting, Justice and Home Affairs, Luxembourg 2007.

[245] To whom states allow multiple nationalities, even if they are culturally attached to their home country, because they live across the national border, similar to what happened in the 20th century in Central and Eastern Europe. On this subject, Horvath E., "Mandating Identity: citizenship, kinship laws, and plural nationality in the European Union", *Kluwer Law International* (2007).

such. Denmark[246], Estonia, Germany, Latvia, Lithuania[247], Luxembourg, the Netherlands, Slovenia[248], and Spain try to require immigrants to renounce their former citizenship while applying for naturalization. Still, in Austria[249], Germany, Netherlands, and Spain[250] exceptions are allowed.

In asymmetry with the naturalization policies of immigrants, the ones on dual emigrant membership have become more inclusive, reinforcing the unequal access to electoral politics among EU nationals and TCNs. The recent trend among the EU-15 older MS[251] is to facilitate emigrants' possibility to keep their original citizenship when naturalizing abroad, as occurs in Sweden, Finland, and Belgium. This process is possible with the purpose of stimulating direct foreign investment or tapping into emigrant population's human capital resources and countering political dissidence supportive of both the national and international political objectives of the country of origin. These objectives must be considered along with eventual pressure by the emigrants' organizations themselves, although the lack of politicization.

Tolerance of dual citizenship has been linked to the resurgence of national pride in Central and Eastern Europe[252] towards more effective protection for external kin minorities and to the cross-border nation-building between homelands and diasporas that followed the post-Cold War and the democratization of the former communist bloc. Nevertheless, their recent independence and fragility made some states reluctant, which were facing pressure in opposite directions from emigrants, who were keen on

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[246] Imposes the criterion that applicants must be employed or enrolled in school at the time of application or showing they did in the previous three to five years without receiving public benefits. Plus, since those who have served more than eighteen months of a jail sentence or have been incarcerated are not eligible for permanent residence, it severely restricts public order.

[247] Dual nationality is accepted narrowly, for instance, in the particular case of ancestors living in the country because they were persecuted in times of occupation.

[248] Along with Germany, applies the renunciation requirements only to TCNs as described by Medved F., "Country Report: Slovenia", EUDO *Citizenship Observatory* RSCAS Paper 12 (2009).

[249] Among special exemptions: celebrities, as in the case of Arnold Schwarzenegger or Christopher Waltz, appointed professors at an Austrian university, or people with a peculiar family heritage.

[250] For instance, allow double allegiance for major immigrant groups such as Latin American countries, Portugal, Andorra, Equatorial Guinea, and the Philippines, with whom they concluded bilateral agreements to maintain special historical, linguistic, and cultural ties in compliance with Art. 24(1) of the Spanish Civil Code. As well as other small communities, likewise that of Spanish-born Sephardic Jews and multinational brigade participants in the Spanish Civil War, and ultimately France signing the Dual Nationality Agreement on March 15th, 2021.

[251] Germany, Netherlands, Denmark, Austria, Luxembourg, and Spain still require the renunciation of previous nationality, although without proof of the actual loss. Nevertheless, all countries allow double nationality when rejection, even for those with refugee status, is either totally impossible or very difficult from a legal standpoint (40-50% of cases Netherlands, Germany, and Denmark).

[252] e.g., in Hungary, Romania, and Slovakia the rebirth of national and ethnic policies in post-communist governments, which aimed to better safeguard minorities, has been correlated with multiple citizenship policies. They were framed in: "nationalizing state", "national minority", and "external national homeland", as illustrated by Brubaker R., "Nationalism Reframed: Nationhood and the National Question in the New Europe", *Cambridge University Press* (1995).

maintaining or re-establishing formal ties within their country of origin, and the expatriate community[253]. Differently from Central and Eastern Europe, where dual nationality served as a way of reconstructing the national "imagined communities" through political democratization[254], external and compact kin populations abroad[255] in Western Europe, coupled with the spread of double membership, have been unprecedented. The necessity to integrate mostly internal permanent residents, which is related to globalization, labour migration[256], and increasing cultural pluralism along with multiple socio-political identities, served as the driving force behind this movement.

The individual economic and political interests of citizens, the national level of the MS represented by state agencies or political elites, and the inter-state level resulting from overlapping contradictions among citizenship legislation of various states are among the numerous stakes entangled in double nationality[257]. For example, successors states of former Yugoslavia strictly delimitated citizenries[258] as a strategy for establishing and strengthening their independence.

[253] Rubio-Marìn R., "Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants", *NYU Law Review* 81 (2006) p. 101-131.

[254] Based on a mass extension of socio-political rights; national reorganization, among which the (re)construction of membership; and revival of heterogeneous programs for national integration between mother countries and distant relatives, ranging from cultural assistance to innovative forms of economic and political protections.

[255] The most inclusive form of protection is the privileged access to co-ethnics in most post-communist countries, such as Poland (comprehensive programs of repatriation of former citizens), Romania, Hungary (special status in 2001 Hungarian Status Law), and Bulgaria (Status Bill focusing on Diaspora all over the world). And political, diplomatic protection to kin minorities is expressly granted, for example, in Art. 9 of the Albanian Constitution.

[256] From seventy-five million persons in 1965 (Western Regions attracted 35.7% of the world immigrants) to one-hundred and twenty million in 1990 (42.7% of the global number of immigrants hosted) in compliance with Zlotnik H., "International Migration 1965/1996: An Overview", *Population and Development Review* 24 (1998) p. 89-126.

[257] Distinguishing between a new state and a restored-state model of citizenship legislation as demonstrated by Brubaker R., "Citizenship Struggles in Soviet Successor States", *International Migration Review* 26 (1992) p. 269-291.

[258] Due to a ban on dual allegiance, 1992 newly formed Yugoslavia, made up of Serbia and Montenegro, has denied seven hundred thousand refugees the ability to vote in presidential elections., consolidating the personal regime of Slobodan Milosevic. For an assessment, Iakoubovsku N., "New Citizenship Figures", OMRI *Daily Digest* available at http://archive.tol.cz/omri/restricted/article.php3?id=23849 (2006).

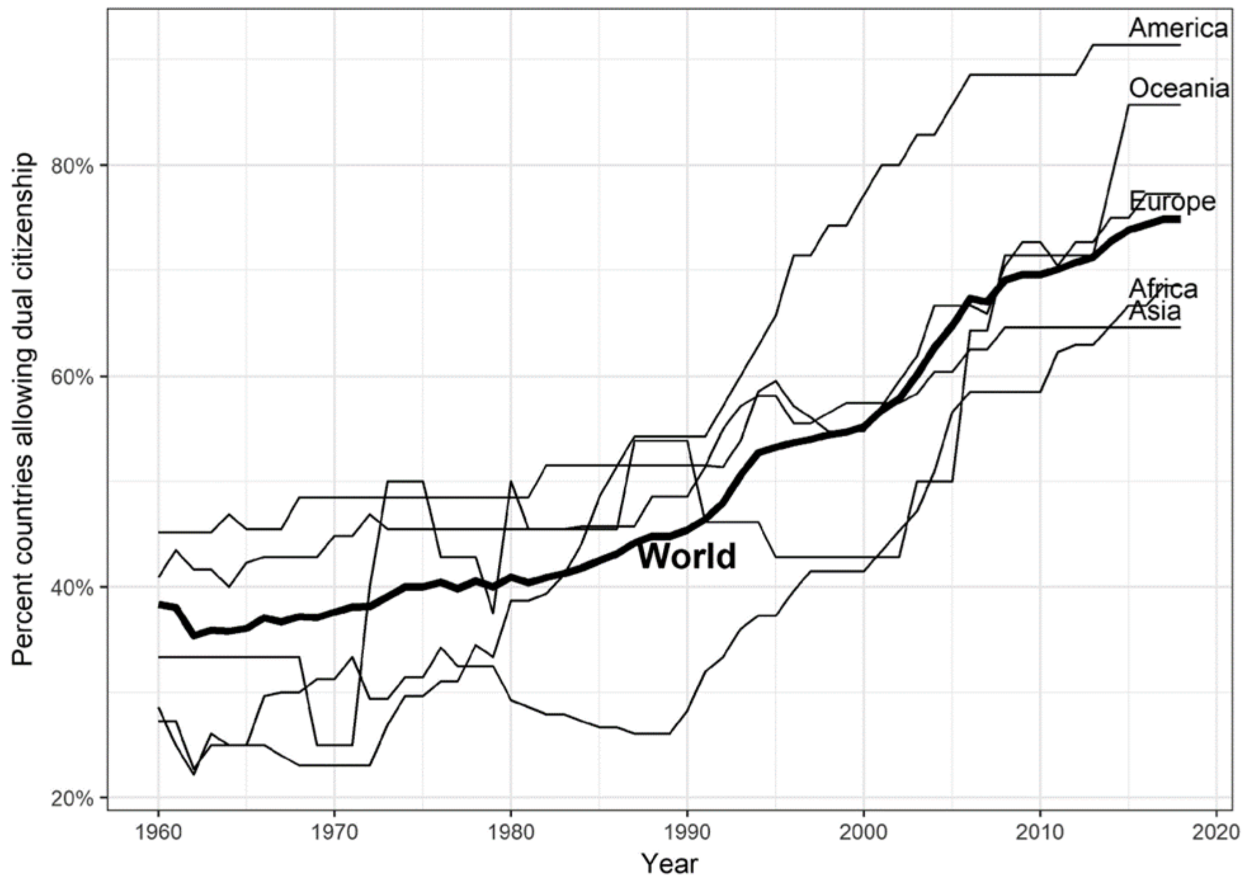

Figure 2: Percentage of countries accepting expatriate citizenship globally from 1960-2017.

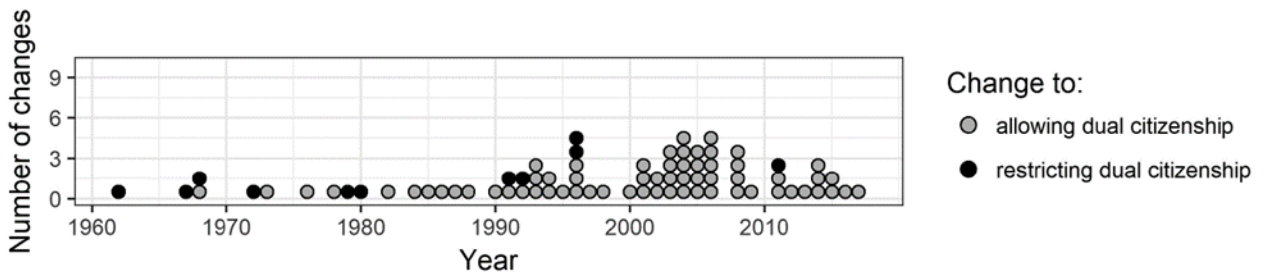

Figure 3: Changes in acceptance of dual citizenship 1960-2017.

The global changes from 1960 to 2017, illustrated in Figures 2 and 3[259], represent the impact of the diffusion of expatriate double allegiance based on received economic remittances, political regime type, and acceptance of diaspora rights. Starting with the electoral right of political participation by citizens of a country who reside abroad[260], the second membership reform politically empowers enfranchised expatriate communities[261].In comparison, authoritarian systems are insensitive to extend dual nationality for citizens residing abroad, who may be forced to flee and live abroad as political refugees. On the contrary, democratic systems are eager to support diaspora requests for the external franchise, coupled with the preservation of double citizenship for voting from abroad. Finally, political elites in high-remittance nations will work to prevent economic sanctions for their tight dual citizenship laws. So, the higher the levels of received remittances of expatriates, the higher the likelihood of a country accepting double nationality.

In middle-income nations, mostly Eastern Europe and Latin America, where citizens have the motive and possibility to earn Western citizenship, typically from EU countries, the acquisition of dual membership is common. In those circumstances, the second nationality serves as a compensatory citizenship[262], addressing gaps in the initial status in terms of possibilities, security, rights, and freedom to travel. Suppose the principle of stratification[263] doesn't mean equal world's citizenship in terms of income and disparities. In that case, individuals are motivated to acquire the higher value of non-residence second allegiance[264] in the global hierarchy of citizenship value. It is believed that the highest-ranked nations have the lowest potential for sending unwelcome immigrants, refugees, criminals, or

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[259] Vink M., de Groot G.-R., and Luk N.C., "MACIMIDE Global Expatriate Dual Citizenship Dataset", *Harvard Dataverse* V3 (2015) in Vink M., "The international diffusion of expatriate dual citizenship", *Migration Studies* 7 (2019) p. 362-383.

