

## The Three Levels of Citizenship within the European Union

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European Union citizenship is derived from Member State nationality. This fact often has been considered a “birth defect” to be overcome by either disconnecting EU citizenship from Member State citizenship or by reversing the relationship in a federal model so that Member State citizenship would be derived from that of the Union. I argue in this essay that derivative citizenship in a union of states can be defended as a potentially stable and democratically attractive basic feature of the architecture of the EU polity where EU citizenship is perceived of as one layer in a multi-level model of democratic membership in a union of states such as the EU. This perspective is not a defense of the status quo, but rather allows for—or even requires—a series of reforms addressing a number of inconsistencies and democratic deficiencies in the current citizenship regime.

Most academics writing about Union citizenship tend to compare it to that which they know best: Nation State citizenship. It then comes as no surprise when they conclude that the current construction of EU citizenship is internally incoherent, externally not sufficiently inclusive, and also lacking in democratic legitimacy. To a certain degree, I agree with this criticism; however, such authors often apply the wrong standard of comparison and therefore are likely to promote faulty solutions. As the EU Treaties clearly have spelled out since the 1997 Treaty of Amsterdam, EU citizenship is complementary or additional to Member State nationality without replacing it. National citizenship is a constitutive element of EU citizenship and therefore cannot serve as an external standard of comparison.

Scholars have described the EU polity as a multi-layered system of governance and governments for some time now. The EU consists not only of the supranational institutions of the European Commission, the Council, the European Parliament, and the Court of Justice of the European Union (CJEU), but also of the national parliaments and governments of the Member States. There is a corresponding system of multi-level citizenship in the Union that needs to be studied and evaluated as a constellation where individuals have plural memberships and where citizenship regimes are connected with each other across levels.

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### A. Local, National, and Supranational Citizenship

This multi-level perspective avoids regarding EU citizenship as either a post-national alternative to Member State citizenship or as a mere appendix filled with a few additional rights not deserving of the label “citizenship” in the strong sense of a status of equal membership in a self-governing polity.

We neither have to envision a futuristic world nor travel far back in history in order to understand how a multi-level system of citizenship can work. Every larger democratic state already internally contains some type of multi-level citizenship regime. It is true that only a few federal states, such as Austria, Switzerland, and the United States of America, formally acknowledge in their constitutions a citizenship of their provinces or states. Yet even highly centralized states, such as France, have elections for regional assemblies that enjoy a range of devolved decision-making powers. While unitary and federal constitutions differ greatly with regard to the political status and powers of sub-national territories, all democratic states, apart from micro states and city states, are subdivided into municipalities with democratically-elected offices such as local councilors or mayors.

The qualifier “self-governing” polity used in the above definition of citizenship does not refer to sovereignty or independence in external relations to other polities. Instead, it refers to the concept of “popular sovereignty” as the requirement that political authority must be internally authorized by citizens through democratic participation and procedures. This interpretation allows dependent polities to be considered as self-governing even if their powers have been delegated or circumscribed by another level of government. Municipalities may be constitutionally-dependent polities whose powers are determined by higher-level governments such as provinces or sovereign states. Yet, as municipalities have devolved autonomy and democratic elections for local governments, they also have their own citizens.

From a neo-republican perspective emphasizing non-domination,<sup>1</sup> local level citizenship is not only a common feature of contemporary democracies but also a democratic requirement. It makes little difference in a classic liberal view whether all individual rights are guaranteed by a central government in a uniform way throughout a state territory or whether local governments are responsible for protecting some of these rights. A neo-republican emphasis on non-domination adds to this a positive reason for local citizenship. If self-government is considered as an intrinsically important value preventing the domination of citizens by the arbitrary exercise of power, it then is not a trivial or morally neutral question whether local matters are decided by governments accountable to local

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<sup>1</sup> See PHILIP PETTIT, *REPUBLICANISM. A THEORY OF FREEDOM AND GOVERNMENT* (1997); QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998).

citizens or by national governments accountable to all national citizens. If central state authorities were in charge of deciding all matters of local government, then representatives of national majorities would unjustly dominate the inhabitants of municipalities.

