

EU Citizenship's Purpose and Achievements Reconsidered

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ABSTRACT

EU citizenship enjoys widespread public support, encourages citizens of the member states to see themselves as members of a larger community, and free movement is key for fostering this sense of common destiny. Yet there is a disconnect between the ideals of EU citizenship and the reality of discrimination, particularly for those deported from one EU member state to another and thus denied the freedom to live, work, or study anywhere in the EU. Limits on the movement of 'undesirable' citizens are not unique to the EU, however; they also occur in other multilevel systems, like the United States and Canada. Considering social rights reveals the perennial tension between EU and member state authorities, including recent moves by member states to make equal treatment the exception rather than norm. Tensions between different levels of government over social rights are also not unique to the EU. Many EU citizens seeking to move within the EU have greater freedom than prospective internal migrants in China, India, or even Canada and the United States. EU citizenship's shortcomings reflect omnipresent tensions between different levels of government, and ambitions for equal citizenship that are not fully realized in any political context but which EU citizenship approximates more closely than citizenship in many other political systems.

1. Introduction: Comparing EU Citizenship's Achievements

Comprehensive historical analysis of EU citizenship's evolution demonstrates that it remains a thin veneer on top of much thicker national citizenships of the member states.¹ Yet the promise of EU citizenship should not be dismissed too swiftly. Comparative federalism reveals that EU citizenship's limitations are not unique to the EU and suggests ways they can be managed, especially in light of substantial public support for robust EU citizenship. For most people, EU citizenship's most attractive feature is the freedom to travel, study, work, or simply live anywhere in the EU. In recent years, various member states have curtailed the ability of many poorer or otherwise 'undesirable' Europeans to exercise these freedoms. It should be a priority to strengthen both member state and EU citizenship by reinforcing initiatives to facilitate and promote free movement for all citizens while simultaneously revitalizing collective services and entitlements at both EU and member state levels, for citizens who stay as well as those who move. Support for European integration was driven by the idea that it would lead to, among other things, a high level of employment and social protection, equality between men and women, a raised standard of living and quality of life, economic and social cohesion, and solidarity among member states.

Over seven decades, European coordination has indeed made advances on many of these goals, and the introduction of EU citizenship is an important symbol of success. But the goals of European integration face many challenges and setbacks, and European leaders should strive to revitalize the aims of integration. Inequality, economic instability, insufficient social protection, and other challenges demand attention – and it appears that a strong majority of Europeans favours harmonizing social welfare systems, with younger Europeans more in favour of harmoniza-

1 See Willem Maas, *Creating European Citizens* (Rowman & Littlefield, 2007). Grateful thanks to Patricia Mindus, Anna-Sara Lind, and other participants in the "European Citizens Thirty Years On" conference held at the University of Uppsala, where I presented an updated version of Willem Maas, 'Money in Internal Migration: Financial Resources and Unequal Citizenship' in Tesseltje De Lange, Willem Maas and Annette Schrauwen (eds), *Money Matters in Migration* (Cambridge University Press 2021) that helped inspire this article. Grateful thanks also to editorial assistant Tim Holappa and two anonymous reviewers.

tion than older ones; such public support should lead to strengthened cooperation, such as the European Pillar of Social Rights. Perhaps a dramatic thickening or centralization of EU citizenship in which most elements of member state nationality would be replaced by EU citizenship will or should occur at some point in the future. In the meantime, however, comparative federalism offers lessons about ways to combat inequalities and promote freedom and solidarity in a multilevel system.

This article starts by exploring the importance of a common EU citizenship for achieving the wider purposes of European integration, arguing that EU citizenship enjoys widespread public support, that it fulfills one of the functions of citizenship generally (encouraging citizens to see themselves as members of a larger community, at home in a larger territory than simply that of their birthplace), and that free movement is key for fostering this sense of common destiny. The next section, on disentangled citizenship and limits on mobility, focuses on the disconnect between the ideals of EU citizenship and the reality of discrimination, especially cases of people deported from one EU member state to another and thus denied the freedom to live, work, or study anywhere in the EU. Such removals of 'undesirable' citizens are not unique to the EU, however; they also occur in other multilevel systems, including established federal systems like the United States and Canada. The next section, on social rights in multilevel systems, describes the perennial tension between EU and member state authorities, including recent moves by member states to make equal treatment the exception rather than norm. Here, too, the EU is not unique as tensions between different levels of government over social rights are common. The final section, on EU citizenship and comparative internal migration, builds on the earlier sections to argue that many EU citizens seeking to move within the EU have greater freedom than prospective internal migrants in China, India, or even Canada and the United States. The overarching conclusion is that the shortcomings and 'failures' of EU citizenship are not unique to the EU and its supranational project; such limitations reflect omnipresent tensions between different levels of government, and ambitions for equal citizenship that are not fully realized in any political context but which EU citizenship approximates more closely than citizenship in many other political systems.

