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Migrant Citizenship: Rethinking the Citizenship-Mobility Nexus

Francesca Strumia

francesca.strumia@city.ac.uk

Abstract

One of the most momentous implications of European citizenship has been the association it has brought about between the status of citizenship and the right to free movement. Much ink has been spilt over this association, its problems, and its promise. However the attention, at least in the legal literature, has fallen mostly on the relation between intra-EU migrant citizens and their host Member States. This article shifts the attention towards the relation between the home Member State and its citizen-migrant. It questions how European citizenship changes the citizenship-mobility nexus in the context of this relation. Its central argument is that through challenging the assumption that citizenship is a settled condition, European citizenship produces a novel iteration of this nexus, migrant citizenship that is. In the context of migrant citizenship, citizenship is the very enabling factor of international movement, and mobility becomes in turn a citizen's freedom. The article sketches the traits of migrant citizenship and sets it against three other configurations of the citizenship mobility nexus. It then weighs the implications of migrant citizenship in the context of three different research agendas. With regard to European citizenship and its prospects, the perspective of migrant citizenship invites to decentralize the search for answers on pressing questions of solidarity and democratic participation. Beyond the European citizenship context, it offers a novel analytical tool for other forms of regional free movement beyond the EU one. In a broader perspective, migrant citizenship contributes to the citizenship and immigration field, reframing the relation between citizenship's exclusive outer shell and its inclusive inner core.

1. Introduction

How has European citizenship reconfigured the boundary between the status of the citizen and the status of the migrant? This is the central question that this article addresses through engaging with the idea of migrant citizenship. The main argument that the article advances is that the association between status of supranational citizenship and right to free movement in the EU has produced a novel iteration of the citizenship-mobility nexus, yielding precisely a status of migrant citizenship.

In the copious literature that has explored, over the last three decades, the Union citizens' right to free movement, its meaning, potential and limits, the migrant citizen is a well-known point of focus.¹ The phrase usually describes the citizen of a Member State who has moved to a host Member State and lives there as a migrant, but also as a quasi-citizen thanks to the equal

¹ See e.g. D Kochenov (ed) *European citizenship and Federalism: the Role of Rights* (CUP 2017); D Kostakopoulou, 'European Union Citizenship: Writing the Future', (2007) 13 ELJ 623; E Spaventa, 'Seeing the Wood Despite the Trees? On the Scope of Union Citizenship and its Constitutional Effects' (2008) 45 CMLR 13.

treatment guarantee that comes with supranational citizenship.² In thus taking up the idea of ‘migrant citizenship’, the article may appear to walk along a well-marked route, leading to the endorsement of the rich *acquis* surrounding European citizenship. However, the notion of ‘migrant citizenship’ that this article engages is distinct from that of ‘migrant citizen’ in common European jargon. ‘Migrant citizenship’ refers to a situation in which the status of the citizen finds expression through migration, and the rights that link to citizenship are enhanced through migration.

In this sense, migrant citizenship is an oxymoron. Citizenship is a status traditionally associated with indicators of settlement, such as residence, tax liability, social entitlements vis-à-vis the welfare state, membership and participation in a territorially bounded political community. It marks the condition of those -the vast majority of the human population-, who are filed to a sovereign state.³ Through being filed to the territory of that state, the citizens have been historically counted, conscripted, and taxed.

Movement beyond state boundaries for purposes of migrating to a different state ‘unsettles’ the citizen. It turns the citizen into a migrant, pushing his status of citizenship into an anomalous zone. Vis-à-vis the state of origin, the migrant becomes an external citizen.⁴ His connection to the state of origin is impliedly weakened, as the citizen becomes the member of the political and economic community of another state. The rights that link to a person’s residence are exercised vis-à-vis the host state rather than the state of nationality. And in some cases the rights that link to citizenship, such as political rights, are lost or become dormant.⁵ Vis-à-vis the state of destination the migrant is, by default, the non-citizen, unless and until he completes a course of settlement and integration to naturalize as a citizen in the new state.⁶ There is thus an antithesis between the condition of the citizen and the condition of the migrant.

European citizenship mitigates this antithesis. Through its association with the right to free movement, it makes migration a potential part of the normal relation between each state and its own citizens. It calls for the state to protect its own citizens both in their capacity and interests as sedentary, and in their capacity and interests as migrants.⁷ As a result, national citizenship is no longer just the arrival point of migration, it can be its very starting point and enabling condition. It can be, in other words, a migrant citizenship.

Migrant citizenship contributes a new perspective to existing debates on the future of European citizenship, pushing for addressing some of the open questions from the angle of the state-own citizen relation. It also offers a potential analytical and normative paradigm for the comparative study of different systems of regional free movement. Methodologically, the article revisits the literature and case law on EU citizenship through the lenses of the citizenship and immigration

² Treaty on the Functioning of the European Union (TFEU), art. 18; Parliament and Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77, art 24.

³ R Brubaker, *Citizenship and Nationhood in France and Germany* (HUP 1992), 31.

⁴ R Bauböck, ‘The Rights and Duties of External Citizenship’ (2009) 13(5) *Citizenship Studies* 475.

⁵ An example was the UK ‘15-year rule’, whereby British citizens living abroad for longer than 15 years lost their right to vote in UK elections. This rule has now been abolished with the Election Act 2022.

