# **EU Citizens in Post-Brexit UK: The Case for Automatic Naturalisation**

*Abstract:* One of the most passionately contested issues in the aftermath of the United Kingdom’s decision of leave the European Union in the June 2016 referendum concerned the standing of EU citizens residing on British territory. This article addresses this question from the perspective of normative political theory. Connecting the issue to recent debates about immigrant rights and the political significance of territorial presence, I argue that non-citizen residents should be granted full citizenship of the host state rather than a mere right to stay. This naturalization process should proceed automatically in the case of EU citizens in post-Brexit UK, given legitimate expectations on both sides created during the UK’s membership in the European Union.

*Keywords*: Brexit; Citizenship; Democracy; Territory, Immigration.

# **Introduction**

In the aftermath of the UK’s decision to leave the European Union in the June 2016 referendum, stories such as that of Monique Hawkins, a Dutch citizen who had lived in the UK for 24 years,[[1]](#footnote-1) surfaced in the British media. Hawkins, who has two children with her British husband, had considered applying for British citizenship in the past but decided not to as it would have conferred few rights beyond those she already enjoyed as an EU citizen. Moreover – and, strikingly, in contrast to non-EU citizens – her marriage with a Brit did not automatically qualify her for UK citizenship. When Hawkins finally decided to file for ‘permanent residency’ status in the UK after the referendum, the Home Office brusquely rejected her application and advised her to make arrangements to leave the country as ‘Brexit’ unfolds.

Hawkins’ story highlights the fears among many of the more than three million EU citizens currently residing in the UK.[[2]](#footnote-2) A political decision in which they had no voice at once radically questioned their legal standing in a country in which many of them have built their lives and families, and threatens to strip them of rights and opportunities they took for granted. Unsurprisingly, the future of European citizens residing on British territory counted among the most passionately contested issues in the aftermath of the ‘Brexit’ referendum. While the Withdrawal Agreement reached between EU and UK in their Article 50 negotiations promises to grant ‘settled status’ to EU citizens with at least five years of residency, its pending ratification by the UK Parliament means that, at the time of writing, the future of people such as Monique Hawkins continues to be rife.

Political theorists have so far remained relatively silent on the question which (if any) rights and obligations EU citizens currently residing in the UK should be thought to have.[[3]](#footnote-3) This is somewhat surprising given the recent prominence of questions concerning the normative standing of non-citizen residents in debates about migration and membership. My aim, hence, is to embed the issue of EU citizens in post-Brexit UK in this wider theoretical context – without, however, overlooking the specifics of the case at hand (such as the fact that the European Union is characterised by a regime of multiple and interlocking levels of citizenship that Brexit forces us to disentangle). Bearing this in mind, I shall make the case that EU citizens in post-Brexit UK should be automatically naturalised.[[4]](#footnote-4)

My argument unfolds in four parts. Section 1 rejects the *sovereigntist view*, according to which EU citizens in post-Brexit UK have no justice-based claim to stay at all. Section 2 introduces recent ‘place-related’ arguments according to which an array of social and political rights should follow from the mere fact that people reside somewhere. In section 3, I argue on democratic grounds that these ‘place-related’ considerations should lead us to rethink the foundations of citizenship rather than disaggregate the entitlements attached to it. Consequently, EU citizens who resided in the UK at the time of the referendum should be automatically naturalised. Section 4 considers two objections to my proposal.

# **1. The Sovereigntist View**

I would like to start by considering the arguably most radical stance on the standing of EU citizens in post-Brexit UK. According to what I call the *sovereigntist view,* citizens of EU Member States who reside on UK territory have no justice-based claims at all against their host state.[[5]](#footnote-5) For they (voluntarily!) came to the United Kingdom under certain terms: that they are free to enter and reside there as long as this is within their rights as guaranteed by EU law. Yet, once the UK is no longer a party to (and hence bound by) the relevant international agreements, it can unilaterally set the terms for those who now lack a legal basis for their continued residence.

Brexiteers may be led to push this view by interpreting the referendum decision as a straightforward rejection of EU freedom of movement (cf. Fine 2018). According to a well-known narrative, the worry about a loss of national sovereignty over immigration was a crucial factor in the Brexit vote.[[6]](#footnote-6) The evidence does indeed suggest that ‘Leave’ voters were strongly motivated by negative attitudes towards the free movement of EU citizens and concerns over net migration figures.[[7]](#footnote-7) Moreover, given that the UK government has for long viewed EU citizenship as interfering with their right to treat the holders of that citizenship as foreigners (Kostakopoulou 2018, 859), Brexit might be seen as a welcome opportunity to return to this practice.

There is no doubt that the *sovereigntist view* would be backed also by international law. For on the day the UK leaves the European Union, all treaties cease to be applicable together with any rights and obligation applicable under them (Shaw 2018). Unless a Withdrawal Agreement is ratified by both sides, the treatment of EU-27 citizens resident in the UK reverts to being a matter for national immigration law subject only to certain international human rights obligations. In other words, it is then fully within the UK’s sovereign determination what status they assign to EU citizens. They may very well be subjected, for instance, to the very same application procedures as any other ‘third party’ immigrant.