2. Citizenship and the Purpose of European Integration

The 1957 Treaty of Rome starts by affirming that the six member states are determined to “establish the foundations of an ever closer union among the European peoples,” decided to “ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,” and direct “their efforts to the essential purpose of constantly improving the living and working conditions of their peoples”.² Subsequent treaties including the ones currently in force continue to specify that the Community now Union’s tasks include promoting things such as a high level of employment and of social protection, equality between men and women, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member states.

Since these goals have been affirmed and reaffirmed many times, we can interrogate the degree to which EU citizenship contributes to their realization. Elsewhere in this special issue, Leonardo Pierdominici discusses how EU citizenship evolves in response to changes in national citizenship, and also how EU citizenship causes national citizenships to evolve.³ Comprehensive historical analysis of EU citizenship’s evolution demonstrates that it remains a rather thin veneer on top of much thicker national citizenships of the member states.⁴ Yet it would be wrong to dismiss EU citizenship’s impact and promise; a full analysis requires assessing EU citizenship’s achievements in comparison with citizenship in other multilevel systems.

The standard Eurobarometer public opinion surveys ask “What does the European Union mean to you personally?” and the top answer is almost always the “Freedom to travel, study and work anywhere in the

2 Treaty establishing the European Economic Community.

3 See Leonardo Pierdominici, ‘The Transformative Capacity of European citizenship. A Comparative Perspective’ in this special issue.

4 See Willem Maas, ‘Boundaries of political community in Europe, the US, and Canada’ [2017] 39 *Journal of European Integration* 575; Willem Maas, ‘European Citizenship and Free Movement after Brexit’ in Scott Greer and Janet Laible, (eds), *The European Union after Brexit* (Manchester University Press, 2020); Willem Maas, ‘European Citizenship in the Ongoing Brexit Process’ [2021] 58 *International Studies* 168.

EU”.⁵ This is a significant result, because it means that respondents identify the EU with free movement (which is guaranteed by EU citizenship, even if respondents do not always make the connection and even if the degree to which EU citizenship guarantees these freedoms is imperfect, as discussed below) more than with any of the other positive or negative effects of European integration. Unfortunately, these freedoms are not available to all EU citizens equally. Elsewhere in this special issue, Sandra Mantu concludes that access to welfare and social rights for migrant EU citizens is precarious, fragmented, and stratified as EU states quarantine EU citizens from social rights, and EU workers and their family members enjoy a privileged position while economically inactive citizens lacking resources remain outside the scope of equal treatment and social solidarity.⁶ Earlier scholarship similarly concluded that low income migrant EU workers and the working poor risk exclusion from equal treatment, while the benefits of free movement are reserved for those with financial and other resources.⁷ Similarly, Daniel Thym’s contribution to the special issue concludes that EU welfare states have undergone a process of neoliberal transformation of which the *Dano* and *Alimanovic* judgements are only two examples.⁸

In special Eurobarometer public opinion surveys, respondents were asked about the extent to which they would favour or oppose harmonizing social welfare systems in the European Union.⁹ Two such surveys were carried out in 2006 and 2017, and both show strong majorities in favour of coordination: in response to the question “Today, each European

5 In the most recent Standard Eurobarometer (number 100, fall 2023), that response was selected by 50 percent of respondents EU-wide, ranging from a high of 74 percent in Sweden and 71 percent in Finland to a low of 39 percent in Poland and 40 percent in Italy (multiple responses are possible).

6 See Sandra Mantu, ‘The Social Dimension of EU citizenship: Insights from National Implementation Practices’ in this special issue.

7 Charlotte Rachel O’Brien, ‘Civis Capitalist Sum : Class as the New Guiding Principle of EU Free Movement Rights’ [2016] Common Market Law Review 937.

