



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

WORKING PAPERS

RSCAS 2017/60
Robert Schuman Centre for Advanced Studies
Global Governance Programme-289
GLOBALCIT

Should EU citizenship be duty-free?

Edited by Maurizio Ferrera and Rainer Bauböck

European University Institute
Robert Schuman Centre for Advanced Studies
Global Governance Programme
GLOBALCIT

Should EU citizenship be duty-free?

Maurizio Ferrera and Rainer Bauböck

EUI Working Paper **RSCAS** 2017/60

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

ISSN 1028-3625

© Maurizio Ferrera and Rainer Bauböck, 2017

Printed in Italy, December 2017

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

www.eui.eu/RSCAS/Publications/

www.eui.eu

cadmus.eui.eu

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies (RSCAS), created in 1992 and directed by Professor Brigid Laffan, aims to develop inter-disciplinary and comparative research and to promote work on the major issues facing the process of integration and European society.

The Centre is home to a large post-doctoral programme and hosts major research programmes and projects, and a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration and the expanding membership of the European Union.

Details of the research of the Centre can be found on:

<http://www.eui.eu/RSCAS/Research/>

Research publications take the form of Working Papers, Policy Papers, Policy Briefs, Distinguished Lectures, Research Project Reports and Books.

Most of these are also available on the RSCAS website:

<http://www.eui.eu/RSCAS/Publications/>

The EUI and the RSCAS are not responsible for the opinion expressed by the author(s).

The Global Governance Programme at the EUI

The Global Governance Programme is one of the flagship programmes of the Robert Schuman Centre for Advanced Studies at the European University Institute (EUI). It aims to: build a community of outstanding professors and scholars, produce high quality research and, engage with the world of practice through policy dialogue. At the Global Governance Programme, established and early career scholars research, write on and discuss, within and beyond academia, issues of global governance, focussing on four broad and interdisciplinary areas: European, Transnational and Global Governance; Global Economics; Europe in the World; and Cultural Pluralism.

For more information: <http://globalgovernanceprogramme.eui.eu>

GLOBALCIT

GLOBALCIT, the successor of EUDO CITIZENSHIP, is an observatory within the EUI's Global Governance Programme. GLOBALCIT publishes two kinds of working papers: (1) peer reviewed and previously unpublished manuscripts on topics of citizenship laws and policies covered by the observatory and (2) collections of edited contributions to GLOBALCIT Forum Debates. For more information, visit our website at <http://globalgovernanceprogramme.eui.eu/globalcit/>

Series editors:

Rainer Bauböck (European University Institute, Political and Social Sciences)

Iseult Honohan (University College Dublin, School of Politics and International Relations)

Jo Shaw (University of Edinburgh, Law School)

Maarten Vink (University of Maastricht, Department of Political Science)

The views expressed in this publication cannot in any circumstance be regarded as the official position of the European Union.



Abstract

In this GLOBALCIT forum debate, Maurizio Ferrera argues for strengthening EU citizenship in order to make it not only attractive for mobile Europeans but also for ‘stayers’ who feel left behind in processes of globalisation and European integration. According to Ferrera, EU citizenship is primarily ‘isopolitical’ and regulatory; it confers horizontal rights to people to enter the citizenship spaces of other member states and it imposes duties of non-discrimination on these states without providing for redistribution in response to perceived or real burdens resulting from free movement. Ferrera suggests several reforms that aim broadly at empowering the stayers. Among his proposals are an “EU social card”, universal transferrable vouchers for accessing social rights in other member states that stayers can pass on to their children who want to move, and a European wide social insurance scheme that would supplement those of the member states. He also suggests to strengthen EU citizenship with some soft duties, such as earmarking a small percentage of personal income tax for EU social policies or raising funds for such policies through fees on an EU social card or EU passports. Some respondents to Ferrera’s essay deny that free movement creates burdens that call for compensation or insist that EU citizenship should remain duty free. Others focus on the sources of solidarity and ask what duties of social justice apply to the EU. Several authors support Ferrera’s arguments while advocating bolder policy reforms.

Kickoff contribution and rejoinder by Maurizio Ferrera, contributions by Christian Joppke, Susanne K. Schmidt, Frank Vandembroucke, Dorte Sindbjerg Martinsen, Andrea Sangiovanni, Martin Seeleib-Kaiser, Julia Hermann, Richard Bellamy, Rainer Bauböck, Theresa Kuhn, Ilaria Madama, Anton Hemerijck, Dora Kostakopoulou, Sandra Seubert and Philippe Van Parijs.

Keywords

EU citizenship, social citizenship, citizenship duties, welfare states, free movement, mobility, immobility, social justice, solidarity.

Table of Contents

<i>Kick off contribution. Should EU citizenship be duty-free?</i>	1
Maurizio Ferrera.....	1
<i>Liberal Citizenship Is Duty-Free</i>	1
Christian Joppke	1
<i>Building Social Europe Requires Challenging the Judicialisation of Citizenship</i>	5
Susanne K. Schmidt	5
<i>EU citizenship should speak both to the mobile and the non-mobile European</i>	9
Frank Vandenbroucke	9
<i>The impact and political accountability of EU citizenship</i>	13
Dorte Sindbjerg Martinsen *	13
<i>“Feed them first, then ask virtue of them” : Broadening and deepening freedom of movement</i>	15
Andrea Sangiovanni*	15
<i>EU Citizenship, Duties and Social Rights</i>	21
Martin Seeleib-Kaiser*	21
<i>Why compensating the “stayers” for the costs of mobility is the wrong way to go</i>	25
Julia Hermann*	25
<i>Balancing the Rights of European Citizenship with Duties Towards National Citizens: An International Perspective</i>	27
Richard Bellamy*	27
<i>Grab the horns of the dilemma and ride the bull</i>	31
Rainer Bauböck*	31
<i>Why adding duties to European citizenship is likely to increase the gap between Europhiles and Eurosceptics</i>	39
Theresa Kuhn*	39
<i>Enhancing the visibility of Social Europe: a practical agenda for ‘the last mile’</i>	41
Ilaria Madama*	41
<i>Towards a ‘holding environment’ for Europe’s (diverse) social citizenship regimes</i>	45
Anton Hemerijck*	45
<i>Imagine: European Union Social Citizenship and Post-Marshallian Rights and Duties</i>	53
Dora Kostakopoulou*	53
<i>Why the Crisis of European Citizenship is a Crisis of European Democracy</i>	57
Sandra Seubert*	57
<i>Regaining the Trust of the Stay-at-homes: Three Strategies</i>	61
Philippe Van Parijs*	61
<i>Social Citizenship, Democratic Values and European Integration: a Rejoinder</i>	65
Maurizio Ferrera.....	65

Kick off contribution Should EU citizenship be duty-free?

Maurizio Ferrera^{*1}

Introduction

In the historical process of state formation, citizenship has played a key role for political integration. It has sorted out “insiders” (the full members of the political community) from aliens/outsideers, has conferred to citizens an equal status, regardless of market and other social positions, it has stabilised and generalised compliance, sustained social cooperation, the legitimation of political authority and, last but not least, the formation of cultural and material bonds throughout the population.

With the Treaty of Maastricht, national citizenship has been complemented with a new layer, EU citizenship. It can be said that the purpose of this innovation was two-pronged: on the one hand, to rationalize (symbolically and institutionally) the disordered array of individual freedoms and faculties linked to the EU and its legal order; on the other hand, to create a new recognizable symbol capable of enhancing, precisely, political integration and mutual bonding among all EU citizens, regardless of nationality.

While there is evidence, twenty-five years on, that European citizens do know and value EU citizenship², there is also some disappointment about the latter’s actual effects in terms of integration and bonding, especially in the light of rising Euroscepticism, *souvanisme* and anti-immigration (including intra-EU mobility) sentiments.

In a recent speech,³ Rainer Bauböck has raised a challenging question: can the integrative functions of EU citizenship be enhanced and how? In a nutshell, Bauböck’s proposal is that we need to “add stuff” in the container, in order to make it more immediately recognizable and salient to individual citizens and more effective as a bonding mechanism. Two additions are, in particular, proposed by this author: a stronger social component (individual rights and levels of protection that apply universally) and “some duty”. EU citizenship is exclusively centered on rights: “a duty-free citizenship does not support a sense of solidarity and it makes citizens less keen to hold governments accountable”.

I generally sympathize with this argument and welcome an open discussion on this topic. Before outlining an agenda for reform, we need, however, to better articulate the diagnosis and clearly identify the existing flaws of the EU citizenship construct – especially in its social dimension. With this aim in mind, I will start by briefly revisiting the key historical steps and elements of national and EU citizenship. I will then highlight the political shortcomings and perverse effects of the latter and single out the challenges that need to be addressed. The last sections of the note will outline some modest proposals for “adding stuff” to the EU citizenship container, making it more consequential and, hopefully, more capable of integrating and bonding.

* Università Statale di Milano

¹ This text has been written in the context of the RESCEU Project (Reconciling economic and social Europe, www.resceu.eu), funded by the European Research Council (Advanced Grant no. 340534).

² European Commission. *European Citizenship*, Flash Eurobarometer 430/2016.

³ R. Bauböck. *Still United in Diversity?* The State of the Union Address, Florence, 5 May 2017. <https://stateoftheunion.eui.eu/wp-content/uploads/sites/8/2017/05/The-State-of-the-Union-Address-by-Rainer-Bauböck.pdf>

A bit of history

Citizenship in the modern sense was born with the French Revolution. The Declaration of Human and Citizens' Rights (1789) identified a series of "natural, sacred and inalienable" rights based on the fact that men are born free and equal. The "political association" is tasked with defending and safeguarding these rights. Thus the *citoyen* is not only the bearer of natural rights, but also of state-backed guarantees for the exercise of such rights. During the nineteenth century, the pre-eminent political association became the nation (the nation-state). Membership of this entity began to be called nationality. With the advent of mass democracy and the welfare state, "nationality" became the first filter for the exercise of the rights of citizenship and, prior to that, for the very legitimacy of a person's presence on the state territory. In the sense of "nationality", citizenship assumed the role of "assigning people to states",⁴ giving them the "right to have rights"⁵ and participation in collective decisions.

Historically, the contents of citizenship/nationality appeared much earlier than the container. State formation was a slow process. For ordinary people, it essentially meant becoming subject to novel duties: paying taxes and serving in the army. Mass conscription was a key element of nation-building. It contributed to turning states into fully-fledged political communities, sharing an identity and a sense of "destiny", with high symbolic charges as it implied the possibility of mutual sacrifice. Territorial borders came to be perceived as "inviolable" national boundaries to be defended *usque ad effusionem sanguinis*. *Bounding* promoted *bonding*, which in turn generalised and strengthened the affectual and normative loyalty vis-à-vis state authorities and their *binding* decisions. The link between taxation and nation-building was less strong. Up to World War I indirect taxes remained by far the most important source of state revenue. Personal income taxes were legally introduced between the end of the nineteenth and the beginning of the twentieth century but only acquired quantitative relevance in the second half of that century. The words for taxation used in Northern and Southern Europe testify that its impact on social solidarity and political legitimation varied greatly: think of the Scandinavian *ska/skatt* (which also means common treasury) vis-à-vis the neo-Latin terms *impôt*, *imposta*, *impuesta* (which evoke a subtraction).

The introduction of social entitlements as subjective rights greatly enhanced the material salience of citizenship. But it also imposed new duties. In "Bismarckian" systems based on compulsory insurance, there was a programmatic link between contributions and benefits from the very beginning. In tax-funded, universalistic systems the link remained weaker. But in the UK, for example, the sense of civic duty and reciprocity was so strong that when the means-tested pension was introduced in 1908, elderly ladies in the countryside brought flowers and food to the post officers who once a week paid them a "free" allowance.⁶

During the *Trente Glorieuses*, the link between the duties and rights of citizenship (especially social rights) started to weaken. This phenomenon was noted as early as in 1950 by T.H. Marshall himself, who observed that in the UK citizenship was increasingly invoked for the defense of rights, ignoring "the corresponding duties ... [which] do not require a man to sacrifice his individual liberty or to submit without question to the demands made by government. But they do require that his acts should be inspired by a lively sense of responsibility for the welfare of the community".⁷ Such sense of responsibility has been constantly eroding since the 1950s, especially within the "middle mass" of employees and pensioners. The growth of social spending has been accompanied by an increase of taxes and contributions. But since the 1990s survey evidence has shown that the vast majority of citizens think that they pay far too much for the benefits they receive – which they consider as

⁴ R. Brubaker. *Citizenship and Nationhood in France and Germany*, Cambridge: Cambridge University Press, 1992.

⁵ According to Arendt's famous formula. See H. Arendt. *The Origins of Totalitarianism*, New York: Harcourt, Brace & Co., 1951.

⁶ J. Harris. *Private Lives, Public Spirit: A Social History of Britain 1870-1914*, Oxford: Oxford University Press, 1993.

⁷ T.H. Marshall and T. Bottomore. *Citizenship and Social Class*, London: Pluto, 1992, p.41

untouchable entitlements and property rights. When the Italian trade unions supported the first reforms of a hugely unbalanced pension system in the early 1990s, on various occasions workers hurled iron bolts at their leaders: a striking departure from the times when old ladies brought flowers to the post office.

The welfare state has indeed been retrenched in the last couple of decades and the access to benefits and services has been made conditional or even “contractual” (i.e. responsibility-sensitive) in the field of unemployment and social assistance. The big “elephants” of the welfare state (pensions and health care) have also been reigned in, but the prevailing justificatory narrative has focused here on the need for cost containment, sustainability, or compliance with “the demands of the EU”. The Marshallian “lively sense of responsibility”, the fact that the rights of citizenship cannot be severed from “the corresponding duties” seem to have gone lost and appealing to them has today very limited political purchase. Even during economic crises or emergencies, consensus building must stay clear of duty-talk.

Enter EU citizenship

In his analysis of European citizenship, Paul Magnette has introduced the distinction between “isopolitical” and “sympolitical” rights (the distinction is drawn from the law and war practices of ancient Greece).⁸ Isopolitical rights are horizontal, as it were: they confer upon individuals belonging to a given political community the freedom to enter into the citizenship space of another community and enjoy the rights recognised by the latter. Sympolitical rights are “vertical”: they stem from a common authority which takes binding decisions for all the members of the participating communities – who in turn have some say on the content of such decisions.

National citizenship is predominantly sympolitical: its scope and content are decided by central authorities through democratic procedures. Only in the case of some welfare benefits are the national rights of citizenship isopolitical, e.g. when they allow any citizen to freely move and to enjoy whatever services – say health care – are provided at the local level, based on choices made by subnational authorities. In the historical federations, sympolitical social rights made a later appearance and still play a lesser role compared to unitary states: federated units have preserved substantial autonomy, especially in health care, social services and assistance. Here the federal government limits itself to guaranteeing free movement and nondiscrimination.⁹

What about EU citizenship? If we exclude some political rights (most notably the right to elect the European Parliament), EU citizenship is almost entirely isopolitical. It is derivative from national citizenship and basically entitles its holders to be treated as equals when they enter the citizenship space of another member state. The rights attached to the EU passport only apply when one crosses an internal border. True, the EU has adopted a Charter of Fundamental Rights and has recently launched a new initiative called the European Pillar of Social Rights. But these are rather soft rights, they apply only in respect of EU legislative acts and do not really add anything substantial to the catalogue of rights already existing in the member states.

EU citizenship does not confer subjective entitlements to material protections (transfers or services) directly provided by the EU. The limited supranational funds that exist in the social field (e.g. the European Social Fund) can only be accessed by national or regional governments. When sympolitical regulatory measures are adopted (e.g. on gender equality or employment protection) they need to be transposed into national legislation to become operative. Even if they concern individual cases,

⁸ P. Magnette. *Citizenship. The History of an Idea*, Colchester: ECPR Press, 2005.

⁹ H. Obinger, S. Leibfried., F.G. Castles, (eds.). *Federalism and the Welfare State: New World and European Experiences*, Oxford: Oxford University Press, 2005.

jurisdictional decisions – the rulings of the Court of Justice of the European Union (CJEU) – can only result from a request on the side of a national Court.

As all rights, also isopolitical ones have corresponding duties. In the first place, mobile citizens are subject to the same obligations that are in force in the country of destination: in particular, they must pay taxes and social security contributions. We can define these obligations as isopolitical duties. But “isopolitics” generates a second, and less visible, type of duty. Stay-at-home citizens are obliged to make room for the mobiles, share with them their own national space (an identity-thick and rights-thick space) and bear the burdens of “hospitality”. Empirical studies demonstrate that intra-EU mobility is not driven by benefit tourism and that, in the aggregate, it tends to benefit the receiving member states. But at the disaggregate level (this or that territorial area, this or that economic sector, this or that policy field) the negative economic and social externalities produced by the mobiles may be greater than the positive ones. The influx of citizens from other EU member states may in fact decrease – locally and contingently – the availability of scarce resources such as jobs, hospital beds, emergency care, social housing, school places and so on.¹⁰ While it may be true that national or local governments have not made the necessary public investments in this policy areas¹¹, the fact remains that mobility has increased the overall problem pressure and originated novel unprecedented needs and policy challenges (e.g. in terms of educational assistance, spatial congestion and segregation, and so on). The social impact of mobility has been significant and it has been perceived as such by a great number of ordinary citizens, who “blame Brussels” because mobility rules do come from Brussels.

Contrary to what happens at the domestic level, the social component of EU citizenship rests on regulation, not on allocation (i.e. material provisions directly funded through tax extractions on the side of the conferring authority). The obstacles to expand the EU budget and powers were (and still are) huge; when it was introduced – in the early 1970s – social security coordination, instead of social supranationalisation, was probably the only feasible solution. But this strategy has caused serious political asymmetries: as a matter of fact, it has empowered a relatively small constituency of mobile citizens, at the (perceived) expenses of large majorities of non-mobile natives.¹² In the medium and large EU countries, more than half of the natives have always lived in the region where they were born and hardly expect to exercise themselves the rights of free movement. On average, large majorities of nationals have never visited another EU country, watched TV or read a book in another language, used the internet to purchase goods from abroad. It is not surprising that many of these people perceive the rights of immigrants as a loss in the value of their own rights and opportunities within their communities. Such perceptions are stronger among the less educated and within poorer areas, where vulnerability is higher and immigration can be seen as a threat in the competition for scarce resources or as a symbolic threat to national values and identities. Free movement rights have expanded options (freedoms, faculties), but have also disturbed national social ligatures and thus tend to generate grievances which can be – and have already been – easily politicised. The above-mentioned (cultural) transformation of social benefits and services into “property rights” and the parallel erosion of the “lively sense of collective responsibility” has offered, in turn, a fertile ground for the spread of resentments and feelings of relative deprivation.

As a result of these dynamics, the introduction of EU citizenship has not met its integrative and bonding promises. Quite to the contrary, it has provoked a sort of boomerang effect. The strategy of equal rights involves generating a “we”, but because of the isopolitical nature of the system, this

¹⁰ See European Commission. Evaluation of the impact of the free movement of EU citizens at local level. Final Report, Brussels, January 2014.

¹¹ As argued, among others, by F. De Witte (ed.). *Freedom of movement under attack: is it worth defending as the core of EU citizenship?*, Working Paper 2016/69, Florence: RSCAS.

¹² The capacity of free movement rights and actual transnational mobility to nurture a sense of identification with the EU seems to be, paradoxically, rather limited. See L.Damay and H.Mercenier. ‘Free Movement and EU Citizenship: a virtuous circle?’ *Journal of European Public Policy* 23(8), 2016, pp. 1139-1157.

strategy encounters the mobilisation of a different “we”. As aptly put by Van Middelaar, the goal was “Hurray, we Europeans can work in twenty-seven countries! The public response has in fact been: Polish plumbers are coming to take our jobs and Brussels is to blame!”¹³

Is there a way to remedy this failure? If the diagnosis is correct, any remedial strategy must address two distinct challenges: 1) deactivating the current vicious disintegrative circle by rebalancing the isopolitical system; 2) making the rebalanced container of EU citizenship more visible and its content more substantial. Only after meeting these challenges can the question of attaching “some duty” (as in Bauböck’s proposal) be put on the agenda.

Deactivating the vicious circle by empowering the stayers

The rebalancing of the current isopolitical system can be achieved in two complementary ways: through a partial compensation for the negative externalities produced by free movers and through some forms of empowerment of those who do not exercise free movement rights. For the time being, it seems unrealistic to imagine that such responses can be given by creating individual sympolitical rights, i.e. subjective entitlements conferred directly by the EU on the basis of a joint decision and funded by EU taxation. But the EU can at least provide the resources for the necessary compensations. As mentioned, negative externalities are felt locally, for certain occupational groups and in respect of certain public and welfare services. The establishment of something like an EU Fund to ease the impact of mobility (or immigration more generally) could serve the purpose. It could work through national (better: subnational) applications and selection criteria based on adequate evidence of impact. In the UK a similar fund was established in 2008 by the Brown government and later (rather inconsiderately) scrapped by the Cameron government in 2010. According to a recent survey, the creation of such a pan-European scheme would be highly welcomed by EU citizens (see table 1 in the Annex).

Empowering the stayers could be a second promising step. If we unpack isopolitical forms of protection, in addition to the binding supranational regulations that force the opening up of national spaces we also find a number of facilitating initiatives sponsored, organised and funded by the EU with a view to easing and supporting cross border mobility and transactions. Among these we can mention: information platforms such as EURES (European network of employment services), exchange programs such as Erasmus, the European health insurance card, e-health, quick assistance services to travelling citizens – including an EU-wide emergency number, 112 —, a support service for crime victims. A number of additional initiatives are planned for the future, such as a single digital gateway to receive counsel and assistance in cross-border situations or a common EU disability card.

While it is true that all these facilitating initiatives provide tangible benefits only if there is a cross border element, their personal scope is potentially very wide: it goes well beyond the constituency of mobile workers, affecting travelers and tourists, patients, students, consumers. Among ordinary people there is only a very limited awareness of these initiatives. The first thing to do is thus to popularize these opportunities among the wider public, disconnecting them from free movement in the thick sense (i.e. work mobility).

A way of doing this would be to introduce an “EU social card” (with a number identifier) available to all European citizens to enhance the visibility of (and also easing access to) the various privileges and services already provided by the existing programs. In the US the social security number is not only a pre-requisite for most contacts with the public administration, but also a visible and tangible symbol of membership in the US legal space. Italy has a similar code, which is called *codice fiscale*, requested for any application to a public benefit, in addition to being used for tax purposes. This number used to be shown on a dedicated plastic card, identifying each citizen (and legal resident)

¹³ L. Van Middelaar. *The Passage to Europe*, New Haven and London: Yale University Press, 2013, p. 261.

primarily as a taxpayer. Smartly, the number is now shown on a different card: the *carta sanitaria* – used to access the National Health Service – which evokes the idea of an entitlement associated to tax duties. A clever move in terms of integration and bonding.¹⁴

A more ambitious idea is to create a direct stake for stay-at-homers *as well* in the area of free movement. As has been aptly noted by various authors, the freedom to move implies also the freedom to stay.¹⁵ Those who opt for staying do not have access to the facilitating benefits and services that the EU provides to the movers. Why not imagine a scheme offering, upon application, universal transferable vouchers (or drawing rights) that workers could pass on to their kin – in particular sons and daughters wishing to move? Such vouchers (each having a certain value) could be used to access the existing benefits and services aimed for mobile workers or cashed in for covering extra expenses linked to mobility. Every worker would be entitled to a voucher. Some workers could just transfer their voucher to other workers or young people in search of job, wishing to move, thus endowing them with more value. One might also consider, however, to allow using vouchers for participating to lifelong learning activities *at home* (and/or in other member states, for short periods) on the side of workers who do not wish to exercise their right of long term free movement. One promising possibility would be to link the use of vouchers for temporary, short term movement with the increasing range of labour market initiatives of trans-border regions. This system would increase the stakes of stay-at-homers. It is to be noted that EU facilitating schemes in the area of childcare, education, training, lifelong learning can be justified not only on the basis of free movement, but also on the mere fact of economic and monetary unification. Providing stayers with some EU funded benefit compensate them at least partially for the often disruptive impact of integration on domestic labour markets.¹⁶

Making EU citizenship more visible and salient

Personal security and welfare are today key political goods guaranteed by the liberal democratic nation-state. In what ways is EU citizenship complementing the security and welfare component of domestic citizenship? As is well known, Europe has no common army and only a very small (social) budget. It is hardly seen as a source of protection by its citizens. A relatively novel right (in part sympolitical, in part isopolitical) which has augmented the content of EU citizenship is the guarantee of consular protection abroad for EU citizens finding themselves in need of assistance in a country outside the EU where their home country is not represented. This novelty can be interpreted as a branching out of EU citizenship from the internal to the external (i.e. extra-EU) sphere. According to some scholars, the external dimension remains today the only one in which citizenship continues to

¹⁴ One should not underestimate the symbolic –in addition to the practical and control-oriented- value of administrative papers in forging belongingness and even bonding. See the interesting historical reconstruction by J. Torpey. *The Invention of Passports: Surveillance, Citizenship and the State*, New York: Cambridge University Press, 2000. On the importance of symbols and everyday practices in EU building, see also the very interesting book by K. McNamara. *The Politics of Everyday Europe*, Oxford: Oxford University Press, 2015

¹⁵ See the various responses to the kickoff essay by De Witte, *supra*, ft. 7.

¹⁶ This evolution might be seen as a social counterpart of an economic dynamic which affected in the past the free movement of goods and the competition regime. In the period which led to the completion to the single market, virtually all types of public regulations at the domestic level became subject to market-compatibility scrutiny regardless of the presence of cross border elements, in the wake of a maximalist interpretation of Treaty provisions (see. M. Poaires Maduro. *Striking the Elusive Balance Between Economic and Social Rights in the EU*, in P. Alston, ed. *The EU and Human Rights*, Oxford: Oxford University Press, 1999). The Lisbon Treaty could serve as the basis for a possible countermovement. European Monetary Union requires domestic adjustments which may clash with the social principles of the Treaty on European Union. Facilitating upskilling and lifelong learning at the national level even in the absence of cross-border elements could be defended based on the same logic that facilitated access to the market and deregulations at the domestic level, regardless of their pertinence for or link with free movement as such.

make a difference compared to mere legal residence.¹⁷ The external protection guaranteed by the Union to all its citizens as such would not only make the burgundy-coloured passport more consequential, but would also increase its symbolic value. As argued by Torpey, passport-based external protection can serve as an effective loyalty and bonding channel, for its capacity to “embrace” movers as citizen-members of a political community.¹⁸ The Commission is currently studying a series of practical measures to make external protection of citizens more effective. A front along which this type of protection could be strengthened is the occurrence of terrorist attacks, in Europe and abroad. Italy already has a scheme for compensating (in the name of “solidarity”) the victims of terrorism and persons killed or injured in the line of duty. It might be a good idea to consider establishing a similar EU wide scheme, sending a signal of pan-European activism on a front – personal security – which is a fast growing popular concern.

The salience of EU citizenship could be enhanced also by strengthening the existing social funds and creating new ones. During the last decade two new funds have been created: the Globalisation Adjustment Fund, providing resources to workers affected by plant restructuring or closure, and the Fund for European Aid to Deprived Persons, providing resources in case of extreme poverty. Benefits are not paid directly to recipients, but through local authorities – which must previously apply for assistance. The indirect character and the small budget of these funds greatly limit their public visibility and salience. At a minimum, the EU should seek some credit by prescribing to local authorities to clearly indicate the provenance of resources at the endpoints of the delivery chain. If an “EU social card” was in place, it could provide a tangible instrument for linking benefits and EU citizenship.

In the wake of a proposal of the Italian government during its last EU presidency (following preparatory work by the Commission), the establishment of an EU fund to compensate cyclical unemployment is currently on the EU agenda. This would be a major step in terms of pan-European solidarity – possibly one of the first important building blocks of a future European Social Union. Most likely, this fund will also operate indirectly. Given its wide personal scope, it will be extremely important to render the link between the EU and the resources accruing to national authorities and, ultimately, citizens as clear and evident as possible. Survey data show that popular support for such an initiative is very large (see Table 1 in the Annex).

Finally, a brand new supranational (and thus sympolitical) scheme could be established for insuring mobile workers against some risks (unemployment, maternity, disability etc.): a sort of 29th scheme (or 28th, after Brexit) separate from existing national schemes and providing homogeneous protections to those workers who move across borders. This idea has been circulating in the debate ever since the 1980s.¹⁹ As shown by table 2 in the Annex, popular support for the establishment of such a scheme would be very high. One of its advantages would be to ease the financial pressure (real or perceived) on domestic social protection systems stemming from the inflow of mobile workers and their families. In an ambitious scenario, this supranational scheme could catalyze the formation of cross-border insurance schemes, in line with the spatial and functional reconfiguration of the European economy and labour market. In due course, such schemes might break the path towards novel forms of transnational risk pooling and thus solidarity.²⁰

¹⁷ Among aother, P.J. Spiro. ‘The (Dwindling) Rights and Obligations of Citizenship’, 21 *Wm. & Mary Bill Rts. J.* 899, 2013. <http://scholarship.law.wm.edu/wmborj/vol21/iss3/6/>; L.S. Bosniak. ‘The Citizenship of Aliens’, 56 *Soc. Text* 29, 1998;

¹⁸ Passports cannot be regarded merely as an instrument of government control. To use the words of the United States passport, the “passport is a valuable citizenship and identity document”. See Torpey, cited above ft. 10.

¹⁹ D. Peters and S. Vansteenkiste. *The Thirteenth State*, Leuven: Acco, 1992.

²⁰ Cross-border pension schemes are already being experimented with in the wake of Directive 2003/41/EC. Almost 700.000 EU workers are already covered by such schemes. See: https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-16-222_2016%20market%20development%20report%202016.pdf.

Adding citizenship duties: Is it desirable? Is it feasible?

The Lisbon Treaty makes it clear that EU citizenship is not “duty-free”: rights come with duties (art. 20 TFEU). So far, such duties essentially consist in complying with EU law, including free movement and its potential negative externalities. Would it be desirable to introduce some heavier, more tangible burden, directly linked to being a citizen of the Union?

As mentioned, the classical duties of citizenship (prior to it: of “subjectship”) have historically consisted in paying taxes and serving in the army. In present times, the former duty can be absolved through indirect taxation, income/wealth taxation, social security contributions and, to some extent, co-payments and fees-for-service. As to the latter duty, mandatory service is today the exception rather than the rule: the vast majority of EU countries have replaced it with voluntary service or with professional armies.