[260] "Voting from Abroad Database" by the International Institute for Democracy and Electoral Assistance (IDEA 2015) <http://www.idea.int/elections/vfa/search.cfm> (2016) in Vink M., Schakel A.H., Reichel D., Luk N.C. and de Groot G.R., "The international diffusion of expatriate dual citizenship", *Migration Studies* 7 (2019) p. 362-383.

[261] Coppedge M., "V-Dem [Country-Year/Country-Date] Dataset v8" (2018). Varieties of Democracy (V-Dem) Project https://doi.org/10.23696/vdemcy18 (2019) in Vink M. Schakel A.H., Reichel D., Luk N.C. and de Groot G.R., "The international diffusion of expatriate dual citizenship", *Migration Studies* 7 (2019) p. 362-383

[262] In "middle-tier" nations, instrumental citizenship is acquired by members of the local elites by purposeful tactics as described by Harpaz Y., "Compensatory Citizenship: A Comparative Study of Dual Nationality in Serbia, Mexico and Israel", Ph.D. dissertation of Princeton University (2016).

[263] Castles S., "Nation and Empire: Hierarchies of Citizenship in the New Global Order", *International Politics* 42 (2005) p. 203-224.

[264] Or citizenship à la carte, which is different from the traditionally studied sentimental dual citizenship in Western countries produced by ongoing immigration as explained by FitzGerald D., "Citizenship à la Carte: Emigration and Strengthening of the Sovereign State" in Mandaville P. and Terrence L., "Politics from Afar: Transnational Diasporas and Networks", *Columbia University Press* (2012) ch. 10 p. 197-202.

terrorists. Meanwhile, lower-ranked nation's people are viewed as "automatic suspects" and their movements are strictly regulated.

To conclude, the de facto toleration of double nationality can be a tool to promote naturalization and to narrow the gap between the populations who can vote and those who live there. Although, these changing policies towards second or plural nationality originated in international law; ECN expanded the discretion of contracting states for express consent in cases where children are born with dual nationality and renunciation, or loss is not attainable or not reasonably expected. Although, some countries allow their emigrants only a sort of "light citizenship", as it occurred for the Turkish government in the 1980s passed a measure providing protections for Turkish-born immigrants the same rights as Turkish citizens on pensions and property[265]. Since the mid-1990s, many of them naturalized in Germany, where they hold a pink card, which granted the holders privileged non-citizens status to full Turkish nationals[266] except for the ability to cast a ballot in local and national elections. This phenomenon of changing membership legislation in favour of increasing economic integration of immigrants is known as post-national citizenship[267]. The latter is granted as a reward[268] for the socioeconomic process as a change that will depend on the country's specific conditions, such as the individual capacity to acquire a precise knowledge of laws and customs.

This view of dual status civitatis challenges Marshall citizenship theory in a transcendent community and undermines solidarity at the national level[269]. Over the years, European states have invaded and seized foreign cities and territories to facilitate the return to Europe of many prospective populations who served in the OCT, as in the case of officials and personnel who had gone overseas for business management or family development.

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[265] Considering note 186, in contrast to past decades, Turkey now encourages "birth tourism" in the host country as shown by Ostergaard-Nielsen E., "Turkey and the "Euro-Turks": Overseas Nationals as an Ambiguous Asset" in "International Migration and Sending Countries", *Palgrave Macmillan* (2003) ch. 4 p. 77-98.

[266] i.e., the right to family reunion is viewed favorably as a tool that encourages freedom of mobility and integration of migrants at the EU level and negatively as one of the main sources of immigration requiring control at the national level. e.g., ECJ, C-7/10 and C-9/10 *Kahveci and Inan*, EU:C:2012:180.

[267] As aforementioned in notes 162-163.

[268] Ibid. note 160. To know more Mazzolari M., "Dual citizenship rights: Do they make more and better citizens?", *Demography* 46 (2009) p.161-191.

[269] Ibid. note 214.

3.6. Multinationality in multicultural incorporation policies

This final section will give a response to the query proposed in the introduction on the actual settlement of multi-layered dual legal status, which directly relates to the denunciation requirements and other problematic issues on the Union citizenship field coupled with MS interactions. Among which the possibility under national law to lose not only the nationality of the country of origin but also the EU membership due to, for instance, military or government work abroad along with the ex lege automatic loss of the original allegiance when naturalizing or having a long-term residence abroad[270]. With the relinquishment of the civis europaeus sum, the right to vote failed as well[271]. In the words of Vink, "For Union citizens residing in one of the EU MS it becomes increasingly irrelevant that they are non-citizens or aliens"[272].

The nationality of MS may have both advantageous and disadvantageous legal ramifications. The first ones can be researched whenever a peculiar state's nationality confers the right to vote and to seek for office in federal elections, qualifying for a job in public service; and, at the same time, giving unconditional access to the territory of the MS[273] along with the main functions of MS' status civitatis. These are the activation of reverse discrimination the wholly internal situations[274] and the access to EU secondary membership. For the negative aspects, it must be noted that since all allegiances of one MS may have a "better nationality" whether they grant access to the same level of EU citizenship from which the rights are obtained. On the other hand, because of the differences in "essence", one MS could also lose the capacity to assert any variations in the rights that their nationalities bring. And further to this, since states can arbitrarily establish rules, some chose to make their nationality irrevocable in response to questions concerning the acquisition and loss of citizenship, as in the case of Greece and Morocco, potentially hurting naturalized citizens and dual nationals as well.

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[270] de Groot G.-R., "Towards a European Nationality Law", *European Journal of Constitutional Law* 8 (2004) p. 2-38.

[271] Hall S., "Loss of Union Citizenship in Breach of Fundamental Rights", *ELR* 21 (1996) p. 129.

[272]. Vink M.P, "Limits of European Citizenship: European Integration and Domestic Immigration Policies", *Palgrave Mcmillan* (2005) ch. 3 p. 66-89.

[273] Since the latter doesn't apply relating to public health, security, and policy to their own residents exercising their right to free movement under treaty derogations.

[274] Hanf, "Reverse Discrimination in EU law" *Maastricht Journal of European and Comparative Law* 18 (2011). Ibid. note 200.

The premise that MS are the ultimate arbiters of Union citizenship status is supported by this argument, which is more sophisticated than some nations initially believed. The ability of states to legitimately impose restrictions on the right of free movement for reasons of public policy or security favours the national over the supranational in determining the boundary between EU and domestic law and in allocating the ultimate responsibility for mobile EU offenders. Considering the more Union law, the less margin of discretion for national authorities[275], MS seek to expand their right to remove foreign offenders, ignoring case law and interpreting the public policy and security derogations broadly. Indeed, the state-centric sovereign theory of constitutional interpretation militates in favour of limiting the principle of mutual recognition and the rights that have been granted to EU citizens since the transfer of regulatory powers from MS to the Union entails a risk for nation-state demos[276]. In opposition to the federalist theory, which interprets European demoicracy[277] broadly, for instance, recognizing in the EU citizen status the social rights and the rights of the Nice Charter. The best option is the empirically grounded middle position of Joppke, who argues that "We can observe both, a stubborn insistence of states to maintain control over their borders and increasing human rights constraints on traditional sovereignty; a proliferation of membership categories and pressures to remould them as a unitary citizenship; a persistence of distinct national models of handling (and containing) ethnic diversity and multicultural pressures on the monocultural textures of nations". The third way to express the dual structure[278] of democratic legitimacy is enshrined in Art. 9 to 12 TEU to complement the democratic systems existing at the MS level.

Though permanent residents have been given a lot of rights that in the past were only reserved to nationals, these rights change at the discretion of the State and are by no means the same in every country. It is expected that EU nationality will be used as a multipurpose tool to break open the right of MS to

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[275] In principle, nationality represented the prime example in the Treaties of MS exclusive competence to establish who is eligible to be an EU citizen, the 1992 Decision on EU citizenship as well as the Declaration on Nationality of a MS appended to the Final Act of the TEU. However, after years of cooperation, the legal orders became so intertwined that MS competence could not be separated from the EU one, as in the case of internal market-based mobility within the EU.

[276] Habermas J., "Democracy, Solidarity, and the European Crisis" in van Middelaar L. and Van Parijs P. (edn.)., "After the Storm how to save democracy in Europe", *Lannoo* (2015) ch. 6.

[277] Ibid. note 82. Term coined by Van Parijs, "Should the European Union Become More Democratic?" in Follesdal A. and Koslowski P., "Democracy and the European Union", *Springer* (1997) ch. 13 p- 287-301 and defined by Nicolaidis K., "The Idea of European Demoicracy" in Dickinson J. and Elefteheriadis P. (edn.), "The Philosophical Foundations of European Union Law", *Oxford University Press* (2010) ch. 2 p. 353 as "A Union of peoples, understood both as States and as citizens, who govern together but not as one, and whose ideas have to be upheld at the same time".

[278] In compliance with Art. 10 TEU, on the one hand, the body of all Union members collectively, and on the other, the various individual peoples of Europe organized in and by their national constitution.

treat mobile citizens and own nationals differently, living up to the high standard set by *Orfanopoulus and Olivieri*[279]. Nationality is still of capital importance, being the most secure status in a state since the Union citizenship is only complementary.

After having analysed dual nationality from the national, post-national and transnational perspectives, through the trans-state approach[280], we will introduce cases of supranational secession, in particular following the Soviet Union's demise in Transnistria[281], as well as the independence referenda held in Scotland[282] following Brexit, and in Cataluña[283]. Anti-political movements favouring partition are usually active in multinational states with strong territorially concentrated minorities, which share a subnational identity, as it is for the Austrian minority in Italian South Tirol or the Bavarian Christian Social Union in Germany. With very few and limited exceptions, the right of self-governance is generally prohibited by international and constitutional law, at least by the majority of EU MS. The successive Chapter would discuss if the attitude held by the European composite republic is to foster rather than modify.

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[279] ECJ, C-482/01 and 493/01 *Orfanopoulus and Olivieri*, EU:C:2004:262 in which the Court, for the first and last time, emphasized the impact of EU status on public policy and security derogations.

[280] Consisting in continuing dense border-crossing ties, which makes membership of citizens across several political communities overlap, but at the same time grasps the integrative potential of reciprocity and solidarity for the latter.

[281] Along the Ukrainian border beyond the Dniester River, in 1992 declared its territorial secession to Moldova until 2001 when it built its citizenry. For a deeper analysis, Baban I., "The Transnistrian conflict in the context of the Ukrainian crisis" http://www.ndc.nato.int/download/downloads.php?icode=468, Research Paper 122 (2015) p. 1-12.

[282] Kenealy D. and MacLennan S., "Sincere Cooperation, Respect for Democracy and EU citizenship: Sufficient to Guarantee Scotland's Future in the European Union?", *ELJ* 20 (2014) p. 1-22 or Hansen P.A., "the European Commission spokesperson, "Scottish referendum to clash with European elections", *Euractiv* (2012), available at www.euractiv.com/section/elections/news/scottish-referendum-to-clash-with-european-elections/.

[283] For a detailed commentary, O'Neil, "A Quarrel "Catalan Independence and the EU"" http://www.catdem.org/cat/notices/2012/12/catalan-independence-and-the-european-union-7034.php (2012) and Cuadras-Moratò X., "Catalonia: a New Independent State in Europe? A Debate on Secession within the European Union", *Routledge* (2016).

4. Secession scenario at the "edgelands" of EU

According to integration theory there should be the option to exit through voluntary withdrawal[284] or secession of a part of a MS's territory, which does not always result in the predecessor state's extinction[285], which brings per se a long history of border disputes. This disruptive phenomenon is partial in the case of an opt-out, which aims to give the individual policy central competencies from the EU by a MS, without the latter leaving the Union (i.e., Sweden). However, it represents a hot topic for international systems that study it for the impact on acquired EU citizenship rights, which may even result in the right of individuals to choose their political future. Applying a public international law inspection[286] in a European context will lead to a significant change in how citizens of a seceding entity are treated since the nationality of the prior state is typically lost as a result. Still, it will also support the procedural operationalization of the subsidiarity principle[287]. The opposite case is that of a dissolution, such as the (often consensual) fragmenting of an existing state, with or without the emergence of a successive one[288].

