

EU Citizenship and Free Movement after Brexit

Willem Maas
York University
maas@yorku.ca

A version of this paper is forthcoming in Scott Greer and Janet Laible, eds., *Europe after Brexit* (Manchester University Press, 2019), which is not yet in proofs; so please let me know if you have corrections or suggestions! For the most recent version – for citation purposes (please don't cite this version), please email maas@yorku.ca

Free movement has been central to the European project since the introduction of mobility rights for coal and steel workers in the 1951 ECSC treaty, and the right of EU citizens to live and work everywhere in the common territory has developed as one of the four fundamental freedoms (alongside free movement of goods, services, and capital) that undergird the single market (Maas 2005, 2007). Since the Maastricht treaty, these rights have been enshrined as the key element of EU citizenship, to which some have attributed federalizing aims and which the European court has suggested is “destined to be the fundamental status of nationals of the Member States” (Maas 2014, 2017a). The right to live, work, and study anywhere within the EU usually tops public opinion surveys asking Europeans what the EU means to them, and these rights are enormously popular across the EU, even in the UK (Maas 2017c, 584). Whichever form Brexit takes—hard, soft, simply symbolic, or something else—free movement is a significant issue in the process. This chapter examines the effects of the Brexit process and potential post-Brexit scenarios on EU citizenship and free movement. The UK has been a key impediment to a more fully developed EU citizenship, but nationalist or protectionist tendencies are also present elsewhere. For example, in 2013 then-Home Secretary Theresa May convinced her interior minister colleagues from Germany, Austria, and the Netherlands to demand new rules to deal with what they alleged was fraudulent welfare claims being lodged by EU citizens making use of their free movement rights, upon which the European Commission asked for evidence of the alleged ‘benefit tourism’ (Travis 2013). Starting by showing how shared European rights culminating in citizenship are central to the European project, the chapter next considers uncertainties, challenges, and opportunities caused by the Brexit process. Uncertainties include the form that Brexit may take and how the UK’s relationship with the (rest of the) EU will evolve, how stark divisions within the UK will be managed, and the status and rights of the 3.6 million EU27 citizens and members of their families residing in the UK (with citizens of Ireland the largest group), the over 1.3 million UK citizens residing in the EU27, and others. Challenges include the status of Northern Ireland and how to avoid reintroducing a border; the need for more coordination in member state citizenship laws and policies; persistent differences in member state social policies and labour market institutions causing ongoing disagreements between EU member states about free movement rules; and the rise of so-called illiberal democracy with a focus on borders and nationalism, against the EU’s aim of superceding nationalism and making borders lose their significance. In line with the idea that the UK’s absence from decision-making processes may deepen integration by bringing the remaining EU member states together (Cini and Verdun 2018, 71), Brexit also raises several opportunities for strengthening EU citizenship and free movement. The opportunities flow from how Brexit has uncovered and stimulated increased attachment to the EU and the European project more generally; high support for greater harmonization of member state social and welfare policies, which would address many of the worries of those concerned about open borders within the EU; and the chance to clarify the relationship between national and EU citizenship.

Citizenship and the European Project

The political push for common European rights predates the 1950 Schuman Declaration that led to the European Coal and Steel Community Treaty (Treaty of Paris) of 1951. For example, the Italian Movimento Federalista Europeo promoted a European “continental” citizenship alongside national citizenship, entailing direct political and legal relationships with a European federation, the legal equality of citizens of all European states, and the “option to take out European citizenship in addition to national citizenship,” while the Dutch ‘European Action’ group called for European citizenship to supplement national citizenship (Maas 2005, 1012). At least as early as 1946, Winston Churchill was promoting what he called “a kind of United States of Europe,” meaning “a European group which could give a sense of enlarged patriotism and common citizenship to the distracted peoples of this turbulent and mighty continent” (cited in Maas 2014, 173). The 1948 Hague Congress, presided by Churchill and gathering some 750 delegates from across the political spectrum,¹ resolved that European union should grant citizens direct access to redress before a European court of any violation of their rights under a common charter and proposed “a European passport, to supersede national passports and to bear the title ‘European’ for use by the owner when travelling to other continents” (ibid). Europe’s postwar political leaders arguably viewed various forms of economic integration as simply interim measures towards a genuine European political community with a common citizenship.²

The Schuman Declaration famously spoke of “common foundations for economic development as a first step in the federation of Europe”; a common market would create “a wider and deeper community” and “lead to the realization of the first concrete foundation of a European federation.” But the path towards a federal Europe was not easy. As Jean Monnet realized in 1956, “fusion of the European peoples” would not result from supranational integration in the limited domains of coal and steel or atomic energy; the “sentiment that their destiny is shared and their prosperity is shared has not been established between the peoples of Europe by the ECSC and will not be by Euratom. How to do it? It is very difficult to find a form that is satisfactory—indeed political—and that is accepted by the parliaments and peoples. We must continue to speak of the Common Market and as far as possible to achieve its beginning at least. But we must find the political opportunity that gives these countries of Europe the sense of a common destiny.”³

Moves to such a sense of common destiny were enshrined in 1957 Treaty of Rome, inspired by the idea that European integration would lead to monetary stability, economic expansion, social protection, a higher standard of living and quality of life, economic and social cohesion, and solidarity among the Member States.⁴ Importantly, the Treaty of Rome expanded free movement rights to most workers and members of their families, and also copied from the Treaty of Paris the idea of non-discrimination on the basis of nationality (Maas 2005). Coupled

¹ Besides Churchill: three former French prime ministers, François Mitterrand, Konrad Adenauer, Harold Macmillan, Altiero Spinelli and his wife Ursula Hirschmann, Walter Hallstein, Salvador de Madariaga, Raymond Aron, and hundreds of other political leaders, professors, businesspeople, religious leaders, journalists and others.