Yet, is the *sovereigntist view* plausible also from a perspective of justice? In order to answer this question, let us look at the underlying conception of political community. The thought, I take it, is that we should think of a political community (in analogy to marriage, religion or a tennis club) as a voluntary association of like-minded individuals. This right to freely associate with whomever we like, of course, has as its corollary a right to exclude. Hence, proponents of this ‘associative model’ typically defend a state’s right to unilaterally decide who to let in (e.g. Wellman 2008; Blake 2013; Pevnick 2011). Christopher Wellman, for instance, argues that “just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community” (2008, 110-112).

We need to clarify what this supposed right to exclude is a right to exclude *from*. It strikes me that there is a gap between what the logic of these arguments actually suggests, on the one hand, and the conclusion its proponents purport to reach, on the other. For all the associative model of political community could plausibly ground is discretion over access to a state’s institutions and ultimately membership. Yet, what is usually defended is discretion over access to a state’s territory. The reason for this gap is simple: even proponents of the associative model hold the view that *once* a person resides within a territory, they have certain justice-based claims against the host state. Hence, the only way to account for citizens’ freedom of association is to preclude migrants from entering the territory in the first place (e.g. Blake 2013, 115; Pevnick 2011, 57).

Consequently, while even proponents of the associative model believe that those who already *do* reside somewhere have justified claims, the *sovereigntist view* implausibly denies that territorial presence has any normative relevance. Even if it could be shown that the UK is entitled to unilaterally control its borders post Brexit, it is too quick to infer from this that EU citizens already residing in the UK are not owed anything as a matter of justice. In fact, their claims may have additional weight considering that entering the UK (in contrast, for instance, to undocumented immigrants) was fully within their rights at the time. In order to determine, then, which rights precisely EU citizens in post-Brexit UK should be thought to have, we need to think more systematically about the significance of territorial presence.

# **2. Territorial Presence and Immigrant Rights**

In the preceding section, I rejected the *sovereigntist view* on the grounds that it denies the normative relevance of territorial presence. In order to illuminate howprecisely being somewhere matters for what we owe to each other as a matter of justice, I will now go on to embed the case of EU citizens in post-Brexit UK in wider debates in political theory about the normative standing of non-citizen residents. Of course, on one level the large number of EU citizens currently living in the United Kingdom is intimately tied the open (internal) borders policy that has become a hallmark of European integration.[[8]](#footnote-8) At the same time, however, it reflects a trend that extends to regions where borders are less fluid than in Europe: increased levels of migration and mobility have led to a situation in which millions of people around the world reside – that is, live and pursue their life-plans over an extended period of time – on the territory of a country of which they are not a citizen.

Hence, political theorists have been keen to find a normative vocabulary for coming to terms with a world in which the boundaries of membership do not neatly map the boundaries of territorial jurisdiction. They want to be able to say something about the set of individuals who are not citizens but who, nevertheless, stand in a significant normative relation to the state by virtue of their residence on its territory. After all, the host state claims authority over them at least to some extent, coercing them to comply with most of its (e.g. criminal and civil) laws and, for instance, to pay an array of taxes.

Appeals to some kind of universal moral standing that all of us have by virtue of our humanity will not get us very far in this respect.[[9]](#footnote-9) For non-citizen residents share this standing not only with the citizens of the hosting state, but also with everyone else in the world at large; there is nothing special, from this perspective, about the fact that someone is physically present within the relevant territory. The claims against the UK government of a Spanish citizen residing in Manchester are no different from those of her fellow citizen living in Madrid – they are limited to some kind of basic treatment we are all equally owed.

This is where so-called ‘place-related’ accounts enter the picture (e.g. Bosniak 2007; Ochoa Espejo 2016; Shachar 2009; Carens 2013; Rubio-Marin 2000). They claim that the mere fact of physical presence links individuals to a state’s territory and/or its inhabitants in ways that ground certain duties and entitlements. In order to overcome what they conceive as too stark a separation between members and non-members, they invite us to stop thinking of the rights granted by a state as an ‘all-or-nothing bundle attached to citizenship status’ (Song 2016, 242; see also Cohen 2009). Some rights (e.g., democratic participation) may presuppose citizenship, while a more limited set of entitlements (most importantly, a right to stay) should follow from the mere fact that people reside somewhere.

Let me briefly introduce three accounts that follow this argumentative line. First, proponents of what I call *place as occupancy* focus on the way in which the needs and interests of individuals are immediately enmeshed with the physical world around them (Stilz 2013; Moore 2015). Given that many of our life-plans are ‘located’ in the sense of being intricately intertwined with certain spatial arrangements and geographic locations (Stilz 2013, 338), we have so-called ‘occupancy rights’ to remain where our social, cultural, and economic practices take place. Accordingly, non-citizen residents are entitled to stay in the receiving country insofar as their ends are attached to their place of dwelling. As Stilz puts it, ‘if a person has been on a territory for a sufficiently long period […] such that most of his goals, relationships, and life projects are contained within that territory, he may be owed a stable legal residence there’ (Stilz 2011, 584).