Conceiving of democratic states as polities with nested layers of local, regional, and state level citizenship is not only a useful analogy for better understanding the EU citizenship constellation, but sub-national citizenships also form an integral part of this constellation. There are not only two, but at least three distinct levels of individual membership in the Union that are universally present throughout the EU polity and include all its resident citizens: local, national, and supranational citizenships.

### **B. Birthright Citizenship at State Level**

If citizenship at its core is a membership status, then the first task when describing this triple level structure is analyzing the rules determining who is a member at each level of the polity. For the national level, such rules are laid down in nationality laws. These laws differ enormously with regard to their specific legal provisions and conditions for acquisition and loss of nationality, not only globally, but also within the EU. Though, once such rules are compared to the rules for determining citizenship in supranational and local polities, it becomes obvious that all nationality laws have a common basic structure and purpose.

A fundamental feature of nationality law in modern states is automatic acquisition of citizenship status at birth, either by descent from citizen parents (*ius sanguinis*) or by birth in the state territory (*ius soli*). These two principles are often contrasted and associated with ethnic and civic conceptions of citizenship respectively. This contrast is exaggerated for two reasons. First, nearly all states combine both principles. The difference is mainly in how much weight each is given. States where *ius soli* dominates domestically, such as the United States, have *ius sanguinis* provisions for the second generation born abroad. And most states where *ius sanguinis* dominates also have domestically *ius soli* provisions for foundlings or children otherwise born stateless. Second, the differences between *ius soli* and *ius sanguinis* in many ways are less interesting than their commonalities. Both confer citizenship at birth or based on circumstances of birth and turn individuals into citizens for an unlimited time that normally is expected to last a whole life. Birthright and lifetime citizenship are remarkable features in the context of liberal democracy because they do not conform to expectations that membership in a liberal polity should be based on individual consent or on inclusion of all who reside in a territorial jurisdiction.

*Ius sanguinis* is often considered as “inherited” citizenship. The metaphor of inheritance, however, is misleading. *Ius sanguinis* citizenship is not analogous to a property inherited at a parent’s death. There is no transaction as with a property previously owned by a parent and subsequently owned by the child. In addition, the acquisition of citizenship by the child

is related to the child's birth rather than the parent's death. A somewhat closer, but still misleading analogy is the idea of inheriting genetic properties. Children "inherit" most of their parents' genes at conception and share these subsequently with their parents. The same could be said about an inherited citizenship status. However, the crucial impact of genetic descent is that it underpins a special relation that children have with their parents, distinguishing them from the children of other parents. By contrast, *iure sanguinis* citizenship establishes a relation of similarity and equality between all children born to citizen parents rather than a special relation between parents and their biological offspring. Citizenship status acquired *iure sanguinis* is a relation of horizontal equality among biologically unrelated individuals whose parents were citizens of the same polity. In this respect, *ius sanguinis* serves exactly the same function as *ius soli*, which establishes the same relation of horizontal equality among those sharing the circumstance of birth in a particular territory.

The acquisition of citizenship by naturalization and the loss of citizenship through renunciation or withdrawal are merely corrective rules serving to resolve marginal discrepancies between a citizenship population determined by birthright and a reference population that states want to exclude or include. The need for such corrective devices arises mainly because of migrations generating non-resident populations with, and resident populations without, birthright citizenship.

Correcting birthright allocation, though, is also necessary when international borders change, either through state breakup and secession or through unification and territorial incorporation. Three different rules have been used for the initial determination of citizenship of populations in newly independent states or incorporated territories: (1) a zero option including all residents at the time of independence; (2) a restoration option referring back to citizenship in an independent predecessor state; and (3) the transformation of a previous federal entity citizenship into that of an independent successor state.

The zero option has been chosen by the vast majority of post-Soviet states which have no prior history of independent statehood. Estonia and Latvia opted for a restoration model excluding most of their large Russian minorities from access to citizenship at independence.<sup>2</sup> In both the violent breakup of Yugoslavia and the peaceful separation of Czechoslovakia, the previously fairly insignificant citizenships of the various federal republics were upgraded into new national citizenships of the successor states. Just as with *ius soli* and *ius sanguinis*, these three rules for determining collective acquisitions of citizenship in new states or territories can in various ways be combined and are mostly implemented together with option rights for a citizenship other than the one assigned through the primary rule.

