



## **Toward a European citizenship based on transnational constitutionalism and solidarity**

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*ABSTRACT: In this text the author argues that the European Union should undertake a two-fold strategy to assure its own survival against the deadly threat of ethno-nationalism. In particular, it should (1) propel a participatory procedure to constitutionalize and to transform how it views itself and (2) enhance social-welfare rights for the benefit of the immense majority of its citizens. These initiatives would inevitably have to take place over an extended period of time and against all odds. Notwithstanding, they appear to offer the Continent its only chance of overcoming its long-standing crisis and resisting its ethnic nationalist temptations.*

*KEYWORDS: Rule of law – nationalism – nation – populism – politics.*

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## 1. Conception<sup>1</sup>

This paper will spotlight civic rights. It will presuppose that they cluster around them are number of other such protections pertaining to voting, association, expression, non-discrimination, and so forth. The discussion will posit them as serving to consolidate the citizenry and as supplying it with a potential source for a post-national principled identity.

In unified Europe, the guaranties at stake come across as problematic perhaps because of their relative newness, their perception as a work in progress, and the verbal violence against their institutions of origin. They have, therefore, generated meager awareness, let alone support, among leaders or citizens. Solving these deficiencies might simultaneously help address others.

Concretely, the European Union should undertake a two-fold strategy not only to shore up such entitlements but also to ensure its own survival against the deadly threat of ethno-nationalism. In particular, it should: (1) propel a participatory procedure to constitutionalise and to transform how it views itself; and (2) enhance social welfare rights for the benefit of the immense majority of its citizens. These initiatives would inevitably have to take place over an extended period of time and against all odds. That notwithstanding, they appear to offer the Continent its only chance of overcoming its long-standing crises and resisting its ethnic nationalist temptations.

## 2. Background

While organizing a 2017 symposium entitled, *A Continent Divided: Nationalism and the European Union* as faculty advisor to the Connecticut Journal of International Law,<sup>2</sup> the editors reviewed the available learned production. They noticed that even though the media had amply covered this novel topic, serious punditry on point had only commenced.<sup>3</sup> Consequently, the periodical invited top scholars, who initiated a still on-going intellectual conversation, which should prospectively persist on a global scale and which the current inquest purports to reorient.

The referenced event centered on the perils posed by: (1) the U.K exit on Europe's northwestern frontier; (2) the debt debacle in the Eurozone, principally, along the southern fringe; and (3) the weakness of the rule of law in the east. Furthermore, it evoked wider issues, which mostly relate to the nationalistic tendencies evident, as well as divergent, throughout. The papers submitted traversed this vast topical terrain, which the present study will itself explore.<sup>4</sup>

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<sup>1</sup> The author himself has translated the quoted non-English texts and vouches for the accuracy of the translation. He would like to thank Claudia Schubert for her invaluable contribution to the development of the ideas of this paper.

<sup>2</sup> See Symposium, "A Continent Divided: Nationalism and the European Union", *Conn. J. Int'l L.*, vol. 32 (2017): 309 [hereinafter Symposium]. See also Federico Fabbrini, "Constitutional Crisis and Institutional Reform: The European Union at the Crossroad", *Conn. J. Int'l L.*, vol. 32 (2017): 285; Jeffrey Atik, "The Social Experience of the Euro", *Conn. J. Int'l L.*, vol. 32, (2017): 267.

<sup>3</sup> Cf. Jill I. Goldenziel, "The Curse of the Nation-State: Refugees, Migration, and Security in International Law", *Ariz. ST. L. J.*, vol. 48 (2016): 579; Christopher K. Connolly, "Independence in Europe: Secession, Sovereignty, and the European Union", *Duke J. Comp. & Int'l L.*, vol. 24 (2013): 51; Moria Paz, "The Failed Promise of Language Rights: A Critique of the International Language Rights Regime", *Havn. Int'l L. J.*, vol. 54 (2013): 157.

<sup>4</sup> See generally Symposium, *supra* note 1.