² As Belgian Prime Minister Paul-Henri Spaak later wrote: “Full well did they measure the importance of the economic transformations they had just decided, but in their minds, those transformations, for all their greatness, were merely accessory to, or, at the very least, the first stage of a yet greater political revolution” (cited in Maas 2007, 9).

³ Entry in Diary of Jean Monnet, 5 August 1956 (unpublished; my translation) on file at the Fondation Jean Monnet pour l’Europe. Grateful thanks to the Fondation and its Director, Gilles Grin, for allowing me to consult the diary.

⁴ These were the conclusions of the Spaak Report of April 1956.

with the expansion of the transnational European court, the principle of non-discrimination would guarantee individual European rights, centred on rights of free movement; as European Commissioner (later Commission Vice-President) Étienne Davignon noted in 1979, “the status of ‘Community citizen’ [was] officially recognized from the moment when the Treaties granted rights to individuals and the opportunity of enforcing them by recourse to a national or Community court” (cited in Maas 2007, 4).

The point of this brief history is to demonstrate the centrality of free movement and citizenship to the European project: they are part of the DNA of European integration, even if the transformation of free movement rights from being defined and promoted in economic terms to forming the core of a shared European citizenship was gradual, from the 1960s through to the 1980s and ultimately to the Maastricht Treaty. Despite substantial support in the early 1970s for introducing European citizenship into the treaties, the first enlargement (the United Kingdom, Ireland, and Denmark in 1973) stymied the process, leading to gridlock in the Council; but the two subsequent enlargements (Greece in 1981, followed by Spain and Portugal in 1986) reinvigorated it, resulting finally in the inclusion of EU citizenship in the Maastricht treaty. Historical hypotheticals are difficult to evaluate, but if the UK had not joined in 1973 it seems likely that EU citizenship would have been introduced sooner. Concomitantly, if Brexit means that the UK loses its decision-making role in the Council, Parliament, and other EU institutions, this may mean a reweighted majority in favour of deepening EU citizenship.

Uncertainties

At the time of writing, significant uncertainties remain about the outcome of the Brexit negotiations and wider process, with possible scenarios ranging the full gamut from a “no deal” departure all the way to a second referendum reversing the results of the first and keeping the UK in the EU, though that would depend on how other member states would respond (Mindus 2017 ch. 3). In late October 2018, building on similar earlier mobilizations (Brändle, Galpin, and Trenz 2018), an estimated 700,000 people rallied in London in support of a second referendum, with most of the marchers expressing support for remaining in the EU (Helm, Savage, and Courea 2018). In early November 2018, the largest public opinion survey since the referendum showed support for remain had grown to 54% while support for leave had shrunk to 46% (Worrall 2018) – a large shift from the 48.1% to 51.9% result of the 2016 referendum.

Both the Conservative and the Labour party were divided on issues of free movement and citizenship, with Labour party leader Jeremy Corbyn in July 2017 having pronounced his opposition to “wholesale importation of underpaid workers from central Europe in order to destroy conditions,” and suggesting that it would be better to leave the single market in favour of a UK immigration policy that “would be a managed thing on the basis of the work required” rather than EU free movement (Chakelian 2017). Meanwhile, Prime Minister Theresa May repeatedly said she believes “ending free movement once and for all” was one of the messages voters sent in the 2016 referendum (Stewart 2018). An analysis prepared by the Bank of England showed that all forms of Brexit would make the UK worse off economically than remaining in the EU: a no-deal scenario would result in 10.7% lower GDP in 15 years’ time than remaining in the EU; a Canada-style deal supported by Boris Johnson and David Davis would result in 6.7% lower GDP than remaining in the EU; and a Norway-style European Economic Area scenario favoured by some Conservative remainers would result in 1.4% lower GDP in 15 years’ time, better than some of the forecasts for the withdrawal agreement negotiated by Prime Minister

May, although in the EEA model free movement of EU citizens would continue (Sabbagh and Partington 2018).

Such grim projections appear more stark because of the intergenerational divide among voters: the 2016 referendum appeared to be highly skewed by age, with three-quarters of voters aged 18-24 having voted remain (Cresci 2016). Because of low turnout, however, more Euroskeptic older voters determined the outcome, which unleashed furious responses such as one widely-shared comment: “The younger generation has lost the right to live and work in 27 other countries. We will never know the full extent of lost opportunities, friendships, marriages and experiences we will be denied. Freedom of movement was taken away by our parents, uncles and grandparents in a parting blow to a generation that was already drowning in the debts of its predecessors” (quoted in Cosslett 2016). In this quotation and in similar responses from other young people (“The75percent” 2016) the EU’s environmental or consumer regulations, trade relations with other countries, and many other activities and institutions are ignored in favour of the rights of individuals to live and work across Europe, the core rights of EU citizenship.