There is no doubt that the life-plans of millions EU citizens are inextricably connected to their residence in the United Kingdom in the requisite way. Many have taken deep roots there precisely because they have literally enmeshed their life-plans with the geographical space – they have built a home there, and often work for (or have even founded and run) local businesses and institutions. The German banker in the City of London,[[10]](#footnote-10) the Italian restaurant owner in Sheffield,[[11]](#footnote-11) or the (infamous) Polish builder in Yorkshire[[12]](#footnote-12) have all built their life-plans around the assumption that their continued residence in the UK will not be interrupted. This means that they have a strong interest – and, according to *place as occupancy*, a right – to remain in the relevant place and to be immune against expulsion.

The second framework, which I label *place as affiliation* (Carens 2010, 2013; Shachar 2009; Rubio Marin 2000), highlights the way in which stable residence is fundamental to our personal attachments and social ties. That is to say, in contrast to *place as occupancy*, physical presence is salient for person-to-person rather than person-to-land relations. Specifically, given that people form their deepest human connections – ‘to spouses and partners, sons and daughters, friends and neighbours and co-workers, people we love and people we hate’ (Carens 2010, 17) – where they reside, they have a strong interest to remain there. Starting from this basic case for a right to stay, proponents of *place as affiliation* advocate an ascending scale of social and political rights for non-members as they extend and deepen their actual participation in the host society over time.[[13]](#footnote-13) In a nutshell, we should recognise ‘the value of an actual, real, everyday, and meaningful web of relations and human interactions’ (Shachar 2009, 167) when it comes to assigning membership rights and legal standing.

As cases such that of Monique Hawkins (mentioned at the outset of this article) illustrate, it is not only the affected non-citizens themselves who would suffer enormous hardships, were they forced to leave their country of residency but also their spouses, parents, or children who are left behind. Like her, millions of EU citizens have formed some of their deepest personal ties to Brits in the course of living in the UK for years or even decades. This evokes a strong intuition that there would be something deeply wrong in forcing them to leave a place where they have lived for a long time.

Finally, according to *place as cooperation,* what is morally relevant about our participation in social relations and practices at a specific location are not the ties and attachments we thereby develop. Instead, the idea is that by virtue of being somewhere, we involuntarily acquire certain duties to uphold the local schemes of cooperation that exist at the respective place (Ochoa Espejo 2017). The basic thought is that in every ‘place’ – a small-scale, bounded area with cultural meaning such as a neighbourhood, a city or a religious site – a number of local schemes of social cooperation are going on that serve people who share that place to get along (Ochoa Espejo 2017, 78). Anyone residing at the geographic location automatically acquires ‘place-related’ duties to do their part in establishing and maintaining such schemes. This is said to ground, for instance, duties of being a good neighbour, respecting sacred spaces, fostering the local ecosystem’s resilience, or sharing communal areas.

From these duties, then, a right is derived to stay at the relevant place and continue to participate in the local scheme of cooperation, regardless of formal membership status in the wider political community. For given that the pertinent duties are “mutual” (Ochoa Espejo 2017, 83) – nobody involved can do their part unless others around them reciprocate – unless the continued presence of all local dwellers is ensured, the moral agency of all others (including that of citizen residents) is in peril. Along these lines, we could argue, for instance, that EU citizens residing in a certain London Borough should be granted a right to remain precisely there (while retaining what is effectively a visiting status in the rest of the UK territory).[[14]](#footnote-14) Otherwise, the web of place-specific duties in the relevant area would be cut apart and local life as a whole disrupted.

Admittedly, it may be hard to neatly keep apart these three accounts on more than a merely analytical level. Physically presence unavoidably opens up the possibility of relating to things and people at the relevant locality. Yet, my concern is less with differences in detail rather than the underlying argumentative structure: the shared idea is that, by virtue of their continued physical presence somewhere, non-citizen residents are engaged or entangled in certain place-related projects or practices. In so doing, they develop relations to the land or the people that are of moral relevance and should be legally acknowledged. Continued physical presence thus grounds a discrete, ‘place-related’ domain of rights and obligations that is conceptually located in between the claims we have on one another as citizens, and those we have as humans.

It is this attempt to disaggregate citizenship and sketch a domain of rights and obligations that individuals are owed merely by virtue of their continued physical presence that I want to problematise. My claim is that this proposal is deeply problematic from a democratic perspective. The existence of a group of long-term immigrants who are non-citizens, I want to suggest, runs counter to the very idea of a self-governing community of free and equal citizens, properly understood.

In order to see why, notice that the (moral) entitlements we assign to non-citizen residents can hardly be specified independently of the political process through which they are implemented and ‘juridified’. For, we are bound to disagree about the nature and extent of each our entitlements, including those mediated by ‘place’; all the more so in the context of modern diverse societies where we frequently interact with strangers with whom we share no personal ties.

