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## European Citizenship: Mobile Nationals, Immobile Aliens, and Random Europeans

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European citizenship, a dormant alter ego of nationality, becomes active and consequential when a resident of an EU member country moves to or visits a country other than her own. An Ethiopian national who has lived and worked in Italy for eight years faces very different prospects for legal inclusion, labor market access, nondiscrimination guarantees, and family reunification than, say, a French national with an identical residency and employment record in Italy. In this context, European citizenship maneuvers invisible but significant boundaries, which still mark the nominally borderless space of the European Union. It turns a blind eye to immigrants' claims that in some way they belong to the European Union. As the main source of mobility rights, European citizenship creates two Europes, one for the more European, and one for the less, without achieving any clear definition of what it means to belong to Europe. It intensifies insider/outsider divisions that have been drawn by member states and, in so doing, waives much of its integrative potential. To reward deserving immigrants while discouraging the undeserving, we should rethink the criteria of Europeanness, and extend to resident foreigners some of the Europe-wide benefits of European citizenship.

### European Citizenship and Mobility

European citizenship is a skinny legal construct, but it relates to important concerns—legitimacy, democracy, identity, immigration, and diversity—that are at the center of incendiary debates in the European Union.

The idea of a citizenship for Europe is closely tied to a notion of a European people, the ghostly *demos* that many students of European integration have been unable to find, and whose absence leaves the future of Europe on shaky grounds.<sup>1</sup> While the “democratic deficit” of the European Union has institutional, procedural, political, and constitutional aspects, its hard core is the disinclination of European citizens to endorse the institutions of Europe as their legitimate, autonomous agents and democratic representatives. (In June 2008, for instance, the Irish rejected the Lisbon Treaty, which was supposed to remedy some of the shortfalls of democracy in Europe.) The distance between the citizens of Europe and the EU has to do in part with issues of identity. The question is whether citizens of Europe can develop some sort of European identity based on civic commonality or on a common cultural heritage. There are many views on the extent to which a European identity exists, and on how such an identity could be developed.<sup>2</sup> So far, however, little in the way of a European identity seems to have been created by a treaty-based European citizenship.

Ideally, European citizenship would address the problem of diversity in Europe. European citizens speak twenty-three official languages; and they celebrate national holidays on different days, recalling on those days different collective memories. (Some may recall a victory, others a defeat.) As children they learn different national histories, or different sides of the same one; and they may worship differently or belong to different churches. Immigration waves add color to the diversity of Europe. Through the prospect of naturalization in a member state, immigrants represent an important pool of candidates for European citizenship. About 19 million non-European citizens are legally resident in the EU. Every year, between 1.5 and 2 million new ones enter the EU legally, and estimates suggest that an additional 500,000 persons enter illegally. Different member states attract different immigrant groups. For instance, the largest group of resident foreigners in Germany is made up of Turks (about 1.8 million). In Spain, it is Moroccans (about 600,000); in Italy, Albanians (about 400,000); in Portugal, Brazilians (about 70,000).<sup>3</sup>

One has to scratch the surface quite hard, then, to reveal the Europeanness of European citizens. Hence a citizenship of Europe that gave meaning to European belonging could help tackle many of the issues connected to diversity—by accommodating claims for membership of the old and new European minorities; by giving a political voice to all groups; and

by rationalizing and rethinking the generous welfare systems of European countries. It is in the interest of the member states to facilitate the long-term inclusion and upward social mobility of immigrants.<sup>4</sup> Low birthrates throughout Europe have led to declining populations in several member states, which in turn threaten their welfare system, their long-term decisional weight within the EU, and more generally the international influence of the European Union. Immigration represents the main way for Europe to cope with this demographic crisis—but only if immigrants have a channel to legal integration, and one that offers the prospect of upward mobility, so that they can become substantial contributors to national welfare systems.<sup>5</sup>

Citizenship can be an important tool in addressing the issues raised by diverse European populations. It sets the criteria that distinguish between insiders and outsiders, and it ties claims and rights to that distinction. It also creates a method for bringing outsiders inside, and in fact encourages those being excluded to seek inclusion. But European citizenship at present does not perform these functions. Being simply additional and complementary to national citizenship, it distinguishes between the rights of citizens and noncitizens, without distinguishing the degree to which either group belongs to Europe. As a result, it produces a distribution of rights and mobility options that often looks undeserved, inconsistent, or arbitrary.

According to the European Community treaty, a European citizen is any person who holds the nationality of a member state.<sup>6</sup> There are three ways of becoming a European citizen: first, being born a national of a member state, either by birth on the territory of one of the member states with some qualifying link to its community or by being born in another corner of the globe but having family links to some EU country national;<sup>7</sup> second, naturalizing as a citizen of one of the EU member states after having complied with all the relevant requirements; and third, being a national of a country that joins the European Union, and whose nationals are thereby collectively vested with European citizenship at the time of their country's entry into the union.<sup>8</sup> In multitier entities, one level of citizenship often derives from another, as is the case in the United States, where state citizenship derives from national citizenship. However, U.S. state citizenship is tied to residence, and thus to a tangible condition of belonging to the territorial and political community of a particular state. European citizenship, in contrast, is not tied to residence or some other obvious indicator of European belonging, to the extent that

holding nationality of a member state can be taken as a proxy for belonging to the European Union. Each member state nationality comes equipped with its own affective symbols, membership requirements, and defining characters. European “citizenship,” conferred in the penumbra of one of those nationalities, represents legal belonging to a community whose emotional and definitional boundaries are at best fuzzy.

European citizens can move and reside freely in any member state; they can vote in local elections and for the European Parliament in another member state if they reside there; they can claim the protection of the diplomatic authorities of another member state while in a third country; and they can petition some European institutions (which is the only thing they can do as European citizens even if they have not moved anywhere). The right to move to and reside in any other EU member country is the most important right of European citizenship. Free movement within the EU was originally a right for workers and economic actors in the European Common Market. In the words of the European Community treaty, and in the minds of the judges of the European Court of Justice, however, this right has gradually taken the shape of a right of citizenship.

Tying free movement to European citizenship generates a hierarchy of mobility in the European Union. At least three groups may now be distinguished in respect of free-movement rights under European law: fully mobile European citizens; semimobile third-country nationals (TCNs) long resident in Europe; and immobile recently arrived TCNs. European citizenship, therefore, while apparently of little definitional value, entails important rights and distinctions that significantly affect the choices open to European citizens and residents.

*European citizens* are at the top of the mobility ladder, even if the exercise of their right often depends on the availability of sufficient resources and comprehensive health insurance. Citizens’ free movement is a formal right that the European Community treaty confers on them, but it also grows out of the work of the European Court of Justice. In a series of judgments between 1998 and 2005,<sup>9</sup> the ECJ relied extensively on the legal instrument of European citizenship to remedy some “externalities” of a person’s right to move to and reside in any EU member state—for instance, to facilitate access to social security systems, as well as permanent residence and family reunification in the host state. Migrant European citizens have increasingly obtained, through

the work of the court, rights comparable to those of nationals of the host state. Two judgments exemplify the court's efforts.

