European citizenship of last resort: migrant strategies and civic practices in the Danish family unification dispute

Rikke Wagner, London School of Economics and Political Science

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Abstract

Family unification is a major immigration route and a focus of government attention in Europe. Denmark has been a 'frontrunner' in this respect. During the past decade it has become very difficult for Danish citizens and residents to bring in a foreign spouse. In response, some transnational couples have decided to use the free mobility in Europe and move to Sweden. The European Union grants extensive rights to family life to EU-citizens living in another EU-country. It also enables the couples to return to Denmark, bypassing Danish regulation.

In the paper I examine this strategy of cross-border movement. Based on 29 semi-structured and narrative interviews I analyze how these couples practice and interpret 'exit' and 're-entry'. Their position as both insiders and outsider makes them particularly sensitive to the boundaries of and intersections between national and supranational membership. Exploring how this terrain is negotiated by marriage migrants can therefore deepen our understanding of the character, promises and limitations of European Union citizenship.

The study contributes to an emerging political sociology researching how EU citizenship is actually lived and experienced. It offers new insights into a field which has long been dominated by legal and philosophical perspectives. I show that a 'European citizenship of last resort' is practiced in the Danish family unification dispute. EU citizenship is activated where core civic freedoms are at stake and options within national law are not available. Engaging with trans-national and post-national approaches I argue that this practice both affirms and transforms national membership.

> R: So how come you're moving to Sweden? […] J: Well we were forced to if we wanted to be together (Interview with Julie and Derek 2011, p.4,)

1. Introduction

The year 2011 was quite eventful for Danish Julie and her Australian husband Derek. They had a little son, got married, and had to leave Denmark. The reason was that the young couple did not meet the country's demanding criteria for family unification. To protect its citizens from unwanted immigration the Danish state is regulating marriage migration very tightly. While Denmark has been a 'frontrunner' in this area, a number of other European countries are following suit (Siim 2007, Phillips 2007, pp.121-122). This restrictive turn means that citizens like Julie are unable to live with their foreign partner in their own country. In response some are 'activating' (Bellamy 2008) their EU citizenship to claim rights they are denied under national law (cf. Kostakopoulou 2007b). In practice this usually means relocating in another EU-state, in this case Sweden (but see Kochenov 2011). The principle of free internal movement is a cornerstone of European integration and citizens who cross borders to settle in another member country are granted extensive entitlements including the right to bring their family (Downes 2001, Carrera 2005, OJEU 2004).

European Union citizenship was introduced with the Maastricht Treaty in 1992. As an empirical and conceptual novelty it has become the topic of intense academic scrutiny. Critics have argued that EU citizenship is a 'misnomer' (Besson and Uzinger 2007, p.575, Armstrong 1996, p.586). Unlike national citizenship, it does not display the proper traits of civic membership. This is countered by scholars who advocate opening up the concept of citizenship. Trans-nationalists, for example, see EU membership as a supplement to national citizenship which could "control the excesses of the modern nation-state in Europe" (Weiler 1999, p.341, Bellamy 2009, p.26, see Kostakopoulou 2000, p.486). Post-nationalists instead stress the radical transformational character of union membership. Or they criticize it for being still too bound up with member-state citizenship thereby excluding immigrant residents (Habermas 1999, chapter 4, Benhabib 2004, Kostakopoulou 1998, 2007b).

Much of this literature is legal or philosophical in character (Weiler 1999, Kostakopoulou 2007b, Wind 2008-9, Habermas 2001b). It focuses on EU treatises, secondary law and the dynamic interpretations of the European Court of Justice. This is understandable given the central role played by the court in developing the rights of EU citizen (Besson and Utzinger 2007, p.574). But it leaves

aside what the newly acquired status actually means in the everyday life of Europeans. The union is often portrayed as an elitist project far removed from the concerns of ordinary citizens. An EU citizenship that is not taken up and used is merely a set of 'dead rights' (cf. Honig 2001). Exploring how citizens negotiate the terrains of national and European orders and how they assign meaning to rights and membership is thus important. Recently therefore a 'sociological turn' (Suarugger and Merand 2010, p.2) has begun. Increasingly studies are being conducted which explore the lived practices of citizens. This provides new and often unexpected insights into the scope, character, promises and limitations of EU citizenship (Favell 2008, Ackers 2004, White 2010, Rumelli et al 2011).

The present paper contributes to this gradually emerging sub-field. It does so through an in-depth case study of marriage migration in Denmark where EU citizenship is used to by-pass restrictive national laws. My study is based on 29 narrative interviews with Danes and/or their foreign spouses who nearly all have moved to Sweden. I show that they practice and articulate a 'European citizenship of last resort'. For most of my informants the EU functions as a guarantee of basic freedoms which they resort to when their nation-state does not protect them. This finding tallies with the trans-nationalists thesis that EU membership constrains illiberal tendencies in a national citizenship that nonetheless retains primary importance. But this is not the whole story. In line with post-national arguments EU citizenship also transforms national membership in significant ways. The right to free movement not only enables citizens to enter another member-state and claim rights. It also allows them to return again to Denmark with their spouse. Regulating the boundaries of inclusion and exclusion are thus no national prerogative. Through their practice of EU citizenship these couples therefore both confirm and disrupt the civic order of the nation state (cf. Kostakopoulou 2007b).

The paper proceeds as follows. The second part surveys the debate on EU citizenship. I first present and discuss two major contending approaches – trans-nationalism and post-nationalism. I then introduce the recent shift from legal-philosophical to more sociological studies. Setting out the main findings of this new body of literature I argue that it overlooks the important field of marriage migration and its interplay with EU citizenship.

In the third part I provide a case study of the Danish family unification dispute. I analyze the stories of Danish-international couples who have used European Union citizenship to avoid or circumvent restrictive national regulation. I show how the Danish civic order is both affirmed and transformed

through the acts of migrant-citizens. I conclude by drawing together the insights from this empirical research and how it can improve our understanding of the trans-national or post-national character of EU citizenship.

2. Understanding European citizenship

In a time of increased global interconnectedness, where national boundaries are under pressure from cross border movement of 'people and money' (Goodin 1992), the European Union stands out as the first contemporary example of a non-state polity with a citizenship of its own. This has understandably caught the attention of a wide range of academics who argue about how best to make sense of this new civic status.

Initially the debate centered on whether or not European Union citizenship was really a citizenship after all (Weiler 1999, pp.324-325, Kostakopoulov 2007b, pp.623-626). Comparing it implicitly or explicitly with nation-state citizenship several scholars noticed its short-comings (Grimm 1995, Armstrong 1996, Miller 1998, Downes 2001). The key element of EU citizenship as set out in the Maastricht Treaty was the freedom of movement within the union. This right, however, which had long been established in community law, was restricted to economic agents of the internal market. Though interpreted rather broadly it did not display the universality of citizenship which assigns equal entitlement to all citizens. In addition critics pointed out that EU citizenship contained few political and social rights.