Let me illustrate what I have in mind with regard to the three accounts just introduced. The problem for *place as occupancy* is that, in diverse societies, individuals’ life-plans are bound to spatially overlap and occasionally conflict. For instance, ‘a Cuban immigrant may have an occupancy right in Miami because it contains his family, his workplace, his Catholic church, and his Spanish-speaking coethnics, while a Jewish Miamian may have an occupancy right in the same area because it contains his soccer club, his synagogue, and his school’ (Stilz 2013, 350). As far as *place as affiliation* is concerned, long-term residents will not only develop personal attachments; they will also have to interact with the local population in ways that are less intimate and informal – as tenants, clients, customers, or employees – and, hence, more likely to be subject to disagreement (for instance, about the terms of engagement, cooperation or employment). Finally, given that the relevant ‘places’ that are central to *place as cooperation* are not neatly defined by physical geography but in part socially constructed, overlapping collectives are bound to disagree about their boundaries or associate competing meanings with them. For instance, while one collective scheme may be built around the assumption that a site is sacred, or that its natural value should be protected, other local dwellers may see in it the prospects for urban development and financial gain.

All this goes to show that we cannot expect our moral assessments concerning rights and obligations to reliably converge. Instead, we need political institutions that set the terms on which individuals can justly interact in the first place. By making public law, they settle the question which claims we each have. Now, the idea underlying democratic institutions is that we give these laws to ourselves: at least as a normative aspiration, the rulers and the ruled are one and the same when it comes to democratic decision-making.

From this perspective, it is highly problematic if a significant segment of the population is permanently excluded from the process of democratic self-government, such that they are subject to the laws without having a say in them. In creating a group of people who are forced to lead their life as permanent guests, we ‘implicitly condone the apartheid-like condition of those who are not offered an equal say in the making of laws to which they are subjected’ (Ypi and De Schutter 2015, 243/4). No democratic state, hence, should tolerate the establishment of a fixed status between citizen and foreigner that forces long-term residents to lead the life of what Michael Walzer (1983, 52) calls a ‘live-in servant’. The only way to prevent this scenario is to fully include them into the polity.

We can see this problem quite clearly in the case of EU citizens in post-Brexit UK. If they are assigned a status below the threshold of citizenship – including, for instance, the ‘settled status’ envisioned in the Withdrawal Agreement or the ‘protected status’ proposed by Kostakopoulou (2018) – they remain at the mercy of future political developments and discourses, in which they would have no say. In particular, an increasingly hostile environment for EU nationals may lead to their rights being slowly stripped away (Bickerton and Tuck 2017, 35). And given that jurisdiction of the European Court of Justice is likely to end after the UK has left the EU, they lack any other institutional means to claim their rights.

In the subsequent section, I will thus propose that EU citizens in post-Brexit UK should, like all other non-citizen residents, be naturalised. In other words, rather than disaggregating democratic citizenship we should rethink the criteria in accordance with which it is usually assigned. On my account, then, continued territorial presence alone grounds democratic citizenship.

**3. The Case for Automatic Naturalisation**

In the preceding section, I rejected a recently popular set of arguments according to which an array of social and political rights – most importantly, a right to stay – should follow from the mere fact that people reside somewhere. I do agree that the underlying ‘place-related’ considerations are significant for what we owe to one another as a matter of justice. Yet, I will now argue that they matter not in the sense of grounding certain entitlements below the level of full inclusion but constitute the foundation of democratic citizenship itself. This grounds my case for naturalising EU citizens in post-Brexit UK.

My framework, which I label *place as politics,* is loosely inspired by Immanuel Kant’s justification of democratic authority. The relevant argument consists of what I take to be two integrated parts; one making the case for a duty to submit to coercive and territorially organised political institutions, the other for the democratic exercise of their authority. The first element is enshrined in the claim that ‘when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition’ (Kant 1996, 6:307).[[15]](#footnote-15) Coexistence under conditions of physical proximity alone, that is to say, grounds an obligation to jointly establish and submit to coercive institutions that make public laws.

The thought is that, without political institutions, we cannot but act on (and ultimately, enforce) each our own interpretation of what our rights and obligations are.[[16]](#footnote-16) However, as moral equals, none of us have the requisite authority to unilaterally determine the terms of interaction. Only political institutions are in a position to provide a public interpretation and enforcement of everyone’s rights and obligations by making coercive laws. In imposing reciprocal limits on freedom, the state coordinates interpersonal interactions such that nobody is subject to another’s arbitrary choice. We thus have an obligation to establish with those around us (and can even force them into) a civil condition in which our interactions are regulated by law (Kant 1996, 6:232).

This argument’s potential weak spot, I take it, is the underlying claim that it is those in our vicinity with whom the relevant conflicts (and hence the need for democratic mediation) are most pertinent; this is the premise supposed to justify the *territorial* exercise of political authority. Robert Goodin (forthcoming) has recently rejected this as a problematically naïve form of political anthropology in a world where many of our interactions and interdependencies are increasingly mediated, for instance, by markets rather than being contingent on physical proximity.

While there can be no doubt that globalization processes put pressure on the correlation between interdependence and physical proximity, we should keep in mind that this link has something quite fundamental going for it: the basic fact that humans are corporeal beings who overwhelmingly act and pursue their life-plans *somewhere*. It means that a large number of our interactions will unavoidably be with those around us – those with whom we share the same roads, work places, parks or schools*.* In other words, shared geographies are a *fundamental* source of human enmeshment; more fundamental than other sources such as shared identities or religion, which are themselves deeply influenced by and embedded in a shared physical world that underlies them.