⁶ For an overview see R VanOers et al, *A Re-Definition of Belonging? Language and Integration Tests in Europe* (Martinus Nijhoff 2010).

⁷ See F Strumia, ‘The State and the Citizen-as-Migrant: How Free Movement Changes the Social Contract’ (2021) EUI RSC Working Paper 2021/79, <https://hdl.handle.net/1814/73020> (accessed 14 September 2023).

literature. In thus doing, it also adds a new direction to the agenda of citizenship and immigration studies.

The first part of the article considers the terms of the relation between the state and the citizen-migrant in the EU, introducing migrant citizenship. The second part distils the model of the citizenship-mobility nexus that migrant citizenship brings about and sets it against existing models of the nexus. The third part considers the implications and contribution of migrant citizenship to three distinct research agendas.

2. European Citizenship and the Emergence of the Citizen-Migrant

Much ink has been spilt on the relation between European citizenship and free movement. To briefly recap a well-known story, the association between the former and the latter has been interpreted and justified mostly in one of three ways. First, as an alliance sealing a form of market citizenship: the right to free movement of Union citizens is in this sense the generalization, with the evolution and consolidation of the single market, of the original right to move and reside in a Member State other than one's own for selected economic reasons: among others, as a worker, self-employed, student, or jobseeker.⁸ From a second perspective, initially heralded by the European Commission, the right to free movement has been seen as a tool to bolster the 'people-building' project of which the idea of a European citizenship has always embodied a legacy.⁹ And from a third perspective the right to free movement was the most salient attribute of a citizenship destined to enhance the autonomy of the individual in the context of the European project. Enhanced autonomy was the result, from this perspective, either of the way the right to free movement emancipated the citizen from the Member State of belonging; or more generally of the role of European citizenship as a vehicle for individual rights.¹⁰ The European Court of Justice, in different lines and different periods of its case law on citizens' free movement, has lent credit to each one of these accounts.¹¹

From any of these perspectives, the relation between citizenship and movement has been looked at through a same set of lenses. The thrust of the association between a status of citizenship and a right of movement across international borders is in creating a category of migrants with citizen-like rights in their host countries. The principle of non-discrimination on the basis of nationality secures this quasi-citizen status.

This lens has focused the attention in the study of citizens' free movement on the relation between the migrant citizen and his host Member State: what rights come to form part of that

⁸ For different views on the potential and limits of market citizenship see e.g. N Nic Shuibhne, 'The Resilience of EU Market Citizenship' (2010) 47 CMLR 1597; M Everson, 'The Legacy of the Market Citizen' in J Shaw and G More (eds), *New Legal Dynamics of European Union* (Clarendon Press 1995).

⁹ See Communication from the Commission to the European Parliament, 'A People's Europe', COM(88) 331 final (1988), para 3.1.2.

¹⁰ E.g. D. Kochenov, 'The Citizenship Paradigm' (2013) 15 Cambridge Yearbook of European Legal Studies 197; F De Witte, 'Integrating the Subject: Narratives of Emancipation in Regionalism' (2019) 30 EJIL 257; A. Bogdandy et al, 'Reverse Solange—Protecting the Essence of EU Fundamental Rights against EU Member States' (2012) 49 Common Market Law Review 489.

¹¹ For market citizenship see e.g. case C-333/13 *Dano* ECLI:EU:C:2014:2358; and case C-138/02, *Collins* ECLI:EU:C:2004:172. For people-building see e.g. case C-184/99 *Rudy Grzelczyk*, ECLI:EU:C:2001:458 (referring to the degree of financial solidarity owed between nationals of a host Member State and nationals of other states). For individual autonomy, see e.g. case C-34/09, *Ruiz Zambrano* ECLI:EU:C:2011:124 (protecting an individual citizen's genuine enjoyment of the substance of the rights attaching to the status of Union citizenship).

relation; what justifies those rights; what are the limits and the exceptions to those rights; how do those rights affect the welfare system and the political organization of the sovereign state; who is left at the margin of the relevant relation, the sedentary, for instance, and the third country nationals.¹²

Looked at through this host Member State-focused lens, the association between citizenship and free movement has attracted severe criticism: it is a privilege reserved for a few;¹³ it creates new lines of difference while challenging old lines of equality;¹⁴ it turns citizens into ‘accidental cosmopolitans’ and depoliticizes citizenship.¹⁵

Truth to be said, a part of the literature has also reverted the gaze in studying citizenship and free movement and questioned the role of home Member States in the context of the project.¹⁶ Even the studies that have taken home Member States as point of focus have been to some extent tributaries of the prevailing approach to citizens’ free movement. They have either looked at the obligations of home Member States as ancillary and complementary to those of host Member States; or have interpreted the enhanced role recognized by part of the case law to home Member States as a failure of the system of citizens’ free movement.¹⁷ In any case they have looked at the role of home Member States as a function of the establishment, maintenance and ultimately break-up of the relation between the migrant citizen and the host Member State. The role of free movement in altering the relation between a citizen and a home Member State has instead been overlooked.