In *Baumbast*, the court held that a European citizen who had originally moved to another member state to be employed still preserved a directly effective right to reside in the host state even after he had abandoned his occupational activity there.<sup>10</sup> In this way, the court began to reconceptualize the right to move as a right to resettle rather than a right to sojourn in another member state as a guest worker. *Trojani* confirmed this tendency.<sup>11</sup> The court was faced with the claim of an indigent European citizen who had a domestic-law residence permit in Belgium and was living there to participate in a reintegration program run by the Salvation Army. He had applied to Belgian authorities for a minimum subsistence allowance, but his request had been denied on the basis of his not being a Belgian national. The court held that a European citizen residing on the basis of a domestic-law residence permit in a member state other than that of his nationality could not be denied a social benefit that would have been granted to a host-state national in the same situation. The court referred in its holding to the right to nondiscrimination on the basis of nationality, which European citizens enjoy with respect to subject areas covered by the EU treaties. The judges seemed to be working to ensure that resettling European citizens are treated as insiders in the new state, with the same level of social solidarity enjoyed by nationals of the host member state. Taken together, *Baumbast* and *Trojani* signal a ripening of a right to free movement based on citizenship, which has gradually lost its original connection to employment issues.

As a further confirmation of this metamorphosis, a 2004 European directive delineates the conditions for the exercise of European Community-wide rights to free movement and residence by European citizens.<sup>12</sup> Under the directive, citizens' rights to free movement remain conditioned on the availability of sufficient financial resources and of health insurance. Any European citizen, however, can reside for a maximum period of three months in any other member state, regardless of resources, and with no access to locally provided social protection. Also, a European citizen who has lawfully resided in another member state for five years is entitled to the status of permanent resident there. Permanent residents are not required to comply with resource requirements and are entitled to equal treatment with nationals, even with respect to social protection.<sup>13</sup> European citizens are thus becoming

increasingly mobile, and able to resettle in different parts of the EU with few legal constraints. Only a very small percentage of European citizens actually takes advantage of these rights, however. Bureaucratic inefficiencies and administrative ordeals make intra-European mobility quite burdensome even for citizens, as the benefits and undifferentiated treatment promised by the directive are not equally forthcoming in every member state.<sup>14</sup> Still, in terms of movement-related rights, European citizens are unequaled in the EU.

*Recently arrived TCNs*, meaning foreigners who have lived in any single member state less than five years (even those whose cumulative time of residence in EU countries is longer), are at the opposite extreme of the mobility spectrum. European law grants these individuals some short-term movement rights. It is silent with respect to movement rights for purposes of resettlement in another EU country.

Short-term movement rights are regulated under the Schengen system.<sup>15</sup> Under the Schengen provisions, TCNs may obtain a common visa, which is valid for periods of up to three months and for the entire Schengen area. In addition, even TCNs who are in a Schengen country on the basis of a domestic-law visa can travel freely to any other Schengen country for periods of up to three months. Quick intra-EU visits are thus readily available to everyone who is legally within the borders of the EU, even those who have been there for just a short while. Resettlement, however, is a different matter.<sup>16</sup> European law has been long silent on this point, and while some recently introduced provisions cover long-term resident TCNs, none addresses recent arrivals. For recently arrived TCNs, resettlement within the EU is still largely an experience of immigration from a first host state to a second one, regulated under domestic immigration law.

*Long-term resident TCNs* enjoy some statutory free-movement rights, which place them in an intermediate category between European citizens and recently arrived TCNs. A 2003 directive provides that TCNs who have gained long-term resident status in a member state by residing there for at least five years can move to a second member state for purposes of study, vocational training, or employment.<sup>17</sup> Financial conditions apply to the exercise of this right, and the second host member state may impose integration requirements on the entering TCNs. While still heavily conditioned, this right of movement for long-term residents approximates the moderately constrained mobility of European citizens.<sup>18</sup> In this sense, the treatment of long-term

resident TCNs may reflect the European Council's intent, expressed at a 1999 meeting in Tampere, that the EU should aim at approximating the condition of TCNs to that of European citizens.<sup>19</sup>

Ironically, though, the concrete *exercise* of mobility rights may remove TCNs further from European citizenship. As noted, TCNs can obtain long-term status only through naturalization into the nationality of an EU member state. As most member states require periods of continuous legal residence on their territory as a condition of citizenship, every resettlement within the EU resets the TCN's clock for legal inclusion.

For instance, an Ethiopian who had legally and continuously resided in Italy for eight years would be a long-term resident there under European law and entitled to move to another member state. He would also be two years away from qualifying for citizenship, Italian and European, under Italian nationality law. If at this point he obtained an attractive employment opportunity in, say, Austria, and moved to that country, he would once again be ten years away from qualifying for Austrian and European citizenship at the discretion of Austrian authorities, and a full thirty years away from Austrian and European citizenship under Austrian law. If the Ethiopian's child (born in Italy, perhaps two years earlier) moved to Austria with the father and thus interrupted his period of residence in Italy, the child would lose the right to apply for Italian citizenship when reaching maturity. (Children born to foreign parents in Italy qualify for Italian and European citizenship at maturity if they have uninterruptedly resided in Italy since birth.) The goal for inclusion would be to co-naturalize with the parent in Austria, provided both have resided there for at least ten years.

If father and child returned to Italy after a couple of years, their temporary absence would have set back the clock there: the residence period for citizenship must be *continuous*. The exercise of free-movement rights thus comes at a potentially high cost, despite the promise of the 2003 directive. Contrast the situation just sketched with that of a European (say, French) citizen: after a mere four years of residence in Italy, he would have already qualified for Italian citizenship, thanks to the more lenient naturalization residence requirements for EU citizens. In Austria, he would face a waiting period of six years—not thirty—before having a legal claim to Austrian citizenship. He probably would have much less interest in these naturalizations, though, as he would in any case have some political voice, social benefits

claims in both Italy and Austria, and a generally secure status by virtue of his being by origin a European citizen. Even his child, born in Italy, would already be a French and European citizen—with a lower stake in obtaining Austrian or Italian citizenship, but able to obtain either more easily than an Ethiopian child under similar circumstances.<sup>20</sup> In short, the “who” and “what” of inclusion in the EU render seemingly similar rights significantly different in fact. For a person not a citizen of the EU, the choice between exercising free-movement rights and lining up for citizenship in a member state (and thus for European citizenship) can be a delicate trade-off.