Gradually, however, the activist interpretations by the European Court of Justice widened the scope and content of EU citizenship (Besson and Utzinger 2007). Based on the principle of non-discrimination social entitlements were increasingly granted to EU citizens living in another EU country. The economic conditionalities of free movement were also interpreted narrowly by the court thus enlarging the group of persons who could use this liberty (Downes 2001, Kostakopoulou 2007b, Joppke 2010b, but see Carrera 2005). The Citizenship directive adopted in 2004 further underlined this tendency (Besson and Utzinger 2007). The terms of the debate have therefore shifted. The topic of contention at present is less whether or not EU citizenship *is* a citizenship but rather what kind of citizenship it is. In the following I set out and discuss the two main positions in this dispute; trans-nationalism and post-nationalism.[1]

[1] A plethora of terms and concepts are afloat in current citizenship studies; trans-national (Bauböck 1995), post-national (Soysal 1994), cosmopolitan (Linklater 2002), de-nationalized (Sassen 2002) and anational citizenship (Kostakopoulou

2.1 Trans-national perspectives

Trans-nationalists seek to strike a balance between national and supra-national citizenship while emphasizing the primacy of the former. European integration must respect the multiple 'demoi' with their diverse national cultures and historical trajectories while seeking to promote peaceful cooperation at all levels. EU citizenship should thus supplement but not replace national membership (Weiler 1999, chapter 10, Bellamy 2001, 2008, cf. Nicholaïdis 2004, Glencross 2011).

Prominent EU lawyer Joseph Weiler has developed this argument quite forcefully. He claims, in line with nationalists, that the nation-state remains a crucial site for collective self-identification. Indeed he argues that "nationhood is not an instrument to obtain belongingness, it *is* it." (Weiler 1999, p.338) An EU citizenship based on rights and common ideals cannot provide us with the deep sense of membership Weiler believes to be necessary. If this supranational status is promoted at the expense of national citizenship it will therefore generate estrangement and political disaffection (p.347). But though Weiler values the nation-state he also emphasizes its inherent dangers. Unchecked, nationalism all too often it leads to wars of aggression or xenophobic policies (pp.340-341). For Weiler "[t]he national and the supranational encapsulate […] two of the most elemental, alluring and frightening social and psychological poles of our cultural heritage. The national is eros […]. The supranational is civilization." (Weiler 1999, p.347)

The solution to this conundrum is not to establish a United States of Europe where union citizenship overrides or replaces nationality. Such attempts to create national-like membership at a higher European level would only reproduce its vices (p.341) without preserving its virtues of diversity and belonging. But nor should we abandon EU citizenship for that would leave nationalism unconstrained. Instead Weiler recommends that we combine national and European citizenship so that each can keep in check the evils of the other. We should, he contends, "embrace the national in the in-reaching strong sense of organic-cultural identification and belongingness and […] embrace the European in terms of European transnational affinities to shared values which transcend the ethno-national diversity." (p.346). We must do so in a way that retains the priority of national membership while allowing for a number of political issues to be decided at the European level (p.346).

2007a). The meaning assigned and the boundaries drawn vary. I specify below how I understand the terms trans-nationalism and post-nationalism in this context.

Weiler thus provides us with a conception of 'corrective citizenship' where EU citizenship supplements, perfects but also preserves national citizenship (Kostakopoulou 2000). The former is wholly dependent on the latter (Weiler 1999, p.346) and merely "aspires to keep the values of the nation-state pure and uncorrupted" (p.341).

This conceptualization is attractive because it takes seriously the merits and dangers of both nationalism and supranationalism. Weiler cautions us against the dual threats of too much passion and too little. Moreover, his Hegelian synthesis promises a way to avoid both evils while incorporating what is valuable in each type of regime. But though such unifying attempts are seductive they often gloss over important remaining differences. Weiler wants to domesticate nationalism and save it from itself. But why should we expect nationalism to obligingly accept taming? He insists that supranationalism should be "policing the boundaries of the nation against abuse" (p.341). But boundary drawing is not a minor issue for nationalists. In some ways, defining the scope of the community is exactly what nationalism is all about. Michael Walzer has defended the kind of rooted organic polity Weiler portrays. He insists that it is essential for the maintenance of such communities to determine its own membership policy. It is a constitutive practice. Liberal and social-democratic nationalists like David Miller and Walzer advocate peaceful cooperation between states and some, albeit limited, protection for refugees. But they still insist on the right of a polity to decide who and how many newcomers it permits and at what speed (Miller 2005, Walzer 1983 chapter 2). Consequently, any inter- or supranational regime that interferes with the drawing of symbolic-political boundaries of a nation-state is not merely trimming the fringes of an otherwise benign order. Such interventions transform the national community in rather radical ways.

Weiler's romantic conception of the nation also raises some questions (see Joppke 2010b, Kostakopoulou 2000, p.486). Though he, at least partially, distances himself from 'blut und boden' nationalism (Weiler 1999, pp.338-339) the organic sense of belonging described does seem to equate ethnos and demos. This in turn is hard to square with for example French civic nationhood (Kostakopoulou 2000, p.486). Weiler (1999, p.339) is aware of this problematic in his account but does not address it. He portrays civic nationalism as an American phenomenon with little relevance in Europe. Christian Joppke (2010b, p.19), however, contends that Weiler would be hard pressed to find any national citizenship in Europe based on the deep sense of belonging he imagines. The spread of liberal norms have transformed national membership making it rights-based and 'light'. Weiler's romantic citizenship is therefore a thing of the past if it ever existed (pp.19-20). Against

this Weiler could point to the polls by Eurobarometre which continue to show that most Europeans identify first as nationals even if many also think of themselves as Europeans (Bellamy 2008, p.603). Even if national identity is not as deeply rooted as Weiler believes it does appear fairly resilient. It may well be that when pressed to define the positive content of a national identity all that can be agreed on is a list of universalistic liberal democratic principles which are not particular to any country (Joppke 2010b). Yet the feeling of 'home' could still be strong. Certainly, the rise of aggressive nationalism the past decades suggests that romantic-organic conceptions of membership continue to hold sway. This is turn highlights the need for liberalizing counter-wailing forces. But how and to what extent EU citizenship is in practice able to perform this task calls for further study.