Yet at least if one truly embraces the third perspective that the literature on citizens’ free movement has weighed, that is the perspective of enhanced individual autonomy, the very relation between citizen and home Member State ought to be the starting point. It is in the context of that relation, indeed, that enhanced autonomy manifests itself. From the negative side, enhanced autonomy follows from the reduced dependency of the citizen on the nation state of belonging – the citizen now has an exit option. From the positive side, free movement commits home Member States to several new obligations towards their own citizens that ultimately enhance the citizens’ sphere of autonomy. Most importantly for the purposes of this article, the perspective of home Member States is revealing as to how truly free movement alters the relation between citizenship, national citizenship, and international movement.

So what happens to the relation between the home Member State and its own citizen when one factors in free movement? The relation between the home Member State and its citizen

¹² For a recent reflection on the justification for relevant rights, see S Seubert, ‘Shifting Boundaries of Membership: The Politicisation of Free Movement as a Challenge for European citizenship’ (2020) 26 *ELJ* 48, 51 (the EU’s free movement regime is stuck between a human rights regime and a citizen’s rights regime). For a recent take on reverse discrimination of the sedentary, see M Van den Brink ‘A typology of reverse discrimination in European citizenship law’ (2023) 2 *European Law Open* 57. For an overview of the trajectories of a decade of literature on European citizenship, see D Kochenov, ‘The Essence of European citizenship Emerging from the Last Ten Years of Academic Debate: Beyond the Cherry Blossoms and The Moon?’ (2014) 62 *International and Comparative Law Quarterly* 97.

¹³ See A Menéndez, ‘Which Citizenship? Whose Europe? The Many Paradoxes of European Citizenship’ (2014) 15 *German Law Journal* 907.

¹⁴ See C O’Brien, ‘Civis Capitalist Sum: Class as the New Driving Principle of EU Free Movement Rights’ (2019) 56 *Common Market Law Review* 1697.

¹⁵ A Somek, ‘Europe: Political not Cosmopolitan’ (2014) 20 *Eur Law J* 142, 147.

¹⁶ E.g. A Lazowski, ‘“Darling You Are Not Going Anywhere”: The Right to Exit in EU Law’ (2015) 40 *European Law Review* 887.

¹⁷ See e.g. O’Brien (n 15), 243; E Spaventa, ‘Earned Citizenship’ in Kochenov (ed) (n 1), 215.

becomes a non-exclusive one. Understanding this non-exclusive character of the relation requires reasoning, to an extent, in reverse steps. The relation is non-exclusive because the citizen of an EU Member State, as a supranational citizen, has a claim to belong, on quasi-citizenship terms, in any of the other Member States. This status of quasi-citizenship follows from the principle of non-discrimination on the basis of nationality that promises to the supranational citizen, when lawfully in another Member State, a number of entitlements and benefits on the same terms as these are provided to the citizen. But the principle of non-discrimination on the basis of nationality only makes sense in a context where the national citizen is able to access the territory of another Member State, and to gain a lawful status in that territory. In other words, the principle makes sense in a system of free movement through internal open borders.

Freedom of movement through these open borders closes the circle: it makes the relation between the sovereign state and its own citizens non-exclusive because it normalizes movement as part of that relation. The exercise of international movement within the free movement area is not an exercise of expatriation; in the case of expatriation, the link between the state and the citizen is altered in a fundamental way. The link is maintained through the effort to engage diaspora communities that belong however in the political and social fabric of another state. Return migration is the exception rather than the rule and entails the recreation of a loosened link, or at least the re-activation of a dormant one. On the contrary, outbound migration within the free movement area is a normal part of the state-citizen relation. It is the exercise of a very right of citizenship, endorsed and guaranteed by the home Member State of the citizen in the first place. Return to the home Member State is also a part of the normal cycle of the citizen's migration and is protected in law.¹⁸ The exercise of free movement, thus, even before shaping the status of the migrant citizen vis-à-vis a host Member State, shapes the status of the citizen-migrant vis-à-vis a home Member State.¹⁹

This latter status has remained unspoken of, but it is well-documented in the case law. The Member States are under a general obligation not to adopt provisions that restrict or discourage the exercise of free movement.²⁰ On the part of home Member States this requires that they abstain from creating direct obstacles to their citizens' outward movement.²¹ It also requires that they do not introduce any indirect restrictions. Indirect restrictions have taken several different shapes in the case law. Under pretence of removing an indirect obstacle to the exercise of free movement, the European Court of Justice has indeed carved out of the Treaty provisions on freedom of movement a growing list of home Member State duties. For instance, home Member States are required to provide a range of exportable financial benefits to their citizens intending to exercise a right to free movement. Relevant benefits include study finance, disability benefits, and civilian war victims benefits.²² Home Member States are also required to recognize names as modified or composed in a host Member State for purposes of inclusion in civil registers and passports.²³ And they have a duty to accommodate the family life that

¹⁸ See e.g. case C-456/12 *O&B* ECLI:EU:C:2014:135.

¹⁹ *Strumia* (n 7).

²⁰ E.g. Case C-212/06, *Government of the French Community v Flemish Government* ECLI:EU:C:2008:178, para 45.

²¹ Directive 2004/38 (n 2) art. 4(2).

²² See respectively, case C-359/13 *Martens* ECLI:EU:C:2015:118; case C-503/09 *Lucy Stewart v Secretary of State for Work and Pensions* ECLI:EU:C:2011:500; case C-192/05 *Tas-Hagen* ECLI:EU:C:2006:676.