For that to change, the human life-form as a whole would have to radically transform in ways that go way beyond what we currently observe (or may even be able even envision). Consequently, I do believe that there continues to be something special about the frequency, range, depth and certainty of our interactions with those around us at least to an extent that warrants a standing mechanism of conflict solution that exercises its authority across a contiguous piece of geographical space, i.e., territorially.

Let us now proceed to the second part of the argument, which accounts for the democratic nature of these institutions. The basic idea is that whether political institutions actually fulfil the moral coordination function they are tasked with depends on the *way* in which they exercise their authority. In particular, in order to overcome the problem of unilateral judgement, disagreements have to be settled such that the political community can be understood to give laws *to* *itself*. For, only then is individuals’ dependence on each other’s private wills replaced with mutual dependence on public laws. In other words, we need a modern form of constitutional and representative democracy, where all those who are subject to the law are also their joint authors.

At first sight, it seems hard to see how this framework could provide any guidance on the question of membership. For notice that a general rationale for territorially organised political entities does not yet tell us anything how to delimit their boundaries. Given that proximity is a scalar or gradual rather than a binary property, with whom do we actually live ‘side by side’, such that we ought to jointly enter into the civil condition and engage in democratic self-government? As John Simmons (2013, 326) puts it, the Kantian framework is structurally incapable of “locating boundaries between different states’ domains of authority in the natural or intuitive places”.

How to deal with this predicament? Jeremy Waldron helps himself to a kind of historical genealogy where boundaries are presented as emerging naturally as organically growing ‘clusters’ of people gradually approach one another. Yet, this will not get us very far in a world without clearly demarcated ‘vicinities’, where people are virtually dispersed continuously over the planet’s surface.[[17]](#footnote-17)

Another option would to draw a radically cosmopolitan conclusion: the fact that boundaries cannot consistently be drawn on the basis of this framework, we may argue, simply shows that we should think of the demos as in principle unbounded (e.g. Abizadeh 2008) or even that ultimately a world state is called for (e.g. Hodgson 2012). Now, even if this turned out to be convincing from a perspective of ideal theory, it would make it very hard to ask many pressing normative questions that arise in our existing political world, which is a world of states – including the question of state citizenship currently at hand.

Hence, I choose to take a different path out of this predicament. My suggestion is that for *place as politics* to provide guidance with regard to the membership question, we need to understand it in a particular way: as what I call a *regulative* principle. That is to say, we should not take it to serve as a normative criterion for carving up the world into distinct territories. Instead, it guides us in answering the question how an institution whose boundaries we take as given (or evaluate on the basis of a separate standard) should be internally arranged and constituted. Thus understood, *place as politics* invites us to understand an existing state in a certain way, namely as a ‘jurisdictional project’ (Blake 2013, 109) that allows a collective of individuals who coexist somewhere to come to terms with that fact by giving themselves laws.

The insight that the boundaries of the state do not reflect those of a prior, pre-political collective, in turn, yields a standard for assigning membership: those who jointly reside on a territory should participate, as full citizens, in the process of democratic law-making. This also entails that non-citizen residents should be naturalised. By granting them citizenship, we formally acknowledge that they belong to the self-governing polity and take part, as equals, in a comprehensive political practice allowing a plurality of interconnected individuals to justly relate to one another.

Notice that it will not do to merely grant democratic participation rights to non-citizen residents (e.g Beckman 2012; Lennard 2015). For on the thick, republican conception with which I am operating here, citizenship is more than a bundle of rights. It is understood as a standing that we assign one another in acknowledgement of our equal participation in the practice of political self-determination.[[18]](#footnote-18) Merely granting a right to vote would introduce a distinction between first- and second-class subjects that runs counter to the very idea of a self-governing community of free and equal citizens (Celikates 2013, 31/32); we would be left with a version of the problem identified in the preceding section.

The reason why my claim is tailored specifically to membership in the state rather than, for instance, other territorially demarcated institutions or entities below the state (such as a city or region) or above it (such as the EU) is largely pragmatic.[[19]](#footnote-19) It has to do with the simple (through purely contingent) fact that the modern state – for the time being – continues to constitute the most important site of political self-determination. That is to say, as long as the overwhelming amount of laws that effect people’s lives are made at level of the modern nation-state, it is inclusion into this polity that should be of primary concern. I shall return to this issue in the final section.

At this point, it is more important to highlight that the sense in which non-citizen residents *should* be naturalised goes both ways: while states have an obligation to offer citizenship, newcomers have an obligation to take it up (Ypi and De Schutter 2015).[[20]](#footnote-20) The reason is that I have defined citizenship not just as a bundle of privileges but as a ‘public office’ that allows those entrusted with it to engage in the democratic formation of a common will. Thus understood, it imposes on its holders a responsibility to think of themselves as engaged in a shared project. Acknowledging this responsibility cannot be optional but is something all present on the territory of a state on a long-term basis owe one another.