2.2 Post-national perspectives

Post-nationalists argue that European citizenship transforms national membership and stress the normative desirability of this development (Habermas 1999, 2001b, Shaw 1997, Benhabib 2004, Balibar 2004, Kostakopoulou 2007b, Wind 2008-9). Influential early versions were quite optimistic about how aggressive and xenophobic nationalism could be replaced by an inclusionary post-national order (Soysal 1994, Habermas 1999). At the same time, though, concern was raised about the exclusionary elements also present in the EU regime, in particular the second-class status of resident immigrants (Shaw 1997, Kostakopoulou 1998, Balibar 2004). The re-emergence of populist anti-immigration parties in many member-states has also underlined the continued vibrancy of nationalism. Recently, Seyla Benhabib (2004) has developed a more cautious post-national argument. Building on Habermas' and her own previous work on deliberative democracy she analyzes the diverse and overlapping citizenship regimes in Europe and offers a critical appraisal.[2]

For Benhabib (2004, p.17-18), as for Habermas, national membership is problematic because it is highly exclusionary. Especially a rooted ethnos-based nationalism is easily used to deprive ethnic minorities of equal status. Instead, we should develop a citizenship based on common rights and principles (pp.11-127). But even a civic nationalism has its limitations. It privileges those already members of the political community and does not take account of the interests and perspectives of migrants (pp.60-64). We need to rethink citizenship outside the mental confines of the nation-state model (pp.172-179).

[2] Habermas and his followers have played a very central role in the debate over postnationalism and offer highly developed theoretical conceptualizations (Habermas 1999, 2001b, Benhabib 2004, Eriksen 2005). Not all postnational scholars, however, are also deliberative democrats though the arguments of the so-called 'constructivists' (Kostakopoulou 1996, 2007b, Shaw 1997) have strong affinities with especially Benhabib's work.

The value of EU integration for post-nationalists like Benhabib is that it shows us how citizenship is at least partly being de-coupled from nation-hood (cf. Kostakopoulou 2007b, p.642). An extensive set of social, civil and political rights are assigned to Europeans living in another EU country than their own. At the same time, as Yasemin Soysal (1994) famously showed, settled immigrants have been granted rights within the nation states without naturalizing. Citizenship in Europe has thus become "disaggregated" (Benhabib 2004, pp.145-146).

But disaggregation and the current European civic regimes are by no means without problems. Benhabib is critical of the "two-tiered status of foreignness [which] has evolved" where newly arrived EU citizens from another member-state have more rights and protections than long term resident migrants (Benhabib 2004, p.153, see also Balibar 2004, p.170, Maas 2005, Kostakopoulou 1998). Moreover, the question of external borders and future migrants needs to be addressed. She particularly worries about the treatment of refugees and asylum seekers. Their moral and legal claim to protection is paramount but not presently adequately respected, she argues (Benhabib 2004, pp.162-163).

In response to these challenges within national and EU law, Benhabib offers a deliberative post-national re-conceptualization of citizenship which puts the question of boundaries and migration front and centre. Like Habermas (2001a) she sees liberal-democratic citizenship as constituted by universalistic ideals of personhood on the one hand and context specific norms of political membership on the other. Liberal rights discourses distribute fundamental entitlements on the basis of attributes which are deemed to be universal such as capacity for reason, human dignity, or autonomous agency. But for these moral rights to become legal rights a bounded political community is required. Indeed, without membership of particular polities citizens cannot exercise their democratic right to self-determination which is part of the universalistic promise (Benhabib 2004, pp.44-45). Where Habermas (2001a) stresses the "co-orginiality" of popular sovereignty and human rights, Benhabib (2004, p.44) acknowledges their "potential conflict". The question of immigration makes this all too clear (pp.44-47). Migrants and refugees' call for protection and recognition as human beings, fellow workers or residents easily clash with the freedom of European peoples to determine their own membership policies nationally and at the EU level. But though this tension is ineradicable it is also productive, Benhabib argues:

> "While we can never eliminate the paradox that those who are excluded will not be among those who decide upon the rules of exclusion and inclusion, we can render these distinctions fluid and negotiable through processes of continuous and multiple democratic iterations" (Benhabib 2004, p.178-179)

To put it differently, we can deliberate about how to interpret rights and where to draw what boundaries. The already established citizens are privileged in this process but are morally compelled by context transcending norms to consider the claims of outsiders. A European regime of disaggregated citizenship gives at least some groups of migrants some civil, social and political entitlements and this turn in enable them to take part in deliberations in courts, city councils and the public sphere (pp. 117,124-126).

Yet despite her attention to boundaries and multiple levels of citizenship Benhabib's empirical analyses of 'democratic iterations' all take place within the confines of European nation-states. Focus is on how settled migrants, ethnic minorities, and majority society reinterpret what it means to be French or German (McNevin 2011, p.31, see Benhabib 2004, pp.183-208). In this part of her argument the presence and claims of newly arrived migrants[3] is ignored.[4] Moreover, the role of mobile Europeans and EU-citizenship is downplayed. The latter omission is perhaps understandable given deliberative democrats commitment to public argumentation. Though various EU funded projects seek to develop trans-European media or forums, public debate in Europe remain predominantly national (Kaitatzi-Whitlock 2007). Yet the informal public sphere is not the only site for reason given. Courts too are central to Habermasian deliberative democrats. Europe has a highly developed inter- and supranational legal infrastructure where rights and membership are subjected to ongoing reinterpretation. It is puzzling how little attention Benhabib in effect devotes to this. Drawing on Benhabib's work Angela Means (2009), for example, discusses a case brought before the European Court of Human Rights by a group of family migrant. She views the litigants' claim to family life as an, albeit unsuccessful, instance of post-national reinterpretation of membership. The Court of Justice of the European Union has also given its opinion in a number of lawsuits where EU-citizens have insisted on a right to family unification with a foreign spouse. Scholars have stressed the promises of union citizenship especially for this group of immigrants (Carrera and Wiesbrock 2010, Besson and Utzinger 2007). It is likely, though, that Benhabib's (2004, p.17) theoretical commitment to 'democratic voice' makes her overlook this particular voice strategy

[3] In her analysis Anne McNevin (2011, p.31) particular stresses how irregular migrants are left out of the discussion.
[4] Inés Valdez (2012, p.108) argues that non-citizen immigrants are excluded altogether from Benhabib's concept of democratic iterations. There are a number of central passages which supports this reading (see pp. 15, 21, 177, 206), but also several which points in a rather different direction (see pp. 14, 117, 124-126, 168-169, 196-197)..

because it is predicated on 'exit' (cf. Hirschman 1993, Warren 2011). European citizens and their families must cross a border within the EU in order to activate their EU citizenship. Then they are able to claim rights. A recent case has challenged this border-crossing requirement (*Zambrano*, see Kochenov 2011). Still exit-entry within the EU has played a central role in the development of the union as a political system (Bartolini 2005). Though not using the terminology of exit, Dora Kostakopulou draws attention to the normative potential of a citizenship regime which enables persons to move between different legal orders. She argues that:

> "[…] individuals, in both their personal and corporate identities, can shift subject positions and activate their link with a normative system (i.e. the human rights regime or the EU) when their link with another normative system either is blocked or fails to yield a desirable outcome. Individuals are thus no longer locked within a single, unified and finite network commanding unqualified allegiance." (Kostakopoulou 2007b, p.645)[5]

In other words, the existence of intersecting civic regimes enhances the freedom of citizens and to some extent migrants. Yet as critics have pointed out, such an exit-based polity privileges the more resourceful citizens who are able to move across borders to activate their EU citizenship or to bring cases before national and European courts (Bellamy 2009, p.20, cf. Kochenov 2011). Furthermore, citizens, who leave one legal order when it does not meet their expectations, do not, on the face of it, display a very civic attitude. To "jump the waiting list" in health care, for example, by moving to another country is hardly very solidaric. It could undermine the national welfare system (Bellamy 2009, p.20, Joppke 2010).