²³ Case C-353/06 *Grunkin Paul* ECLI:EU:C:2008:559; Case C-541/15 *Freitag* ECLI:EU:C:2017:432.

their citizens have created or reinforced while in the exercise of free movement, through granting a right of residence to third country national family members upon the citizen's return to the home Member State.²⁴

In all these instances the home Member State is called to protect its citizens in their capacity as actual or potential migrants. The relevant obligations point to a subtle but consequential transformation in the relation between the sovereign state and its citizen: this relation comes to embrace international mobility as a citizen's freedom.²⁵ In the context of this renewed relation, the sovereign state takes on the additional function of being the agent of the citizen's mobility. This role of the sovereign state certainly has a negative dimension. This is the dimension that has been explored and illustrated in the case law – the state has to make sure that conditions and requirements at the national level do not impede or discourage migration. It also has to ensure that returning migrants do not suffer a disadvantage for having migrated. But if one fully embraces the notion of migrant citizenship there is also a positive dimension to this role of the state as agent of mobility. The state has to create and maintain the international relations that fulfil the citizen's ability for migration. It has to protect the external interests of the citizen. Reconceiving mobility as a citizen's freedom, in challenging a lingering association between citizenship and settlement, brings a hard shake, in turn, to existing understandings of the citizenship-mobility nexus.

3. Recasting the Citizenship-Mobility Nexus: Migrant Citizenship

Sedentism has in recent centuries become a dominant trait of most human social systems, and certainly characterizes the social system of the sovereign state.²⁶ However mobility has been and remains a fundamental aspect of the life of humans. Wanderings, migrations, displacements and colonizations have marked the very pace of human evolution.²⁷ A certain dualism thus characterizes the human condition, one between sedentism and nomadism, mobility and settlement. In this dualism, citizenship, as a status that files a person at birth to a sovereign state and in most cases seals a life-long link to the relevant state, tilts the balance towards settlement.²⁸

Many, if not most of the rights that citizenship entails – political, economic, welfare rights- are held vis-à-vis this state entity and enjoyed through residence within its territorial boundaries. The legal identity of the citizen is also firmly tied to the state. Through the grant of a passport, the state certifies and guarantees that identity – the sole manner in which the individual is recognized by any other state. And thus, through the grant and withdrawal of the passport, and with it of the citizen's legal identity, the state also holds the monopoly of the citizen's

²⁴ Case C-456/12 *O&B* ECLI:EU:C:2014:135; Case C-673/16 *Coman* ECLI:EU:C:2018:385.

²⁵ *Strumia* (n 7), 9-10.

²⁶ For a fascinating account of the emergence of sedentism, and the role of the state in this respect, see J Scott *Against the Grain – A Deep History of the Earliest States* (Yale University Press 2017).

²⁷ *Ibid.*, 2-5 (noting that for ninety-five percent of the human experience on earth, humans lived a nomad life). Also see N McDonnell, *The Civilization of Perpetual Movement – Nomads in the Modern World* (Hurst and Co. 2016).

²⁸ See in this sense R Bauböck, 'Democratic Inclusion: A Pluralist Theory of Citizenship', in R Bauböck (ed) *Democratic Inclusion - R. Bauböck in Dialogue* (Manchester University Press 2017) 3 ('sedentariness creates the conditions under which citizens can collectively authorize and hold accountable a territorial government').

international mobility options.²⁹ Equally, the duties that typically come with citizenship – such as, for instance, military service and tax liabilities - are owed to the state as a territorially defined entity. To tax the citizen and count her in for several purposes, electoral registers, the census, jury duties, conscription, the state relies precisely on categories that evidence settlement, such as residence, domicile, occupation of a dwelling. On the other hand, as the sole status that guarantees an unconditional right to stay in, and return to, the territory of the state, citizenship is the best protection available to the person who intends to live a settled life.

When acquired through naturalization in a host country during a person's life rather than at birth, citizenship still links to settlement. The award of citizenship is usually the last step in a migrant's course of integration and settlement within the economic, social and political community of a host state. Under the nationality legislation of most countries, length of residence is the first and foremost condition of eligibility for naturalization.³⁰ And length of residence in the territory of a state of course speaks to settlement within its community.

In citizenship literature efforts to emancipate the theory of citizenship from the nation state have built in relevant part on the delinking of the experience of citizenship from the national territory. In its post-national version, citizenship becomes associated with personhood rather than with nationality, as the 'locus' for the claiming and fruition of citizenship rights is no longer the territory of the nation state but rather a broader space where international institutions operate and nation states cooperate.³¹ In its trans-national meaning citizenship captures the individual's condition of plural belonging across several overlapping spheres, only one of which coincides with the national community.³² And in its supranational meaning, citizenship expresses the horizontal link among several sovereign states that have committed to mutually recognize their respective citizens as the holders of a claim to access, rights and voice within each of their national communities.³³

Each of these visions, in the effort to push the scope of citizenship beyond the boundaries of the nation state, ends up challenging the association between citizenship and settlement. In thus doing, it confirms, *a contrario*, that very association as a denoting character of national citizenship. This implied association between citizenship and settlement makes for a complex nexus between citizenship and mobility, that takes on different configurations depending on the type of movement that one considers. Figure 1 proposes a taxonomy of these configurations.