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<sup>2</sup> William Rogers Brubaker, *Citizenship Struggles in Soviet Successor States*, 26(2) INT'L MIGRATION REV. 269, 277-84 (1992).

It is crucial to understand that only shifting international borders automatically lead to inclusion or exclusion of entire territorial populations. Democratic states with stable borders never include first-generation immigrants without asking for their consent. One might object that there is the exceptional case of co-ethnic immigrants in Germany and Israel who have been automatically naturalized upon entry. However, these groups have been identified as members of the nation prior to immigration. Accepting the invitation to “return” implies consent by the immigrant to acquiring full citizenship status.

Correcting birthright allocation through naturalization therefore requires an individual application, as does voluntary renunciation by non-resident citizens. Involuntary withdrawal of citizenship by the state is sometimes used as a sanction, but may also affect persons who are seen as lacking a genuine link to the state concerned. This is sometimes the case if persons have inherited their citizenship through birth abroad and have never taken up residence in their ancestors’ country of origin. In any case, acquisition and loss of citizenship in democratic states that is not based on birthright is regulated by procedures involving individual consent or qualifications for membership. Thus, primary determinations of citizenship at the birth of both states and individuals are corrected by consent-based secondary determinations for individuals who want to change, or no longer have a claim to retain, their initial citizenship.

What is the purpose of birthright citizenship and how can it be justified? All modern states are constructed as trans-generational political communities and birthright membership is the crucial mechanism supporting their continuity. There are also distinctly democratic reasons for birthright allocation. Governments of independent states wield comprehensive political powers over their subjects and take decisions affecting future generations in important ways. While this may also be true for some powerful non-state actors, such as large corporations, only political governments can be held accountable by and be made responsive to citizens. If all citizens regarded themselves as merely temporary residents living among other temporary residents, then they would have little reason to support long-term decisions for the sake of future generations.<sup>3</sup> Instead of hoping to win a political argument or election, exit would become the preferred response by minorities who regard majority decisions as contrary to their fundamental interests or convictions.

The focus of normative critique therefore should not be on birthright as such, but rather on those rules generating unjustifiable exclusion or over-inclusion. Every birthright regime not properly corrected by fair access to naturalization unjustly excludes first generation immigrants. For similar reasons, an *ius sanguinis*-based regime that automatically includes the children of citizens independently of whether their parents have ever lived in the

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<sup>3</sup> See Rainer Bauböck, *Temporary Migrants, Partial Citizenship and Hypermigration*, 14(5) CRITICAL REV. OF INT’L SOC. & POL. PHIL. 665, 685 (2011).

country is over-inclusive as it turns extra-territorial populations into citizens based on a criterion that does not indicate a genuine link to the polity.

### C. Residential Citizenship at the Local Level

Yet in contemporary states, citizenship at the local level is no longer determined through birthright.<sup>4</sup> Liberal democracies grant internal freedom of movement not merely to their own citizens, but instead to all legal residents in their territory, and local governments provide public services to all those residing within their jurisdiction. It is true that most democratic states still reserve the franchise in local elections to their national citizens. However, national citizens do not have to apply for local naturalization after moving to a different municipality; they are automatically included as local citizens with full participatory rights after a certain period of residence. Moreover, fourteen European states, twelve of which are EU Member States, have fully disconnected local from national citizenship by also enfranchising third-country nationals.<sup>5</sup>

A second type of citizenship regime based on *ius domicilii*, i.e., automatic residential membership, is thus found at the local level. Birthright citizenship at the state level has a sticky quality due to its strong external dimension. It is not lost through emigration and can be passed on to at least the second generation born abroad. This is also a main reason why plural nationality is becoming more frequent. A growing number of children of migrant origin acquire several citizenships at birth. Moreover, an increasing number of states also tolerate dual nationality in cases of naturalization or voluntary acquisition of a foreign nationality. By contrast, local citizenship is fluid and generally singular at any point in time. Taking up residence in another municipality leads to automatic acquisition of a new citizenship and automatic loss of a previous one.