Moreover, citizens are expected to respect liberal democratic decision making. All members and affected parties are free to express their views and have their concerns given due consideration. But once public deliberation has come to a temporary closure and, following the right procedures, a collective decision has been made loyal citizens should abide by it. They are free to re-open the debate and argue for a change in policy. But they should not try out their luck in another legal order.

The force of this critique depends on the circumstances, I will argue. Citizens (or countries!) who opt in or out for their private convenience may well be acting un-civic. In particular where their action (individually or if aggregated) greatly affects their compatriots rights or core interests. Tax evasion and welfare state free-riding are examples that spring to mind. But where core rights and freedoms are at stake the case against exit is harder to make. The refugee who leaves her home state

[5] A similar argument has been developed by Ayelet Shachar in the context of multiculturalism (Shachar 2001, chapter 6). For a critique see Reitman 2004, Benhabib 2002, pp. 122-132, Phillips 2007, pp.151-154)

in fear of persecution is hardly to be blamed for disloyalty. Even within well-functioning liberal democratic regimes conflicts over basic principles often arise. Indeed, this is Benhabib's point about the tension between collective will formation and individual freedoms. If this tension cannot be resolved but only negotiated why should exit-entry not be part of such negotiation processes? It suggests that a post-national argument for exit based citizenship needs careful consideration and calls for situated analysis.

2.3 Citizenship – from status to practice

The debate between trans-nationalists and post-nationalists has so far been dominated by jurists and philosophers (Weiler 1999, Shaw 1996, Kostakopolou 1998, Habermas 1999, Bellamy 2001, Benhabib 2004, Balibar 2004). Even where sociologists and political scientists have entered the dispute case law, directives and EU treatises have been the predominant empirical sources (Wind 2008-9, Joppke 2010b). Yet citizenship is by no means only a legal status. It is also a practice – something we do, claim, and experience in different ways in our everyday life. The two dimensions are not reducible to each other. You can be an EU citizen without ever feeling so, and you can enact a European citizenship without having the required legal status (Joppke 2010a, Isin 2008, Rumelli et al 2011).

Recently a 'sociological turn' has begun in EU studies (Suarugger and Merand 2010, p.2) part of which explores European citizenship as a lived reality (Ackers 2004, Coldron and Ackers 2009, Favell 2008, Nanz 2009, White 2010a-b, 2011, Rumelli et al 2011). Adrian Favell (2008) in his path breaking study has examined the narratives of West-European elite migrants who live and work in big European cities. He finds that they enjoy a postnational life-style, but also encounter numerous obstacles especially in the longer run. A number of research projects have similarly analyzed the mobility of mainly blue collar workers from the new East and Central European member-states (see Burrel 2009) and the 'older' southern European states (Nanz 2009). This literature focuses on workers who use the freedom of movement within the European Union. As Louise Ackers (2004) points out this labour based migration is highly gendered. She has examined the role of non-paid care work and the mobility of dependents in the EU. Her work draws attention to important current limitations in EU citizenship. Ackers and Keleigh Coldron have also investigated the substantial retirement movement taking place from North to South. Because pension is now a portable good many retirees from, for example, Britain move to Spain where

living expenses are lower and the weather is better. This can put pressure on the welfare systems of poorer southern European countries (Coldron and Ackers 2009).

Much of the sociological research on European citizenship thus focuses on the minority of mobile citizens who activate their EU citizenship. The perspectives of the majority who stay at home have also recently become an object of investigation. Micheal Bruter (2005) has conducted a cross-country quantitative study combined with focus group interviews which documents 'the emergence of a mass European identity'. He shows that strong local and national identification reinforce rather than undermine European identity. But while a civic conception of Europe tends to support EU integration, cultural identification often accompanies EU skepticism. From a qualitative perspective Jonathan White (2010a-b) has explored the civic understandings of taxi-drivers in Germany, Britain and the Czech Republic. He shows that even a modest transnational Europe based on common problems and projects face considerable challenges if it is to claim legitimacy from ordinary citizens.

These abovementioned studies all focus on the lives of European citizens, whether at home or abroad. But as we have seen the trans-national/post-national debate is just as much about how we treat those who have not been granted this status – whether they are already here as immigrants or are knocking at 'our' door. A few studies have begun probing this question. Claudia Aradau, Jef Huysmans and Vicky Squire (2009) discuss the civic acts of sex workers in Europe many of whom are irregular migrants. Rumelli et al (2011) have analyzed enactments of European citizenship by Kurdish activists in Turkey who invoke 'Europe' from outside the EU. Anne McNevin (2011) and Luis Cabrera (2010) have studied the civic practices of irregular migrants seeking to cross into Europe from North Africa. These studies challenge the legalist assumption that citizenship-*status* must be acquired before it can be practiced. They show that citizenship is often claimed and contested by those formally excluded.

The lived "quasi-citizenship" (Besson and Utzinger 2007, p.580) of marriage migrants has not, however, been adequately examined. Though legal analyses have shown the potency of EU citizenship to be most striking where this particular group is concerned (Kostakopoulou 2007b, Carrera and Wiesbrock 2010) there is little empirical research into their lives, dreams and civic struggles (but see Rytter 2012). This is unfortunate. Couples of European and non-European citizens occupy a special in-between position as both insiders and outsiders. They are particularly sensitive to the boundaries of and intersections between national and supra-national membership.

Exploring how these couples negotiate the overlapping civic orders in the EU can therefore improve our understanding of the limits and promises of European citizenship beyond the nation state. This is the purpose the remainder of the paper.

3. Practices of citizenship in the Danish family unification dispute

Marriage migration is an interesting case for citizenship studies. It brings out very clearly the tension between liberal individual rights and national membership which, as we have seen, is central to debates over European citizenship. In liberalism all citizen ought to be free to pursue their own life plans as long as they respect the equal liberty of others. The state should be wary of interfering in the intimate lives of citizens and leave the choice of sexual practices, relationships and marriage to consenting adults (Mill [1859] 1974, Hart 1963). The right to family life is thus an important part of liberal norms and protected in international human rights conventions. But when citizens marry across borders it raises the question of boundaries so often bracketed in liberal accounts (see for example Rawls 1971, p.8). This in turn activates nationalist concerns. If citizens bring in spouses from outside then the make-up of the body politic changes. 'We' are no longer who we thought we were. Family unification therefore potentially threatens what nationalists cherish the most: the freedom of a political community to determine its own membership and admission policies (cf. Miller 2005).

