Essays

Liquid Citizenship — Citizens' Rights in the European Union*

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Abstract

My paper is structured in three sections. In the first, I will introduce a debate about the form of the modern State in terms of a 'conditional' and 'purposive' programme. This debate was particularly acute in the late Seventies and Eighties, and gave rise to an alternative presented as 'responsive' or 'reflective'. However, and this is my point in this first section, this alternative in a context of globalisation and neo-liberal hegemony has deviated from its previous aims and has been used to give a new impetus to a reshaping of the political order that is indeed very far away from being 'responsive'. This development has been taking place especially within the discourse of the EU law doctrine.

In the second section, I will present a view of the normative evolution of EU institutions. In particular, I will contend that we have witnessed a strong 'constitutionalization' of the EU Treaties, particularly of its so-called 'four freedoms', and that this development has been exacerbated in the emergency which arose from the financial crisis surrounding the European Monetary Union. This new sort of (supranational) constitutionalism which is not supported by an equivalent supranational projection of democratic deliberation puts at risk the role played by member States as arenas of robust public discourse and locus for the re-allocation and re-distribution of resources, wealth, and rights among citizens.

In the third and final section, I will focus on European Citizenship as laid down in the EU Treaties and as concretely shaped by the European Courts. My contention here will be that this supranational citizenship is very much a creature of the Spirit of the Time and its 'liquidity'. It makes individuals, if you like, closer to being the holders of a credit card, the visitors to a shopping centre, or travellers leading to a holiday resort, than committed members of a civil society.

I. Introduction

This is a special occasion. Forty years are for an academic institution but a short lapse of time. And yet these years have been my entire active academic life, a great part of which I have spent between the Badia and the Villa Schifanoia. Forty years, in any case, are sufficient for giving a sense of

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achievement. And an achievement and a success indeed were these forty years of our Department. And today here I am, grateful for being allowed to be back, even if for only one day, surrounded by four generations of EUI law scholars. I see here some of my teachers from my time as a researcher at the Badia; I see colleagues from my term as a professor; I see some of my students, and the students of those students that are now here teachers. We are a community, and proud of it.

Let me also say a few words about those that cannot be with us: Professor Mauro Cappelletti, a pupil of Piero Calamandrei, a liberal socialist, who gave his in-printing to much law research at the Institute; Nino Cassese, that I remember as a worried visitor of prisons in his quality of member of the European Committee for the prevention of torture; Brian Bercusson, a staunch defender of workers' rights and a perplexed commentator of Viking and Laval; Yota Kravaritou, whose criticism of neoliberalism should now be vindicated; and our previous President, Werner Maihofer, one of the protagonists of the liberal reform of the German penal code in 1969. In all these years the Law Department – as is proved by these names alone – has been a centre of excellence not only for scholarship, but also for moral and civic commitment.

Now, to my paper.

II. A Debate as Background

What has happened in the European Union over the course of these last forty years can perhaps be best understood by going back to a debate that took place in the 1980s and that was for the most part hosted by our law.

It was a debate over the fiscal crisis of the State,[1] meaning the welfare State, which was laying an increasingly heavy tax burden on its citizens. At the same time, the welfare State was being criticized as a pervasive presence in society in its effort to directly set unemployment and family policies and regulate social life at large. One concern was that this encroachment would bureaucratize and juridicize the so-called 'world of life'. Another concern was that this overcommitted welfare state would make citizens irresponsible by turning them into passive recipients of government handouts, to the extent that they would lapse into a frame of mind where they would not even try to find a job, thereby sucking vitality out of the labour market.

[1] Essential in this regard is J. O'Connor, *The Fiscal Crisis of the State* (London: St. Martin's Press, 1973), as well as W. Streeck, *Gekaufte Zeit: Die vertagte Krise des demokratischen Kapitalismus* (Frankfurt am Main: Suhrkamp, 2013), who reconstructs the concrete ways in which that debate wound up affecting economic policy in the Western countries. See also W. Streeck, 'Demokratie oder Kapitalismus? Europa in der Krise' *Blätter für deutsche und internationale Politik* (Berlin: Blätter Verlagsgesellschaft, 2013), who describes the debate on these issues between Streeck and Habermas.