This arrangement can again be supported by democratic reasons. Local governments are responsible for providing public services to local residents and ought to be accountable to these residents. Discrimination on grounds of nationality is arbitrary from the perspective of local self-government. But why do arguments in favor of birthright citizenship not also apply to the local level? The answer is simply that local residential citizenship is not an independent structure. It is nested within a national citizenship regime, so that every local

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<sup>4</sup> This is a relatively recent development. Birthright citizenship in municipalities (*Heimatrecht*) in late 19<sup>th</sup> century Austria and Germany was used to restrict internal migration by denying poverty relief and access to local public services to citizens residing outside their municipality of birth. Switzerland's *Bürgergemeinden*, in which membership is acquired at birth, is a historical remnant of this system. Today's *hukou* system in the Peoples' Republic of China is an extreme case of local birthright citizenship as an instrument of exclusion from social welfare. This is based on *ius sanguinis* so that rural *hukou* status is even inherited by the second generation of migrant-descent born in cities.

<sup>5</sup> See JO SHAW, THE TRANSFORMATION OF CITIZENSHIP IN THE EUROPEAN UNION: ELECTORAL RIGHTS AND THE RESTRUCTURING OF POLITICAL SPACE 77–80 (2007).

citizen is also a member of a trans-generational political community—either as an internal citizen of the encompassing state or as an external citizen of a foreign country.

By considering local and national citizenships as a combined multi-level structure, we can see how these two principles of residence and birthright supplement each other. The long-term perspective of democratic community supported by birthright at the national level provides a stable background for more fluid memberships at the local level. Local citizenships are not for life, and are acquired as easily as they are lost. Mobile individuals will therefore be multiple local citizens sequentially over the course of their lives, but not simultaneously, since local citizenship has only a very weak external dimension.

There is an additional democratic reason for keeping local citizenships singular at any point in time: No citizen should have multiple votes across several sub-state polities because provinces and municipalities are integrated into a common structure of government and democratic representation.

#### **D. EU Citizenship: Derivative Status and Mobility-Based Rights**

Intergenerational and residential citizenships are the two basic regimes found in contemporary democratic polities. EU citizenship represents a third and hybrid type. When asking who are the citizens of the EU, the answer is the nationals of the EU Member States. Individual membership in the EU polity therefore is determined neither by an EU birthright, nor by residence in the EU, but is derivative of Member State nationality. Yet the control that the Member States retain over the acquisition and loss of EU citizenship is exposed to a powerful force operating at a transnational level: The right to free movement inside the territory of the Union. This residential aspect of EU citizenship is not only articulated in the narrowly conceived rights of territorial admission, settlement, and access to employment, but also includes a general right of non-discrimination on grounds of nationality and applies to political rights. EU citizens residing in Member States other than their state of nationality can there participate in local and European Parliament elections.

The derivative nature of EU citizenship is not a historically unique construct. The same citizenship architecture was characteristic for early stages of federal statehood in Germany, Austria, and the United States of America. Switzerland seems to be the only surviving case where federal citizenship is formally derived from cantonal citizenship.<sup>6</sup> In Switzerland, as in the EU, the distinct polities of the union enjoy wide powers of self-determination with regard to naturalization. The important difference is that in Switzerland federal rather than provincial law regulates birthright acquisition and loss of

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<sup>6</sup> See CHRISTOPH SCHÖNBERGER, UNIONSBÜRGER: EUROPAS FÖDERALES BÜRGERRECHT IN VERGLEICHENDER SICHT 122–24 (2005).

citizenship.<sup>7</sup> Member State self-determination in matters of citizenship is therefore stronger in the EU than in any of the historical or contemporary federal nations. Even the much looser union between the Nordic states, after abandoning post-1945 plans for a common Nordic citizenship, engaged its Member States in a harmonization of their citizenship laws so that they would become compatible with free movement rights developed through the Nordic Passport Union.<sup>8</sup> No such coordination has been possible in the EU, although Member States can subvert each other's immigration controls by producing EU citizens with free access to the rest of the Union.

