

## Chiara Raucea, *Citizenship Inverted: From Rights to Status?*

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*Chiara Raucea, 'Citizenship Inverted: From Rights to Status?' (diss. Tilburg), Tilburg, 2017, 187p.*

In this PhD dissertation, Chiara Raucea proposes a novel way of conceptualizing citizenship status and citizenship rights. Instead of the formal status of citizenship resulting in citizenship rights, Raucea explores the possibility that – in some cases – individuals have claims to citizenship rights that subsequently allow them to challenge their formal exclusion from membership of the political community. She develops this model of Invertible Citizenship in her clearly-written and philosophically-grounded dissertation, with the aid of a number of judgements from the Court of Justice of the European Union (CJEU) on European Union (EU) citizenship.

Focusing on the CJEU's important 2011 *Zambrano* judgement and the Court's following case law on EU citizenship, Raucea details how EU citizenship can be invoked in court to claim a derived right of residence within the EU for non-EU citizens. Her thorough doctrinal analysis starts by focusing on the *genuine enjoyment* formula that the CJEU uses to prohibit EU member states from taking action that hinders a EU citizen in the genuine enjoyment of the substance of the rights conferred by their status as EU citizens. While the Court has so far declined to set out in detail what the substance of these rights is, it is in any case clear that the right to reside in the territory of the EU is foundational. This aspect of EU citizenship, in turn, has been used to confer rights of residence upon a select group of non-EU citizens: third country nationals who are the primary caregivers of EU citizen

minor children, or so-called *Zambrano* carers (p. 88). The rationale of the CJEU has been that, if the primary caregiver of EU citizen child were forced to leave the territory of the EU, the child would have no choice but to accompany its caregiver out of the EU. This would lead to the inability of the EU citizen child to genuinely enjoy their EU citizenship rights, which in any case include the right to reside in the territory of the EU. From this, a right of residence is derived for the non-EU citizen caregiver.

A right of residence is certainly not equivalent to a right to formal membership (i.e. citizenship) and Raucea is careful to emphasize that the genuine enjoyment formula does not eliminate the distinction between members and non-members of the political community. What this formula does is to allow for the *re-negotiation* of these membership boundaries, based on the factual involvement of individuals in the production and distribution of social goods within a political community (p. 79). She shows how the rights agreed upon within the EU political community – with the right to remain within the EU territory taking a prime position – can only be guaranteed if the particular category of *Zambrano* carers is not excluded from the EU territory (p. 88). She links this to the broader point that a political community's agreed scheme of allocation of social goods (which include rights) is not something that can be realized independent from the participation of those within the political community. It is because of this 'intersubjective and relational nature of citizenship rights' (p. 97) that some non-formal members of a political community are nevertheless intertwined in relations with formal members of that community that implicate these non-formal members in the production and distribution of social goods in the state in which they reside. In practice, we see that this allows someone factually participating in the distribution of social goods within a political community, but formally excluded from membership, the possibility to claim a right traditionally allotted to EU citizens: the right not to be expelled from the EU territory (p. 88). In this way, a 'corrective mechanism' (p. 147-48) exists to challenge the exclusion from formal political membership of those with a genuine link to a political community (p. 160).

Raucea shows that the definition of a political community's boundaries is an on-going process that is intertwined with the simultaneously on-going process of distributing rights (p. 99-103), thus challenging the traditional Walzerian view of citizenship that assumes a temporal sequence in the distribution of membership and the distribution of social goods. While decisions on membership are necessary for subsequent decisions by those members on distribution of social goods, this book illustrates how these decisions are always only provisional, as the practical effects of the agreed-upon distribution of goods can recursively adjust membership boundaries

(p. 123).

Raucea furthermore rejects Walzer's notion that the act of boundary-setting by the political community is an act completely 'untamed' by normative criteria, as well as the more cosmopolitan notion (represented by Benhabib) that there exists an external, transcendental counterpoint from which this act of boundary-setting can be judged (see Chapter 3, generally). Instead, Raucea argues that boundaries can only be challenged based on how they fulfil their function of distributing social goods equally, and that this challenge can only be brought by those involved in the scheme of allocation of social goods. When there exists a perceived mismatch between the group of individuals involved in the production and distribution of social goods and those who are formal members, such challenges can be brought (p. 147).

Raucea's model is certainly an improvement on Walzer's and Benhabib's views of citizenship. Yet, I wonder if her emphasis on participation in the production and distribution of social goods as a basis for claiming membership does not bring with it hazards of its own, at least from the perspective of democracy as based on self-governance and the moral equality of human beings.

The logical consequence of Raucea's model seems to be that those who *do not* participate in the production and allocation of social goods within a particular political community do not have a claim to formal membership in that political community. This would, in the first place, affect the claims of those non-citizens who – while not participating – nevertheless find themselves for whatever reason subject to the collective power exercised over them by a political community. Think of non-citizens living in the territory of a state where they are homeless, physically or mentally incapacitated, or simply lacking in the progeny and employment necessary to claim participation in the production and distribution of social goods. Under Raucea's model, these groups of non-citizens have no claim to formal membership due to their lack of participation in the production and distribution of social goods within the political community. Yet, it is undisputed that these groups of non-citizens are just as subject to the exertions of coercive power by the political community as those who do participate. They might not be able to claim membership based on participation, but does the community not indirectly acknowledge their belonging by subjecting these individuals to the rules of the political community?

Raucea might reply that in the case of these non-citizens, the burden is on the non-citizen to prove their genuine link to political community and that participation in the production and distribution of social goods is how this can be proven. I would then ask how this

logic is to apply to those who are citizens but do not participate in the distribution of social goods? Would the invertible model of citizenship allow the boundaries of the political community to be adjusted so that those formal members who, in fact, do not participate are excluded from membership?

I suspect that in some such cases of non-participation exclusion from formal membership might be acceptable, the most prominent example being the emigrant who leaves his country of citizenship and extracts himself from all economic, social and interpersonal relations in that country. It is not outrageous to think that his formal membership in his country of origin is ended (on the strict condition that his new home country affords him formal membership!). Yet, even here – what to think of the emigrant who is still subject to the laws of his home country? Should an emigrant who must still comply with its former home state’s laws regarding taxation, military conscription and/or criminal jurisdiction not still be considered a formal member of that state despite his lack of participation?

Moreover, in many other cases of lacking participation due for example to age, illness or simple unwillingness, it is unclear how exclusion from formal membership would accord with the principles of self-governance and the moral equality of human beings in a democracy. This leaves me curious as to why Rauceca places such emphasis on the criterion of participation instead of the more customary ‘all affected principle,’ which would seem to more aptly include those who deserve to be included while nonetheless respecting the need for a bounded political community.

Despite these queries, Rauceca’s Invertible Citizenship model provides a valuable new way of conceptualizing citizenship; a way that accords more with the reality of European Union citizenship as interpreted by the Court of Justice of the European Union than many other models. Rauceca shows how the practice of political membership is far more complex and interdependent than political and legal theorists often assume. This book convincingly displays that the attainment of a political community’s own goals are intertwined with and dependent upon the non-citizens living in that community. Rauceca faces head-on the implication of this fact: those non-citizens who are in practice part and parcel of the political community deserve equal rights with other members.