Hardline Brexiteers, on the other hand, saw free movement as an unalloyed negative. “We must break free of the EU and take back control of our borders” declared a poster unveiled by UKIP leader Nigel Farage during the Brexit referendum campaign, and Farage subsequently emphasized that “the main reason above all that we voted to leave the European Union is we wanted to get back control of our lives and, in particular, control of our borders because unrestricted free flow of unskilled labour had driven down wages, had made it tough to get a GP appointment, to get our kids into the right school” (Campbell 2017). Blaming EU free movement (rather than successive UK governments implementing austerity measures; as one commentator puts it specifically for issues of citizenship (Guild 2017, 54), British citizenship confers fewer and fewer rights on its holders) for cuts to medical care and education budgets misrepresented reality, as did the Leave campaign’s infamous bus emblazoned with the promise that leaving the EU would mean 350 thousand pounds per week extra spent on the National Health Service, a promise from which Brexiteers quickly backtracked after the vote (The Independent 2016; McCann and Morgan 2016). Similarly, Conservative MEP and Leave campaigner Daniel Hannan admitted he could envisage a situation where the UK kept free movement of labour with the EU after Brexit and, asked if he thought Leave voters had been deceived into thinking their vote would end free movement, replied “do not imagine that if we leave the EU it means zero immigration from the EU, it means we will have some control” (Quinn 2016).

The result of the 2016 referendum immediately created considerable legal and personal uncertainty for the 3.6 million EU27 citizens and their families resident in the UK (with citizens of Ireland the largest group), the over 1.3 million (not including many dual citizens) UK citizens and their families resident in the EU27, and others (Shaw 2018). Confusion reigned both in the UK and outside, as the UK government appeared unprepared for a vote of leave. As an example of this government confusion, some EU citizens who had resided in the UK for many years were given notice that they would need to depart (O’Carroll 2016). The UK government later changed its tone, with Prime Minister May, in the speech accompanying the triggering of the Article 50 process, emphasizing that the UK would “seek to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states as early as we can” (United Kingdom 2017). In the same speech, Prime Minister May emphasized her government’s desire to “maintain the common travel area with the Republic of Ireland. There should be no return to the borders of the past. We will control immigration so that we continue to attract the brightest and the best to work or study in Britain, but manage the process properly so

that our immigration system serves the national interest” – which implies that the right of EU27 citizens to live and work in the UK was against the national interest, or at least had been managed improperly.

Aside from some exceptional cases, most EU27 citizens saw no change to their legal status while Brexit negotiations were under way, as was generally also true for UK citizens residing in the EU27. Yet the question of how to deal with UK citizens and members of their families residing in the EU, and vice versa, remained unclear even with the Withdrawal Agreement agreed to on 25 November 2018. A ‘questions and answers’ document prepared by the European Commission (European Commission 2018) leads with the proviso that the description of UK laws and the UK’s intended approach to implementing the Agreement “is based on the information that we have currently available” – which fails to provide certainty for many categories of people affected by Brexit (Garner 2018). This despite the Agreement’s assurance that UK legislation protecting EU rights would prevail over other UK legislation, and that the implementation and application of the citizens’ rights part of the Agreement would be monitored by an independent national authority.

British in Europe (a coalition of groups advocating for the rights of the over one million British citizens living and working elsewhere in the EU) and the3million (a group advocating for the rights of the roughly 3.6 million EU citizens living and working in the UK) issued a joint letter in September 2018 arguing that “If the fundamental status of EU citizenship means anything at all, we need to be protected rather than penalised for seizing all the opportunities that European citizenship has given us - and which were confirmed by successive UK governments during the UK’s membership of the EU.”⁵ Coalitions such as People’s Vote advocate a referendum on the final deal before it could be implemented.⁶ In the area of citizenship and freedom of movement, this matters because member groups such as Healthier in the EU argue that one of the arguments used by the leave campaign, that Brexit would help the National Health Service, is wrong; Healthier in Europe proclaims that “Softening a hard Brexit or stopping it altogether is key to limiting the damage to our NHS and healthcare.”⁷ Meanwhile, the chair of British in Europe argued in August 2018 that the only solution to protect the rights of UK citizens living in other EU countries as well as EU citizens and British citizens themselves in the UK was for the UK to reverse Article 50 and remain in the EU.⁸

One reason these and similar groups are significant is that they advocate increasing the content or scope of EU citizenship. For example EuroCitizens, a group for UK citizens in Spain and Spanish citizens in the UK, advocates a situation in which “UK nationals are given full European citizenship” even after Brexit.⁹ Similarly, Welsh nationalist party Plaid Cymru has argued that UK citizens should be allowed to retain their EU citizenship after Brexit, or else develop a new model of ‘Associate European Citizenship’ (Masters 2018). Others speak of an ‘EU protected citizen’ status for EU citizens (Kostakopoulou 2018). Finally, a European Citizens’ Initiative on “permanent European Union citizenship” asks the Commission to propose ways to avoid “collective loss of EU citizenship and rights, and assure all EU citizens that, once

⁵ <https://www.the3million.org.uk/publications> and <https://britishineurope.org/joint-paper-issued-with-the3million/> .

⁶ <https://www.peoples-vote.uk>

⁷ <https://www.healthierin.eu/factsheet>

⁸ “As children of the European project who have lived its benefits first-hand and know what future generations in the UK are set to lose – enough is enough. We have no choice but to accept that the only solution to protect our lives and livelihoods (and those of EU citizens in the UK), as well as those of all Brits in the UK, is to remain in the EU.” <https://www.theguardian.com/commentisfree/2018/aug/14/brexit-ruin-lives-british-citizens-europe-peoples-vote>

⁹ <https://eurocitizens2020.blogspot.com/>

attained, such status is permanent and their rights acquired”; as of this writing, the ECI had reached over 100,000 signatures with seven months left in the signature period, significantly more than the related “Retaining European Citizenship” ECI and two similar ones launched in 2017.¹⁰ In June 2018, the Amsterdam appeals court overturned a lower court ruling to refer to the CJEU a question about the EU citizenship of British citizens post-Brexit since this was still considered hypothetical.¹¹ Similarly, the conclusion of a House of Commons study (Walker, Robinson, and Miller 2018) is that the feasibility of proposals for ‘associate EU citizenship’ and all similar schemes remains uncertain.