It has been suggested that the status of resident foreigners in European nation-states after World War II has gradually come to resemble that of citizens, especially in terms of social rights.<sup>21</sup> The achievement of *legal* citizenship, the argument goes, has lost attraction for immigrants, who are able to gain inclusion in the national community through avenues other than citizenship. However, even if most contributory social benefits are now granted in EU states regardless of citizenship, citizenship does confer special benefits. In some cases it remains the only way to have access to the full range of welfare benefits, including the noncontributory ones. Public service employment is often reserved for citizens. Citizenship confers full political voice, at the national and local level. It grants security of status by annulling or reducing the risk of deportation, and an EU passport means admission on favorable visa conditions in many other countries—all the more important in a society which tends to be increasingly transnational, and where affective and professional ties cut across borders.<sup>22</sup>

### **The Centrality of the Nation-State**

Nationality is a legitimate avenue of distinction between European citizens and noncitizens, and it may represent a valid proxy for a notion of belonging to Europe. Tying conditions of mobility to that distinction may likewise seem fully legitimate. Still, limits on immigrants’ mobility interfere with a balanced relation between labor demand and supply throughout the various member states. Immigrants are by definition more prone to movement than local residents, and if allowed they might respond to local employment crises by extending their job search to neighboring states and to EU zones where labor

market conditions are more promising. Greater freedom to move might also temper the unsettling effects of large waves of immigration to a particular geographic area.

However, the two-tiered system also entails some important consequences in terms of European-level responses to issues of immigration and diversity. First, the fact that immigrants are bound to a national pocket of the EU reinforces the role of the national community as the main referent for their integration and legal inclusion. This tends to lessen the importance of their becoming *European as well as national* citizens. Second, as the passage from alienage to citizenship (both national and European) happens at different times in different member states, and as it also entails a passage from a condition of immobility to one of mobility, immigrants with similar histories of presence in the EU and residing in the same member state may find themselves at different levels of inclusion. Is there room to rethink the exclusive relationship between European citizenship and nationality? Is it possible to make that relationship less exclusive?

European immigrants are strongly bound to a host nation-state, even if they have all entered the EU area by passing through a stretch of common external borders. Some of them—for instance researchers, students, and possibly in a not-too-distant future highly skilled workers—enter on common EU visas.<sup>23</sup> Immigrants are tied to a specific nation-state first by reduced mobility options. About seven hundred thousand people obtained EU citizenship in 2006, roughly the same number as U.S. naturalized citizens that year.<sup>24</sup> But while naturalized U.S. citizens have achieved their status while potentially moving around in the nine million square kilometers of U.S. territory and potentially resettling across the several U.S. states without encountering significant regulatory or physical barriers,<sup>25</sup> naturalized Europeans have achieved their status by sticking to a member state, to its rules and its territory, with reduced experience of the EU's political, cultural, linguistic, and legal diversity. Mobility within a society fosters exchange and intercommunication among the different parts of that society, especially if the pockets of difference are territorially organized (as is the case in the EU and in part in the United States). This matters particularly because the EU, unlike the United States, cannot count on country-wide communication and awareness, which partially compensate for the *de facto* immobility of some segments of the population. In the United States, there is a common language and a lively

national political debate in the media; in the EU, the media, political debates, and social discourse are too fragmented to create a sense of Europeanness or make up for its lack. Hence the likelihood that immobile immigrants will experience isolation from Europe.

In addition, the immobile immigrants' pathways to naturalization in each member state differ quantitatively and qualitatively, and are not likely to remind prospective citizens that their desired legal status is a supranational one. On the contrary, elevation to citizenship reinforces the link between an immigrant and a specific European nation. The length of the residency requirements varies from member state to member state, from a minimum of three to a maximum of ten years. Some states consider any title to legal residence as valid for purposes of naturalization, while in others "residence" means presence on a permanent residence permit. Some states admit dual nationality, while others insist on a renunciation, release, or loss of any previous citizenship. Some naturalization laws also require prospective citizens to have sufficient and stable resources to support themselves and possibly their families, while others impose no such requirement. As already noted, the country of naturalization also affects the status of children born in the host member state. Some naturalization statutes allow for children of immigrants to acquire nationality at birth if at least one parent has been resident for a while in the state of birth; others allow minor children to co-naturalize only at the time their parents naturalize; still others prohibit naturalization of children before they reach majority. Even when immigrants have obtained a European national citizenship, and hence a European citizenship, their status, though nominally equal, is not equally secure. Some member states provide that naturalized citizens lose their citizenship (including European citizenship) at the occurrence of several events, such as absence from the territory of the naturalizing state for periods of seven years or longer without a positive statement of an intent to remain citizens.<sup>26</sup>

In short, an individual's status as a European is overwhelmed by the national features of the naturalization process. This is evidenced also by the integration requirements that many prospective citizens have to meet. These requirements test the applicant's familiarity with cultural, linguistic, and constitutional features of the receiving polity. They signal that the grant of citizenship represents not only a change in legal status but also admission into a political and affective community, which claims a right to

self-definition. While these requirements safeguard local identities and local political autonomy, they also suggest that the idea of the polity exhausts itself at the frontier of the nation-state. Nineteen member states out of twenty-seven require that prospective citizens prove their knowledge or command of (one of) the national languages. Twelve member states also require that citizenship applicants show knowledge of the history, the culture, and/or the Constitution and relevant laws of the adoptive country. The culture, history, and laws that one is called on to learn represent first of all a nation, and only secondarily Europe.<sup>27</sup>

The nation is also central to the oaths or declarations of allegiance that many naturalizing immigrants have to render. Some elements of these oaths are constant: loyalty to the naturalizing state, and commitment to protect its interests. But what if the national interest comes to conflict with the interest of the European Union (into which, to some extent, the immigrant is also naturalizing)? The oaths either ignore these potential tensions or implicitly indicate that the nation prevails over everything.

A prospective Lithuanian, for instance, has to swear “to be loyal to the Republic of Lithuania, to observe the Constitution and Laws of the Republic, to defend the independence of Lithuania, to protect the territorial integrity of the state.” She also swears to “respect the state language of Lithuania, its culture and customs, and to strengthen the democratic Lithuanian state.” A prospective Hungarian must express his allegiance in the following words: “I do solemnly swear that I shall consider Hungary my country. I shall be a loyal citizen of the Republic of Hungary, shall honor and observe the Constitution and laws thereof. I shall defend my country as far as my strength allows, and shall serve it according to the best of my abilities.” A prospective Latvian says: “I pledge that I will be loyal only to the Republic of Latvia. I undertake to fulfil the Constitution and the Laws of the Republic of Latvia in good faith and with all vigour to protect them. I undertake without regard to my life to defend the independence of the State of Latvia and to live and work in good faith, in order to increase the prosperity of the State of Latvia and of the people.” And the future Romanian will swear “devotion to the Romanian country and Romanian people” and agree “to defend the rights and national interest [and] respect the Constitution and the laws of Romania.”<sup>28</sup> To be sure, these recitations have symbolic and celebratory value, rather than promising concrete action. Still, who would know that

when citizenship applicants proffer these words and seal their contract of belonging to Lithuania, Hungary, Latvia, or Romania, they are also sealing their contract of belonging to the European Union?

