

# **Communicating European Citizenship**

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# Dynamics of extension and assertion: enacting European citizenship

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## Introduction and rationale

The European Court of Justice (ECJ), in clarifying legal ambiguities or anomalies in European citizenship status, has extended the scope of that status. Ordinary European citizens – and others such as third country nationals who may or may not even reside in the EU – assert their citizenly claims in varied ways through acts of citizenship. Both types of act – acts of extension and acts of assertion – have the potential to shape the future of European citizenship. If, for example, we focus exclusively on ECJ legal rulings, we may miss the significance of social and political acts of citizenship. This paper, building on work across the ENACT project<sup>1</sup>, outlines key ways in which European citizenship is the unfinished product of highly varied social and political, as well as legal, acts. It does so by introducing and sketching two dynamics – the *dynamic of extension*, and the *dynamic of assertion* - in the enactment of European citizenship, and shows what this approach can add to current debates.

Acts of European citizenship come in a number of varieties. To clarify the nature of the two dynamics at the core of my discussion, it is helpful to note that among the core (dictionary) meanings of ‘act’ and (especially) ‘enact’ is a distinction between (a) enactment as completion of a task, the contours of which are already substantially in place, and (b) enactment as a creative or aesthetic act. The first sense informs the idea of the dynamic of extension: here, acts extend in a linear fashion an understanding or a regime of ruling or practice. These acts of extension are implicitly, and sometimes explicitly, teleological in that they gain significance from a perceived (even if not shared in all details) end point or vision of (in this case) European citizenship. The second sense, which informs the idea of the dynamic of assertion, stresses acts as unpredictable, non-linear, directed to an immediate goal. In other words, at the heart of the idea of an act (of citizenship) is a bifurcation of meaning expressed through the two dynamics.

I refer to a ‘dynamic’ to signify a significant underlying pattern of acts of citizenship. A dynamic is a pattern that characterises a set of acts which on the surface may appear to be wholly disparate. Any simplifying analytical device will, at some level, do an injustice to the rich plurality of acts of European citizenship, from the privileged centre (such as the ECJ) to the margins (e.g. claims by illegal migrants entering the EU). Nonetheless the extension/assertion distinction enables us to counterpose

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<sup>1</sup> ENACT (Enacting European Citizenship) is a research project funded by the 7<sup>th</sup> Framework Research Programme of DG Research of the European Commission and coordinated by The Open University in the UK. For further details see <http://www.enacting-citizenship.eu/>. I am grateful to participants in the workshop on *Enacting European Citizenship of Third Country Nationals in the EU* (CEPS, Brussels, March 2009), and in the ENACT workshop Making Connections (Koc University, Istanbul, October 2009) for comments on an earlier draft. This paper remains a work in progress; comments are welcome to [m.j.saward@open.ac.uk](mailto:m.j.saward@open.ac.uk). Though I have drawn extensively on research conducted across ENACT, I am solely responsible for the framework and the interpretation of that material in this paper.

fruitfully key contrasting aspects of European citizenship which are often examined as entirely different realms (of research, and of politics).

Broadening the focus of work on European citizenship from status to acts, and from courts to a range of other actors does not diminish its importance as a legal status. European citizenship has existed as a legal status since 1993 and has developed through EU legislation and ECJ case law since then, especially in the 2000s (Besson and Utzinger 2008, 185). In this respect, a dynamic of extension – however haltingly or incrementally, the status has been extended - is crucial to its evolution. As a legal status, derivative from citizenship of a member state of the European Union (EU), European citizenship has been subject to a number of tensions and questions. Because the EU lacks many attributes of a state, core provisions of European citizenship are not enforced like national citizenship can be. Sovereign authority, which normally accompanies a bounded citizenship regime, belongs to entities other than the EU. European citizenship is activated legally when citizens of one member state move to or in another member state – it is activated by (a particular kind of) mobility, which differs from the normal basis of citizenship in belonging to a state. In a sense, it makes citizens of a certain kind out of foreigners of a certain kind<sup>2</sup>. In these and other senses European citizenship challenges received ideas of citizenship. And the scope of European citizenship remains controversial – to what extent should it extend to social and political rights, as well as market-linked rights associated with movement between member states? And what is the status of residents in the EU who are not citizens, be they long term residents or others (Besson and Utzinger 2007)? In short, the development of European citizenship as a legal status has been complex and contested.

ECJ judges, for example, can be said to make ‘acts of European citizenship’ when they rule to clarify or extend its scope. But acts of European citizenship can also be a much wider array of claims to or assertions about rights attached to European citizenship. They may be acts committed by people holding formal status as European citizens, or people who do not. They may be acts that challenge existing understandings of formal European citizenship, sometimes in spontaneous and visceral ways. Acts of citizenship in this wider sense can be quite independent of one’s formal citizenship status (or territorial location or residence). Varied groups and people will have ideas of European citizenship and what being of ‘Europe’ means to them; by committing acts of citizenship they enact themselves as European citizens, even if in unconventional ways.

By exploring citizenship *as* enacted – and, therefore, to simplify, at ‘acts of citizenship’ (Isin 2008) – we may capture underlying dynamics of the contests over (European) citizenship that are not always evident in examining its development as a legal status alone. ENACT research has shown the huge diversity of styles and effects of acts of citizenship in, and oriented to, Europe. For example, Kurds in Turkey make citizenly claims on, and oriented to, the European Union; young people in Turkey make claims as Europeans against Turkish authorities, or on the European stage. The presence of Roma people has posed challenges to the depth and application of European citizenship; and gay rights groups in Latvia have asserted their identities and rights partly in connection to ideals of European citizenship.