Ypi and De Schutter (2015, 242-243) refer to this idea by way of what they call the ‘all-affecting principle’: if agents repeatedly and significantly affect one another (as I have argued they do if they live in one another’s vicinity), they are obliged to justify, discuss and negotiate those of their actions and practices that have an impact on others’ public life within the requisite democratic processes. Consequently, permanent residents owe it to a country’s citizens to take up citizenship and participate in the democratic processes through which they reciprocally justify their practices and actions with the aim of establishing ground-rules for coming to terms with their coexistence. Put differently, the asymmetry of political standing I diagnosed in the preceding section, between citizens and non-citizen residents who live as ‘strangers in their midst’, is problematic not only from the perspective of the former but also the latter and, indeed, the political community as a whole.

In concluding this section, I have to address the difficult question *when* a newcomer counts as a resident. My appeal to repeated and persistent interaction obviously excludes transients and visitors from the purview of the argument, but can we specify a threshold of residency at which a non-citizen’s interactions with the local population has the required frequency, range, depth and certainty? While I will not be able, within the confines of this article, to sketch and defend a specific policy proposal, I want to provide at least an analytical criterion that can guide us in so doing.

Notice that the existing accounts discussed in the preceding section typically determine an immigrant’s standing and entitlements from a *backward-looking* perspective: it is past time exclusively that matters. As Carens (2010, 103) pointedly puts it, ‘the longer the presence, the stronger the claims to membership’. I would like to suggest that, by contrast, the temporal logic underlying my own account is essentially *forward-looking*: what matters for determining whether an immigrant is to take part in democratic self-government is how long they will or are likely to reside on the relevant territory. Following this logic, the assignment of citizenship should be understood not as a *reward* but a *promise*: the promise that a newcomer counts as an equal participant in the democratic project that the relevant community takes itself to be engaged in.

Now, the time someone has actually spent somewhere may enter this calculation, quite simply because past residency tends to be a good indicator for future coexistence. More importantly, however, whether one or both sides have legitimate reason to expect that they will coexist permanently is a matter of the newcomer’s legal standing, i.e., of the legal status they are assigned upon entering the country. This is relevant for the case of legal permanent residents in particular, where both sides can legitimately expect that they can (and, potentially, will) stay indefinitely.

Against this background, I want to defend the claim that EU nationals who were living in the UK at the time of the Brexit referendum should be automatically naturalised via a special and speedy procedure (Bickerton and Tuck 2017, 33/34). The reason is that before June 2016 they had, for many purposes, not been treated or even registered as migrants and hence rarely thought of themselves as such. This should be taken into account as their host community unilaterally changes the terms of admission and belonging. By contrast, EU citizens entering the UK after that date would be subject to a separate naturalisation process that similarly applies for non-citizen residents from non-EU countries.

**4. Predicaments of Citizenship**

In the preceding section, I made the case for automatic naturalisation of EU citizens in post-Brexit UK. Citizens of Union Member States who resided on British territory on the day of the 2016 referendum should be given UK citizenship via a special and speedy procedure. In this concluding section, I shall consider two objections.[[21]](#footnote-21) They concern the implications of my proposal for citizenship in the country of origin on the one hand, and on EU citizenship, on the other – both of which EU citizens in post-Brexit UK may lose if naturalised. Addressing these worries will not only allow me to lay out in more detail how my general framework for thinking about non-citizen residency plays out specifically in the post-Brexit scenario, it will also put further flesh on the bones of the citizenship conception underlying my argument.

The first concern about my proposal is that it would lead to *some* residents losing citizenship in their country of origin. Indeed, while most EU Member States do permit dual citizenship, Denmark, Norway, Estonia and Lithuania (as well as, under certain conditions, Poland and the Netherlands) require the renunciation of the former nationality upon naturalisation elsewhere.[[22]](#footnote-22) Hence, the status of EU citizens in post-Brexit UK would essentially depend on a “member state lottery” (Kostakopoulou 2018, 861; see also Shaw 2018, 6/7).

There are two normative issues here that we should distinguish. First, the variability of naturalisation laws across the (remaining) 27 Member States, which results in divergence and inequalities in the treatment of EU citizens in the post-Brexit scenario, seems to be problematic as such. There is a straightforward fairness-based case to be made, hence, for a more unified citizenship and naturalisation practice. But what should the relevant practice be? This leads to the second, more substantive question: does my model allow for dual citizenship in the first place? On this point, I want to bite the bullet and defend the controversial idea that territorial presence should not only be a *sufficient* but also a *necessary* condition of citizenship, such that non-resident citizens ought to be denaturalised after a period of living abroad.

Admittedly, this may appear to be an unappealing implication of my framework. Do individuals who live abroad not have a legitimate interest to retain a variety of connections to (people in) their home country and express their (cultural, social, or emotional) affiliation with it? They certainly do have such an interest, yet I believe that a right to infinitely retain citizenship while living abroad should not be the way to acknowledge it. At least this is what I take to follow from the deflationary conception of citizenship on the basis of which I operate. I suggested that we should understand citizenship as a distinctly political status that entitles its holder to be an equal participant in the practice of democratic self-government, rather than a permanent status expressing shared cultural, national or historical ties. This status should be reserved to those who tend to have the thickest nodes of interaction because they jointly coexist on a territory.