Even as the EU insists on its political character and longs for the affection, allegiance, and trust of the European people, then, EU immigrants' struggle for integration has the nation as its focus. The centrality of the nation-state as a gateway to membership in the European polity tends to reinforce the primacy of the national people and aspiring nationals over the European people at large. For instance, it is within the boundaries of each nation that battles for entitlements to welfare, housing, education, health care, and political participation come to be fought, and that different recipes to accommodate the potentially competing interests of old members and newcomers are found. It is within these same boundaries that both solidarity and resistance find their stronger expression. The European Union, by setting minimum standards for the treatment of outsiders and by establishing some rules of nondiscrimination, at most sets the broad contours of this confrontation. This may make the escape from Europe's often-lamented democratic deficit even more difficult. The nation-state tends to remain the natural referent for participation, representation, and assimilation. The people of Europe, conscious of their national differences and only casually aware of their Europeanness, have a hard time identifying common interests that can safely be entrusted to the EU.

Nationality remains thus the primary filter of external diversity. There is no way of becoming a European without at the same time acquiring a particular European nationality. Europe remains at a distance. As a result, an emotional vacuum surrounds European citizenship, which individual national attachments cannot fill.

### **Different European Destinies for Similar Immigration Histories**

In addition to reaffirming the central role of the nation, the nationality-dependent distribution of mobility rights in the EU potentially differentiates among otherwise similar immigration histories, distinguishing "more-mobiles" and "less-mobiles" among TCNs who may have spent equal time in the European Union. As a result, TCNs who have been in a certain member

state for a short period are potentially more legally included there than TCNs who have been in another member state ever since entering the EU. This depends in part on diverging requirements for nationality and thus for full mobility. To refer to my earlier illustration: suppose our Ethiopian friend had originally left Ethiopia at the same time as his brother, also seeking better fortunes in Europe. While he had found a job and obtained a job permit in Italy, his brother had found a better chance in France. After eight years of legal residence in the EU, the brother's legal situation is potentially quite different. The Italian-resident Ethiopian is still waiting for the ten years necessary for naturalization in Italy to pass. At most, he may have obtained an EU long-term residence permit. The French-resident Ethiopian, in contrast, will long have met France's five-year residence requirement for naturalization. If he has applied for naturalization and obtained French and thus European citizenship, he will be fully mobile, while his brother is still stuck in Italy. The French Ethiopian could immediately move to Italy, provided he found an occupation there or had resources to support himself. Once there, he would enjoy stronger political rights than his brother—who had been resident in Italy eight years longer than he and in the EU for the same length of time.

The French Ethiopian could vote in local elections in the Italian municipality of his new residence and could vote for the European Parliament. His Italian-resident brother would remain fully disenfranchised. What is more, the French Ethiopian brother could sponsor other Ethiopian relatives to come to the EU and to Italy on better conditions than currently apply to his brother, and could obtain a more secure status for them.<sup>29</sup> He could naturalize into Italian citizenship after only four years of residence in Italy. He would also be able to leave Italy and move to a third member state, spending some time there as a job seeker and trying his fortune again. In moving and resettling around the EU, he would not compromise his status as a European citizen in any way, while his Italian-resident brother, if making a similar choice, would sacrifice his options for legal inclusion through citizenship. The issue here is not whether it is desirable or not, fair or not, that a European citizen be treated better than someone who is not a European citizen, or that a European national be treated better than someone who is not a European national. The issue is that European citizenship differentiates among immigrants who, in terms of European belonging, are similar and similarly deserving.

The mobility options and related rights connected to EU citizenship may also differentiate among similarly situated *communities* of immigrants in connection with the political enlargement of the EU. Accession to the European Union means extension of common citizenship to the national population, including members of the entrant population who already reside in an EU member country. In the immigrant community, this cuts across immigration histories, shortening and easing the course to integration for some favored groups in the immigrant pool. The new European citizens suddenly surpass in status other segments of the immigrant community, regardless of how long they have been resident in the host state and regardless of their employment and family histories.

The Albanian and Romanian communities in Italy provide a telling example. The two national groups represent the two most populous immigrant communities in Italy, amounting to 376,000 and 342,000 individuals respectively. The two communities are similar in the collective perceptions of native Italians. They have been present in Italy for roughly the same time. Their members tend to take up similar occupations and, sadly, are among the most regular occupants of Italian jails.<sup>30</sup> Yet in January 2007, with the accession of Romania into the European Union, Italian-resident Romanians suddenly became European citizens, with the result that they can vote in Italian municipal elections, enjoy a range of labor rights and a number of nondiscrimination guarantees, and soon will have full mobility rights.<sup>31</sup> Moreover, they now qualify for a shortened residency requirement of four years (instead of ten) in order to naturalize into Italian citizenship. Albanians, including those who have resided in Italy for much longer than some Romanians, remain aliens.

If in the United States one day all immigrants of Mexican nationality—but they alone—were given preferential treatment on account of their nationality (perhaps including voting rights in local elections, more generous welfare benefits, a preferential channel to sponsor family members, and a shortened path to American citizenship), this would probably raise eyebrows and evoke unpleasant memories of an era when immigration policy was based on national quotas. It would be yet more absurd if Mexicans could move unconstrained among the several states and resettle in any of them, while immigrants of any other nationality had to stay put in their state of first settlement unless they attained American citizenship. In the European Union, the ordinary operation of European citizenship may produce results of this kind.

### European Citizenship beyond Nationality?

Addressing in normative terms the inconsistencies in immigration and citizenship experiences requires careful reflection and the weighing of pros and cons. Some of the issues connected to the practical operation of the “who” and “what” of European citizenship, such as the reduced importance of residence-based notions of European belonging and the hierarchy of mobility rights, seem to argue for the extension of full-fledged mobility options to immigrants, a move that would in part decouple European citizenship and nationality. To change the legal requirements underpinning European citizenship, however, is to transform its nature. This might be neither desirable nor politically desired in the European Union, an entity that remains a novel experiment in the sharing of political and economic decision making and that properly has not adopted the defining features of a state entity. The EU’s relationship to the people of Europe is still uncertain; the institutions of the EU long for legitimacy and support while the people of the EU are indifferent or hostile. For these reasons, European citizenship as additional and complementary to nation-state citizenship—that is, as it was conceived ever since the Maastricht era—is perhaps its preferable form.<sup>32</sup> The dependency of European citizenship on nationality is a moderate way to introduce an EU-wide legal status without compromising the political and legal distinctiveness of a wide array of national citizenships. To the extent that citizenship can be seen as a marker of local cultural, political, and civic traditions, the current European citizenship regime may be seen as an effective way to realize the European project of “unity in diversity.”