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<sup>2</sup> These points draw upon comments ENACT participant Elspeth Guild.

Long- and short-term resident third country nationals in the EU at times enact themselves as European citizens, making claims and asserting identities (ENACT has, for example, looked specifically at migrant groups in Budapest). A key project challenge is to recognise and understand such acts of assertion – and sometimes of rupture - as challenges to more formal ideas of (European) citizenship. The latter is an arena of lively and significant political claim and counterclaim as well as a legal status.

I go on to sketch six key lines of variation of acts under the dynamics of extension and assertion<sup>3</sup>. I conclude with comments on the crucial relationships in practice between the two, and the importance of those relationships to the analysis of European citizenship.

### **Extension and assertion: lines of variation**

Table 1 outlines six lines of variation which taken together distinguish acts under the dynamic of extension from acts under the dynamic of assertion. (This is an indicative set of features, and it is not intended to be definitive. Equally the different axes of variation are closely linked to each other or overlap in complex ways; I pick up this point towards the end of the paper). The first area is ‘trajectory and intent’. What is the goal, or planned or implied destination, of acts of European citizenship under the two dynamics? This is the most crucial mode of distinction between the two, and in the discussion below I devote more space to it. The second line of variation is the conception of the act – I distinguish different types of acts of citizenship, and explain their significance. The third line of variation concerns the positioning and profile of the actor – what does the institutional or spatial positioning of an actor tell us in terms of the underlying character of different acts of citizenship? The fourth line concerns how acts of citizenship play upon inclusion and exclusion under the two dynamics; the fifth focuses upon what the acts produce, and the sixth on the relevant scales of applicability of acts under the two dynamics. The second and third columns respectively in Table 1 set out how acts of European citizenship under each of the two dynamics can best be characterised with respect to these six axes of variation.

The discussion will suggest and develop the idea that the two dynamics are both crucial and – surprisingly, perhaps – mutually dependent in the enactment of European citizenship. The two dynamics are interpretive frames that are designed to capture some key contributions, contrasts and overlaps between acts under the dynamics of extension and assertion.

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<sup>3</sup> Arguably this distinction echoes the Greek distinction between making and acting (Arendt 1958).

**Table 1 – Enactment of (European) citizenship**

<i>With respect to the following features...</i>	<i>...acts under the dynamic of extension tend to be...</i>	<i>...while acts under the dynamic of assertion tend to be...</i>
I. Trajectory and intent	Addressing or fixing an anomaly or dispute arising within the existing legal order, with an eye to extending legal clarity on the status of European citizenship	Asserting a claim to citizenship or citizenly regard with respect to an issue or dilemma; sometimes to expose limited or formal understandings of European citizenship
II. Conception of act of citizenship: act <i>on</i> , act <i>as</i> , act <i>out</i>	Primarily acts <i>on</i> , and <i>within</i> , formal citizenship status; a procedural enactment of legality	Primarily acts which involve acting <i>as</i> citizens regardless of the formal status of actor; more informal aesthetic acts
III. Actor's position(ing) and political profile	Acts performed by formal judicial institutions, which depoliticise and judicialise the claims and disputes considered; top-down acts with depoliticising effects	Acts performed by groups or people outside formal EU or governmental institutions, asserting hitherto low-profile or challenging issues or identities; informal, non-institutional and bottom-up acts with politicising effects
IV. Logic of inclusion	Ruling within current understandings of European citizenship legal status, or ruling on current legal disputes regarding access to citizenship	Challenging current bounds or modes of formal and informal access to rights of European citizenship
V. What is performatively produced?	Producing/extending rights and rules of European citizenship	Productive of new questions, claims, subjectivities and agendas for European citizenship
VI. Scales	Reinforcing of fixed, territorial EU scales of ruling, and of existing institutional sites of power for such ruling	Generative of open-ended and uncertain scales of citizenly concern, and new sites of citizen action not necessarily territorially confined to the EU

## Points of interpretation – a comment

An act of European citizenship, for present purposes, is an act that is intended to clarify or modify European citizenship status, or which embodies claims to rights or consideration in terms of the status or an ideal of European citizenship. On this definition, a wide and disparate range of acts might be acts of European citizenship. Clearly how one might establish that an ‘act’ of an appropriate kind has occurred, and that it had a certain meaning, is a critical issue<sup>4</sup>. It matters whether we (as academic researchers and interpreters) seek the view of the actor (or the performer of acts of citizenship in question), or another interpreter, where the two differ. There may be many interpreters in a given case, including academic observers, other than the agents themselves. Using the example of how an act of (European) citizenship might be conceived, consider Table 2.