This scenario was sometimes thematized by resorting to Niklas Luhmann's distinction between two ways in which the State's law can connect with the citizens' activity: under a 'conditional' programme or under a 'purposive' one.[2] In the former case, the law acts as it does in a classic liberal state, for it confines itself to laying down a set of rules under which everyone is to go about their business, typically in the strictly economic sense which explains why these are the rules of the market and the free exchange and movement of goods, capital, labour, and services. In this framework, the state does not set any aims to be pursued, but only conditions to be satisfied. Under the purposive programme, by contrast, the state sets out teleological directives and standards of conduct, and engages actively in an effort to achieve the basic aims posited as having primacy. The state itself turns into an economic agent and no longer limits itself to acting as the 'night watchman' of the nineteenth-century liberal tradition. It steps into the market and models it in its own image, while ensuring its operation.

The Luhmannian dichotomy was felt by many to be unsatisfactory, and so a 'third way' was proposed: that of the so-called responsive, procedural, or reflexive programme.[3] Following this model, the State should neither retreat from its role as a social actor, nor should it fill that role as an overbearing, much less authoritarian, actor. It should rather strike a middle ground, acting conditionally but as an agent *within* society. It is an active State that does not abstain from social action, but it does so only by setting out procedures or a framework within which society can preserve its own autonomy without giving in to any paternalist intrusion into the 'world of life.' The society envisioned in this third programme is made up of agents who are not directly or primarily economic but are rather social: labour unions, community organisations, cooperatives, and all manner of collective forms of association – a sort of neocorporativism in which the state acts merely as watchdog, an arbiter of disputes and protector of rights.

Now, what does all of this have to do with the European Union and its law? The procedural programme, no more than the 'responsive' or 'procedural' law it is an expression of, regrettably never got off the ground: it never made it past its conception stage as a normative ideal. It was thought to be coded into the evolutional force of history, but history, as it turned out, was taking quite a different turn. Even so, the 'procedural' programme did fulfil some of its promise, though in an area it was not thought capable of

[2] See, for example, N. Luhmann, *Zweckbegriff und Systemrationalität: Über die Funktion von Zwecken in sozialen Systemen* (Frankfurt am Main: Suhrkamp, 6th ed, 1999).

[3] See G. Teubner, 'Reflexives Recht: Entwicklungsmodelle des Rechts in vergleichender Perspektive' *Archiv für Rechts- und Sozialphilosophie*, 13-59 (1982). See also G. Teubner, 'Das regulatorische Trilemma' *Quaderni fiorentini*, 109-149 (1984), and K. Ladeur, *Postmoderne Rechtstheorie: Selbstreferenz, Selbstorganisation, Prozeduralisierung* (Berlin: Duncker & Humblot, 1995).

investing in or at least not until, even within Luhmann's theoretical framework itself, certain trends began to take hold that could likewise be characterized as neoliberal. This new turn was in fact a full reversal: we went from democratic corporatism to neoliberalism. And all it took to set in motion this new course of events was a background change in society or the community, which morphed from an 'association' into a 'business firm.' Industry, in other words, no longer found itself interfacing with an antagonistic association but with a willing partner: communication and interchange, hitherto discursively and deliberatively conflictual, became functional. And what form of communication and interchange is more functional and effective than the market? 'Proceduralism' hitherto applied to the network of cooperatives, unions, associations, and groups which were thought to provide the support needed to actually exercise citizenship in the state, and which were even poised to grow in that role. But henceforth 'Proceduralism' would be brought to bear on a more traditional and traditionally well-established form of association within civil society, namely, and as suggested, the market. We need only take a functionalist view of how behaviour can be coordinated, and such coordination conveniently realizes itself in the form of competition and the market. And 'responsive' law might accordingly be recast as *lex mercatoria*.

However, what the 'responsive' or 'proceduralist' diagnosis calls for is not a return to Manchester liberalism and the minimalist, *laissez faire* State that refrains from engaging in economic activity: the point is rather to set out a regulatory framework that is *internal* to the economy. In other words, as much as the state does, following this view, have a part to play as an economic actor within the broader economy, the point of its action should not be to constrain the market and mould it in view of a social end, but rather to enable it to do what it does without hitting any bumps in the road, much less roadblocks: the market is designed to ensure an efficient allocation of resources so as to stimulate growth and yield profits, and the state is there to provide the conditions necessary for that to happen. If we set this doctrine in the broader context of the history of ideas, however, we may find it curious to discover that it has been with us for quite some time, operating more or less latently as the driving force behind the 'functionalism' of European integration. This is the driving idea of 'ordoliberalism', that essentially Germanic strand of liberalism which sees in the State not an adversary but a powerful ally, and which is aimed at bringing free competition into the fold of the State. The aim — in a statement of Franz Böhm, one fountainhead of ordoliberalism — is to mould 'natural law' into State law, where *natural law* is understood to refer to a spontaneous order, that is to say the *market*, and where *State law* refers in the first instance to the classical order of a rigid

legal constitution, which is not easily disposable by parliamentary majorities.[4] If you want *more market* — the Ordoliberal claims —, you should have *more rules*, or, better, *more authority*.