Even so, some room might be found to think about attenuating the exclusive link between nationality and European citizenship, for instance, by extending to the immigrant population the mobility rights that are now mainly tied to European citizenship. At present immigrants to the EU are subject to a vertical process of inclusion: they receive national citizenship and only as a result the horizontal, Europe-wide benefits of European citizenship. The horizontal effectiveness of European citizenship could be enhanced to the benefit of outsiders. While member states could retain their naturalization laws and requirements, introducing via European law some measure that recognizes and seeks to minimize disparities across member states might temper many of the tensions highlighted earlier.

In the case of immigrants, a qualifying threshold, alternative to nationality, would be needed to grant rights of movement and mutual recognition. This threshold could be represented by legal residence on EU territory for a minimum period.<sup>33</sup> Once the immigrant had met the qualifying residence requirement, a number of mutual-recognition effects for purposes of specific nationality laws might be triggered. For instance, immigrants could be allowed to count periods of residence in different parts of the European Union for purposes of complying with the residence requirements under individual naturalization laws. Birth on the territory of another member state could be treated as equivalent to birth in the territory of the naturalizing state for purposes of children's naturalization. Knowledge of one of the many languages of the European Union could justify leniency in applying the national requirements for knowledge of another. Demonstrated commitment to the constitutional values of a member state could be considered to corroborate an immigrant's potential for successful integration into the society of another member state. Mutual recognition is a guiding principle in important areas of European law (prominently, the free movement of goods),<sup>34</sup> and it might work well in the area of people's free movement and inclusion.

Alternatively, the European Council's statement at Tampere might be read to encourage the expansion of the rights of aliens through EU law in order to make their status more and more similar to, even if distinct from, citizenship. Aliens in the EU who exercise their mobility rights can significantly delay their access to citizenship. Thus making citizenship less attractive to immigrants by allowing them to claim rights usually exclusive to national citizenship might also contribute to attenuating the dilemmas that currently affect their mobility decisions. This choice is in part impracticable, especially as regards immigrants' political participation at the national level. It would reflect the lingering perception of immigrants as guest workers rather than as new, full-fledged community members. In any case, most new immigrants are in the EU to stay, and keeping them on a separate but equal track vis-à-vis citizens does not serve the purposes of successful integration and harmonious coexistence. Also, expanding citizenship rights without extending citizenship itself poses the danger of devaluing citizenship.<sup>35</sup>

Applying mutual recognition principles and extending mobility to immigrants would not lessen the value of citizenship as a tool for defining both the terms of coexistence in a community and the values embraced by that

community. Citizenship is a source not only of rights but also of civic duties. Creating a double threshold for inclusion—one for obtaining mobility, and a second one for obtaining nationality—would not make full inclusion in the community any less selective. The idea of mutual recognition among regimes of membership would be based on a notion of belonging to Europe, and would reflect the view that membership in a European member state, either as national or as resident, has some legal and symbolic value in the rest of the EU.

The extension of mutual recognition to the regime of membership could be tied, though it need not be, to a newly conceived, independent notion of European citizenship. A new European citizenship could be granted based on possession of either nationality of a member state or minimum legal residence in the EU, barring criminal convictions. Its effects might be limited to mobility and mutual recognition matters, while the limited political rights of current European citizenship could be tied to European nationality (meaning nationality of one of the EU member states). Such an approach would help to close the gap between the experience of being an immigrant to a European country and the experience of being a citizen of that country.

Making different elements of nationality interchangeable would reduce the role of the nation in Europe for purposes of assimilation, while maintaining intact the member states' distinctive roads to nationalization. A regime of that description would dilute the sense that there are two Europes, one for insiders and one for outsiders, while at the same time making a Europe without borders more credible and effective. This in turn might be conducive to a better integration of immigrant populations and to a more rational distribution of their political and social rights. Rights to political participation and to full welfare inclusion would still remain tied to nationality, but access to nationality through eased mobility would be rationalized.

It might be objected that more-mobile immigrants could be tempted by inclusion-shopping behavior and move to more permissive EU countries. That in turn might trigger a "race to the top" and prompt member states to adopt restrictive inclusion regimes. Too many factors, however, play a role in immigrants' choices of where to live and work to give them the freedom to simply pursue favorable naturalization regimes.<sup>36</sup> And immigrants who show through their aspiration to citizenship a willingness to integrate into the host society are likely to be desirable for many member states whose natural population is gradually shrinking.

From a different point of view, mutual recognition with respect to nationality requirements can be seen as colliding with the fundamental interest of the member states in defining their own community. Discourses of European citizenship have always met with the reluctance of the member states to renounce any fraction of their sovereignty on the subject of nationality. For instance, a declaration attached to the Treaty of Maastricht, which had established a European citizenship for the first time, clarified that each member state remained free to determine who would be a national for European Community purposes.<sup>37</sup> Introducing a European law requirement that each member state must recognize the residence time and the proofs of integration that an immigrant has collected in other member states interferes at least indirectly with each nation's desire to "select" its own citizens. However, current law already limits each member state's freedom to define its own community. Free movement and corollary nondiscrimination rights stand in contrast with the right to national self-definition: they are a way of extending to EU citizens the entitlements enjoyed by national citizens. Each member state identifies its own citizens and thus its portion of European citizens. As these EU citizens are increasingly able to claim rights comparable to those of nationals in other member states, this means that each member state is delegating part of its definitional powers to all other member states.<sup>38</sup> As the rights entailed by free movement expand, the residual power of community self-definition shrinks. At the apex, where free-movement rights allow EU citizens to do anything national citizens can do and to claim anything national citizens can claim, the member states' power of self-definition is effectively annulled.

Member states may still legitimately claim that they are willing to extend to EU citizens certain benefits that they are unwilling to extend to immigrants who are not EU nationals. France could say for instance that it is willing to accommodate Germans, who are EU citizens, but not Turks, who are not. But what if Germany one day decided to grant citizenship to its entire resident foreign population, including 1.8 million resident Turks? The very next day all these Turks could move to France as EU citizens and there claim their rights. How different would they be, though, in terms of Europeanness from the Turks of the day before?

For a more realistic example, consider the case of illegal immigrants. Here, too, one state's choice affects all others. Many member states, particularly in southern Europe, have opted in the last two decades for generous

amnesty programs, which promised legal pardon and legal status to undocumented immigrants. (In Italy, this happened in 1986, 1990, 1995, 1998, and 2002.<sup>39</sup>) The legalized immigrants obtain legal residence and are thus put on a potential pathway to national citizenship. They become part of the pool of candidate European citizens, to which other member states might be called to give residence and rights, even if they maintain a much stricter policy toward their own illegal immigrants.