(1) New York University's Grainne de Búrca wrote about the so-called "Brexit" as a choice stemming from the longstanding "difficult" relations between: (a) the United Kingdom; and (b) the European Union and reflected on various potential explanations for the vote. Frank Emmert of Indiana University, in turn, mused about the future of these two entities, externalizing plenty of pessimism. My colleague Peter Lindseth then decoded the U.K. departure as a backlash against Europe's Court of Justice. Finally, Wesleyan Professor Peter Rutland dove into an alternate decodification of the referendum's result as a shocking but explicable reaction to the perceived dreadful ramifications of European integration: loss of sovereignty, mass migration, and growing domestic economic inequality.<sup>5</sup>

(2) From the University of Leiden, Tanja Bender reported that the recession in Europe led to further fiscal competition among member countries to attract businesses and ultimately, to taxpayer protests against (entirely legal) tax-avoidance by multinationals. As a positive upshot, she pinpointed the emergence of a politically hardened will to harmonize corporate taxation regionally. Jeffery Atik of Loyola Law School in Los Angeles, for his part, gauged the euro's social cost against its capacity to coalesce the citizenry. Dublin City University's Federico Fabbrini maintained that the crisis swelled due to the absence of a powerful Brussels-based executive, which might have tackled the institutionally determined dimension and fostered a systemic upgrade. Closing out, Georgetown's Philomila Tsoukala argued essentially that the bloc furnished money to Greece's administration not to subsidize Greeks living beyond their means but to save the continentally spread-out banking-network. She rejected the suggestion of pumping up the executive authority, while speaking favorably of a multispeed Europe.<sup>6</sup>

(3) Boston College's Vlad Perju juxtaposed jurisdictions in which the effort to undermine legality structures succeeded (like Hungary or Poland) against those in which it flopped (such as Romania). He attributed the difference in outcomes to the local leadership's conduct rather than to the European Union's external intervention. Thereafter, Rutgers's Roger Daniel Kelemen detailed Europe's mechanisms for the preservation of democracy and human rights. Wrapping up, Daniel Hegedus of the German Council on Foreign Relations, as well as Visiting Lecturer at the Free University of Berlin, dissected the Hungarian regime's democratic backsliding and falling-out with the bloc.<sup>7</sup>

These three dialogic exchanges are progressing fascinatingly and have proffered invaluable insights.<sup>8</sup> Nonetheless, they are flowing somewhat separately from one another. The upcoming disquisition will seek to weave all the threads together. It will aspire to portray each of these critical emergencies as pointing to, *inter alia*, a single problem: namely, the lack of a potent across-the-board civic identity, through which citizens might feel that they can at once, uphold and profit from the cooperative scheme in place. This deficiency would seem to account, to some degree, for the British balloting to bolt, the reluctance of well-off northerners to support worse-off southerners, and the illiberal impulses on the Eastern front.

At a more abstract level with quite tangible repercussions, the reflections formulated will summon up a critique of the extant literature via the framework outlined

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<sup>5</sup> See generally *id.*

<sup>6</sup> See generally *id.* See also Fabbrini, *supra* note 1; Atik, *supra* note 1.

<sup>7</sup> See generally Symposium, *supra* note 1.

<sup>8</sup> See *id.*

ahead. Indeed, they will envision construing European communities transnationally and nationally through constitutionalized precepts, rather than nationalistically through values or slogans. The ensuing integrative setup across Europe should achieve an augmented legitimisation and functionalisation.

### 3. Argument

“*A specter is haunting Europe: the specter of*” *nationalism*”, to paraphrase Karl Marx. The United States confronts a similar threat, perhaps more extremely.<sup>10</sup> On both coasts of the North Atlantic, partisans pushing an ethnically nationalistic agenda have gained prominence and, all too often, power.<sup>11</sup> Apparently, they have drawn on their vision of the nation to delineate their populism politics, which deeply divides the populace through nativism and xenophobia. Upon accomplishing my proposal, I will conclude that the European Union needs to reinforce its constitutional democracy and solidarity and to rely on them to ignite in its citizens a stronger allegiance to it, in conjunction with an unprecedented sense of identity.