III. Citizenship Versus Constitutionalism?

Now, that is precisely the trend we have been witnessing in the evolution of EU law, especially with regards to its case law. What happened is that, following the view that integration should come about by free trade and market competition, the European Court of Justice (ECJ) has 'constitutionalized' the EU's primary law, and indeed its secondary law as well.

The 'constitutionalization' at stake, however, is not of the democratic kind which occurs at the moment of constitutional enactment, when the people resolve to bind themselves to a form of government under which to ensure their own coexistence and conduct their political action, their 'acting in concert' as Hannah Arendt would say. By contrast, none of these elements ever featured in the process of European integration, which from the outset has been built from the top by political elites.

Constitutionalization here means that the decision-making rules available to national parliaments are transformed into rules under which the same parliaments have no deliberative powers. National law is demoted to a rank below that of EU law. And that supremacy of EU law is made rigid, in the sense that national parliaments are *de jure* barred from making changes to this law, while governments themselves are *de facto* prevented from doing so (the latter is also, to some extent, a *de jure* impediment as a result of the *acquis communaitaire* and also the *effet utile*). European Union constitutionalism is thus fashioned as a counterweight to Member States democracy and plastically creates what we are permanently wont to refer to as the EU's democratic deficit.[5] The constitutionalization of EU law, in other words, might be seen as built on the deconstitutionalization of the member States — and yet these States' constitutions are the outcome of a 'constitutional moment' and of some form of constituent power, while nothing of the sort can be observed at the supra-national, European level.

But there is more. Citizenship in a sense 'duplicates' sovereignty: by acting as its 'counterpart' it takes on the same features as sovereignty itself. An effective way to frame sovereignty is through *Kompetenz-Kompetenz*, a

[4] See F. Böhm and E. Mestmäcker, *Reden und Schriften über die Ordnung einer freien Gesellschaft, einer freien Wirtschaft und über die Wiedergutmachung*, (Karlsruhe: C.F. Müller, 1960), 158, 174. See also E. Mestmäcker, *Die sichtbare Hand des Rechts: Über das Verhältnis von Rechtsordnung und Wirtschaftssystem* (Baden-Baden: Nomos, 1978), 27.

[5] On this whole situation, see the lucid analysis offered in D. Grimm, 'The Democratic Costs of Constitutionalization: The European Case' 21 *European Law Journal,* 460-473 (2015).

concept developed by the German theory of public law. Sovereignty, in other words, is conceptualized as a 'self-reflexive meta-competence' or power, for the object of this power is itself. Stated otherwise, sovereignty is that power which can normatively define itself, providing its own content and drawing its own boundaries. The sovereign needs to be empowered to set out its own powers, and something to this effect applies to citizenship as well.[6]

Citizenship means, in the first place, that one has political rights and can take part in the process of making laws — the same laws that define citizenship itself, by shaping its contour and content. One is a citizen, rather than a subject, to the extent that one can exercise decision-making powers in framing one's own citizenship and establishing what it normatively entails. One is a citizen to the extent that one can contribute to the law-making process, especially when it comes to framing the laws by which citizenship itself is governed.[7] Now, no part of this description applies to EU citizenship. Only recently, under the Treaty of Lisbon, has the European Parliament gained actual decision-making powers. But this is still a co-decision power shared with the Council of Ministers (the intergovernmental body that brings together all the member states' executive governments), and the EU Parliament still lacks the power to initiate legislation (which it would do by introducing proposals for regulations and EU law) — a power that remains firmly in the hands of the European Commission.