²⁹ See J Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (CUP 2000). Also see S Mau et al., 'The Global Mobility Divide: How Visa Policies Have Evolved Over Time' (2015) 41 *Journal of Ethnic and Migration Studies* 1213.

³⁰ For an overview of the conditions for the acquisition of nationality in the legislation of 177 countries see the EUI Global Citizenship Observatory Global Nationality Laws Database [Global Nationality Laws Database - Globalcit](#) (accessed 17 September 2023).

³¹ See Y Soysal, *Limits of Citizenship – Migrants and Postnational Membership in Europe* (Chicago University Press 1994).

³² See R Bauböck, *Transnational Citizenship – Membership and Rights in International Migration* (Edward Elgar 1994); also see M Collyer 'Diasporas and Transnational Citizenship' in A Shachar et al (eds), *Oxford Handbook of Citizenship* (Oxford University Press, 2017).

³³ See F Strumia, *Supranational Citizenship* in A Shachar et al (n 32).

Figure 1. The Citizenship-Mobility Nexus

	Non-interference	Enabling	Sequential/conflictual	Migrant citizenship
Nature of nexus	Citizenship is neutral in respect to mobility options. Movement does not affect citizenship status	Citizenship status, evidenced through passport, enables movement	Citizenship status (host country) as end point of migration process. Link to home country is altered through migration	Mobility as a citizen's freedom. The migrant moves as a citizen
Examples	Internal movement	Short-term international travel	Long-term international migration	Regional international movement in the EU

In a first configuration of the nexus, the relation between citizenship and mobility is one of non-interference and mutual neutrality. Having or not having citizenship status does not alter internal mobility options: citizenship is thus neutral in respect to internal movement. And the exercise of mobility does not interfere with citizenship status. This first configuration applies to internal movement within the borders of the sovereign state. Under international law internal movement is a right that a state is bound to guarantee, save for exceptional circumstances, to everyone lawfully within its borders.³⁴ It is thus a right independent of citizenship.

In a second configuration of the nexus the relation is rather one of support and enabling: citizenship status enables movement. This is the case for short-term international movement. The physical manifestation of citizenship status is the passport. Holding a valid and internationally recognized passport is an unavoidable requirement to exercise mobility on an international basis. Not only, states also negotiate visa conditions and visa waivers for their passport holders. In this sense citizenship is the very enabler in respect to both the ability to cross an international border, and the ability to enter another state for purposes of short-term business, leisure or family visits.³⁵

In a third and last configuration of the nexus, that embraces the relation between citizenship and international migration, this relation is either sequential or conflictual, depending on whether one looks at it through the lens of the citizenship one aspires to acquire through migration, or through the lens of the citizenship one holds when undertaking migration. Through the former lens, the award of citizenship comes at the very end of the journey of the migrant, once he is integrated and settled in the host country. In rewarding settlement, citizenship thus follows and concludes movement for purposes of international migration. Through the latter lens, citizenship per se discourages long-term migration. The citizen who migrates out of a state of nationality becomes an external citizen.³⁶ As migration lays the grounds of a relation with a new state, the relation of the citizen to the state of origin weakens. Under the nationality law of some states citizenship, or some of the rights attached to it, are lost in the long run through absence from the state.³⁷ A corollary of this configuration of the

³⁴ See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 12(1).

³⁵ See S Mau (n 29).

³⁶ Bauböck, (n 4).

³⁷ For instance, Dutch provisions on loss of citizenship by operation of law through absence from the state territory were at stake in the European Court of Justice case C-221/17 *Tjebbes* ECLI:EU:C:2019:189. As a

nexus between citizenship and international migration is a marked antithesis, from the perspective of any given state, between the status of the migrant and that of the citizen in that state. The migrant is, by default, the non-citizen, who may become citizen at the completion of a course of settlement and integration. And the citizen is, by default, the non-migrant. If undertaking migration, the citizen is at least to an extent exiting his status of citizen.

In recognizing mobility as a citizen's freedom, European citizenship reconciles this antithesis. Through committing the Member States to protect their citizens in their capacity as migrants, European citizenship challenges the very idea that the status of the migrant contrasts that of the citizen. It rather points to migrant status as one of at least two legitimate ways to live the citizen condition, a sedentary way and a migrant way. At the same time, as it attaches a right to international mobility to the status of citizenship, European citizenship pushes international migration in the frame of free movement from the conflictual/sequential configuration of the citizenship-mobility nexus to a novel type of enabling configuration.

On the one hand citizens' free movement does not fit in the conflictual/sequential configuration. The exercise of free movement does not detract from the status of citizenship, whether national or supranational. It is on the contrary a very form of exercise of citizenship. Also, the sequence between movement and citizenship is reversed. Exercising free movement does not need to lead to the acquisition of the citizenship of another Member State. As the migrant citizen is covered by a broad equal treatment guarantee in a host Member State, the migrant citizen has a status in that Member State already on the basis of holding the citizenship of his Member State of origin. And conversely holding the latter citizenship is the very pre-requirement to benefit from the right to free movement.³⁸ It is the status of citizenship, national and supranational, that empowers the citizen to exercise international migration.

In instituting this enabling relation between citizenship and international migration, European citizenship problematizes existing understandings of the citizenship-mobility nexus in a much more profound way than it appears at first sight. A relation in which citizenship enables international migration is unique in its kind.