**Table 2 – Interpretive perspectives**

				<b>Act of citizenship</b>	
		<b>Act-as-such</b>	<b>Act on citizenship</b>	<b>Act as (citizen)</b>	<b>Act out citizenship</b>
<b>Perspective</b>	(En)actor				
	Interpreter (emic)				
	Interpreter (etic) <sup>5</sup>				

Different elements of the research across ENACT approach these issues in different ways. A study of migrant politics in Budapest, for example, explicitly approaches certain debates on citizenship ‘through the lens of (im)migrants’, and notes critically the over-use of a simplified ‘ethnic lens’ through which acts might be interpreted (Rajaram 2009). An ENACT study of youth claims in Turkey makes it clear that it investigates ‘not only those acts that the groups themselves explicitly designate as those of European citizenship or Europeanness, but also acts that we interpret and theorise as acts of European citizenship and Europeanness’ (Isyar, Keyman and

<sup>4</sup> The definition provides resources that could help us to answer crucial questions that arise, such as: When does an act become more than a ‘mere’ action and become a ‘political’ act? And, in turn, when does a ‘political’ act become an ‘act of citizenship’ (of whatever precise kind – see table 2)? When does an act of citizenship become an act of European citizenship? What’s the difference between enacting EU citizenship and enacting European citizenship?

<sup>5</sup> ‘Emic’ interpretations refer to those which are couched within the cultural understandings of the group concerned. Etic interpretations derive from sources separate from that community. I have separated the (en)actor from both because to include the actor within the emic category may wrongly and pre-emptively dismiss the enactor’s capacity to think and act outside attendant cultural frames. The use of these distinctions in no way implies the objectivity or even the superior accuracy of etic interpretations.

Rumelili 2010). Rather than enter into the complex and familiar social science issues of knowledge generation, perspective, and interpretation at play here, I simply note the sensitivity of ENACT researchers to the need to justify (in particular) the adoption of more detached or ‘etic’ interpretations of acts as acts of European citizenship. This sensitivity arises precisely because ENACT seeks to incorporate but go beyond core judicial and governmental acts in its understanding of acts of European citizenship<sup>6</sup>.

## **I. Trajectory and intent**

The intent behind acts under the dynamic of extension is to complete a task, to ‘fix’ anomalies; its trajectory is the finishing or completion of a common ideal of European citizenship. The notion of ‘extension’ is intended to capture the idea that acts under this dynamic are ‘anchored’ in a formal conception of European citizenship from the Maastricht Treaty through subsequent rulings and policies. European citizenship may well remain ‘in many areas little more than a distant dream’ (Besson and Utzinger 2008, 197), but it *is* a distinct formal ideal (a dream) to be achieved in the future (however distantly).

The intent behind many acts under the dynamic of assertion is to question or disrupt existing formal codes, understandings or applications of European citizenship status. Such acts are far less ‘anchored’, are relatively uncoordinated, and can be unpredictable in trajectory and impact.

In this section I will look at each dynamic in turn, starting with the dynamic of extension.

### *One or twenty-seven? Union and nations in the EU*

Our task is immediately complicated by the fact that there are two distinct and (as it happens) competing conceptions of the process of *completing* a task of creating citizenship – that of the EU as a whole, and that of the member states. EU governing acts pursuing an extension or clarification of European citizenship through core principles such as non-discrimination and equal treatment (through ECJ rulings for example) offer one vision of what is to be extended or completed. Member states, especially in recent years by pursuing stronger concerns with social and cultural integration, not least in the wake of heightened security worries, may be operating under a different dynamic of extension driven by a conception of nationhood and national identity (Carrera and Merlino 2008; Mantu 2009a; Mantu 2010). *Each* of these variants can be understood as offering a ‘fundamental’ conception of citizenship, be it European (or French, or British...). This is most obviously the case for the EU’s and the European courts’, conception, which the ECJ sees as the ‘fundamental status’ for European citizens across member states. But member states’ own particular conceptions can also be understood as ‘fundamental’, since European citizenship status remains derivative on citizenship and nationality laws in member states, and not least in recent years countries such as Britain and France have

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<sup>6</sup> One key question is whether an act of citizenship can only be recognised from its consequences (and therefore retrospectively). Many such acts will be recognisable in this way, but it would be unhelpfully stipulative to rule out acts of assertion (for example) whose consequences remain unclear.

reasserted their grip on who may enjoy what rights of citizenship and nationality within their jurisdictions, and under what terms (Mantu 2009b and 2010).

We can go a step further to characterise these different conceptions of what it is – what conception or vision of citizenship or indeed of belonging - that is to be completed or extended. From the EU perspective, according to Carrera and Atger (2009), this conception (embodied differentially in the outlook of the European Commission, the ECJ, and the ECtHR) is a highly and explicitly *liberal* one. This liberal vision is evident in a range of EU provisions. The politics of Directive 2004/38 on the rights of citizens to move freely in the EU is highly instructive in this context. By one interpretation, member state practices have produced ‘a whole range of illiberal exceptions to the granting of EU rights and guarantees embracing “the freedom to move”’ (Carrera and Atger 2009), not least with respect to transitional arrangements applied to Bulgarians and Romanians in particular. There are many forms of ‘inadequate domestic transposition’ of the rights specified under the Directive; taken together, these add up to the effective ‘proliferation of different forms of European citizenship whose normative framing and implementation by the nation-states fosters differential treatment and conflict with fundamental rights’ (Carrera and Atger 2009). Although there is evidence that ‘we are moving towards the freeing of Union citizenship from the constraints of national citizenship’ (Mantu 2010, 32), the UK and France for example have asserted their sovereignty in a range of linked nationality acquisition and deprivation issues (Mantu 2010, 23). Recent shifts in these states towards tighter integration policies have produced ‘deficits’ in terms for example of Union non-discrimination and inclusion principles (Carrera and Wiesbrock 2009, 46).