But there are subject matters that the Treaty of Lisbon removes from parliamentary co-decision, and everything that pertains to EU citizenship is included in that grouping.[8] EU citizens are, therefore, deprived of any political right which would enable them to directly shape the rules by which the contents and contours of EU citizenship is framed: that rulemaking ability is denied to the European Parliament, and so is off limits to the voting public that elects members of this body. Therefore, unlike citizenship of the member States, EU citizenship cannot be described as a *Kompetenz-Kompetenz*, or metacompetence, a power over the rules concerning the political rights through which citizenship itself gains substance.

So what we have in Europe is a rigid constitutionalism without democracy or, rather, with a democracy that is not robust enough to counteract the rigidity of a 'constitutional' design — consisting of primary, and sometimes secondary, legislation — that takes primacy over national law. This constitutional rigidity results from the doctrines of direct effect and primacy, as well as from the ECJ's interpretive principles (the *effet utile*, and the

[6] See M. La Torre, 'Ciudadanía y *gubernaculum* en el Tratato sobre la Constitución de la Unión Europea' 11 *Derechos y libertades*, 41-55 (2007).

[7] In this regard, ibid.

[8] See M. La Torre, 'Citizenship and European Democracy: Between the European Constitution and the Treaty of Lisbon', in P. Birkinshaw and M. Verney eds, *The European Union Legal Order after Lisbon* (Alphen aan den Rijn: Kluwer Law International, 2010).

acquis communaitaire, which weigh in favour of the four freedoms) and the unwieldy mechanism for amending or reforming the treaties. But there is, in addition, a key factor that takes us back to the previous distinction made between the three types of programs — conditional, teleological (purposive), and procedural — with regard to which thirty years ago a lively debate took place within theory and sociology of law. This additional factor lies in the (higher order) 'constitutional' norms in question.

In the liberal State, the constitution is light, essentially setting out general rules whose function is to guarantee the operation of the institutions through which citizens are enabled to coexist. A constitution of this kind will consist of two parts: a first part laying out the basic principles of the political and legal order, and a second part containing the rules that regulate the state's bodies and institutions, and hence the law-making procedure, the executive power, and the judiciary. A democratic state will have a more intense and representative law-making activity, and so the menu of basic rights will be longer and more extensive. And in a welfare state, the civil and political rights will be buttressed by social rights; likewise, equality will operate not only as a formal principle but also as a substantive one, entailing a system of wealth redistribution on top of progressive taxation and free access to certain social services and public goods. But even here the constitution does not constitutionalize: it does not confine economic and social policy within the bounds of specific rules, nor does it restrict too much the free play of parliamentary contention and party politics. In the same vein, and even more importantly, even if a democratic state operates under a rigid constitution, its law-making activity does not simply consist of applying and enforcing constitutional norms. That is because legislation — next to the constitution, which frames its procedure and grounds its legitimacy — continues to act as an essential source and instrument of popular sovereignty.

However, the Union's rigid, extra-democratic constitutionalism changes this model in profound ways, in part because the provisions of the EU treaties, now recast under the Treaty of Lisbon, cannot be described as constitutional in any substantive sense for they are not designed to set up a broad framework within which citizens can coexist and politics follows its own free course. In the original Treaty of Rome, liked today in the Reform Treaty of Lisbon, a framework is set out to closely regulate matters that bear any strong connection to the aim of European integration, be it the question of customs duties, or that of competition and the free movement of goods, or that of monetary and budgetary policy.[9] This feature of the European

[9] See D. Grimm, 'The Democratic Costs of Constitutionalization: The European Case' n 5 above; Id, 'Über einige Asymmetrien der europäischen Integration', in Id, *Die Zukunft der Verfassung II: Auswirkungen von Europäisierung und Globalisierung* (Frankfurt am Main: Suhrkamp, 2012), 262.

'constitution' comes out particularly clearly with the introduction of the single currency, the Euro, which requires a close web of fiscal and monetary regulations. Finally, there is the European Fiscal Compact, an intergovernmental agreement applying to the Eurozone that was signed outside the frame established by the EU.

The Maastricht Treaty introduced a rule preventing member States from passing any budget exceeding three per cent of their gross domestic product (GDP), in effect 'constitutionalizing' a certain view of political economy that makes it essentially impossible to pursue any economic policy based on Keynesian principles. The European Fiscal Compact requires that the three-percent 'golden' rule defining a balanced budget be written into the legal order of every member State, possibly with formal constitutional dignity, thus radicalizing the economic policy architecture established by the Maastricht Treaty.[10] Moreover, the budgets of member States are to be monitored and approved by the Commission. National lawmakers are thereby deprived of several key economic levers, for they are restricted in their ability to decide on the kind of economic policy that is deemed most effective in responding to a certain contingency or economic cycle.