Given widespread anti-tax sentiments among voters, the imposition of some explicit and visible EU tax would today not be a good idea in terms of political support, integration and bonding.²¹ Even a recourse to “the most Europeanised of all taxes”, i.e. the VAT, could be counterproductive.²² In the present context, the only feasible strategy would probably be to introduce some voluntary financial contribution “for Europe” by means of nudging incentives. In some countries, when filling in their forms, taxpayers have the option to earmark a certain percentage (or per thousand) of their taxes for certain activities or institutions: churches, philanthropic, third sector, humanitarian institutions, political parties, cultural associations and so on. In Italy, 0.8% is mandatory (taxpayers must choose between the state or a church among a list of different denominations). 0.5% is voluntary (it can be earmarked for a long list of recognised institutions engaged in social, humanitarian and scientific research activities). An additional 0.2% can be earmarked for political parties. The *cinquexmille* is chosen by more than 16 million taxpayers and produces an annual revenue of half a billion euros. A similar system could be established by all national tax authorities of the member states, giving the option of earmarking a small quota of personal taxes in favor of the EU as such (or, better still, of some of the abovementioned social funds). A bolder move of nudging would be to reverse the sequence of choice: the contribution for Europe (its social funds) is mandatory, unless the taxpayer explicitly opts out of it (“automatic enrollment”).

Another possibility would be to use the co-payment or fee-for-service route in exchange for the array of facilitating initiatives that the EU already provides to ease the exercise of free movement and related rights. If access to the benefits and services of these initiatives (and the new ones that might be added) were filtered through an EU social card, the issuing (and renewal) of such card could be subject to a fee, to be used for funding the most expensive schemes (such as the above-mentioned voucher system). The UK scheme for easing the impact of migration was funded through a levy of 50 pounds on immigration permits. The possible fund for compensating the victims of terrorism could be financed through a small fee on the issuing of passports – obviously clarifying the purpose of this fee.

Beyond taxes and fees, another voluntary form of duty could be a pan-European civil service for young people. The EU has recently established a European Voluntary Service and a European Solidarity Corps. Participating to such services could be made more appealing to young people by stressing the benefit of acquiring valuable skills and experiences. In due course, these two services could morph into some sort of an EU civilian defense and civic community service that could be chosen as an alternative to national service in those member states where the latter is mandatory; in the

²¹ Italy did introduce a *tassa per l'Europa* in 1997, to meet the deficit target required to join the euro. Nobody protested: but it was an extraordinary levy, for a defined goal, at the time perceived as beneficial for the whole nation. And then prime minister Romano Prodi promised that the tax would be paid back - a promise that was at least partially kept.

²² Van Parijs has proposed, for instance, an EU-wide VAT of 20% to finance a monthly universal euro-dividend of 200 euros per month, for reference see <http://www.theglobaljournal.net/article/view/1038/>.

other member states it could still be chosen voluntarily.²³ Although remaining far from proper and “hard” duties, the proposed extractive instruments would indeed move in Bauböck’s direction, through cautious and experimental steps. In the current “euro-critical” context, jumping from “duty-free” to “duty-heavy” citizenship might be politically dangerous and even counterproductive.

An incremental strategy – with a vision

Following the tradition of Max Weber, we can define rights as sources of power (*Machtquellen*). Since power is a social relation in which somebody’s “will” causes the behavior of somebody else, regardless of the latter’s “will”, the creation of a right automatically creates a correlative duty of compliance. But what exactly are the power resources, which back the actual exercise of rights? First, there are normative resources: holding a right means having legitimate reasons to claim compliance (horizontally from fellow-citizens and vertically from political authorities). Secondly, there are enforcement resources: if compliance is not obtained, the right holder can activate legal coercion. Thirdly, there are instrumental resources: the conferring political authority typically provides the conditions for a full exercise of rights. In the case of social entitlements, for example, the state sets up social insurance systems (securing their financial bases), provides information and advice for accessing benefits and so on. While the second type of resources (enforcement) are what makes rights (and, by extension, citizenship) “hard”, in contemporary liberal-democratic societies we should not underestimate the importance of the other two types: normative and instrumental resources.

Even when it adopts binding norms that indirectly impinge on national citizenship, the EU cannot provide enforcement resources directly to citizens. As mentioned, even access to the CJEU is mediated by national courts. The EU does provide, however, normative resources (if only through soft law) and EU citizenship does directly empower citizens with instrumental resources for the exercise of rights.

In this note, I have argued that it is precisely the provision of instrumental resources (money, benefits and services, infrastructures and so on) that could make EU citizenship more salient, visible and tangible for wide social constituencies. A smart enhancement and packaging of such resources (accompanied by an adequate communication, capable of bringing some credit to the EU directly), could be the trampoline for strengthening the social citizenship dimension of the EU and experimenting with a range of soft duties. Intra-EU free movement rights (more precisely: the freedom to reside and work in any member state) is not only the hardest right of EU citizenship; it also the only one that differentiates EU citizens from third-country legal residents. In other words, it is the key marker of EU belonging in the thick sense.

In the debate it is often argued that the increased harmonisation of rights and obligations between citizens and legal residents is making citizenship a less robust form of association, and that consequently its bonding potential has lost traction. The peculiar features of EU citizenship make it less sensitive, however, to such trends.

Internally, EU citizenship entitles to free movement. So far, this entitlement empowers only a limited constituency and has the risk of generating boomerang effects. In my scenario, the fact of free movement (and of the monetary union – a point which I cannot develop here) justifies the expansion of facilitating benefits and services that could be accessible to everybody: either in the form of transferrable drawing rights or in the form of access to training and life-long-learning services at home (or in another member state, for a short time) aimed at endowing all Europeans with the skills required by the new integrated European economy, based on a single market and international openness.

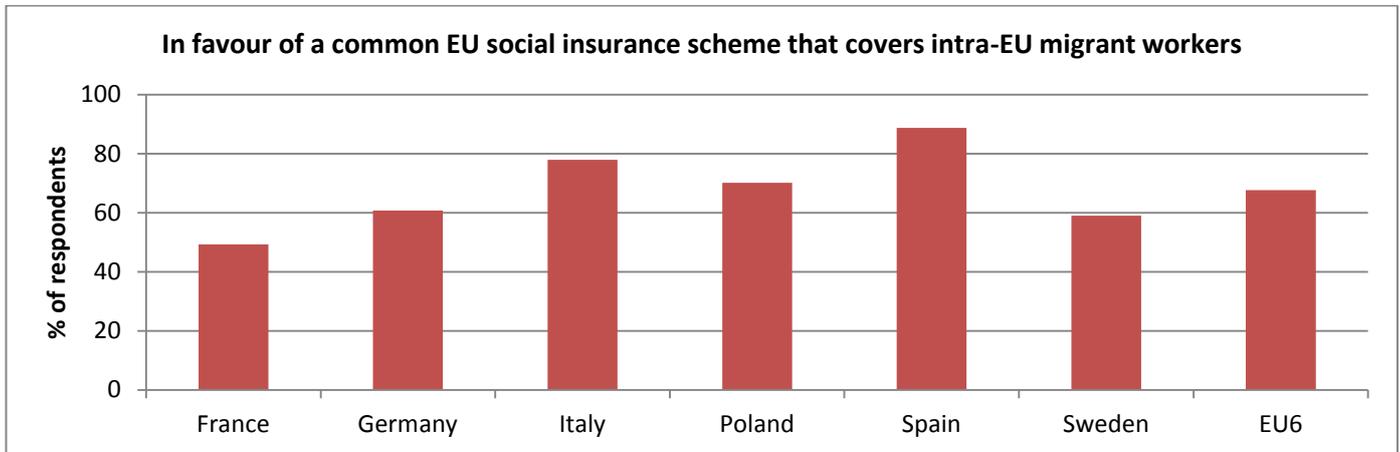
²³ The US National Guard and the Swiss militia system –originally meant for military and defence purposes – are being increasingly transformed into civilian defence and civic community services, and are often mobilised for various types of internal emergencies or natural disasters.

Externally, EU citizenship (which carries a passport eligibility foreclosed to third country legal residents) entitles to forms of protection against harms to personal or material security which are unfortunately becoming more frequent. The motto *Civis Europaeus Sum* would thus acquire a consequential meaning, both within and outside the EU.

My proposals (summarised in tables 4 and 5) may seem unambitious and low-key, but they have the advantage of being practical and can become operative without Treaty changes or major legislative innovations. National citizenship and welfare regimes were not born with a historical Bing Bang, but with a slow sequence of incremental reforms. Given the heavy legacy of such regimes, incrementalism is the only policy strategy for the EU today. A strategy that does not rule out the elaboration of grand political visions. Quite to the contrary, it presupposes visionary thinking, otherwise small steps become a purposeless and random walk, very likely to result in political failure.

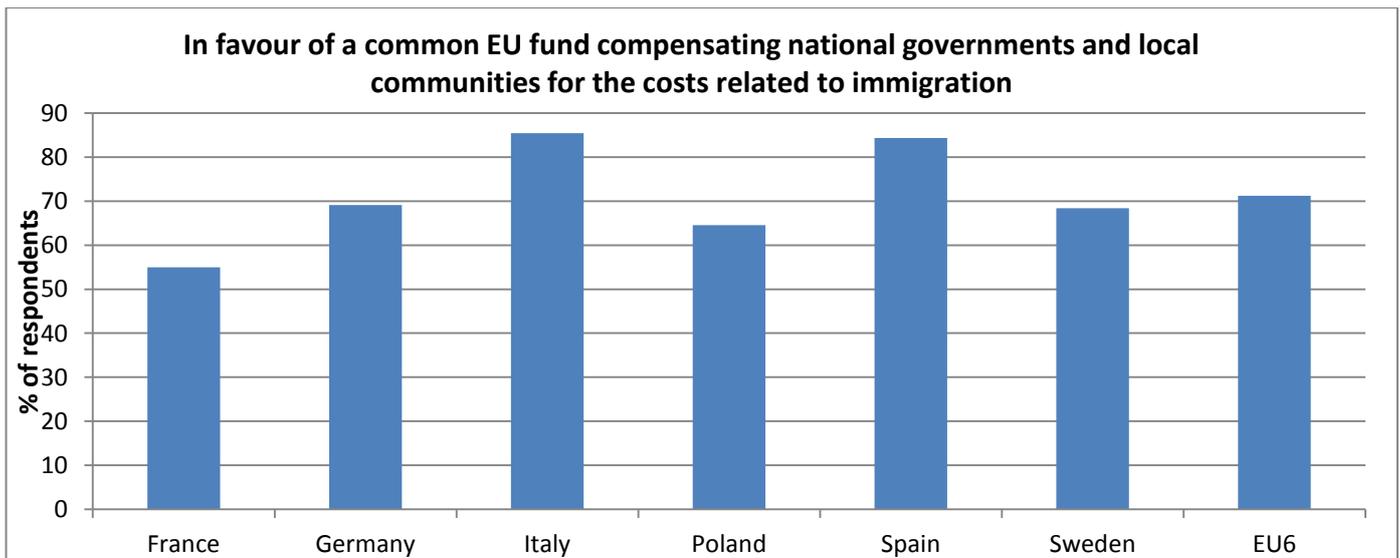
Annex

Table 1



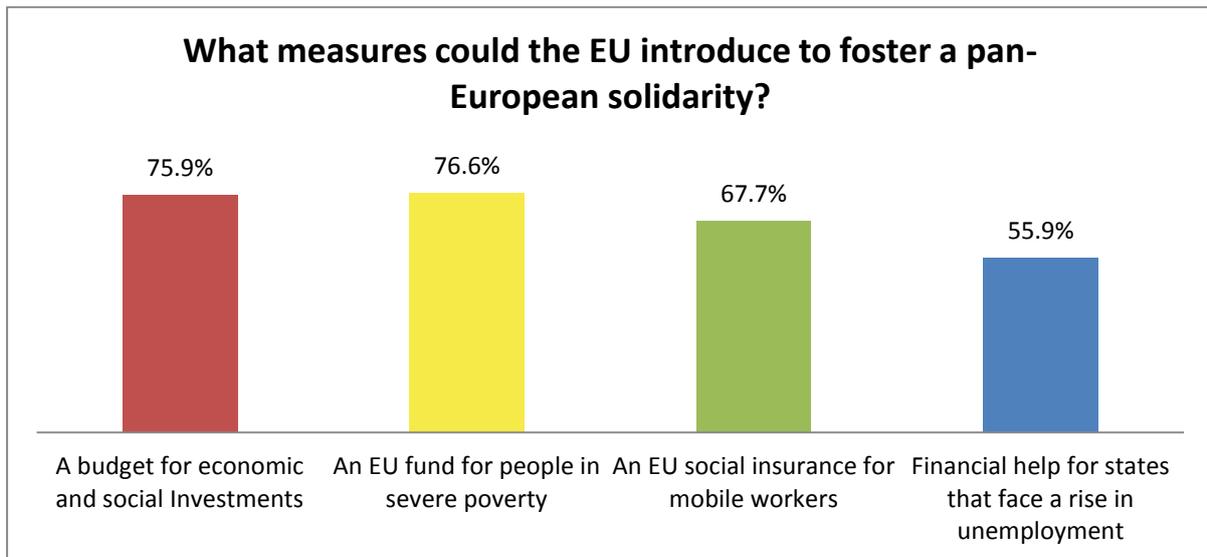
Source: Ferrera and Pellagata, *Can Economic and Social Europe Be Reconciled? Citizen Views on Integration and Solidarity*, Milan, 2017, available at: www.resceu.eu

Table 2



Source: Ferrera and Pellagata, *Can Economic and Social Europe Be Reconciled? Citizen Views on Integration and Solidarity*, Milan, 2017, available at: www.resceu.eu

Table 3



Source: Ferrera and Pellagata, *Can Economic and Social Europe Be Reconciled? Citizen Views on Integration and Solidarity*, Milan, 2017, available at: www.resceu.eu

Table 4: Adding a social component to EU citizenship

Compensating the stayers:

- EU Fund to ease the impact of mobility

Enabling the stayers:

- A system of (transferable) universal vouchers for mobility/upskilling purposes

Autonomising the movers:

- EU social insurance scheme for mobile workers

Universal empowerment and protection

- A social card for access to the whole range of EU funded facilitating services
- Enhancing the visibility and salience of the Global Adjustment Fund, the Fund for European Aid to the Most Deprived Persons (FEAD) and of the various initiatives of the European Social Fund
- An EU Fund against cyclical unemployment
- An EU insurance against the victims of terrorism and persons injured in the line of duty
- Enhancing and making more visible the external protections linked to the EU passport

Table 5: Adding some duty to EU citizenship

Financial duties:

- An earmarked contribution for “Social Europe” (or the European Social Union, or any of the socially oriented EU funds) as a voluntary option when compiling national tax forms (e.g. Italy’s *cinqueper mille* system)
- Fees for the issuing/renewal of the EU social card and the EU passport (explicitly earmarked for their “protective” functions)

Personal duties:

- An EU civilian defense and civic community service. As an alternative option for young people of member states with mandatory services; as a voluntary option in the other member states

Liberal Citizenship Is Duty-Free

Christian Joppke*

Maurizio [Ferrera](#) has produced an admirably detailed and savvy catalogue of suggestions to “add stuff” to European Union citizenship, particularly on its social rights dimension. The idea is that more deliverables, particularly for the vast majority of Europeans who do not take advantage of the right of free movement that remains the beating heart of EU citizenship, will increase the cohesive and integrative powers of the European citizenship, and allow to attach some “soft” duties to it that in its current form are entirely missing. The question whether EU citizenship “should” be duty-free is only tangentially raised, and it is presumed rather than discussed that the only reasonable answer could be negative.

While the spirit of this proposal is “incremental” and pragmatic, I would like to question some larger presumptions that go into it. The first and central is that duties are a necessary component of citizenship. However, tax paying and army service, which are mentioned by [Ferrera](#) as “novel duties” attached to the rise of national citizenship, and apparently considered as model duties for a strengthened EU citizenship also, are no specific citizen duties. All legal residents are required to pay taxes; and most armies today are professional and thus facultative (and some armies, like the American, following the Imperial Roman model, also recruit non-citizens). As already Hans Kelsen observed, even “allegiance”, that quintessential citizen duty, is not a legal duty but merely a “political and moral” exigency: “There is no special legal obligation covered by the term allegiance. Legally, allegiance means no more than the general obligation of obeying the legal order, an obligation that aliens also have”.¹

Kelsen wrote this at a time when “treason” was still a crime that only citizens could commit; its functional equivalent today, “sedition”, which is the legally enforceable opposite of allegiance, is a crime that non-citizens also can be charged for.² A non-starter at the national level already, where—as Dimitry Kochenov put it—citizenship has undergone a process of “liberal de-dutification”³, it is obvious that a “dutified” EU citizenship would be extra-anachronistic.

This leads me to question a second presumption of [Ferrera](#)’s proposal, which is that national citizenship provides a model for EU citizenship. If anything, one might argue, in reverse order, that EU citizenship provides a model (and guarantor) of a “lightened” citizenship that is observable at the state level already.⁴ For Ferrera, the direction is for EU citizenship to move up to the national model. This entails certain questionable idealisations, for instance, of national citizenship to feed “affectual and normative loyalty vis-à-vis state authorities and their *binding* decisions” ([Ferrera](#)). When was that, and where, one must ask. From the ground up, states are better conceived as “protection rackets”⁵, so that an “affectual and normative” attitude to that sort of thing appears delusional, at best. Undeniably, in the nationalist past, citizenship *was* a reason for people to spill their blood and that of others, and it was a ground to be duped by “state authorities” (who is *that*, one must continue asking). It isn’t, and shouldn’t be, today. Add to this the element that the EU is no ordinary state. If the equivalent of “state authorities” in Brussels, which is the European Commission, decides to relicense Monsanto’s

* University of Bern

¹ H. Kelsen. *General Theory of Law and State*. Cambridge, Mass.: Harvard University Press, 1949, p. 235.

² See G. Fletcher. *Loyalty: An Essay on the Morality of Relationships*. New York: Oxford University Press 1993; chapter 3.

³ D. Kochenov. ‘EU Citizenship Without Duties’, *European Law Journal* 20(4), 2014, pp. 482-98

⁴ See C. Joppke. ‘The Inevitable Lightening of Citizenship’, *European Journal of Sociology* 51(1), 2010, 9-32.

⁵ Charles Tilly, ‘War Making and State Making as Organized Crime’, in Peter Evans et al. (eds.), *Bringing the State Back In*, New York: Cambridge University Press, 1985.

glyphosate, a controversial weed killer that is strongly suspected by the World Health Organisation to be carcinogenic to humans, in this decision presumably not uninfluenced by this multinational's formidably resourceful, state-dwarfing lobby,⁶ there shouldn't be a EU citizenship tranquilizer around to let that pass as "binding decision". Perhaps it would be a category mistake to deploy the citizenship concept in the first place. The EU is a regulatory regime, not a protection racket, so that "citizenship", which has grown out of a protection logic, providing a flowery "allegiance" and "loyalty" coating to the elementary state function of providing security, is the wrong concept to begin with. Citizens and others have every reason to be suspicious of a notionally technocratic but still humanly fallible European Commission that is only indirectly, if at all, liable to democratic constraints. Karl Marx would be posthumously redeemed if "citizenship" were available to feed "affectual and normative loyalty" to that elite.

There is a third problematic presumption in [Ferrera's](#) proposal to "add stuff" and to "dutify" EU citizenship, which is the idea that "moving"—incidentally, by a tiny group that does not even cross the five percent mark of the EU population—causes harm that "stayers" should be indemnified for. As [Ferrera](#) writes, EU citizenship "has empowered ... mobile citizens, at the (perceived) expenses of large majorities of nonmobile citizens" (Ferrera typescript, p.5). [Ferrera](#) cautiously talks about "perception" here but then gives credence to it by proposing to compensate for the "negative externalities" of free movers and to "empower" the stayers. This would give legal dignity to the ur-trope of European populists, that of migrants as perpetrators and of natives as victims. More fundamentally still, it buys into the populists' hideous re-labelling of mobile EU citizens as "immigrants". It is a fact that the fiscal effects of post-Enlargement migration into the UK, mainly from Poland, which has been the single-biggest theme of the Brexit campaign, have been positive. But then it would reward the British state twice over if tax-payers of other EU states were to pick up the bill of the region-specific infrastructural impasses (schooling, health care, transport, etc.) that are inevitably caused by this migration. In short, any scheme that gives legal dignity to slicing the European citizenry into two unequal halves, movers and stayers, with the perverse and absolutely anti-European connotation of moving as harmful and staying as virtuous (at least, as something to be rewarded for), is dangerous, because it confirms the demonology of European populists.

This is not to deny that the binary of moving v. staying maps closely into that of openness v. closure, which is the central new cleavage of societies undergoing globalisation, largely obliterating the classic left-right cleavage that has structured Western politics for over 200 years. However, if the old cleavage was reconciled by the welfare state and its social citizenship, doubts are allowed that these compromise structures can be simply applied to a new situation in which globally mobile capital has greatly diminished the fiscal capacity of the state and its judicial authority over the economy. The European citizenship, in contrast to traditional citizenship that eulogises the value of staying and closure, has moving and openness written on its forehead. No compensatory EU funds for stayers or tangible benefits for tourists, patients, students, consumers, via a "EU Social Card", etc., as proposed with alacrity and a great sense of practicality by [Ferrera](#), will ever warm up the stayers to "Europe". Peter Spiro nicely describes the novelty of the day that a Londoner opposing Brexit will feel closer to a New Yorker opposing Trump than to their notional fellow-citizens in the province voting for Brexit or Trump.⁷ Or as David Goodhart commented on Brexit opponents' sense of waking up "in a different country" on the morning of June 24, 2016, this is exactly how Brexit proponents had felt *before* the fateful referendum.⁸ Both camps quite literally inhabit different spaces, from the mental to the physical, and are tied up in incompatible loyalty structures. "Citizenship" has become an obsolete clip

⁶ 'European Commission Plans to Relicense Controversial Weedkiller', *The Guardian*, 24 February 2016. One must concede, however, that the European Commission's stubborn support for the multinational is backed by some large member states, including Germany and France.

⁷ P.J.Spiro. 'Citizenship After Trump', *International Migration Review* 2017.

⁸ D. Goodhart. *The Road to Somewhere*, London: Hurst, 2017.

to tie them together. The cohesion and bottom-up support that the European project needs to survive, and to move on, is unlikely to stem from cosmetic corrections to a citizenship that cannot but be partisan in the openness v. closure rift. More urgent would be to end the intolerable situation that not just populist movements but entire member states have decisively thrown themselves on the “closure” end of the spectrum, opposing Europe from within it, by building “illiberal states” that openly repudiate the common values upon which the EU also legally rests.

Finally, if I understood [Ferrera](#) correctly, he defends his proposal as one that would sharpen the distinction between privileged EU citizens and less privileged third-state nationals, or “immigrants” proper, because only EU citizens but not settled immigrants are meant to benefit from the proposed social policy measures. This strikes me as retrograde (and against the territorial logic of dispensing welfare). The thinning distinction between citizens and legal permanent residents is a side-effect of a larger liberalisation of citizenship in Western states and of the “civilising” of nationhood that undergirds the latter. This is a hard-won achievement, not a liability. For the opposite tribal model of a citizen elite tightly sealed from second-class immigrants, consult the Gulf States. It would be ironic if the European Union, which has been created to tame nationalist exclusiveness, were now to mimic it.

These somewhat grand-scheming objections, some perhaps more plausible than others, are raised for the sake of debate; they are not meant to diminish [Ferrera](#)'s powerful and deeply knowledgeable proposal. We share the same vision of strengthening the European citizenship. At heart, however, I would guard against the notion that citizenship should be duty-full. Liberal citizenship is duty-free, in a legal (not moral!) sense, and EU citizenship is even more so. A citizenship that imposed hard legal duties was the “citizenship” of communist states, today also that of Islamic states, which arrogate to themselves a strong formatting of the preferences and beliefs of their members. This is not a model to follow, because it impairs elementary freedoms.

Building Social Europe Requires Challenging the Judicialisation of Citizenship

Susanne K. Schmidt^{*1}

Which rights should European citizenship entail to protect the achievements of European integration, while overcoming its pitfalls? Should we aim to ‘add stuff’, as [Ferrera](#) suggests, or rather follow Joppke's plea for non-exclusive citizenship rights? I agree with [Ferrera](#)'s diagnosis that EU citizenship has an isopolitical bias, it horizontally opens nationally shaped (and financed) welfare systems to citizens from other member states. However, in his 'detecting of the flaws' he overlooks the largely judicial genesis of citizenship rights, which are crucial for understanding the shortcomings of EU citizenship. In the following, I start by filling this gap. Because [Ferrera](#)'s suggestions require political decisions, they are much welcome on this basis.

Since Maastricht, EU citizenship saw an impressive advancement from a rather symbolic Treaty addition to being the 'most fundamental status' (C-184/99 *Grzelczyk*). In the light of *van Gend* (26/62), *Costa* (6/64), *Cassis de Dijon* (120/78), and multiple other rulings, scholars of European integration have taken for granted how much the Court of Justice of the European Court (CJEU) shapes policy in the EU by interpreting the many policy objectives the Treaty contains (four freedoms, competition law, and then citizenship). For citizenship, the judicial development implied an increasing pressure on nationally financed welfare states to open up non-discriminately to EU citizens, even if economically inactive, and with few and recent ties. But in late 2014 the CJEU made clear that those entering a state but never intending to work and contribute (C-333/13 *Dano*) have no European right to claim equal access to funds.

Behind the extraordinary policymaking power of the CJEU is what Dieter Grimm calls over-constitutionalisation.² An intergovernmental Treaty describing cooperation aims is policy-rich. If this Treaty is transformed into a constitution by declaring it directly effective and supreme, the Court's interpretations of the Treaty acquire constitutional status themselves. For citizenship rights, this means that the rights enshrined in the Citizenship Directive or in the regulations on the coordination of national social security systems, have been shaped back and forth between the EU's judiciary and its legislature, with the latter not being able to overrule the former's constitutionalised rulings.³ Next to EU secondary law, CJEU case law directly shapes the social policy of member states.

This peculiar way of policymaking has repercussions. As rulings on single cases take generalised effect, the resulting policy is unable to cater equally well for the differences of national welfare systems. Its character of ‘one size fits none’ is more pronounced than a negotiated policy would be, where all member states could make their preferences known regarding national conditions and singularities. And, more seriously in our context, the CJEU is hardly legitimised for opening up national welfare systems to EU citizens. This is not to say that those advocating for welfare chauvinism know about the judicial background of the rules, but rather that member-state governments would not have legitimated, absent judicial pressure, the partly far-reaching opening of national welfare systems even to those that have hardly contributed so far. For instance, following *Styrelsen* (C-46/12, 2013), EU students working 10-12 hours per week have gained access to Denmark's generous non-repayable student support. Labour-activating welfare states subsidise poorly paid EU

* University of Bremen

¹ Funding of Norface is gratefully acknowledged (www.transjudfare.eu)

² D. Grimm, 2015. ‘The democratic costs of constitutionalisation: the European case’, *European Law Journal* 21, pp. 460-473.

³ S.K. Schmidt. *The European Court of Justice and the Policy Process: The Shadow of Case Law*, Oxford: Oxford University Press, forthcoming in 2018.

citizens, implying that tax-financed in-work benefits may be higher than actual pay, resulting also in incentives for workers' exploitation.⁴

Nationally financed welfare state systems that are only coordinated at the EU level may need to balance openness and closure in the way of an 'earned' social citizenship excluding those that recently joined the national community for a transition period.⁵ This is not to say that internal EU migration currently takes a toll on the old member states. Overall contributions appear positive, and it is rather of grave concern that the poorer EU countries seem to lose out from the free movement rights of their citizens.⁶ But within the rich states the benefits of European integration, as of globalisation, do not appear to be distributed equally. The working class feels left out from the liberal consensus. This needs to, and could be handled better within the member states. But inevitably, like the free movement of capital, individual free movement rights can be used to free-ride on different member states' provisions or to engage in regulatory arbitrage. Empirically, this may be of much less relevance than tax evasion. But to those contributing to national welfare systems, to those having themselves difficulties making ends meet, arbitrage and lack of reciprocity undermines the legitimacy of national welfare alongside that of the EU.⁷

Are [Ferrera](#)'s suggestions likely to remedy the situation? They strengthen the necessary political debate. If the opening of national protection systems to those with recent links and few financial contributions to the member-state community lacks legitimacy, because solidarity is claimed with no reciprocity, his suggestion of an EU social scheme for those on the move appears the most promising. Those using their free movement rights, requiring support in the transition, should be compensated directly from the EU level to top up, for instance, their Bulgarian unemployment payments that do not allow them to look for a job in Denmark.⁸ In addition to [Ferrera](#)'s argument, this would lessen the normative drawback of the immediate opening of national welfare. To me, it therefore appears better suited than his other suggestions of compensating for possible costs of 'hospitality'. The array of national welfare schemes and European funds already appears sufficiently confusing to the non-expert, so that more may be gained from greater transparency than from further additions. A division of competences, where the level of government granting rights also has to cover their costs would allow social Europe to progress from 'regulation' to 'allocation'. And it would bolster the EU's legitimacy if it could give added value to EU citizens moving to other member states.

Such an EU citizenship could not treat newly settled third-country nationals on a par, in the same way as mobile EU citizens would have to 'earn' their equal rights in host member states. If I understand Joppke well, he argues against such exclusion and for a thin, liberal citizenship, reminding us of the dangers of national privilege and allegiance.

Intuitively, inclusion has greater appeal than exclusion, but possible costs to the achievements of advanced welfare states need empirical analysis. Highly differentiated societies rely on redistribution, social services, public education, and infrastructure. Solidarity and reciprocity are closely related, as

⁴ M. Ruhs. *Is Unrestricted Immigration Compatible with Inclusive Welfare States? The (Un)Sustainability of EU Exceptionalism*. Oxford: Compas, Centre on Migration, Policy and Society, Working Paper No. 125, 2015.

⁵ D. Kramer. 'Earning social citizenship in the European Union: free movement and access to social assistance benefits reconstructed', in *Cambridge Yearbook of European Legal Studies* 18, 2016, pp. 270-301.

⁶ R. Atoyane et al. 'Emigration and Its Economic Impact on Eastern Europe'. *IMF Staff Discussion Note.*, 2016. D.Sindbjerg Martinsen, G.Pons Rotger, 'The fiscal impact of EU immigration on the tax-financed welfare state: Testing the 'welfare burden' thesis', *European Union Politics*, 2017. doi:10.1177/1465116517717340

C. Dustmann, and T. Frattini. 'The Fiscal Effects of Immigration to the UK', *The Economic Journal* 124, 2016.F593–F643. doi:10.1111/eoj.12181

⁷ L. Beaudonnet, Laurie. 'A threatening horizon: the impact of the welfare state on support for Europe', *Journal of Common Market Studies* 53, 2016, pp. 1-19.