The right of self-determination[289] between countries and their nationals very often clashes at the confluence of law, politics, economics, or search for identity and the principle of territorial integrity between states, which recognizes the inviolability of countries' borders and prohibits the use of force to change them. To maximize the fullest effect of both principles without contradictions the first should be initially fulfilled internally within the boundaries of existing MS. In this way, sovereign countries will have serious obligations regarding democracy and the protection of minority rights for the pursuit of

[284] Art. 50(3) TUE, negotiation clause that militates against the automatic termination of EU citizenship rights upon secession. On this topic, Rieder C.M., "The Withdrawal Clause of the Lisbon Treaty in the Light of EU Citizenship: Between Disintegration and Integration", *Fordham International Law Journal* 37 (2013) p. 147-172.

[285] This was, historically, the only solution for sub-state nations seeking total control over their territory. Also, Crawford J., "The Creation of States in International Law", *Oxford University Press* (2007) p. 72: "Primarily encompasses non-consensual, even if not belligerent, separation cases, which are best treated as instances of "devolution"". Among the examples of territorial adjustment are the separation of Algeria from France in 1962 or 1985 Greenland's acquisition as an Oversea Country and Territory by the Kingdom of Denmark.

[286] Art. 4 of the 1978 Vienna Convention on the Succession of States in respect of Treaties establishes that: "The effects of state succession on membership of an international organization depend on the relevant rules of the organization".

[287] Schafer W., "Withdrawal Legitimised? On the Proposal by the Constitutional Convention for the Right of Secession from the EU", *Intereconomics Forum* (2003) vol. 38 p. 182-185.

[288] Rothbard N., "Nations by Consent: Decomposing the Nation-State" in Gordon D. (edn.), "Secession, State and Liberty", *New Brunswick and London* (1998) ch. 4 p. 79-88.

[289] Art. 1 of the ICESCR and of the ICCPR, coupled with Art. 3 of the UN Declaration on Rights of Indigenous People.

people's economic, social, and cultural development. However, whenever a state cannot fulfil this right, the recognition may become external, overriding the principle of territoriality by providing a right to secede from the parent state, although in very narrow circumstances such as in cases of populations under colonial rule or foreign occupation. The latter principle of territoriality will be protected by international law if it represents all the people on the MS territory without discrimination and in full respect of their rights to pursue their self-fulfilment.

The jealous anarchy and the oft-shifting alliances of earlier centuries make it far more likely to create an armed conflict within a nation-state, triggered either by the purported exercise of the right of self-governance or by the efforts to resist it. As aforementioned, in times of sharp supranational conflicts, MS may be justified in exploiting minority groups or imposing choices on dual nationals who wish to serve in their militaries, including renunciation of their status civitatis by other parties. The greater the protection worldwide, the stronger the tendency towards political integration and formation of larger states, as opposed to smaller states, which generally have a greater interest in free trade. Nevertheless, the separation tendencies are strengthened with the advancing globalization of a free trade programme.

International disputes generally turn around external or internal self-determination since these democratic claims find their roots in a nation's desire to govern itself more independently. The first external right may consist in a consensual secession, which is agreed upon when an independent country explicitly recognizes any minority groups without necessarily feeling bound by its effects. This informal obligation to negotiate bona fide (Art. 2, 4, 20, and 50 TEU) when the partitioning state is willing to be part of the EU[290] helps achieve an equal protection standard through legal avenues. This kind of partition brought, for instance, to the bloodless "Velvet Divorce" of Czechoslovakia into Czech Republic and Slovakia or the mutually agreed separation of Norway from Sweden. The second internal right, instead, maybe the case of the alternative unilateral secession[291] whenever efforts to acquire exterior self-determination are unsuccessful or doomed to be unsuccessful, making the separation of one nation from another more

[290] Greenland is an optimum precedent of an EU MS territory, notwithstanding the withdrawal from the EEC (Part IV: "Association of the Overseas Countries and Territories"). Now Art. 335 TFEU provides a simplified Treaty amendment procedure about full-blown negotiations (Art. 49 TEU), which are no longer invariably needed to achieve such changes in the status of certain territories of the qualifying MS.

[291] According to the theory of national self-determination of people, this right might be possible when it is enshrined in the constitution, even if rare (i.e., Canada), or when, based on the choice theory of secession, a group of citizens can create its own democratic state, approved by many secessionist movements (i.e., Cataluña), or even for a just cause such as the repeated and serious violation of HR through the principles of federalism, democracy, constitutionalism, notwithstanding the protection of the rule of law and minorities (i.e., New Caledonia or Cyprus).

problematic. For this reason, the prohibition of non-bilateral withdrawal is treated as a general rule, except when it represents a corrective measure implemented in reaction to an instance of abuse, exploitation, or domination[292]. Nonetheless, such corrective self-determination will be prevented by European processes, since it might be in breach of the principle of faithful collaboration (Article 4(3) TEU) and of the values of the Union (Art. 2 TEU). It would logically follow that "the solution to any problem for which the Treaties do not expressly provide must be sought first within the system of the Treaties and not only if those prove unhelpful in conventional public international law"[293].

To regulate and contain the illegal contested secession in Europe, the right to self-rule can be recognized only in specific situations not to be misused as an instrument for free riding but to counterpressure the over-centralization of the Union. Considering that modern constitutions are already reluctant to regulate it as a positive right because it would involve a recognition of a quiescent sovereignty of the subunits that compose the state. Whether the separation is negotiated or unilateral, it is easier for secessionist organizations to persuade local and foreign audiences of the necessity of a new independent statehood when the official diplomatic recognition is supported by strong governments in the international system[294]. The ultimate objective of every separatist movement is to win the approval of the vast majority of other members of the world community.

In this final Chapter, in the larger context of the developing European integration processes, different MS will be compared through the method of "constitutional ethnography"[295], built on detailed studies based on (new) membership regimes[296], which place at the centre stage the "live in" dimension of

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[292] i.e., the French constitutional system in Corsica, notwithstanding the sizeable Italian minority, coupled with the Basques, Bavarians, or Flanders contemporary situation.

[293] Edward D., "EU Law and the Separation of Member States", *Fordham International Law Journal* 36 (2013) p. 1151-1162.

[294] Currently, the most influential are those UN Security Council members who are permanent members: US, UK, France, China, and Russia. Approximately two-thirds of the countries that demanded independence did so between 1931 and 2002, as demonstrated by Coggins B.L., "Friends in High Places: International Politics and the Emergence of States from Secessionism", *International Organization* 65 (2011) p. 433-467.

[295] Term coined by. Scheppele K.L, "Constitutional ethnography: an introduction", *Law and society review* 38 (2004) vol. 3 p. 395 to describe a work which involves the "Study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal landscape".

[296] Defined by formal rules and informal ideologies or, in the words of Jenson J., "The European Union's citizenship regime: creating norms and building practices", *Comparative European Politics* 5 (2007) p. 53-69: "The institutional arrangements, rules and understandings that guide and shape current policy decisions and expenditures of states, problem definitions by states and citizens, and claims-making by citizens". In particular four dimensions are possible: the "responsibility mix", namely the boundaries of state responsibilities; acquired rights and duties; the governance arrangements of a polity, including the institutional mechanisms giving access to the state; and belonging or boundaries of membership.

political struggles over the bargain[297]. The liminal process and project of territorial rescaling on citizenship in the European multilevel federation are contested politically by the individuals residing there through referenda, held in compliance with existing constitutions. This phenomenon of integration and disintegration in new and aspiring states nowadays represents the norm rather than the exception[298]. For this reason, it will be examined the foundations of multilevel secession from a theoretical and comparative perspective. Figure 4[299] displays the real movement of political borders while capturing the variety of previous and current movements along the Union's territorial grid. For instance, the 2010 declaration of the goal of the succeeding Catalan governments was to convert Cataluña and Basque's autonomous community into respectively an independent state of the EU and an autonomous country without significantly altering the region's constitutional status within Spain[300]. However, the act of disconnecting has had significant political repercussions that have affected both the rest of Spain and neighbouring MS. Another harsh example is the case of irredentism in Crimea, having a subordinate position without an autonomous republic during the shifting of the international border between Ukraine and Russian federation. Finally, this graphic depicts the idea of a clean division between territorially or functionally distinctive jurisdictional domains by drawing a distinct line between EU and non-EU sectors as well as between supranational, state, and regional levels of government.

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[297] Shaw J., "Citizenship in the New States of South Eastern Europe", *Citizenship Studies* 16 (2012) p. 309-321.

[298] Taylor P.J., "World cities and territorial states: The rise and fall of their mutuality" in Paul L. and Taylor P.J., "World cities in a world-system", *Cambridge University Press* (1995) ch. 3 p. 48-62.

[299] Arrighi J.-T. and Stejepanovic D., "Introduction: The Rescaling of Territory and Citizenship in Europe", *Ethnopolitics* 18 https://doi.org/10.1080/17449057.2019.1585087 (2019) p. 219-226.

[300] Considered by both the President of the Catalan government and of the European Commission Barroso J.M., in a letter of January 7th, 2014, as "A question of internal organization related to the constitutional arrangements in the member state". Consider also Corretja Torrens M., "El fundamento démocratico del derecho de los Catalanes de decidir" in Cargiao J., Conde and Ferraiuolo G. (edn.), "El encaje constitutional del derecho a decidir. Un enfoque polémico", *Madrid Catarata* (2016) ch. 2 p. 62-81.

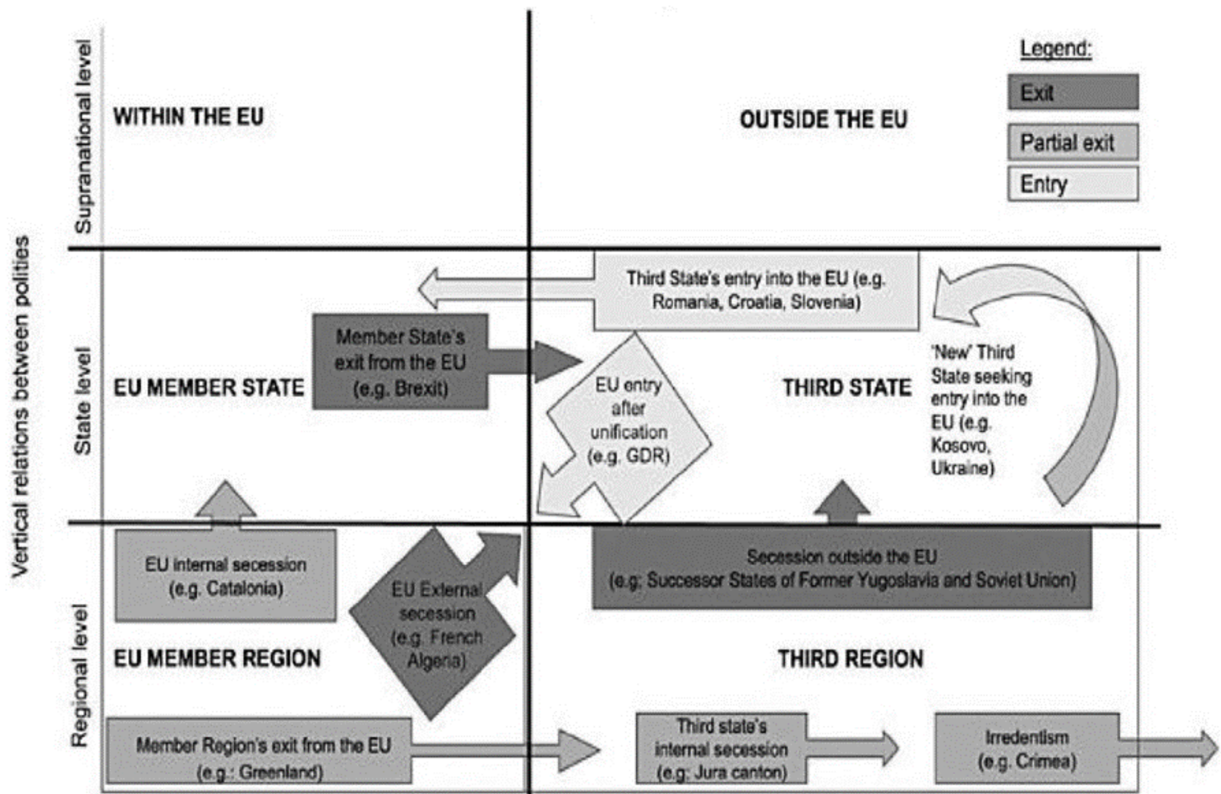

Figure 4: EU secession.