In a nutshell, the European Union should embark upon two existential journeys in the face of its contemporary malaise and the underlying ethno-nationalist menace. It should: (1) launch a bottom-up popular dialogue in order radically to alter how it understands itself, with a focus on the civic rights it constitutionally recognizes; and (2) beef up its own solidarity-inspired engagement, as well as that of its population. These twin endeavours would inevitably have to take place protractedly and improbably. Nonetheless, they may, very well, constitute the sole hope of keeping the flame alive.

The troubles and challenges facing the European Union conjure the famous proclamation of Antonio Gramsci: “*The crisis consists precisely in the fact that the old is dying and that the new cannot be born. In this interregnum, a wild array of morbid phenomena appears.*”<sup>12</sup> In my opinion and counterintuitively enough, ethnic nationalism not the bloc, represents the aging life-form that is painfully progressing toward death. Simultaneously, an unprecedented collective self-understanding is struggling, apparently hopelessly, to come to birth.

Loosely defined, an ethno-nationalist movement identifies or associates the polity with a peculiar, mostly dreamt up,<sup>13</sup> ethnic group or perspective. It excludes outsiders

<sup>9</sup> Cf. Karl Marx and Friedrich Engels, *Manifest der Kommunistischen Partei, 4 Werke* (Berlin: Dietz Verlag, 1983), 461 (“Ein Gespenst geht um in Europa — das Gespenst des Kommunismus.”) (“A specter is haunting Europe: the specter of Communism.”).

<sup>10</sup> Liz Alderman, “Macron Vowed to Be Business Friendly. Now He Faces a Protectionist Uproar”, *N.Y. Times*, Aug. 2, 2017 (“President Trump is championing a more nationalistic stance in the United States, while Europe is generally calling for freer trade to stoke growth.”).

<sup>11</sup> Patrick Bohler, “Catalonia, Ukraine, Turkey: Your Thursday Briefing; Europe Edition”, *N.Y. Times*, Oct. 26, 2017 (“In the United States, President Trump’s brand of hard-edge nationalism is increasingly taking root within the Republican Party. Those uneasy with grievance politics are either giving in or giving up the fight”); Katrin Bennhold, “Merkel Forges Pact to Govern With Old Allies”, *N.Y. Times*, Feb. 8, 2018 (“Nationalist leaders in Central and Eastern Europe, led by Hungary’s prime minister, Viktor Orban, are challenging the liberal consensus at the heart of the European bloc.”); Steven Erlanger, “Macron Urges E.U. to Uphold The ‘Authority of Democracy’”, *N.Y. Times*, Apr. 18, 2018 (“And nationalism in Europe is on the rise, and not just in Central Europe, under pressure from migration, terrorism and globalization.”).

<sup>12</sup> Antonio Gramsci, *Quaderni dal carcere* (Turin: Giulio Einaudi, 1977), 311 (Q 3, § 34) (“La crisi consiste appunto nel fatto che il vecchio muore e il nuovo non può nascere: in questo interregno si verificano i fenomeni morbosi più svariati.”).

<sup>13</sup> See Benedict Anderson, *Imagined Communities* (London/New York: Verso, 2006), 5-6 (“In an

and other standpoints as alien. Needless to say the instigating insiders act illegitimately, as well as arbitrarily, not merely in their concoction of an identity along these lines but especially, in their exclusion of others.

Ethno-nationalism is a worn-out, tired concept. It has been perishing for over two centuries. At least since the French Revolution, societal actors in Europe and beyond have been attempting to imagine the integration of politicised collectivities through principles, rather than ethnicities.<sup>14</sup> Nevertheless, they have clung to the ethnically nationalistic paradigm, despite its conceptual and moral bankruptcy, because of its apparent capacity to bring the masses together simply and quickly. This simplicity and quickness of appeal explains, in addition to its staying power up to now, why it will not inevitably disappear soon, or ever.

Nationalism, according to Jürgen Habermas, “*emerges within the educated middle-class and spreads out through the channels of modern mass-communication.*”<sup>15</sup> “*It takes on artificial features,*” he elucidates, “*...due to both its literary development and its wide public dissemination.*”<sup>16</sup> “*Its constructed character renders it intrinsically susceptible to manipulative misuse at the hands of political elites.*”<sup>17</sup> In light of this manipulability, politicians frequently feel tempted to proceed nationalistically in order to reach and remain in office.