⁸ C. Bruzelius, C. Reinprecht, M. Seeleib-Kaiser. 'Stratified Social Rights Limiting EU Citizenship', *Journal of Common Market Studies*, 2017. doi: 10.1111/jcms.12555.

[Ferrera](#) reminds us. A currently positive fiscal balance under conditions of EU free movement is insufficient proof, as there is no full opening and member states tread carefully to maintain their welfare schemes under the relative openness forced by the CJEU. If we fail to consider how redistribution could work in a context of encompassing non-discrimination without resulting in a race to the bottom of welfare services, we may strengthen rather than beat right-wing populism.

Freedom of movement and EU citizenship have liberating force for the individual. But they have to be embedded so that they do not undermine the republican basis on which they ultimately rest.⁹ A solely liberal notion of citizenship that does not exclude anyone, extending to third-country nationals, may be a citizenship for those whose fortunes do not seem to depend on collective action as they are individually imbued with sufficient resources. Is the inclusive, liberal citizenship vision possible without transforming it into a neoliberal nightmare of the fully liberated market-citizen? And is it really politically more attractive than a temporary exclusion from full equal treatment for those moving into other communities? An all-inclusive, truly cosmopolitan citizenship conception can hardly assure those fellow citizens that are losers of globalisation of our solidarity if they feel pitted against all humankind in need. It has been asked why the working class abandoned the Left.¹⁰ But the converse question similarly merits debate.

We all depend on the surplus of functioning, highly differentiated societies. The rising number of failed states, and increasing problems with rule of law even in EU member states show how much ridden with prerequisites the Western highly developed (welfare) state is. Joppke sees ‘incompatible loyalty structures’ on both sides of the openness v. closure cleavage that cannot be tied together by citizenship anymore. That does not bode well for the necessary political discussion of how open national welfare states should be and under which conditions they integrate newcomers. The decision cannot be left to courts that deal with it under the principle of non-discrimination. Different from democratic majorities, the judiciary is ill-equipped to take decisions on allocating resources. Non-discrimination as a principle neither gives clear guidelines, as it requires treating like cases alike, and unlike cases differently. For welfare states depending on redistribution, which are legitimate criteria for distinction?

Traditionally European integration has been market integration and as such it is not sustainable. But the building of communities sharing values and solidarity takes time. It cannot be surprising that the increasing economic and social heterogeneity through simultaneous deepening and widening of the EU resulted in challenges. To strengthen the sense of belonging, EU citizenship rights are important, but in order to have societal backing they need to be politically shaped and granted, not judicially. Has this not been amply demonstrated by the Brexit vote? Without entering this debate, which [Ferrera](#) opens, sustainable progress towards a real European Community is unlikely. Relying on courts is insufficient.

⁹ F.W. Scharpf. ‘Legitimacy in the multilevel European polity’, *European Political Science Review* 1, 2009, pp. 173–204.

¹⁰ B. Rothstein. <https://www.socialeurope.eu/white-working-class-abandoned-left>

EU citizenship should speak both to the mobile and the non-mobile European

Frank Vandembroucke*

Maurizio [Ferrera](#) tables a catalogue of proposals to add a social dimension and ‘some duty’ to EU citizenship. As always, his search for incremental solutions that reconcile feasibility and vision is challenging. However, I have some sympathy with Joppke’s reaction that one cannot dispense with a more fundamental debate on free movement, on which public opinion is deeply divided. [Ferrera](#)’s proposals may be relatively peripheral to settling that fundamental debate. On the other hand, Joppke’s insistence that EU citizenship is duty-free, because it is liberal, does not yield a justification for free movement and non-discrimination of mobile Europeans. I believe it is possible to justify free movement in a framework of principles that speak both to the mobile and the non-mobile European, whereby openness is embedded in principles of reciprocity. Reciprocity bridges rights and obligations.

To clarify the issues at hand, we should distinguish three questions:

1. How can we justify free movement?
2. How can we justify non-discriminatory access to social benefits for those who move?
3. How can we justify a difference between active and non-active citizens in the application of (1) and (2)?

Why free movement for active citizens?

Simply postulating that EU citizenship implies free movement begs the question. The most robust normative justification holds that free movement of workers means that EU citizens share an opportunity set, which is much larger than the opportunity sets offered by separate national labour markets. If free movement is about ‘equal access to opportunities’ across borders for *all* Europeans, it is hard to see how it can be mitigated or nuanced on a permanent basis (which is different from postponing it during a transitory period): either equal access applies for everybody – for the low-skilled as much as for the high-skilled, for all kinds of jobs –, or it does not apply, at least as long as equal access to opportunities is so conceived.¹

This normative justification is not premised on the idea that free movement would *per se* improve the position of the worst-off within the EU. The status of such a principle in a conception of social justice is comparable to Rawls’ principle of ‘fair equality of opportunity’, which has priority over his ‘difference principle’: for Rawls, ‘fair equality of opportunity’ (which is about access to positions and offices) has to be respected, even if it would limit the scope for redistribution. But is there an *inevitable* trade-off? With regard to the distributive consequences of free movement, I agree with Joppke that there is something problematic in Ferrera’s proposal to set up a compensation mechanism for countries experiencing intra-EU immigration. Next to Joppke’s observation that national governments are not incurring budgetary losses because of immigration and should be responsible for securing adequate provision of social services for their residents, the ‘negative externalities’ mentioned by [Ferrera](#) may be more real for countries of mass emigration than for countries of immigration. Therefore, such a proposal risks to be highly divisive in today’s Europe. The only way to tackle the distributive risks associated with mobility is to be more demanding vis-à-vis member states with regard to the quality of their welfare states, notably in the realm of labour market regulation and

* University of Amsterdam

¹ There is no denying that formal equality of opportunity does not guarantee real, substantive equality of opportunity. This distinction is emphasized, rightly, by C. Bruzelius, C. Reinprechtand Seeleib-Kaiser, M. ‘Stratified Social Rights Limiting EU Citizenship’, *Journal of Common Market Studies*, 2017 DOI:10.1111/jcms.12555 (although I’m not convinced by the policy solutions they propose – but space forbids to pursue this here).

the provision of social services - more demanding than the EU is today. The regulation of minimum wages is a prime example. Different traditions exist with regard to the regulation of minimum wages: in some member states public authorities set minimum wage levels, in other member states this is the exclusive domain of social partners. But, however minimum wages are determined, a common European principle should be that *all* workers are covered by minimum wage regulation: decent minimum wages should apply universally in the EU's member states, without exceptions for certain sectors, or types of jobs, or types of workers. A related example is access to social protection: there should be no jobs that do not create access to social protection. In short, if we don't want immigration to boost a precarious, hyper-flexible segment of labour markets, there should be limits to precariousness and flexibility *across the board*. Or, think about access to social services, which can be under pressure in municipalities or regions with significant immigration: member states should guarantee sufficient provision of social services to safeguard universal access, for non-mobile citizens as much as for mobile citizens. The debate on the European Pillar of Social Rights can be the starting point to develop such common principles. Admittedly, developing and translating such principles into tangible realities is an uphill battle in today's Europe; but there is no alternative if free movement is to be reconciled with domestic social cohesion.

Next to the principled case based on a notion of equality of opportunity, there is a second, more contingent argument in support of free movement: a single market needs both a regime of free movement of workers and a regime of posting of workers (which supports the freedom of service delivery), and the two regimes *need each other* and should constitute a well-balanced and sustainable whole. Posting² has become a controversial issue in the EU: it is difficult to control and generates problems of social dumping in particular economic sectors. Therefore, reform is necessary. However, one cannot dispense of a posting regime: an integrated market for services requires that workers can be sent to other member states for short-term projects, without being employed and affiliated to the social security system of the receiving country. Simultaneously, a single market needs a regime of free movement of workers seeking regular employment contracts in other countries as a *necessary corollary* to a regime of posting.³ Limiting free movement of workers (with the principles of non-discrimination it implies) between a country A and a country B while allowing posting would be unfair from the point of view of workers living in A, since it would make it impossible to work in B on the basis of the full social and employment policy regime in that country. Moreover, such an imbalance would enhance a dynamic of social dumping in B: the alternative 'non-dumping' option, which some workers from country A might prefer (compared to the 'posting' option), is simply unavailable in such a scenario. For it to be fair to workers, an integrated, single market for services needs both a well-delineated posting regime and free access of workers to regular employment contracts in other countries.

Why non-discrimination?

There should be no denying that the case for free movement for workers has often been made on mainly economic grounds (with a view to the efficient allocation of factors of production), and that the principle of non-discrimination, notably with regard to social security entitlements, has often been

² A 'posted worker' is an employee who is sent by his employer to carry out a service in another EU member state on a temporary basis. Posted workers are different from EU mobile workers in that they remain in the host member state temporarily and do not integrate in its labour market, as they maintain an employment contract with an employer in their home ('sending') country. In contrast to posted workers, EU mobile citizens who work in another member state and have an employment contract with an employer in the latter member state are entitled to full equal treatment with nationals in access to employment, working conditions and all other social and tax conditions.

³ I develop this argument in a paper on basic income, reciprocity and free movement: F. Vandenbroucke, *Basic income in the European Union: a conundrum rather than a solution*, ACCESS EUROPE Research Paper No. 2017/02, 2017. Available at SSRN: <https://ssrn.com/abstract=3011847>

defended as a corollary of free movement: non-discriminatory access to social security entitlements associated with employment obviously facilitates free movement. In the previous section, I tabled an argument for free movement based on access to opportunities, which does not refer to the traditional economic efficiency argument. In addition, we need independent arguments for non-discrimination that are not premised on the idea that free movement should be promoted *per se*.

The fact that a mobile worker is incorporated in the solidarity circle of the country where he or she works is most often defended as crucial to European citizenship. Without appeal to European citizenship, there is another argument, premised on the idea that the European Union should be union of welfare states. The fact that a Polish worker enjoys the same social rights as Belgian workers when working and living in Belgium justifies that his employment generates the same social security contributions and tax revenue for the Belgian government as the employment of a Belgian national in Belgium. In other words, non-discrimination in terms of social rights justifies and so sustains the principle that we do not tolerate competition between the Polish and the Belgian social and taxation system on Belgian territory: such competition is a recipe for social dumping. The non-discrimination principle establishes a notion of reciprocity across EU member states, in the following sense: all member states guarantee that all economically active mobile citizens will have equal access to social policies in each of the member states; simultaneously, all member states understand that including economically active mobile citizens in the solidarity circle of their host country protects these solidarity circles against practices of social dumping within their own territory.

Earned social citizenship

The coexistence of national welfare states and free movement in the EU is made possible by a principle of ‘earned social citizenship’. Historically, the tension between free movement and the bounded welfare state was reconciled by granting the right to move only to the economically active (and their dependents) to the exclusion of the economically inactive and by establishing a coordination regime for social security systems to the exclusion of social assistance. This simple dichotomy was not tenable, but, when the right to free movement became open to economically non-active citizens, EU citizens were granted a right of residence throughout Europe “as long as they do not become an unreasonable burden on the social assistance system of the host Member State”. The 2014 *Dano*-judgment by the Court stresses that member states have “the possibility of refusing to grant social benefits to economically inactive Union citizens who exercise their right of free movement *solely* in order to obtain another Member State’s social assistance”.⁴ Dion Kramer sketches the combination of continuity and change in the evolution of the EU’s principle of ‘earned social citizenship’ and situates that evolution in a broader notion of “neoliberal communitarianism”, which “combines a communitarian care of the national welfare state with a neo-liberal emphasis on the individual’s responsibility to achieve membership of that welfare community”. He labels it ‘neo-liberal’ since “it becomes the individual’s own responsibility, expressed in the form of ‘earning’ citizenship, to convert to a bounded community of economic, cultural and social values”.⁵ Kramer sees dangers in the current evolution, as an expanding notion of individual responsibility, not only with regard to economic contribution but also with regard to cultural traits such as language, risks to be pushed further and further within the confines of the national welfare state itself. However, taking on board these cautionary notes, there is also a more positive reading of the notion of ‘earned social citizenship’ for mobile Europeans, at least *if the EU would oblige its member states to develop comprehensive and adequate systems of minimum income protection* and if an increasingly restrictive interpretation of what ‘earned social citizenship’ means can be avoided. In this more positive reading, a carefully

⁴ *Dano*, C-333/13, EU: C: 2014:2358, para 78, emphasis added.

⁵ D. Kramer, ‘Earning Social Citizenship in the European Union: Free Movement and Access to Social Assistance Benefits Reconstructed’, *Cambridge Yearbook of European Legal Studies* 18, 2016, pp. 270-301. The first quote is on p. 277; the second quote is on p. 272.

delineated possibility for member states to exclude non-nationals from domains of social policy in which principles of compassion rather than principles of responsibility dominate (such as social assistance) would be a corollary of a *duty* for each welfare state to protect its own citizens against vulnerability on the basis of compassion.

I would indeed argue that in a ‘European Social Union’ – a true union of welfare states – two complementary logics can apply legitimately with regard to social citizenship if they are applied conjointly:

1. Economically active citizens have the right to take up employment opportunities across borders, and on the basis of employment they – and those who depend on them – ‘earn’ non-discriminatory access to all social benefits in the member state where they work, including protection against the consequences of involuntary inactivity (unemployment, illness). National regulations that guarantee fairness in labour markets apply fully to them. This serves both a pan-European notion of equal access to employment opportunities and the purpose of social cohesion in each welfare state.
2. A non-active citizen who needs protection cannot simply rely on any member state of his (or her) choice: his nationality determines the member state, which is first and foremost responsible for his protection. Under carefully delineated conditions, another member state to which he has no bond of nationality is allowed to say that the non-active citizen’s social protection would create an ‘unreasonable burden’ on its welfare state (these conditions must substantiate that, in the absence of a real link with the host member state, the right of free movement was exercised solely in order to benefit from the host state’s social assistance). In contrast, it would be ‘unreasonable’ for any member state not to provide adequate social protection for its national citizens, whatever the causes of their vulnerability and dependence.

Obviously, setting the boundaries between these logics is a complex task and raises many questions. As Verschuereen pointed out, there is both a broad and a narrow interpretation of the *Dano* judgment to which I referred earlier.⁶ What are the exact conditions under which the notion of ‘unreasonable burden’ can be applied, and what is the role played by criteria of ‘integration in the host country’ to show a ‘real link’ with that country? The reciprocity that a member state can demand from nationals of another EU member state must be judiciously defined. Also, next to principles that apply to labour markets and income protection, a space of European social citizenship needs specific principles in the domains of education and health care. In addition, and importantly, if these logics lead to a regime of ‘enter at your own risk’ (whereby residence of non-active non-nationals is *de facto* tolerated, without guarantee of protection), this may lead to precariousness and marginalisation of non-nationals.⁷

I am not implying that, today, the EU and its member states apply these complimentary logics carefully and consistently: both with regard to ‘fair mobility’ and minimum income protection for the non-mobile citizens there is an agenda to be taken up (some of Ferrera’s proposals fit well into an agenda of ‘fair mobility’). However, these complexities, tensions and risks do not make these complementary logics illegitimate as a general framework for regulating social citizenship in the EU. If those principles were applied consistently, EU citizenship would speak both to the mobile and the non-mobile citizen: it would support mobility, but also impose on member states the adequate protection of and delivery of social services to the non-mobile.

⁶ H. Verschuereen. ‘Preventing ‘Benefit Tourism’ in the EU: a Narrow or Broad Interpretation of the Possibilities Offered by the ECJ in *Dano*’, *Common Market Law Review*, 52, 2015, pp. 363-390.

⁷ A. Heindlmaier and M. Blauberger. ‘Enter at your own risk: free movement of EU citizens in practice’, *West European Politics*, 2017. doi: 10.1080/01402382.2017.1294383

The impact and political accountability of EU citizenship

Dorte Sindbjerg Martinsen *

Maurizio [Ferrera](#)'s essay on how to take EU citizenship forward is an inspiring and welcome contribution to a heated, politicised debate. [Ferrera](#) not only presents the state of EU citizenship, its current challenges but also suggests concrete policy proposals how to make it more substantial and less counter-productive. His essay addresses the question raised by Rainer Bauböck: can the integrative function of EU citizenship be strengthened and how?

[Ferrera](#)'s text raises several pertinent issues one could take up, but here I shall focus on the sketched tension between the 'small constituency of mobile citizens' and those who stay. As [Ferrera](#) writes, the hardest right of EU citizenship is the right to reside, work and become a member of the welfare community of another member state. At the same time, this core of EU citizenship has produced public and political concerns about social dumping and welfare tourism. To confront this tension, [Ferrera](#) proposes to empower the 'stayers' by, for example, introducing an EU social card while at the same time 'dutifying' EU citizens, for example by introducing a small earmarked 'Social Europe' tax.

While I agree that there is a pressing need to examine and confront the tension between the 'free movers' and the 'stayers', I see neither time nor current political support for such EU solutions to materialize. They may be interesting future objectives but there is a call for more immediate engagement with the tensions described, be they mainly perceived or real. First of all, in my view, as researchers we should engage in a fact-finding mission. We need to know more about how EU rules and rights actually work in the member states and what their outcomes are. Much of the debate has been assumptive and situational. However, as also noted by [Ferrera](#), empirical evidence demonstrates that mobile EU citizens are net contributors to the public purse, i.e. at an aggregate level they contribute more to the welfare budget than they take out.¹ Such findings should lead to a more nuanced way of portraying mobile EU citizens. They pay income tax, VAT, corporate tax, estate tax and social security contributions in their hosting member state, tend to be relatively young and take time to claim benefits. The public revenue they generate are part of financing the welfare benefits, services and public goods for the 'stayers' too. In addition, research demonstrates that EU citizenship is stratified² and that when applied in practice, some EU citizens have only precarious status in their host member state.³

This is not to say that EU mobility has no negative social and economic consequences. Some citizens – and some member states⁴ – are obviously more fit for the internal market than others. Negative externalities should indeed be confronted politically. The question then becomes at what regulatory level and with which means? First of all, domestic politics is foremost responsible for scarce welfare resources, i.e. hospital beds, emergency care, social housing or school places, etc. Ordinary citizens may tend to blame Brussels because mobility rules come from Brussels, but Brussels

* University of Copenhagen

¹ See C. Dustmann, T. Frattini. 'The fiscal effects of immigration to the UK', *The Economic Journal* 124(580), pp. 593–643; J. Ruist. 'Free immigration and welfare access: The Swedish experience', *Fiscal Studies* 35(1), pp.19–39 and D.S. Martinsen and G.P. Rotger. 'The fiscal impact of EU immigration on the tax-financed welfare state: Testing the 'welfare burden' thesis', *European Union Politics*. <http://journals.sagepub.com/eprint/TESAUcFRQ4jVRvp9aQkb/full>.

² C. Bruzelius, C. Reinprecht and M. Seeleib-Kaiser. 'Stratified Social Rights Limiting EU Citizenship', *JCMS: Journal of Common Market Studies*, 2017. <http://onlinelibrary.wiley.com/doi/10.1111/jcms.12555/full>

³ A. Heindlmaier, and M. Blauburger. 'Enter at Your Own Risk: Free Movement of EU Citizens in Practice'. *West European Politics* 40(6), 2017, pp. 1198-1217.

⁴ A. Hassel, J. Steen Knudsen and B. Wagner. 'Winning the Battle or Losing the War: The Impact of European Integration on Labour Market Institutions in Germany and Denmark', *Journal of European Public Policy* 23, 2016, pp. 1218-39.

does not decide on the level of taxation or the proper level of public investment. Domestic politics does and should be held accountable. Secondly, domestic politics is responsible for the implementation of EU rules. Social dumping, lowering wages and reducing health and safety at work places across the Union, is indeed a negative side-effect of free movement. The recently adopted enforcement directive concerning posting of workers gives the member states new means of monitoring compliance with the rules and introduces a principle of chain responsibility in the construction sectors. But the effectiveness of these new control measures again depends on national implementation and the resources allocated to control and correct for social dumping. Domestic politics shares political accountability for ineffective EU rules. The ‘blame-game’ seems so far to disregard domestic implementation and enforcement of Brussels’ mobility rules. Thirdly, EU politics is responsible for the adoption of EU rules and should be held accountable for their content and development. When unintended consequences of EU rules surface, it is a political obligation to correct such rules. Here there is no quick fix in a European context. Changing EU rules requires overcoming significant thresholds for the necessary majorities in both the Council of Ministers and the European Parliament. But it is not mission impossible.⁵ If the Court of Justice of the European Union has interpreted the concept of worker in EU law in a way that deviates too far from political intentions, this calls for EU legislative politics. Otherwise, considerable variation in implementation will continue.⁶ Or if member states can prove that influx of EU citizens or outflow of benefits challenge the financial sustainability of a specific welfare scheme, corrective mechanisms or exemptions should be adoptable. The latter form of differentiated integration may disturb the uniformity of EU rules – but could at the same time increase its domestic support.

We have already seen the disruptive effects of political discourse where EU mobile citizens are regarded as welfare seekers and social dumpers; just recall the Brexit debate. [Ferrera](#)’s call for avoiding further disintegrative and counterproductive consequences of EU citizenship’s core rights is thus timely and urgent. Bridging the cleavage between the ‘mobile’ and the ‘stayers’ calls for further research, for multilevel politics as well as multilevel accountability.

⁵ D.S. Martinsen. *An Ever More Powerful Court?: The Political Constraints of Legal Integration in the European Union*, Oxford: OUP, 2015.

⁶ C. O’Brien, E. Spaventa, and J. De Corninck. ‘Comparative Report 2015-the Concept of Worker under Article 45 TFEU and Certain Non-Standard Forms of Employment’, 2016.

“Feed them first, then ask virtue of them”: Broadening and deepening freedom of movement

Andrea Sangiovanni*

Maurizio [Ferrera](#)'s contribution is characteristically sharp, engaged, and imaginative. In this comment, I will not unpack his various proposals. Rather, I want to discuss the way the issues are framed, and propose an alternative way of grounding them.

Citizenship as an instrument for bonding and integrating

“In the light of rising Euroscepticism, *souvrainisme* and anti-immigration ... sentiments”, [Ferrera](#) wonders under what conditions EU citizenship might play a more integrative role in European politics. Currently, EU citizenship only secures a thin set of entitlements (to nondiscrimination activated only when an EU citizen is involved in activities or situations that cross an internal EU border), and only secures them for a tiny fraction of the European population (primarily those who actually exercise their rights to freedom of movement, which amounts to less than 5% of the EU population). [Ferrera](#)'s proposals for reform aim both to broaden and deepen the appeal of EU citizenship, mainly by securing a novel set of entitlements to immobile citizens and by extending the range of social entitlements available to those who move.

Given [Ferrera](#)'s insistence that EU citizenship should play a more 'integrative role', the criteria by which we should judge whether his proposals would be successful, assuming they were ever adopted, are therefore explicitly functional. We should endorse the proposals if and insofar as they enhance the *perceived legitimacy* of further European social integration and if and insofar as they *increase support* for freedom of movement. [Ferrera](#) writes, 'I have argued that it is precisely the provision of instrumental resources (money, benefits and services, infrastructures and so on) that could make EU citizenship more salient, visible and tangible for wide social constituencies. A smart enhancement and packaging of such resources ... could be the trampoline for strengthening the social citizenship dimension of the EU...' It is as if [Ferrera](#) were to say: “We (European elites?) agree that further European social integration and freedom of movement are desirable; the task that remains is to get EU publics to agree with us. How might we do that? By enhancing the symbolic, material, and instrumental significance of European citizenship in such and such ways. ‘Feed them first, then ask virtue of them’¹”

What is odd about such a perspective is that it cannot be offered to EU publics *themselves*. Imagine a member of the public asks: ‘And why should I aim to augment European citizenship in the ways you propose?’ Given how [Ferrera](#) has framed his question, the answer must be: ‘Because it will get you to bond more with fellow Europeans and therefore assent to further EU social integration without undermining freedom of movement’. But that’s no answer at all, given she is asking why she should assent to the proposals, bond with other Europeans, and support freedom of movement *in the first place*.

To be sure, there is nothing wrong with making an argument intended to propose reforms that might feasibly sustain the European project in the face of growing skepticism. And yet there is still something lacking. This contrast can be sharpened if we further imagine that EU publics in fact reject [Ferrera](#)'s proposals (despite the evidence that [Ferrera](#) has marshaled that indicates some support for the general direction). Should one abandon them as *therefore* misguided? Or might there be something

* King's College London

¹ As the Grand Inquisitor says in F. Dostoevsky, *The Brothers Karamazov*. R. Pevear and L. Volokhonsky (trans.), New York: Vintage Books, 1991, p. 253.

still to be said for them? What might we say, for example, to an engaged, publically minded EU citizen that rejects Ferrera's proposals because they believe either that (a) freedom of movement is a mistake (as many British do, including those who voted for Remain), (b) freedom of movement should remain formally open to all but without further support for either movers or stayers, or (c) freedom of movement should not be limited to EU nationals (but extended to all third-country nationals [TCNs] as well)?

Broadening and deepening freedom of movement

In the following, I want to sketch a response that provides an alternative basis for Ferrera's proposed reforms while addressing (a) and (b).

With our publically minded EU citizen in view, what is the best argument in favor of EU-wide freedom of movement? One might argue that the free movement of persons is an essential aspect of the Single Market, and, as such, is to be recommended mainly as a device for securing a more efficient allocation of the factors of production. This is an advantage that leads, through productivity gains, to aggregate gains. But there is also an advantage, in principle, from the perspective of each individual. Freedom of movement and nondiscrimination expands every EU citizen's choice set, providing them with an expanded range of opportunities both to seek gainful employment abroad and to pursue broader cultural, social, political and personal interests.²

But, as Ferrera and others have rightly pointed out, freedom of movement also brings costs—costs, furthermore, that do not fall equally on everyone. In particular, there is some (albeit heavily contested) evidence that, while there are net aggregate economic benefits from greater immigration, some communities, some groups, and indeed some member states will inevitably lose out. In the same way as any shift in technology, say, from candlesticks to electric bulbs, will diminish the pay and bargaining power of the candlestick makers (or displace them entirely), the same can be said with immigration: a greater supply of cheaper, unorganised labor will put downward pressure on wages and diminish the bargaining power of those who work in immigrant-heavy sectors. At the same time, public services (education, healthcare, social services, etc.) in communities in which newly arrived immigrants concentrate will bear relatively greater burdens than other communities. Finally, member states that are net senders of immigrants may suffer brain drain, as their skilled labor force moves abroad.³ These costs are most often borne not by the well-off but by those who are already disadvantaged. Our member of the public will want some explanation for why she must bear these costs to make way for gains that accrue mostly to others.

The best response will appeal to a broader conception of social justice for the European Union.⁴ Consider that, in integrating, member states and their peoples open their societies, polities, economies, and territories to international and supranational control. By pooling sovereignty, member states and their peoples of course stand to gain, but the constraints of intergovernmental bargaining and supranational control often expose states both to a range of negative externalities and to risks and costs that they can no longer confront on their own. To face them, member states depend on the collaboration and cooperation of other member states and supranational actors. To name but one example, think of the constraints of monetary union, and the relative position of Greece and Germany

² This point is well made in F. Vandenbroucke. 'Basic Income in the European Union: A Conundrum Rather Than a Solution', *SSRN Research Paper* 2017/02, The Amsterdam Centre for Contemporary European Studies, 2017.

³ To calibrate this effect, one must also take into account that many of the CEEC countries were happy to support free movement as it served as a means of relieving excessive labor supply. See, e.g., M. Kahanec, 'Labor Mobility in an Enlarged European Union', in *International Handbook on the Economics of Migration*, A. Constant and C. Zimmerman (eds.), Cheltenham: Edward Elgar Publishing, 2013, pp. 137-52 and references cited therein.

⁴ For this point, see also the contribution to a previous EUDO debate by D. Thym. 'The failure of Union Citizenship beyond the Single Market'.

within it. As I argue elsewhere⁵, the best normative model for deciding how these benefits, costs, and risks ought to be distributed is grounded in a conception of reciprocity: member state peoples owe one another a *fair return* for their mutual submission to EU rules and supervision. The fair return for risks and losses is, in turn, best captured by the idea of a hypothetical insurance market, in which member state peoples know the risks associated with integration but not their place in that distribution. On this view, member state peoples and their citizens are owed a fair division of the gains—which are secured mainly through the convergence promised by the implementation of a Single Market—and indemnification against those risks and losses that are a result of integration, and which they could do little to prevent or avoid. This model can be used to support a much broader Social Union among member state peoples than at present (though stopping well short of providing support for an EU-wide federal welfare state).

We can also use this framework to address our hypothetical members of the public and their concerns with respect to freedom of movement (recall [a] and [b]).⁶ As I have said, freedom of movement brings benefits, but with these benefits also come costs that fall disproportionately on some. Those on whom such costs fall – those whose communities, services, career opportunities and wages are most affected – have a claim, according to the reciprocity-based view of social justice I have just outlined, to be indemnified against these losses in exchange for their support for freedom of movement as a whole. The logic of this reciprocity-based view reinforces and undergirds Ferrera’s proposals for an EU fund (modeled on the Globalisation Adjustment Fund) to ease the impact of mobility on affected groups. Although this is not discussed by Ferrera, we could also imagine extending the fund to provide for education and vocational programs in countries suffering from brain drain. This addresses the member of the public who wonders why she should support freedom of movement in the first place, given the costs involved (see [a] above), and, at the same time and in the other direction, addresses those who wonder why they have a duty to support those who bear the costs, given the aggregate benefits.

From within such a reciprocity-based conception of social justice for the EU, what can be said on behalf Ferrera’s proposals for ‘empowering the stayers’? In this category, Ferrera includes, among other things, a proposal for a universal and transferable voucher system intended to compensate those who do not exercise their rights to freedom of movement. Here we can invoke again our member of the public who, in (b) above, wonders why freedom of movement should guarantee anything more than a formal right to move. An appealing response points to the difference between a merely *formal* and a more *substantive* equality of opportunity, not generally (i.e., with respect to *all* socioeconomic opportunities – as in Rawls’s Fair Equality of Opportunity principle – which would require vastly more redistribution across EU member states) but with respect to opportunities to exercise, more specifically, *freedom of movement*. Recall that one rationale for freedom of movement is an expansion of every EU citizen’s opportunity set. The value of that opportunity set to each individual will be very unequal if some can exercise the option to move easily and others, through no fault or choice of their own, cannot – for example, because they have dependents or lack sufficient resources to make use of that freedom. (Here I register a small disagreement with Ferrera, who does not distinguish – from the point of view of their respective entitlements – between those immobile citizens who freely choose to stay and those whose choice is much more constrained.⁷) In those cases, providing merely formal

⁵ See A. Sangiovanni. 'Solidarity in the European Union', *Oxford Journal of Legal Studies* 33, 2013, pp. 213-41; A. Sangiovanni. 'Solidarity in the European Union: Problems and Prospects', in *Philosophical Foundations of European Union Law*, J. Dickson and P. Eleftheriadis (eds.), Oxford: Oxford University Press, 2012, pp. 384-412; A. Sangiovanni *The Bounds of Solidarity: International Distributive Justice, Reciprocity, and the European Union*. Cambridge: Harvard University Press, forthcoming. Here of course I can only briefly sketch the model.