4.1. Territorial rescaling in the European Constellation: implications on citizens

As hitherto mentioned, the territorial rescaling process is the result of political elites asserting their right to self-determination over a certain region or population. The term "rescaling" describes the movement of economic, social, and political action and regulating systems to new spatial levels interconnected above, below, and outside the nation-state. Among the many variations on the rescaling theme, the functional, political, and institutional dimensions will be considered. The best documented practical effects are in the economy, where development and change are shifting their spatial scale upwards to European levels and downwards to cities and regions. While the rescaling of politics was first noticed in the resurgence of territorial protest in Western European countries in the 1960-1970s, defining the modernist logic helped to break the assumption of integration of a once-forever process. States, having lost regulatory capacity in functional change, seek to regain it through new territorial mechanisms, such as regional planning and technocratic approaches to territorial management.

However, a more or less considerable percentage of the domestic people as well as the territorial polities involved in its recognition resist this strategy both internally and externally. As a result, the promise of European integration of improving socio-economic conditions and fundamental rights of, for instance, Romani populations or undocumented migrants[301], have been largely unfulfilled, remaining instead at the "margins of citizenship"[302]. A trend that was aggravated by the processes of integration and disintegration occurring at the supranational and national levels. When allegiance is part of the conflict resolution, a nuanced conclusion can be reached in constitutive referenda, which use direct democracy to draft new states' or constitutions' founding documents. Before the creation of the globally recognized polity or as a necessary part of a peace accord, among the many "unusual" occurrences there are the Aland Islands, Bosnia Herzegovina, Cyprus, Montenegro, and Northern Ireland.

Three trends in the modernist social science consider territory either as an inconsistent place to eliminate in the name of normative and liberal universalism or to be reified to engage various forms of spatial determinism, or even to assume the only political form of a unified nation-state. First, in compliance with a functionalist division of the environment, "we can almost say that a people is as much advanced as territorial divisions are more superficial"[303]. From a residual category, the territory was rediscovered to build space into theoretical models in different fields, for example, in the early 1990s, new economic geography or by social sciences in the late twentieth century. Indeed, the national integration paradigm emphasized functional differentiation to explain the consolidations of states around national societies as privileged definers of territory and significant actors in international politics[304].

Baubock[305] developed a level-differentiated democratic theory that demonstrates how distinct local, sub-state, and international withdrawals have different substantive and procedural requirements. Pro-independence elites may embrace a territorial and plural conception of the people, as in the Catalan and

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[301] Piccoli L., "The regional battleground: Partisanship as a key driver of the subnational contestations of citizenship", *Ethnopolitics* (2019) vol. 18 p. 340-361 focuses on four "ordinary" regions in Italy and Switzerland to show that the strengthening of representative and accountable regional governments provided political elites with new resources to adapt, blur and re-define boundaries of allegiance, often seen as the exclusive prerogative of central governments.

[302] Sardelic J., "Roma in times of territorial rescaling: An inquiry into the margins of European citizenship", *Ethnopolitics* 18 (2019) p. 325-339.

[303] Durkheim E., "Selected Writings", *Cambridge University Press* (1972) refutes geo-political and territorial determinism.

[304] In the words of Deutsch K. and Kochen M., "Pluralization: A mathematical model", *Operation Research* 20 (1972) p. 276-292, "The integration proceeded until it met its limits, at which point unassimilated territories would break away to form their own states".

[305] Ibid. note 14.

Scottish cases[306] that will be discussed subsequently, to bolster the external legitimacy of their claim in a normative environment that strongly disfavours ethnic reasons, to emphasize their compliance with current international rules[307].

The general restrictions of territorial integrity, democratic diversity, and recognition needs must be observed when considering separation as a political upgradation of self-governing territory within a multilevel constellation of polities[308]. Changes in borders may cause governments to become embroiled in disputes with neighbouring domains, even if the deliberate separation of a polity from a larger territory in which it was formerly integrated is not a common occurrence. Moreover, explanatory theories[309] Explanatory theories are typically level-specific since they only apply to independent states without taking other levels of secession into account. This right should be better replaced by the desire for co-determination, as even the choice to join the EU is contingent on the consent of all other MS before its membership can take effect.

European people cannot be defined either from the outside or by other objective factors such as ethnicity or language, and history. Nonetheless, being anchored on the national's right to take part in Union democracy, which would go against the denial of the people of Europe to whom they belong. Therefore, the expression of self-government within the EU is understood as a collectively exercised individual HR, as also positively ratified in 1966 UN Covenants. Consequently, there is no direct threat to public safety or national security in the proposal for partition. In a democracy, it may not even be used to suppress the expression of that goal or the exercise of that right by a gathering of people[310].

The recognition of the right to national self-determination for all European citizens without a proper state within it has a remedial and individual component. The restorative withdrawal is based on European

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[306] Arrighi J.-T., "“The people, year zero”: Citizenship and the politics of independence in Scotland and Catalonia", *Ethnopolitics* (2019) vol. 18 p. 278-297.

[307] Keating M., "Rescaling the European state: The making of territory and the rise of the meso", *Oxford University Press* (2013).

[308] Ibid. note 14.

[309] Among the most advanced the "remedial-right-only" normative theory of Buchanan A., "Justice, Legitimacy, and Self-Determination. Moral Foundations for International Law", *Oxford University Press* (2007), ignored the liberal nationalist theory, which aims to improve the alignment of national and political boundaries and applies to linguistically and culturally distinct territories, such as the secession of Jura from the canton of Berne in the 1970s, or the reasons why within-state secessions and exit rights from regional unions are frequently accepted.

[310] ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), App. No. 29225/95 and 29221/95: "The fact that a group of person calls for autonomy or even requests secession of part of the country's territory, thus demanding fundamental constitutional and territorial changes, cannot automatically justify a prohibition".

ideals, EU citizens' rights against discrimination, and their full participation in democracy in the Union of States, which is made up of other Europeans without their own national state[311]. Instead, the individual secession is based on the right to exercise one's personal freedoms freely and collectively as protected by EU HR law.

If no explicit formal democratic self-government rights in Europe can be found under EU law, recognizing the results of (informative) self-determination referenda[312] outside the context of decolonization has been continuous and consistent. The domestic co-determination referendum is, at the very least, consistent for those who have been permitted to join the Union soon following their democratic self-rule process. This possibility leading to their acceptance as states under international law[313], even though generally with the opposition of the home state. Likewise, the independence referenda for infra-state territorial units within the EU's territory[314] are capable of determining their political status without a proper legal base within the Treaties.

To comprehend the issues with secession in the context of citizenship, the successive sections will spotlight the EU policies of neutral "engagement without recognition". However, it will be examined prima facie the struggle of Baltic states and its mixed system of membership for national self-determination crammed between the Cold War's rival superpowers. And secondly, it will be provided with an in-depth evaluation of the caseload on the increasing number of initiatives for independence plebiscitary elections, among which the most contested and known in Scotland, Catalonia, and the Basque region, with its peaceful rather violent populist protests. In particular, Catalan and Scottish cases were depicted because they share analogous perceptions, interpretations, and aspirations for home rule, maintaining at the same time some divergences, such as the appurtenance of the Eurozone by Spain, in contrast with Scotland.

[311] i.e., Kosovo because of the province's recent history and politics.

[312] Twenty-six out of fifty-five independence referenda organized in the past twenty years more than half of them had been held without the parent state's permission, which resulted in the creation of a new state that was later acknowledged by all EU MS. This data identifies the emergence of the international customary norm, also through the relevant (state's) opinion iuris.

[313] e.g., the adhesion to the EU unanimously approved by EU MS in 2004 for the Czech Republic, Estonia (1991), Latvia (1991), Lithuania (1991), Slovakia, and Slovenia (1990) after the 1990s referenda on independence. To know more, Roepstorff K., "The Politics of Self-Determination. Beyond the Decolonisation Process", *Routledge* (2013).

[314] The Saarland's 1955 vote to join Germany passed without any legal challenges to its adherence to Union legislation, the 1982 Greenland referendum to end all EEC Treaty obligations, and 2014 for Scotland in compliance with UN General Assembly Resolution 2625 (XXV) of October 24th, 1970.

4.2. The Baltic secession: Transnistria case and others recent upheavals

In addition to the prospect of future Western Balkans EU membership[315], it was commonly believed that this shared nationality helped to reduce ethnic conflicts in the prospective MS, particularly with the increasing Europeanization of their citizenship laws. Civis europaeus sum was no longer thought of as a uniform status only conferred by the state but rather as a complex architecture of territorially distinct allegiances and rights concurrently granted by supranational, national, and regional tiers of government in the multi-layered European polity. Indeed, the territorial growth, division, or contraction always disturbs the legal standing and related rights of persons who reside in that nation.

Brubaker, in his research on “citizenship struggles”, differentiated between the “new state” and the “restored state” model of allegiance legislation[316]. The first one was adopted in countries that, without a distinctive history of membership, lacked a statehood tradition of their own, such as the Republic of Moldova, which have conferred comprehensive rights for all of their inhabitants. The latter scheme, instead, was used in nations that rely on their pre-Soviet statehood legacy, initially excluding from membership all immigrated residents in the post-1945 period, as in the case of the Baltic States and Romania once they signed the infamous 1939 Ribbentrop-Molotov Pact.

Allegiance Act on reinstated citizenship rights that had existed prior to the Soviet invasion excludes from those HR in these situations and political freedoms all residents who immigrated there after WWII. This exclusion was present until the post-Cold War era, when the international community recognized Estonia, Latvia, and Lithuania as sovereign states[317] with their governments, political systems, and international relations being part of the UN, notwithstanding Russia’s opposition. Not even the new citizenship legislations in Croatia, Slovenia, and Czech Republic can be studied separately from the process of Yugoslavia disintegration started in 1941 and based on the uti possidetis principle. Almost all Socialist Federal Republic of Yugoslavia’s (SFRY) successor states externalized their constituent parts up to the disintegration of the entire country. This accomplishment was possible through the founding documents

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[315] Especially policies towards the Russian-speaking resident population were criticized by the OCSE and the Council of Europe because they could bypass certain conventions of international law pertaining to citizenship.

[316] Ibid. note 13.

[317] The criteria for recognition need to be more well-defined but generally involve a demonstration of effective control over territory and population, a functioning government, and international acceptance.

that, albeit at a different speed and with minor changes, hastened nation-building and "ethnically engineered" their populations to the benefit of the majority ethnic group[318].

To these two clusters it might be added a third hybrid one represented by "new states" that have taken on a "restored" state dimension, allowing former citizens and their descendants born or permanently resident inside any territory that historically belonged to that state access to allegiance, such as Ukraine, on the express condition that they rescind their foreign citizenship[319].

Restitution of national status during the shift from communism to capitalism that in 1991 brought Moldovan citizenship law to become one of the most liberal and inclusive laws[320], conferring full membership to all Republic citizens who live there permanently. Romanian speakers (64.5%) were among the approximately four million people who lived in Moldova in 1989, according to the Soviet census, while Gagauz Turks (3.5%), Bulgarians (2%), Ukrainians (13%), and Russians (11%)[321]. All these people the Republic became Moldovan citizens, irrespective of their ethnicity or birthplace, although potentially conflicting with 1991 Romanian law[322].

The political conflict in Moldova was further aggravated following the Communist Party's electoral victory in 2001. To complicate matters, the claims of "Moldovanists" favours pursuing a strategy of tight coordination and integration with Russia, as well as "pan-Romanianists" who support a state union between the two neighbouring states. The Republic's southern Gagauz population's calls for administrative autonomy and the anti-reformist and Russophile elites' separatist tendencies further compounded the issue in Transnistria[323]. In this scenario of political issues surrounding Moldova's status, the emblematic case of *Ilie Ilascu*[324] is worth citing. This case is so unique in the European parliamentary

[318] Sticks I. and Ragazzi F., "Croatian citizenship: From ethnic engineering to inclusiveness" in Baubock R., Perchinig B. and Sievers W. (edn.), "Citizenship Policies in the New Europe", *Amsterdam University Press* (2009) ch. 11 p. 339-355.

[319] Iordachi C., "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships" in Baubock R., Perchinig B. and Sievers W. (edn.), "Citizenship Policies in the New Europe", *Amsterdam University Press* (2009) ch. 6 p. 177-200.