Nor are there any mechanisms making it possible to democratically reach such fundamental decisions on a supranational level. Here, too, the European co-legislator (the European Parliament) has little say in the matter as much of the decision-making power remains firmly in the grip of the European Commission and the European Central Bank. The latter has deprived national central banks of their powers over policy and, moreover, is designed as an entity acting independently of both the Council of Ministers and the European Parliament. And while national governments retain important powers in the Council, they often act as executive organs and abide by an essentially intergovernmental logic rather than a Union one. There is also the newly born divide between member States that are debtors and those that are creditors, as a result of their respective positions in the European Stability Mechanism.

The paradoxical effect of this whole setup is that it seems to conjure into existence the 'procedural programme' that was being dissected in the 1980s, albeit upending its sense and driving principle. By way of procedures and regulations, the European 'constitution' and its law are now being entrusted with directly providing for the 'civil society', except that the latter is distilled down to its free-market form. We no longer have the conditional programme that more or less left the market to its own devices, allowing it to self-regulate except for a set of framework rules. Nor do we have the purposive programme, since the EU no longer intervenes in the market in its own name or through

[10] See M. La Torre, 'A Weberian Moment for Europe? Constitutionalism and the Crisis of European Integration' 20 *European Public Law*, 3, 421–433 (2014).

its own agencies and enterprises. What we do have is a *constitutionalized market*: its principles are put into place and guaranteed through a regulatory scheme that, operating on the primary level of EU law, assumes a higher-order 'constitutional' form.[11]

IV. A 'Liquid' Law

There is a dispute as to whether the current phase can still be understood as part of modernity or whether we have already crossed over into what many are keen to call the postmodern. As for myself, rather than referring to a nebulous postmodernity, I would suggest speaking of a 'liquid' modernity. Its distinguishing trait lies not so much in our having moved beyond the 'old' modernity as in our having radicalized some of its features, especially its blanket, totalizing embrace of instrumental or strategic rationality — turning away from communicative or discursive rationality — and the central role of techniques, which 'liquefies' nature and fashions it as a mere 'product' that can be manipulated at will without regard to any 'substance' or 'essence' it may have. Politics turns into 'biopolitics', while law dissolves into a myriad network of functional relations described as 'soft' only because the associated sanction consists not in a penalty but only in being excluded from the communicative (commercial) circuit. Relationships are no longer discursive; they are no longer predicated on sense but on waves of 'annoyance', a bit like the autopoietic closure of systems disturbed by the environment, in the manner described by Luhmann. The law dissolves into a network of mutual annoyance, and in this way it, too, becomes 'liquefied', proceeds by hypothetical, rather than categorical, imperatives, and responds to 'information' that acts as a causal stimulus rather than as propositional content.

The 'liquidity' of the human condition in general comes as a result of the breaking up of three boundaries: (a) the normative boundary, in that norms are interpreted as technical rules or functional imperatives (an expression of this breakup in legal scholarship can be seen in the 'law and economics' movement); (b) the empirical or 'natural' boundary, in that nature can now be reproduced in the laboratory, where it can be manipulated even at its core, to such an extent that it can no longer curb the human drive to consume and exert power; and (c) geographic or spatial boundaries, in that with the breakup of the first two barriers human action gains the ability to bend in any direction and extend its reach almost boundlessly, so much so that space shrinks into some form of single place or 'nowhere', and finally 'the shrinking

[11] See D. Grimm, 'La forza dell'UE sta in un'accorta autolimitazione' *Nomos*, 2, 2-9 (2014) (translated from the German original).

of space abolishes the flow of time'.[12] We have fallen into a sort of black hole of eternal iteration, an echo chamber that reduces our very existence, which otherwise essentially unfolds over time and projects a future that is open to change.

The condition of 'liquidity' is that of a society in constant flux. Let me quote here Zygmunt Bauman:

> 'Many of us change places — moving homes or travelling to and from places which are not our homes. (...) In the world we inhabit, distance does not seem to matter much. Sometimes it seems that it exists solely in order to be cancelled; as if space was but a constant invitation to slight it, refute and deny. Space stopped being an obstacle (...).'[13]

Now, this whole description recalls the way the ECJ often seems to envision EU citizenship, the fundamental content of which is equated precisely with freedom of movement[14] and the context of which is identified with the European single market understood as the Union's basic public space.

