

**C**ontroversy between mobile **EU citizens and national welfare systems** in Europe has arisen not only in the macro-political sphere, but also at the micro-legal level. The role that concerns over immigration from EU Member States played in the United Kingdom electorate's vote for Brexit has been heavily emphasised. Before the vote, **David Cameron** made the creation of an "emergency brake" on the right of EU citizens to access social benefits a key plank of the renegotiation of the United Kingdom's membership that was eventually rejected by the electorate. At the micro-legal level, recent rulings by the **European Court of Justice** in cases such as *Dano* and *Alimanovic*, that have taken restrictive interpretations of the right of mobile citizens to social assistance in their host Member State, have generated claims of injustice by EU law scholars.

The result has been the perception of an unresolvable tension: the access rights provided by **EU citizenship** undermine national welfare states and the social solidarity on which they are founded. On the other hand, the exclusion of EU citizens from the national political processes by which welfare states are created and maintained undermines their right to self-determination and exposes them to the injustices created by changes made by the political process. This contribution argues that such **negative outcomes** will only persist so long as methods of redistribution are not available at the European level. Accordingly, it is suggested that the only means to create the sufficient social solidarity that would enable the creation of **European welfare mechanisms** is to enable individuals to choose to become EU citizens through the emancipation of EU citizenship as a voluntary and autonomous status.

## **A welfare no-man's land**

The argument that the rights granted to mobile citizens in their host Member States undermine national social solidarity can be based on the legal form that such rights take. The conditions for access are detailed in the **2004 Citizens' Directive** and the Regulation on the co-ordination **of social security systems** from the same year. The vague and ambiguous manner in which these provisions are framed means that the European Court of Justice has regularly been called upon to define precisely the contours of access to rights of social assistance in cases brought by mobile citizens.

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This phenomenon of a supranational court disapplying national legislation that prejudices the individual rights of EU citizens is disempowering not only for the national welfare systems, but also for the mobile EU citizens who are forced to bring these claims. From the former perspective, the court's power to disapply legislation that arises from the will formation exhibited by national citizens in the democratic process undermines the **thick social bonds** which enable the generation and maintenance of welfare systems. From the latter perspective, the current institutional structure of social assistance for mobile citizens prevents them from accessing the democratic means of will formation. This is because EU citizenship only grants rights to access the results of these processes in host Member States; it does not grant the right to vote in national elections and thus participate in the creation of welfare mechanisms. Therefore, the only **means of self-determination** for such mobile citizens in the event that their access to social assistance is restricted is through litigation before courts.

Accordingly, EU citizens who have moved from their state of nationality to another Member State fall into a no-man's land between the social solidarity in their host and home Member States. In the former state, their participation in welfare mechanisms will necessarily be parasitic upon the domestic political processes enabled by national social solidarity. With regard to the social solidarity in their home Member State, they are no longer physically present within the society. Thus, rights to social assistance that are provided for by the home Member State in the first three months following emigration may not be sufficient to guarantee the citizens' welfare in the different economic and social conditions of their new home state.

## **Aligning rights**

What can be done to resolve the conflict between national social solidarity and European free movement? My suggestion is to **create the necessary mechanisms for redistribution for EU citizens at the European level**. As a sensitive area of "high-politics", fiscal capacities and welfare mechanisms have remained a reserved area of Member State

competence with soft co-ordination rather than hard legal harmonisation at the European level. This has proceeded out of pace with the Europeanised provision of free movement rights for individuals which has found its culmination with EU citizenship. Thus, to align the movement and social rights of individuals and to **break the deadlock of retained national competence for welfare provisions**, citizenship of the European Union should be made an autonomous and voluntary status that individuals choose to adopt. This [argument](#) has been proposed as a solution to the macro-political problem posed by **Brexit** of an entire Member State polity losing their EU citizenship. However, I would suggest that the proposal can also help to resolve the tensions of redistribution in Europe that have arisen outside of the context of Member State withdrawal.

*Providing the nationals of the Member State with the choice to exercise their political self-determination and form themselves into a true European citizenry would enable the creation of the thick social solidarity equivalent to that at national level*

I would argue that the shared practice and experience of **exercising EU law rights to move across borders and integrate** into the societies of other Member States has already created an incipient form of social solidarity between mobile citizens. However, because EU citizenship is predicated upon nationality of a Member State, there is currently no means for this incipient solidarity to manifest itself into the formation of **a defined transnational polity**. It is suggested that providing the nationals of the Member State with the choice to exercise their political self-determination and form themselves into **a true European citizenry** would enable the creation of the thick social solidarity equivalent to that at national level.

Such a constitutional moment approaches **John Rawl's "original position"** through allowing the new European citizens to come together through a **deliberative process** in order to decide upon the design of their European welfare mechanisms. Rather than falling into the no-man's land between national political processes, the European citizenry would be represented in their preferences through legislation created by a similarly emancipated European Parliament. Such autonomy would also insulate the legislative choices taken by

## Voluntary EU citizenship: a means to create European welfare mechanisms? By Oliver Garner

national polities; rather than adjudicating and potentially striking down national legislation in the name of overriding EU law norms, the European Court of Justice would instead adjudicate upon norms that have been created through **a truly European political process**.

The purpose of this short reflection piece has been to suggest that the creation of European welfare mechanisms by European citizens for European citizens is necessary to resolve the conflict between the social solidarity necessary for national welfare systems and the integration of EU citizens into the societies of the Member States. Much **rhetoric** has been propounded regarding bringing the EU closer to the citizens and building a people's Europe. However, in order to build a people's Europe, a European people must first build itself. The (re)creation of citizenship of Europe as an **autonomous** and **voluntary** status would achieve this ideal.

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