*From this EU-level perspective*, there is a disjuncture between European transposition of international legal norms on free movement rights, or statelessness, for example, and national practices or laws in EU member states which may display ‘arbitrariness’. It is this disjuncture which, for example, motivates ECJ and ECtHR efforts to harmonise national laws on deprivation of citizenship. The goal is consistency, thus ironing out anomalies. Anomalies in this case are generated through international or regional legal norms being used to scrutinise national laws and practices: ‘International law is relevant for the manner in which states elaborate and implement national nationality legislation as the obligations that they assume at the international level via multilateral conventions have to be respected in their domestic legal orders’. Harmonisation is the goal – and this is harmonisation measured against an implicit universal (such as ‘equal citizen rights’) - though in the case of the EU at least the focus tends to be on the *procedures* and the *instruments* rather than the explicit philosophical content (or the terms of its underlying defence of the universal as such)<sup>7</sup>. Making further advances involves creating new ‘instruments’ to deal with national anomalies. The legal norms under legal scrutiny are ‘meant to transcend the boundaries of the nation state’ (Mantu 2009a).

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<sup>7</sup> In correspondence, Sandra Mantu expresses doubts that from a legal perspective there is an ‘ideal of formal citizenship status across the Union’. Her assessment is that ‘there is no clear intention of harmonization on the part of the courts’, at least when it comes to *nationality* legislation (which has tended to dominate citizenship policy, arguably as a vehicle for member states to pursue security-driven integration agendas). She does not, however, question the usefulness of speaking of a dynamic of extension; the latter does not imply that EU actors share one conception of what the endpoint is or should be, or of the character of the anomalies that lie in the path of its realisation.

Thus there is a teleological normativity in the European court perspective (the locus classicus of the dynamic of extension) – counteracting ‘inhuman and degrading treatment’ for example in ECtHR rulings on deprivation. The creation of EU citizenship established a principle of equality ‘in which Union membership is destined to be the fundamental status of its members’, and new principles might be needed to ‘put them in accord with the special features of this new legal space’ (Mantu 2009a). Further, there is an implicit drive towards ‘the future existence of a European demos’ in the harmonisation of nationality laws (Mantu 2009a). There are ‘incipient EU standards on nationality’. National standards can be haunted by these larger standards.

A liberal ideal of common and equal treatment across the Union with respect to citizenship is evident in the EU outlook; it is the extension of this vision which shapes the Union version of acts under the dynamic of extension. But there appears to be a battle over which underlying conceptions of citizenship different acts (under the dynamic of extension) are striving to extend.

### *Member state perspectives*

It is difficult to generalise about competing member state visions of citizenship, nationality and rights – or in other words, the competing dynamics of extension which they act under. But it is reasonably clear that tensions between Union ideals and national ones have been strong in recent years. Consider one specific member state perspective subject to scrutiny in the ENACT programme. Post-Soviet Latvia has been substantially guided by a *republican* logic which lies behind the distinctive and controversial ‘non-citizen’ status it has created for long-term resident Russians in particular. This logic clashes quite directly with the liberal logic embedded within EU citizenship norms, which look to bring about harmonisation on an individual-by-individual basis<sup>8</sup>. In short, it is crucial to European citizenship that starkly different philosophies of governance can, and do, produce different dynamics of extension. Member states as well as the EU are involved in ‘stabilising practices’ (Rajaram 2009) – what we see with respect to struggles over defining European citizenship are clashes between (at least two – or, 1 + 27) would-be universal conceptions<sup>9</sup>.

ENACT research on Latvian cases illustrates the tension between underlying liberal versus republican ideals. The trajectory of the dynamic of extension from *the Latvian state’s* perspective may be that ‘citizenship is not equality but self-determination’ (Kruma and Indans 2009). There is a very different idea here of what is to be ‘completed’ – a national universalism in tension with a liberal universalism of the ECJ, for example. The idea in Latvia of court cases involving the ‘revocation of the

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<sup>8</sup> This liberal logic is underlined through the fact that ‘the EU is one of the few – and possibly the only – examples of a polity based exclusively on rights as opposed to substantive notions of peoplehood’. Its cosmopolitan conception is built around (individual) ‘personhood’, as opposed to the republican conceptions built around ‘peoplehood’ (Delanty 2007, 65-6).

<sup>9</sup> Delanty (2007) claims that the real tensions regarding citizenship in Europe today are not so much between national and transnational conceptions, but rather between republican and cosmopolitan conceptions (though we might add that the latter tension is significantly embedded within national/transnational tensions).

status of non-citizen' also work to logic of completion and extension. The status of non-citizen can be understood as a core product of the fundamental or 'universal' vision of national identity represented and promoted by the Latvian state. With that vision broadly established, the Latvian courts can limit themselves to technical legal rulings. Kurdish claims and assertions similarly face a universalising Turkish state discourse on citizenship.