The tension between the strictly derivative nature of EU citizenship and its residence-based free movement rights also generates differential treatment of EU citizens residing in their country of nationality and those residing in another Member State, termed here "first country nationals" (FCNs) and "second country nationals" (SCNs) respectively. The protection of EU citizenship applies in specific ways to those persons who have invoked their free movement rights and those who are involved in cross-border situations in other ways. Such individuals enjoy, for example, extended rights to family migration that most Member States deny their own FCNs who want to invite TCN family members to join them. Such instances of reverse discrimination have been a notorious side effect of a construction of EU citizenship that applies more directly to mobile populations than to sedentary ones. In a series of recent judgments, most prominent among which are the 2010 *Rottmann*<sup>9</sup> and 2011 *Zambrano*<sup>10</sup> cases, the Court of Justice of the European Union has expanded the meaning of cross-border situations to include many that previously were considered to be purely internal. In order to do so, the Court often must apply a twisted logic that derives fundamental rights from a merely potential link with the exercise of free movement.

While free movement generates substantial privileges for SCNs, their most important democratic citizenship rights remain less secure than for FCNs. Although EU citizens residing in other Member States enjoy voting rights in local and EP elections there, SCNs remain excluded from political representation in the national government of their host country, with the exception of Irish citizens in the UK and British citizens in Ireland who can vote in national elections. From a residential citizenship perspective, this is an oddity. One

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<sup>7</sup> In the United States of America, birthright citizenship was established as a federal power through the 14th Amendment of 1868. Withdrawal of citizenship remained largely under the control of state courts and comprehensive protection against denaturalization was only provided by a 1967 landmark decision of the Supreme Court. See *Afroim v. Rusk*, 387 U.S. 253 (1967); PATRICK WEIL, *THE SOVEREIGN CITIZEN: DENATURALIZATION AND THE ORIGINS OF THE AMERICAN REPUBLIC* (2013).

<sup>8</sup> EVA ERSBØLL, *Nationality Law in Denmark, Finland, and Sweden*, in *TOWARDS A EUROPEAN NATIONALITY: CITIZENSHIP, IMMIGRATION AND NATIONALITY LAW IN THE EU* 230, 233–34 (Randall Hansen & Patrick Weil eds., 2001).

<sup>9</sup> *Janko Rottmann v. Freistaat Bayern*, CJEU Case C-135/08, 2010 E.C.R. I-1449.

<sup>10</sup> *Gerardo Ruiz Zambrano v. Office national de l'emploi*, CJEU Case C-34/09, 2011 E.C.R. I-1177.

can hardly argue that the local franchise is necessary in order to prevent SCNs from suffering political disadvantage, while at the same time maintaining that being deprived of the much more important national franchise is an acceptable restriction of their free movement rights.<sup>11</sup>

Finally, EU citizenship generates another highly problematic distinction between mobile European SCNs and TCN migrants. The residential dimension of EU citizenship has imposed a special privilege of local voting rights for SCNs on often-reluctant Member States, such as Austria, France, and Germany, all of which adhere to the constitutional idea of a unitary people consisting of identical members across all levels of the polity. This has led to a distinction between two classes of local citizens that is arbitrary from the perspective of local self-government. More generally, there are now two strongly contrasting approaches to the integration of migrants in the EU. Member States and the EU itself promote active integration policies for TCNs that combine sanctions and tests with affirmative measures, while for intra-EU migrants, a market citizenship logic dictates a *laissez-faire* approach assuming that unconstrained mobility and non-discrimination is all that is needed for social integration.

#### **E. Scenarios for Rectifying the Deficits of EU Citizenship**

Some of these problems could be addressed by weakening the derivative nature of EU citizenship and moving forward on the road towards a fully residential citizenship not only at the local, but also at the supranational level. Allow me to briefly sketch four possible steps on this road.

A first reform would introduce the automatic acquisition of EU citizenship, but not Member State nationality, to long-term resident TCNs. This proposal, which has been occasionally endorsed by migrant lobby organizations, MEPs, and the Committee of the Regions as well as by some scholars, would create two classes of EU citizens: Those for whom this status is derived from their nationality and those for whom it is instead derived from residence. While the reform would lead to more inclusion by providing long-term resident TCNs with local voting rights throughout the EU and all the other privileges of EU citizens, it can hardly be seen as overcoming current concerns in Member States about immigrant integration. Resolving these issues by removing them from the domestic agenda of Member States can only breed further anti-EU resentment among Member State electorates. Finally, this proposal would also remove the most powerful argument for opening access to national citizenship to all long-term resident immigrants. If these immigrants enjoy automatic access to EU citizenship, they will not only lack incentives for

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<sup>11</sup> For a debate on this question, see Rainer Bauböck, Philippe Cayla & Catriona Seth, *Should EU citizens living in other member states vote there in national elections?* (RSCAS Working Paper No. 32, 2012), [http://eudo-citizenship.eu/docs/RSCAS\\_2012\\_32.pdf](http://eudo-citizenship.eu/docs/RSCAS_2012_32.pdf).

naturalization, but will also be perceived as having no substantive claim to full membership and political participation at the national levels.