Challenges

One of the most vexing issues surrounding Brexit is the status of Northern Ireland, both for issues of borders and trade but also for issues of citizenship and free movement of people. In order to ensure no border would need to be reinstated between Northern Ireland and the Republic of Ireland after Brexit, either Northern Ireland or else all of the UK would need to remain inside the EU customs union – what became known as the ‘Irish backstop’ in the withdrawal negotiations. In the Good Friday Agreement of 1998, the governments of the UK and Ireland had recognized “the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.”¹²

If the context of shared EU membership (in the words of the Good Friday Agreement, the UK and the Republic of Ireland signed the agreement “as friendly neighbours and as partners in the European Union”) were to change because of a UK departure from the EU, the question of citizenship would return. In the 2016 referendum, 56% of voters in Northern Ireland chose remain, but many unionists voted leave; and following the 2017 elections, Prime Minister May’s minority government depended on the parliamentary support of the Democratic and Unionist party (DUP), which opposed any distinction between Northern Ireland and the rest of the UK. Meanwhile, Ian Paisley Junior, son of the DUP’s founder, was advising his constituents and others to acquire Irish passports.¹³ In November 2018, over a thousand academics, filmmakers, lawyers, writers, athletes, business owners and others implored Irish prime minister Leo Varadkar to protect the rights of Irish citizens in Northern Ireland (Carroll 2018).

The Protocol on Ireland / Northern Ireland included in the November 2018 Withdrawal Agreement (it takes up 29 pages of 585 page agreement, signifying that this is not a minor matter) notes that the EU and UK intend to “replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing” and also that “Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship.” In other words,

¹⁰ <https://www.eucitizen2017.org>. The threshold for a successful ECI is 1 million signatures; the deadline for this ECI is 23 July 2019.

¹¹ <https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:GHAMS:2018:2009>

¹² Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (Good Friday Agreement), art. 1(vi).

¹³ <https://www.theguardian.com/politics/live/2016/jun/25/brexit-live-emergency-meetings-eu-uk-leave-vote?page=with:block-576e43c3e4b0be24d34f6033#block-576e43c3e4b0be24d34f6033>

many of the questions that were resolved with the 1998 Good Friday Agreement have been reopened by the possibility of Brexit (McTague 2018).

Another challenge that is sharpened by Brexit relates to the need for some degree of harmonization or Europeanization of the citizenship laws of the member states. Increased cross-border migration and family formation leads to functional pressures for basing access to citizenship rights on residence rather than nationality, and the introduction and growth of EU citizenship has profoundly altered the nature of Europe and the meaning of European integration for its citizens, which forces even notionally sovereign EU member states to coordinate their citizenship policies (Maas 2016). To take one example: investor citizenship schemes have proliferated in the EU following the financial crisis, and their attractiveness relies at least partially on the right to live and work in other EU member states (Parker 2017). Commenting on investor citizenship schemes in Malta and Cyprus, Justice Commissioner Jourová noted that they raise “legitimate concerns, because if in one country a dangerous person gets citizenship, he gets citizenship for the whole of Europe. Maybe we all have to renegotiate the whole system and the whole competence of Europe. Because there is a contradiction. Once we have some weak points in the EU, some weak points where it is easy to enter the space, the whole of Europe has a problem” (Garside and Osborne 2018). Similarly, a 2010 CJEU judgement concluded that member state competence concerning citizenship must be exercised in accordance with the Treaties and that member state decisions about naturalization and denaturalization are amenable to judicial review carried out in the light of EU law (discussed in Maas 2016, 542). The European Parliament resolved in 2014 that there should be “closer coordination and a more structured exchange of best practices between Member States with respect to their citizenship laws in order to ensure fundamental rights and particularly legal certainty for citizens,” and also called for “comprehensive common guidelines clarifying the relation between national and European citizenship” (cited in *ibid*), a need that is exacerbated by Brexit.

Free movement of people was a major theme of the 2016 referendum campaign, and persistent differences in national welfare state and labour market institutions suggest ongoing disagreements between EU member states about free movement rules (Ruhs and Palme 2018). The absence of clear and stringent guidelines regarding access to benefits confronts potential beneficiaries with significant uncertainty, as evident in the case of EU students: the heterogeneity of national schemes results in significant inequality, with many possible combinations of cross-border situations of student support (Schenk and Schmidt 2018, 1535). Member states have been remarkably successful at using welfare policies to limit the mobility of poor or otherwise undesirable EU migrants (Lafleur and Mescoli 2018), for example by limiting access to benefits. Indeed, just nine days before the Brexit referendum, the CJEU issued its ruling in *Case C-308/14 Commission v UK*, which appeared to be motivated solely by “the need to accommodate the UK’s desires to discriminate, in order to avoid offending national welfare sensitivities, and placate the population sufficiently to tempt it to vote to stay in the Union” (O’Brien 2017). Even without that judgement, however, EU free movement provisions have always existed in tension with national welfare states, and balancing the rights of individual European citizens to move, consume services, or find employment or housing across the entire EU territory with the desire of member state governments to maintain some degree of preferential treatment for their own citizens remains a challenge for EU institutions (Maas 2009, 279). Indeed, other instances of multilevel citizenship generally entail a space for inequality of some citizenship rights, including preferential access to social benefits (Maas 2013b, 2017b), which in the EU has meant continued discrimination against groups such as the Roma (Gehring 2013; Parker and López Catalán 2014)

and against other poor, ‘dangerous,’ or otherwise undesirable individual EU citizens (Mantu 2017), despite little or no evidence of ‘welfare tourism’ actually occurring.