Overall, then, the dynamic of extension is evident in the often clashing practices and guiding ideas behind EU-level action on European citizenship and member states' actions. The EU level and the various national levels provide different interpretations of what idea is to be extended, and therefore for example what factors might count as 'anomalies' from that idea that might be addressed- what are they anomalies *from* – a more cosmopolitan-universal conception of citizenship centred upon individual rights, on the EU side, or a more republican-universal conception centred on the defining of a national collectivity, on the nation-state side. Many contemporary assessments see in this set of clashes key reasons why the development of European citizenship is by turns halting, partial and grudging. The European courts have seemed reluctant to assert themselves against the member-state folding of European citizenship concerns into national nationality, immigration and security laws. 'Integration', newly prominent as a guide to national policy (not least in France) can lead to exclusion. The UK, Sweden and the Netherlands have also moved away from 'multicultural' perspectives. There is increasing 'conditionality', for example through citizenship tests and ceremonies and language tests, attached to access to nationality in member states (Carrera and Wiesbrock 2009). In short, there is wide agreement among observers of a new convergence on restrictions on EU citizenship. 'Integration' in itself is not the issue. Rather, there are different levels of projects of integration at work, member-state ones and EU-level ones, which at varied points clash with one another legally and politically. Odmalm concludes that while citizenship policies across the EU may well be 'converging', they are doing so 'only in a limited legal sense; in fact, the main area of convergence concerns the additional integration "hurdles" place on migrants' (Odmalm 2007). Those hurdles often represent member state republican' visions of citizenship, reflected in the prism of concerns about security and integration, as opposed to Union level liberal visions. The dynamic of extension involves the extension of a vision, however underdeveloped some elements of the vision may be and however incremental and halting extension towards it may be.

### *Trajectory and intent and the dynamic of assertion*

At the limits of the extension perspective, we begin to encounter the trajectory and intent of acts under the dynamic of assertion. Rather than ruling on selected anomalies in a vision of European citizenship, acts under the dynamic of assertion are more particular, isolated in space and time, and less easily characterised in terms of trajectory or intent.

Acts of citizenship that give shape to an underlying dynamic of assertion include unexpected claims and challenges posed, for example, by the arrival of a group of Roma in a park in Berlin. This event, studied in detail in an ENACT project, involved the Roma 'enacting the contradictions which EU citizenship embodies' (Caglar and Mehling 2009, 15). The Roma asked for asylum seeker status – even though they

were already EU citizens – since the former status would entitle them to shelter and access to work that their EU citizenship, ironically, could not (Caglar and Mehling 2009, 14-15). ‘In but not of the EU’, the Roma in this context could ‘test the boundaries and the limits of European citizenship from within’ (Caglar and Mehling 2009, 4).

Consider alternatively the deployment of the idea of ‘Europe’ as a guarantor of individual citizen rights and freedoms by the lesbian, gay, bisexual and transsexual rights group Mozaika in Latvia (Baltruška, Indāns and Krūma 2010). Or acts of conscientious objection as an act of European citizenship by young people in Turkey, who do not have formal EU citizenship (Isyar, Keyman and Rumelili 2010). ENACT research examines acts of conscientious objection focusing on Turkish young people’s mobilization of the ideal of Europe (and institutions affiliated with Europe) in their stance against discourses of the modern nation-state. Or consider Kurdish actors in Turkey who aim to establish their social and political visibility, then their status ‘as’ citizens. Act by Kurdish representatives and citizens can be acts of European citizenship by the fact that they can reference Europe, criticise or affect Europe, or responsabilise Europe (Isyar, Keyman and Rumelili 2009). It can be argued that Kurds can enact themselves as subjects of European citizenship for certain political purposes, even if they are acting as citizens with respect to a formal status that they lack. Such disparate acts of European citizenship variously constitute the actors as subjects of and for citizenship, in a number of controversial and challenging ways.

The very process of asserting claims, which is evident for example in Kurdish groups’ demands for language rights and other rights and freedoms (Isyar, Keyman and Rumelili 2009), can be seen as part of *democratisation* not just in terms of European courts and their granting of rights, but in the very acts and claims themselves as democratising. Non-institutionalised or ambiguously positioned groups and individuals historically have posed questions of democracy – who are ‘the people’, how do they ‘rule’ and be ruled? Although the formal status of European citizenship is, of course, closely tied to movement of a citizen of one member state to another member state (this is when the formal aspects of European citizenship status are ‘triggered’), troubling acts under the dynamic of assertion arise where potential subjects are ‘mobile’ subjects, even in the form of ‘mobs’: Unlike the judicial realm, democratic politics of the mob ‘takes equality as a maxim of action and not as a formal foundational principle or a goal to be achieved’. Acts of assertion are most often found at the logical or spatial edges of the operation of formal European or national citizenship: ‘the judicial system can only minimally address marginalised people’ (Aradau, Huysmans and Squire 2008).

In some cases, a key part of the intent of enactment under the dynamic of assertion is agenda-setting, putting cases and claims up for consideration where established institutions (e.g. the EU governing and judicial bodies) may not pick them up otherwise. In the Kurdish case we observe claims that involve acting on perceived universal European ideals (and against the differing universal ideals of the Turkish state), but it may be an unexpected interpretation of those ideals that is forced onto the (European and Turkish) agenda. Elsewhere, the dynamic of assertion at play in ‘mobilising mobility’, for example in the case of the Roma, or of sex workers, is in key measure one of bringing it onto some agenda, or (since the shape of the ‘agenda’

is not pre-set, waiting for this one new claim or issue to ‘complete’ it) of moulding or rewriting a political agenda. In the case of migrants in Budapest, we observe an expanded concept of the political where ‘the trajectory and destination of political markers such as rights are not entirely in the control of state or state-like authorities’ (Rajaram 2009), where new agendas around rights can be set through assertion. This is not agenda-setting’ in a straightforward, institutionalised policy-studies sense of the term; rather, it is a wider question of political visibility of claims, of people and groups enacting their claims as citizens in varied contexts. It may be indirect, ambiguous, disruptive agenda-setting – political and cultural as much as, or instead of, judicial.