⁶ I say more about the tension—and how to resolve it—between facilitating freedom of movement and domestic commitments to social solidarity in Sangiovanni, 'Solidarity in the European Union'.

⁷ See also the useful discussion in a previous EUDO forum by K. Oberman. 'What to say to those who stay? Free movement is a human right of universal value'.

freedom of movement unfairly disadvantages those who cannot easily move. As in the previous case, we can say that they have a reciprocity-based entitlement to compensation derived from their support for freedom of movement as a whole.

The same logic, finally, can be used to buttress [Ferrera](#)'s perhaps most ambitious proposal, namely to set up a social insurance scheme – a kind of mobility fund – protecting workers who decide to exercise their free movement rights. Such a fund would have the effect of mitigating inequalities of opportunity to move that are due to differences, for example, in the exportability of benefits for mobile jobseekers. As Bruzelius et al. have shown, given differences in the exportability of benefits for jobseekers and limitations in access to social benefits for jobseekers in host states, it is much easier for someone to move from Britain to Latvia in search of work than the other way around.⁸ An EU-funded mobility fund of the kind advocated by [Ferrera](#) would serve, among other things, to dampen these inequalities and so, once again, to address our hypothetical member of the public in (b).

The duties of citizenship

In his comment, Christian Joppke wonders whether an excessive emphasis on the duties of citizenship betrays an anachronistic and potentially dangerous revival of what we might call Romantic citizenship. Allegiance and loyalty, death and ethnic belonging, exclusion of those who do not share in the myths of national identity, suspicion of immigrants, and so on, are the foundation stones of Romantic citizenship. To be sure, [Ferrera](#) invokes none of these in defense of his proposals, but Joppke worries that [Ferrera](#)'s proposals (whose aim is to strengthen allegiance to EU citizenship) have an unavoidably exclusionary ring to them. They both give too much credence to those who falsely see movers as 'benefit tourists' or (in the language of the CJEU) 'unreasonable burdens', and threaten to impose an artificial divide between EU citizens (who are entitled to the benefits of freedom of movement [Ferrera](#) advocates) and TCNs (who are not).

I think that that [Ferrera](#) has a ready response. The first step is to emphasize that not all 'citizenship duties' are made equal. [Ferrera](#) here can easily agree with Joppke (as I, too, would) that the set of Romantic duties are outmoded and dangerous. But citizenship also includes more prosaic duties, e.g., to pay one's taxes, as well as duties of civility, toleration, and, indeed, justice. These are duties that flow from what Rawls calls citizens' 'sense of justice'. It is these duties that support [Ferrera](#)'s proposals, not the Romantic ones. This becomes especially clear if we interpret those duties as obligations of reciprocity in the ways I have suggested. From this point of view, we do owe those whose communities, wages, and so on, are most affected indemnification – but this duty is compatible with both requiring evidence of such effects and with acceptance of the fact that movers are, *on average*, a net benefit – socially, culturally, fiscally, economically, politically – to the polity *as a whole*.

What about the divide between TCNs and EU citizens (and so [c] above)? Here the response – again within a reciprocity-based perspective – is straightforward. Because legally resident TCNs participate in their host society's political, civil, social, economic life (in the relevant sense) to the same extent as EU citizens, they bear the same duties and are owed the same benefits and advantages as member state citizens (even if they are economically inactive).⁹ And because of their legal residence in their host country, they also contribute willy-nilly to the European project. Recall that TCNs, too, contribute – in the same way as EU citizens – to the project of integration both in complying with laws enacted or constrained by the European legal order and in contributing (politically, socially, economically, etc.) in ways that ultimately support and sustain European

⁸ C. Bruzelius et al. 'Stratified Social Rights Limiting EU Citizenship', *Journal of Common Market Studies*, 2017, forthcoming

⁹ I say much more about the grounds for such reciprocity in A. Sangiovanni. 'Global Justice, Reciprocity, and the State', *Philosophy & Public Affairs* 35, 2007, pp. 2-39.

institutions (and EU freedom of movement). To be sure, such an extension of duties and entitlements is not currently on the agenda, but the point is that it should be as a matter of justice. If [Ferrera](#) were to qualify his functionalism (which gives perhaps too much credence to the current state of public opinion), I do not see why a conclusion like this would not be available to him as well.

In this comment, I have not sought to challenge [Ferrera](#)'s proposed reforms. Rather, I have sought to ground them, not in a functional-empirical analysis of what is most likely to inspire support for EU citizenship, but in a broader conception of social justice. The two perspectives are not in direct competition, but they do depart from very different starting points.

EU Citizenship, Duties and Social Rights

Martin Seeleib-Kaiser*

Social rights and EU citizenship have moved from the fringe to the centre of the political debate. Ferrera's proposals are timely and address important issues of this urgently needed political and academic debates.

Since the ratification of the Maastricht Treaty (1993) European Union citizenship has formally become a reality and citizens of European Union Member States are no longer *only* citizens of the respective Member States, but also 'multinational citizens' of the European Union.¹ However, welfare states continue to be largely defined through nation-state borders,² creating welfare state insiders and outsiders. Accordingly, EU migrant citizens³ are often considered as outsiders, who access social benefits and services without having fulfilled their duty of having paid taxes in the country of destination. This perception has led to a significant politicisation of freedom of movement and to the notion of 'welfare tourism' in a number of Member States.

Despite the at times dominant frame of 'welfare tourism', especially in the UK media, *the* main reason for intra-EU migration is work. Due to high employment rates among EU migrant citizens, it is not surprising that empirically there is no evidence of 'welfare tourism.' Moreover, various analyses have demonstrated that EU migrant citizens are net contributors in countries of destination, i.e. they contribute more in taxes and social (insurance) contributions than they take out in benefits and services.⁴ As a group EU migrant citizens 'over-fulfil' their duty to contribute to funding welfare benefits and services in the Member State of destination. This obviously does not mean that every EU migrant citizen fulfils an *individual* duty. But, does this mean s/he should not be entitled to minimum income benefits or services? In this context it might be helpful to highlight that welfare states do not apply the principle of an individual duty to nationals or permanent residents as a precondition for receiving (subsistence) benefits or certain social services, such as health care. And there are good reasons not to do so!

Nevertheless, the significant increase in intra-EU migration has led to problems and challenges at the local and regional level putting pressure on social services. Ferrera suggests the establishment of a special EU fund to address these problems, while Joppke argues that such a fund would benefit those countries that already benefit from intra-EU migration. In my view, this debate seems rather academic, as EU funds to deal with challenges arising from intra-EU migration are already available under current EU funding arrangements. By using resources from the European Social Fund (ESF) and the Fund for European Aid to the Most Deprived (FEAD) affected local authorities and organisations, for instance in Germany and Sweden, were able to address some of the challenges arising from intra-EU migration at the local level. In other words, existing European funds can provide local actors with additional resources, without necessarily providing Member States that benefit from intra-EU migration with additional funds. No such funds were used in England to address the challenges in the localities most affected by intra-EU migration -- a political choice by the UK government! For the

* University of Oxford

¹ R. Aron. 'Is Multinational citizenship possible?', *Social Research* 41 (4), 1974, pp. 638-656.

² M. Ferrera. *The boundaries of welfare*, Oxford: Oxford University Press.

³ I define EU migrant citizens as EU citizens who are, or intend to become, habitually resident in a Member State of which they do not hold nationality. This category differs from EU mobile citizens, i.e. citizens who move across borders for limited periods of time. EU citizens belonging to the category of mobile citizens fall into the subcategories of cross-border workers, posted workers, students or tourists.

⁴ C. Dustmann and T. Frattini. 'The fiscal effects of immigration to the UK', *The Economic Journal* 124(580), 2014, pp. 593-643; Martinsen, D. S.; G.P. Rotger. 'The Fiscal Impact of EU Immigration on the Tax-financed Welfare State', *European Union Politics*, 2017. doi: <https://doi.org/10.1177/1465116517717340>.

future it would seem reasonable to increase the overall levels of the ESF or FEAD and making these funds more conditional upon addressing ‘European’ social issues (including the potential negative effects of intra-EU migration at the local level, be this in the countries of origin or destination), thereby strengthening EU social citizenship at the local level.⁵

Another challenge associated with EU citizenship is the risk of exploitation in labour and housing markets. Job-seeking EU migrant citizens from Central and Eastern European as well as Southern Member States often cannot rely on substantive social rights, as the system of Social Security Coordination does not provide any substantive exportable unemployment benefits for them. As a consequence of residence requirements they are neither entitled to minimum income benefits in the country of destination, putting them at risk of exploitation. If one considers the concept of freedom of movement not only as a negative liberty, but also as a positive right, it would seem reasonable to introduce a European Minimum Income Scheme or a supra-national unemployment scheme, as suggested by Ferrera, to address the identified challenge of insufficient social security and risk of exploitation among job-seeking EU migrant citizens.⁶

Vandenbroucke suggests the introduction of an EU minimum wage, strengthening the ability of Member States to provide good and comprehensive social protection at the national level and reforming the existing arrangements for posted workers. These are laudable proposals, but they would seem largely ineffective to address the problems of potential exploitation among EU migrant citizens without substantive exportable unemployment benefits or insufficient social protection, especially since main destination countries, such as Britain and Germany, already have national minimum wage systems. It is the duty of Member States to enforce national and EU minimum standards in labour and social law to avoid social dumping and the undermining of national working conditions for this we do not need new regulation, but the enforcement of current laws!⁷ In this context it seems worthwhile to note that British authorities have only recently started to ‘accept’ the duty to enforce minimum wage and working conditions by appointing the UK’s first labour market enforcement chief.⁸

Irrespective of the increasing importance of EU citizenship and social rights in the current political and academic debates, many participants still shy away from getting to the core of EU citizenship as a fundamental right. The issue of social rights and duties of EU migrant citizens within the EU is not *sui generis*, as it has been at the centre of many political and judicial debates in (con)federal jurisdictions. In this context it might be worthwhile to learn from two historical examples: the North German Confederation (*Norddeutscher Bund, NDB*; 1867-1870) and the United States of America. Citizenship of these two jurisdictions was derived from the citizenship of the constituent states – very similar to EU citizenship. Furthermore, important elements of the welfare state, such as providing a minimum of subsistence or certain social services, were the responsibility of the constituent states. For Bismarck the system of local and regional poor relief with restrictive residence requirements was incompatible with the principle of freedom of movement in the NDB. Consequently, the *Unterstützungswohnsitzgesetz* (law on the domicile for social assistance) of 1870 entitled every poor person within the territory of the NDB to poor relief at the place of residence, irrespective of the Member State of origin and duration of residence. The US Supreme Court ruled against the State of California, which in the 1990s once again had introduced minimum residence requirements for the state welfare programme, declaring the residence clause as unconstitutional, arguing: “Citizens of the United States, whether rich or poor, have the right to choose to be citizens of the State wherein they

⁵ C. Bruzelius, E. Chase, and M. Seeleib-Kaiser. ‘Semi-Sovereign Welfare States, Social Rights of EU Migrant Citizens and the Need for Strong State Capacities’, *Social Europe Journal*, Research Essay No. 3, 2014.

⁶ C. Bruzelius, C. Reinprecht, and M. Seeleib-Kaiser, ‘Stratified Social Rights Limiting EU Citizenship’, *Journal of Common Market Studies*, 2017. doi: 10.1111/jcms.12555.

⁷ C. Bruzelius, E. Chase, E and M. Seeleib-Kaiser, 2014, see above.

⁸ M. Khan. ‘UK appoints enforcer to crack down on minimum wage abuse’, *Financial Times*, 17 January 2017. <https://www.ft.com/content/b61d7370-d31e-11e6-9341-7393bb2e1b51>.

reside. ... The States, however, do not have any right to select their citizens” (Saenz v. Roe; 526 U.S. 489 (1999): 511)⁹.

For EU citizenship to become truly a fundamental status it is necessary to overcome the differentiation between economically active and non-active EU migrant citizens and finally abolish the residence requirements, as it was the case in the NDB and the US -- territorial jurisdictions with isopolitical citizenship. Simply put: to be, or not to be, an EU citizen that is the question!

⁹ C. Bruzelius, M. Seeleib-Kaiser. ‘Freedom of Movement and the Right to a Minimum Income: Comparing the North German Confederation, the US and the EU’. *Paper prepared for the 2017 Annual Conference of the Research Committee 19*, ISA, University of North Carolina, Chapel Hill, June 22-24, 2017.

Why compensating the “stayers” for the costs of mobility is the wrong way to go

Julia Hermann*

Like most of the previous respondents, I agree with Ferrera that the unequal division of the costs and benefits of free movement calls for action. My main criticism concerns his proposal to compensate non-mobile citizens. In my response, I shall expand on Christian Joppke’s critique of Ferrera’s presumption that “moving” causes harm that “stayers” should be indemnified for.

Ferrera argues that one way of strengthening the integrative capacity of EU citizenship would be to compensate those EU citizens who do not make use of their right to free movement for the negative effects of intra-EU mobility, and to empower them through particular initiatives. Joppke takes this to be a non-starter, because by making such a proposal, Ferrera confirms the populist portray of migrants as perpetrators and natives as victims and “buys into the populists’ hideous re-labelling of mobile EU citizens as ‘immigrants’”. I agree with the direction of this criticism, but not with Joppke’s apparent denial of the existence of real adverse effects of freedom of movement. A crucial question is to what extent the perceived negative externalities are real. Ferrera is fully aware of the fact that some of the fears are ungrounded, and Joppke rightly criticises him for not addressing this when he makes his proposals for compensating and empowering non-mobile citizens. However, Joppke seems to presume that there are no negative externalities at all, thereby ignoring the point emphasised by Ferrera that despite the fact that, in the aggregate, mobility tends to benefit the receiving member states, there are also adverse effects, which are felt at the local level. We have to identify the real adverse effects in order to get a clearer picture of those perceptions of negative effects that are false, and must then ask what can and ought to be done to change these false perceptions.

Ferrera notes that in a particular territorial area, economic sector or policy field, the negative economic and social externalities (e.g. a decrease in available jobs, hospital beds, emergency care, social housing, school places etc.) may exceed the positive ones. He presents the negative externalities as “produced by the mobiles”. Vandembroucke and Sindbjerg Martinsen address “social dumping”. Vandembroucke moreover mentions the possibility that the negative externalities may be more real for countries of mass emigration than for countries of immigration. Independently of the answer to that question, it is important to address the fact that mobility can place a big burden on the latter countries. Take a country such as Italy, where many well-educated young people emigrate in order to work in Britain, Germany, The Netherlands, etc. (brain drain). Would compensating, for instance, non-mobile Italian citizens be the adequate response to the brain drain that the country experiences? No. The adequate response would be to make the reforms necessary for making it attractive for talented young Italians to stay in their country, and for attracting talented citizens of other member states.

The proposal to compensate non-mobile citizens is problematic for a number of reasons. First, it gains support from the view that the mobiles produce the negative externalities, which is not correct. They are produced by the system, i.e., they are the consequences of giving people the right to free movement without providing mechanisms that prevent a race to the bottom of welfare services, wage dumping and so forth. Once we abandon the picture of movers producing negative externalities, Ferrera’s proposal becomes much less plausible. Second, every EU citizen is a potential mover. Someone who is a stayer today might be a mover tomorrow. Every EU citizen has the formal freedom of movement. At any point in time, this is not a substantial freedom for many people, but this situation is not static. Not only is it possible that stayers may want to exercise their freedom of movement in the future, it is also possible that they get into a situation where they find themselves compelled to do so. Third, the demand for compensation doesn’t fit well with Ferrera’s claim that one of the corresponding duties of the right to free-movement is “to bear the burdens of ‘hospitality’”. Fourth, the demand makes negative externalities seem unavoidable, which is not the case. Fifth, although the burdens are

* Utrecht University

not shared equally, mobility ultimately affects society as a whole when it leads to a decline of domestic cohesion. In the long run, the burdens are not felt merely locally, but globally. Finally, compensatory measures don't go far enough. We have to address the systemic flaws, the origins of the European *malaise*.

The costs of mobility call for two things: a justification to those bearing them disproportionately, and measures to reduce them. Those who lose out are entitled to a justification for why they ought to support freedom of movement (see Sangiovanni's contribution to this debate). It might well be that such a justification is currently not available, because if we consider the situation of EU citizens on the whole, the costs of free movement might be disproportionately high. There seems to be an agreement between most of the respondents in this forum that the required justification would be available if the social dimension of the EU were strengthened significantly, implying that, as things are now, many EU citizens are entirely justified in opposing freedom of movement.

Given the present form of the EU, some of the negative effects might indeed be unavoidable. Due to big differences between member states concerning minimum wage regulations, access to social protection, flexibility of the labour market, taxes etc., mobility of workers leads to a race to the bottom. As Vandembroucke writes, "if we don't want immigration to boost a precarious, hyper-flexible segment of labour markets, there should be limits to precariousness and flexibility *across the board*". Vandembroucke claims that the only way to tackle the distributive risks associated with mobility is to be more demanding with regard to the quality of welfare states. He asks for common principles, e.g. "All workers are covered by minimum wage regulation". Seeleib-Kaiser argues that the relevant regulation (in the form of national and EU minimum standards in labour and social law) is already there but needs to be enforced. At this point the question becomes whether the EU is, in its current state, able to enforce it. Vandembroucke admits that "developing and translating such principles into tangible realities is an uphill battle in today's Europe", but emphasises that "there is no alternative if free movement is to be reconciled with domestic cohesion". Ferrera proposes to establish a supranational scheme providing homogeneous protections to mobile workers. Sangiovanni stresses that justice requires a much broader social union than we currently have. He suggests grounding Ferrera's proposals in his conception of justice for the European Union.

There are doubts as to whether the EU as we know it is capable of achieving the political union necessary for broadening the social union. Because the EU is, in the first instance, an economic union – the project of a common market – and because of its well-known democratic deficit, a broader social union might only be reachable via fundamental reforms. Perhaps we even need to start all over again. Ferrera may be right that "incrementalism is the only policy strategy for the EU today", but this may mean that our problem is not solvable by any of the policy strategies that are available to the EU in its current form. One rather radical proposal is to create a European Republic, in which there are no nation-states anymore, but only regions, cities, and – most importantly – citizens.¹ I do not wish to defend this utopia here, but want to emphasise that there is the real possibility that in its current form, the EU cannot achieve the required social union. This would mean that due to the internal constitution of the EU, EU-citizenship couldn't fulfil its integrative functions. If we follow Ulrike Guérot, citizenship that fosters integration and solidarity has to imply equality in front of the law, equal general voting rights and equal social participatory rights.² In today's EU, citizens do not have any of this. Unfortunately, this is not stuff that could simply be added to the "EU-citizenship container". I am not saying that this is the correct diagnosis. My point is that given the enormous problems the EU is facing, we have to take this possibility very seriously.

¹ U. Guérot. Warum Europa eine Republik werden muss! Eine politische Utopie. Third edition. Bonn: Dietz, 2017

² Guérot, 2017, see above.

Balancing the Rights of European Citizenship with Duties Towards National Citizens: An Inter-national Perspective

Richard Bellamy*

Discussions of European citizenship have tended to mobilise around two somewhat divergent views. The first view, well represented by Maurizio Ferrera's argument for his ingenious proposals, treats this status instrumentally: as a mechanism for promoting both greater allegiance to the EU from those individuals subject to its authority and greater solidarity amongst them. As with Ferrera's argument, such views tend to conceive European citizenship in analogous terms to citizenship within the member states, with the goal being to wean individuals away from the national to the supranational, at least to some degree (Habermas remains the classic statement of this approach).¹ By contrast, the second view, of which Christian Joppke's contribution offers a fine example, treats European citizenship as transnational. So conceived, it involves not only denationalising citizenship but also transforming the very nature of citizenship itself.² A citizen becomes no more than an individual bearer of liberal rights, with no special duties to any particular political community but only the moral obligations to uphold the liberal rights of all other individuals (actually Joppke is silent on this issue, but I assume de-dutification can only be taken so far).

Although Ferrera's account moves in the direction of a supranational view, his policy proposals occupy a mid-point, providing a transitional phase that seeks to reconcile the national to the transnational. By contrast to Joppke, I believe such a reconciliation is not only a pragmatically necessary endeavour but also normatively justifiable. However, I shall argue that the grounds for doing so indicate difficulties with the conventional supra- and trans-national views of European citizenship, and point to an alternative view that I shall call inter-national.

As Andrea Sangiovanni has observed in his contribution, Ferrera's declared grounding for his proposals beg the question of why the vast majority of citizens of the different member states, who do not themselves take advantage of freedom of movement, should view further European integration and the creation of social solidarity at the European level as desirable in the first place. Although Ferrera does not articulate his reasoning explicitly, the implicit rationale would appear to be the two standard functional and moral arguments that are habitually offered for an ever closer Union. The functionalist case contends that in an interconnected world, the only way to take advantage of the economic benefits globalisation brings while managing its costs is through scaling up beyond the nation state. The moral case involves a form of cosmopolitanism, whereby the argument holds that if we are to treat all individuals as of equal moral worth we must likewise remove those political boundaries that entail treating them unequally. Both these arguments certainly need to be taken seriously. Whether they can only be adequately or appropriately addressed by a scaling up of political authority to the regional level or beyond is another matter.³

Given these arguments, the obvious question to ask is why we should take national citizenship seriously at all? As Joppke contends, surely the moral argument in particular suggests we should avoid either pandering to nationalism in the short term or replicating its exclusionary characteristics at the

* European University Institute

¹ J. Habermas. 'Citizenship and National Identity: Some Reflections on the Future of Europe', *Praxis International*, 12(1), 1992, pp. 1-19

² For full accounts of this thesis, see: D. Kochenov. 'EU Citizenship without Duties', *European Law Journal*, 20(4), 2014, pp. 482-498; D. Kostakopoulou. 'European Union Citizenship: Writing the Future', *European Law Journal*, 13(5), 2004, pp. 623-646.

³ For a discussion of these two views, see: R. Bellamy. 'Between Cosmopolis and Community: Justice and Legitimacy in A European Union of Peoples' in S. Tierney (ed), *Nationalism and Globalisation: New Settings, New Challenges*, London: Hart, 2015 Ch 10, pp. 207-232

supranational level in the long term? One reason arises from the fact that, for all their faults, democratic nation states, such as those that are members of the EU, provide the most effective political systems so far devised for rendering governments accountable to the governed in ways that encourage these governments to pursue policies aimed at treating the governed with equal concern and respect, and thereby securing their rights. *Pace* the transnational de-dutyfiers, individual rights claims are likely to go unheeded without some political and legal authority capable of upholding them consistently and coherently over time. Meanwhile, that authority will only be likely to uphold these rights in an impartial and fair way if suitably constrained to do so, with the most effective constraint being to subject rulers to a system of equal influence and control by the ruled. As a result of such a set up, citizenship becomes the ‘right to have rights’.⁴ Indeed, it could be argued that it is only within such a context that rights can be either effectively or legitimately claimed.⁵ For it is only through participating, on the one hand, in a scheme of social and economic cooperation capable of supporting expenditure on a suitable public infrastructure needed to secure rights; and, on the other hand, within a scheme of political cooperation through which individual rights can be claimed, justified and agreed to on equal terms to others, that a system of rights that is fair and sustainable can emerge. The duties that arise from involvement in these two schemes may have gained a romantic, nationalist colouring, yet as Andrea Sangiovanni notes they are for the most part prosaic – paying taxes, treating others with civility – not least by accepting the rules of the political game, and acknowledging the obligation to treat others with equal concern and respect.

The transnational view tends to overlook the role democratic states have had and continue to have in generating rights not only for their citizens but also for those citizens of other countries who may temporarily move to visit or work there. They treat them as self-evident moral properties of individuals that apparently can be met spontaneously.⁶ Many proponents of the transnational view among legal academics have also been overly sanguine about the judicialisation of the EUs transnational citizenship provisions, which has largely occurred as an extension of the *lex mercatoria* of the single market.⁷ As Susanne Schmidt remarks in her contribution, the deployment of litigation by market actors gains a false legitimacy from exploiting the terminology of citizenship rights. For it allows those actors with an economic interest in further market integration - the majority of which are enterprises rather than individuals - a privileged venue that is biased against, and often inaccessible by, the immobile majority, undermining the relative political equality offered by democratic citizenship.⁸ Nevertheless, transnational critics are right to note that many of these same states have been, and still can be, great sources of injustice for those individuals and whole peoples they have dominated either directly, through colonisation and war, or indirectly, through exploitative trade deals, and who they continue to exclude through various immigration policies.

In this regard, the supranational solution might seem superior because it can overcome the possibility of domination and exclusion simply by being more inclusive of who is a citizen. Yet, as Ferrera acknowledges, establishing anything coming close to such a social and political system at the national level required a long period of political struggle facilitated by mass conscription in war, which gave ordinary people a degree of leverage over those whose wars they were obliged to fight – not least in prompting the establishment of social insurance and ultimately the granting of universal

⁴ See: R. Bellamy. ‘The “Right to have Rights”: Citizenship Practice and the Political Constitution of the EU’ in R. Bellamy and A. Warleigh (eds). *Citizenship and Governance in the European Union*, Continuum, 2001, pp. 41-70

⁵ R. Bellamy. ‘Rights as Democracy’, *Critical Review of International Social and Political Philosophy*, 15(4), 2012a, pp. 449-471

⁶ For a detailed critique see: R. Bellamy. ‘A Duty-Free Europe? What’s Wrong with Kochenov’s Account of EU Citizenship Rights’, *European Law Journal*, 21(4), 2015, pp. 558-565.

⁷ R. Bellamy, 2015b, see above.

⁸ T. Isiksel, *T. Europe’s Functional Constitution: A Theory of Constitutionalism Beyond the State*, Oxford: Oxford University Press, 2016, pp. 142-143.

adult suffrage. Meanwhile, a degree of bonding sufficient to agree upon and abide by collectively binding decisions was facilitated not only by boundaries delineating among whom they were made and to whom they applied, as Ferrera reports, but also by a common history, culture and language. These latter features in particular may belong to the romantic attachments that Joppke deplores as reactionary throw-backs, but they served a functional purpose in facilitating the operation of democracy as a mechanism for the public realisation of the equal status of citizens. For to achieve that result, citizens must be able to air their disagreements and deliberate in ways all can see are fair and addressed to their common concerns, all of which assumes a public sphere and shared interests. As the events unfolding in Catalonia indicate, where these features are deemed to be lacking, then large numbers of people are likely to be willing to exercise their liberal rights to freedom of speech and association to militate for a political community that can embody them and can only be prevented from doing so through coercion.

Such factors make a rapid shift to supra-nationalism unlikely if not unfeasible *a priori*. Even if achievable it may also be undesirable. There are a plurality of reasonable ways of combining and pursuing the goods that give value to human lives, and even among liberal democracies there can be found a variety of economic, social, legal and political systems. Within a large, socially and culturally diverse political unit, the risk of common policies being inefficient and inequitable increases, along with the prospect of majority tyranny over consistent minorities. Finally, just as in a domestic political system, checks and balances between different institutions can be important for ensuring that individuals and groups of individuals all get treated with equal concern and respect in the making and implementation of collective policies, so a collaborative system of mutually checking and balancing states can operate in a similar manner.

Against this background, an alternative characterisation of Ferrera's proposals holds that they comprise not transitional steps aimed at easing and promoting a gradual shift towards the development of a European supra-national citizenship but as components of an inter-national European citizenship designed to supplement rather supplant national citizenship in response to the functional and moral arguments reported above. Such a status forms part of a more general international arrangement aimed at promoting equality of concern and respect between the citizenship regimes of its constituent member states, not least by facilitating the movement of citizens between these different regimes. Within an interconnected world, the national citizens of democratic states can be regarded as having obligations not to dominate the national citizens of other democratic states, not least by undercutting their capacity for self-government. They also have joint obligations to address problems that can only be tackled through collaboration and that involve harms and injustices that almost all moral systems regard as such. These include the prevention of the most egregious infringements of basic human rights, and the need to tackle global poverty and avoid a climatic catastrophe. A feature of such an arrangement is that it does not seek to subsume national citizenship regimes within a more encompassing supranational regime but rather to facilitate their effective and legitimate operation through cooperation and the mutual regulation of their interactions.

I have argued elsewhere that to a large, if imperfect, extent the EU conforms to this kind of arrangement,⁹ not least through its decision making involving the normative logic of a two-level game whereby governments reach consensual agreements as the representatives of their respective peoples, from whom these agreements must be capable of winning their acceptance over time. I call such an arrangement a form of 'republican intergovernmentalism'. Union citizenship likewise can be assimilated to this account as a form of inter-national citizenship. Inter-national citizenship has two main aims. On the one hand, it addresses both the functional and the cosmopolitan critiques of national citizenship regimes by allowing citizens to move freely between these regimes without discrimination on grounds of nationality so far as access to employment or short or long-term residence is concerned. On the other hand, though, it remains justified to maintain the viability and diversity of these

⁹ R. Bellamy. 'An Ever Closer Union of Peoples: Republican Intergovernmentalism, Demoi-cracy and Representation in the EU', *Journal of European Integration*, 35(5), 2013, pp. 499-516.

citizenship regimes and the solidarity among national citizens that make them possible. After all, they remain the source of the rights that mobile citizens move to enjoy. That can involve rules limiting immediate access to certain social benefits in the case of individuals who have yet to find employment and contribute to them. It would also justify giving a vote only in local as opposed to national elections for those unwilling to become national citizens and to commit to the future sustainability of the citizenship regime. Finally, it would entail the possibility – as suggested by Ferrera – for states that are a party to this arrangement to collectively agree on some indemnification for those national citizens who lose out. Note that in this conception of citizenship the source of rights is strictly speaking provided by the contracting states that agree to this arrangement and fulfil the obligations necessary to their realisation rather than any supra-national entity *per se*. Hence, it is logical that the entitlement to access this status stems from being a citizen of one of the contracting states. Moreover, the rights associated with an ‘inter-national’ conception are ‘isopolitical’ rather than ‘sympolitical’. The policies that Ferrera proposes can all be offered on this account on ‘isopolitical’ grounds – as part of the mutual recognition and associated duties of the citizenship regimes of the member states.