8 See Daniel Thym, ‘Sociocultural Deservingness and Economic Merit in the Evolution of Citizens’ Rights’ in this special issue. But see Sandra Mantu’s discussion of the *CG* case.

9 European Commission, ‘Special Eurobarometer 467: Future of Europe’ <<https://europa.eu/eurobarometer/surveys/detail/2179>>.

Union Member State is responsible for its own social welfare system. To what extent would you be in favour or opposed to the harmonisation of social welfare systems within the European Union?” fully 64 percent of respondents in 2017 (up from 62 percent in 2006) indicated they were in favour, versus only 26 percent (down from 28 percent) who were opposed.¹⁰ As might be expected, respondents in countries with generous welfare systems had the highest levels of opposition: respondents in Denmark (47 percent opposed; 48 percent in favour), Sweden (42 percent opposed; 55 percent in favour), Finland (41 percent opposed; 55 percent in favour), and Germany (39 percent opposed; 53 percent in favour) had the highest levels of opposition. On the other end, the highest levels of support were from respondents in Croatia (88 percent), Hungary (86 percent), Cyprus and Bulgaria (both 83 percent), Latvia (81 percent), Romania and Slovenia (both 80 percent), Portugal (78 percent), Slovakia and Greece (both 77 percent), and Spain (76 percent). Furthermore, survey respondents aged 15–39 were most likely to favour harmonised social welfare systems (67% versus 61% of those aged 55 and over).¹¹ Of note, respondents in the United Kingdom were least in favour: only 47 percent of respondents in the UK were in favour, versus 37 percent opposed and 16 percent who did not know (as noted above, respondents in several countries were more opposed, but the UK had the lowest level in favour).¹² Thus Brexit changes the balance of opinion by further increasing the large majority of EU citizens who favour harmonizing social welfare systems.

Such strong and stable majorities in favour of harmonizing European social welfare systems, even in countries where there is understandable opposition (respondents in every single country were more in favour than opposed even, as noted above, in the states with the highest levels of opposition) indicate an opportunity for integration-minded political leaders who wish to facilitate free movement and promote feelings of European belonging. Speaking on 9 May 1948 at a rally in Amsterdam, Winston Churchill expressed the fervent desire for reaching again “a

10 In both surveys, 10 percent did not know. Ibid 52.

11 Ibid 53.

12 Ibid 52.

Europe in which men will be proud to say, 'I am a European'," and continued by expressing the

"hope to see a Europe where men of every country will think as much of being a European as of belonging to their native land, and that without losing any of their love and loyalty of their birthplace. We hope wherever they go in this wide domain, to which we set no limits in the European Continent, they will truly feel 'Here I am at home. I am a citizen of this country too'."¹³

Such inspirational speeches presaged the formal introduction of EU citizenship by many years, but encapsulate one of the purposes or characteristics of citizenship generally: thinking of oneself as a member of a larger community, at home in a larger territory than simply one's birthplace.

Several years after Churchill's speech, Jean Monnet similarly addressed the issue of inspiring a sense of common destiny. He wrote that the

"sentiment that their destiny is shared and their prosperity is shared has not been established between the peoples of Europe by the ECSC and will not be by Euratom. How to do it? It is very difficult to find a form that is satisfactory—indeed political—and that is accepted by the parliaments and peoples. We must continue to speak of the Common Market and as far as possible to achieve its beginning at least. But we must find the political opportunity that gives these countries of Europe the sense of a common destiny."¹⁴

A challenge for European governments is to avoid positioning national and EU citizenship in opposition to each other, and instead to link EU citizenship closely to the purposes of European integration – including

13 Address given by Churchill at the European rally in Amsterdam, 9 May 1948, in Winston Churchill, *The Sineews of Peace: Post-War Speeches by Winston S. Churchill* (Cassell 1948) 318–321.

14 Jean Monnet diary 5 August 1956 (unpublished, on file with the Fondation Jean Monnet pour l'Europe; Willem Maas translation). Grateful thanks to the Fondation Jean Monnet pour l'Europe and its Director, Gilles Grin, for letting me consult the diary. See also Willem Maas, 'The Origins, Evolution, and Political Objectives of EU Citizenship' [2014] *German Law Journal* 797, 799.

perennial goals such as high employment and social protection, raising the standard of living and quality of life, and economic and social cohesion.