[320] Concentrating on the notions of nation and national identity, the chosen official tongue, and connections to Russia and Romania.

[321] King C., "The Moldovans. Romania, Russia, and the Politics of Culture", *Standford University Press* (2000).

[322] Since omitting residents who relocated to the province during the Soviet era and since Romania's legislation unconditionally allowed double nationality.

[323] Ibid. note 279.

[324] ECtHR, *Ilascu and Others v. Moldova and Russia* (2004), App. No. 48787/99.

history because the member of the nationalist Perestroika reforms and leading promoter of "Romanianism" was elected deputy in Moldovan and Romanian Parliament but also chosen as a representative of the Council of Europe Parliamentary Assembly. However, with the consolidation of the separatist leadership led by Russophile Smirnov, the active leader was detained together with five other members of the Popular Front local organization in Transnistria and accused of terrorism against the purported Republic's government. The "Ilascu Group", amply publicized in support campaigns of Moldova and Romania, was the subject of a Stalinist show trial, a creation of the regional propaganda apparatus. Ultimately, Ilascu received a death sentence (even if it was never carried out), while his collaborators were sentenced to long imprisonment.

Romania did not fight its independence or the name of the new Republic's special status, in contrast to the Federal Republic of Germany and the former German Democratic Republic (GDR) or Greece and the Former Yugoslav Republic of Macedonia. Instead, it has treated Moldova and Transnistria, as respectively an independent institutional authority and a de facto sovereign entity, implicitly recognizing, in the interaction with each other, the legal authority to create its own national identity and citizenship laws. The distance between the two strategies grew due to the failure of the special partnership policy that Romania and Moldova launched in the 1990s and the forcible suspension of the nationality restitution process as a result of the pressure from the EU.

While Moldova presents the impression of being a fractured Republic, torn apart by fierce disagreements over its national identity, political outlook, and membership affiliation[325], the Republika Srpska in Bosnia and Herzegovina demonstrated its desire for unity and independence. After the 2006 secessionist referendum in Montenegro and afterward the 2008 unanimously self-proclaimed declaration of independence from Serbia by Kosovo Assembly[326], the aspirations for other ethnic minorities in their quest for independence were strengthened. One of the most recent examples is the one raised by the governing Alliance of Independent Social Democrats, which proposed the possibility for the Republika

[325] In 2000, pproximately 500,000 Moldavan people were dual citizens, with about 25% of the population traveling on Romanian passports, which grants visa-free travel in the Schengen space, followed by Russian, Ukrainian, and Bulgarian dual citizens. In fact, it was estimated by Pasat V., "Exodus" in "Nezavissimaya Moldova", *Basa Press* http://www.basa.md/ (2000) that about 40% of Moldovan citizens also held Romania, Israeli or Russian membership.

[326] ICJ, Advisory Opinion about the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (2010). Now this new state has a (recognized) semi-protectorate status not violating international law, but not even granted the candidate status since Serbia denied Kosovo's Albanians' right to seek self-determination externally, being part of its territory. This position, like the Bosnia Herzegovina case, was supported by Belgarde against the recommendations the International Crisis Group provided.

Srpska to unify with Serbia to offer long-term security and stability for the region[327], even if against the "anti-Dayton" Bosniak Party. The independence referendum from Bosnia Herzegovina[328] presented to the Republika Srpska National Assembly was condemned by US and EU because, according to the Peace Implementation Council (PIC), the country's entities have no right to decide unless the Dayton Peace Agreement or stability are at danger.

The EU and OSCE tried to facilitate the conflict management practices of (non) interaction[329], the most common of which is engaging in a direct dialogue between secessionist authorities and parent states as occurred in South Ossetia and currently in the Donbass region. Recognizing diverse levels of violence, conflicting historical contexts, and inconsistent effort of international settlement, the utmost importance and common issue remain the sovereignty in the post-Soviet conflict zones[330]. Georgia's South Ossetian conflict grew more intense when the Soviet Union fell apart, and being a frozen conflict, there may still be a risk of re-escalation. Notwithstanding the ceasefire agreement with Russia in 1992, hostilities resumed in several phases. Among the most notorious, the first one in 2004, after a decade passed as a "frozen state", up to the most violent one in 2008, when the five-day war was started, which overlooked the formal separatist status of South Ossetia. The ongoing active conflict in Eastern Ukraine, instead, escalated from the revolutionary events that followed the Ukrainian pivot to the West, which Russia did not accept. In reaction to the referendum on the independence. The central government in Kiev initiated an "anti-terrorist operation" to restore constitutional order in the "People's Republic" of Donetsk (DNR) and Lugansk (LNR). Despite the Special Monitoring Mission in Ukraine under the auspices of OSCE and the EU, the Minsk agreements left the warring parties in a condition where they were at war but not at peace[331].

[327] Jokic A., "The Aftermath of the Kosovo Intervention: A Proposed Solution" in "Lessons of Kosovo: The Dangers of Humanitarian Intervention", *Broadview Press* (2003) ch. 8 p. 173-182.

[328] Meyer S., "Border changes may happen in Kosovo and Macedonia", *Oculus News* (2019) predicted a deteriorating relationship with Republika Srpska since Bosnia Herzegovina was far from a united country. According to the 2010 Gallup Balkan Monitor, based in Brussels, 88% of Bosnian Serbs backed this "separatism".

[329] The main (in)formal approaches are avoidance, monitoring (i.e., on analysis of media reports), negotiation, and cooperation.

[330] Despite being a (in)direct conflict party, Moscow claims to play a major role in managing the situation in "near abroad" Russia.

[331] Yegorov O., "The Minsk Agreements: 2 years, 2 deals-but no peace in Ukraine" https://www.rbth.com/international/2016/09/05/the-minsk-agreements-2-years-2-deals-but-no-peace-in-ukraine_627177 (2016).

From this case study can be derived three lessons as succession of guiding principles: the departing nation and the remaining bloc must negotiate solutions[332], and the seceding state has to inform[333] and possibly to suggest options for individuals concerned[334]. Art. 19 ECN, which substantially repeats Art. 10(1) of the 1961 Convention on Statelessness affirms that “in cases of state succession, state parties concerned shall endeavour to regulate matters relating to nationality by agreement amongst themselves and, where applicable, in their relationship with other States concerned”. Related to the obligation to disclose and possibly applicable in the event that the EU or another supranational entity were to dissolve, Art. 6 of the UN International Law Commission’s 1999 Draft Articles on Nationality of Natural Persons in Relation to the Succession of States requires all appropriate steps to “ensure (that) persons concerned will be informed, within a reasonable period, of the effects of its legislation on their nationality”. Moreover, based on the standards outlined in Art. 18 ECN, MS involved in succession shall take the wishes of the parties involved, particularly nationals of the prior state, into consideration.

This instance shows once more how the Union's use of threats and rewards could change the interactions between a state that is nationalizing and its own internal minority as well as between a related state and its ethnic diaspora in the "near abroad." However, they also demonstrate how these latter interactions can be maintained within the EU's institutional structure. And this is the objective that is trying to be pursued in the following sections on Scotland, Cataluña, and the Basque region.

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[332] e.g. decision of the Supreme Court of Canada, *Reference re Secession of Quebec* (1998) 2 S.C.R. 217: “The federalist principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to the Confederation to negotiate constitutional changes to respond to that desire. The corollary is an obligation on all parties to come to the negotiation table”.

[333] The justification is that the parties involved shouldn't be reduced to a purely passive position regarding the effects of a succession of States on their status or faced with unfavorable consequences of exercising an option that they could have ostensibly been unaware of at the time.

[334] Art. 24 and 25 of the Involuntary Loss of European Citizenship Draft Articles and Art. 16 of the Venice Declaration.

4.3. How easily could an independent Scotland join the EU?

As discussed in the previous Chapters, the 2016 Brexit referendum demonstrated the potential consequences of withdrawing from the EU[335]. However, it constituted only the tip of the iceberg in the rising secessionist tensions. The twin domino effect of England's exit from the EU[336] was to foster other MS to leave the Union of States. It is interesting to observe that throughout the two-year period following the use of Art. 50 TEU, the indisputably legal referendum was held in Scotland on September 18th, 2014[337]. Which followed the 2012 negotiations on political trade between the British and the Scottish governments, required a simple majority in case of a potential secession (Edinburgh agreement).

So, it seems sense that the Scots would support their effort to join the EU in order to establish themselves as a European state (Art. 49 TEU) once Britain's voluntary withdrawal was completed[338]. The political Union Act of 1707 between Scotland and England never faltered, although the distinctiveness of Scotland's institution, the legal and educational system, was preserved. It is possible that Scottish nationals, generally qualifying as European people, held British subjective status or a particular type of UK membership, thereby continuing to enjoy Union citizenship rights. "Whatever may be the desirability of preserving and protecting citizenship rights and whatever may be the force of the duty of sincere cooperation, these cannot serve to defeat the rights of other interested and affected parties from vetoing Scottish allegiance in the EU if they believe that it is in their interests to do so"[339].

The devolution process from England's Court system takes into account the long history of the independent nation and the strong identity of Scotland, which, similarly to Wales and Northern Ireland, mobilized for the recognition of its undoubted right to decide. When the Scottish Parliament's overall majority was won by the Scottish National Party (SNP) in 2011, it advocated for the long yearned Scottish independence since better off within the EU than as a part of the UK. With some exceptions based on ties to the UK or remaining British colonies, the provisions dealing with the consequences for nationality in former British territories that attained independence had a recurring theme that the person who became

[335] Hofmeister H., "Should I Stay or Should I Go?", *ELJ* 16 (2010) vol. 16 p. 589-603.

[336] In which 62% of Scots voted to remain in the EU.

[337] Crawford J. and Boyle A., "Annex A Opinion: Referendum on the Independence of Scotland-International Law Aspects" in "Scotland Analysis: Devolution and the Implications of Scottish Independence" www.gov.uk (2013) p. 64-111.

[338] Jackson B., "The Political Thought of Scottish Nationalism", *The Political Quarterly* 85 (2014) p. 50-56.

[339] Armstrong, "After "Ever Closer Union"", *Fordham International Law Journal Online* 37 (2014) p. 119-125.

a citizen of the newly independent state under its initial laws would cease to be a British citizen on that day[340].

Among the consequences that Brexit brought, there has been the resurgence of resistance movements in Wales and Northern Ireland, fuelled by the belief that the interests of these regions are not adequately represented within the UK's political system. While the devolved regions have significant powers in areas such as health, education, and transport, they are ultimately subject to the supremacy of the UK Parliament, which may override decisions and legislate on matters that fall within their jurisdiction. Additionally, the legal framework for devolution does not provide a fortiori with a clear legal basis or a specific legal process for separation, different from the Union since it may lead to political instability. To sum up, not only the right to secede can be granted in respect of several conditions as a clear and compelling legal and political justification, but also the mandatory consent of the UK Parliament, which is unlikely to be forthcoming unless there is significant political pressure in favour of secession and a legal effort to negotiate new membership.

For these reasons, the broad coalition protested for a degree of transnational economic and political integration accomplished by the consent of citizens, expressed collectively through their representatives and autonomous representatives' institutions. This opportunity to reshape the political landscape of the UK is accompanied by the corresponding form of dual or multi-level citizenship to defend their right to national self-government actively [341]. Whereas, for what concerns the democratic dimension of post-sovereign allegiance, the fact that sub-state nations may wish to share or coordinate sovereignty is compatible with other nations' desire or may even bring to the delegation of their sovereign authority to a trusted external governing one, which is contingent on the consent of equal sub-state national groups. Devolution was highlighted by those who consider themselves to be citizens of both Scotland and Great Britain, while those with exclusive identities preferred independence or maintaining the UK as a single state[342]. In the words of Tierney and Boyle, "If the UK accepts Scottish independence, and if it is willing

[340] Fransman L., "Fransman's British Nationality Law", *West Sussex: Bloomsbury Professional* (2011) part II p. 607.

[341] Persuasive argument worths for MS of EU and sub-state nations such as Cataluña and Wales. For an assessment, Connor W., "National self-determination and tomorrow's political map" in Cairns A.C., Courtney J.C., MacKinnon P., and Smith D.E. (edn.), "Citizenship, Diversity and Pluralism: Canadian and Comparative Perspectives", *McGill-Queen's University Press* (1999) ch. 8 p. 163-176 and De-Shalit A., "National self-determination: political not cultural", *Political Studies* 44 (1996) p. 906-920.