We could think of other arrangements, of course, that would allow emigrants to naturalise in their country of residency without thereby having to sever all ties to the country where they originate. On a ‘rotating citizenship’ model (Ypi and De Schutter 2015, 249), for instance, non-residents’ citizenship becomes temporarily dormant but can be taken up again at a later point. This would of course require that emigrants have a ‘right of return’ to their country of origin in the first place, such that resettlement is an actual option.

Let me now turn to the second objection. It starts from the observation that the automatic naturalization of EU citizens in post-Brexit UK would not only cost them their citizenship of the home state. In becoming UK citizens, they would simultaneously lose their EU citizenship.[[23]](#footnote-23) For since its formal establishment by the Maastricht Treaty in 1993, European Union citizenship has been derivative of national citizenship in a Member State, making the latter effectively gatekeepers of EU citizenship. With Brexit, Europeans resident in the UK are bound to lose their Union citizenship and the protections afforded by it.

Kostakopoulou (2018, 860) thus worries that, in collapsingEU citizenship into national citizenship, my account is ‘consonant with eurosceptic and nationalist ideology which favours a restrictive notion of national citizenship and clearly demarcated boundaries between nationals/members and non-nationals/foreigners’. The idea of transnational models of citizenship, she argues, is precisely to go beyond the ‘law of the excluded middle’ and accommodate the rights of those whose stake in the political community falls short of a claim to full political inclusion. My proposed model, the argument goes, replaces this visionwith a ‘nation-centric logic which requires the conversion of “aliens” into nationals via naturalization’ (Kostakopoulou 2018, 862). In a similar vein, Jo Shaw laments ‘the resurgence of the fundamentals of national immigration law over the postnational promise of EU citizenship’ (Shaw 2018, 8).

Let me make two points in response. First, I should repeat why I give **‘**methodological and political primacy’ (Kostakopoulou 2018, p.862) to national citizenship. Emphatically, it is *not* an idea of the nation-state as a community of fate along ethnic, cultural or nationalist lines. Against the background of such a notion, a focus on state citizenship would indeed have exclusionary consequences in the sense of side-lining newcomers, who usually lack the relevant features. By contrast, and as mentioned before, I start from the contingent fact that, at present, territorially bounded communities organized as nation-states are the primary site of political self-determination, such that everyone physically present on their respective territories should be part of that practice. Nothing besides, above or beyond the fact the we live ‘side by side’ with others, I argued, is required for full political inclusion. On the basis of this more fluid account of *access* to membership, I believe, we can make a clear-cut distinction between members and non-members without buying into an exclusionary narrative.

This leads directly to my second point. For, we notice that there are no principled reasons to restrict the implications of my model to the nation state, nor to even confine ourselves to a monistic model of citizenship in the first place. *Wherever* there are (potentially overlapping) sites of democratic self-government, membership should be assigned on the basis of territorial presence. Polities on the sub-state or supra-state level are candidates for this model as much as the state.

It is a matter of contention, for instance, whether European integration has already reached a point that would turn EU citizenship into a truly political status. Some scholars highlight that the latter remains essentially a right to free movement and non-discrimination that primarily serves to promote exchange and mutual respect between the citizens of the different Member States (e.g. de Witte 2018). Others point out that, in exercising these rights,EU citizens have effectively created a **‘**broader, more cosmopolitan political community’ (Kostakopoulou 2018, p. 857). Consequently, Union citizenship should no longer be mediated by prior national citizenship but should be based on mere lawful residence in the territories comprising the EU (e.g. Maas 2007; Kochenov and Plender 2012; Tonkiss 2013). My aim here is not to settle this question. All I want to highlight is that my case against disaggregating citizenship is not a case against EU Citizenship as such, or indeed any other form of transnational citizenship. Nor does it foreclose conceptions of complex, hybrid identities and plural senses of belonging more generally. To see this, however, we need to reconceive the notion of citizenship and its foundations.

# **Conclusion**

The United Kingdom’s decision to leave the European Union within two years from March 2017 has left the legal situation of millions of European residents on British territory in limbo. The aim of this paper was to engage in normative reflection on this issue by means of providing a more systematic account of the normative significance of territorial presence. I focused on contrasting two ways of thinking about the way in which territorial presence may be taken to matter politically. Some accounts seek to supplement democratic citizenship with an additional domain of rights and obligations: they argue that engagement in ‘place-related’ projects, relationships and practices grounds certain moral entitlements (most importantly, a right to stay) that should be politically acknowledged. This move is motivated by worries about too stark a gap between ‘either treat[ing] someone as a proto-citizen, or consider[ing] her as nothing more than a transient deserving of no more than the basic human and legal rights that any liberal society should accord to any person’ (Ochoa Espejo 2017, 72).

Yet, this gap is only as problematic as proponents of these accounts take it to be as long as we continue to define membership in the democratic political community on the basis of criteria that immigrants rarely meet. I thus suggested to rethink the foundations of membership themselves rather than disaggregating the rights associated with it. According to *place as politics*, continued physical presence is relevant when it comes to assigning democratic citizenship. EU citizens who want to continue to reside in post-Brexit UK should thus be automatically naturalised.