A final important challenge relating to citizenship and free movement is the lingering popularity of border controls, not only in the UK (which is not a member of the Schengen system) but also in member states where nationalist parties do well, such as Hungary and Poland. Though the Schengen system removed physical border controls, many member states nevertheless retain mobile policing units whose officers focus on certain ethnic and migrant groups as dangerous others, despite the idea that free movement constitutes “the very essence of what the EU means” (Brouwer, van der Woude, and van der Leun 2018, 9). Public opinion data underscores the issue: 49% of respondents think globalization threatens their country’s identity, compared with only 41% who think it does not, recalling the Brexit slogan ‘take back control’ and suggesting that European publics want to keep ways to control outsiders.¹⁴ The Spring 2018 Standard Eurobarometer showed 38% of respondents cite immigration as one of the two most important issues facing the EU, well down from its peak of 58% in Fall 2015, but still ahead of terrorism (29%) and the economic situation (18%), which had led responses from the financial crisis until Spring 2015, when immigration overtook it as the most cited important issue. Even though the refugee crisis has abated as of this writing, and even though EU policy is not directly responsible for member state decisions regarding immigration from outside the EU, member state publics likely agree with former UK Prime Minister David Cameron about the “need to have either a system with external borders or a system with internal borders. You can’t have borders that don’t work at either level” (ITV News 2015). Mobile EU citizens are both more aware of and more supportive of EU citizenship (Siklodi 2015) but most Europeans stay in their country of origin, even though though mobility is increasing and residence may not be the best way to measure mobility (Recchi 2015).

Opportunities

The Brexit referendum has uncovered and stimulated a growing attachment to the European Union and the European project more generally. The post-referendum rallies and marches in the UK are perhaps the most visible manifestation, but public opinion surveys underscore a similar trend across Europe. A November 2018 flash Eurobarometer survey found that 59% of Europeans trust the EU while only 42% trust their national government, continuing a trend towards more trust in the EU.¹⁵ The spring 2018 standard Eurobarometer survey showed that 58% of Europeans view “the free movement of people, goods and services within the EU” as among the EU’s most positive results, with respondents in the UK less positive (51%) but growing more so.¹⁶ Meanwhile the sense of European citizenship also continues to grow: 70% of respondents across the EU feel that they are citizens of the EU, the highest ever recorded (the same as autumn 2017, and an increase from 64% in autumn 2015), with respondents in the UK having among the lowest such feeling, meaning that Brexit would shift the average feeling of European citizenship upwards.¹⁷ Within the UK, as demonstrated in the 2016 referendum, there

¹⁴ 10% don’t know; the corresponding numbers for 2016 were 53%, 38% and 9%, so the proportion of those who think globalization does threatens their country’s identity has dropped but still remains the most widely held view. Special Eurobarometer 467, 2017, p.46.

¹⁵ Flash Eurobarometer 472, 2018 “Public opinion in the EU regions” (November 2018).

¹⁶ Standard Eurobarometer 89, spring 2018 p.20. The question is: “Which of the following do you think is the most positive result of the EU? Firstly? And then?” allowing three responses.

¹⁷ 57% total yes (25% “yes, definitely” plus 32% “yes, to some extent”) and 41% total no (26% “no, not really” plus 15% “no, definitely not”) and 2% don’t know (Standard Eurobarometer spring 2018 p.31)

is a strong generational difference: 70% of UK respondents aged 15-24 feel they are citizens of the EU, compared with only 44% of those aged 55 and over.¹⁸

In terms of social rights, a strong majority of Europeans favour the harmonization of social welfare systems: the 2017 Eurobarometer survey found 64% in favour, 26% opposed and 10% don't know – compared with 62%/24%/10% in 2016.¹⁹ Importantly, of all 28 member states, respondents in the UK were least supportive, with only 47% favouring harmonization. Support for harmonization was highest in Croatia, Hungary, Cyprus, Bulgaria, Latvia, Romania, Slovenia, Portugal, Slovakia, Greece, and Spain, with Belgium, Poland, Estonia, Luxembourg, Italy, and Latvia also being above the EU average. This is 17 out of the 28 member states, and if the UK leaves then the support for harmonization will increase even more.²⁰ Also notably, younger respondents (those aged 15-39) were more in favour of harmonization compared with older respondents (those aged 55+), 67% to 61%. Brexit could allow new coalitions of member states to work towards greater harmonization of social policies. As Greer notes in this volume, the UK was a huge beneficiary of free movement, inducing a brain drain in many EU member states; successive UK governments have also been the driving force behind deregulating the labour market and favouring a minimalist welfare state (Greer 2019). The loss of UK voices in the Council, Parliament, Commission, and other EU institutions will result in new coalitions in all policy areas. For free movement and citizenship, the effect is likely to reinvigorate the Franco-German axis, particularly when joined with southern member states which have traditionally favoured strengthening EU citizenship (Maas 2007) and perhaps central and eastern European member states, if their support for more free movement within Europe can be coupled with calls for more social Europe, such as the European Pillar of Social Rights proclaimed in 2017 (Vandenbroucke 2018).