One may object that the same happens in at least two other contexts. First, in the context of interstate movement within a federal union of states, where as is the case in the US the narrative, if not the legal possibility of a 'right to travel' is linked to federal citizenship.³⁹ Second, in the context of migration towards a state whose citizenship the migrant already holds as a dual nationality, obtained for instance by virtue of ancestry or by virtue of an investment.⁴⁰ The role of citizenship in enabling movement, and the type of movement that is enabled differ however in these latter two cases from that of European citizenship and free movement.

In the federal case, the right to move interstate is tied to the citizen's status of belonging in the federation at large. It depends on the relation between the citizen and the federal level state, for

further example, under the '15-year rule' British nationals lost the right to vote in UK elections after 15 years of residence abroad. However the rule has been removed with the Election Act 2022.

³⁸ See TFEU, art. 20 and art. 21.

³⁹ See S Kreimer, "But Whoever Treasures Freedom...": The Right to Travel and Extraterritorial Abortions' (1993) 91 Michigan Law Review 907, 914-917.

⁴⁰ On compensatory dual citizenship, see J Harpaz, *Citizenship 2.0: Dual Nationality as a Global Asset* (Princeton University Press 2019); on investment citizenship see D Kochenov, M Sumption and M Van den Brink (eds), *Investment Migration in Europe and the World: Current Issues* (Hart 2024).

as mediated by state or local citizenship that relation may be.⁴¹ Also for many purposes interstate movement in the territory of a federal state bears a closer analogy to internal movement within a unitary state than to international migration. Instead EU citizens' free movement entails mobility across a set of international borders, for as open as these may be. And it depends on the commitment of the EU Member States to mutually recognize their respective citizens rather than on those citizens' link to the Union and its institutions.

In the case of dual citizenship, it is not the first citizenship that enables outward movement and entry into the second state. It is the citizenship of the second state that authorizes inbound movement of the dual citizen. The contextual holding of two passports opens a specific mobility corridor to the dual national. This corridor does not depend on an agreement or commitment to mutual recognition on the part of the states that sit at the two ends of the corridor as is the case of European citizenship. It depends on the cumulative effect of two individual citizenships unilaterally exercising their role of authorization to settlement within the borders of a given state.

In both cases the association between citizenship and settlement is preserved. As it is preserved in each of the configurations of the citizenship-mobility nexus that have been explored above. The nexus is one of non-interference in the case of internal movement within the territory of the citizen's settlement. It is one of empowerment in respect to short term movement out of the territory of settlement, on the assumption that such movement is not meant to disturb the underlying condition of settlement. It is a sequential link in the case of the international migrant as citizenship rewards his re-settlement in a new state. It is a conflictual one in the case of the birthright citizen who becomes a migrant, as international migration disrupts his condition of settlement.

In the case of European citizenship, instead, the default association between citizenship and settlement is at least in part disrupted. European citizenship, in endorsing a status of migrant citizenship, challenges the very presumption that citizenship is a condition associated with settlement.⁴² Mobility turns into a citizen's freedom. The migrant travels as a citizen. As a result, citizenship can be migrant or settled. Both are legitimate ways to experience the citizen condition. And both ways deserve, and call for, state protection.

4. The Implications of Migrant Citizenship

The emergence of a migrant citizenship in the terms considered above flips the role of the sovereign state in the context of the migrant-citizen cleavage. Migrant citizenship calls for the state to act not, or not just, as a border guard screening migrants on behalf of the citizen-sedentary and their interests, but also as an agent for the citizen-migrants. Taking stock of this flipped role of the state drives new questions, or new directions, for at least three distinct research agendas.

⁴¹ In this sense, see US Supreme Court, *Crandall v Nevada*, 73 U.S. (6 Wall.) 35, 48-49 (1868). Also see *Passenger Cases*, 48 U.S. (7 How.) 283, 492 (Taney, C.J., dissenting). Also see Kreimer (n 39), 914; F Strumia 'Individual Rights, Interstate Equality, State Autonomy: European Horizontal Citizenship and its (Lonely) Playground from a Trans-Atlantic Perspective', in Kochenov (n 1).

⁴² The link between European citizenship and mobility is widely acknowledged in the literature. See e.g. Seubert (n 12), 49. 'While national citizenship was traditionally linked to being rooted in a territory, European citizenship is inherently linked to mobility'. The point that is made here, however, is that the newly established link that European citizenship establishes is between national citizenship and mobility.

and participatory dimensions of European citizenship starting at the national level may follow from embracing this alternative focus.