Free movement, the main right guaranteed by EU citizenship, is key for fostering the sense of common destiny. Reporting on a major comparative study of different examples of political integration, Karl Deutsch wrote in 1957 that “full-scale mobility of persons has followed every successful amalgamated security-community in modern times immediately upon its establishment” and that “the importance of the mobility of persons suggests that in this field of politics persons may be more important than either goods or money.”¹⁵ As the Treaty of Rome was being implemented, European policymakers may have been inspired by such research to look for ways to enhance mobility of persons within the emerging Community.

3. Disentangled Citizenship and Limits on Mobility

Faced with some member states restricting or attempting to restrict the exercise of free movement by EU citizens who those states fear would become a burden on their welfare systems,¹⁶ some scholars have more recently advocated disentangling EU citizenship from national citizenship and creating a separate status for mobile EU citizens and possibly also for third-country nationals.¹⁷ Yet examples drawn from comparative federalism demonstrate some potential dangers of such an approach, because it may become unclear which level of government should have

15 Karl Wolfgang Deutsch, *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience* (Princeton University Press 1957) 53–54.

16 Sandra Mantu, ‘Women as EU Citizens: Caught between Work, Sufficient Resources, and the Market’ in Tesseltje De Lange, Willem Maas and Annette Schrauwen (eds), *Money Matters in Migration* (Cambridge University Press 2021); Dorte Sindbjerg Martinsen and Benjamin Werner, ‘No Welfare Magnets – Free Movement and Cross-Border Welfare in Germany and Denmark Compared’ (2019) 26 *Journal of European public policy* 637; Annette Schrauwen, ‘Pushing out the Poor: Unstable Income and Termination of Residence’ in Tesseltje De Lange, Willem Maas and Annette Schrauwen (eds), *Money Matters in Migration* (Cambridge University Press 2021).

17 Oliver Garner, ‘The Existential Crisis of Citizenship of the European Union: The Argument for an Autonomous Status’ (2018) 20 *Cambridge Yearbook of European Legal Studies* 116.

authority and responsibility. For example, under the constitution of Canada, the First Nations, Métis, and Inuit are a federal rather than provincial responsibility. Yet because social services such as health care and education are a provincial responsibility, many members of these groups cannot easily access health care or education at the same standards as other citizens (e.g. Indian Health Transfer Policy) and they therefore 'fall through the cracks' compared with other Canadians.¹⁸ Ideas from the early 2000s that Indigenous Canadians should be treated as 'citizens plus' have not had much success.¹⁹ In particular, non-status or 'unregistered' First Nations or Métis people often end up in a situation where both the provincial and the federal governments deny having responsibility,²⁰ what a 2016 Supreme Court of Canada ruling called a "jurisdictional wasteland".²¹

Similarly, an autonomous EU citizenship for mobile EU citizens and third-country nationals (a legal status not dependent on citizenship of a Member State, but granted directly by EU authorities)²² would not necessarily improve the situation of many marginalized individuals and groups in the EU. Indeed, some groups would likely suffer, as member states conclude that they could pass on responsibility for such 'rootless' individuals and groups to EU authorities, who at present and for the foreseeable future have far fewer resources to aid such groups than does Canada's federal government dealing with First Nations, Métis, and Inuit. As Rainer Bauböck puts it, if member state nationality is discon-

18 'Federal Departments of Indigenous and Northern Affairs | The Canadian Encyclopedia' <<https://www.thecanadianencyclopedia.ca/en/article/aboriginal-affairs-and-northern-development-canada>> accessed 12 November 2023.

19 Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (University of British Columbia Press 2000).

20 Sara Fryer and Olivier Leblanc-Laurendeau, 'Understanding Federal Jurisdiction and First Nations' (Library of Parliament 2019) Publication 2019-51 <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201951E>.

21 *Daniels v Canada (Indian Affairs and Northern Development)* 2016 SCC 12.