Another opportunity is that Brexit allows member state governments and EU institutions to clarify the relationship between national and EU citizenship, as suggested for example by greater coordination of naturalization policies. Indeed, as some legal scholars argue, Brexit puts EU citizens of exclusively UK nationality at risk of being stripped of their EU citizenship in a way that “might fall within the ambit of EU law” (Mindus 2017, 90), a conclusion consistent with “the gradual absorption of national citizenship within Union citizenship” so that “the two levels of citizenship are intertwined in a mutually dependent way, neither able to develop without taking account of the other” (Davies 2011, 5, 9) and ideas for a transnational EU citizenship (Olsen 2012). The various proposals for associate EU citizenship or permanent EU citizenship etcetera all assume greater decoupling between EU and member state citizenship that in ways that recall earlier debates about extending EU citizenship to third-country nationals (Maas 2008). At the same time, Brexit is also spurring member states to consider their citizenship laws: German citizens taking up another nationality lose their German nationality, and non-Germans acquiring German nationality must renounce their previous nationality, unless the state of other nationality is an EU member state or Switzerland; but the UK may be granted a transition period (Auswärtiges Amt 2018). Similarly, the Netherlands is considering proposals to extend the possibilities for dual nationality, prompted by Brexit. And of course many individuals

¹⁸ Ibid, p.34.

¹⁹ The question was: “Today, each European Union Member State is responsible for its own social welfare system. To what extent would you be in favour or opposed to the harmonisation of social welfare systems within the European Union?”

²⁰ Ibid, p.135.

are opting to take out insurance policies in case Brexit results in the loss of their rights in the UK or the EU27 (Schrauwen 2017; Jessurun d'Oliveira 2018).

Conclusion

With or without the United Kingdom as a member, the European Union will continue to face the tension between unity and diversity. Despite the genesis of European rights in the principle of non-discrimination on the basis of nationality, EU free movement provisions have always existed in tension with national welfare states and the desire of member states to control access to their territories, labour markets, and related institutions (Maas 2009, 279). Balancing the rights of individual European citizens to move, study, consume services, or find employment or housing across the entire EU territory with the desire of member state governments to maintain some degree of preferential treatment for their own citizens remains a challenge for EU institutions. This chapter charted the most significant uncertainties, challenges, and opportunities posed by Brexit for EU citizenship and free movement. Recalling the centrality of individual rights and shared citizenship to the European project may also offer the best conclusion: Brexit exacerbates many challenges and uncertainties facing the EU – the ones examined above, the challenge of developing the monetary union into an effective European political union (Habermas 2018), the rise of europhobic nationalism and illiberal democracy, geopolitical and environmental challenges galore – but European leaders will rediscover that shared rights are the only effective way of fostering the sense of a common destiny that is necessary for any political project to have legitimacy. Free movement rights for workers launched the process of European political integration and the continuing development of European citizenship is central to sustaining and furthering the European project (Maas 2013a, 96). This may occur through more harmonized European social rights, expanding programs such as Erasmus or the European Solidarity Corps, and other initiatives undergirded by the growing appreciation of European citizenship. Or Brexit, if it occurs, may be the first of several nationalist retreats to ‘little England,’ little (or revanchist greater) Hungary, Poland, Italy, etcetera, and away from a supranational Europe which promised, paraphrasing the European Coal and Steel Community treaty, to substitute for age-old rivalries the merging of essential interests and lead to a broad and independent community among peoples with a destiny henceforward shared.

Bibliography

- Auswärtiges Amt. 2018. “Brexit-Übergangsgesetz.” 2018. <https://www.auswaertiges-amt.de/de/aussenpolitik/europa/brexit-uebergangsgesetz/2119360>.
- Brändle, Verena K., Charlotte Galpin, and Hans-Jörg Trenz. 2018. “Marching for Europe? Enacting European Citizenship as Justice during Brexit.” *Citizenship Studies* 22 (8): 810–28. <https://doi.org/10.1080/13621025.2018.1531825>.
- Brouwer, Jelmer, Maartje van der Woude, and Joanne van der Leun. 2018. “(Cr)Immigrant Framing in Border Areas: Decision-Making Processes of Dutch Border Police Officers.” *Policing and Society* 28 (4): 448–63. <https://doi.org/10.1080/10439463.2017.1288731>.
- Campbell, Chris. 2017. “Nigel Farage Feels BETRAYED by David Davis over Open Borders to EU Migrants after Brexit.” *Express.Co.Uk*. February 23, 2017. <https://www.express.co.uk/news/uk/770912/Nigel-Farage-David-Davis-Brexit-EU-borders-migrants>.