In short, with respect to trajectory and intent, the two dynamics differ markedly. The dynamic of assertion introduces the inconvenient, the unexpected, and the not-quite-citizen, into the citizen frame of reference, potentially setting new legal and political agendas. This dynamic in action can disrupt a judicial sense of a pre-set task of harmonising or completing (a universal conception of) citizenship by introducing elements that were not yet a part of the picture, or which expose new ruptures.

## II. Acts of: and *on, out, as*

Acts under the dynamic of extension *tend* to be acts *on* citizenship – acts which seek to extend or complete the details and the application of an already articulated model of citizenship. In acting on citizenship within the dynamic of extension, the ECJ for example performs acts of citizenship in the shape of supranational judicial decisions. These are primarily acts on citizenship in that they are acts that clarify and build on citizenship from a distinctive European perspective. Acts under the dynamic of assertion may more often involve constructing a new repertoire of acts; they are more likely to be acts *as* citizens, regardless of the present formal citizenship status of the actor.

On the other hand, third country nationals in Budapest for example do not operate on citizenship as fixed status; rather, they ‘act as’ claimants to ‘a bundle of social rights, despite their non-citizen status. Citizenship here becomes more of a practice than a ‘formal status’. Those rights claimed need not be a pre-defined set. For example an act of citizenship can be a refusal to ‘be positioned by the International Family Law in Germany’ (or by extension any specific legal regime); it ‘becomes an act of citizenship as it implies a break with the given narratives and topos of citizenship’ (Caglar 2009). Especially within a dynamic of assertion, I would argue, ‘acts of citizenship contest habitus by grounding their legitimacy and entitlements not in the existing legal and social frames ... but in unfamiliar or new grounds’. So acting *as* citizens may be acting (claiming, asserting) on a new conception of what it may mean to be a European citizen. The Kurdish groups studied in ENACT arguably display acts of citizenship in both respects – acting as European citizens, but within an interpretation of ‘European’ that may be distinctive to the Kurdish perspective.

Then there is the example of movement as such – ‘mobile acts’ (Aradau, Huysmans and Squire 2008). Often attention is given to movement which is sanctioned by the free movement provisions of the EU and European citizenship. This is movement, mostly for economic purposes, within the EU by formal European citizens – these are

*acts as such*, and at most they are an *acting out* of European citizenship. But movement, such as that of Roma in Berlin (Caglar and Mehling 2009), can be seen as more challenging – it is still movement by European citizens in formal terms, but the socially and culturally disenfranchised nature of the actors underlines the facet of acting *as* citizens – in a sense, *daring* to act *as* citizens, and challenging the limits and contradictions at the heart of the status.

### III. Actor's position(ing) and political profile

The question of actors' positioning for the two dynamics follows closely the crucial points about trajectory and intent outlined above.

Actors and institutions operating under the dynamic of extension tend to be statal, including judicial, institutions such as the ECJ and the ECtHR. They are specific, formally located law-clarifying institutions. Their positioning lends some analytical credence to 'vertical' ideas of citizenship, where statuses are adjudicated from above and 'handed down' - presumptions about positioning are closely tied to presumptions about power and competence. Actors under the dynamic of extension 'see like a state' (Scott 1998) – and seeing in that way renders some things and acts visible, and obscures others.

This is one reason why assertive claims can be seen as 'beyond the domain of legal rights', for example a number of groups speaking for third country nationals in the EU, because that very 'domain' is defined by the symbolic mapping of society that state institutions perform, and as it comes into focus so varied marginal demands and claims which do not fit go out of focus (Rajaram 2009).

Actors and institutions operating under the dynamic of assertion tend towards the informal, and the dispersed. The very need for assertion will tend to reflect a degree of social, political and/or legal marginalisation, whether the asserters are citizens, non-citizens, denizens or margizens. Sites of assertion will tend more to the unpredictable, and the conventionally non-political. The dynamic of assertion introduces the idea of specific sites of enactment which disrupts ideas of a continuous, homogenous national site – gateway cities for example (Rajaram 2009). Assertive acts may disrupt senses of borders as meaningful only in certain conventional ways.

Actors and institutions may and do occupy varied intermediate positions – in particular there are examples of a dynamic of assertion operating practically within state structures as well as outside or against them. In Latvia, for instance, the key actors for 'non-citizens' have been small political parties and interest groups – in a sense, 'outsiders on the inside'. Similarly the Latvian Human Rights Committee has been an advocate of non-citizen voting rights (Kruma and Indans 2009)). In Turkey, a number of important Kurdish acts of assertion have come from official local government actors (Isyar, Keyman and Rumelili 2009).

In short, some position and are positioned as granters of rights, from the 'top down'; others position and are positioned as demanders of rights (or the right to have rights, or even the bare right to consideration), from the 'bottom up'. And some who do the demanding are located within the set of institutions which primarily does the granting.