22 Willem Maas, 'European governance of citizenship and nationality' [2016] *Journal of Contemporary European Research* 532; Willem Maas, 'Member State and EU Citizenships Should be Strengthened Rather than Disentangled' in Liav Orgad and Jules Lepoutre (eds), *Should EU Citizenship Be Disentangled from Member State Nationality?* (EUI Working Papers, RSCAS 2019/24) <https://cadmus.eui.eu/bitstream/handle/1814/62229/RSCAS%202019_24rev2.pdf> accessed 12 November 2023.

nected from EU citizenship, “nationalist governments would not only gain further leeway for illiberal citizenship policies; they would also be provided with new scapegoats: ‘rootless’ EU citizens whose rights are not grounded in their belonging to a Member States of the Union, but are imposed by ‘Brussels’ as a restriction on national sovereignty.”²³

Third-country nationals and stateless people are not the only ones at risk: even people who do have citizenship of an EU member state can face discrimination, in violation of the promise of EU citizenship. For example, the Roma who are deported from France, Italy, Spain and other EU states to Romania would not be ‘saved’ by an autonomous EU citizenship: they and all other mobile EU citizens would benefit far more from more generous welfare states in both origin and destination member states. Recall that EU member states have been deporting Roma for many years, and that even after EU accession and the extension of EU citizenship, a “local politics of exclusion is legally possible,” since “the ambiguity of a multilevel citizenship not only opens up possibilities for multifaceted forms of exclusion, but also for various forms of resistance.”²⁴ The idea that the inherently ambiguous nature of EU citizenship as a form of multilevel citizenship opens up possibilities for resistance is attractive.²⁵ Yet even up to the present, Roma and others are still being deported from one EU member state to another, with some EU citizens even dying while in detention.²⁶ Indeed, the expulsion

23 Rainer Bauböck, ‘If You Want to Make EU Citizenship More Inclusive You Have to Reform Nationality Laws’ in Liav Orgad and Jules Lepoutre (eds), *Should EU Citizenship Be Disentangled from Member State Nationality?* (EUI Working Papers, RSCAS 2019/24) <https://cadmus.eui.eu/bitstream/handle/1814/62229/RSCAS%202019_24rev2.pdf> accessed 12 November 2023.

24 Owen Parker and Óscar López Catalán, ‘Free Movement for Whom, Where, When? Roma EU Citizens in France and Spain’ (2014) 8 *International Political Sociology* 379.

25 Owen Parker, ‘Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance’ (2012) 50 *JCMS: Journal of Common Market Studies* 475.

26 Ioana Vrăbiescu, *Deporting Europeans: The Racialized Mobility of Romanians in France* (Lexington Books, an imprint of The Rowman & Littlefield Publishing Group, Inc 2021) 1.

of Roma from one EU member state to another can be seen as part of a general criminalization of mobility within Europe.²⁷

For people deported from one EU member state to another, the promise of EU citizenship – and even more broadly the idea that European integration brings with it the freedom to live, work, or study anywhere in the EU – has evidently not been realized. There is a clear disconnect between official discourse of EU citizenship and the reality of discrimination, up to and including deportation.²⁸ In France, expulsion can be accompanied by a three-year ban on re-entry, and to the “extent that the Roma are noticeably targeted by, if not the legal provisions, at least by the administrative use of these provisions, they can hardly be considered as being equal to other European citizens, or even as European citizens at all.”²⁹

This mistreatment of Roma who are deported can correctly be characterised as a failure of EU citizenship, but it is worth asking how unique it is in multilevel systems. Of course it is against international law to deport one's own citizens from the territory of their country of citizenship – yet such deportations happen nonetheless. One study found that the United States deports hundreds of US citizens per year.³⁰ A related report claims the real number is closer to thousands per year, a figure that according to the author of the study may strike some as so high as to lack credibility.³¹ The parallel with the deportation of Roma from one EU member state to another, however, is not international removals but deportation of

27 Ioana Vrăbiescu, ‘The State Riddle: Working through Messiness alongside a Shared Deportation Apparatus in France and Romania’ (2019) 27 *Social Anthropology* 33.

28 Robert Gould, ‘Roma Rights and Roma Expulsions in France: Official Discourse and EU Responses’ (2015) 35 *Critical Social Policy* 24.

29 Marie-Laure Basilien-Gainche, ‘European States Returning European Citizens: France and the Roma Populations’ in Sandra Mantu, Paul Minderhoud and Elspeth Guild (eds), *EU Citizenship and Free Movement Rights* (Brill Nijhoff 2020) 266.

30 Deportation Research Clinic, Northwestern University, ‘United States Citizens in Deportation Proceedings: Immigration Court “Code 54” Adjournments, January 1, 2011 to June 9, 2017’ <<https://deportationresearchclinic.org/USCData.html>> accessed 13 November 2023.