It is not surprising, then, that marriage migration is on the agenda in a many liberal democracies. In recent years some European states have tightened the rules for family reunion considerably with Denmark in a 'leading' role (Ruffer 2011, p.937, Phillips 2007, pp.119-122, Niessen et al 2007, pp.10, 50-55). In 2002 the incoming centre-right government introduced a set of restrictions on access to marriage migration. Both parties had to be at least 24 years old (the 24-years-rule). Moreover, the couples' joint attachment to Denmark had to exceed their ties to any other country (the attachment requirement). In addition a number of economic conditions were set to make sure that the Danish spouse was able to provide for his or her partner (Rytter 2012, Scmidt et al 2009). This new regulation has made it very difficult for Danish citizens and residents to settle in Denmark with a foreign spouse. Amendments and reforms have been carried out since, but Danish family unification law remains the most restrictive in Europe.

In response more than 2000 transnational couples have used the freedom of movement in the EU to move to Sweden (Schmidt et al 2009, Rytter 2012). They cross the bridge of Oresund which

connects the Danish capital Copenhagen with its Swedish neighbour city Malmoe. The European Union provides comparatively extensive protection of family life to any EU citizen who lives in another EU-country. Only requirement is that he or she is able to support the spouse and have adequate health insurance (OJEU 2004). Should the couple wish to return to Denmark, EU cooperation enables them to do so, thus bypassing Danish legislation (OJEU 2004, Ministry for Refugee, Immigration and Integration Affairs 2011, Manners et al 2007, pp.297-299).

In the following analysis I draw on research I have conducted on the lived experiences of these couples. The paper is based on 29 semi-structured and narrative interviews (Kvale 1997, Riessman 2008, Maynes et al 2008) with Danish citizens and/or their foreign spouses.[6] In selecting my informants I have aimed for breadth of perspectives. My informants therefore vary considerably in the age, gender, class, ethnicity and nationality. The majority of my informants, however, are in their twenties and of middleclass background often with a higher education. This reflects that the rules particularly affect young mobile citizens. In addition, most of the Danish spouses have ethnic majority background. Many ethnic minority citizens have also left for Sweden to marry spouses from their parents' country of origin. There is some existing research on their experiences which I draw on (Rytter 2012, Schmidt et al 2009). I have interviewed couples who left for Malmoe shortly after the rules 24-years rule was introduced, as well as recent and prospective movers. Some of my informants have stayed in Sweden, while others have returned to Denmark or plan to do so. For comparative purposes two interviews were also carried out with Danish citizens who were unable to use either national or EU law and therefore had to live apart from their partner.

The aim of the interviews is to gain insight into how national and European citizenship is practiced and interpreted by this group of citizens and migrants. The stories constructed in our focused conversations enable me to map out the strategies used by my informants and how they make sense of their actions. In the following subsections I therefore return to Julie and Derek, whom we encountered in the beginning, and other couples are introduced as the analysis unfolds.

[6] An interview guide was used and all interviews were recorded and transcribed. Some interviews were conducted in English and some in Danish or a mix of both. One interview was carried out in Danish and Spanish with the Danish spouse translating her partner's answers for me. In the analysis I have translated Danish quotes into English. Italics are used where the speaker emphasizes a particular word. All informants have been anonymized.

3.1 EU citizenship and the primacy of national membership

My informants had all initially decided on Denmark as the place to live and enjoy their family life at least for a time. For the Danish spouse this is their home state where have their network, studies, jobs and citizenship. Many therefore expect that, as a matter of course, they will be able to live here with their partner.

Searching for entry-options in Danish national legislation

About a third of the couples I interviewed first sought to obtain a residence permit for their partner using Danish and not EU regulation. This means trying their luck with one or more of the three main entry routes in Danish national law: family unification, labour migration and study. Family unification is, on the face of it, the natural starting point as a programme aimed at their situation. If granted, it enables foreigners who are married to Danish citizens to enter and settle – temporarily at first – in the country. Many of my informants did consider applying for family reunion under Danish law. They contacted the Danish Immigration Service for advice and spent considerable time reading laws and guidelines. Yet because the rules are so strict, most eventually concluded that they would not be able to obtain a residence permit this way. Particularly for young couples who are under 24 years of age there is little point in trying. In the end then only a few actually applied.

One who did go through the application process is Derek, the young Australian presented in the introduction. He first came to Denmark with a Danish girlfriend he had met in New Zealand. The couple went back and forth for a while, but then she got pregnant. When their son was born, Derek applied for family unification. His application was declined because he was less than 24-years old. That he was the parent of a Danish citizen did not help him. The Immigration Service judged that the baby's attachment to Denmark was not strong enough to warrant an exemption. The family could instead settle in Australia, it was argued. Derek appealed the decision and later appealed the appeal. He used appealing as a temporary strategy for prolonging his stay while hoping to find a more lasting solution. Meanwhile he did not have the right to work and the family was hard pressed economically. Eventually Derek and his then wife split up partly owing to the stress and uncertainty of their situation. He had to leave the country, but filed again for family unification to stay with his son.

While the case was under consideration Derek got in contact with Julie on a dating site. They started going out and soon moved in together. Shortly after, Derek got a very high paid job. This enabled him to get a residence permit as part of a green card program for employees with salaries of at least 375,000 DKK (50,400 Euros). Then Julie got pregnant. Just after their little boy was born, however, Derek was fired and had to leave the country. By then the financial crisis had set in. With no education to speak of his chances of finding another high paid job were slim. He therefore applied for family unification once more to stay with his new wife and son. But again the answer was negative. Derek had now turned 24 and was thus old enough, but Julie was only 23. As before, the Immigration Service ruled that the baby, Alexander, did not have sufficient independent attachment to Denmark to prevent the family from moving elsewhere. Derek and Julie therefore finally decided to go to Sweden.

Derek tried different tactics but had most success when he became a labour migrant. Various green card programmes exist for high skilled or high paid workers. As most of the marriage migrants are quite young, however, they seldom have the necessary qualifications for this entry route. For less skilled workers becoming an au pair is an option which a couple of my informants have used. This program offers an 18 month legal stay with some remuneration in exchange for light house work. It is mainly used by young Pilipino women and often exposes migrants to exploitation from their Danish host families (Stenum 2010, pp.139-179, author interview with Grace and Jonas 2011). Rather than trying their luck as labour migrants foreign spouses can enter Denmark as students. For my predominantly young interviewees this is an easier way to gain access. Some thus did a high school exchange or spent a semester on a Danish folk high school. This obviously is a short term solution but it allows the couple some respite while they consider their options.