- Carroll, Rory. 2018. "Irish Celebrities Urge PM to Protect Citizens' Rights in Northern Ireland." *The Guardian*, November 5, 2018. <https://www.theguardian.com/world/2018/nov/05/irish-celebrities-urge-pm-to-protect-citizens-in-northern-ireland>.
- Chakelian, Anoosh. 2017. "It Feels like a Betrayal': EU Citizens React to Jeremy Corbyn's Migration Stance." July 27, 2017. <https://www.newstatesman.com/politics/uk/2017/07/it-feels-betrayal-eu-citizens-react-jeremy-corbyn-s-migration-stance>.
- Cini, Michelle, and Amy Verdun. 2018. "The Implications of Brexit for the Future of Europe." In *Brexit and Beyond*, 63–71. Rethinking the Futures of Europe. UCL Press. <https://www.jstor.org/stable/j.ctt20krxf8.12>.
- Cosslett, Rhiannon Lucy. 2016. "If You're Young and Angry about the EU Referendum, You're Right to Be | Rhiannon Lucy Cosslett." *The Guardian*, June 24, 2016. <https://www.theguardian.com/commentisfree/2016/jun/24/young-angry-eu-referendum>.
- Cresci, Elena. 2016. "Meet the 75%: The Young People Who Voted to Remain in the EU." *The Guardian*, June 24, 2016. <https://www.theguardian.com/politics/2016/jun/24/meet-the-75-young-people-who-voted-to-remain-in-eu>.
- Davies, Gareth T. 2011. "The Entirely Conventional Supremacy of Union Citizenship and Rights." EUI RSCAS working paper 2011/62.
- European Commission. 2018. "Questions and Answers – the Rights of EU and UK Citizens, as Outlined in the Withdrawal Agreement." European Commission - European Commission. November 26, 2018. https://ec.europa.eu/commission/publications/questions-and-answers-rights-eu-and-uk-citizens-outlined-withdrawal-agreement_en.
- Garner, Oliver. 2018. "Citizens' Rights in the UK-EU Withdrawal Agreement: Ossifying EU Citizenship as a Juridical Status?" November 28, 2018. <http://globalcit.eu/citizens-rights-in-the-uk-eu-withdrawal-agreement-ossifying-eu-citizenship-as-a-juridical-status/>.
- Garside, Juliette, and Hilary Osborne. 2018. "'Golden Passports' Threaten European Security, Warns EU Commissioner." *The Guardian*, October 16, 2018. <https://www.theguardian.com/world/2018/oct/16/golden-passports-threaten-european-security-warns-eu-commissioner>.
- Gehring, Jacqueline. 2013. "Free Movement for Some: The Treatment of the Roma after the European Union's Eastern Expansion." In *Democratic Citizenship and the Free Movement of People*, edited by Willem Maas, 143–74. Leiden: Martinus Nijhoff.
- Guild, Elspeth. 2017. *Brexit and Its Consequences for UK and EU Citizenship, or Monstrous Citizenship*. Leiden: Brill Nijhoff.
- Habermas, Jürgen. 2018. "'New' Perspectives For Europe." October 22, 2018. <https://www.socialeurope.eu/new-perspectives-for-europe>.
- Helm, Toby, Michael Savage, and Eleni Courea. 2018. "Almost 700,000 March to Demand 'People's Vote' on Brexit Deal." *The Observer*, October 20, 2018, sec. Politics. <https://www.theguardian.com/politics/2018/oct/20/70000-demand-new-brexit-vote>.
- ITV News. 2015. "Schengen: Europe's Passport-Free Travel Zone 'on Brink of Collapse.'" November 12, 2015. <https://www.itv.com/news/2015-11-12/schengen-europes-passport-free-travel-zone-on-brink-of-collapse/>.
- Jessurun d'Oliveira, Hans Ulrich. 2018. "Brexit, Nationality and Union Citizenship: Bottom Up." Working Paper RSCAS 2018/49. <http://cadmus.eui.eu/handle/1814/59115>.

- Kostakopoulou, Dora. 2018. "Scala Civium: Citizenship Templates Post-Brexit and the European Union's Duty to Protect EU Citizens." *JCMS: Journal of Common Market Studies* 56 (4): 854–69. <https://doi.org/10.1111/jcms.12683>.
- Lafleur, Jean-Michel, and Elsa Mescoli. 2018. "Creating Undocumented EU Migrants through Welfare: A Conceptualization of Undeserving and Precarious Citizenship." *Sociology* 52 (3): 480–96. <https://doi.org/10.1177/0038038518764615>.
- Maas, Willem. 2005. "The Genesis of European Rights." *Journal of Common Market Studies* 43 (5): 1009–25.
- . 2007. *Creating European Citizens*. Lanham: Rowman & Littlefield.
- . 2008. "Migrants, States, and EU Citizenship's Unfulfilled Promise." *Citizenship Studies* 12 (6): 583–95.
- . 2009. "Unrespected, Unequal, Hollow?: Contingent Citizenship and Reversible Rights in the European Union." *Columbia Journal of European Law* 15 (2): 265–80.
- . 2013a. "Free Movement and Discrimination: Evidence from Europe, the United States, and Canada." *European Journal of Migration and Law* 15 (1): 91–110.
- . 2013b. "Varieties of Multilevel Citizenship." In *Multilevel Citizenship*, edited by Willem Maas, 1–21. Philadelphia: University of Pennsylvania Press.
- . 2014. "The Origins, Evolution, and Political Objectives of EU Citizenship." *German Law Journal* 15 (5): 797–819.
- . 2016. "European Governance of Citizenship and Nationality." *Journal of Contemporary European Research* 12 (1): 532–51.
- . 2017a. "Free Movement and the Difference That Citizenship Makes." *Journal of European Integration History* 23 (1): 85–101.
- . 2017b. "Multilevel Citizenship." In *The Oxford Handbook of Citizenship*, edited by Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink. Oxford: Oxford University Press.
- . 2017c. "Boundaries of Political Community in Europe, the US, and Canada." *Journal of European Integration* 39 (5): 575–90. <https://doi.org/10.1080/07036337.2017.1327526>.
- Mantu, Sandra. 2017. "Alternative Views on EU Citizenship." In *Migration on the Move: Essays on the Dynamics of Migration*, edited by Carolus Grütters, Sandra Mantu, and Paul Minderhoud, 225–46. Brill Nijhoff.
- Masters, Adrian. 2018. "Keep EU Citizenship after Brexit Says Plaid Cymru." ITV News. March 7, 2018. <http://www.itv.com/news/wales/2018-03-07/wales-plaid-cymru-eu-citizenship/>.
- McCann, Kate, and Tom Morgan. 2016. "Nigel Farage: £350 Million Pledge to Fund the NHS Was 'a Mistake.'" *The Telegraph*, June 24, 2016. <https://www.telegraph.co.uk/news/2016/06/24/nigel-farage-350-million-pledge-to-fund-the-nhs-was-a-mistake/>.
- McTague, Tom. 2018. "The British and Irish Are Fighting Again." Politico. November 1, 2018. <https://www.politico.eu/article/how-brexit-burned-uk-irish-friendship-theresa-may-leo-varadkar/>.
- Mindus, Patricia. 2017. *European Citizenship after Brexit: Freedom of Movement and Rights of Residence*. New York : Secaucus: Palgrave Macmillan.
- O'Brien, Charlotte Rachel. 2017. "The ECJ Sacrifices EU Citizenship in Vain: Commission v. United Kingdom." *Common Market Law Review*, January, 209–43.
- O'Carroll, Lisa. 2016. "Dutch Woman with Two British Children Told to Leave UK after 24 Years." *The Guardian*, December 28, 2016, sec. Politics.