31 Meredith Hoffman, ‘The US Keeps Mistakenly Deporting Its Own Citizens’ (*Vice*, 8 March 2016) <<https://www.vice.com/en/article/pa4mq7/the-us-keeps-mistakenly-deporting-its-own-citizens>> accessed 13 November 2023.

US citizens from one US state to another; Canadian citizens from one Canadian province to another; citizens of India from one Indian state to another; and so on. Such deportations clearly violate a core principle of citizenship – but they do occur, even though the removals are usually framed as voluntary.

As an example, the city of San Francisco has a program entitled ‘home-ward bound’ that provides homeless people with one-way bus tickets out of San Francisco. A newspaper report in 2023 noted that the program had “helped more than 13,000 people leave the often damaging streets of San Francisco in a humane, practical, low-cost way over nearly two decades,” but found that the annual number of removals had dropped from over 800 annually between 2006 and 2018 to only 177 people in 2021 and 271 people in 2022.³² San Francisco is far from unique: New York City also facilitates homeless and destitute residents to return to other parts of the United States, most often Puerto Rico.³³ San Francisco and New York are only two of the most high-profile examples of cities that provide what has been termed “Greyhound therapy” (the name of a major bus company).³⁴ An 18-month investigation in 2016 and 2017 by the newspaper *The Guardian* compiled a database of around 34,240 journeys funded by homeless relocation programs.³⁵ The point of these comparative examples is that it is not unusual for EU member states to seek to remove ‘undesirable’ EU citizens to their home member state, just as US cities and states do. But such removals do raise questions about

32 Heather Knight, ‘S.F. Used to Give Homeless People Bus Tickets Home. Why Did It Stop Pushing the Program?’ (*San Francisco Chronicle*, 8 April 2023) <<https://www.sfchronicle.com/sf/bayarea/heatherknight/article/homeward-bound-homeless-program-17880387.php>> accessed 13 November 2023.

33 Julie Bosman, “City Aids Homeless with One-Way Tickets Home,” *New York Times*, 28 July 2009.

34 John L Smith, ‘Nevada Sued For “Greyhound Therapy” For Mentally Ill Patients’ *The Daily Beast* (23 September 2013) <<https://www.thedailybeast.com/articles/2013/09/23/nevada-sued-for-greyhound-therapy-for-mentally-ill-patients>> accessed 13 November 2023.

35 ‘Bussed out: How America Moves Thousands of Homeless People around the Country’ (*the Guardian*) <<http://www.theguardian.com/us-news/ng-interactive/2017/dec/20/bussed-out-america-moves-homeless-people-country-study>> accessed 13 November 2023.

the effectiveness of citizenship and its promise of equality and freedom – not only in the European Union but also in established federal systems like the United States and Canada.

4. Social Rights in Multilevel Systems

As early as the Treaty of Rome – and even before that, in the Treaty of Paris, for workers in the coal and steel industries – European institutions such as the Parliament and Commission have attempted to introduce and enhance social protections for migrant workers. The Commission attempted as early as the 1960s to advance European social rights with the goal of making member state citizens “actually feel that they are citizens of the one Community” and “be aware that their common fortune is attributable to the Community.”³⁶ And as early as the 1960s, member states have been resisting EU encroachment on what they see as their prerogative. For example, in 1964 the Council meeting of member state ministers responsible for social affairs concluded unanimously that social security was the sole jurisdiction of member states rather than subject to Community coordination. Following this declaration, the social affairs ministers did not meet again as a Council for two years, following which they agreed – sidelining the Commission entirely – that common social policy rules could be passed only with unanimous member state support, which was seen as unlikely.