As I remarked, this account fits the existing citizenship provisions relatively well, at least once the relevant directives are taken alongside the rights enumerated in the Treaties. As Schmidt notes, it has been the reading in of an aspirational, transnational, account of citizenship by the Court post *Grzelczek* that has distorted the justified balance between the rights of European citizenship and their duties towards (as well as of) national citizens that lies at the heart of this status. Similarly, though Ferrera tackles a genuine and pressing issue in an innovative and imaginative way, I believe his approach will have not only more appeal but also a better justification through being grounded in an inter- rather than a supra- national account of European citizenship.

Grab the horns of the dilemma and ride the bull

Rainer Bauböck*

EU citizenship was conceived almost by stealth through the jurisprudence of the European Court of Justice. When the Maastricht Treaty officially announced its birth, it was quickly dismissed as either “little more than a cynical exercise in public relations”¹ or as a “pie in the sky”.² No longer: Today EU citizenship is hotly contested in public debates in nearly all of the member states. At the heart of this debate is the tension between free movement and social protection. The contributions published in this forum mirror the arguments heard in public arenas at a much higher level of analytical reflection. But what they somehow do not seem to reflect is the heat of the debate. By this I do not mean that scholars should shout insults at each other when they disagree. What I mean is that they should put more emphasis in their analyses on political contestation and participation as core indicators for the salience and strength of democratic citizenship.

I find myself almost entirely in agreement with Maurizio Ferrera’s nuanced and well-considered analysis and policy proposals. I agree both with his diagnosis that the burdens created by free movement in Europe threaten to undermine national welfare regimes. There are *perceived* burdens that erode political support for European integration and *real* burdens that put strains on local communities and less skilled ‘stayers’ in the destination as well as the origin countries of mobile EU citizens. I agree also that there is no magic solution for the free movement–social citizenship dilemma, but that building a ‘social pillar’ of EU citizenship and fortifying it with some ‘prosaic duties’ (Andrea Sangiovanni) would help to blunt the sharp edges of the dilemma to a certain extent.

Yet I think the dilemma is even sharper than Ferrera and most of our authors acknowledge. The ‘permissive consensus’ that allowed EU integration to make sometimes steady and sometimes halting progress without ever retreating is in shatters today. It may be relatively easy to convince the Commission of the incremental improvements proposed by Ferrera, but it seems much more difficult to imagine sufficiently broad policy coalitions involving member state governments that would endorse them. My conclusion will be that bolder proposals for strengthening EU citizenship are worth fighting for, and that in a much more politicised environment they need to be addressed directly to European citizens in attempts to win their support and votes.

I arrive at this conclusion by focusing on two preliminary questions that must be answered before we can discuss *how* to strengthen EU citizenship. The first one is, as pointed out by Frank Vandebroucke and Andrea Sangiovanni, that we need to know *why* we ought to do so. My answer will differ somewhat from theirs. I think that normative reasons to embrace EU citizenship are largely contextual and contingent, but this does not mean that they lack force. The second prior question is *what* it is that we want to strengthen. This is a question about the nature of EU citizenship, its potential and limits. I argue that the derivative, multilevel and transnational construction of EU citizenship is full of tensions, which creates a need for political rather than purely judicial or technocratic solutions.

A European community of destiny

For Vandebroucke, free movement “means that EU citizens share an opportunity set, which is much larger than the opportunity sets offered by separate national labour markets”. Following Rawls,

* European University Institute

¹ J.H.H. Weiler. ‘European Citizenship and Human Rights’, in J. A. Winter, D. M. Curtin, A.E. Kellerman, B. De Witte (eds) *Reforming the Treaty on European Union: The Legal Debate*, The Hague/Boston: Kluwer International, 1996.

² H. U. Jessurun D’Oliveira. ‘Union Citizenship: Pie in the Sky?’, in E. Rosas (ed.) *A Citizens’ Europe: In Search of a New Order*, London: Sage, 1995.

Vandenbroucke regards equal access to opportunities for all citizens within a polity as a basic principle of justice that is lexically prior to the difference principle, which requires that social inequalities are justified only if they improve the position of the worst-off. This line of reasoning supports giving general priority to free movement where it conflicts with redistributive and regulatory welfare policies, although, according to Vandenbroucke, such conflicts are not inevitable.

Let us assume this liberal view of justice is sound and correctly applied. Why should it then stop at the borders of the EU? Should liberal states not be required to seek to expand their citizens' set of opportunities by concluding reciprocity-based agreements on free movement also with third countries? Switzerland and Norway are already involved in such arrangements with the EU. Why not extend them to Canada, Australia and New Zealand? In fact, reciprocity-based free movement arrangements have existed, prior to EU accession, between the UK and Ireland and, independently of the EU, between Australia and New Zealand as well as between several South American states. Moreover, a rapidly increasing number of individuals enjoy today free movement with full access to national labour markets without any coordination between the states involved simply because they possess several nationalities. The point is that, although free movement is the core right of EU citizenship, it is not necessary to form a political union with a common citizenship in order to realise the goal of expanding opportunity sets through international freedom of movement.³ In Paul Magnette's terminology introduced by Ferrera, the isopolitical goal of free movement does not require the construction of European Union citizenship, which is to a significant extent sympolitical. So the normative argument for free movement alone cannot explain why EU citizenship needs to be strengthened. What we need first is a clearer idea about what kind of polity the EU is or ought to become. The right balance between free movement and social citizenship depends on our answer to this question.

For Sangiovanni freedom of movement is not a sufficient answer to why citizens should support the goal of a stronger EU citizenship. While free movement expands every citizen's choice set and range of opportunities, it is also politically contested – as the Brexit referendum has clearly demonstrated – and can entail significant costs for local communities and citizens who are – often involuntarily – insufficiently mobile. For Sangiovanni, “the best response will appeal to a broader conception of social justice for the European Union.” This is indeed an important step towards answering the normative question. Duties of solidarity and social justice in a union explain better why citizens *ought* to support adding a social pillar or contributory duties to the present content of EU citizenship.

Yet I am not sure this answer is sufficient. As with Vandenbroucke's argument, there is a nagging question raised by global justice theorists: Why should duties of solidarity and social justice stop at the EU borders? First, we live in a world in which states are interconnected and people are interdependent to an extent never seen previously in human history. Conditions for reciprocity-based solidarity are therefore present not only within the EU but on a global scale. Second, disparities in income and wealth are far greater between the EU and Africa than within the Union. Does the EU therefore have a duty to expand the opportunities of African citizens and to include them in its conceptions of social justice by offering membership to their states?

Unlike Vandenbroucke's argument from free movement that is by its very nature expansive, the social justice argument could also lead to the opposite conclusion. In a multilevel union of states, citizens can raise the question – and many of them do – why social justice at the level of the Union should take priority over social justice at the national level in cases where the two conflict with each other. If, as John Rawls thought, social justice is a matter of fairness and reciprocity among *citizens* involved in a comprehensive scheme of cooperation rather than among human beings *per se*, then it seems *prima facie* an open question whether the Union ought to add social justice elements to its free

³ See R. Bauböck. 'Migration and the Porous Boundaries of Democratic States' in *The Oxford Handbook of Transformations of the State*, Oxford: Oxford University Press, 2014, pp. 516-531.

movement-based citizenship or should instead let member states strengthen their national schemes of social citizenship and enable them to do so even at the price of some territorial closure.

In my view, the question within which political unit free movement and social justice ought to be realised and reconciled with each other requires an entirely different answer. The European Union has a claim to be supported by its citizens as such a unit – *in addition* to the state whose nationals they are and *in addition* to their duties of global justice – because of the historical context in which Europe finds itself today. The EU is not a response to normative requirements of justice beyond the nation-state; it is a response to the conditions for democracy in Europe.

The two most basic conditions for democratic self-government are the prevention of external domination (through war, colonialism or economic domination by external actors) and internal domination (through authoritarian political rule or political domination exercised by powerful economic groups). The European Union was born out of the desire to make war between European states impossible and its expansion to Portugal, Spain, Greece and the former communist states was driven by the desire to prevent forever the return of authoritarian rule in Europe. Threats of internal and external domination of European democracies are, however, still very much present. Today they take the shape of an authoritarian transformation of democracy through right wing populist parties in power and of external economic domination through powerful corporations. The shrinking demographic, economic and military weight of Europe in the world should not be regarded as *per se* a problem for stabilising democracy, but it provides a strong reason for European states to pool their resources when addressing external threats.

These are normative reasons why European states have formed the Union and should want to maintain and strengthen it. They are further reinforced by the commitments they have made to each other when deepening integration with each round of amending the European Treaties. And they are supported by rational self-interests to avoid the costs of exit. As Brexit illustrates, these costs are very high – not because Michel Barnier tries to drive them up, but because of the external conditions the EU states are exposed to and because of those internal conditions that they have created together. The latter conditions explain why staying outside is not as costly as leaving. The European Union has in this – prosaic and not at all romantic – sense become a community of destiny. The citizens of such a community have particularistic reasons to enhance its social cohesion and strengthen its democratic legitimacy. And these are reasons that can be communicated in public debates.

I need to register here a disagreement with Richard Bellamy whose commitment to democracy as a mechanism for the public realisation of the equal status of citizens I fully share. Bellamy says that “to achieve that result, citizens must be able to air their disagreements and deliberate in ways all can see are fair and addressed to their common concerns, all of which assumes a public sphere and shared interests”. Bellamy thinks these conditions are not sufficiently present in the EU to motivate citizens to support trans- and supranational European citizenship. And he invokes the Catalan secession crisis to illustrate the point. “Where these features are deemed to be lacking, then large numbers of people are likely to be willing to exercise their liberal rights to freedom of speech and association to militate for a political community that can embody them and can only be prevented from doing so through coercion.”

In contrast to this view, I think that the Brexit and Catalan crises serve to demonstrate that there are in fact sufficiently strong public spheres and shared interests at the level of the encompassing EU and Spanish polities and that separatism is the wrong response to the current predicaments. In both Britain and Catalonia, exiteers and unionists represent(ed) about half of the respective populations. Under such conditions, the reasons why one side wins and the other side loses in a referendum have little to do with deeply rooted collective identities or shared interests of *all* citizens of the polity and a lot to do with the hard-to-predict outcomes of political campaigns. Moreover, the arguments why Britain would be better off outside the EU and Catalonia outside Spain can be demonstrated to be wrong by pretty overwhelming evidence. What drives such separatism is a politics of resentment rather than of the

common good. In response to perceived and real grievances, the politics of resentment advocates closure or separation at the price of severely damaging the interests of the citizens it claims to represent.

Bellamy is right that the argument appealing to shared interests must be won in the public sphere, but he is wrong to think that these conditions are absent when it comes to European citizenship. European citizens share interests in reducing external and internal threats to democracy; they have committed through their representatives to create a political and not merely economic union; and they are today exposed to public debates in which European issues are at the centre of controversy and discussed simultaneously across Europe.

The DNA of EU citizenship

Let me now turn to the second preliminary question that is not addressed in Ferrera's essay: What is EU citizenship? Art. 20 (1) TFEU says: "Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship." This is the DNA of EU citizenship that determines both its potential evolution and its limits. EU citizenship is derived from member state citizenship rather than the other way round. And since it is additional and not substitutive, it adds another layer to national citizenship.

The potential of this construction is that it transforms nationals into multiple citizens whose rights, duties and political memberships are determined not only by their state, but also by a political union of which their state is a member. The construction adds even a third level below the state when it gives non-national EU citizens the right to vote in municipal elections in their host member state. As I have argued elsewhere, EU citizenship encompasses thus at least three levels, each of which has a distinct rule for determining membership. At the national level citizens are determined by circumstances of birth (through descent from citizen parents or birth in the territory) or naturalisation procedures; at the Union level, citizenship is derived from national membership; and at the local level, it includes (or ought to include) all residents in the municipality.⁴

The principles for determining local and national citizens are independent from each other and create thus a potential for conflicts over who counts as a citizen. When 'sanctuary cities' protect undocumented migrants against deportation, they oppose their own principle of including all residents to the state's power to exclude non-citizens from admission and residence in its territory. By contrast, the derivative nature of EU citizenship is meant to secure that no such conflict can arise. EU citizens are not those who reside in the EU territory, but all those and only those who are nationals of a member state. Yet a potential for conflict emerges through Art. 20(2) that defines those rights that EU citizenship adds to those of national citizenship. Foremost among these is free movement. When the Court of Justice of the European Union (CJEU) defends immediate access of EU job seekers to employment-related social benefits in other member states, it upholds an expansive interpretation of free movement against the attempts of states to protect their distinct social citizenship regimes through territorial closure. Conflicts of this kind are inevitable in any multilevel democracy. They are pervasive also in consolidated federal states, but there federal courts operate as the ultimate arbiters and interpreters of a constitution that regulates the division of competencies between levels of government. In the EU, the Court interprets instead treaty-based citizenship rights agreed to by states with distinct constitutions and welfare regimes. Such constitutional pluralism⁵ makes a union of states fundamentally different from a federal state.

⁴ R. Bauböck. 'The Three Levels of Citizenship Within the European Union', *German Law Journal* 15(5), 2014, pp. 751-764.

⁵ See J. H. H. Weiler. *The Constitution of Europe*, Cambridge: Cambridge University Press, 1999.

Conflict over citizenship is institutionalised and, as Susanne Schmidt and Richard Bellamy point out, it cannot always be authoritatively resolved by the CJEU. The court is thus often seen as acting politically when it moves forward with daring declarations that “EU citizenship is destined to become the fundamental status of nationals of the member state”.⁶ It followed up when telling member states that they have to take EU law into account when depriving nationals of their citizenship⁷ and have to grant legal residence to EU citizen children of undocumented migrants even if their EU citizenship has not been activated through cross-border movement.⁸ Yet precisely because the CJEU is acutely aware of having to fill political lacunas left open by the legislature, its expansionary moves in matters of citizenship have been regularly followed by retractive ‘clarifications’.⁹

The institutionalisation of conflict over citizenship creates a strong potential for politicising EU membership rights and statuses also in the legislative branch of the EU (i.e. the Council and Parliament) and the public arenas of member states that has so far been kept at bay. Brexit (and potentially also Scottish and Catalan secession attempts) could unlock the cage. When this happens, those who want to promote European integration should not be caught unprepared but lay out and explain their visions to citizens and voters instead of acting merely as advisors to the Commission.

I tend to think therefore that we need now not merely pragmatic incrementalism but also bold ideas how to develop EU citizenship further in ways that are compatible with its multilevel DNA. This is why I proposed putting on the agenda a direct EU income tax that would create incentives for EU citizens to hold EU legislators politically accountable for their use of tax money and that would introduce a social justice dimension into EU citizenship if such a tax were progressive.¹⁰ In order to become politically feasible, such a tax must not be added to current national contributions to the budget but diminish them, which would also make the conflict between net contributor and net recipient governments less poisonous. I am perfectly aware that such a proposal requires Treaty change¹¹ and is not a vote getter, but if it is integrated into a coherent political platform for strengthening EU citizenship it might stand a chance to find also sufficient electoral support. Which pollster would have predicted before the victories of van der Bellen in Austria and of Emmanuel Macron in France that one could win elections on an unabashedly pro-EU programme in member states whose citizens are among the most Eurosceptic ones?

Yet the constitutional DNA of EU citizenship also sets limits to what kind of animal it can eventually become. Julia Hermann refers to the idea – without endorsing it explicitly – of “a European Republic, in which there are no nation-states anymore, but only regions, cities, and – most importantly – citizens.” This is the old notion that Europe must eventually become a federal state – a persistent trope among supporters of European integration that shows a lack of imagination with regard to alternative forms of political community that do not imitate the nation-state template. Such a ‘provincialisation’ of member states and their citizenship could not come about gradually by transferring ever more competencies to the Union; it would require at some point a radical break. While there is no hard and fast distinction between pooling and transferring internal sovereignty, creating a European republic or federal state would mean that at a specific date member states lose their external sovereignty as independent members of the U.N. and the international state system. It is not impossible to imagine historical conditions under which some states may be ready to abolish

⁶ Grzelczyk v Centre Public d’Aide Sociale d’Ottignes-Louvain-la-Neuve, (2001) C-184/99.

⁷ Janko Rottmann v Freistaat of Bayern (2010) C-135/08.

⁸ Ruiz Zambrano v Belgium (2011) C-34/09.

⁹ Shirley McCarthy. v Secretary of State for the Home Department (2011) C-434/09; Murat Dereci and Others. v Bundesministerium für Inneres (2011) C-256/11; Elisabeta Dano and Florin Dano v Jobcenter Leipzig (2014) C-333/13.

¹⁰ See R. Bauböck. Still United in Diversity? The State of the Union Address, Florence, 5 May 2017

¹¹ Treaty change would be necessary if an EU tax were to apply to all member states instead of being introduced through enhanced cooperation among a group of them, such as the Euro group.

themselves in this way. In the history of the U.S., Switzerland and Germany, i.e. quite some time before the consolidation of the international state system, it took civil and international wars to trigger the move from confederation to federation.¹² If these are the conditions for realising a federal European Republic, then this is hardly a dream worth dreaming.

Martin Seeleib-Kaiser explicitly refers to the U.S. and German examples when spelling out some of the implications of a federalist project: “For EU citizenship to become truly a fundamental status it is necessary to overcome the differentiation between economically active and non-active EU migrant citizens and finally abolish the residence requirements.” What he fails to mention is that establishing priority for federal citizenship in the post-Civil War 14th amendment to the U.S. Constitution and in unified Germany after 1871 entailed a radical downgrading of the U.S. states and German Länder whose citizenship henceforth was derived from federal citizenship rather than the other way around. If this were really the destiny of EU citizenship, then the member states have every reason to reject it and the power to do so as masters of the Treaties.

In contrast with the other authors in our debate, Bellamy devotes much attention to the nature of EU citizenship. For him, it is inter-national, rather than trans- or supra-national. I find this terminological choice somewhat confusing. It is the citizenship of independent states that is international by nature. Citizenship is not only a domestic legal status that comes with certain rights and duties; it is first of all a mechanism for allocating individuals to states based on reciprocal international recognition of states’ right to determine their own citizens and of their personal jurisdiction over these citizens, including to a certain extent also those residing abroad. In contrast to the citizenship of EU member states, citizenship of the Union is not (yet) international in this sense. It is not a legal status that depends on recognition by third countries. The right of EU citizens to seek diplomatic and consular protection by other EU states in third countries where the state whose nationals they are is not sufficiently represented creates a potential claim for international recognition but it is far from obvious that third countries are bound to accept this claim.¹³

Bellamy interprets also the concept of ‘transnational citizenship’ in a way that hardly matches academic debates. For Bellamy, transnational seems to be synonymous to postnational. However, the ample literature on transnationalism in migration studies has used this concept instead to refer to the increasing salience of links between emigrants and their states of origin, i.e. a phenomenon that expands the reach of national identities and citizenship beyond the states’ territorial borders instead of creating a new type of postnational political community. Again, it is primarily the citizenship of independent states that has become transnational in this sense, for example through toleration of dual citizenship or granting voting rights to expat citizens. Yet EU citizenship too was from the very beginning constructed as a transnational status, since most of its rights are activated through cross-border activities, while it is the member state of origin that determines who possesses the status and who can enjoy transnational rights within the Union.

My disagreement with Bellamy is, however, probably not merely terminological. Transnational citizenship is also transformative for national citizenship. This is true in the international arena where states increasingly claim extraterritorial jurisdiction, promote nation-building projects beyond their borders and mobilise their diasporas as an economic, cultural and political resource. The potential for inter-state conflict has not yet been tamed by a corresponding evolution of international legal norms. Political theory also has not kept up with developments and remains largely stuck in a dichotomy between domestic and global conceptions of justice or democracy that fails to take into account the increasing salience of transnational political spaces and phenomena that straddle this distinction.

¹² See C. Schönberger. *Unionsbürger: Europas föderales Bürgerrecht in vergleichender Sicht*. Tübingen: Mohr Siebeck, 2005.

¹³ See M. B. Moraru. *Protecting (unrepresented) EU citizens in third countries. The intertwining roles of the EU and its Member States*. PhD thesis, European University Institute, Florence, 2015.

Nowhere has the transformative potential of transnational citizenship been greater than in the EU, where freedom of movement has triggered not only a need for top-down regulatory coordination, but also bottom-up adaptation of welfare regimes and social citizenship in the member states.

The transnational nature of EU citizenship greatly enhances the potential for conflict over the determination of specification of citizenship rights and duties that is already inherent in a multilevel structure where union citizenship is derived from national citizenship.

Politicising the struggles over EU citizenship

Thinking about *why* we ought to strengthen EU citizenship and *what* the EU citizenship is that should be strengthened pushes me to always the same conclusion. We can no longer rely on European nation-states to provide sufficient protection for democratic citizenship; nor can we rely on a functionalist teleology that pulls European states towards merging into a federal European republic. Both of these perspectives are out of tune with the way the European Union has evolved over time and the way it has constructed its citizenship.

Finally, we can also not rely on the EU as a guarantor of the rule of law and a correspondingly thin liberal citizenship at European level that secures free movement and non-discrimination and leaves it to the member states to sort out their social citizenship problems. Pace Christian Joppke, the EU is no longer just a regulatory regime. It has become a fiercely contested political arena that is not just located in Brussels, Luxembourg and Strasbourg, but is staged today in every national capital and election campaign.

Liberals tend to think of democracy as being only instrumentally valuable in order to maintain the rule of law that secures individual freedom. Liberal egalitarians regard it also as the political regime that offers the best chances to implement distributive regimes that promote social justice. Yet most liberals fail to give serious thought to what is necessary in turn to maintain democracy so that it can deliver these goods.

I have suggested above that the strongest justification for EU integration is that it protects the external and internal conditions for democracy in Europe. Internally, democracy is hard to sustain over time if citizens no longer believe that governments enjoy input legitimacy derived from being authorised through democratic elections and if citizens no longer share a sense of solidarity and special duties among co-citizens. These beliefs are better supported by theories that regard democracy as having not only instrumental but intrinsic value because it realises the ultimate value of popular self-government – albeit in necessarily imperfect ways.

If liberals abandon this idea it will be picked up by nationalist populists. This may not happen in good times where a permissive consensus allows the liberally minded elites to pacify citizens through what Ernest Gellner called the Danegeld of economic growth.¹⁴ But once output legitimacy becomes weaker in times of economic crises and straightjackets, input legitimacy will be the question around which political forces are mobilised.

Europe is in this situation right now. The social deficits of European citizenship have contributed to deepening an emerging cleavage between mobile and static populations that is reflected in political attitudes towards openness and closure.¹⁵ Ferrera's fine-tuned proposals how to combine a robust defence of free movement with European social protection policies show that the dilemma is not necessarily a tragic one. The very complexity of Europe's constitutional order creates opportunities for

¹⁴ E. Gellner. *Nations and Nationalism*, Oxford: Blackwell, 1983.

¹⁵ See R. Bauböck. 'The new cleavage between mobile and immobile Europeans', in: *Freedom of Movement under Attack: Is It Worth Defending as the Core of EU Citizenship?* (F. de Witte, R. Bauböck and Jo Shaw, eds.), EUDO Citizenship, 2016, pp. 19-20.

experiments and social policy inventions of this kind. Ferrera suggests at the end of his essay that a vision is needed to guide also incremental reforms. I think that maybe even more is needed now. The dilemma is a political one and needs to be addressed in the political arena. By mobilising a politics of resentment among immobile citizens, populists have seized one of its horns and use it as a weapon against the EU. Those who want to strengthen the European Union and its citizenship should not commit the error to seize the other horn and appeal only to the minority of mobile Europeans. The answer to the EU citizenship dilemma must be to grab both of its horns and to risk a rough ride on the back of the bull. This is what a woman in ancient Greek mythology did. Her name was Europa.

Why adding duties to European citizenship is likely to increase the gap between Europhiles and Eurosceptics

Theresa Kuhn*

Citizenship is not only a legal device to determine who is member of a political community and hence has both civic rights and duties. It has also always been a tool to integrate its members and strengthen a sense of collective identity and political legitimacy. With this integrative power in mind, Maurizio Ferrera proposes to add both a social dimension and some duties to European citizenship that should strengthen the social bonds across the EU. His proposals are innovative and intriguing, and have triggered a wide array of very insightful reactions in this forum debate. Rather than reacting to each of these policy proposals, I will focus on the proposed duties as they most closely relate to my research interests. I will then make two alternative proposals that target the stayers and try to mitigate the gap between winners and losers of European integration.

In short, Ferrera suggests to add both civic and financial duties to European citizenship. This makes a lot of sense as people often fail to appreciate the goods and services they get for free and start caring for a common good once they have to contribute to it. Let me explain why I nonetheless doubt that these duties will have the effect that Ferrera is hoping for. Rather than strengthening a sense of European identity across the board, these duties risk widening the gulf between pro-European citizens and those opposing European integration. We are currently witnessing the emergence of an increasingly important fault line in European politics between highly educated, mobile Europhiles, and lower skilled, immobile Eurosceptics who see themselves as (and sometimes are) the losers of European integration.¹ Let me discuss how the duties proposed by Ferrera have different implications for Europhiles and Eurosceptics and hence have unintended consequences for European collective identity.

Ferrera proposes to introduce the possibility of paying a voluntary, earmarked contribution to “Social Europe” on national tax forms. The rationale behind this proposal is that such a contribution could make the EU more salient and visible, and by paying into such a fund, citizens could be “nudged” into caring and feeling responsible for the European Union. Similar mechanisms have been thought to contribute to nation building, and experiments in behavioural economics indeed support the expectation that individuals become more caring once they contribute to a common good. One has to ask, however, who will be the European citizens that are ready to pay a voluntary contribution to “social Europe”. Very likely, this is the group of Europeans that is already convinced of the benefits of European integration. Recent studies on redistribution across the European Union show that citizens with cosmopolitan values are most willing to share resources with other Europeans, and they are most likely to support international redistribution in the EU.² Eurosceptics, however, most probably refrain from paying such a contribution, and will therefore also fail to develop the sense of responsibility and ownership through their contribution that Ferrera is hoping for.

Ferrera further suggests introducing an EU civilian defense and civic community service, again with the hope that taking part in such a service will instill some sense of community. In fact, such

* University of Amsterdam

¹ L. Hooghe and G. Marks. ‘Cleavage theory meets Europe’s crises: Lipset, Rokkan, and the transnational cleavage’, *Journal of European Public Policy*, 2017, online first, <http://dx.doi.org/10.1080/13501763.2017.1310279>. T. Kuhn, *Experiencing European integration. Transnational lives and European identity*. Oxford: Oxford University Press, 2015.

² T. Kuhn, H. Solaz and E. Van Elsas. ‘Practising what you preach: How cosmopolitanism promotes willingness to redistribute across the European Union’, *Journal of European Public Policy*, 2017, online first <http://dx.doi.org/10.1080/13501763.2017.1370005>. M. Bechtel, J. Hainmueller and Y. Margalit. ‘Preferences for International Redistribution. The Divide over the Eurozone Bailouts’, *American Journal of Political Science*, 58 (4), 2014, pp.835-856.

initiatives exist already. Over the past 20 years, 100.000 young people aged 17-30 have participated in the European Voluntary Service.³ Moreover, the newly created European Solidarity Corps provides a unique platform for young Europeans and organisations that wish to get involved in projects related to European solidarity. These are great initiatives, but will Eurosceptic youth be willing to participate? While I am not aware of any studies on the European Voluntary Studies, research on Erasmus exchange programmes is informative. While an Erasmus experience has the potential to foster European identity,⁴ students who take part in such an exchange are already more pro-European than their peers before going abroad.⁵ Moreover they primarily interact with other Erasmus students rather than the (immobile) local students. Such a self-selection might contribute to the widening gulf between Eurosceptics and Europhiles: People open to European integration self-select into participating in European voluntary services and into paying voluntary contributions. By doing so, they strengthen and reaffirm their pre-existing support for European integration, and are increasingly surrounded by like-minded, equally mobile individuals, while Eurosceptics remain in their own country and in their own Eurosceptic circles.

To sum up the argument so far, all these proposals primarily address those Europeans who are already European-minded and self-select into transnational interactions and European engagement. I suggest addressing the Eurosceptics, but in a somewhat different way than Ferrera. He proposes to compensate the stayers by means of an EU fund to ease the impact of mobility. Joppke has already pointed out that by doing so, European policy makers might reify and legitimise populist resentments by portraying movers as perpetrators and stayers as victims. One way to deal with this concern could be to frame these transfers differently. For example, rather than speaking of a “compensation for losers”, one could offer a “mobility bonus” to those regions (and their residents) that are able to attract large shares of EU migrant workers. These bonuses could be earmarked for investments into activating unemployed residents. Consequently, those Europeans who usually tend to see themselves as losers of European integration might feel that they benefit from being part of a winning region. My other concern about such a “compensation” policy is that it might “nudge” stayers into the wrong direction. If intra-European mobility indeed fosters European identity, and pro-European citizens self-select into mobility, then we should provide incentives for stayers to overcome their reservations and move around rather than giving them a premium for staying at home. This is a very difficult endeavor, and the Erasmus Plus Programme already tries to reach out to a broader cross section of society beyond university students.

Finally, given the widening gap between mobile and immobile Europeans, the answer to Euroscepticism might not lie in promoting more mobility across European member states but in addressing the increasing socio-economic divides and opening up the resulting “echo chambers” within countries. By trying to engage in a dialogue with Eurosceptic co-nationals, Europhiles might be able find to better answers than by repeating the Europhile mantra.

³ http://europa.eu/youth/sites/default/files/evs_factsheet_and_impacts_apr_2016.pdf

⁴ K. Mitchell. ‘Rethinking the ‘Erasmus effect’ on European identity’, *JCMS: Journal of Common Market Studies*, 53(2), 2015, pp. 330-348.

⁵ I. Wilson. ‘What Should We Expect of ‘Erasmus Generations’?’, *Journal of Common Market Studies*, 49 (5), 2011, pp. 1113-1140.