- <https://www.theguardian.com/politics/2016/dec/28/dutch-woman-with-two-british-children-told-to-leave-uk-after-24-years>.
- Olsen, Espen D. H. 2012. *Transnational Citizenship in the European Union: Past, Present, and Future*. London: Continuum.
- Parker, Owen. 2017. "Commercializing Citizenship in Crisis EU: The Case of Immigrant Investor Programmes." *JCMS: Journal of Common Market Studies* 55 (2): 332–48. <https://doi.org/10.1111/jcms.12462>.
- Parker, Owen, and Óscar López Catalán. 2014. "Free Movement for Whom, Where, When? Roma EU Citizens in France and Spain." *International Political Sociology* 8 (4): 379–95.
- Quinn, Ben. 2016. "Leave Campaign Rows Back on Key Immigration and NHS Pledges." *The Guardian*, June 25, 2016. <https://www.theguardian.com/politics/2016/jun/25/leave-campaign-rows-back-key-pledges-immigration-nhs-spending>.
- Recchi, Ettore. 2015. *Mobile Europe: The Theory and Practice of Free Movement in the EU*. Houndmills: Palgrave Macmillan.
- Ruhs, Martin, and Joakim Palme. 2018. "Institutional Contexts of Political Conflicts around Free Movement in the European Union: A Theoretical Analysis." *Journal of European Public Policy* 25 (10): 1481–1500. <https://doi.org/10.1080/13501763.2018.1488883>.
- Sabbagh, Dan, and Richard Partington. 2018. "Economic Forecasts Strike Blow to Theresa May's Brexit Deal." *The Guardian*, November 28, 2018, sec. Politics. <https://www.theguardian.com/politics/2018/nov/28/economic-forecasts-strike-blow-to-theresa-mays-brexit-deal>.
- Schenk, Angelika, and Susanne K. Schmidt. 2018. "Failing on the Social Dimension: Judicial Law-Making and Student Mobility in the EU." *Journal of European Public Policy* 25 (10): 1522–40. <https://doi.org/10.1080/13501763.2018.1488884>.
- Schrauwen, Annette. 2017. "(Not) Losing out from Brexit." *Europe and the World: A Law Review* 1 (June). <https://doi.org/10.14324/111.444.ewlj.2017.04>.
- Shaw, Jo. 2018. "Citizenship and Free Movement in a Changing EU: Navigating an Archipelago of Contradictions." In *Brexit and Beyond: Rethinking the Futures of Europe*, edited by Benjamin Martill and Uta Staiger, 156–64. UCL Press. <https://www.jstor.org/stable/j.ctt20krxf8.23>.
- Siklodi, N. 2015. "Active Citizenship through Mobility? Students' Perceptions of Identity, Rights and Participation in the EU." *Citizenship Studies* 19 (6–7): 820–35.
- Stewart, Heather. 2018. "Brexit: How the Meaningful Vote Will Work." *The Guardian*, November 28, 2018. <https://www.theguardian.com/politics/2018/nov/28/brexit-how-the-meaningful-vote-will-work>.
- The Independent. 2016. "It Was Only an 'Aspiration': Leading Brexiteer Chris Grayling Says £350 Million a Week Extra for the NHS Was Only an 'Aspiration.'" June 27, 2016. <http://www.independent.co.uk/news/uk/politics/brexit-350-million-a-week-extra-for-the-nhs-only-an-aspiration-says-vote-leave-campaigner-chris-a7105246.html>.
- "The75percent." 2016. <http://the75percent.tumblr.com/>.
- Travis, Alan. 2013. "Benefit Tourism Warnings by Theresa May Get Short Shrift from Europe." *The Guardian*, April 29, 2013. <https://www.theguardian.com/world/2013/apr/29/benefit-tourism-theresa-may-europe>.
- United Kingdom. 2017. "Prime Minister's Commons Statement on Triggering Article 50." March 29, 2017. <https://www.gov.uk/government/speeches/prime-ministers-commons-statement-on-triggering-article-50>.

- Vandenbroucke, Frank. 2018. "2017: A Turning Point in the Development of the EU's Social Dimension?" 2018. <https://www.clingendael.org/pub/2018/clingendael-state-of-the-union-2018/12-the-eus-social-dimension/>.
- Walker, Nigel, Timothy Robinson, and Vaughne Miller. 2018. "European Union Citizenship," March. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2018-0061>.
- Worrall, Patrick. 2018. "Major New Brexit Poll Shows Voters Swinging towards Remain." Channel 4 News. November 5, 2018. <https://www.channel4.com/news/major-new-brexit-poll-shows-voters-swinging-towards-remain>.