After this defeat, the Commission replaced its previous efforts to increase benefits for workers with a new goal of controlling social security costs, one of the first steps in the reorientation from the needs of citizens to those of the market. Henceforth, the push for European social rights was justified in terms of enhancing free movement of labour, necessary for a smoothly functioning market. Coordinating social security systems, mutual recognition of qualifications, ensuring equal access to social benefits, and even efforts to develop a European role in combating poverty or

36 Lorenzo Piccoli, ‘More than a Customs Union? : Competing Visions of European Citizenship’ in Emma C Gardner and Amir Qamar (eds), *Dissident voices in Europe?: past, present and future* (Cambridge Scholars Publishing 2016) 101.

in family policy could thus be characterized as market-oriented economic policies rather than an effort to enhance ‘social Europe’.³⁷

Bringing the story of European social rights to the present, recent research finds that three member state strategies – “cementing exclusion from social assistance, interlinking bureaucracies and systematic verification, and the fragile relationship between residence and social assistance” – are part of the effort by some member states to “fight to reverse CJEU’s initial stance on EU citizenship as a legitimate source of social rights for economically inactive EU citizens.”³⁸ These moves attempt to reinterpret EU citizenship rights and fit them into “the logic of migration control where the default position is that the administration has a right to refuse applications unless migrants can justify their claims.”³⁹ Rather than the previous logic under “EU citizenship law where the EU citizen is entitled to equal treatment, save for exceptions where the state must justify exclusion from equal treatment. The move to systematic control of all applicants for social assistance suggests a system underpinned by a logic of generalised suspicion towards EU citizens where equal treatment is the exception and not the norm.”⁴⁰

Equal treatment as exception rather than norm clearly indicates the limits of EU citizenship, but here too it is unclear how unique the EU is when compared with other multilevel systems.⁴¹ For example, a US citizen in West Virginia (median household income \$43,469; life

37 Daniel V Preece, *Dismantling Social Europe: The Political Economy of Social Policy in the European Union* (First Forum Press 2009).

38 Sandra Mantu and Paul Minderhoud, ‘Struggles over Social Rights: Restricting Access to Social Assistance for EU Citizens’ (2023) 25 *European Journal of Social Security* 3, 16.

39 Ibid 17.

40 Ibid.

41 From a legal perspective, citizenship of the EU might most fruitfully be compared with “citizenship” (if not always called that) of international organizations such as Unasur, Mercosur, the African Union, etcetera. But no other international organization has developed the institutional density that characterizes the EU, hence this article’s focus on countries. See Willem Maas ‘Trade, Regional Integration, and Free Movement of People’ in Joaquín Roy, ed., *A New Atlantic Community: The European Union, the US and Latin America* (University of Miami, 2015) 111; Willem Maas, ‘Unrespected, unequal, hollow? Contingent citizenship and reversible rights in the European Union’ (2015) 15 *Columbia Journal of European Law* 265.

expectancy 74.8 years) faces lower life chances than one in neighbouring Maryland (median household income \$80,776; life expectancy 78.8 years), but in one interpretation the role of the US federal government is limited to facilitating free movement and to combatting state efforts to restrict in-migration by poor fellow Americans. However, the federal government also contributes to raising the welfare of individual West Virginians through individual social programs. A European analogy would be a European unemployment insurance program as discussed in some proposals connected with the European Pillar of Social Rights. The European Pillar of Social Rights is based on three headings: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion – and the European Commission has given the EPSR a “strikingly ambitious role.”⁴²

Since its early beginnings in the 1960s, efforts to enhance ‘social Europe’ by developing common social policies with concrete entitlements have continued to break apart on the rocks of member state sovereignty, despite the formal introduction of EU citizenship. As a result of the EU’s failures in this area, many authors conclude that, as one commentator puts it, “it is difficult to see how EU citizenship could ever classify as ‘full citizenship’ unless the EU changes its polity form and transforms into something that resembles much more a European post-war nation state”; and “only if the EU were to develop into a full-blown welfare state (as we only know it at national level) legitimately, could it ensure welfare for all mobile EU citizens without challenging national redistributive policy.”⁴³ As the same commentator correctly notes, however, such analyses need to compare “EU citizenship with other historically contingent forms of citizenship to which it approximates much more closely rather than 20th

42 Zane Rasnača, ‘Bridging the Gaps or Falling Short? The European Pillar of Social Rights and What It Can Bring to EU-Level Policymaking’ (European Trade Union Institute 2017) Working Paper 2017.05 13.