Pursuing higher education in Denmark is a longer term strategy and requires more academic and economic resources. Katrine and Mark, a Danish-Canadian couple, chose this route. They met each other during high school in Holland where their parents were working. The two youngsters had been dating for about a year when the families were due to leave again. Having just graduated Mark decided to follow Katrine to Copenhagen and begin his studies there. He got accepted to a free degree program in construction management and received a student visa. When he finished four years later Mark had a year to find a job. Though he spoke Danish fluently and had a Danish education it proved difficult:

M: ... the crisis had just started so 300,000 were fired
R: mm
M: from the building sector and I had just finished my studies and had to look for work.
K: It was terrible.
M: I applied to more than 300 places but only 50 responded, and then it was always something about: "No, this is a good applicant but unfortunately we don't need anyone" or "we have just fired some who"...
R: Yes.
K: You can say it was an unlucky time to graduate, right.
R: Yes
K: [...] But then when you had finished you got a year, right?
M: Yes, to look for work
K: To look for work. And after that he got something called working holiday
M: working holiday
K: which is an agreement Denmark has with some countries, and *Canada* was among these countries.
M: There was something new too...
K: yes, where they could take half a year's holiday and work for half a year, and then when that expired here, what is it, three-four months ago?
M: Yes.
K: Then we were faced with the choice that we didn't have any other option than
M: get married
K: get married and go to Malmo.
M: Yes and choose something called 'The Malmo model'
K: Yes, because there we were actually denied *all* other options. We we could either say that [Mark] travels back to Canada or we choose to use the Malmo model, and that then it is what we have decided to do, because what do you do? We have known each other for seven years, right, and [Mark] has lived in Denmark for six years, and it's after all, well
M: [...]
K: really hard
M: [...].
R: Mm
M: But then now we're in the situation where we've come to the end of those
K: yes
M: what can you say, short cuts, so you don't have any other option […] than the Malmo model. […] (Interview with Katrine and Mark 2011, pp.2-4, original emphases)

Mark was fortunate to find a programme which did not have tuition fees for non-EU citizens. Many do, however, thus making it more difficult to use this strategy. In addition he was able to get student loans from Canada. This enabled him to display enough money on his bank account to get a student visa. But again, this is not an option open to all marriage migrants. Even for those like Mark, who are able to gain entry this way, studying is only a temporary solution which can leave couples vulnerable to market fluctuations. In the end then, Katrine and Mark, like Derek and Julie, had to

move to Malmoe and use their EU-citizenship. Indeed, this is the experience of nearly all my informants who first tried to find a way to stay together in Denmark under national law.

For nearly all in this group of couples, then, EU citizenship became a citizenship of last resort. It was activated only after options within national law had been exhausted. This does not imply that they had no other way of living together. Most could, as the Danish authorities recommend, have settled in the country of the partner. But if they wanted to live in Denmark or at least stay close to network, jobs and studies in Copenhagen they had to use EU law.

Straight across the bridge to Sweden

So far we have seen how many of the couples interviewed first tried to enter Denmark through the regulation of the national civic order. The majority, however, moved directly to Sweden. Yet also most informants in this group employ and interpret EU citizenship as a strategy of last resort, I will argue. To see how let us turn to Aimée's story. She is a young woman with dual Danish and French citizenship. She was born in France but grew up in Denmark. When Aimée was 19 she wanted to go back to France. She went to Marseille and met a young man from Morocco. He had applied for asylum in France, but the application had been turned down. He was therefore residing illegally. They fell in love and decided to live together, but Aimée also wanted to go back to Denmark to study. After a time in France, considering their options, they went to stay with his family in Morocco and got married. Aimée was well aware of the Danish family unification rules and knew that at 22 she was too young to apply. But she also worried that if they remained in Morocco until she turned 24, they would not be able to meet the attachment requirement. Their joint connection to Morocco or France might exceed their affiliation to Denmark. She therefore resorted to EU regulation.

Since Aimée was also a French citizen she thought she could use EU rules to move directly to Denmark and then apply for family unification as an EU citizen living in another member country than her own. But after a phone conversation with the Danish Immigration Service she reconsidered. They informed her that the application would in all likelihood be declined. The reason was that her husband had not had legal residence in another EU-country before coming to Denmark. At the time this was considered by Danish authorities as a condition for using EU rules of family

unification.[7] Sweden, however, interpreted EU law differently and did not require prior legal stay. So Aimée went to Sweden and got family unification as an EU citizen. Later she and her husband also used EU-law to return to Denmark. In the interview I asked Aimée about her thoughts on this process:

> R: It is EU rules that makes it possible for you to make that trip to Sweden and then return. Is that something you have thought about?
> A: Yes, that is something I have thought about. Well I I think about it in the way eh that that Denmark has made some very restrictive rules *because* they want to protect, I think, Denmark and the Danish citizens, eh. But the way *I* see it *I* have gotten my protection from the EU because it is the EU that has helped me live with my *husband* in my own *country*. Eh yes, well, helped me to eh to use my rights. So in that sense I do feel a bit let down, you know, by my own country that I cannot live here with my husband when I have lived so many years in Denmark and have family here and have paid so much in taxes, worked and studied. *There* I have thought a lot about how the EU has helped me in a *good* way.
> R: Because there are some who say that: "Yes, but that model, 'the Malmoe model', a journey across and then back that it is a way of circumventing, in inverted commas, the Danish rules."
> A: Yes.
> R: Is that something you have...?
> A: Well, so it *is*. Eh, well we didn't go to Malmoe, you know, because we wanted to live in Malmoe. It was something we did out of necessity. So it *is* a way of circumventing the Danish rules. But then that is just a sign that the Danish rules are not fair [rimelige]. Eh because well I can understand that it is a little unfair if our marriage was pro forma and my husband just wanted a residence permit in Denmark and we moreover didn't love each other. So well I can see that perhaps it isn't fair to do it that way. But that's not how our situation is, after all. (Interview with Aimée 2011, pp.6-7)

Aimée and her husband were inventive. They considered different options and eventually managed to obtain legal residence for him in Denmark. But they did not use any short or long term tactics within Danish national law. It is not difficult to think of possible reasons why. She was too young to make it worthwhile to apply for family unification in Denmark. Her husband probably did not have the skills and means required to get a green card or a study visa. If he had then he could probably have found a way to stay legally France. No matter what reasons Aimée might have had for going straight to Sweden, the point is this: She interprets their temporary stay in Malmoe as a necessity. It is not that she wants to spend a year there and explore what it means to be an EU citizen. Rather, her EU citizenship has protected them where her Danish citizenship failed.

[7] This interpretation would soon be overturned by the European Court of Justice in the so called 'Metock-case' (see Cabrera and Wiesbrock 2010).