In short, the power of self-definition of each national community in the EU has become increasingly subject to the immigration and nationality policy decisions of other member states. The effectiveness of any claimed intention by any member state to maintain a legitimate distinction of treatment between European nationals and TCNs within its borders must be tested against these considerations. European citizenship, which seems not to define, steals much definitional power undetected. Extending elements of mutual recognition to the experience of inclusion of TCNs in the various member states would not compromise definitional powers that have not already been compromised by European citizenship and free movement.

### **Conclusion**

European citizenship makes for two Europes, a mobile and an immobile one. As an extension of nationality, however, it uses no independent criterion to distinguish mobile Europeans and immobile non-Europeans, to the detriment of a comprehensive notion of European belonging. Grounding effective mobility options in both nationality and residence, by extending principles of mutual recognition to the employment, residence, and cultural assimilation experiences of immigrants in the various member states, could be a way to mitigate the immobility of immigrants and at the same time to rethink the notion of European belonging and European citizenship. In an encompassing notion of “belonging to Europe,” one open to both immigrants and natives, both national and external diversities of the European population might be reconciled. And once the EU has found ways to handle layers of diversity in its society, it probably will also have found answers to issues of identity and legitimacy.

## Notes

1. See Lars-Erik Cederman, *Nationalism and Bounded Integration: What It Would Take to Construct a European Demos*, 7 *Eur. J. Int'l Rel.* 139 (2001) for an overview of various approaches in the literature on European integration to issues of democratic deficit and the prospects for a European *demos*.

2. For a sample of approaches to the issues of European identity in relevant interdisciplinary literature, see *Europeanization, National Identities and Migration: Changes in Boundaries Construction between Western and Eastern Europe* (Willfried Spohn and Anna Triandafyllidou eds., 2003); *Transnational Identities: Becoming European in the EU* (Richard K. Herrmann, Thomas Risse, and Marilynn B. Brewer eds., 2004); *Changing European Identities: Social Psychological Analyses of Social Change* (Glynis M. Breakwell and Evanthis Lyons eds., 1996); *European Identity: Theoretical Perspectives and Empirical Insights* (Ireneusz Pawel Karolewski and Viktoria Kaina eds., 2006); Neil Fligstein, *Euroclash: The EU, European Identity, and the Future of Europe* (2008).

3. Eurostat, *Population and Social Conditions*, [http://epp.eurostat.ec.europa.eu/portal/page?\\_pageid=0,1136184,0\\_45572595&\\_dad=portal&\\_schema=PORTAL](http://epp.eurostat.ec.europa.eu/portal/page?_pageid=0,1136184,0_45572595&_dad=portal&_schema=PORTAL) (accessed Sept. 12, 2008).

4. For the idea that European provisions on citizenship and free movement are not grounded in a solid idea of supranational belonging, see Lisa Conant, *Contested Boundaries: Citizens, States and Supranational Belonging in the European Union*, in *Boundaries and Belonging: States and Societies in the Struggle to Shape Identities and Local Practices* (Joel S. Migdal ed., 2004).

5. By bringing a young workforce to the EU, immigration offers solutions to the welfare problems posed by the decline in birthrates; on the other hand it contributes to the problem, as most immigrant workers remain employed in low-paying activities and thus enlarge the class of workers who contribute less than they receive to national welfare systems. See Craig A. Parsons and Timothy M. Smeeding, *What's Unique about Immigration in Europe?* in *Immigration and the Transformation of Europe* (Craig A. Parsons and Timothy M. Smeeding eds., 2006).

6. The definition of European citizenship and the main rights connected to it are contained in Articles 17 to 21 of the European Community treaty.

7. For the features of policies of access to nationality in European countries, see Italian Ministry of Interior, *Primo Rapporto sugli Immigrati in Italia* (Dec. 2007), [http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0673\\_Rapporto\\_immigrazione\\_BARB\\_AGLI.pdf](http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0673_Rapporto_immigrazione_BARB_AGLI.pdf), 164–66; see also *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries* (R. Bauböck, E. Ersboll, K. Groenendijk, & H. Waldrauch eds., 2006).

8. Nationals of twelve countries in Europe have experienced this transition in the last four years, and nationals of three more are set to experience something similar in a not-too-distant future. The twelve most recent entrants into the EU include Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Bulgaria,

and Romania. Turkey, Croatia, and the Former Yugoslav Republic of Macedonia are currently candidate countries for accession to the EU.

9. See, e.g., Case C-85/96, Martínez Sala v. Freistaat Bayern, 1998 E.C.R. 2691; Case C-413/99, Baumbast and R. v. Secretary of State for the Home Department, 2002 E.C.R. 7091; Case C-456/02, Michel Trojani v. Centre public d'aide sociale de Bruxelles (CPAS); 2004 E.C.R. 0; Case C-224/98, Marie-Nathalie D'Hoop v. Office national de l'emploi, 2002 E.C.R. 6191; Case C-184/99, Rudy Grzelczyk v. Centre Public d'Aide Sociale d'Ottignies-Louvain-La-Neuve, 2001 E.C.R. 6193; Case C-209/03, The Queen v. London Borough of Ealing, Secretary of State for Education and Skills 2005 E.C.R. I-2119. On the transformation of the right to free movement into a right of citizenship in the EU see Francesca Strumia, *Citizenship and Free Movement: European and American Features of a Judicial Formula for Increased Comity*, 12 Colum. J. Eur. Law 713, 731–32 (2006). In more recent judgments, the court has continued to support the mobility of citizens on the social side by opposing fiscal and social legislation in the member states that directly or indirectly created disadvantages for intra-community migrants (see, e.g., Case 520/04, Turpeinen, 2006 E.C.R. I-10685); on the other hand, the court has also accepted challenges to member-state legislation that made the availability of study subsidies more difficult for intracommunity migrants (Case Morgan C-11 & 12/06, 2007 E.C.R. I-9161).

10. Case C-413/99, Baumbast and R. v. Secretary of State for the Home Department, 2002 E.C.R. 7091.

11. Case C-456/02, Michel Trojani v. Centre public d'aide sociale de Bruxelles (CPAS), 2004 E.C.R. 0.

12. Parliament and Council Directive 2004/38, 2004 O.J. (L 158) 77 (EC).

13. *Id.* at arts. 6, 7, 16, 24.

14. See Alain Lamassoure, Député européen, *Le Citoyen et l'Application du Droit Communautaire*, Rapport au Président de la République (June 2008), <http://lesrapports.ladocumentationfrancaise.fr/BRP/084000379/0000.pdf>.