At the same time as it redirects the attention to the state-own citizen relation in the EU context, migrant citizenship may also prove a valuable analytical tool in the context of other projects of free movement beyond the EU one. In this sense, it contributes to a second research agenda on regional integration in a broader comparative perspective.⁴⁷

Beyond the EU project, several other regional associations have in place, indeed, systems of free movement among the participating states. For instance, the Association of South East Asian Nations (ASEAN), established in 1967 and comprising today ten member states, allows free movement of certain classes of travellers as part of its project of political and economic integration.⁴⁸ The Economic Community of West African States (ECOWAS) joining 15 African States, recognizes free movement of persons as one of its general objectives.⁴⁹ Three other projects have linked a right to regional free movement to a project of common citizenship: the Caribbean Community (CARICOM), formed in 1973 among 20 Caribbean countries; MERCOSUR, established in 1991 between Brazil, Argentina, Uruguay and Paraguay; and the Gulf Cooperation Council, joining since 1981 Oman, Bahrain, Qatar, Kuwait, Saudi Arabia and the United Arab Emirates in an economic and political union.⁵⁰

As an analytical tool for these projects, migrant citizenship suggests to partly shift the attention away from the nature of the integration project and from the rights and status of regional migrants in host countries.⁵¹ It rather leads to question, along the same lines as in the EU context, the impact of projects of regional free movement on the terms of the social contract between different sovereign states and their citizens. Novel questions emerge: to what extent mobility is internalized as a right of the citizen at the national level? And what novel obligations

⁴⁷ For a sample of a vast field, see A Geddes, *Governing Migration Beyond the State: Europe, North America, South America and Southeast Asia in a Global Context* (Oxford University Press 2021); S Lavenex and N PIPER (eds) 'Special Issue: Regions in Global Migration Governance' (2022) 48 *Journal of Ethnic and Migration Studies*.

⁴⁸ See ASEAN Agreement on Movement of Natural Persons, signed in Phnom Penh on 19 November 2012, [2012-ASEAN-Agreement-on-the-Movement-of-Natural-Persons.pdf \(nus.edu.sg\)](https://www.nus.edu.sg/2012-ASEAN-Agreement-on-the-Movement-of-Natural-Persons.pdf) (accessed 17 September 2023); also see ASEAN Secretariat, 'ASEAN Economic Community Blueprint 2025', [AECBP_2025r_FINAL.pdf \(asean.org\)](https://asean.org/AECBP_2025r_FINAL.pdf) (accessed 17 September 2023), art. 19-21.

⁴⁹ See Economic Community of West African States (ECOWAS), Revised Treaty 1993, [Treaty | Economic Community of West African States \(ECOWAS\)](https://www.ecowas.org/Treaty%20Economic%20Community%20of%20West%20African%20States%20(1993).pdf) (accessed 17 September 2023); also see Protocol A/P 1/5/79 Relating to Free Movement of Persons, Residence and Establishment, ECOWAS O.J. 1979/1, [http://www.unhcr.org/49e47c9238.pdf](https://www.unhcr.org/49e47c9238.pdf) (accessed 17 September 2023).

⁵⁰ For CARICOM, see Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Caricom Single Market and Economy, 2001, [Revised Treaty of Chaguaramas \(caricom.org\)](https://www.caricom.org/Revised-Treaty-of-Chaguaramas) (accessed 17 September 2023), art. 45-46; also see David S. Berry, *Caribbean Integration Law* (OUP 2014). For MERCOSUR, see Decision of the Council of MERCOSUR, 'Estatuto de la Ciudadanía del Mercosur. Plan de Acción', n. 64/10, December 2010, art. 2, [Estatuto de la Ciudadanía del Mercosur - MERCOSUR](https://www.mercosur.int/Estaduto-de-la-Ciudadania-del-Mercosur-MERCOSUR) (accessed 17 September 2023); for the Gulf Cooperation Council see Cooperation Council for the Arab States of the Gulf, Secretariat General, Economic Agreement, 31 December 2001, [http://www.wipo.int/wipolex/en/other_treaties/text.jsp?file_id=227910](https://www.wipo.int/wipolex/en/other_treaties/text.jsp?file_id=227910) (accessed 17 September 2023), art. 3. Also see Strumia (n 33), 683-685.

⁵¹ For some inquiries from these perspectives see e.g. D Acosta Arcarazo, *The National vs the Foreigner in South America: 200 Years of Migration and Citizenship Law* (Oxford University Press 2021); L Hong Tan, 'Will ASEAN Economic Integration Progress Beyond a Free Trade Area?' (2004) 53 *International & Comparative Law Quarterly* 935.

does the state come to owe to its citizens as a result? To what extent does the state act as an agent for the mobile citizen in the regional system of free movement?

Ultimately, the migrant citizenship paradigm, in spite of its regional origin, brings a potential important contribution to a third research agenda on citizenship and immigration in broader terms. The key inquiry in this sense is how citizenship has evolved and what its prospects are if one looks at it from the point of view of immigration. A broad interdisciplinary field of study has developed in the penumbra of Rogers Brubaker's original intuition that citizenship is internally inclusive and externally exclusive.⁵² Some of the key questions in the relevant field pertain to how citizenship is accessed and to the dynamics according to which the rights of citizens are extended to non-citizens.⁵³ Christian Joppke about a decade ago offered an optimistic assessment in this sense, detecting a liberalizing trend in the Western world across three dimensions of citizenship: as a status it was becoming more easily accessible; its rights content was being extended to non-citizens; as a marker of identity it was opening to the integration of newcomers.⁵⁴

In recent years gloomier perspectives have prevailed. Access to citizenship is once again taking on ethnic connotations, while citizenship as a status is being commoditised, instrumentalised and weaponised.⁵⁵ Racial and ethnic profiling in border controls and novel forms of discrimination have inspired some to suggest that the exclusive outer shell of citizenship is tearing apart its inclusive internal fabric.⁵⁶ In-between these rosier and gloomier views, the perspective of migrant citizenship opens up a third way, through reverting once again the gaze. It invites to question, beyond how one gets to citizenship through migration or how one gets to the rights of the citizens as a migrant, how citizenship is exported through migration and through whose agency. Migrant citizenship pushes to question, from an empirical standpoint, what rights citizens bring along when they become migrants. From a normative standpoint, it leads to ask what rights they ought to bring along as migrants.