The principled alternative, which harks back to the Enlightenment or earlier,<sup>18</sup> presents itself nowadays under the formulation of “*constitutional patriotism,*” popularized

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anthropological spirit, then, I propose the following definition of the nation: it is an imagined political community—and imagined as both inherently limited and sovereign.”).

<sup>14</sup> See, e.g., Declaration of the Rights of Man and Citizen of 1789, *appended to Const. (Fr.)* (“Les Représentants du Peuple Français... ont résolu d’exposer, dans une Déclaration solennelle, les droits naturels, inaliénables et sacrés de l’Homme, (...) afin que les réclamations des Citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.”) (“The representatives of the French people... have decided to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, (...) so that the citizens’ grievances, hereafter based upon these simple and incontestable principles, will tend to uphold the constitution and to enhance the happiness of all.”); *Const. (Bol.)*, *pmb.* (Construiremos “[u]n Estado basado en el respeto e igualdad entre todos, con principios de soberanía, dignidad, complementariedad, solidaridad, armonía y equidad en la distribución y redistribución del producto social, donde predomine la búsqueda del vivir bien; con respeto a la pluralidad económica, social, jurídica, política y cultural de los habitantes de esta tierra.”) (We shall construct “[a] state not only based on the notions of respect and equality for all, along with principles of sovereignty, dignity, complementarity, solidarity, harmony, and of equity in the distribution and redistribution of the social product, but also in which the quest for good living prevails and respectful of the economic, social, legal, political, and cultural plurality among the inhabitants of these lands.”).

<sup>15</sup> Jürgen Habermas, *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des Demokratischen Rechtsstaats* (Frankfurt: Suhrkamp, 1992), 635 (“Er ersteht im gebildeten bürgerlichen Publikum und verbreitet sich über die Kanäle der modernen Massenkommunikation.”) [hereinafter, Habermas, FG].

<sup>16</sup> *Id.* (“Beides, die literarische Vermittlung und die publizistische Ausbreitung, verleiht dem Nationalismus künstliche Züge...”).

<sup>17</sup> *Id.* (“... das gewissermaßen Konstruierte macht ihn von Haus aus für den manipulativen Mißbrauch durch politischen Eliten anfällig.”).

<sup>18</sup> See, e.g., Immanuel Kant, *Die Metaphysik der Sitten* (Frankfurt: Wilhelm Weischedel ed., Suhrkamp 1977), 429 (Part II, Ch. I, § 43) (Das öffentliches Recht “ist also ein System von Gesetzen für ein Volk, d.i. eine Menge von Menschen, oder für eine Menge von Völkern, die, im wechselseitigen gegen einander stehend, des rechtlichen Zustandes unter einem sie vereinigenden Willen, einer *Verfassung* (constitutio) bedürfen, um dessen, Rechtens ist, teilhaftig zu werden.”) (Public law “is a system of laws for a people, that is, a multitude of persons or peoples who relate to each other reciprocally, as well as legally, under a will that unites them all. They therefore need a *constitution* (constitutio) to partake in what is right.”).



by Habermas himself,<sup>19</sup> originally coined by Dolf Sternberger,<sup>20</sup> and espoused in some form within and without European borders.<sup>21</sup> It finds an echo in philosophical conceptions developed in the United States, such as the “*political liberalism*,” “*overlapping consensus*,” or “*public reason*” of John Rawls.<sup>22</sup> Those who assume this outlook recommend integrating communities socially and politically through a set of constitutionalised norms, which usually embody specific basic entitlements, rather than through a shared cultural or linguistic background.<sup>23</sup>

At times, Europe’s elected establishment seems to have marched down this path. It has proposed charters or their equivalents and has, with limited success, urged its constituents to follow its lead.<sup>24</sup> Not surprisingly, ethno-national forces have resurfaced and resisted at every turn.<sup>25</sup>

<sup>19</sup> See Habermas, FG, *supra* note 14, at 651 (“Verfassungspatriotismus”) (“constitutional patriotism”); Jürgen Habermas, *Die Einbeziehung des Anderen: Studien zur Politischen Theorie* (Frankfurt: Suhrkamp, 1996) 143, 263-264 (“Verfassungspatriotismus”) (“constitutional patriotism”).