Enhancing the visibility of Social Europe: a practical agenda for ‘the last mile’

Ilaria Madama*¹

This Forum has, so far, addressed many ‘big issues’ about EU citizenship, but has paid much less attention to the ‘catalogue’ of suggestions [Ferrera](#) has made in order to “add stuff” to EU citizenship and to make it more visible and salient. I would like to focus on these proposals, all going in the direction of strengthening the social dimension of integration. As widely acknowledged in the literature, social policy institutions have historically served key political functions for state and nation building purposes in Western countries,² including in federal systems, where social citizenship – as noted also by [Seeleib-Kaiser](#) – has been used as an element to foster unity.³ Within the EU’s multi-level framework, the possibility to exploit the legitimating and credit claiming potential of supranational social programmes for polity-building and maintenance is being undermined by two elements: on the one hand, the small size of the EU social budget and, on the other hand, the indirect way of functioning of supranational programmes that makes EU measures and funds scarcely visible to citizens.

According to the 2017 Flash Eurobarometer on *Citizens’ awareness and perceptions of EU regional policy*,⁴ EU actions to promote social and economic development are largely unknown to respondents, with more than 63% never having heard of any EU co-financed project to improve the area they live in.⁵ The average value however conceals significant variation across countries: if 80% of respondents have heard about EU’s regional support in Poland, the share drops to 40% in Italy, 27% in France and 25% in Germany, sinking to a modest 16% in Austria and 14% in Denmark⁶.

These figures somehow confirm that little credit goes to the EU directly for her own efforts and spending in the social sphere. This does not come as a surprise. A broad strand of implementation studies has documented how the translation of higher level policies and goals into street-level actions is subject to a “variety of disjunctive influences”.⁷ This issue becomes even more relevant in federal and multi-level polities, in which higher-level policies are more at risk of getting unraveled at the frontlines,⁸ as street-level providers are not direct arms of the supranational level. The so-called last mile problem (the final link of the implementation chain) has a political dimension as well. The level of government/political authority that controls the last mile has an incentive to “capture” as much political credit as possible, even if resources (legal and/or financial) come from higher levels.

* Università degli Studi di Milano

¹ This text has been written in the context of the RESCEU Project (Reconciling economic and social Europe), www.resceu.eu, funded by the European Research Council (Advanced Grant no. 340534).

² Cf. P. Flora, Introduction and Interpretation, in P. Flora, S. Kuhnle, and D. Urwin (eds). *State Formation, Nation-Building and Mass Politics in Europe: The Theory of Stein Rokkan*, Oxford, U.K.: Clarendon Press, 1999, pp. 1–91.

³ H. Obinger, S. Leibfried, and F. G. Castles (eds). *Federalism and the Welfare State: New World and European Experiences*. Cambridge, U.K.: Cambridge University Press, 2005.

⁴ Flash Eurobarometer 2017 Available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/79239>

⁵ Regional policy is endowed with 351.8 billion euros and accounts for approximately a third of the EU budget for the current 2014-2020 budget cycle. It co-finances (primarily through the ESF, the ERDF and the Cohesion fund) projects to promote job creation, competitiveness, economic growth and citizens’ quality of life.

⁶ These findings partly reflect the diverse relevance and size of EU financing across countries, but still there is no strong correlation between level of awareness and per-capita EU funding.

⁷ Cf. P. J. May and S. C. Winter. ‘Politicians, Managers, and Street-Level Bureaucrats: Influences on Policy Implementation’, *JPART*, 19, 2007, pp. 453–476 (p. 454).

⁸ Cf. L. R. Keiser. ‘Street-Level Bureaucrats, Administrative Power and the Manipulation of Federal Social Security Disability Programs’, *State Politics & Policy Quarterly*, 1(2), 2001, pp. 144-164.

Some of the proposals suggested by [Ferrera](#) would work as antidotes against this syndrome, enhancing the EU's visibility for end-recipients at the terminal phase of the implementation chain. The current situation is more advanced on this front than [Ferrera](#) acknowledges. EU institutions (especially the European Commission) are aware of the last mile problem and have in fact already made several attempts to foster the visibility of EU's action at the points of actual delivery. I will illustrate this with the example of the Fund for European Aid to the Most Deprived (FEAD), a new EU social program that was launched in March 2014 with the aim of confronting the most severe forms of material deprivation by providing non-financial assistance to the most needy.

The FEAD, in brief

The assistance provided by the FEAD takes primarily the form of food, clothing and other essential stuff, accompanied by advice and counselling to help beneficiaries to re-integrate into society. The FEAD may also finance stand-alone social inclusion activities, which are designed to strengthen most deprived people's skills and capacities to help them overcome the situation of difficulty they face.⁹

Participation in the programme on the side of member states is mandatory and its governance model rests on a multi-level approach. Member states are required to prepare national Operation Programmes (OP), illustrating the domestic strategy for implementing the Fund during the 2014-2020 period. They can opt for two different OP types: OP I - covering primarily food aid and basic material assistance, complemented by social inclusion measures; and OP II - dedicated to stand-alone social inclusion measures.

Overall, the programme was endowed with 3.8 billion euros from the EU budget. In addition, member states have to top up the allocation through national co-financing.¹⁰

Despite the steering role played by European and national managing authorities in the management of the programme, the actual implementation of the measures at the street level primarily relies on partner organisations, i.e. civil society organisations such as food-banks and charities, that are in charge of the actual distribution of assistance and the provision of social inclusion measures.

In the context of this Forum's discussion, the FEAD experience is interesting in two main respects. First, the FEAD Regulation¹¹ details a number of requirements that, at the very end of the implementation chain, street-level providers have to comply with. These include the requests that "during the implementation of an operation, the beneficiaries of funding and partner organisations shall inform the public about the support obtained from the Fund by placing either at least one poster with information about the operation (minimum size A3), including about the financial support from the Union or a Union emblem of reasonable size, at a location readily visible to the public. This requirement shall be fulfilled, without stigmatising end-recipients, at each place of delivery"; and "any document, including any attendance or other certificate, concerning an operation shall include a statement to the effect that the operational programme was supported by the Fund".¹² This is a relatively new explicit strategy precisely aimed at claiming some symbolic and thus political credit at the end of the last mile.

⁹ See European Commission. The Fund for European Aid to the Most Deprived (FEAD), Breaking the vicious circle of poverty and deprivation, Brussels, European Commission, 2015.

¹⁰ The minimum co-financing rate is set at 15% of eligible public expenditures, but it can be reduced up to 0% for member states with temporary budgetary difficulties.

¹¹ Regulation of the European Parliament and of the Council no. 223 /2014.

¹² Art. 19 of the Regulation of the European Parliament and of the Council no. 223 /2014.

Second, the European Commission has made special efforts to strengthen awareness, as well as its reach over front-line partners, by financing the creation of a community of stakeholders, grouping together EU-level NGOs and EU institutions, partner organisations – in addition to national managing authorities. Within the activities of the FEAD Network, the European Commission organises face-to-face meetings and has created a social media platform to boost virtual interactions. In this case, the political goal is not only credit claiming, but more ambitiously that of establishing direct links between the supranational level and the social and 'civic' grass roots.

How compliant are local authorities and delivering agencies with these new regulatory provisions? How effective are they in raising awareness, enhancing visibility, generating symbolic credit? We do not have any empirical answer yet, these are, however, very relevant and intriguing questions for future research.

An EU Social Card?

Introducing an 'EU Social Card' aimed at easing citizen access to services, as envisaged by Ferrera, could be another promising strategy. It would be a small *riforma col cacciavite* (to use an Italian metaphor: a simple fix made with a screwdriver, with limited cost and high effectiveness) to make the social dimension of EU citizenship more visible and tangible. The EU has already introduced a *European Health Insurance Card* (EHIC), which entitles to medical treatment – on a par with nationals - in health emergencies as well as for pre-existing conditions while travelling through Europe. In February 2016, a pilot project for an *EU Disability Card* has been launched and it is meant to enable mutual recognition of disability status between EU Member States, making it easier for persons with disabilities to travel to other EU countries. There is also a *European Professional Card*, aimed at simplifying professional qualification recognition procedures for workers moving to other EU countries.¹³

These three initiatives provide tangible benefits only if there is a cross-border element – in Ferrera's terminology they are isopolitical instrumental facilitators. Ferrera rightly highlights, however, the need to empower and make more visible the stakes of European citizenship also for the stayers. Many contributions to this Forum have addressed Ferrera's proposals from a normative perspective. Some have raised doubts about the very fact that stayers may bear material burdens in the wake of mobility. The essential point, however, is that stayers – especially if low-educated and low-skilled – do *think/feel* (it is both a belief and an emotional reaction) that they indeed suffer some penalty. These beliefs/feelings may be normatively or factually unwarranted. But they exist, as profusely documented by empirical research. And they are politically relevant facts, closely linked with the rise of euro-skepticism. I agree with [Ferrera](#) that it would be politically sensible to de-activate the disruptive potential of these orientations through some EU programme dedicated to (or including) those citizens who, for any reason, do not exercise free movement and risk to find themselves in a situation of economic difficulty. Again, the EU is already moving in this direction, with a novel initiative aimed at addressing the up-skilling of low-qualified people.¹⁴ The programme targets adults with weaknesses in basic skills, knowledge and competences, who therefore are more likely to face a higher risk of unemployment, a higher incidence of poverty and social exclusion. In 2016 there were 63 million people – almost a quarter of the Union population aged 25-64 – with at most lower secondary education. A *Skills Guarantee*, the official name of the Commission's proposal,¹⁵ could really kill three birds with one stone: providing a concrete support to the most vulnerable (normative

¹³ See European Commission, *EU Citizenship Report*, 2017. http://ec.europa.eu/newsroom/document.cfm?doc_id=40723

¹⁴ Cf. Council Recommendation of 19 December 2016 on *Upskilling Pathways: New Opportunities for Adults*. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2016_484_R_0001

¹⁵ European Commission, *A New Skills Agenda For Europe*, 2016, COM(2016) 381 final. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0381&from=EN>

rationale), making the EU economy more competitive via an enhanced human capital (functional rationale), and bringing the stayers closer to (i.e. more loyal and supportive of) the European Union as such: a political rationale well worth pursuing.

Towards a ‘holding environment’ for Europe’s (diverse) social citizenship regimes

Anton Hemerijck*

Maurizio [Ferrera](#) has written an important and timely response paper to Rainer Bauböck’s call to “add stuff” to EU citizenship. Standing on the shoulders of the equally perceptive and nuanced ideas on citizenship rights by T.H. Marshall, [Ferrera](#) ventures to explore the political space for raising, in an incremental fashion, elements of ‘social’ citizenship to the level of the EU, in full recognition of the overriding significance of the member states as the principal providers and guardians of highly diverse welfare benefits and services. [Ferrera](#), like Marshall before him, believes that social citizenship does not only provide individuals with an elementary right to economic opportunity and security, through poverty relief, universal access to health care and education, labour market services, unemployment, sickness and old age insurance, but that social citizenship also encourages a sense of community membership and belonging, referred to by Marshall as sharing “to the full in the social heritage and to live the life of a civilised being according to the standard prevailing in society”.¹ It is this sense of moral integrity and community loyalty, historically an important (by-)product of national welfare state building, that the EU sorely lacks. More perversely, it has been argued, among others by Fritz Scharpf and Wolfgang Streeck,² that the intricate connection of EU citizenship to free movement in the internal market and, for the Eurozone, budgetary rules setting limits to discretionary fiscal reflation in times of demand-deficient unemployment, in effect undermines national welfare state capacities to maintain social citizenship achievements, won over decades of national political struggle for the improvement of people’s life chances and the protection of vulnerable citizens – the aged, the sick, the unemployed – from economic, social and political marginalisation.

[Bauböck’s](#) rejoinder to [Ferrera’s](#) opens by explicitly acknowledging that EU citizenship was conceived ‘by stealth’ by the Court of Justice of the European Union (CJEU) in the slipstream of the Maastricht Treaty. The political objective at the time was to seal the internal market with the single currency. As these institutional breakthroughs were negotiated at a time when the ‘supply side’ revolution in economic theory was riding high, their architects generally believed that the Single European Act (SEA) and the Economic and Monetary Union (EMU), and associated budgetary rules, would force member states to keep their ‘wasteful’ welfare states in check. Indeed, the primacy of internal market, together with the prohibition to revert to currency devaluation in times of mass unemployment for the Eurozone, constrained national social citizenship regimes, ‘by stealth’.

Frank [Vandenbroucke’s](#) post-hoc legitimisation, with reference to John Rawls, prioritising ‘fair equality of opportunity’ over the ‘difference principle’ of distributive justice, implicitly assumes a well-delineated European polity that is able to work out an explicit compromise between these two principles. The EU is not really a political union in terms of democratic self-determination, although it is currently experiencing growing pains to that effect. Its borders change with each wave of enlargement and now it is confronted with a first case of withdrawal. It is tragically ironic that the United Kingdom, whose governments in the past have been the strongest force behind the internal market and enlargement and very vocal in scorning Europe’s social dimension, has decided to leave the EU on the sentiment that open markets have gone too far. More to the point, the deepening of European economic integration of the 1990s was never presented as an explicit citizenship regime change to national electorates. Market integration and the liberalisation of public services was the EU’s primary *raison d’être* – think of the Bolkestein directive. Leaders at the time of the Maastricht

* European University Institute

¹ T. H. Marshall. *Sociology at a Crossroads and other Essays*. London: Heinemann, 1963, pp. 74

² F. W. Scharpf. ‘The European Social Model: Coping with the Challenges of Diversity’, *Journal of Common Market Studies*, 40(4), 2002, pp. 645–70; W. Streeck. *Buying Time: The Delayed Crisis of Democratic Capitalism*, New York: Verso, 2014.

Treaty sold the internal market and the currency union as a way to enlarge the economic pie for domestic welfare redistribution. Writing in the late 1990s, Fritz Scharpf already conjectured for the then 16 EU member states that regulatory competition, especially in the area of corporate taxation, was impairing the economic viability of national welfare states, while (welfare) migration, under the EU's freedom-of-mobility rules, would damage their political viability.³ We know that Scharpf's dystopia of ruinous competitive social dumping has not come true for two important reasons. The first is that most of the successful European economies, according to the Global Competitiveness Index of the World Economic Forum (2014), are high-spending welfare states, including, Finland, Germany, the Netherlands, and Sweden, with levels of social spending hovering between 25% and 30% of GDP. At a minimum, the evidence that high social spending does not per se hurt competitiveness, presses us to consider the quality rather than the quantity of social spending in trying to better understand the relation between welfare provision and economic prosperity in rich democracies.

The second reason is that the deepening of the internal market has been accompanied by a considerable expansion of EU cohesion policy, breakthroughs in social security coordination and important secondary legislation and CJEU jurisprudence, referred to by Suzanne [Schmidt](#), on health and safety, anti-discrimination, equal pay and equal treatment, part-time and temporary work, and parental leave, modelled generally after the better performing countries rather than the lowest common denominator. But with the latest 2004 and 2007 waves of enlargement, in conjunction with the Eurozone fallout of the global financial crisis, magnifying asymmetric shocks without any measure of burden sharing or collective re-insurance, trapping Eurozone debtor countries in 'bad' economic and socially imbalanced equilibria,⁴ we have to sadly acknowledge that Scharpf was pretty much on the mark.

In the current predicament, electorates continue to hold national politicians accountable for socio-economic (mis-)fortune, not EU institutions. With political accountability bound up with popular welfare states, it is particularly difficult to renege on established social contracts in hard economic times. In addition, the failure to resolve the euro crisis at the supranational level has increasingly been met by rising eurosceptic domestic pressures to water down ruling governments' commitments to European solutions, especially in the politically sensitive policy areas of welfare provision. It therefore comes as no surprise that today anti-EU right-populist parties are the most ardent defenders of the post-1945 social contract for 'natives' only, proclaiming that retirement at 65 can be sustained through protectionism, a ban on migration and by bidding farewell to the internal market and the single currency. On the other hand, eurozone crisis management hardly departed from the deeply entrenched worldview, anchored in the Maastricht Treaty, that generous welfare provision harms competitiveness. Fiscal conservatives, including Northern social democrats, have championed intrusive cost-containment in exchange for fiscal bailouts, in the Eurozone periphery, to make up for a lost decade in 'structural reform'. Mario Draghi, being interviewed by the *Wall Street Journal* at the height of the Eurocrisis in early 2012, similarly declared the 'European social model' as 'long gone'. Between right-populist welfare chauvinism and ongoing calls for overnight fiscal consolidation, a "political-institutional vacuum" has emerged at the heart of the European project. Even if populist parties do not enter office, to the extent that they successfully portray a nostalgic image of a national welfare paradise lost as a result of globalisation and mass migration promoted by the EU, mainstream parties, in- and outside of government, face severe difficulties in claiming credit for making national welfare states more future proof through improvements in family welfare in return for a higher pension age.

The Juncker Commission has taken on an ambitious number of social policy initiatives, including the Youth guarantee, the ErasmusPro initiative for cross-border initiatives, the New Skills Agenda for Europe, the European Pillar of Social Rights,⁵ the Social Scoreboard for assessing progress towards a

³ F. W. Scharpf. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press, 1999.

⁴ P. De Grauwe. 'The Governance of a Fragile Eurozone', *CEPS Working Document*, no. 346, Brussels: CEPS, 2011.

⁵ European Commission. *The European Pillar of Social Rights*, Brussels: Publication Office of the European Union, 2017

social 'triple A' for the EU. Most of these initiatives are being pursued in a seemingly uncoordinated manner, without an overall ideational framework or policy paradigm. What's more, time and again, concerns about inequality, poverty and mass (youth-)unemployment are relegated to 'auxiliary' status and remain subordinated to the Six-Pack (2011), the Fiscal Compact (2012) and the Two-Pack (2013),⁶ prescribing balanced budgets irrespective of urgent needs. As a consequence, and in spite of the post-crisis lip service paid to social investment by the European Commission, the 'default' policy theory of market liberalisation, balanced budgets, hard currency, and welfare retrenchment has not been questioned.

With high (youth) unemployment, rising poverty and inequality as the breeding grounds for xenophobic populism and Brexit-type political contingencies, the EU and its member governments have to break with the 'permissive consensus' of relegating social policy to the jurisdiction of the nation state, under the proviso of 'subsidiarity', and market and currency regulation to the EU, as if this conjured up a 'happy' equilibrium. It does not. And here lies, as Maurizio [Ferrera](#) makes crystal-clear in his essay, the fundamental *political* reason why adding 'social' stuff to EU citizenship can no longer be dismissed as wishful dreaming. Indeed, a transformative turn, in the conceptualisation of Paul Magnette, from the 'isopolitical' citizenship right of free movement and the destabilising externalities of the Treaty to the 'sympolitical' re-confirmation and enlargement of EU social citizenship, is imperative. The isopolitical limitations of EU action in the social domain have to be confronted on two fronts: 1) in terms of political priorities threatening the very legitimacy of the European project, and 2) in terms of sound comparative evidence of how dynamic social policies can help achieve prime EU political objectives of growth, jobs, competitiveness and social inclusion.

Before we move forward, there is an important caveat to be discussed. The effective delivery of social citizenship rights implicates state steering capacity, not merely regulation. Civil rights, rights to property and respect for the rule of law are operationally precise and can, as such, more easily be enforced. However, today the European Commission is unable to retroactively uphold the Copenhagen accession criteria, which Hungary and Poland accepted when joining the EU, for the likes of Viktor Orban and Jaroslaw Kaczynski, further weakening thereby the legitimacy of the EU in many member states with strong commitment to the rule of law. Social rights, defined in terms of substantive need, are of a different breed altogether. The right to a minimum income, which is in the words of Marshall 'not proportionate to the market value of the claimant', obliges the political community to interfere with and modify the distributive consequences of cyclical and volatile market processes. This requires 'positive state capacities',⁷ both in terms of 'bending' market processes through taxation and compulsory social insurance contributions and also through provision of benefits and service delivery, which the EU, as a mere regulatory regime, in the words of Christian [Joppke](#), lacks by deliberate intention. Consequently, the question of 'how much' is good enough, and 'what kind of benefits and services' are required, on behalf of 'what categories of (deserving) citizens', and 'at whose expense' are fundamental political questions, which, for the time being, cannot be settled at the level of the EU.

I am in full agreement with Maurizio [Ferrera's](#) diagnosis of the post-crisis EU social malaise, imbalance and contradictions and the need for the 'sympolitical' change of heart that he suggest. When it come to policy proposals, [Ferrera](#) opts essentially for a 'compensatory approach' that aims at de-activating the (perceived) disintegrative dynamic of EU civil citizenship undermining domestic social citizenship regimes, by focusing on policy support for the so-called 'stayers', those who do not exercise free movement rights. Ferrera wants to empower them through services and benefits that help

⁶ European Commission. 'Toward Social Investment for Growth and Cohesion – Including Implementing the European Social Fund 2014-2020', Brussels: Publication Office of the European Union, 2013

⁷ P. Genschel and M. Jachtenfuchs. 'From market integration to core state powers: the Eurozone crisis, the refugee crisis and integration theory', *EUI Working Papers*, Robert Schuman Centre for Advanced Studies, European University Institute, 2017.

to mitigate the disruptive effect of EU economic integration on national labour markets and welfare regimes.

[Ferrera's](#) proposals immediately beg the questions of 'who to compensate?'; 'for what exactly?', 'how much?', 'through which kind of benefit or service?', and 'who is to pay?' for the new policy provisions. And 'what about other losers?', such as countries suffering a brain-drain of their college graduates under conditions of high youth unemployment, reinforced by the Eurozone austerity reflex? I am also doubtful, at this current juncture, that we will really be able to identify and measure the bewildering complexity of the negative externalities at play through improved policy-evaluation, as suggested by Julia [Hermann](#). And whether 'adding stuff' through a compensatory enrichment of EU social citizenship would strengthen a European sense of community is another open question. Although I concur with the general sympolitical re-direction of the substantive initiatives [Ferrera](#) puts on the table, I would rather pursue a more roundabout gradualist route to EU social citizenship progress, whereby the EU would assertively back and bolster the problem-solving capabilities of semi-sovereign national welfare states, rather than compensate perceived losers from economic integration. Rather than moving towards a broader Social Union, as suggested by Andrea [Sangiovanni](#), I plead for an EU support for national solution that allows the nation states to better perform their welfare functions of social protection and social promotion in their highly diverse domestic jurisdictions. If successful, EU support for national welfare provision could very likely reinforce popular loyalty to the EU as a common possession of a union of welfare states. But I am not sure whether it is essential for the EU to claim political credit, as Maurizio [Ferrera](#) intimates. In this respect, I guess, I am in-between [Ferrera's](#) supranational stance of and Richard [Bellamy's](#) inter-national position.

In my monograph *Changing Welfare States*,⁸ I coined the notion of an assertive 'holding environment' as a quintessential EU support structure for (active) welfare states to prosper in the single market and the currency union. The notion of a 'holding environment' refers to a zone of resilience based on shared values and a common purpose, matched by competent institutions, in times of painful adaptation. The function of a 'holding environment' is to mitigate stress and thereby uphold the integrity of national welfare states, but also to maintain pressure to mobilise rather than overwhelm domestic reforms with only disciplinary intrusion, and to back up progress on tough problems with light at the end of the tunnel. The 'holding environment' for sustainable welfare provision, contrasts sharply with the notion of the single market and the single currency as intrusive welfare state 'disciplining devices'. There is important progress underway. In terms of shared values, the presentation of a European Pillar of Social Rights by the European Commission is an important step forward in comparison to the more ambivalent 'social market economy' ambition laid down in Articles 2 and 3 of the Lisbon Treaty. The Social Pillar recommendation of the Commission sets out 20 key principles, defined in terms of rights in support of fair and well-functioning labour markets and welfare systems. The Social Pillar, likely to be endorsed by the European Council at the Social Summit for Fair Jobs and Growth in Gothenburg on 17 November 2017, is a good example of the articulate translation of the latent commitment to social solidarity that the EU member welfare states, in spite of their many differences, share in terms of key principles without interfering deeply with the division of labour between member states, social partners and the EU. All in all, the 20 principles cover a well-balanced portfolio of 'fair-playing-field' social and employment regulatory provisos, including equal treatment, gender equality, work-life balance, health and safety, minimum wages and social security rights. The latter comprise unemployment benefits, old age pensions, social protection and health care. Significant attention, moreover, is devoted to 'capacitating' social rights, such as the right to essential service, inclusive education and training over the life course, active labour market policy support, childcare and family benefits, the inclusion of people with disabilities, long-term care, and housing assistance. These echo the 2013 *Social Investment Package for Growth and Social Cohesion* of the Barroso Commission, urging EU Member States to advance post-crisis welfare reform

⁸ A. Hemerijck. *Changing Welfare States*, Oxford: Oxford University Press, 2013.

strategies that help 'prepare' individuals, families and societies to respond to the changing nature of social risks in advanced economies by investing in human capabilities from early childhood through old age, rather than pursuing policies that merely 'repair' social misfortune after moments of economic or personal crisis. The Pillar principles, articulated as rights, can come to serve as a reference framework to fundamental values that the EU and the member states share. As such, the Pillar may well enhance a sense of community membership. However, for an effective sympolitical 'holding environment', European initiatives that make a contribution to strengthening the problem-solving capabilities of national welfare states, it is quintessential to ensure that the Pillar is not an empty shell. More tangible EU institutional support is called for to uphold and back up the integrity of national welfare states.

Back in 1999, Fritz Scharpf had the ingenious idea of introducing an EU agreement on not reducing overall social spending relative to GDP, so as to pre-empt ruinous competition among European welfare states, leaving the member states at liberty to decide on levels of benefits and services, modes of delivery and financing techniques through national democratic processes, but not for the purpose of economic competition. If such a rule had been adopted at the time, to be sure, the social and political consequences of some bailout programs administered by the Troika of the EU, the ECB and the IMF would have been less socially disruptive, especially in the case of Greece. A more recent proposal for the Eurozone is to introduce a 're-insurance scheme' for national unemployment insurance systems. The idea is that unemployment insurance is a core feature of national welfare states with a highly effective macroeconomic stabilisation component and with uptakes increasing during downturns when resources are constrained by the need of fiscal consolidation. A pan-Eurozone unemployment re-insurance scheme would provide more fiscal breathing space for countries asymmetrically affected by the downturn, which in turn could trigger faster and stronger recovery (see also [Vandenbroucke](#)'s contribution).

My own proposal is to discount social investment policies from the fiscal criteria of the Stability and Growth Pact (SGP) and the Fiscal Compact in order to create the necessary fiscal space within a bound of 1 to 2 percent of GDP for the coming decade. Inspired by the 2013 *Social Investment Package*, I have come to develop an operational taxonomy of three interdependent and complementary social policy functions for further empirical analysis and assessment: (1) easing the flow of contemporary labor-market and life-course transitions; (2) raising and upkeeping the quality of the *stock* of human capital and capabilities; and (3) maintaining strong minimum-income universal safety net *buffers* for micro-level income protection and macro-economic stabilisation in support of high employment levels in aging societies. In this taxonomy, the buffer function is primarily about securing adequate and universal minimum income safety nets but is also able to stabilise the business cycle against economic shocks. Next, the stock function concerns the development, upgrading and upkeeping of human capital and capabilities over the life course with wider bearings, relating to the provision of 'capacitating social services', bringing under one roof adjustable bundles of professional assistance in parental counselling, pre-school, care for the elderly, including skill enhancement and training services in case of unemployment, family-care and housing support. The flow function, finally, is about improving and easing gender-equal access to employment over the lifespan, making sure that unemployed workers can return to work as fast as possible through active labour market policies and job matching so as to 'make labour market transitions pay' and equalize work-life balance for men and women. The available evidence suggests that integrated stock, flow and buffer policy mixes increase the returns on human capital in terms of employment, growth, generate higher tax bases and more inclusive economic security, and mitigate inequality, (child-)poverty, welfare dependency, and even crime.⁹

If we consider the three policy functions in terms of a viable division of responsibilities between the EU and the member states, then clearly the function of social security buffers, as the core function

⁹ A. Hemerijck (ed.). *Uses of Social Investment*, Oxford: Oxford University Press, 2017.

of the modern welfare state, jealously defended by domestic political actors, should remain in the remit of the national welfare state. If France and Italy, through democratic processes, agree to spend most fiscal resources on pensions, this may not be wise in the light of adverse demography, but there is very little that a supranational organisation can do, except to advocate that sustainable buffers are in the long run best served by investing in future productivity. The flow function, concerning labour market regulation, collective bargaining, work-life balance and gender equality with a aim of fostering adaptable family-friendly employment relations and careers in the knowledge economy, can be well served by mutual learning and monitoring processes of open coordination, engaging national administrations and relevant EU expert committees and the social partners.¹⁰ The experience of the crisis, especially the Eurozone austerity reflex, has resulted in a public investment strike, most unfortunately in the area of human capital stock capabilities, lifelong education and training, with significant negative consequences for future growth, employment and productivity in knowledge economies facing adverse demography.

If the European Union is considered the trade union of the next generation, as Mario Monti allegedly intimated, then surely the EU, with a youth unemployment rate close to 50% in Spain and Greece, is not doing a good job in terms of interest representation and collective action. Granting more fiscal room for manoeuvre (within bounds) to countries that experience excessive social and macroeconomic imbalances would enable them to secure sustainable financing of education and skills upgrading before the ageing predicament becomes truly overwhelming. Exempting such investments from SGP deficit requirements would render greater fiscal space to member states that opt for social investment reform, without trampling on eurozone fiscal rules. For countries struggling to commit to a balanced budget without abandoning their domestic social commitments such exemptions could foster immediate gains in early childhood, female employment, improved work-life balance and reduced levels of early school leaving with positive medium-term outcomes in employment, educational attainment and ultimately pension cost-containment resulting from higher levels of employment.

Domestic reform ownership is crucial. That's why the initiative for proposals lies with national actors. Italy and Spain could opt for the creation of immediate (and primarily female) jobs by making huge investments in high quality childcare centres. France could pursue a radical improvement of its system of vocational education and training based on the Finnish and German examples, while Belgium, the Netherlands and Slovenia could ramp up their rather regressive lifelong learning arrangements. At the same time, discounting human capital stock investments should be closely monitored through the European Semester in terms of effective alignments with labour market regulation and employment relations that help to ease labour market and life course transitions for individuals and families and facilitate strong (universal) social security reform across Euro-member states.

Beyond incentivising domestic social investment reform ownership through positive – carrot rather than stick – conditionality, there is a real need to streamline the EU budget to further leverage social investment returns in the European Social Fund (ESF), the Youth Employment Initiative (YEI), the Youth Guarantee, the European Globalisation Fund (EGF), and the European Fund for Strategic Investments (EFSI), known as the Juncker Plan, by giving priority to mitigate cross-border externalities and to positively foster resilient European welfare states.