Along this third way, the relation between the inclusive core and the exclusive shell of citizenship comes under question from a novel angle. What happens to the exclusive outer shell when the inclusive core of citizenship is stretched and the migrant travels as a citizen who brings along his citizenship status? And in turn what model of inclusion and co-existence does a citizenship that can be exported through migration call for? The former question ultimately points to the ability of citizenship to become inclusive from the outside in. The latter question

⁵² Brubaker (n 3), 21.

⁵³ In the former sense, see e.g. Brubaker (n 3); in the latter sense see e.g. Soysal (n 31); L Bosniak, *The Citizen and the Alien – Dilemmas of Contemporary Membership* (Princeton University Press 2006). Also see C Joppke, *Citizenship and Immigration* (Polity Press 2010), 27-31.

⁵⁴ Joppke (n 53), 31.

⁵⁵ See A Shachar, 'Beyond Opened and Closed Borders: The Grand Transformation of Citizenship' (2020) 11 *Jurisprudence* 1, 21-25; C Joppke 'The Instrumental Turn of Citizenship' (2019) 45 *Journal of Ethnic and Migration Studies* 858; EUI Global Citizenship Observatory Forum, 'Weaponized Citizenship: Should International Law Restrict Oppressive Nationality Attribution?', [Weaponized Citizenship: Should international law restrict oppressive nationality attribution? - Globalcit](#) (accessed 18 September 2023).

⁵⁶ See e.g. S Salomon, 'Citizenship and Unauthorized Migration: A Dialectical Relationship' (2020) 83 *Modern Law Review* 583; also see R Barbulescu and A Favell, 'Commentary: A Citizenship without Social Rights? EU Freedom of Movement and Changing Access to Welfare Rights' (2020) 58 *International Migration* 151.

re-enters from an alternative door an old debate between integration of migrants and multicultural citizenship.⁵⁷

5. Conclusion

In response to the question with which this article started off European citizenship has blurred the boundary between the status of the citizen and that of the migrant, through reconfiguring international mobility as a citizen's freedom. This is not just because it has singled out a category of migrants for quasi-citizenship status in a host country. But also because it has in relevant part rewritten the pact between the sovereign state and its own citizens: this pact has come to contemplate outward migration, and its protection, among its clauses. The result is that the migrant is but a way of being of the citizen. The sovereign state is compelled to cater to both the sedentary and the migrants among its citizens, and to mediate among their respective interests in discharging its role.

It has made room in this way for a form of citizenship, migrant citizenship, that potentially alters ingrained understandings of the citizenship-mobility nexus. At the very least, migrant citizenship challenges a long-standing association between the idea of citizenship and the idea of settlement: citizenship files the individual to a territorial state, it is mostly expressed and experienced through residence in the territory of the state, and it both presumes and entails allegiance to that state. Migration tampers with each of these aspects.

Migrant citizenship instead reconciles the status of citizenship and the experience of migration: being filed to a Member State of the EU is the very enabling condition for international migration in the regional frame; migration goes hand in hand with the possibility to take up residence in different Member States; and as migration becomes a natural part of the condition of the citizen, it cannot be interpreted as a sign of lack of allegiance.

Migrant citizenship, in the terms explored in this article, has not been central so far to the epistemology of European citizenship. The potential of European citizenship has been assessed and criticized through categories borrowed from the paradigms of sedentary citizenship and of migration. From these perspectives, European citizenship has proven an unfinished project, and one ultimately yielding more exclusion than inclusion. Migrant citizenship offers an alternative assessment tool. The notion of migrant citizenship may help tackle one of citizenship's fundamental dilemmas. This is the dilemma of being a condition of inclusion premised on one of exclusion, and of exclusion on rather arbitrary terms.⁵⁸ The condition of citizen indeed is achieved in the vast majority of cases through a 'birthright lottery'.⁵⁹ Rethinking the citizenship-mobility nexus along the lines suggested by migrant citizenship can mitigate citizenship's exclusionary character, and thus potentially make its arbitrariness less consequential. Migrant citizenship indeed places the emphasis on reconceiving migration as a citizen's freedom and on the duty of the state to protect the external opportunities of the citizen.

⁵⁷ For two prominent voices in the debate see W Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford University Press, 1996); L Orgad, *The Cultural Defence of Nations: A Liberal Theory of Majority Rights* (Oxford University Press, 2015). Also see S Vertovec, 'Towards Post-Multiculturalism? Changing Communities, Conditions and Contexts of Diversity' (2010) 61 *International Social Science Journal* 169.

⁵⁸ J Carens, *The Ethics of Immigration* (Oxford University Press 2013), 226 (citizenship is the modern equivalent of feudal privilege).

⁵⁹ A Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009).

In displaying a novel aspect of the citizenship-mobility nexus, migrant citizenship reshuffles the very categories of inclusion and exclusion in whose respect citizenship has traditionally served as a watershed. It promises this way important insights for the theory of citizenship at large.