A second and more radical proposal would address this latter problem for SCNs by abolishing any remaining distinctions between FCNs and SCNs and granting the latter a residence-based franchise in national elections. If this reform were adopted after the first one, it would also benefit TCNs. This move would retain the exclusionary potential of nationality laws in regulating access to EU citizenship, but would effectively eliminate any traces of the derivative nature of EU citizenship with regard to its content of rights, leaving Member State nationality behind as a hard but empty shell.

A third possible reform could then be a response to this outcome that abolishes birthright citizenship in Member States and establishes it instead as the basic principle for determining EU citizenship. All those born in the territory of the EU—with possible conditions for prior parental residence as in all current versions of national-level *ius soli*—and all those born to EU citizen parents outside the territory would automatically become citizens of the Union and of all its Member States. As a consequence, state level citizenship would have to be determined by residence. This move would effectively transform the EU into a federal state and downgrade the Member State citizenship to provincial status.

Finally, we can imagine a utopian fourth step that would abolish birthright citizenship even at the level of the European supranational state and replace it with a uniform rule that in every polity, all those and only those who are long-term residents will be counted as citizens. In contrast to the democracy-based argument in defense of birthright sketched above, some political theorists have argued from a cosmopolitan perspective that birthright citizenship is a major source of violence between states<sup>12</sup> or that it serves to maintain a globally unjust distribution of resources and opportunities.<sup>13</sup> According to this view, the three preceding proposals should be regarded as merely intermediary steps on the road to universal residence-based citizenship.

As my earlier discussion of the conditions for residential citizenship at the local level has made clear, I am not convinced by this project. Its third step, at which the current Union would be replaced by a federal state, cannot be ruled out *a priori*. There may be future economic, political, or military crises that convince Member States of the need for a much deeper political integration. Yet, such a possible response to a life-threatening challenge must not be confused with a hidden *telos* that supposedly pulls the EU towards becoming a federal state, even in the absence of democratic support by its citizens.

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<sup>12</sup> JACQUELINE STEVENS, *STATES WITHOUT NATIONS: CITIZENSHIP FOR MORTALS* (2001).

<sup>13</sup> Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49(2) *THE REV. OF POL.* 251, 252 (1987); AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 8–13 (2009).

The fourth scenario, in my view, is even more clearly a dystopian rather than a utopian one. It is difficult to imagine how democratic political communities could be formed and maintained without assurances of trans-generational continuity provided by birthright membership. Yet we cannot rule out this possibility on purely normative grounds. In a hypothetical world where most people are migrants living outside their countries of origin for most of their lives, maintaining birthright membership would amount to establishing a tyranny of sedentary minorities over mobile majorities. Current residence would then become the only justifiable basis for linking territorial jurisdictions to populations of citizens. I assume that in this scenario only minimal states could claim legitimate authority. Considerations of social justice that support public systems of education, health, and welfare based on redistributive taxation would find little popular support, and democratic participation would be reduced to a small politically-interested elite. The need for belonging to associations with birthright membership would then not vanish completely, but would probably be articulated through the formation of non-territorial associations based on religion, class, or ethnicity. What I cannot imagine is how democracy as we know it could survive such a radical disconnection between residence-based territorial jurisdictions and birthright-based non-territorial associations.<sup>14</sup>

In today's world, less than 4% of the global population is comprised of international migrants residing for more than twelve months outside their country of birth.<sup>15</sup> Among the 507 million EU residents, 4.1% are TCNs and 2.7% are SCNs.<sup>16</sup> In such a world, instead of dismantling territorial and trans-generational political communities with largely sedentary populations for the sake of promoting geographic mobility, migrants must be enabled to integrate as equal citizens into these polities at all levels.