<sup>20</sup> Dieter Henrich attributes the term “constitutional patriotism” (“Verfassungspatriotismus”) to Dolf Sternberger. Dieter Henrich, *Nach dem Ende der Teilung: Über Identitäten und Intellektualität in Deutschland* (Frankfurt: Suhrkamp, 1993), 74.

<sup>21</sup> See, e.g., Francesc de Carreras, “Patriotismo sin tribu”, *El país*, Nov. 11, 2001 (“Frente a un concepto prepolítico y prejurídico de patria basado en un pasado histórico compartido con la voluntad de constituir una comunidad de destino, el patriotismo constitucional propugna una identidad colectiva basada en los valores de libertad e igualdad, de Estado de derecho y de democracia.”) (“Against a pre-political and pre-legal concept of fatherland resting on a shared historical past and on a will to constitute a community of destiny, constitutional patriotism advocates a collective identity based on the values of liberty, equality, the rule of law, and democracy.”); Guillermo Hoyos Vásquez, “Multiculturalismo y democracia en América Latina”, *Congreso latinoamericano sobre filosofía y democracia*, eds. Humberto Giannini and Patricia Bonzi (Santiago de Chile: LOM Ediciones, 1997), 289, 302-303 (“La democracia deja de ser mero procedimiento, y como campo de participación desde perspectivas culturales diferentes logra que los ciudadanos se reconozcan como miembros de una comunidad y que dichas comunidades se relacionen entre sí: es la dimensión ética del patriotismo constitucional.”) (“Democracy ceases to reduce to a mere procedure. As a field of participation from different cultural perspectives, it brings citizens to recognize themselves as members of a community and these collectivities to interrelate with each other. This represents the ethical dimension of constitutional patriotism.”).

<sup>22</sup> See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 135 (“(...) political liberalism supposes that there are many reasonable comprehensive doctrines with their conception of the good, each compatible with the full rationality of human persons (...).”); John Rawls, “The Domain of the Political and Overlapping Consensus”, *N.Y.U. L. Rev.*, vol. 64 (1993): 233, 234 (“[T]he idea of an overlapping consensus is introduced to explain how, given the plurality of conflicting comprehensive religious, philosophical, and moral doctrines always found in a democratic society—the kind of society that justice as fairness itself enjoins—free institutions may gain the allegiance needed to endure over time.”); John Rawls, “The Idea of Public Reason Revisited”, *U. Chi. L. Rev.*, vol. 64 (1997): 765, 773 (“A citizen engages in public reason, then, when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also reasonably be expected reasonably to endorse.”).

<sup>23</sup> See *supra* notes 18-21 and accompanying text.

<sup>24</sup> See, e.g., Sarah Lyall, “Irish to Vote on Complex European Union Treaty, Raising Fears of Its Rejection”, *N.Y. Times*, June 12, 2008 (“In 2005, a proposed European constitution—written under the aegis of Valéry Giscard d’Estaing, the former French president—died after it was rejected by voters in France and the Netherlands.”).

<sup>25</sup> Craig S. Smith, “Sensing Opportunity, Rightist Seeks the French Presidency Again”, *N.Y. Times*, May 2, 2006 (“But recent opinion surveys indicate that [France’s aging right-wing firebrand, Jean-Marie] Le Pen’s approval rating has surged to more than 20 percent after government missteps over a draft European constitution a year ago, rioting last fall in immigrant neighborhoods, largely by second-generation residents, and a labor law that drew nationwide protests last month.”); Richard Bernstein, “Charter for the European Union Meets Resistance”, *N.Y. Times*, May 22, 2005 (“Anticonstitution campaigners, like

In part, this constitutional campaign has made scant progress because its proponents have not embraced it openly or clearly. Mostly, however, it has foundered because it has unfolded on a top-down basis. The whole effort has failed to mobilise, let alone fire up, the citizenry.<sup>26</sup>

The European Union would need to venture two steps to improve its prospects in this quest. First, it would have to set in motion a protracted, profound, deliberative, and democratic process. Thereby, its denizens would ponder, discuss, draft, and eventually approve a constitution. In the end, they would attain a new constitutional self-definition on their own and deliberately, not by observing the mandate or recommendation of their representatives or upon a leap of faith. Secondly, the bloc would have to focus incrementally on social-welfare guaranties. It would then have a better shot at convincing its constituencies of the concrete advantages of the advocated transformation.