15. The Schengen system has its origin in a 1985 agreement and a 1990 convention among several EU countries. See Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, June 14, 1985, 2000 O.J. (L 239) 43, at 13; Convention Implementing the Schengen Agreement of 14 June 1985, June 19, 1990, 2000 O.J. (L 239) 43, at 19. The Schengen instruments and subsequent regulations have been incorporated in the 1997 Treaty of Amsterdam and have thus become full-blown European law, which binds all member states with the exception of the United Kingdom, Ireland, Norway, and Iceland. The countries that TCNs are free to visit on a Schengen visa also include those that are party to the Schengen Agreement even if they are not members of the EU. They do not yet include all the countries that entered the EU as a result of the 2004 and 2007 enlargements. As of June 2008, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia are part of the control-free area.

16. *Legal* resettlement, that is. Among the Schengen-participating EU countries, border controls have been abolished. This opens up easy opportunities for de facto resettlement in

the shade of the law. Many undocumented immigrants enter at particularly convenient spots along the external borders of the EU (such as the Strait of Gibraltar) and then move undetected across the Schengen borders.

17. Council Directive 2003/109, 2003, O.J. (L 16) 44 (EC). This directive has been adopted on the basis of Title IV of the EC treaty, and as a result it does not apply to the United Kingdom, Ireland, and Denmark, which have opted out of this part of the treaty. A proposal for a directive on TCNs' right to travel within the community had been previously adopted by the European Commission but never made it into law. See Commission Proposal for a Council Directive on the right of third-country nationals to travel in the community, COM (1995) 346 final.

18. Once they have entered a second member state, TCNs are also covered by an equal treatment guarantee for purposes of access to the labor markets, education, and related grants and social security. See Council Directive 2003/109, art. 21.

19. "A more vigorous integration policy should aim at granting them rights and obligations *comparable* to those of EU citizens." Presidency Conclusions, European Council, Oct. 18, 1999, 4; "The legal status of third country nationals should be approximated to that of Member State nationals." *Id.* at 21.

20. For Italian nationality law, see Law no. 91 of 1992 of February 5, 1992, *Nuove Norme sulla Cittadinanza*, in 1992 O.J. 38, available at [http://www.giustizia.it/cassazione/leggi/191\\_92.html](http://www.giustizia.it/cassazione/leggi/191_92.html). For French nationality law, see C. Civ., art. 21-7 to 21-18, available at [http://www.legifrance.gouv.fr/html/codes\\_traduits/code\\_civil\\_textA.htm](http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm) (in English). For Austrian nationality law, see Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985, last modified 2006); see also <http://www.wien.gv.at/english/administration/civilstatus/citizenship/claim.html>. For Danish nationality law, see Consolidated Act on Danish Nationality no. 422 of 7 June 2004, [http://www.nyidamark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation\\_act\\_no\\_422\\_7\\_june\\_2004.pdf](http://www.nyidamark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation_act_no_422_7_june_2004.pdf).

21. Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (1994). But see Irene Bloemraad, *Citizenship and Pluralism: Multiculturalism in a World of Global Migration*, in *Citizenship and Immigrant Incorporation: Comparative Perspectives on North America and Western Europe* (Gokce Yurdakul & Michal Bodemann eds., 2007) at 58 (observing that citizenship remains the main avenue to obtain all government-sourced benefits).

22. The external validity of European citizenship still faces important limits. Most countries which benefit from visa-free travel to the EU have recognized visa-free access by reciprocity only to the nationals of some of the member states of the EU, even if the European Commission is negotiating with third countries for the extension of the reciprocity regime to *all* the nationals of the EU. The commission has recently suggested the adoption of retaliatory measures against those third countries which resist these extensions. Countries which resist the expansion of visa-free travel to all European citizens are Japan, Singapore, Panama, and the United States. Citizens of twelve EU member states (Bulgaria, the Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, and Slovakia)

must still obtain visas to travel to the United States. Canada and Australia have proved more cooperative, even if conditions of full reciprocity with them remain undefined. See Press Release, Europa, The European Commission Adopts Its Fourth Report on Visa-Waiver Non-Reciprocity with Third Countries (July 23, 2008), <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1189&format=HTML&aged=0&language=EN&guiLanguage=en>; see also EurActiv.com, EU threatens to slap visa sanctions on US, July 24, 2008, <http://www.euractiv.com/en/transport/eu-threatens-slap-visa-sanctions-us/article-174461>.

23. Council Directive 2004/114, 2004 O.J. (L 375) 12 (EC); Council Directive 2005/71, 2005 O.J. (L 289) 15 (EC); *Commission Proposal for a Council Directive on the Conditions for Entry and Residence of Third Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final (Oct. 23, 2007).

24. Source of U.S. data: Department of Homeland Security, Office of Immigration Statistics, Annual Flow Report, Naturalizations in the United States 2006, May 2007, available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/Nat\\_01\\_Sec508Compliant.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/Nat_01_Sec508Compliant.pdf) (accessed June 3, 2009); Source of EU data: Eurostat, access to citizenship in 2006, available at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&rcode=tps00024&plugin=1> (accessed June 3, 2009). Seven hundred thousand people were naturalized in the United States in 2006 out of an estimated legal permanent resident population of approximately 12 million. About 1.2 million people obtained legal permanent resident status in the United States in 2006, 60 percent by adjustment of status, while the rest were new entrants. Total admissions in the United States in the same year amounted to 33 million people, but this number includes about 29 million tourists and travelers on business.

25. Some data suggest that there are phenomena of secondary migration among the states in the U.S., ignited in part by diverging supplementary integration policies in different states. See Nathan Glazer, *Governmental and Nongovernmental Roles in the Absorption of Immigrants*, in *Paths to Inclusion: The Integration of Migrants in the United States and Germany* (Peter H. Schuck ed., 1998), 70–72.

26. This applies to naturalized citizens of Cyprus and Malta. The shortest residence requirement for naturalization is found in Belgium, while the longest requirements are found in Greece, Italy, Lithuania, Slovenia, and Spain. Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Romania, and Slovenia impose financial requirements for the grant of citizenship. Release of previous citizenships is required in Austria, Bulgaria, the Czech Republic, Denmark, Estonia, Germany, Latvia, Luxembourg, the Netherlands, Poland, Slovenia, and Spain. With regard to children of immigrants, the most liberal states in the EU are Ireland, Belgium, Germany, Estonia, Latvia, Portugal, and the UK, which under some conditions grant citizenship to local-born children of foreign parents who have resided on their territory for a certain time before the children's birth. Spain allows local-born children of foreigners to naturalize after only one year of residence.