The interview with Aimée brings out two important points which apply not just to couples who go straight to Sweden but to the vast majority of my informants irrespective of the pathways they followed. First, they would have preferred to move directly to Denmark but were unable to or could not stay. Second, they consider the right to live with their family in their home country as a basic entitlement which the Danish state ought to have protected.

Trans-nationalism revisited

My informants' practice of an EU citizenship of last resort lends credit to trans-nationalist arguments, in particular regarding the primacy of national citizenship. We need neither affirm nor reject Weiler's controversial conception of nationality as a deep sense of belonging to realize the more mundane importance Danish citizenship has for these couples. Living in Denmark enables the Danish spouses to continue the kind of life they have been used to. They can keep in regular contact with Danish friends and family. Moreover, they and their partners can enjoy the entitlements of citizens in a liberal democratic welfare state. This includes access to good quality education and a well-functioning labour market. The immense and taken-for-granted value Danish citizenship has for my interviewees is reflected in the energy and creativity they display in searching for solutions within national law and in the anger and sense of injustice they experience when this fails.

We could thus read the practice of these marriage migrants as an example of trans-national corrective citizenship. The protection of the supranational order is invoked in exceptional circumstances where basic liberal rights are threatened by an excessive nationalism and then only when it is clear that domestic solutions are not available. But, as I will argue in the following, the national civic order is not just affirmed and corrected but also altered significantly by these enactments of EU citizenship (cf. Kostakopoulou 2007b).

3.2 EU citizenship and transformations of the national order

I have shown how important national citizenship is in the stories of Danish family migrants, even though a supranational EU citizenship is enacted. But while their practice of exit paradoxically reaffirms national membership the boundaries of the national order are also transformed.

Circumventing Danish law

Let us revisit the couples we have met. Aimée and her husband used EU law not just to live together in Sweden but to return to Denmark after six months. This too is what Mark and Katrine were

hoping to do. Others, like Julie and Derek were planning to stay longer or perhaps permanently in Sweden. Especially for families with children moving back and forth is very demanding. The couples, who do go back to Denmark in this way, bypass restrictive national law. This does not render Denmark's family unification law null and void. It still holds for those who are not able to meet the self-sufficiency criteria in EU law. But the freedom of the nation to determine the boundaries of the political community through majoritarian democratic politics is nonetheless challenged.

But how much is it challenged, we might ask? Recently there has been a significant rise in the number of Danish-international coiples applying for family unification under EU law. In the period from 2005 to 2008 the Danish Immigration Service on average took 104 decisions per year under these rules. This increased to 818 in 2009 and 705 in 2010 (The Danish Immigration Service 2011, p.35). In a comparative perspective, though, figures remain low. In 2010 a total of 7105 decisions were made on family unification under both national and EU legislation (p.34). It is thus still a small fraction who tries to use EU citizenship to move to Denmark. Leading politicians have therefore sought to downplay the importance of the EU option (Østergaard 2011). With so small numbers it is not really a threat to national sovereignty after all. From a quantitative perspective, this seems plausible. But the symbolic significance is considerable. This is clear from the many aversion tactics employed by the state, as we shall see in the following.

The state fights back

Over the years the Immigration Serviced has interpreted EU law very narrowly. The ministry claimed that only EU citizens who had worked in another member-state could use European rules and then only if they had a job Denmark when they returned. This excluded pensioners, students and Danes who lived in Malmoe but worked in Copenhagen (Bøegh-Lervang and Madum 2010, p.108, The Danish Immigration Service 2006 pp.2-3). In practice it meant that Danish citizens with jobs or studies in Denmark had to quit or take a leave. Then they had to find work in the Malmoe area where unemployment was high at the time. After a while they could return with their partner provided that they had got a job in Denmark again. On these conditions not many chose this option in the beginning (Interview with Lisbeth and Marianne 2011, p.8, cf. The Danish Immigration Service 2011, p.35).

Maiken and Selim, a Danish-Tukish couple, are among the few who did. They had met at a beach resort in Turkey. He was working and she was holidaying with her family. They fell in love and lived together for six months in Turkey. After a while Maiken who was then 20 years old wanted to begin her studies in Copenhagen. Hence they decided to go Denmark. Because of her age family unification under Danish national law was ruled out. In January 2006 Maiken therefore moved to Malmoe. Selim had some savings which enabled them to buy a flat. They got married in a hurry and applied for family reunion in Sweden under EU law. Then they started considering how to come to Denmark:

> S: […] first of all we didn't know how long we had to live in Sweden in order to move back, so, yes, she [Maiken] worked about six months in another company in Denmark so that she had to take the train every morning back and forth, and then we found out that she needed to work in Sweden for six months, but that wasn't right either.
> M: No.
> S: Because there wasn't anybody who knew how, I mean, what you have to, I mean, how long you have to work – not in the, eh what, Department of Immigration Affairs, either.
> M: Department of Immigration Affairs. I refuse to call it Immigration Service.
> S: [giggles] Yes, Department of Immigration Affairs, they didn't know it either.
> M: We got a new reply <u>every</u> single time we called them.
> M: Once, it was 14 days in Sweden - that was fine. The next time it was three months. Then it was ten weeks, then it was six months, and then we thought
> S: [xxx]
> M: belt and braces
> S: *Yes.* (Interview with Maiken and Selim 2011, p.4)

They ended up staying in Sweden for more than a year with Maiken working first in Denmark and then in Sweden. Eventually they left for Copenhagen and Selim got a five year residence permit as the spouse of an EU citizen. Both Maiken and Selim were frustrated with how difficult it was to find out how the rules were interpreted. Not only was it hard to get a straight answer by calling the authorities. On the home page of the Immigration Service the EU-route was just mentioned very briefly (p.23, see also The Danish Parliamentary Ombudsman 2008, pp.44-48).

In 2008 the Danish Ombudsman investigated the administration. He found that the information provided about EU citizens' right to family unification, while not willfully misleading, was clearly insufficient (The Danish Parliamentary Ombudsman 2008, p.63). His examination also looked at the actual practice of the Immigration Service in handling applications. By then a number of judgments from the European Court of Justice had greatly challenged the restrictive Danish

interpretation of EU law. The ombudsman concluded that the Immigration Service had been slow to implement several court verdicts (p.1). A recent study shows the Ministry as a 'veto player' in the implementation process circumscribing in different ways the reach of EU law (Bøegh-Lervang and Madum 2010, pp.105-11). The ministerial aversion policy underlines how important it was considered to uphold a restrictive family unification police and to resist liberalizing counter-effects from the citizenship regime of European Union.

The debacle of the Metock-verdict

The symbolic significance of EU citizenship is also clear from the public controversy surrounding the so-called Metock case. The ombudsman's investigation was prompted by a series of articles run by a Danish newspaper in the summer of 2008 about the Immigration service and the sparse information they provided to citizens interested in using EU law (Bøegh-Lervang and Madum 2010, p.92). It raised considerable public debate and brought attention on the possibilities of union citizenship in this respect. When the debacle was at its highest the European Court of Justice gave a liberalizing verdict in a case between four family migrants and the Irish Minister for Justice (pp.92-93, Carrera and Wiesbrock 2010).