The question of political profile under the two dynamics links closely to issues of positioning and inclusion. The central issue here is one of political visibility – its presence, maintenance and absence, and demands for it. One might draw on the ideas of Ranciere (1999; 2007), for who issues of visibility and ‘sayability’ are crucial in politics and aesthetics (underlining in turn the distinctively aesthetic aspect of acts under the dynamic of assertion). Who is visible, who is brought into domains of consideration and how, and by whom (and crucially, via what acts)?<sup>10</sup>

The Roma lack visibility, but (ironically) movement as a form of claim brings that invisibility into the light; by ‘pointing to’ or ‘pointing out’ invisibility it becomes an element of discussion, and an altered form of visibility. Otherwise, the European studies literature ‘fails to take mobility seriously as a constitutive dimension of European citizenship. Rather, the emphasis remains a territorial one, in which mobile acts of citizenship are erased from sphere of political analysis’ (Aradau, Huysmans and Squire 2008). Social citizenship claims are partly about establishing ‘social presence’.

The politics of visibility varies between the two dynamics – for example, on issues of legal deprivation of citizenship, ‘the international community is more likely to take notice of violations of nationality standards mostly in cases involving violations on a large scale, rather than individual cases’ (Mantu 2009a). And the Latvian ‘special status of non-citizen’ provides an example of a distinctive type – a fascinating and (linguistically at least) seemingly self-contradicting view where the ‘non-citizen’ is rendered visible through a process of formalisation of a subordinate citizenship-like status (Kruma and Indans 2009). Visibility, of course, is linked to means and outlets of expression – in Turkey, language rights for Kurds have been a key factor in issues of visibility (Isyar, Keyman and Rumelili 2009).

#### IV. Logic of inclusion

The dynamic of extension operates through the definition and application of the appropriate grounds for exclusion and inclusion within formal citizenship statuses. A good deal of the attention of the ECJ and the Commission have been focused on persistent – and from the Union’s perspective inconsistent and unacceptable – exceptions to the non-discrimination ideals accompanying European citizenship, especially with regard to the rights of long-term residents of Europe who are third country nationals.

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<sup>10</sup> A number of examples of actors under the dynamic of assertion may tend towards Ranciere’s (1999) ‘part of no part’. But we need to be sensitive to the variance of parts that cross (and shift and construct) zones defining parts of recognised parts and parts of no part. Whether the part/no part distinction is manifested as heard/unheard, seen/unseen, formal/informal, powerful/powerless, or some other or additional distinction, there can for example be: the part of the key part; the part of the visible part, the part of the marginal part, the part of the feared part, the part of the scapegoat, and indeed the part of no part. (The latter still reads like a recognised ‘part’, or designated social role the performance or assertion of which (ironically) may establish it as a new kind of part. So behind *that*, perhaps, lies a further, perhaps more abject category, the simple ‘no-part’). In line with Gupta and Fergusson, such rupturing acts can be seen as (or performed or presented as) challenges to the idea of the political as the ‘imposition of permanence onto an unhinged and fluid spatiality’ (Rajaram 2009).

Under the dynamic of assertion the question of inclusion is more complex. Claimants may be ‘included’ and excluded from European polities in varied formal and informal ways, and to varying degrees. Some element of marginalisation will normally motivate acts under this dynamic. But often assertive acts will involve a posing of questions as part of making claims: should I have legal or political rights, or social rights, or am I making a new sort of claim? ‘Mere’ questions can transmute into claims - it depends on the resonance or salience the questions are able to generate. An interpreter, for example, making an ‘etic’ interpretation of a questioning of their status by (say) marginalised members of third country national groups in the EU, may effectively transform that questioning into a claim – which may be a claim to citizenship rights, or a claim to a right to have rights.

Such acts may well be disruptive, for example in the case of the Roma: ‘Mobility is set in tension with ideas of citizenship as static or territorially bound and constitutive of pre-defined subjects’ (Aradau, Huysmans and Squire 2008). The *unsettling* stranger in the midst upsets the economic conception of the *acceptable* stranger – and the limits of a conception of citizenship which tightly defines the latter. In ENACT research the analysis ‘moves beyond the territorial frame of inside-outside or insider-outsider, in order to explore the ways in which mobile sex workers as strangers constitute themselves as political agents with the “right to have rights”’ (Aradau, Huysmans and Squire 2008). Assertions of claims on ‘Europe’ or the EU can come from the territorial ‘outside’ – the European-focused claims of Kurds for example. ENACT researchers have suggested that the case of Kurdish demands aimed at Europe is one where we need to reconsider ‘the constitutive elements of citizenship itself because through these acts of citizenship, the taken-for-granted relationships between state-territory-citizen are broken’ (Bora Isyar, ENACT forum). Inclusion can work alongside citizenship in varied ways, of course. For example, informal and effective citizenship ties can involve ‘sociability and fellowship’ through the institutions of society quite apart from formal political-legal citizenship (Rajaram 2009). Sometimes social rather than legal inclusion forms the particular aim of disenfranchised groups under the dynamic of assertion (Rajaram 2009).

## V. What is performatively produced?

Acts of citizenship of varied kinds may also be performances in two key senses. First, they are likely to be acts with some form of public profile – acts ‘in public’, staged to be watched. Second, they may be performative in the Austinian sense that the very act in itself produces something. My brief comment here focuses on this second sense primarily.

Under the dynamic of extension, the performatively produced element is a change in the law or the procedures dictating the law’s application. This is a performative in the strongly Austinian sense (Loxley 2007) – by stipulating ‘we decree that...’, courts do so decree; the pronouncement creates what it pronounces, a legal ruling. Of course, legal rulings can also produce changes in individuals’ status and position within society (national and European).