Transitioning to this vantage point on both counts would not only enhance the legitimacy of Europe's institutional organs. It would also increase their functionality. The entire entity would operate more legitimately by intensifying its commitment to democracy and distributive justice. Currently, it appeals based on, at best, the boon of a massive, merged market and a lasting peaceful coexistence or, at worst, a: "*chauvinism of affluence*,"<sup>27</sup> which comes across as oppressive against the impoverished periphery and exterior. The European Union would additionally turn into a more functional enterprise, with members permanently committed to the good of all. It presently tends to function as an arrangement of convenience. Individual countries pursue, almost exclusively, their own self-interest. Great Britain appears to provide an extreme case in point, all the way up to its dramatic decision to depart.<sup>28</sup> This generalised stance renders it practically impossible to build anything in the long run.

Evidently, not even the statesmen and women most devoted to the communal project have fully grasped its civic implications. When Germany's Chancellor Angela Merkel traveled to France after a moment of terror and tragedy in 2015, for example, she justified her presence in terms of friendship, while deploying the formal, comfortably distancing, German pronoun "*Ihnen*."<sup>29</sup> In the aftermath of a populist electoral scare in the Netherlands in 2017, she spoke of partnership too.<sup>30</sup> These manners of addressing neighbors engaged in a joint undertaking of

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Geert Wilders, a maverick populist member of Parliament and a leading anti-immigration campaigner, have toured the country to warn that the Dutch will lose control of their own borders.").

<sup>26</sup> See, e.g., Marlise Simons, "Dutch Voters Solidly Reject New European Constitution", *N.Y. Times*, June 2, 2005 ("But most noted by analysts after the results became known was the enormous gap between politicians and common citizens.").

<sup>27</sup> Habermas, FG, *supra* note 14, at 659 ("*Wohlstandschauvinismus*").

<sup>28</sup> See, e.g., Stephen Castle, "Britain Receives Proposals for 'Better Deal' to Stay in the E.U.", *N.Y. Times*, Feb. 3, 2016 ("Mr. Cameron has said that he wants to negotiate a 'better deal' from the bloc... Mr. Cameron called the new plan a 'very strong and powerful package,' adding that, while there was no final agreement and more work was needed, 'strong, determined and patient negotiation has achieved a good outcome for Britain.") (quoting former Prime Minister David Cameron).

<sup>29</sup> Addressing the French people after the Parisian terrorist attack on November 14, 2015, Merkel proclaimed: "Wir, die deutschen Freunde, wir fühlen uns Ihnen so nah." ("We, your German friends, we feel so close to you."). Thorsten Denkler, "Merkel: 'Wir weinen mit Ihnen'", *Süddeutsche Zeitung*, Nov. 14, 2015 (on file with the author) (quoting Angela Merkel). See also Adam Nossiter, Aurelien Breden, and Katrin Bennhold, "Paris Attack Was the Work of 3 Teams", *N.Y. Times*, Nov. 15, 2015 ("We, your German friends, we are so close with you.") (quoting Angela Merkel).

<sup>30</sup> See Angela Merkel, "Speech at the Demography Summit in Berlin", *Chancellorship Documents*, Mar. 16, 2017, (on file with the author) ("Die Niederlande sind unser Partner, unser Freund, unser Nachbar.")

transnational consolidation over six decades sound somewhat tepid. to say the least. Non-European nations with much looser ties to the Continent, such as the United States, can already refer to their European counterparts as “*friends*” or “*partners*.”<sup>31</sup> Merkel could have instead used the expression “*fellow citizens*.”