Coming in the middle of a debate over EU citizenship and family unification the Metock case received unprecedented public attention in Denmark. This had little to do with its content which was not of direct relevance to most of the Danish marriage migrants (Bøegh-Lervang and Madum 2010, pp.132-133). The significance of the judgment lay in the attention it drew to EU law. The public debate around the verdict, the newspaper campaign and the Ombudsman investigation lead to a liberalization of the Danish implementation of EU law and increased public awareness. While the real trigger was arguable the critical investigatory journalism, Metock came to symbolize EU law in the ensuing debate (Bøegh-Lervang and Madum 2010, pp.132-133). Indeed, political elites used this court case to shift public focus from the Immigration Service's maladministration to the allegedly illegitimate usurpation of powers by the ECJ (Wind 2008, see also Børgh-Lervang and Madum 2010, p.93). This debacle again shows that the perceived threat to the national civic order from EU citizenship was by no means negligible.

Trans-national and post-national interpretations

Despite persistent resistance from national authorities European Union citizenship has enabled citizens and their migrant spouses to circumvent the national civic order. Even if it is still

comparatively few who actually practice citizenship in this way the symbolic significance is hard to ignore. In an area, which has been eminently important to Danish public debates about identity, citizenship and migration for more than a decade (Schmidt 2011, pp.258-264), national policies can be bypassed. The boundaries of the nation have thus become more 'porous' (Benhabib 2004) and harder to regulate by insiders.

A Weiler inspired trans-national analysis might see this as a welcome taming of an excessive nationalism. The true Danish liberal nation from before the restrictive migration laws is at least partially rescued and re-established. The apolitical essentialism of this argument is hardly convincing. What 'genuine Danishness' is is precisely the centre point of this political struggle. Even in the 1980'es when Denmark's family unification regime was considered among the most liberal in Europe (Schmidt 2011, p.259) it was by no means uncontested. Thus to believe that there ever was a pure and undisputed Danish community – whether inclusive or exclusive - is to fall into the trappings of populist politics of nostalgia. The resistance demonstrated all along by state bureaucracies and government elites shows that this is no smooth 'civilizing' process. But it also underlines how what is at stake in this policing of boundaries goes to the heart of nationalist projects. The case thus lends credibility to the post-national argument that EU citizenship not merely constrains but also transforms the national civic order (Kostakopoulou 2007b).

This raises the normative question of how to assess such a transformative regime. What should we think about a European citizenship which allows citizens to switch between national and supranational jurisdictions? We have seen that some post-nationalists interpret this as enhancing the freedom of citizens while critics stress the dangers to national citizenship it represents. My informants' experiences can contribute new insights to this dispute. Their stories describe an act of exit which is not undertaken lightly. EU citizenship is activated only when there are no viable options within national law.

This is all the more telling as the advantages of EU citizenship vis a vis national law are considerable. Couples who move to Sweden using union regulation gain better protection than couples who manage to obtain family unification under Danish law. The former, for example, obtain five years right of residence while the latter only get a two year permit. Moreover, Danish law obliges the couples to provide a bank guarantee to cover potential costs. This is not required under EU law. The 'instrumental' advantages of union citizenship in this respect are often stressed

by my interviewees as added benefits of going to Sweden. But even those who move directly to Malmoe rarely describe this is the main motivation. Rather, they choose this path because they have well-founded reasons to doubt that they will be able to use national entry routes.

Moreover, what prompts my informants to activate their EU citizenship to bypass Danish rules is no trivial matter. They feel that the Danish state by depriving them of the freedom to live with their partner in their own country has wronged them. It is, as Aimée put it, unfair. At stake are the interpretation of basic constitutional principles and the negotiation of individual freedoms versus collective self-determination. Moving to Sweden to use EU citizenship can thus, I would argue, be seen an instance of 'democratic iteration', but performed through exit as much as voice. It is a practice that seeks to challenge prevailing understandings of the rights and boundaries of national membership by mobilizing supranational citizenship.

4. Conclusion

In this paper I have discussed the character, potential and drawbacks of a European Union citizenship in the making. I critically assessed the debate between trans-nationalists and post-nationalist focusing on the work of Weiler and Benhabib. Weiler stresses the primacy of nation-state membership while highlighting the need for a civilizing EU integration to keep in check the worst excesses of nationalism. Benhabib by contrast underlines the profoundly transformational potential of post-national citizenship. Though not uncritical of the current EU regime she values its potential for opening up the boundaries of citizenship.

This dispute over EU citizenship has long been dominated by lawyers and philosophers and benefits from the recent shift towards sociological investigations of lived European citizenship. In particular, I claimed that the experiences and strategies of trans-national marriage migrants and their use of EU law deserve further attention. Their dual position as insiders and outsiders, citizens and migrants, allows us to explore the boundaries and intersections of national and supranational civic orders.

Analyzing the stories of Danish-international couples I found that most of my informants enact a European citizenship of last resort which both affirms and transforms national membership. They use their status as EU citizens where core rights are at stake and then only when options within national law have been exhausted.

This European citizenship of last resort resonates with Weiler's trans-nationalism. My informants are typically persons who have travelled a good deal. Through marriage their intimate lives have become transnational. Even for these internationally oriented citizens the ability to live in their own country is valued highly. This is reflected in the energy with which they search for entry into Denmark and their anger and sense of injustice when this fails. Yet when national membership conflicts with basic liberal freedoms the latter is ultimately ranked higher.

This reading is has considerable merit but does not fully grasp the transformative character of EU citizenship. The Danish civic order is circumvented in an area of pivotal importance to present disputes over national identity and membership. Aversion tactics by Danish state elites have made it difficult to use EU citizenship. Yet while the number of couples by-passing Danish rules are still somewhat low, the pervasive state resistance demonstrates how disruptive of core national regulation union membership is perceived to be. This supports post-national arguments about the radical potential of European citizenship.

Rather than immediately praising or dismissing this overlapping, conflictual and transformative civic order, I argued that we need to analyze actual practices carefully. The stories of marriage migration I have explored here provide us with an example of an exit-based enactment against which some of the usual criticisms do not hold. This is not an instance of citizenship 'shopping' where citizens look around for the most advantageous deal to satisfy their personal convenience. It is a strategy undertaken for the protection of basic civil liberties and only where options within the national civic order have been exhausted. On this basis I recommended that we read Benhabib's post-national work on democratic iterations through the lens of exit-entry. This enables us to see such practices in a new light. They become meaningful as attempts to re-claim and re-interpret civic rights and negotiate the ineradicable tension between individual freedoms and political boundaries.

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