#### **F. Modest Reforms within the Multi-Layered System**

In conclusion, for the time being, we should explore alternative ways of resolving the deficiencies of EU citizenship. The starting point should be to accept it as a potentially coherent and normatively attractive constellation of three interconnected membership regimes: A birthright-based one at the Member State level, a residential one at the local level, and a derivative regime with residence-based rights at the supranational level. This perspective supports a few modest reforms.

The first would be to extend the local franchise to all residents in all Member States. Instead of deriving the local citizenship and franchise from the national and European

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<sup>14</sup> See *supra* text accompanying note 4.

<sup>15</sup> UNITED NATIONS, INTERNATIONAL MIGRATION REPORT 2006: A GLOBAL ASSESSMENT, E. A. S. A. P. DIVISION (2006).

<sup>16</sup> *EU Citizenship - Statistics on Cross-border Activities*, EUROSTAT (May 19, 2014), [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/EU\\_citizenship\\_-\\_statistics\\_on\\_cross-border\\_activities\\_](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/EU_citizenship_-_statistics_on_cross-border_activities_).

citizenships, the former would be ultimately based on its own distinct principle of inclusion, a principle already embraced by twelve Member States and implicitly present as well in the local democracy in all other states. The main obstacle for this reform is the constitutional construction of a *unitary demos* across all levels within a state. The anachronistic character of this constitutional conception is also displayed by the fact that campaigns for a local franchise for TCNs have been surprisingly resilient even in France, Germany, and Austria where constitutional courts or councils have blocked reforms.<sup>17</sup>

The second reform would ensure that European citizens residing in other Member States do not lose their representation at national levels. This can easily be achieved by introducing absentee ballots in those few Member States that still have not done so—for example, Ireland and Greece—or by scrapping provisions in other countries—such as the UK and Denmark—that withdraw voting rights after a certain period of residence abroad.<sup>18</sup> Serious concerns in countries with large diasporas that a general right of external voting might impact electoral results too strongly could be taken into account by limiting an absentee franchise to SCNs and excluding emigrants residing in third countries, or by reducing the weight of the external vote by counting it separately for specially reserved seats.<sup>19</sup> There are reasons why external voting has recently become a global democratic standard and these reasons can be decisively reinforced through the imperative that free movement inside the EU must not lead to a loss of democratic representation at any level. A final argument for the external franchise solution rather than the extension of national voting rights to SCNs in their country of residence is that the former reform affirms the derivative nature of EU citizenship that the latter denies.

The third and most important reform would be to coordinate access to EU and national citizenships through some common basic standards for *ius soli* and *ius sanguinis*, for naturalization, renunciation, and withdrawal. Allowing the CJEU to expand the scope of EU citizenship rights while denying the EU any competence to harmonize Member State policies with regard to citizenship status undermines the legitimacy of the Court. It is also likely to create conflicts between states suspecting each other of undermining their immigration control powers, and leaves the EU agendas of harmonizing integration policies

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<sup>17</sup> See Luicy Pedroza, *Citizenship Before Nationality: How Democracies Redefine Citizenship by Debating the Extension of Voting Rights to Settled Immigrants* (2012) (unpublished Ph.D. dissertation, University of Bremen) (on file with author).

<sup>18</sup> On 4 July 2012, the German Constitutional Court abolished the three-month German residence requirement for external voting in German elections. Bundesverfassungsgericht [BVerfG - Federal Constitutional Court], Case No. 2 BvC 1/11, 132 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 39 (Apr. 7, 2012). In the 2013 national elections, German citizens without prior residence in Germany could vote if they could demonstrate some familiarity with German politics and that they were affected by it, see <http://www.konsularinfo.diplo.de/wahlen>.

<sup>19</sup> See Rainer Bauböck, *Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting*, 75(5) *FORDHAM L. REV.* 2393, 2446 (2007).

towards TCNs and promoting the political participation of SCNs in their host countries radically incomplete.

None of these reforms challenge the derivative nature of EU citizenship or the importance of birthright membership in the Member States that, after all, have created the European Union. These reforms instead make explicit the as of yet underdeveloped multi-level structure of citizenship in the European polity.