27. A direct reference to Europe can be found only in Austrian legislation, which states: "To evaluate the integration of a foreigner into Austria, her attitude towards social, economic and cultural life in Austria should be taken into account together with the basic values of a European democratic state and its society." See Bundesgesetz, Über die österreichische

Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985, last modified 2006) *available at* [http://www.unhcr.de/fileadmin/unhcr\\_data/pdfs/rechtsinformationen/5.1.A-Gesetze/A\\_Stb\\_02\\_Staatsbuergerschaftsgesetz.pdf](http://www.unhcr.de/fileadmin/unhcr_data/pdfs/rechtsinformationen/5.1.A-Gesetze/A_Stb_02_Staatsbuergerschaftsgesetz.pdf), par. 11

28. For the Lithuanian pledge, *see* Law on Citizenship, art. 3 para. 17, September 2002, No. IX 1078, as amended by law 18 July 2006, No. X-768, *available at* [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=285786](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=285786) (in English). For the Hungarian pledge, *see* Act IV of the Hungarian Parliament, 1993 on Hungarian Citizenship, sect. 7; *available in* unofficial English translation at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Foreigners\\_and\\_citizens/Nationality/Documents/National\\_legislation/Hungary%20Act%20LV%20of%201993.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Hungary%20Act%20LV%20of%201993.asp). For the Latvian pledge, *see* Citizenship Law, 1994 (amended 1998) sect. 18, *available in* unofficial translation at <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan018407.pdf>. For the Romanian pledge, *see* Romanian Citizenship Act of 1 March 1991, at art. 20; an unofficial English translation of the act is *available at* <http://www.romanianpassport.co.il/english/romanian-citizenship-law/>.

29. *Compare* Parliament and Council Directive 2004/38, 2004 O.J. (L 158) 77, at 5, 12, 13, 17, 20 (EC) *with* Council Directive 2003/109, 2004 O.J. (L 16) 44 (EC). TCNs face some waiting periods to sponsor their TCN family members; integration requirements may be imposed on their entering family members; if a family member loses a qualifying relationship with his sponsor, his status in the EU becomes less secure than the status of an EU citizen's family member in similar conditions; and finally, family members of TCNs might face waiting periods before being given access to the labor market.

30. Albanian immigration into Italy intensified in the first half of the 1990s, while Romanians began to represent a dominant component of the immigration flux in the second half of the 1990s. *See* Italian Ministry of Interior, Primo Rapporto sugli Immigrati in Italia (Dec. 2007), at 69. Romanians and Albanians are the immigrants most likely to be accused of and arrested for a range of crimes in Italy, including murder and robbery. The percentage of foreigners among people accused of a crime in Italy increased from 6 percent in 1988 to about 30 percent in 2006, while the percentage of foreigners as a component of the population increased from 0.8 percent to 5 percent. Many of the accused foreigners are illegal immigrants, which alters the proportion between foreigners as a percentage of the population and foreigners accused of crimes. *See* Ministero dell'Interno Italiano, Rapporto sulla Criminalità (June 20, 2007), [http://www.interno.it/mininterno/export/sites/default/it/assets/files/14/0900\\_rapporto\\_criminalita.pdf](http://www.interno.it/mininterno/export/sites/default/it/assets/files/14/0900_rapporto_criminalita.pdf).

31. Under the provisions of the accession treaties, member states may introduce or maintain restrictions on potential entrant workers from the new member states. The free movement rights of these groups of workers may be limited for a maximum total period of seven years from the date of accession, a period that thus expires in the case of Romania on December 31, 2013.

32. The Lisbon Treaty, now of uncertain destiny after the Irish rejection, codifies the principle of conferral as the rule informing the division of competences between the member states and the EU. *See* Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, art. 1, introducing art. 3a and 3b in the

Treaty on European Union, Dec. 13, 2007, 2007 O.J. (C 306) 01, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.

33. In this respect, this proposal leans toward a territorially based conception of entitlement. For the virtues and limits of models of inclusion based on territoriality, see Linda Bosniak, *Being Here: Ethical Territoriality and the Rights of Immigrants*, 8 *Theoretical Inquiries in Law* 389 (2007), available at SSRN: <http://ssrn.com/abstract=1126427>. See also A. Aleinikoff, *Between Principles and Politics: U.S. Citizenship Policy*, in *From Migrants to Citizens: Membership in a Changing World* 119 (Thomas Alexander Aleinikoff & Douglas Klusmeyer eds., 2000) for the idea that lawful settlement should be at the basis of membership claims.

34. See Case 120/78, *Rewe-Zentral v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649.

35. See Peter H. Schuck, *The Devaluation of American Citizenship*, in *Citizens, Strangers and In-Betweens: Essays on Immigration and Citizenship* 163 (1998), on how weakening the difference between the status of citizen and noncitizen in the United States may devalue American citizenship, and on the problems connected with this devaluation.

36. A recent study on immigration in the European Union found that one of the main factors driving immigration flows is existing networks with people who already reside in the destination country. While the study focuses on immigration of TCNs to European countries, it suggests in more general terms that factors other than the availability of legal and social benefits play the bigger part in immigrants' choice of a destination country. See Peder J. Pedersen, Mariola Pytlikova, & Nina Smith, *Migration into OECD Countries, 1990–2000*, in *Immigration and the Transformation of Europe*, *supra* note 5, at 43.

37. Member states are also allowed to deposit declarations indicating who is to be considered a national of their state for community purposes; see Declaration on Nationality of a Member State annexed to the 1992 Treaty on European Union, 1992 O.J. (C 191), at 98, available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0098000022>; see also Gerard Rene de Groot, *The Relationship between the Nationality Legislation of the Member States of the European Union and European Citizenship*, in *European Citizenship: An Institutional Challenge*, 115, 120 (Massimo La Torre ed., 1998). The attitude of the European Court of Justice when dealing with issues of nationality and political rights is much more restrained than when the court considers social rights issues; for instance, the court has insisted that member states are free to designate the criteria according to which their citizens are entitled to vote for the European Parliament. (See, e.g., Case 145/04, *Spain v. United Kingdom* of 12 September 2006, 2006 E.C.R. I-7917).

38. Also, member states are prevented from imposing any additional requirement on a national of an EU member state in order for him to benefit from European Community law rights on their territory: the European Court of Justice set a clear rule in this respect in the 1992 Micheletti case. Spain had refused the right of establishment to a dual national Italian-Argentinian who had previously resided in Argentina. Spain had demanded that a dual national—a national of both a member state and a nonmember country—have his last habitual residence in a member state before being permitted to establish his activity in Spain. The court held that requirements of this kind are not admissible. Nationality of a member state

remains the only requirement for a person to be a fully entitled European citizen. See Case C-369-90, *Mario Vicente Micheletti v. Delegación del Gobierno en Cantabria*, 1992 E.C.R. I-04239.

39. See Report of the European Migration Network, *Illegally Resident Third Country Nationals in Italy: State Approaches Towards Them and their Profile and Social Situation* (Dec. 2005), <http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=B9698EF8D7790D7EC84E49C82A3A0299?directoryID=17>. In 1986, 105,000 applications were accepted; the figure was 222,000 in 1990, 246,000 in 1995, 217,000 in 1998, and 650,000 in 2002.