Looking ahead, Europe is in dire need of a growth strategy that is economically viable, politically legitimate and seen as socially fair. Given the magnitude of the hangover from the sovereign debt crisis and the dismal experience of social investment reform in Southern Europe prior to the Euro crisis, there are no quick fixes. The EU must, however, break with the policy legacy of relegating social investment reform to being a 'handmaiden' to isopolitical citizenship only – wise to pursue

¹⁰ J. Zeitlin. *Transnational Transformations of Governance: The European Union and Beyond*, Amsterdam: Amsterdam University Press, 2011.

when the economy expands, but prohibited when the chips are down. Only then can social citizenship rights become embedded in a sympolitical 'holding environment' that commits, bonds and integrates the EU and the member states to the shared welfare commitment of civilised living in the EU.

Imagine: European Union Social Citizenship and Post-Marshallian Rights and Duties

Dora Kostakopoulou*

Writing in 1959, Ortega y Gasset noted that ‘reality is not closed and reduced to the past and the present, but holds open the frontier of the future in which the real will be something that has yet to come into being.’¹ [Ferrera](#) and the other contributors in this forum have opened up a debate on the future of EU citizenship and argued for its ‘renovation’ in the light of rising Euroscepticism and nationalist centrifugalism in the member states. [Ferrera](#) shares Bauböck’s diagnosis that EU citizenship has not met its integrative potential. While renovation is not always innovation, [Ferrera](#) has laid down the path for innovative thinking about the (future) content of EU citizenship and for the introduction of ‘soft’ citizenship duties which would strengthen the ties that bind EU citizens. I am in favour of ‘soft’ as well as ‘hard’ EU citizenship duties and I argue here that EU citizenship is not, and cannot be, duty free.

My argument is developed in three steps; namely, I discuss a) why EU citizenship is not duty-free, b) why it cannot be duty-free and c) what kinds of explicit duties it could incorporate in the future. I should mention at the outset that I fully share [Ferrera](#)’s call for a social EU citizenship and the addition of citizenship duties. But, like Joppke, I disagree with the justification provided and with [Ferrera](#)’s confinement of duties to EU citizens. In addition, it seems to me that we might wish to rethink the functionality and the effectiveness of providing ‘instrumental resources (money, benefits, infrastructures and so on) that could make EU citizenship more salient, visible and tangible for wide constituencies’ ([Ferrera](#)). It might be preferable to draw on normative principles and the values of the EU in order to provide a compelling justification for the development of an EU social citizenship (see Sangiovanni and Bauböck) and for the addition of EU citizenship duties. The social dimension of EU citizenship must be grounded on values, and not on money. Material benefits and instrumental means create an impression that the EU should be ‘purchasing’ the loyalty of EU citizens, more often than not do not guarantee a long-term identification with ‘Europe’ – this is confirmed by the Pro-Leave votes in Wales in the UK’s ‘Brexit’ Referendum on 23 June 2016 – and cannot be a substitute for the incorporation of durable and meaningful social citizenship rights and duties into the EU citizenship provisions.

EU Citizenship is not duty-free

EU citizenship does not encompass duties for individual citizens, but it is not duty-free. It contains a number of implied duties on the part of the member states (and their authorities) and the EU institutions designed to ensure the implementation of EU citizens’ rights (i.e., mobility rights, political rights, the right to diplomatic and consular protection when travelling abroad and the rights contained in Article 24 TFEU). Article 20 TFEU and the subsequent articles state clearly that ‘citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties’ and that they shall have the rights to move and reside freely, to vote and to stand as candidates in elections to the European Parliament and in municipal elections in the member states of residence, to enjoy diplomatic and consular protection abroad and to non-judicial means of redress, such as those stated in Article 24 TFEU. The word ‘shall’ implies categorical duties on the part of the member states to respect and to realise EU citizens’ rights. In addition, the principles of non-discrimination on the ground of nationality and equality underpin and justify EU citizens’ ‘civil rights’, the right to equal treatment in the member state of residence and political rights. The European Union, on the other hand, has the duty to observe the principle of equality of its citizens in all its activities (Article 9 TEU). EU citizens

* University of Warwick

¹ J.Ortega y Gasset. *Man and Crisis*, Ruskin House, London: G. Allen and Unwin, 1959, p. 210.

‘shall receive equal attention from its institutions, bodies, offices and agencies’ (Article 9 TEU). While all this is true, [Ferrera](#) is proposing a different kind of dutiful action and participation. He would like to see: a) the empowerment of stayers through facilitating initiatives and a partial compensation for the negative externalities produced by free movers; b) an increase in the visibility and salience of EU citizenship by *inter alia* strengthening its social dimension and c) the introduction of EU citizens’ voluntary financial contributions for Europe and civic duties. Such reforms would strengthen the integrative function of EU citizenship and sustain bonds of solidarity. I am in favour of both (b) and (c), but, like Joppke and Kuhn, I have several reservations about (a) which are outlined below.

Why EU citizenship cannot be duty-free

One does not have to graft the Marshallian paradigm of civil, political and social rights onto EU citizenship in order to justify the need for a social EU citizenship. Nor does one have to compare national and European citizenships in order to conclude that EU citizenship remains relatively underdeveloped in comparison to its national counterpart. Citizenship rights (and duties) can only be exercised in freedom and dignity and the latter necessarily involves a social welfare dimension. Without it, the free exercise of rights loses its meaning since the abstract, autonomous individual remains unshielded from the contingencies of imposed vulnerability.

The Court of Justice of the European Union (CJEU) has emphasised the need for the protection of vulnerable EU citizens and has justified the extension of the principle of equal treatment to the field of social assistance in the member state of residence on a number of grounds; namely, contribution (for active economic actors), authorised residence, one’s sufficient degree of integration or his or her ‘real link’ with the host society or the employment market and permanent residence. Job-seekers’ allowances and other benefits have also been justified on the basis of an anticipated contribution-based solidarity and the need to facilitate a job-seeker’s integration into the employment market and his or her active participation in it.² More importantly, those who assess whether a mobile Union citizen has a real link to the host society or the domestic employment market are the member states’ authorities – not the EU.

True, the politicisation of free movement in the UK and other member states has accentuated concerns about the preservation of national welfare systems which have already been hit by the sovereign debt crisis and years of austerity, but it, nevertheless, remains the case that claims about welfare tourism in the EU in the main are unsubstantiated empirically. [Ferrera](#) acknowledges this. But he also draws attention to the war of narratives and discourses in certain member states and the uneasiness about ‘the burdens of solidarity’ or the ‘social impact of mobility’ in certain areas. As a remedy, he proposes the creation of an EU fund to ease the impact of mobility and for other measures to empower the stayers (an EU social card and universal transferable vouchers). But such a proposal entails risks. Joppke has accurately articulated them. It would legitimise the ‘demonology of European populists’ (Joppke, p. 2); it would ‘divide the European citizenry into two unequal halves, movers and stayers’; and it would depict ‘mobility as harmful and staying as virtuous’. All these are important considerations. To these, I would add that mobility is not cost free for ‘free movers’ and that ‘uprootedness’ and settlement in another member state are not easy, straightforward and risk free processes. Everything has its price. The sad predicament and unacceptable experiences of xenophobia and discrimination of EU citizens settled in the United Kingdom following the Brexit referendum of 23 June 2016 confirm this. In addition, the EU citizenship provisions do not reflect the full panoply of rights that ‘stayers’ derive from EU law. One could briefly mention their access to services of general

² See, for example, Case C-224/98 Marie-Nathalie D’Hoop v Office national de l’emploi [2002] ECR I-6191; C-138/02 Brian Francis Collins [2004] ECR I-2703; Joined Cases C-22/08 and C-23/08 Athanasios Vatsouras v Arbeitsgemeinschaft (ARGE) Nurnberg 900 and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nurnberg 900, Judgement of the Court of 4 June 2009.

economic interest, consumer rights, anti-discrimination rights, equal pay as well as to the rights protected by the EU Charter of fundamental rights.

If we wish to make ‘Europe’ a bit better, we would need to transcend the logic of ‘winners’ and ‘losers’. Whatever one’s mobility status, class origin, gender, race, ethnicity, nationality, religion, sexual orientation, ability or disability and age, the kind of trust and solidarity that exist in communities of strangers is based on institutions that promote rights and welfare for all. This form of trust and loyalty expands the potential radius of solidarity and is often more durable because it is not based on narrow perceptions of self-interest or short-term calculations of one’s contributions or misperceptions about ‘others’ (i.e., non-nationals) and their role and contributions to society. In this respect, instead of justifying a stronger social dimension of EU citizenship and social duties on the basis of a fair (or fairer) mobility agenda, it would be preferable to support the EU social pillar³ [3] and a social citizenship agenda. This leads me to the final point about what kinds of duties EU citizenship could include.

What kinds of EU citizenship duties and who should be the duty-bearers?

Since the European Union is a multi-layered polity comprising of ‘its peoples’ (Article 3(1) TEU) and the member states (and their authorities), there is no need to confine future citizenship duties to EU citizens. Indeed, one could envisage a ‘variable geometry’ of duties addressed to Union institutions, the member states and to EU citizens. With respect to EU citizen duties, [Ferrera](#)’s proposals of introducing some voluntary contribution for ‘Europe’ and a pan-European civil service for young people are meritorious. Kuhn has also mentioned the newly created European Solidarity Corps (operational on 7 December 2016) and Seeleib-Kaiser supports the introduction of a European Minimum Income Scheme. I endorse all of the above. President Juncker has also displayed leadership in commencing a discussion, and an action plan, on the social dimension of Europe. The European Pillar of Social Rights will be proclaimed jointly by the European Parliament, the Council and the Commission at the forthcoming Gothenburg Social Summit on 17 November 2017. Some of the 20 key principles of the Pillar would be an excellent addition to the existing provisions of EU citizenship. These do not differentiate between movers and stayers. Their addition would make EU citizenship an institution relevant to all EU citizens.

Let us imagine an EU citizenship with explicit references to social protection (Principle 12), minimum income to ensure dignified living (Principle 14), access to health care (Principle 16), assistance for the homeless and the combatting of homelessness (Principle 19), protection of health and safety at work (Principle 10) and the right to fair wages and protection from dismissal (Principles 6 and 7). Such social citizenship rights would reflect Bauböck’s suggestion of ‘grabbing both horns of the dilemma’ and ‘risking a rough ride on the back of the bull’. But it would also show that the 21st century EU citizenship, like the early 1990s TEU’s version, encompasses vision. It directs our lives with due regard for humane and dignified living, so that in view of it we may live and cooperate with others.

Besides social citizenship rights and duties, one could also envisage the addition of other citizenship duties. For instance, the draft text on Union citizenship included an environmental right and duty: ‘citizens should have a right to enjoy a healthy environment coupled with an obligation to preserve and protect it’. Writing in the 1990s, I argued that a clause could be inserted in Part 2 TFEU stating that ‘all Union citizens have an obligation to display solidarity with other Union citizens and nationals of third countries. This obligation entails respect for each person’s dignity and the rejection

³ European Commission. *The European Pillar of Social Rights*, 24 October 2017. https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en.

of any form of social marginalisation'.⁴ More recently, I have argued that 'possible social citizenship duties that might find their way into the TFEU's provisions on EU citizenship in the future are: a) a duty addressed to both the member states and the Union to promote the equal standing of all citizens in the EU by taking all possible measures to promote labour market participation and to fight poverty, homelessness and social exclusion; b) a duty on the part of the member states and the Union to promote inclusive access to the resources, rights and opportunities needed for participation in the democratic life of the Union; and c) an institutional equality duty applying to all levels of policy-making' [5].⁵

The EU would also benefit from the incorporation of the right to good administration which is enshrined in Article 41 of the EU Charter of Fundamental Rights into the EU citizenship provisions, thereby extending the scope of the corresponding duty-bearers to the member states (and all public bodies). According to Article 41(2) of the EU Charter this right includes the right of every person to be heard before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his or her file and the obligation of the administration to give reasons for its decisions. Given that most of the decisions that affect EU citizens (be they movers or stayers) are taken by the authorities of the member states, it is difficult to understand why only EU institutions should have the obligation to observe good and fair administration. Article 41(3) of the Charter also gives every person the right to 'have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the member states'. Similarly, all public bodies in the member states should be bound by the same obligation. Freedom cannot be separated from dignity and the rule of law and the making of decisions by public bodies in the member states without giving an opportunity to those adversely affected to be heard or without a clear and adequate reasoning epitomises disrespect for citizens and contempt for procedural legality.

Looking Forward

This interpretation also reveals a post-Marshallian template for EU citizenship. I am certain that scholars, policy-practitioners, civil society representatives as well as the readers of this forum will have more ideas about future EU citizenship rights and duties. Instead of devoting precious time, energies and resources to wasted frictions and unnecessary quarrels, let us welcome the future and reflect on the proposals and the thoughts expressed by [Ferrera](#) and all the other contributors in this forum. Free movement and equal treatment (the civil dimension), political participation (the political dimension) and social protection (the social dimension) are important for the development of the self and the flourishing of societies. One cannot promote one dimension and restrict or overlook the others; all are implicated in practice and interact with one another. Similarly, rights cannot exist without duties, be they explicit or implied, perfect or imperfect. An EU citizenship that reflects the values of the EU (Article 2 TEU) and the goals of the European integration project (Article 3 TEU) must have both.

⁴ D. Kostakopoulou. 'Towards a constructive theory of citizenship in the European Union', *Journal of Political Philosophy*, 4(4), 1996, pp. 337-58.

⁵ D. Kostakopoulou. 'European Union citizenship rights and duties: civil, political and social', in E. Isin and P. Nyers (eds.), *Routledge Handbook of Global Citizenship Studies*, London: Routledge, 2014, p. 434.

Why the Crisis of European Citizenship is a Crisis of European Democracy

Sandra Seubert*

In his detailed reflections Maurizio [Ferrera](#) engages with pressing issues about the future of European integration. He starts from the observation that there is considerable disappointment about the actual effect that EU citizenship has had in the last 25 years since its introduction. This is a quite modest description for the fact that the rise of right wing nationalism and Euroscepticism seems to indicate severe doubts about the functionality and the legitimacy of the existing EU institutions and the project of European integration in general. In the economic and subsequent sovereign debt crisis tacit consent for the course of integration has evaporated. The EU increasingly influences the everyday life of citizens without at the same time increasing its legitimacy to do so. What can EU citizenship bring about in this situation?

The populist attacks against Europe can be interpreted as a result of the current lack of democratic and social integrative sources. [Ferrera](#) convincingly analyses the characteristics and flaws of EU citizenship, in particular regarding its social dimension, and proposes an agenda of reform to enhance the integrative function. He convincingly diagnoses the shortcomings of EU citizenship in its “isopolitical” dimension but is rather reluctant to draw more radical conclusion of reform in the “sympolitical” dimension. In what follows I will take issues with some general assumptions of his argument about enhancing social citizenship and reflect on the necessity and nature of democratic reforms.

Why social citizenship?

[Ferrera](#) reconstructs the historical process of a nationalisation of citizenship – its success in creating boundaries and bonds and demanding loyalty in exchange for protection – but mentions the main characteristics of *democratic* citizenship only implicitly: the promise of equality and freedom under self-given laws. In its current shape the EU might just be too far away from this promise, so any allusion to it seems overly risky and comes close to opening a Pandora’s box. But by taking up the language of citizenship this box is already opened anyway. The association of the idea of citizenship with the European Community promised its transformation into a polity whose constituent elements are no longer only the member states. Has the EU ‘overstretched’ itself with this promise? Ferrara’s argument for strengthening the integrative function of EU citizenship rests on the assumption that the introduction of social rights as entitlements enhanced the salience of citizenship in the (national) past and is likely to do that in the (European) future. While he concedes that much has changed since “Bismarckian” times – welfare states have been retrenched and changed in their logic of providing assistance – his general intention is to revive this idea: “adding stuff”, i.e. using instrumental resources such as monetary benefits in order to make EU citizenship more salient, visible and tangible in order to “directly empower” European citizens. My concern is that this short-cut might not be successful unless European citizens envisage the European project as their voluntarily chosen common concern. Ferrara describes his strategy as realistic but this also means that it follows up on a problematic logic that has driven European integration so far: to win support by delivering tangible advantages for particular groups.

No doubt: no political citizenship without social citizenship. Political participation must not appear as a class or status privilege (if it is supposed to be democratic). But if citizenship is about authorising the laws one is subjected to, its normative core is about *empowerment* rather than protection. Citizenship is not a status that the enlightened monarch, in this case the European leaders (or an avant-garde judiciary as Susanne Schmidt argues), can bestow on subjects. Citizenship is about the

* Goethe-Universität Frankfurt a.M.

development of a political subjectivity and a practice through which free and equal individuals collectively take their fate into their own hands. Enhancing EU citizenship would thus mean: moving away from the current focus on protecting rights – even if they are no longer primarily the rights of economically active ‘mobile’ citizens and include the socially disadvantaged – and putting the political agent who wants to influence the conditions of his/her existence at the centre.

Countering Anti-European Politics

Christian Joppke suggests that it might be a categorical mistake to apply the citizenship concepts to the EU in the first place, since the EU is a regulatory regime rather than a “protection racket”. We have every reason to be suspicious if EU citizenship is supposed to conceal this. Absolutely true, but doesn’t this suggest another conclusion? The division of labour between economic, regulatory policies as European issues, on the one hand, and social, labour market and redistributive policies as national issues, on the other hand, is currently deeply contested. With every new step of integration, in particular with regard to Economic and Monetary Union, transnational interdependence has been growing, creating a need for political debate and discretion which is at odds with the depoliticised intergovernmental mode of decision-making in the EU.¹

The crisis of European democracy and the crisis of European citizenship go hand in hand. Detached from political space the European citizenry is left without clear addressees for dealing with social and political conflicts. The EU is not yet perceived as an (emerging) context of justice. The framing of justice has for a long time been gripped by a “Westphalian political imaginary”, which means it has been restricted to the modern territorial state.² Indeed, what is needed is a “broader conception of social justice in Europe” (Andrea Sangiovanni). In the current institutional set up, taking on the pan-European perspective of a Union citizen is systematically discouraged. What a European democracy demands is a transnational coding of social conflicts, a border-crossing articulation and deliberation in order to make them visible and understandable as transnational economic or cultural lines of conflict.³ But what we witness instead is a resurrection of national stereotypes. Since the cosmopolitan, pro-European elite has difficulties in convincingly explaining why membership in this Union is worth promoting, disadvantaged citizens from prosperous member states tend to be in favour of putting an end to European integration, whereas less well-off citizens in the Union’s deficit countries demand redistributive policies *within* the Union which most of their prosperous counterparts are likely to refuse.⁴ It becomes painfully obvious that European citizens are not yet members of a solidly political Union, but that they are still primarily members within a Union of states, where national interests are played off against each other.

There is a fatal *misframing* of social conflicts along national rather than social cleavages. How can this misframing be broken up? A politicisation of European issues is needed. As Rainer Bauböck rightfully stresses: The dilemma of EU citizenship is a political one and needs to be addressed in a political arena. In the institutional architecture of the EU the European Parliament is the actor that is most likely to articulate and win recognition for transnational social interests. But it cannot be

¹ C. Offe. *Europe Entrapped*, Cambridge, UK/Malden, USA, 2015, pp.25-28.

² N. Fraser. *Scales of Justice. Reimagining Political Space in a Globalizing World*, Cambridge, UK/Malden: Polity Press, 2008, p. 12.

³ E.g. contrary to public representations it is not Germany as a whole that is ‘Export Master’, but certain regions, in particular in the South-West, whereas e.g. Northern Italy is comparatively more productive than East Germany.

⁴ It is remarkable that left-wing protest movements in debtor states such as Spain or Greece and the majority of the population in these countries are not ‘anti-European’ in general and not in favour of an exit from the EU, but rather against austerity policies which they identify primarily with Germany. Exit options are rather articulated in the relatively well-off member states. For an instructive differentiation of the Northern European New Right, a Central-East European defensive nationalism and a Southern European, pro-European and pro-refugee New Left, see H. Kriesi. ‘The Politicization of European Integration’, *The Journal of Common Market Studies*, 54 (S1) 2016, pp. 32–47.

successful without social intermediaries: an active civil society and citizenry that would pass on the conflicts negotiated in parliament to the various democratic publics and *vice versa*.⁵ In the long run the future of EU citizenship will depend on how a multilayered governance system such as the EU will be able to balance the different levels of political participation, thereby accommodating principles of political equality, public control and influence on political decisions. “Liberal de-dutification” (Joppke) is not a particular problem of EU citizenship, but what is a particular problem is the lack of a clear social reference group: a community of citizens who grant each other rights on the basis of reciprocity. The challenge lies in the construction and legitimation of new frames of reference for the deliberation of social and political conflicts. This is indeed a *republican* project but different from the one that Richard Bellamy envisages. Bellamy argues in favour of a complementary status rather than a fundamental status of all EU citizens on the basis of a protection of “diversity”. His idea of “republican intergovernmentalism” is concerned with promoting equality of concern and respect between the different citizenship regimes of the EU’s constituent member states. But in a context such as the current EU, in which social and economic spheres are decoupled, “protection of diversity” might well disguise power asymmetries and lead to a conservation of wealth disparities and inequalities.

Coping with the crisis demands effective coordination of economic and financial politics. But the peoples of the member states cannot be expected to give up creative power at the national level without a clear substitute on the transnational level in sight. That is why the answer to the crisis is unavoidably connected to issues of European democracy.

⁵ See also the proposal by Thomas Piketty et al. for a parliamentary assembly of the euro-zone which is supposed to be combined of members of the EP and members of national parliaments (S. Hennette, T. Piketty, G. Sacriste, A. Vauchez. *Pour une Traité de démocratisation de l’Europe*, Le Seuil, 2017.

Regaining the Trust of the Stay-at-homes: Three Strategies

Philippe Van Parijs*

I greatly appreciate and warmly welcome contributions that go far beyond criticism and lamentation and make concrete proposals for improving Europe's state of affairs. We have a plethora of jeremiad rehearsals. We need far more people like Maurizio [Ferrera](#) with both the courage to stick their neck out and the readiness to learn from their critics — without losing courage.

Two distinctions

I found the framing of the central issue in terms of Paul Mignette's distinction illuminating. Very roughly, the actual and potential exercise of the isopolitical rights granted by the EU (essentially the four freedoms plus non-discrimination) are gradually undermining the member states' capacity to keep effectively guaranteeing to its citizens some of the sympolitical rights they were used to (not least various aspects of physical, socio-economic and cultural security).

This stylised formulation of the central issues fits in with a second distinction adopted by [Ferrera](#): a distinction between two categories of European citizens which I first heard used in this context by Koen Lenaerts, the president of the Court of Justice of the European Union (CJEU). For “movers”, the creation and expansion of their EU-wide isopolitical rights can easily compensate the reduced effectiveness of the sympolitical rights granted by their own state. But for the “stay-at-homes”, this is far from obvious and they cannot easily be fooled into taking it for granted. No wonder that some political entrepreneurs identified the juicy slot, with a thriving anti-European populism and a widely felt legitimacy crisis as a result.

All movers

If this is a fair stylised characterisation of the core of the EU's current legitimacy crisis, there are three straightforward strategies one can think of. A first one, arguably the dominant one from the side of the European institutions, consists in trying to convert as many stay-at-homes as possible into movers. Those attracted by this strategy presumably feel encouraged by the economic creed that market-driven mobility is good for efficiency, as it enables factors of production to move to those locations where they are most productive.

However, the mobility of workers and of economic activities also produces effect too easily ignored by economists: the dislocation of communities in both the countries of origin and the countries of arrival. Linguistic diversity makes these externalities far more serious on European scale than on national scale. A Europe with a majority of movers would not be a solution. It would be a catastrophe. [Ferrera](#)'s modest proposal to further extend Erasmus-type mobility beyond a privileged fraction of university students can make sense for several reasons, but this cannot be seen as a first little block of what might provide a structural solution.

Retreat

The second strategy consists in curtailing the isopolitical rights that are the cause of the problem. In an ambitious interpretation, these rights currently include the right for any EU citizen to settle anywhere in the EU and enjoy, whichever member state she settles in, the same sympolitical rights as the citizens of that state. The de facto and largely de jure restriction of these rights to workers, active job

* European University Institute and Université catholique de Louvain

seekers and their dependents is arguably required to discourage “welfare tourism” and thereby to protect the effectiveness of the sympolitical rights conferred by national welfare states. In the pre-Brexit-vote negotiation, the UK asked for the possibility of discriminating further, by denying immigrant workers from EU countries access to some in-work benefits. And one of the options many British soft-Brexiteers would be delighted to see accepted is full access to the EU market combined with full control over who is entitled to enter the UK — an option firmly rejected so far by the EU side. I understand the EU’s negotiating stance, if only as a requirement for blocking the UK’s appetite for further expanding, through cherry-picking, the massive *net* brain drain of half a million highly educated EU 27 citizens currently living in the UK.

However, as a general measure within the EU, would a shrinking of isopolitical rights not be an acceptable option if that is required to regain the allegiance of the stay-at-homes? Ferrera shows little inclination in this direction. No doubt such infringements on the principles of free movement and non-discrimination would require treaty changes. But with a crisis as deep as the one diagnosed at the start, is there any hope of resolving it with unchanged treaties? More decisively, these infringements would amount to giving up fragments of an extraordinary achievement from which the EU can derive legitimate pride. Free movement and non-discrimination are not only good, up to a point, for economic efficiency. They are also good, *ceteris paribus*, for the sake of social justice, though not if *ceteris* are so far from *paribus* that they end up undermining valuable national sympolitical rights. We should therefore stop pondering more or less radical versions of this second strategy only if there is enough hope from the side of the third one — which, I believe, enjoys [Ferrera](#)’s preference, as it does mine.

Caring Europe

The third strategy consists in creating or expanding sympolitical rights at EU level or at least in making some existing EU policies that currently operate via member states governments be perceived more like sympolitical rights directly bestowed by the EU. This is how I interpret his proposal of a social card, or his idea that, in the distribution of its structural and regional funds the EU should be clearly identified “in the last mile”. I am not sure this last idea will do much to assuage the resentment of the stay-at-homes of the richer member states. Surely, they are likely to realise that, if their country is a net contributor to the EU budget, more could and arguably would be done for them, not less, in the absence of EU policies. In at least one of [Ferrera](#)’s proposals, the EU labelling of the “last mile” might even be counterproductive: if it is the EU that is seen by locals to pay for the benefits of asylum seekers and refugees, for example, some may indeed think: “At least we are not paying for them”, but others perhaps also: “It is again for these foreigners that the EU is opening its purse. Nothing for us.”

Whatever problems specific proposals may raise, however, I do agree fundamentally with Maurizio [Ferrera](#) that the key to the solution we are seeking is the resolute creation and expansion of EU-level sympolitical social rights. The EU must become a caring Europe and be seen to be one. Proposals such as funds for the retraining of workers hit by “globalisation”, an EU-wide complementary insurance scheme for short term unemployment, Michael Bauer and Philippe Schmitter’s proposal of a means-tested Euro-stipend and the proposal of a universal Euro-dividend each have their own advantages and disadvantages, but they all fit in this category [1].¹ For the sake of addressing our problem, they are far superior, it seems to me, to inter-state reinsurance systems, as likely to appeal to the technocrats as they are unlikely to enthrone the stay-at-homes.

¹ See S. Dullien. ‘Why a European unemployment insurance would help make EMU more sustainable’, *Social Europe*, 3 October 2014; P. Schmitter, and M.W. Bauer. ‘A(modest) proposal for expanding social citizenship in the European Union’, *Journal of European Social Policy*, 11 (1), 2001, pp. 55-65; P. Van Parijs. ‘The Euro-Dividend’, *Social Europe*, 3 July 2013, and P. Van Parijs, Philippe and Y. Vanderborght. *Basic Income*, Cambridge (Mass.): Harvard University Press, 2017, chapter 8.

As a further variant of this strategy, [Ferrera](#)'s idea of a voucher for life-long learning also seems to me well worth exploring further, especially if it goes along with making available to all EU citizens some educational resources developed at EU level, starting with the translation softwares developed within EU institutions. Blended lifelong learning — combining the mobilisation of the cognitive wealth of the internet with local critical and creative appropriation — are key to both justice and efficiency in this century. Playing a major role in it is one of the ways in which the EU can become — and be perceived to have become — a caring Europe.

Duties

There was not that much in Maurizio [Ferrera](#)'s paper about the duties which the title of this debate suggested we would see defended. Certainly a single army and compulsory military service for all European men and women would be a magic bullet for the strengthening of the European identity and thereby for the sustainability of a caring Europe. Largely for good reasons, this is not an option. But a European army should be one, and also conscription into an appropriately designed European civil service. I am in the scientific committee of the initiative that supports the creation of a voluntary civil service open to all Belgians. I am in favour of making it compulsory, and indeed of Europeanising it. But many details in the implementation matter greatly to prevent it from proving counterproductive.

At EU level, just as at the local or the national level, however, the most important civic duties are not legal ones. At all levels, political leaders must become able (again?) to tell their respective peoples: “Don't ask what your municipality, your state, the Union can do for you, but what you can do for them.” For this not to sound ridiculous, leaders must deserve the trust they are expecting. And institutions must be shaped so as to enable them to deserve this trust. From this perspective, institutions that turn the EU into a caring Europe are a must.

Social Citizenship, Democratic Values and European Integration: a Rejoinder

Maurizio Ferrera^{*}

This Forum debate has gone way beyond my expectations and hopes. I thought that commentators would mainly address my proposals on enhancing rights and introducing duties. The conversation has instead extended to my diagnosis as well, to the rationale which lies at the basis of my prescriptive ideas. By focusing on starting points, the forum has thus brought into light different perspectives and styles of reasoning around citizenship and even broader political questions. With hindsight, I should have spelled out more carefully my basic assumptions. But there is time to remedy this now – and not just for the sake of this particular discussion. I am in fact convinced that a closer and more systematic dialogue between empirical, normative, legal and social theorists would be a welcome and beneficial innovation, a way to contrast excessive disciplinary perspectivism and the related risks of analytical lock-ins.

I will begin this rejoinder by addressing the disagreement on starting points. I will then move to general issues of democracy, citizenship and social rights. Next, I will revisit my proposals in the light of the critiques and suggestions received. In the concluding section, I will broaden again the scope towards conceptions of justice, political legitimacy/stability as well as towards possible visions about the future of the EU.

Two perspectives on politics: alternative or complementary?