In actuality, a common citizenship binds the peoples of this consolidated Europe,<sup>32</sup> generally entailing “*the right to move and reside freely within the territory*,” “*to vote and to stand as [as a candidate] in [European and municipal] elections*,” and “*to petition . . . European . . . institutions*.”<sup>33</sup> Granted, it is evolving sluggishly and still has a considerable way to go, above all, in the sense of encompassing a robust notion of anti-discrimination, along with a vigorously enforced set of entitlements (and duties), such as those guaranteed (and imposed) by Europe’s Charter of Fundamental Rights.<sup>34</sup> On solidarity, specifically, not to mention other progressive or emancipatory aspirations, this otherwise ambitious unification venture has little to show for itself. Surprisingly, sometimes, the Central European Bank seems to be moving faster and farther on this front than the other bodies or the national governments and populaces.<sup>35</sup>

In sum, Europe should dare the recommended two-fold strategy to ensure its own survival. In other words, it should: (1) propel a participatory procedure to

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(“The Netherlands is our partner, our friend, our neighbor.”).

<sup>31</sup> Mark Landler and Thom Shanker, “Gates and Clinton Unite to Defend Libya Intervention, and Say It May Last Awhile”, *N.Y. Times*, Mar. 28, 2011 (“our European friends”) (quoting Hillary Clinton); Liz Moyer, “U.S. and Europe Set Rules for Derivatives Regulation”, *N.Y. Times*, Feb. 11, 2016 (“our European partners”) (quoting former U.S. Treasury Secretary Jacob J. Lew).

<sup>32</sup> See Charter of Fundamental Rights of the European Union, 13 December 2007, 2012 O.J. (C 326) 391. Cf. European Court of Justice (Grand Chamber), Nov. 14, 2017, *Toufik Lounes v. Secretary of State for the Home Department*, In Case C-165/16, paragr. 51 (Nationals of Member States possess “rights pertaining to Union citizenship, (...) also against (...) Member States.”).

<sup>33</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon], art.º 20(2).

<sup>34</sup> Treaty on European Union (Maastricht Text), July 29, 1992, 1992 O.J. (C 191) 1, 31 I.L.M. 253, art.º 8(1) (“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.”); Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1, 37 I.L.M. 253, art.º 8(1) (“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.”); Treaty of Lisbon, art.º 20(1) (same).

<sup>35</sup> Compare Jack Ewing and Liz Alderman, “Inaction by Greeks Tests Patience of Rescuers from the Central Bank”, *N.Y. Times*, May 7, 2015 (“The European Central Bank has already lent about 110 billion euros, or about \$120 billion, to banks in Greece—more than to any other country’s financial institutions, relative to the size of the economy. The banks need the cash to continue providing credit to the Greek economy.”) with Stephen Castle, “When Britain Goes to Vote, European Union May Feel the Results”, *N.Y. Times*, May 7, 2015 (“Mr. Cameron has spoken of restricting welfare payments for Europeans who can come to Britain because the bloc guarantees the citizens of member states free movement across European borders.”). See also Jürgen Habermas, “Warum Merkels Griechenland-Politik ein Fehler ist”, *Süddeutsche Zeitung*, June 22, 2015 (on file with the author) (“Mit der Ankündigung, notfalls Staatsanleihen in unbegrenzter Höhe anzukaufen, hatte er für die Euro-Gruppe die Kastanien aus dem Feuer geholt. Er mußte vorpreschen, weil die Regierungschefs unfähig waren, im europäischen Gemeininteresse zu handeln; sie blieben ihren jeweils nationalen Interessen verhaftet und verharrten in Schockstarre.”) (“By announcing the purchase, if necessary, of an unlimited number of governmental bonds, [Mario Draghi, the head of the European Central Bank,] pulled the chestnuts out of the fire for the Eurogroup. He had to press ahead on his own because the heads of government were unable to act in the common European interest. They remained trapped in their respective national interests and stuck in a state of paralysis.”).



constitutionalise and to transform how it views itself; and (2) enhance social welfare entitlements for the benefit of the majority of its inhabitants. Obviously, these initiatives would have to come to fruition over an extended period of time and against all odds. Notwithstanding, they appear to offer the only chance of overcoming the Continent's long-standing critical predicament and defeating ethnic nationalism, along with the morbidity that it propagates.