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1. #  ‘Dutch woman with two British children told to leave UK after 24 years’, *The Guardian,* 28 December 2016, available at: <https://www.theguardian.com/politics/2016/dec/28/dutch-woman-with-two-british-children-told-to-leave-uk-after-24-years> idge University Press, 2009). ssigned.empt to construeas that of a novel analytical vocabulary. non-citizen residency. IN par.

 [↑](#footnote-ref-1)
2. Much of what I have to say in what follows holds correspondingly for the estimated 1.2 million Brits living in EU countries. [↑](#footnote-ref-2)
3. Work that does touch on membership-related implications of Brexit (e.g. Shaw 2017; Kostakopoulou 2018; Schmidt 2017) rarely takes a normative perspective. [↑](#footnote-ref-3)
4. Bickerton and Tuck (2017, 33-36) suggest precisely this as a policy proposal, though without providing a systematic theoretical defence. [↑](#footnote-ref-4)
5. I am grateful to an anonymous referee for urging me to address this argument. [↑](#footnote-ref-5)
6. ‘EU referendum: Concern over immigration delivers a “significant” poll boost to the Leave campaign as voters react to claims over UK border control’, *The Telegraph*, 31 May 2016, available at http://www.telegraph.co.uk/ news/2016/05/30/ concern-over-immigration-delivers-a-significant-poll-boost-to-th/. [↑](#footnote-ref-6)
7. See GQR poll conducted for the TUC, June 24–27, 2016, available at https://gqrr.app.box.com/s/xb5sfzo19btsn74vawnmu7mn033p1ary. [↑](#footnote-ref-7)
8. Across the countries constituting the European Union, 16 million inhabitants are citizens of another Member State (Eurostat, 2017). [↑](#footnote-ref-8)
9. Song (2016) and Fiss (1999) argue, for instance, that all persons within a state’s territory are owed equal treatment by virtue of being equal claimants of certain human rights. [↑](#footnote-ref-9)
10. ‘Deutsche Bank: 4000 jobs at risk of being moved out of UK after Brexit’, *The Guardian,* 26 April 2017, available at: <https://www.theguardian.com/business/2017/apr/26/deutsche-bank-4000-jobs-at-risk-of-being-moved-out-of-uk-after-brexit>. [↑](#footnote-ref-10)
11. ‘Meet Britain’s EU-workers: “It would be difficult to replace us”’, *The Guardian,* 3 June 2016, available at: <https://www.theguardian.com/politics/2016/jun/03/meet-britains-eu-workers-it-would-be-difficult-to-replace-us>. [↑](#footnote-ref-11)
12. ‘Britain’s Poles: hard work, Yorkshire accents and life post-Brexit vote’, *The Guardian,* 25 October 2016, available at: <https://www.theguardian.com/society/2016/oct/25/polish-in-wakefield-brexit-vote-britain>. [↑](#footnote-ref-12)
13. Both Carens (2013, 164/5) and Shachar (2009, 169-171) use passage of time as a shorthand for the relevant kinds of affiliations.t isesutinguggest to steamtic ut the ose who concurrently exist on a territory can jointly set their terms of tate other than The force of their arguments is thus contingent on there actually being such a correlation between time and social ties. [↑](#footnote-ref-13)
14. Recent surveys show how strongly the political identity of Londoners is tied to their city. See ‘Londoners identify as citizens of the city first before British, English or European, poll finds’, *The Standard,* 19 October 2017, available at: <https://www.standard.co.uk/news/london/londoners-identify-as-citizens-of-city-first-before-british-english-or-european-poll-finds-a3654936.html>. [↑](#footnote-ref-14)
15. All references to Kant refer to the commonly used pagination of the Prussian Academy edition. [↑](#footnote-ref-15)
16. Kant develops this argument in the *Doctrine of Right* (Kant 1996). See also Ripstein 2009. [↑](#footnote-ref-16)
17. Waldron starts from the assumption that ‘humans are not spread out evenly across the face of the earth, but clustered together in a plurality of distinct localities’ (Waldron 2011, 10). The idea is that geographical factors like the unequal distribution of resources on earth attract people unevenly to different locations. These human clusters can then be thought of as boundaries of proximity on the basis of which specific territories are delineated. [↑](#footnote-ref-17)
18. This not to deny that this standing has a number of further rights attached to it (such as diplomatic protection, automatic re-entry to the state as well as the autonomic entitlement to pass nationality on to one’s children) that are only indirectly related to the primary justification for granting citizenship. [↑](#footnote-ref-18)
19. I am grateful to an anonymous referee for urging me to address this. [↑](#footnote-ref-19)
20. Similar arguments are made by Rubio-Marin 2000; Lopez-Guerra 2005. [↑](#footnote-ref-20)
21. Both objections are raised by Kostakopoulou 2018, 860-862. [↑](#footnote-ref-21)
22. Specific national reports on this issue are available on the EUDO website: <https://www.eui.eu>. [↑](#footnote-ref-22)
23. On the various ways in which EU citizenship and national citizenship interact from a legal viewpoint, see e.g. Carrera and de Groot 2016; Guild 2016. [↑](#footnote-ref-23)