My starting point is empirical-theoretical. I have taken stock of the historical developments which led to the consolidation of national (social) citizenship rights and – based on an extensive scholarly literature – have highlighted the key political function they served for state formation. Social rights expanded opportunities and created an area of equality vis-à-vis certain risks and needs; they connected citizens in a web of reciprocal obligations, fostered identity and community ties – both having a strong ‘bonding’ and emotional component.¹ I see EU citizenship as a novel step in this long term development of right-based citizen empowerment. But I suggest that the integrative and legitimating potential of EU citizenship is not only weaker than its national counterparts, but also ripe with potentially divisive consequences, due to its isopolitical nature. I do acknowledge that workers’ mobility can bring and has indeed brought substantial economic advantages. But functional arguments and evaluations play a secondary role in my diagnosis. And while I appreciate Richard Bellamy’s friendly effort to extract an unarticulated moral view from my reasoning (a form of cosmopolitanism), my own effort has gone in a different direction: analysing EU citizenship as a *political* instrument which – regardless of its functional or normative rationale – can produce (or not produce) political cohesion and stability. My questions rest on a realist conception of politics, conceived as the sphere whose foundational task is to ‘keep the community together’ (of course under democratic constraints in the cases discussed here) and to look at citizenship in this perspective. Bellamy goes some way in my direction when he defends the nation state (and thus boundaries) in instrumental terms, i.e. as the most effective system and territorial container devised so far for safeguarding responsiveness, accountability and equal rights. But my perspective takes an additional step by asking: what are the empirical conditions of possibility for nation-building (or EU- building) and for the political viability over time of the democratic state (or the Union)? And what role can (EU) citizenship play in this context?

^{*} Università Statale di Milano. This text has been written in the context of the RESCEU Project (Reconciling economic and social Europe, www.resceu.eu), funded by the European Research Council (Advanced Grant no. 340534).

¹ M.Ferrera, *The Boundaries of Welfare. European Integration and the New Spatial Politics of Social Protection*, Oxford: Oxford University Press, 2005

Many commentators have either not captured or not appreciated my empirical perspective. Christian Joppke considers my association between national citizenship and political bonding/loyalty as a “questionable idealisation” and dismisses “affectual and normative attitudes” towards state authorities as “delusional at best”. What is the ground of such a severe takedown? If I understood him correctly, Joppke espouses a state theory whereby the protection logic of national citizenship has mainly served to coat the elementary state function of providing security with “flowery allegiance and loyalty”. As factual judgements, these statements sound quite daring and far-fetched to me. The war-welfare nexus has been indeed highlighted by a wealth of comparative historical works.² But even if and when social programmes were originally introduced to “coat” the warfare goals and strategies of the nation state, their “protection logic” has subsequently acquired an autonomous dynamic, which in most cases started to generate genuine bonding, loyalty and diffuse support. If this is the historical case, I fail to see why puzzling about the integrative potential of EU citizenship should be “a category mistake”. It is precisely by using this category that we can single out the political differences between state-building and EU building and identify the limits and constraints of the latter compared to the former.

Joppke criticises my starting point also from a normative point of view, defining as “retrograde” my remarks about mobility rights being restricted to EU citizens and not (fully) to third country residents. To begin with, this is today a fact, with factual implications that need to be captured and empirically analysed. Second, as aptly noted by Rainer Bauböck, the dimension of exclusion inheres in any concept denoting membership and inclusion. It is true that, from a normative perspective, the balance between inclusion and exclusion must rest on principled justifications. But, again, my metric is realist-political. Citizenship integrates and legitimises political power to the extent that it ‘bounds’, that it is a recognisable marker of an insiderhood to which certain selective advantages are associated. I am not formulating a value judgement here; I am not saying that things ought to be this way. What I am saying is that we have empirical evidence that citizenship, when operating within a politically bounded space, has a potential to integrate and legitimise. The ‘good’ in which I am interested is the political cohesion of the EU. In this sense, and only in this, I make a value choice. But it is only a very weak ‘value-related’ choice *à la* Max Weber. I merely believe that it is interesting and important to raise questions about the viability of the EU, given its undeniable conspicuousness as a political entity and its increasing role in shaping people’s life chances. Nothing more or less.

The contrast between the empirical and the normative perspective is best exemplified by Frank Vandembroucke’s and Andrea Sangiovanni’s well-articulated contributions. Both outline distinct conceptions of justice for EU solidarity and free movement in particular. And they both embark on this exercise because they deem my reasoning lame (my interpretation), peripheral (Vandembroucke) or lacking (Sangiovanni) in respect of the more ‘foundational’ debate about justificatory principles. For them, the basic challenge which I dodge is how to address the question of an ideal (presumably rational and informed) citizen asking, in Sangiovanni’s words, “why should I accept or enhance EU citizenship?”. I concede that my empirical and realist arguments would have little traction indeed were I ever to engage in a philosophical *disputatio* of this sort. But would they remain equally unpersuasive if I engaged in a debate with a real world Europhile politician struggling everyday with the problem of consensus? In this situation, it would probably be the philosopher’s view that has little traction and might be considered unfit for pragmatic purposes. It is, indeed, a matter of perspective as well as of interlocutors. I locate myself in the real situation of late 2010s Europe; I notice that the fact of free movement causes the fact of Euroscepticism; I surmise that this dynamic may well jeopardise the political stability of the EU as such; I draw on the toolkit of comparative politics and public policy analysis and suggest that a recrafting of EU citizenship might contain this threat. In addition to my fellow political scientists, my interlocutors are essentially the policy-makers. Yes, I confess: the elite. Not because I am dismissive of ‘the people’ and cynical about the stylised processes of democratic

² The latest and most up to date work is H. Obinger, K. Petersen, O. Starke, O. (eds.). *Warfare and Welfare: Military Conflict and Welfare State Development in Western Countries*, Oxford: Oxford University Press, 2018.

will formation elaborated by political philosophers. But rather because I think that elites are and should not only be spokespersons of their voters, but responsible leaders as well. (Remember the polemic between Edmund Burke and his Bristol electors?) And, in my perspective, ‘keeping the community together’ in the face of pluralism and disagreement (and hopefully building constructively on both) is a key task of responsible leaders.

As self-contained conceptions of EU social justice, I do find Sangiovanni’s and Vandenbroucke’s arguments coherent and largely convincing (with some caveats, starting from those raised by Bauböck). They have an academic, but also a political relevance, to the extent that they can provide valuable symbolic resources to policy-makers puzzling about problem-solving and consensus-building. But – as both authors obviously know – the public acceptance of these arguments cannot be taken for granted. What can be done if there is disagreement? In the philosopher’s perspective, one should probably move up one level and interrogate philosophical doctrines about political justice, which specialise in principles on how to fairly manage disagreements. This regress *ad infinitum* is however of little use for real politics and real politicians, struggling with conflicts here and now. Without detracting from the importance of principles and normative reasoning, empirical political theory shifts the focus on how institutions and policies relate to system performance and diffuse support. Collective acceptance *for the right reasons* remains a desirable ideal goal and may even result in greater stability. But, in Weber’s wake, empirical political theory conceives of legitimation as a more complex property and process, resting not only on *reasons* (normative and instrumental) but also on affectual and traditional *orientations*. It is this mix of motives that allows a real world polity to survive what Ernest Renan called the “daily referendum” on associative life and collective institutions.

The debate has revealed another misunderstanding that I may have inadvertently originated in my initial contribution and that needs to be cleared. Joppke has raised the worry (which has resonated in other comments as well) that my diagnosis and proposals may bring ammunitions to the enemy, i.e. “populist demonology”. Let me be crystal clear: in acknowledging the fact of Euroscepticism and the profusely documented increase of chauvinist orientations of European voters, I certainly do not imply that one must be indulgent towards such phenomena, not least because of their manipulative character. On the other hand, a mere judgement of fact cannot be accused of buying into the enemy’s views. And while I do agree with Dorte Martinsen that researchers should concentrate on fact finding and perhaps even engage directly “with the tensions described, be they mainly perceived or real”, I must be able to use descriptive categories such as ‘stayers’ or ‘movers’ and of analysing observable social and political tensions between them without being accused of covert intelligence with the enemy.

The most appropriate and fruitful conclusion of this discussion on fundamentals is a plea for mutual understanding and collaboration between normativists and empiricists. What I have in mind is not just a *modus vivendi*, but the construction of an overlapping consensus whereby: 1) each side makes an effort to acknowledge an equal, if obviously different, theoretical relevance, purchase and autonomy on the other side; 2) both look more closely into each other, especially when normativists make descriptive or causal arguments and empiricists deal with values or undertake political or policy evaluations. To some extent this construction is already under way.³ I find that it is a challenging enterprise, opening novel avenues of research especially for younger scholars.

Citizenship, democracy and European integration

Magnette’s distinction between sympolitical and isopolitical citizenship rights has proven very useful to frame the entire debate. It has also pushed some commentators to focus on the political dimension of citizenship – equal participation rights to democratic self-rule. Sandra Seubert is correct in pointing out that I have not adequately addressed this dimension in my historical reconstruction and diagnosis.

³ See E. Rossi and M Sleat. ‘Realism in Normative Political Theory’, *Philosophy Compass*, 9(10), 2014, pp. 689-701.

The European project, Seubert argues, ought to be voluntarily chosen by citizens who consider it as responding to common concerns. If this is not the case, as noted also by Kostakopoulou, then my proposals would just reinforce the problematic logic that has driven European integration so far: buying consensus by delivering tangible advantages for particular groups. Van Middelaar has defined this logic as the Roman strategy of EU consensus building through *panem et circenses* – and without even reaping the full benefits of this.⁴

Does my realist perspective inevitably make me a Bismarckian in disguise or, at best, an elitist and paternalist liberal-democrat? Probably yes, if the starting point is a normative preference for participatory democracy based on individual equality and freedom under bottom-up, self-given laws. But that is not the only possible starting point. When I became a political scientist, I started to appreciate ‘Schumpeter’s other doctrine’, i.e. the so-called competitive theory of democracy, which, in my reading, is not an elitist juxtaposition to the participatory view. It rather corrects the latter by bringing back into the democratic scene the important figure of the (would-be) elected leader and by drawing attention to the electoral logic as such. In the real world, free elections inescapably activate a quid pro quo dynamic whereby *whats* (policy programmes inspired by different values and ideologies) are exchanged for *whos* (votes in support of competing political leaders promising *whats*). On this view, political citizenship confers an equal (if minimal) power resource – the individual vote – which can be spent during electoral exchanges. Democratic rights of political participation logically presuppose civil rights and are in their turn instrumental for the acquisition and defence of social rights. Once the whole package is in place, the famous Marshallian tryptic generates mutual synergies; citizenship not only acquires a self-sustaining equilibrium but becomes a unique instrument for taming and controlling vertical power through the multiplication of the horizontal powers and endowments of citizens, in their various social roles and life situations. The keystone of this system is sympolitical closure. Who gets what, how and when is the result of domestic democratic politics, which produces collectively binding sovereign decisions. Domestic markets – for goods, services, capital and labour – can of course be (made) open. But key national decisions result from citizens’ endogenous preferences on how to manage the consequences of openness and define/redefine its boundaries. My conclusion is not dissimilar from Seubert’s (democratic empowerment is the core) but on my view the core is derived from empirical, not normative theory.

Gradually, and to some extent creepingly, the EU has lifted the sympolitical keystone. Isopolitical integration has caused increasing cross-system externalities which can no longer be democratically managed at either the national or the supranational level. The EU is today a quite peculiar political system which defies all our analytical categories. We say it is “far from federal”. But in certain policy areas regulatory standardisation linked to free movement has gone way beyond the limits that historical federations (such as the USA or Switzerland) have not dared to trespass. Swiss cantons still enjoy wider margins of residency-based ‘discrimination’ than EU member states. In the US it is true that “states cannot select their citizens”, especially when it comes to welfare, as Martin Seeleib-Kaiser reminds us. But they can, for example, charge higher fees to out-of-state students applying to state universities and delay residence requests by students for the mere purpose of paying lower fees. The Court of Justice of the European Union (CJEU) has become a hyper-federal watchdog of EU law and its supremacy over national law – with serious social consequences, as correctly highlighted by Susanne Schmidt. Another indicator of hyper-federalism is the extent to which some policy decisions are delegated to non-majoritarian institutions with very wide regulatory autonomy (e.g. as regards state aids, competition, or banking supervision). It is true that this institutional architecture has resulted from ‘demoicratic’ procedures and decisions in the past (the CJEU was born from the Rome Treaty, the ECB from the Maastricht Treaty, and so on). But the fact is that today such institutions find themselves far removed from the basic form of democratic control: the vote of individual citizens. In some other core areas of state power (e.g. fiscal policy: taxing and spending) we are under the illusion

⁴ L. Van Middelaar, *The Passage to Europe, How a Continent became Europe*, New Haven: Yale University Press, 2013

that the EU only rests on intergovernmental coordination. But we use intergovernmentalism as an indicator of inter-nationalism, in Bellamy's sense: a two level game in which national citizens mandate their governments to negotiate inter-national agreements under the implicit assumption that subsequent decisions under these agreements remain responsive and accountable to national citizens. This is no longer the case. Under the reformed Growth and Stability Pact, the Commission's decisions on macroeconomic imbalances or budget deficits (decisions which may have huge consequences for ordinary citizens) can be rejected only through a reverse qualified majority rule, which has been (correctly in my view) equated with 'minority rule'.⁵ I am afraid that the EU has long ago ceased to conform to that 'republican inter-nationalist' blueprint praised by Bellamy. And I think this also obtains for the intuitively appealing democratic formula of "governing together, but not as one".⁶ If my diagnosis is correct, in key policy areas the EU has already become a powerful "one", in which some demoi (not to speak of some citizens) are more equal than others.

What are the consequences of this opaque regime (that we find very hard to define in terms of democratic theory) for the Marshallian tryptic described above? The least that we can say is that the new regime has entirely deconstructed the coherence of the tryptic and heavily undermined its effectiveness and even viability. Strangely enough, this situation has been endogenously generated. Democratic sympolitical decisions have originally authorised isopolitical standardisation of economic and civil rights. Such decisions have also deliberately transferred some sympolitical sovereignty to the supranational level. The latter has gradually undermined the content and quality of domestic social rights. The hands of national citizens have been tied: in certain domains their votes have become ineffective or no longer requested. It is unclear which majorities prevail, in some cases the rules even allow minorities to prevail.

A full account of how we got here is way beyond the scope of this rejoinder.⁷ Empirical political theory suggests that to some extent we have been victims of unintended consequences and perverse effects of institutional logics. We should also be careful not to neglect the enormous advantages that integration has produced: not only more aggregate welfare, but also robust safeguards for peace and security. As noted by Bauböck, the EU was born to anchor the post-war system of fragile and shattered democracies. And still today we badly need it to secure the conditions of possibility for democracy in Europe. I would add a second consolation. Political supranationalisation has partly served – especially in certain member states – as a beneficial constraint for irresponsible domestic choices in taxing and spending and as an incentive to engage in responsible strategies of functional and distributive rationalisations. There were important cross-national variations in the coherence and balance of the Marshallian tryptic and some did need significant corrections, especially in terms of financial duties (see below).

The bottom line of my reasoning is, however, that the EU citizenship regime(s) are currently skewed and unstable. Let me then turn to the question of what can be done, focusing on one particular instrument: EU citizenship in its social and duty components.

Caring Europe, my proposals and the "holding environment"

Agreeing with my diagnosis about a growing tension between stayers and movers, Van Parijs identifies three fundamental strategies of response. The first ("all movers"; we could also call it "more of the same") consists in "converting as many stay-at-homes as possible into movers". Since a total

⁵ L. Daniele, P. Simone, P. Cisotta (eds.), *Democracy in the EMU in the Aftermath of the Crisis*, Berlin, Springer, 2017.

⁶ According to the famous formula as understood by Nicolaidis. See K. Nicolaidis 'European Democracy and Its Crisis', *Journal of Common Market Studies*, 51(2), 2013, pp. 351–369.

⁷ For an updated debate, see D. Chalmers, M. Jachtenfuchs and C. Joerges (eds.). *The End of the Eurocrats' Dream*, Cambridge: Cambridge University Press, 2016.

conversion would be obviously impossible, let us say that this strategy should rest on persuading the stayers to internalise the functional and normative rationales of mobility as a collective benefit. But empirical evidence tells us that an increasing number of stayers do not (no longer) buy into that view. The “all movers” strategy is not a solution, but an aggravation of the political problem. The second strategy is “retreat”, i.e. curtailing those isopolitical rights that cause the problem. I did not discuss retreat in my introduction, but yes, I believe that there is room for some steps in this direction.⁸ I fully agree, for example, with Schmidt that limits should be posed to the judicialisation of citizenship. I also think that the mobility regime can be partially reconfigured in a restrictive direction through secondary legislation alone – no Treaty changes needed. The third strategy is “Caring Europe”, which was first submitted to EU leaders in exactly this wording by a group of scholars (myself included) during the UK presidency of the EU in 2005, under Tony Blair.⁹ The political rationale of Caring Europe is not Bismarckian. And while this strategy alone cannot remedy the loss of individual democratic control, it can indeed kill three birds with one stone: 1) it can backstop the centrifugal, Eurosceptic dynamics as well as the destabilisation of the Marshallian tryptic; 2) it can safeguard the functional and social justice advantages ingrained in free movement; 3) it can contribute to the overall durability of the EU polity by thus preserving the otherwise vulnerable pre-conditions of peace and democracy in Europe (Bauböck’s argument).

The Caring Europe strategy has precisely informed my concrete proposals, so let me now revisit them in the light of the debate. Both Seeleib-Kaiser and Ilaria Madama underline that there is already more ground than meets the eye for implementing some of my proposals and that the Commission is well aware of the need to integrate stayers in the mobility and social agenda of the EU. This should at least partly overcome the scepticism of Martinsen who is worried about the lack of time and political support for my proposals to materialise swiftly. To a large extent, my proposals merely go in the direction of a political rationalisation of the status quo: reaping all the consensus building potential of those instruments that are already available. One might ask: if it is so easy, why has it not been done already? The answer lies in the level at which such decisions are taken and the interests/views of decision-makers at that level. Making sure that the EU role can be captured at the street level and “in the last mile” or introducing a social card is not today European Council stuff. These nitty gritty provisions are decided by the lower echelons of EU and national bureaucracies primarily interested in administrative and practical details. Last mile implementation is under the radar of local politicians ready to capture the credit of any *panes* or *circenses* accruing to their voters. The integrative and legitimising potential of my proposals should be brought to the attention of top leaders, those who are ultimately responsible for the EU’s stability and durability. The launch of a social card for accessing all the already existing co-funded programmes of the EU that provide advantages to all citizens, whether stayers or movers (as well as the enhancement and greater visibility of the external protection advantages of the EU passport) should be promoted by top leaders and could be done rather easily.

The introduction of a voucher scheme (and I like Theresa Kuhn’s idea of using in some way the label “mobility bonus”) and of a universal skills guarantee (maybe also a “children guarantee”) require sympolitical agreement. But the skills guarantee is already on the agenda: it could well be deliberately crafted so as to maximise its visibility to the stayers. Some commentators (Sangiovanni, Vandenbroucke, Hermann, Hemerijck) have rightly noted that mobility may not only generate some losses for the stayers of the countries of destination, but also of the countries of origin (e.g. through brain drain). Here the solution could be an active involvement of the EU in sponsoring “return mobility” programmes. The Central and Eastern member states have already launched national initiatives in this direction to bring back home the “drained brains” and to help the relocation of their nationals residing in the UK. EU complements to such initiatives would be a very good idea. A

⁸ M. Ferrera, ‘The Contentious Politics of Hospitality. Intra-EU mobility and social rights’, *European Law Journal*, published online on 25 May 2017.

⁹ A. Giddens (ed), *The Hampton Court Agenda: a Social Model for Europe*, London: Policy Network, 2006.

sympolitical consensus on a dedicated EU insurance scheme for mobile workers is more difficult to piece together, I acknowledge this. This proposal has been around for many decades, without attracting the attentions it deserved. What is required here is a shift from functional to political attention, in a context of increasing contention about mobility. A similar (and more demanding) shift is needed also for the possible introduction of an EU fund against cyclical unemployment. Here the obstacles concern not only political consensus building, but also epistemic convergence, given the currently prevailing obsessions about ‘moral hazard’ on the side of ordoliberal elites and experts. More than a century of experience with mass social insurance against unemployment at the domestic level (initially opposed precisely on moral hazard grounds) should indicate however that there are ways of containing the risk and that the risk itself is not so high after all.

Some commentators have themselves made additional proposals in the logic of a Caring Europe. There is no space to enter into the details and I do share the logic (if not all the details) of such additional suggestions. I would like to briefly comment, however, on the more ambitious strategy outlined by Vandenbroucke and Anton Hemerijck about moving towards a European Social Union of some sort.¹⁰ Under this approach, the core of social sovereignty should remain at the national level, where redistributive issues can still largely (but not entirely) be dealt with via national sympolitical decisions. In Vandenbroucke’s contribution, one task of the Union should be to make sure that member states do guarantee (via binding constraints or surveillance?) sufficient social provisions and legal minimum wages for whoever legally resides within their territory. In Hemerijck’s contribution, the Union should essentially provide a “holding environment” for an effective functioning of national social protection systems. If I understand him correctly, Hemerijck espouses a ‘softer’ overall approach, in the logic of the Lisbon and EU2020 agendas, which now underpin the newly created European Pillar of Social Rights. And he is not sure whether it is essential for the EU to claim political credit for its institutional scaffolding. In addition, he feels half way between the inter-national position of Richard Bellamy and my alleged supra-national position. But as I argued above, supranationalism is already with us, and rather ‘hype’ in some policy areas. Taking it apart – at least to a certain degree – may be functionally and normatively desirable. But is it institutionally feasible, short of a financial/monetary catastrophe? Brexit is teaching us how difficult it is for member states to disentangle themselves from the EU in ways which are decently reasonable in normative and instrumental terms. In this sense, I fully agree with Bauböck that the EU has become a community of – “prosaic and not at all romantic” – destiny. It is the famous historical institutionalist argument about the temporal quasi-irreversibility of complex institutions (you cannot put the toothpaste back into the tube once you have squeezed it out). My doubts about Hemerijck’s softer and semi-internationalist notion of a socially friendly “holding environment” (HE) are fourfold. First, would it imply a partial dismantling of the supranationalist excesses that we now have (as proposed, among others, by Fritz Scharpf)?¹¹ Would this HE essentially be a top-down construction promoted by enlightened leaders, technocrats and experts? Is it realistic to expect that HE would reinforce “loyalty to the EU as a common possession of a union of welfare states” in the eyes of voters already mobilised by anti-EU parties? And finally, how can we manage the dangerous and destructive politicisation that free movement has already triggered off? My modest proposals for the short term are motivated by these latter developments. But also for the long term, I think that we should definitely have a plausible and deliberate legitimation strategy for the EU (even as a holding environment) which will never be effective without at least a modicum of Roman policies.

¹⁰ I have outlined and justified my own position on the European Social Union in *The European Social Union: a missing but necessary “political good”*, in F. Vandenbroucke, C. Barnard and G. Febaere (ed.), *A European Social Union after the Crisis*, Cambridge: Cambridge University Press, 2017

¹¹ F. Scharpf. *De-Constitutionalization and Majority Rule. A Democratic Vision for Europe*, Cologne: MPIfG Discussion Paper 16/14, 2016.

What about duties?

The question of duties has remained somewhat in the shadows of the debate. In my initial contribution I had myself been cautious and modest on this front. The link between duties, and especially tax paying duties, and legitimacy is complex and full of strains. Many of the existing Eurosceptic parties were born as anti-tax parties. If our aim is to enhance the integrative potential of citizenship, we should tread very lightly on this terrain, adopting, as I suggested, a nudging rather than a binding strategy.

Since Joppke has launched an attack on the very idea that citizenship ought to imply duties, I feel a duty to respond. I understand that in normative and legal theory there is an articulated debate on this issue. I do not enter into this debate but will try to summarise my realist approach, in the hope of making my normativist colleagues aware of the essentials of the empirical theory on rights and duties. The production of political goods (policies and generalised compliance) requires ‘extractions’ from the members of the territorial community, the most obvious exemplars of which have historically been conscription and taxes. Are these extractions part of the citizenship package? Definitely yes, in my perspective. As the etymology of the term clearly suggests, being a citizen means being a member of a *civitas*, a legally constituted collectivity. Since extractions are a precondition for the survival of the latter, a citizen cannot avoid the duties of membership which inhere in her very status as such. Fulfilling one’s duties (which also and predominantly means, in ordinary life, to respect the rights of fellow citizens and the prerogatives of the authorities) is key for the success of the “daily referendum” on the political community. Without generalised compliance, political stability is at risk. The formal titularity of a right is a precondition for its actual exercise. But the exercise is effective only to the extent that there is both horizontal (on the side of other citizens) and vertical (on the side of the authorities) compliance, i.e. the observance of those duties which are correlative of rights. The correspondence of rights and duties is especially important in the case of social entitlements, which entail financial resources. As mentioned above, in various countries the increasing gap between the actual fruition of social entitlements and tax/contributory duties or compliance (e.g. through evasion or the black economy) has led to acute sustainability problems for the welfare state. To a significant extent, such problems have also resulted from irresponsible political choices, i.e. the conferral of entitlements not underpinned by adequate duties of financial participation.

Why do citizens fulfil their duties? In my perspective, this is immaterial. Some may do that “for the right reasons”, some for habit, custom, romantic affection. As I said above, in real world polities, legitimacy rests on a mix of motives. Is the correspondence between rights and duties the product of a coherent historical trajectory and deliberate strategy? Not at all. Citizenship is a symbol that came gradually to encompass pre-existing national patchworks of rights and duties, got intertwined with the parallel symbol of ‘nationality’ and turned into a basic status, that of “having rights to have rights” within a bounded space. The symbol over-emphasised the rights side of membership, but it always implied a second side, i.e. the duty to accept duties.

It is certainly true that the substance of the citizenship package has been gradually extended to all legal residents (with the key exception of sympolitical participation rights). But as long as state boundaries remain a fact, the status of citizenship entails a vertical empowerment vis-à-vis territorial authorities which aliens or denizens do not have and through which citizen can define and redefine the rules of access and the content of the denizenship status itself.

Even if ordinary people do not visualise this clearly, the EU is a bounded territorial collectivity. Although derivative of national citizenship, EU citizenship does confer novel isopolitical civil and social rights and their correlative duties as well as novel sympolitical rights through the European Parliament. As I have argued above, the large majority of citizens are ‘stayers’. They have to comply with one class of isopolitical duties (accepting mobile workers as equals in the labour market and welfare state) without de facto exercising the corresponding isopolitical rights. Their capacity to change this situation through sympolitical rule making has been curtailed domestically and is still

weak supranationally. I do not share Hemerijck's theory according to which EU citizenship was adopted to seal the internal market. Historical reconstructions show that the new provisions of the Maastricht Treaty (also) reflected the social and political strategy of EU building of leaders such as Jacques Delors. Whether by design or by failure, the fact is that rather than complementing national citizenship regimes, EU citizenship has ended up destabilising them. My proposals aim at a political rebalancing. In this perspective, I believe that a smart gradual strategy of soft dutification of EU citizenship, initially based on nudging, might have positive and virtuous political effects. Kuhn worries that such nudging would only activate those who are already in favour of the EU. So be it. My survey data show that the share of EU voters that do favour cross national or pan-European forms of solidarity exceeds the share of cosmopolitans.¹² Eurosceptics are extremely vocal, but their numbers oscillate between 15% and 30%, depending on the member state. Pro-EU voters are still a large majority (as recent elections, especially in France, have demonstrated), but this majority is silent and disoriented. Adding stuff to EU citizenship and some nudging for its dutification could provide, precisely, a focus to coalesce around the Caring Europe agenda.

Conflicts and visions on the future of Europe

Time to conclude. My realist perspective is only loosely related to values. It rests on a Weberian value relation and then emphasises the centrality of instrumental political goods, which have to do with safeguarding "what is necessary to maintain democracy" (Bauböck) so that it can produce the final goods that free and equal citizens decide to pursue. Do I have a personal normative conception about integration? Yes, I do, and it belongs to the same liberal egalitarian cluster of the explicit or implicit conceptions espoused by most of our commentators.¹³ But I have chosen here to keep my reasoning at a meta-level. And at this levels normative conceptions are political 'objects' which contribute to providing a collective sense of purpose that can motivate citizens to belong together. A vibrant intellectual debate on ultimate purposes is very important for institution building and polity maintenance. EU building is a novel experiment in political unification of different national communities, undertaken within a (now) unfavourable historical constellation characterised by an overall de-freezing of the economic, social and cultural patterns of modernity. We perceive a pervasive and foundational change, a general "melting of all that was solid", but we seem unable to define this change in positive terms rather than merely as an ambiguous contrast to the past (post-modernism, post-nationalism, post-democracy, post-materialism, post-capitalism, etc.). Without 'pro-utopian' (from the Greek pros, before us) visions of the future, we should not be surprised about the return of nostalgic and backward looking "retrotopias" (to use Zygmunt Bauman's metaphor).¹⁴

I mentioned above Schumpeter's distinction between the 'classical' and the 'other' doctrine of democracy and I have argued that they should be seen as two sides of the same coin, the latter as a 'vertical' correction to the former. I now conclude by recommending an additional correction. Democratic participation and competition must be infused with values. Equal and free participation and proceduralised power struggles among elites only define the perimeters of a playing ground where substantive interests, ideas and values contend with each other. The emphasis on values (on the polytheistic fight among them) as a quintessential element of politics in the sense of *Berufspolitik* is a major legacy of Weber's political theory, including his often misinterpreted theory of democracy. "Man would not have attained the possible unless time and again he had reached out for the impossible" is the famous Weberian motto concluding his speech on Politics as a Profession. As social

¹² M. Ferrera and A. Pellegata, Reconciling economic and social Europe. Report on the REScEU Survey.

<http://www.resceu.eu/events-news/news/can-economic-and-social-europe-be-reconciled-citizens'-view-on-integration-and-solidarity.html>

¹³ M. Ferrera, 'Solidarity in Europe after the Crisis', *Constellations* 21(2), 2014, pp. 222–238

¹⁴ Z. Bauman. *Retrotopia*, London: Polity, 2017.

scientists (normative and empirical) we can contribute to producing visions of the impossible. But the outreachers ought to be political actors: responsible, pros-eutopian and, I would add, also Euro-enthusiastic politicians.

Editors:

Maurizio Ferrera

Department of Social and Political Sciences

University of Milan

Via Conservatorio 7, 20122 Milano

Email: maurizio.ferrera@unimi.it

Rainer Bauböck

European University Institute, Department of Political and Social Sciences

Via dei Roccettini, 9

I-50014 Fiesole Florence

Italy

Email: rainer.baubock@eui.eu