[342] McCrone D., Bechofer and Frank, "Choosing National Identity", *Sociological Research Online* 15 (2010) vol. 3 p. 13-25.

to cooperate with Scotland's application to join the EU, the duty on the EU to respect the territorial integrity of the UK is no longer at issue"[343].

However, if Scotland were to gain independence and effectively apply for supranational status, it would need to meet the criteria set out in the Union's accession process. Among the three objective Copenhagen criteria[344] determined by the European Council to adopt before accession, there is the applicant state's functioning market economy, its capacity to cope with Union status obligations, adhering to the objectives of political and economic unification, and, above all the establishment of solid institutions that uphold minority's rights, the rule of law, democracy, and HR. In a sum, these requirements means that Scotland is compelled to set its legal and regulatory framework to align with EU standards.

This potentially lengthy process for a new form of partnership is one of the many hurdles that may be presented. The new intergovernmental forum, which was modelled after the British Irish Council, was in charge of monitoring this new equal partnership within Scotland's continued EU membership. In the event of Scottish secession, the strong pound sterling, shared with the UK, would have been substituted to establish its currency and central bank[345]. If the EU authorities change the conditions of Scottish citizenship, the latter would be asked to join not only the Euro and the Schengen Agreement but also to give up its part of the "Thatcher rebate". These negotiations are possible whenever EU MS do not veto Scottish membership in the Union, as a natural reaction to their concerns over regional separatism within their borders. However, the EU has historically supported regionalism and self-determination, and it is possible that Scotland could gain support from other member states.

From a legal standpoint, the issue of Scottish independence will require significant constitutional changes, including citizenship, borders, and financial arrangements. However, the pro-Union Better Together camp didn't deny the possibility of a Scottish EU nationality, having enjoyed the latter for forty years, even if as part of the UK, and have already adopted the acquis within domestic law as a mature democracy with respect for HR. Always considering that the negotiations with the UK government may supplant the outcome, MS of the Union must convey the feasibility of Scottish independence as an EU

[343] Tierney S. and Boyle K., "An Independent Scotland: The Road to Membership of the European Union", *ESRC Scottish Centre on Constitutional Change Briefing Paper* (2014) p. 16.

[344] Largely declarative conditions are subject to flexible interpretation and expanded additions by the European Parliament and Commission.

[345] Watt N., "Scottish Independence: Currency Union Warning "BackFires" on Westminster", *The Guardian* (2014).

member before separation takes effect. This trend is partially confirmed in Figure 5 by the online survey experiment in shaping secessionist preferences[346].

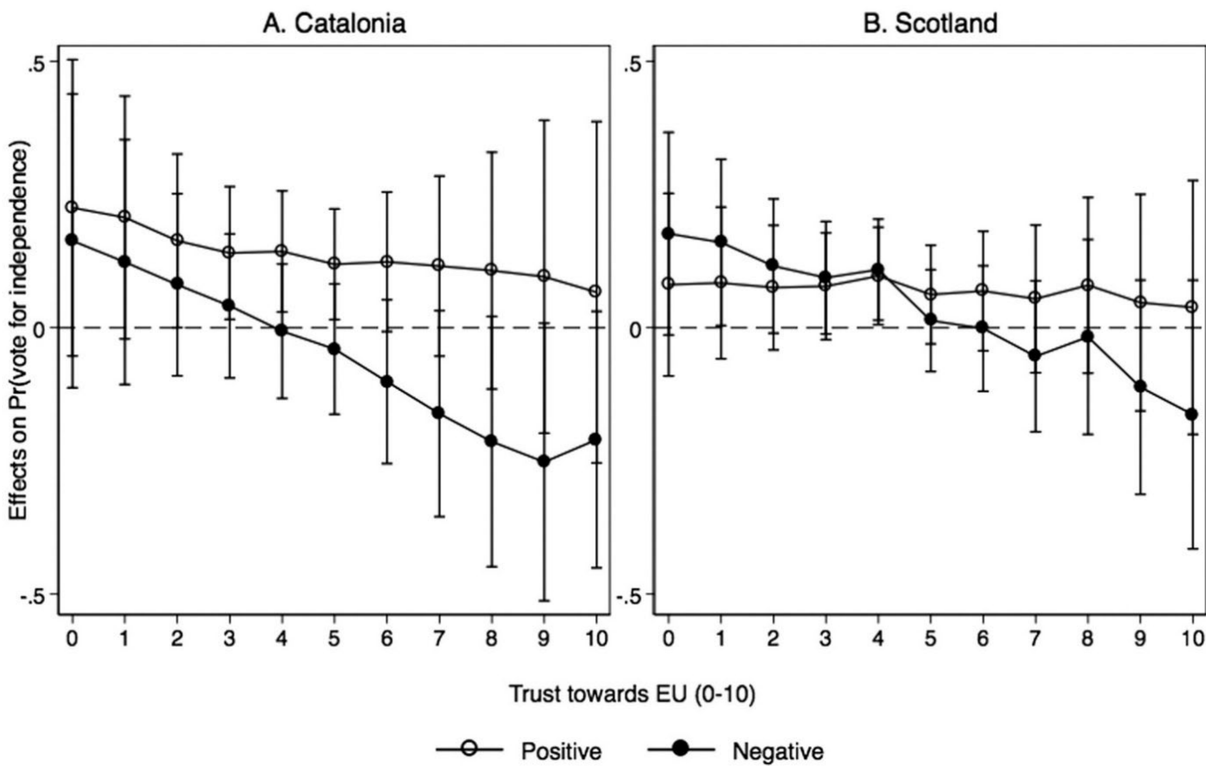

Figure 5: Online survey experiment on independence in Catalonia and Scotland

4.4. Cataluña and Basque problem: new States of Europe?

Catalonia, the northeastern land of the Iberian Peninsula, has a long history as an autonomous community, which dates to the Spanish Civil War and the Francisco Franco dictatorship up to the 1978 restoration of democracy in Spain. After Franco's death, the region was granted limited self-government in the Spanish Constitution of 1978, even though Art. 155 allows the central government to take control of the autonomous region if it violates the Constitution. However, under Spanish law, Catalan membership is available to people who were born in Catalonia or who have lived there for a specific amount of time, which is distinct from the Spanish one. After the 1714 War of Succession, the earliest precedent of devolution in Cataluña has seen the four provinces of Barcelona, Girona, Lleida, and

[346] Muro D. and Vlaskamp M.C., "How do prospects of EU membership influence support for secession? A survey experiment in Catalonia and Scotland", *West European Politics* 39 (2016) p. 1115-1138.

Tarragona joining forces to create a new universal franchise: the Mancomunitat de Catalunya. The features distinguishing this new institution from Spain Catalan include the official language in the education system and public administration, a rich set of Generalitat de Catalunya (Catalan parliamentary and governmental institutions), and folkloristic traditions. Even though the Mancomunitat experience was abruptly interrupted by the General Primo de Riveira's coup d'état, this precedent is worth mentioning for the political recognition given by the Spanish government.

This self-ruling sentiment has never really ended for the autonomous regions. In fact, after the large turnout rally organized by the Assemblea National Catalan (ANC) in Barcelona on September 11th, 2012 (Catalan National Day), popular consultations on the political future of Catalonia were held, first in 2014 as a massive exercise of free speech by Catalan citizens. And secondly, in 2015, a last resort "imperfect referendum"[347] for the regional participation process towards self-determination was de facto framed[348], emulating the strategy of the Scottish government. They were both declared illegal and invalid respectively by the Constitutional Court and the Spanish government because they violated Art. 2 of the Spanish Constitution and the democratic principle according to which the unbreakable unity of the Spanish nation is the foundation of the Constitution. The widespread condemnation of the "extra-constitutional referendum"[349] brought the government and its allies to invoke, in favour of the principle of legality, the Art. 155 of the Spanish Constitution. In this way, the police could suppress the pro-independence movement favouring secession charging President Mas along with two cabinet members for disobedience, abuse of power, and embezzlement of public funds. This act was defined by many Catalans, including many members of the Catalan Parliament[350], as a failure to respect their autonomy as a separate nation, outstanding the principle of democracy that places the will of the people before the legal issues.

Subsequently, in the short period from 2010[351] to 2015, many Catalan nationals have been pushing for greater self-determination, according to the descriptivist approach, by its national identity beyond the

[347] For the controversial interpretation of its outcome: 47.8% to the "yes" option and 39.1% to the "no".

[348] Participation reached a record-breaking 77%, a figure that was not registered in any election in Catalonia since 1982.

[349] Advanced as a shallow conception of democracy based on the majoritarian principle prevailing over any other consideration.

[350] Elected under a pro-independence platform from 14% in 2010 to 72% in 2015.

[351] In particular, on June 28th, 2010, was released by the Spanish Constitutional Court the politically controversial judgment on the Statute of Autonomy of Cataluña (approved in 1932, 1979, and ultimately in 2006), which declared unconstitutional those parts that invalidate the referendum of 2006.

right to decide the self-determination of nations through independence referenda. Though the electoral manifesto of the Catalan anti-capitalist party, it was called for disobedience within an anti-democratic Union. It didn't propose its financial elites[352] abandon the EU or the European Monetary Union (EMU) since it represents the best safeguard for its progressive independence. In contrast with it, the thought of other scholars, in conjunction with high-ranking EU officials[353], is that if Catalonia were to separate from Spain, it would no longer be part of the Union, as the European federal Republic recognizing only the sovereignty of its MS. This would have significant implications for Catalan nationals, as they would lose their European status and the rights along with the protections that come with it, like the ability to reside and work in other Union nations. In addition, Catalans would also lose their Spanish citizenship, as Catalonia would no longer be part of Spain. This lapse would leave Catalan citizens stateless and deprived of basic rights and protection. This demonstrates how practically complex is this kind of resistance movement from a legal and political perspective. From the legal sight, if international law recognises the right to cooperation, it must also respect the territorial integrity of states, complying with the national constitutions and laws. And, if this situation wasn't enough complex, we must consider that secession is governed not only by supranational but also domestic law.

The same contentious desire for greater autonomy is also rooted in the Basque country (Navarra and France), having the latter a distinct culture, language, and history from the rest of Spain. More peaceful proponents of Basque partition, inevitably influencing all other seventeen autonomous communities in Spain[354], argue that the prohibition of withdrawal enshrined in the Spanish Constitution violates the Basque people's right of self-determination recognized under international law as a fundamental HR. The Basque region, as well as Catalonia, tried and still tries to pursue self-governance by democratic means, which include a move towards federalism and increased regional powers, easing the government's fiscal position. However, Spain's legal and constitutional barriers to self-rule have consistently rejected calls for independence. Even if both movements have gained momentum in recent years, the current political climate doesn't suggest a resolution soon.

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[352] In effect, Catalonia is a relatively prosperous region in Spain (19.8% of the total Gross Domestic Product [GDP]) and within Europe (GDP 15% higher than average). For a thorough overview, Boylan B.M., "In Pursuit of Independence: The Political Economy of Catalonia's Secessionist Movement", *Nations and Nationalism* 21 (2015) p.761-785.

[353] In the words of the Commissioner of Justice and Vice-President of the Commission Reding V.: "Catalonia, if seceded from Spain, could not remain in the European Union as a separate member". For an extended inspection, Fariza I., "Bruselas insiste en que una Cataluña independiente quedaria fuera de la UE", *El Pais* (2014).

[354] Art. 137 of the Spanish Constitution. i.e., Galicia.

In a nutshell, the political controversy after 2015 can be summarized in: is Catalonia a political entity which, as such, is entitled to decide, in an unquestionable democratic fashion, all aspects of its political future according to its political preferences? The answer by the Spanish government, and almost all political parties, is a fierce and resounding "no" based on the fact that Art. 1 and 2 of the Spanish Constitution[355] give no space for the rights of regions to secede from the state unilaterally. While the supporters of Cataluña's right to decide to emphasize that limitations to the principle of self-government, when reached through unequivocally democratic means by the majority of the members of the Catalan Parliament, would be politically reprehensible. Nonetheless, it must be found a way to harmonize the two sights in a negotiated and reasonable manner since the principle of legality and democracy cannot contradict, like the democratic disagreement in Scotland and Quebec.