This is the space essentially defined by the 'four freedoms' of the EU citizen, and perhaps nowhere does it come alive more vividly than in the social artefact of the shopping centre, where the market economy takes on a visual form through which it can be observed concretely at work. Here life is organized 'around consumption'.[15] Herein lies the ideal 'architectural' embodiment of the unchecked circulation of goods and persons. The basic personal status in a shopping centre is that of seller or of buyer/consumer, the latter being an individual moving freely about from storefront to storefront — the interface through which to peruse the goods on offer, the medium in virtue of which supply meets demand. In the context of this interchange, one can bring along parents and friends (as buyer) and interact with others under any assumed identity (as seller). EU citizenship — such as it takes shape in its present normative and judicial framework — bears more than a passing resemblance to the status of participant to the festival of consumption celebrated at the shopping centre. In fact, we can think of EU citizenship as the normative transliteration of that status. In light of that analogy, even the ECJ's compassionate move to extend the purview of EU citizenship appears

[12] Z. Bauman, *Globalization: The Human Consequences* (New York: Columbia University Press, 1998), 88.

[13] Ibid 77.

[14] See, for example, the Opinion of Advocate General Poiares Maduro in Joined Cases C-158/04 and C-159/04, *Alfa Vita Vassilopoulos AE and Carrefour Marinopoulos AE* v *Elliniko Dimosio and Nomarchiaki Aftodioikisi Ioanninon* (European Court of Justice First Chamber 14 September 2006), delivered on March 30, 2006, available at www.eur-lex.europa.eu. Cf M. Everson, 'A Citizenship in Movement' 15 *German Law Journal*, 975–976 (2014).

[15] Z. Bauman, *Liquid Modernity* (London: Polity, 2015), 76.

functional to the 'liquid' construct of the individual qua consumer,[16] ceaselessly ambling to and fro amid the alluring panoply of goods, possibly with a retinue of family and friends.

The 'liquidity' is reflected and condensed in the flexibility of the labour market:

> 'The labour market is too rigid; it needs to be made flexible. That means more pliant and compliant, easy to knead and mould, to slice and roll, and putting up no resistance whatever is being done to it.'[17]

Corresponding to this flexibility in the demand for labour, however, is an equally strong 'rigidity' of supply.

> 'And so to meet the standards of flexibility set for them by those who make and unmake the rules — to be 'flexible' in the eyes of the investors — the plight of the 'suppliers of labour' must be as rigid and *inflexible* as possible — indeed, the very contrary of 'flexible': their freedom to choose, to accept or refuse, let alone to impose their own rules on the game, must be cut to the bare bone.'[18]

Stated otherwise, 'liquid' citizenship must not be allowed to 'solidify' into the rights and powers of collective and political action. The rules of 'liquid' citizenship — EU citizenship being now its archetype — are there to be used, consumed, 'enjoyed', but must not be set by those who hold rights as individuals under those rules. Quite significantly, this dialectic of 'flexibility' and 'rigidity' can be found in the case law of the ECJ, which on the one hand is quite generous in recognizing EU citizens as having rights of free movement and residence, but on the other hand, in so doing, not only restricts the leeway afforded to the welfare State, driving up its costs, but also, and crucially, undercuts or outright denies or ignores those rights that can be turned into rights to collective and political action, like those typically associated with trade union activity.[19]

[16] See A. Somek, *Individualism: An Essay on the Authority of the European Union* (Oxford: Oxford University Press, 2008).

[17] Z. Bauman, *Globalization: The Human Consequences* n 12 above, 104.

[18] Ibid 115.

[19] In that regard, Stefano Giubboni underscores the 'fundamental conceptual aversion of the Luxembourg judges to the idea of 'industrial citizenship'. S. Giubboni, 'European Citizenship and Social Rights in Times of Crisis', in 'EU Citizenship: Twenty Years On', special issue, 15 *German Law Journal*, 935–964, 949 (2014). And that development seems paradoxical, even dystopian, if we look at it today in light of Art 117 of the 1957 Treaty of Rome, which sought and anticipated improved conditions for workers in the member states, see A. Supiot, 'Under Eastern Eyes' 73 *New Left Review*, 29–36, 33 (2012).