What is performatively constituted in acts under the dynamic of assertion is particularly difficult to predict or classify. In some respects, such acts performatively

produce subjects of claims with increased social or political visibility. They may produce an altered sense of what is on the agenda of issues for political authorities. New ways of being-citizens are performed which may have lasting resonance. New scripts are written.

As the comments above on positioning suggest, acting under the extension dynamic may well be a game for the comparatively powerful to play; to engage in the assertion dynamic may likewise reflect relative powerlessness. Recall Arendt's analysis of action. All actions, she argues, are part of a complex web of actions and consequences. Actions create reactions and may indeed provoke unpredictable chain-reactions. In this way action can be said to have a 'boundlessness': 'the smallest act in the most limited circumstances bears the seed of the same boundlessness, because one deed, and sometimes one word, suffices to change every constellation'; action 'always establishes relationships and therefore has an inherent tendency to force open all limitations and cut across all boundaries' (Arendt 1958, 190). In this light, we can see the ever-present potential for incidental or unpredictable patterns of empowerment (and the exercise of power, e.g. through legal or political agenda-setting) stemming from assertive acts of citizenship. Assertive actions have an unpredictable quality and potential indirect or direct impact despite their often marginal location and positioning. They can be highly productive in their 'tremendous capacity for establishing relationships' (Arendt 1958, 191). Arendt comments: 'while the various limitations and boundaries we find in every body politic may offer some protection against the inherent boundlessness of action, they are altogether helpless to offset its second outstanding character: its inherent unpredictability' (Arendt 1958, 191). In other words, although working with a dynamic of extension is standard operating procedure for (especially legal entities within) states, state authorities cannot always shelter the institutions and cultures implicated in this dynamic from disruption from assertive acts. In short, there is a complex and shifting relationship in what can performatively be produced by acts under the two dynamics. Acts under the dynamic of assertion often are acts by marginal or relatively powerless actors, and the fate of the questions and claims embedded in the acts will often reflect this fact. My comments are meant to suggest that there need be nothing inevitable or predictable about such an outcome.

## **VI. Scales**

As suggested above, under the dynamic of extension the scales of ruling are perceived as fixed and territorial; citizenship is about status, and status derives from applications of territorial jurisdiction. There are sites that European courts cannot reach from the limited perspective that their elevated position consigns them to (ironically, they can be limited by their own omniscience). From the perspective of the ECJ, for example, 'the negotiation of the individual's legal status takes place at a scale outside his immediate reach, suggesting that states ... are the main actors' (Mantu 2009a). But there are scales, local and disparate and cross-border, which are contested under the dynamic of assertion at the margins of legal reach.

This leaves other conceivable scales of acts at the socio-cultural margins and boundaries of societies. For example, Roma and other mobilities suggest different scales: 'By including the paradoxical nature of mobility into the conception of

citizenship, one unsettles the territorial and cultural model presupposed by discussions of institutional accountability, demos creation and top-down granting of rights' (Aradau, Huysmans and Squire 2008).

### **Conclusion: overlaps and intersections**

In this paper I have sketched the play of the dynamic of extension and the dynamic of assertion in the interpretation of enactment of European citizenship. It is conceded that much work remains to be done to defend and elaborate this distinction. As this work is developed further, a key focus will be on the interaction of consequences of acts under the two dynamics, or the ripple effects that acts under one dynamic can and do create for the other.

There are cases covered by ENACT where the two dynamics interact, without coinciding. The European Roma Rights Centre (ERRC) takes cases for example to the ECtHR where it claims that certain countries don't live up to their obligations; in so doing it may set agendas that might not otherwise be set for legal authorities. But it is difficult for the Roma with their distinctive migration patterns to have relevant access to law, an example which shows how acts under the dynamic of assertion can operate to some degree in an extra-legal sphere. Further, because these are ideal-types, many crucial issues arise in cases where key actors occupy or act out 'grey zones' with mixed or blurred characteristics<sup>11</sup>. Rulings by courts can be read as assertive acts, for example.

There is a mutual dependence between the two dynamics. There can for example be a mutual agenda-setting role: the assertion can create the ground for an extension, and the extension can define the current ground for potential assertion (courts can 'rupture' too). This mutual dependence may be a key to understanding the dynamics of enacting European citizenship. The legal extension perspective can never quite settle the world according to its vision. The assertion perspective can never quite unsettle the structured order that gives rise to a given extension perspective. Without acknowledging the fact, perhaps the extension needs the assertion to set and adjust its agendas to emergent pressures; the assertion needs the extension as a potential point of answering questions and resolving claims. Perhaps the assertion is the unspoken precondition of the extension. The extension dynamic is about classification, perceptibility and consideration. But what acts produce that which requires classification or consideration? Acts under the dynamic of assertion are a major candidate. Conversely, acts of assertion can be provoked by models of political inclusion in the sphere of the extension. The extension tries to impose language and other controls but its control over meanings and people is always incomplete.

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<sup>11</sup> Sergio Carrera in the ENACT forum emphasises 'the potential for the individual to act within [EU Courts] and, more particularly, the role of EU Courts as one of the sites of resistance in the hands of the individual to react (and see their liberties and fundamental rights guaranteed and protected against illiberal practices by public authorities at any European national, regional and local levels of governmentality)'.

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