Overall, the quick response to the query given in the section's title is that the unique phenomenon of Catalan secessionism will remain a major political concern in the years to come, making it an interesting phenomenon in comparative examination. Nonetheless, the latter requires a nuanced approach that cum granu salis would balance the principle of self-determination with the need for integrity of the rule of law. Even if there is no precedent experiment for a successful secession in the European democracy, it doesn't mean that it cannot be stipulated a constitutional reform approved in a referendum submitted to the Spanish people[356].

4.5. Comparative analysis of secession and counter-secession

From these cases, some arguments can be derived in favour and against the right of secession in Western democracies. A fortiori, the notion of blurring boundaries in an "ever-closer Union"[357] seems to conflict with the idea of separating from an EU MS. On the contrary, small sovereign states in Europe do not fear invasion due to the political stability and tranquillity that prevail there. The political and economic incentives offered by the Union encourage participation in the separatist challenge. However, its admission policies pose a significant obstacle in accordance with the "Prodi doctrine," for which any

[355] Both "The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards" and "National sovereignty belongs to the Spanish people, from whom all State powers emanate" are correct statements.

[356] Seen by many scholars as the only workable solution in compliance with the doctrine of the Spanish Constitutional Court, for which there are no material limits to the reform of the Constitution.

[357] Ibid. note 70.

region that secedes from a Union MS automatically leaves the European club and must reapply in accordance with the standard procedures.

Even if most people of the seceding region have voted for the separation must still be calculated the negative consequences based, above all, on the difficulty of regulating the matter at the international level[358], but also the fact that it lowers the quality of the political discourse, in addition to the economic issues. Furthermore, the issue of minority self-determination has been bialy prevented at the international level since international organizations, which represent MS as representative of the majorities in their countries, have a vested interest in political centralization and legal stability[359]. This problematic theme is especially so if there is a significant ethnic, racial, or religious minority in the territory, it will be ruthlessly suppressed, or the secessionist state may initiate hostilities against its neighbours[360].

In the words of Hirschman, "voice may be more efficient than exit"[361]. Giving space to the secessionist groups would let disappear the discussion of topics when majority and minority opinion differs. This argument also negatively influences the economies of scale, which are based on quality rather than cost. Nevertheless, from the cost-benefit analysis, anti-political separation too is hardly justifiable with its rising average cost and per capita tax burden. The departing nation may increase the cost of information and transactions in cross-border commerce by adopting its currency and internal laws. Moreover, based on the unanimous agreement at the constitutional level, side payments would be required by the minority independent groups to compensate the majority. To this redistributive spillover through the tax-transfer system[362] must be added the "Pareto-relevant" external effects, if not internalized through negotiations, may lead to inefficiencies. The latter include the national minority left behind in the country's exposition

[358] Neither the UN Charter nor the 1978 Vienna Convention on Succession of States in respect of Treaties recognize the right of secession because, in compliance with the President of the European Commission Barroso J.M., "A region which secedes from a Member State, automatically ceases to be part of the European Union".

[359] Hecher M., "The Dynamics of Secession", *Acta Sociologica* 35 (1992) p. 267: "Almost all host countries themselves face potential secessionist movements. It is not difficult to conclude that supporting secessionist movements elsewhere might help stir up unpleasant problems at home. This argument provides leaders of states with an incentive to collude by universally discouraging secession. In the second place, support for a secessionist movement necessarily comes at the expense of relations with its host state".

[360] Lockwood B., "Voting, Lobbying and the Decentralization Theorem", *Economics and Politics* (2008) p. 416-431.

[361] Hirschman A.O., "Exit, Voice and Loyalty", *Harvard University Press* (1970).

[362] i.e., Flanders and Catalonia, Yugoslavia, with the withdrawal of Slovenia and Croatia and Scotland's independence supported only after the discovery of large oil and gas fields in Scottish waters.

to reckless suppression[363] and the negative externalities on interregional public goods produced by the seceding region jointly with others, such as allowing more pollution using a lake or a river.

As for the advantages, the main argument is that the permission of the unconditional right of people to self-rule is more decisive than insisting whenever the division must be shown to be safe, in compliance with Buchanan's primary rights theory. Otherwise, his just cause theory can be applied when secession is considered the only reasonable way to resist some forms of persistent injustices[364]. The alleged grievances, understood as violations of basic HR or systematic threats of charters' autonomy, the right of self-government represents a remedial solution. So, collective mobilisation, under ethnonational distinctiveness, argues for disengagement by using personal and societal identity motives. Separatists invoke basic principles and insist on the democracy of the social movement in the lack of specific instructions in international law on how to proceed.

Minorities find it simpler to depart when the seceding state is spatially concentrated and smaller than the predecessor state. The rules on separation may be agreed upon and enforced in an international framework, which may contain the division of liabilities and assets and the respect of minorities. If both the antecedent state and the seceding one are members of an international organization that upholds HR in MS, the protection of minorities is much less of a concern. The Union agreed in the Charter of Nice that these rights apply to the entirety of the realm covered by EU law. According to Art. 7 TEU the European Council may "Decide to suspend certain of the rights if it determines the existence of a serious and permanent breach by a Member State of the values referred to in Art. 2", including the respect of human dignity and HR, as well as the rights of people who identify as minorities. In this way, the self-governed minority, notwithstanding a tolerant attitude by the majority group, is more effectively protected if obliged by other MS to grant the right of self-determination[365].

However, the rump state and the seceding nation might soon engage in bilateral talks to keep up joint production and use and maintain an efficient level for interregional public goods since it is also negatively affected. Especially on the interregional economies of scale, usually, even if the departing nation loses

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[363] Miller D., "Secession and the Principle of Nationality" in Moore M. (edn.) "National Self-Determination and Secession", *Oxford University Press* (1998) ch. 4 p. 62-78.

[364] Ibid. note 309.

[365] e.g., the rights of minorities were upheld when the French-speaking and Catholic regions of the Swiss canton of Bern opted to secede and create their own "Canton Jura". As illustrated by Dominicé C., "The Secession of the Canton Jura in Switzerland" in Kohen M.G. (edn.), "Secession: International Law Perspectives", *Cambridge University Press* (2006) ch. 14 p. 453-469.

more than the rest of the country, it must be extremely dissatisfied if it chooses to secede[366]. Separatism increases the efficiency and innovation of government officials by putting them under pressure to perform in a competitive environment. Democratic governments compete with one another, which reduces the amount of taxation and regulation since individuals have more options and scope for comparison. Regarding democracy, as affirmed forcefully by Lord Acton[367], "If the distribution of power among the several parts of the state is the most efficient restraint of monarchy, the distribution of power among several states is the best check on democracy; it is bad to be oppressed by a minority, but it is worse to be oppressed by a majority".

From these theoretical considerations, partition and secession on the whole, outcomes in Western democracies are more likely to be favourable than unfavourable. The current European states are the consequence of centuries of oppressive governance, primarily fashioned by dynastic succession mishaps and ruthless military victories. For these reasons, achieving political entities that represent the desires of the populace requires the freedom to self-determination.

4.6. The future quest for national self-determination in borderland regions

Even though Scotland's referendum and Catalonia, coupled with the Basque process towards independence, have reached several milestones, they didn't provide neither conclusive solutions nor a general interpretation beyond these specific cases. The claims of territories seeking independence from a MS should take a more outspoken position which is related to the EU's role in the withdrawal calculation and its externalizing impacts, as well as considerations regarding equitable treatment for other European states.

Some territorial players might fare better by distancing themselves from the bigger state structures they currently inhabit and forging new ones. In none of these cases, however, is implied to repeal the citizenship of the Union from that territory. On the contrary, the preservation of EU membership conditions and associated privileges are assumed as part of the independence framework. Above all,

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[366] For Buchanan J.M. and Tullock G., "The Calculus of Consent: Logical Foundations of Constitutional Democracy", *University of Michigan Press* (1962) ch. 11 p. 147: "Because it has been outvoted many times, withdrawal would remove such negative externality".

[367] Acton L., "The History of Freedom in Antiquity" in Fears J.R. (edn.), "Selected Writings of Lord Acton, Vol. 1: Essays in the History of Liberty", *Indianapolis Liberty Fund* (1985) p. 177-188.

because converting a sub-national entity into a state within the Union is less expensive, it does not negate the necessity for MS to carry out critical tasks in global trade, macroeconomic management, and foreign affairs. If the seceding state aims to achieve EU allegiance, this decision hugely affects the institutional composition and policy of the successor country. It involves relevant adjustments the distribution of seats in the European Parliament, the membership of the Commission, and the balance of power between states and groupings of nations. In addition, a certain group of third parties are impacted by separation and immediate EU membership: nations seeking supranational status. It is soundly rooted in the European doctrine of automatic non-application of Union law that the newly independent state has, by virtue of its independence, joined the EU as a third country, and the latter MS are not recognized any democratic rights unless its inhabitants have acquired them as citizens of the Union[368].

The current attempts at the national level in Europe are primarily raised on a civic or democratic perspective of nationalism. This does not, however, mandate that a people be seen as a previously existent, collective entity that is geographically limited. However, it will nonetheless bring about the manifestation of a country engaged in self-determination, relying on the pre-existence of a defined people. The right people's self-government is paradoxical with the European integration process since the former is not provided in any explicit EU provision[369]. Nevertheless, we can consider Art. 49 and 50 TEU to recognize the right of (unilateral) cooperation for EU MS and, therefore, for their people[370]. However, it is necessary to find solutions to the problems that EU individuals in this situation face. The corrective secession categorically cannot serve as a stand-in for participation in discussions or a defence for not following the provisions of Article 49 of the TEU[371] and the control mechanisms of the ECtHR and the Council of Europe.

[368] Few counterclaims, defending the thesis of continued allegiance, argue that EU law requires recognizing nationals to argue that the termination of EU fundamental rights by independence is preferable in secessionist territories.

[369] It is mentioned neither in the 1975 Helsinki Principles nor the 1990 Paris Charter, even though they do not represent legally enforceable documents in positive EU law.

[370] Although the full legal effects are produced only two years following the European Council's formal notice and are subordinated to the equivalent positive choice of European peoples. For a thorough analysis Anderson G., "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession", *Vanderbilt Journal of Transnational Law* 49 (2016) p. 1183-1254.

[371] Van Rompuy H., President of the European Council, declared "If a part of the territory of a member state ceases to be a part of that state because that territory becomes a new independent state, the treaties will no longer apply to that territory. Nonetheless, under Article 49 of the Treaty on European Union, any European State which respects the principles set out in Article 2 of the Treaty on European Union may apply to become a member of the Union according to the known accession procedures. This would be subject to ratification by all member states and the Applicant State".

Indisputably, membership of the Union would need to be formalized using a new Treaty or an explicit EU regulation, specifying exclusion in the event that the EU is not followed or is abandoned when transitioning. The distinction between the path of the EU revision procedure (Art. 48 TEU) or the conventional state of accession to the Union (Art. 49 TEU) serves can serve as a stand-in for implicit discussions of deeper concerns of political morality. Via Art. 48 TEU, the obligation to negotiate concurrently with the autonomous settlement with the founding state, when the reformed treaty is signed, while Art. 49 TEU is the preferred route to regulate accession, which emerges from scrutinizing the applicant's compliance with the EU acquis.

EU officials and national leaders have consistently signalled that secession is not only a democratic act but also an internal matter for the affected MS, as occurred with Greenland and German reunification. The Union's potential for integration or absorption will determine whether or not to increase the number of EU MS. In cases of newcomers adhering after leaving an original state, before joining, there had been a division, like in Croatia, Czech Republic, Slovakia, and Slovenia[372]. One of the old concerns for the new states in the Altneulander[373], characterized by discontinuous statehood, remains the injunctions against plural citizenship. The distress of small states in Eastern Europe, such as Slovenia, Estonia, Latvia, and Lithuania, is the pain caused by the idea that one's people and country are disappearing[374], based on historical realities and reinforced by demography. These small nations purportedly fought for the self-determination idea, first advocated by the US President Wilson, and territoriality to establish the boundaries of a fictional community and rectify past wrongs.

No new accession would take place during the Commission President's tenure, according to a formal statement made in 2014, which excluded the countries already in the process. The basic requirements established in the Copenhagen conference were created enhancing the EU's enlargement's transparency and thus respond to allegations of favouritism to certain countries. To address this weakness, those countries that had already progressed in political and economic development[375] were rewarded for their strides toward democratization. The best-case scenario would ensure a smooth transition regardless of

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[372] Thus, there is no valid precedent for the case of simultaneous independence and EU accession.

[373] Helz T., "Altneuland", *Leipzig German Seemann Madfolger* (1902), a term which was coined having in mind Palestine but, in this case, apposite for the lands of the Union MS that were formerly communist.

[374] Bibo I., "The Misery of Small Eastern European States" in "The Art of Peacemaking: Political Essays by Istvan Bibo", *Yale University Press* (2015) ch. 3 p. 208.

[375] The so-called "front-runners" like the Czech Republic, Estonia, Hungary, Poland, and Slovenia.

whether it was interpreted as continuous allegiance or internal expansion because membership and its benefits would never vanish for the seceding state[376].

Consequently, the equality between nations within the state's borders, once reconceptualized, the common understanding of status civitatis allows for its existence in multiple or shared forms that correspond to different territories. This statement confirms the series of structural changes that globalization forces[377] and transnational interdependence brought to the international system of states. As a result, nation-states are reducing the political salience of territorially concentrated domestic identities and forms of membership in favour of those complex and overlapping citizenships which transcend the borders of countries and MS. In more provocative terms, some liberal cosmopolitans argue that most of us already have multiple or mixed identities, hence, to demand political rights, and preserve and promote a distinctive national identity, that is fundamentally out of touch with reality[378].

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[376] Term coined by MacCormick N., "Democracy at many levels: European constitutional reform", Convention on the Future of Europe 298/02, to speak of the potential for existing MS to split into new ones.

[377] It may even reinforce distinctive national identities, loyalties, and forms of citizenship, which are underpinned as a defensive reaction to preserve national cultures against homogenization, or to defend the autonomy of a particular national community. This defensive nationalism, however, is often critically portrayed as irrational or bloody-minded tribalism by Connolly W.E., "Speed, concentric cultures, and cosmopolitanism", *Political Theory* 28 (2000) p. 596-618.

[378] Held D., "The transformation of political community: rethinking democracy in the context of globalisation" in Shapiro I. and Hacker-Cordòn C. (edn.), "Democracy's Edges", *Cambridge University Press* (1999) ch. 6 p. 84-101.

5. Conclusion

When the British poet Agard warns his readers to "remember the "ship" in citizenship"[379], he implies the membership as a status that should be responsive to population changes rather than being a set institution. Many modern states still proceed to grant citizens all political, social, and civil rights concerning non-citizens' civic and socio-economic rights, excluding them from most political engagement. Traditionally, in Western nations, citizenship was strongly correlated with an ethnic conception of nationality, transmission to following generations based only on descent, and hostility against many different nationalities. The Treaties allowed for a right of membership option based on habitual residence and based on a person's birthplace, provided that their parents were living there at the time. Indeed, emigration and immigration have played a leading role in recent membership reforms, even if a few countries are still experiencing transitions from sending to receiving countries, while others have definitively undergone it[380].

European civis sum cannot be viewed in such a flexible community as merely an institutional reflection of pre-existing and pre-political attitudes on domestic membership. Instead, it is serving as a driving force for the development of a civic and reflective European identity[381]. Union status civitatis, as repeatedly stated, is an inherently multifaceted and contingent concept that straddles a divide between law and politics, having normative underpinnings with practical implications. To rationalize the doctrinal openness of supranational allegiance and to shed light on diverse factors and the complex dynamics that influence the interpretative metamorphosis of legal rules, the corresponding fluctuations in case law mixed methods must be applied.

Seen as an institutional issue, it carries an ethical responsibility and a commitment to a democratic social transformation concerning others. The possibility to extend this new form of demos, also at the national level[382], embraces the idea of plural active connections, vertically and horizontally, which endow membership identity as a network good. Although nationality law belongs to the MS domaine réservé,

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[379] Agard J., "Remember the Ship" in Protecter J., "Writing Black Britain ,1948-1988: an interdisciplinary anthology" (2000).

[380] While some nations, such as Belgium and Portugal, have liberalized access to their nationalities for immigrants and their descendants, Austria, Denmark, France, Greece, the Netherlands, and other countries raised their standards for citizenship.

[381] Preuss, "Citizenship and Identity: Aspects of a Political theory of Citizenship" in Bellamy R., Bufacchi V. and Castiglione D. (edn.), "Democracy and Constitutional Culture in the Union of Europe", *Lothian Foundation Press* (1994) p. 108: "Citizenship does not presuppose the community of which the citizen is a member but creates this very community".

[382] i.e., enabling Union citizens to cast their ballots in general elections in the MS where they live.

domestic decisions are not independent of Union citizenship. Ergo, there can be incentives for the adoption or modification of domestic laws in a way that gives proper consideration to EU law.

Twenty years after the "communitarisation" of asylum and migration policies through the 1997 Treaty of Amsterdam, exists a certain degree of uncertainty, regarding how different people's legal standing is affected by EU law, depending on their nationality and whether they have crossed an internal or external border. The interpretation of Union citizenship contributed constructively to the CJEU case law exercising of freedoms and EU rights[383]. The conceptual openness of Union membership is one factor that facilitates progressive change employing prospective dynamism by ECJ. At the same time, the broader social and political context may similarly support thematic shifts or judicial changes of direction. In particular, it is important to note that the legality of Community Acts is contingent upon the respect for basic rights "as they result from the constitutional traditions common to MS"[384].

Treaty modifications, new laws, and cutting-edge court decisions cannot alone result in a higher degree of identifiability of pattern or transnational solidarity without being embedded in social practices and political life in order not to remain a "hallow hope"[385]. Indeed, EU status is not only about rights and courts but attains its full potential in the active participation of nationals in the governance of Europe, which is based on representative democracy.

Consequently, to the withdrawal of England from the Union and the ongoing public debates about migration, the supranational heritage and its legal, political, and social contours remain surprisingly fragile and inherently unstable. The outcome of Brexit, first of all, represents a radical expression of a centripetal force that has always existed, favouring a confederal structure, and accepting that citizens' primary allegiance lies with solidary communities at the national level[386]. And at the same time, the "no" vote represented the extreme expression of transnational mobility across borders, which is still subject to controversy. As demonstrated by the cases of *Micheletti*, *Garcia Avello*, and *Rottman* moving toward making nationality matters a mixed competence, the ECJ in *McCarthy* even inferred the eventual removal

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[383] AG G. Léger Opinion, ECJ, C-214/94 *Boukhalfa v. Federal Republic of Germany* para. 63.

[384] Art. 6(2) TEU.

[385] Gerald N., "The Hallow Hope. Can Courts Bring about Social Change?", *Chicago University Press* (2008).

[386] Bellamy R., "Evaluating Union Citizenship: Belonging, Rights and Participation within the EU", *Citizenship Studies* 12 (2008) p. 597-611.

of British nationality[387] in favour of a more convenient EU status. For one, in the words of Davis, we could say that the hierarchy between the two different ideas of nationality and Union allegiance has been abandoned in favour of "citizenship pluralism"[388].

Regardless of whether a nation leans toward allowing or prohibiting multiple memberships, it typically looks out for its ethnic relatives, waiving the majority of conditions, such as language proficiency or long-term residency, on behalf of expatriates and even their descendants, or on behalf of minorities overseas. Although initially regarded as an abomination equivalent to bigamy[389], in the words of Schlenker, dual nationals, involved politically in the state of residence and of descend, are seen "as vanguard and bearers of citizenship identities and practices across and above nation-states, and thus as an important source for democratizing a globalized world order"[390]. Plus, reconciling with the émigré communities and producing new waves of emigration, partly stimulated by globalisation and partly by the EU enlargement, makes dual citizens more interested in preserving relationships with both their home nations and the country where they currently dwell.

These MS had to deal with the confounding issue of collective allegiance in the context of state restoration and new establishment following partitioning or shifting of borders or secession in addition to the individual acquisition and loss of membership. Sometimes, Western Europe's national identity issue has influenced a return to ethnic roots and the political exclusion of long-term residents[391]. However, affirming the principle that one's kin will always be their own, no matter where they are or what allegiances they may hold, the customary principle of self-determination applies to all regions that are not self-governing and to all nations that have not yet gained independence[392]. This principle of international law must also be considered a right as enforced by Scots, Catalans, and Basques,

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[387] Declared by His Majesty's Government if the citizens had the right to abode in line with British immigration law, in accordance with the British Nationality Act 1981, or had a connection with Gibraltar in the case of overseas territories citizens.

[388] Davis G., "The Entirely Conventional Supremacy of Union Citizenship and Rights" in Shaw J. (edn.), "Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?", (2011) ch. 2 p. 5-10.

[389] On January 26th, 1849, Bancroft in Letter to Lord Palmerson 36th Congress, 1st Session 160 (1860) exclaimed provocatively that one should "As soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it". His viewpoint was also codified in the twenty-six separate bilateral agreements, or "Bancroft Treaties," that forbade naturalized Americans from holding dual citizenship with other countries, even those originally from Europe.

[390] Schlenker A., "Divided Loyalty? Political Participation and Identity of Dual Citizens in Switzerland", *European Political Science Review* (2013).

[391] e.g., restricting Russian immigrants' ability to acquire Estonian and Latvian nationality after moving there after 1940.

[392] Art. 1 of the UN Charter and para. 54-56 of CJEU Advisory Opinion in Western Sahara.

considering the Kosovo precedent. In the Advisory Opinion of July 22nd, 2010, the ECJ concluded that there was no rule of international law prohibiting the unilateral declaration of independence, though it didn't go any further on the efficacy of this statement or the level of Kosovo's international recognition. Furthermore, in the European context, the Treaties' reticence on secession is starkly contrasted by the three arguments in favour of it, in compliance with the historical ethos of European integration[393]. However, enough normative basis can be deduced by Art. 49 and 50 TEU on agreed secessions paired with Art. 4(2) TEU's prohibition on disrespecting governmental responsibilities and constitutional identity concerning territorial integrity[394]. This standpoint, combining the rule of law with the values of true cooperation can only imply that the EU does not forbid secession[395], chiefly when backed by a significant portion of the new demos. Since the breakdown of the Soviet Union thirty-four successful independence referenda were held in the 1990s, fifteen of which led to the creation of new states because the seceding entity was a component of the non-democratic state and had the backing of the international community.

Although a theoretical inquiry is still necessary to be developed[396], it can be stated that attitudes toward citizenship have certainly changed. A mere contract between a MS and its people is now a vehicle for fundamental rights that cannot be withdrawn arbitrarily[397]. And any changes to a territory's legal status are therefore expected to have an impact on the membership status of (at least some) residents, in accordance with conventional conceptions of statehood. In this worldview, every person is a "global citizen" and is responsible for civically engaging with matters that concern all of humanity, no matter in which country they take place. The concept of cosmopolitanism presents a one-world view in which every person is a member. This solution has garnered a lot of support from international organizations defending the rights of people in many different countries as well as non-governmental organizations

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[393] Weiler J., "Catalonian independence and the European Union", *European Journal of Immigration Law* 23 (2009) p. 909: "The very demand of independence disqualifies these states morally and politically as future member states of the EU".

[394] During the EU Constitutional negotiations, the Spanish government demanded to respond the Ibarretxe Plan's challenge, which called for a new status for the Basque Country that was nearly equal to full statehood.

[395] Right to secede that was also legitimized in Art. 1-59 of the European Convention Draft Treaty for a European Constitution,

[396] i.e., in most international agreements relating to nationality and state succession, other countries residing on the territory of the successor state appear to be neglected or whether de-territorialization represents a deeper or a limited form of globalization by rebuilding territorial systems of action at a higher level.

[397] Paraphrasing Art. 15 of the Universal Declaration of Human Rights (UNDHR), as in the case of a retroactive restriction of a ground of acquisition. For a general overview, UN Human Rights Council (2009), *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary General*, A/HRC/13/34.

(NGOs), which may provide surveillance services or basic services to protect HR[398]. Although the status of global citizens is highly abstract, and many governments are reluctant to issue citizenship to an individual holding multiple-country passports, some countries have downplayed the visa process to the point that (certain) temporary guests do not need it anymore.

[398] Kuisma M., "Rights or Privileges? The Challenge of Globalisation to the Values of Citizenship", *Citizenship Studies* 12 (2008) p. 613-627 and Faist T. and Kivisto P., "Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship", *Palgrave Macmillan, Houndmills* (2008).

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