43 Cecilia Bruzelius, ‘European Citizenship: Points of Comparison’ (*GLOBALCIT Review Symposium of Challenging European Citizenship*, 12 October 2021) <<https://globalcit.eu/globalcit-review-symposium-of-challenging-european-citizenship-ideas-and-realities-in-contrast-agustin-jose-menendez-and-espen-d-h-olsen/>> accessed 12 November 2023.

century nation state configurations of citizenship,” such as federal and other multilevel forms of citizenship.⁴⁴

5. EU Citizenship and Comparative Internal Migration

For all its shortcomings, such as those identified by other articles in this special issue, EU citizenship has succeeded in transforming the movement of EU citizens within the European space into something resembling the internal migration that happens between states within the United States, provinces within Canada, and similar internal migrations elsewhere. In fact, the freedom of EU citizens to travel, study, work, or simply live within the common European territory is arguably often stronger than that of citizens of other large and complex polities such as China or India, where analogous freedoms are either not guaranteed or subject to so many administrative and other barriers as to place in question the utility of common citizenship.

Chinese provinces and cities impose residence requirements and restrictions on internal migration, despite the Universal Declaration of Human Rights provision that “Everyone has the right to freedom of movement and residence within the borders of each State.”⁴⁵ Viewed from “the national level, Chinese citizenship appears weak, with few social rights and almost no political participation. Citizenship responsibilities are located primarily at the national level in China, but local membership dictates entitlements to and provision of citizenship rights.”⁴⁶ In other words, “it is the local government that provides the socio-economic collective rights that define the value of Chinese citizenship.”⁴⁷ The problem

44 Ibid.

45 Article 13. The Universal Declaration of Human Rights is non-binding, but other treaties, international legal instruments, and loose global norms confirm that intra-state freedom of movement is settled in international law, even if some states (such as China) do not comply. The point is political more than legal: citizenship implies freedom of movement.

46 Samantha A. Vortherms, ‘Hukou as a Case of Multi-Level Citizenship’ in Zhonghua Guo (ed), *The Routledge Handbook of Chinese Citizenship* (Routledge 2021) 137.

47 Ibid.

for internal migrants is that local governments in China “legally classify people who live locally but are registered elsewhere either as second-class citizens or non-citizens within their own country.”⁴⁸

Furthermore, likely to a greater extent than even ‘undesirable’ migrants such as Roma in the EU, internal migrants in China often face prejudice and discrimination: news media reports often blame them for crime and social disorder.⁴⁹ Building on plans first announced in 2019, however, China’s ministry of public security in August 2023 told local governments to cancel hukou (household registration; first introduced in 1958 to limit mobility, at the same time that European leaders were attempting to facilitate mobility) restrictions in cities with fewer than 3 million people, and relax them for cities with 3–5 million people, while larger cities with populations over 5 million would also be encouraged to relax their hukou quotas.⁵⁰ Despite the restrictions now starting to be relaxed, millions of people – an estimated 292 million people in 2023, or one-third of the total working population – did move ‘illegally’ and were barred from access to healthcare, public education, and other social benefits in the cities; without “urban hukou, rural migrants have to pay more for social services and are often barred from buying property in the city.”⁵¹

India is another relevant comparison with the European Union, perhaps even more relevant than China, because while Chinese citizens have no guaranteed right to free movement within China (at least until the relaxations of the hukou system announced in 2023 are enacted), the constitution of India provides (in Article 19, clause 1) that all citizens have the right “to move freely throughout the territory of India” (sub-clause d) and “to reside and settle in any part of the territory of India”

48 Ibid 139.

49 Samantha Vortherms, ‘Between the Center and the People: Localized Citizenship in China’ (PhD dissertation, University of Wisconsin Madison 2017) 115.

50 Amy Hawkins, ‘China to Relax Internal Migration Rules to Kickstart Economy’ *The Guardian* (4 August 2023) <<https://www.theguardian.com/world/2023/aug/04/china-to-relax-internal-migration-rules-to-kickstart-economy>> accessed 14 November 2023.

51 Ibid.

(sub-clause e). Yet these rights can be restricted by Indian states,⁵² and indeed most Indian states do restrict employment in the public sector as well as public education and other social assistance programs to residents of the state rather than newcomers. Internal migrants in India and several neighbouring countries can be described as being “stateless without losing the state’s legal recognition”; lack of adequate “nutrition, health hazards, illiteracy and the tag of outsiders within their own countries make them run from one place to another to live a life without rights and dignity” – so that, for internal migrants, “citizenship has no meaning.”⁵³

Another report concluded that “Migrants have little or no state-level support and are often scapegoated by local law enforcement and politicians for any trouble. They are underpaid, underserved and unable to be fully productive. Interviews with interstate migrants across India revealed widespread despondency about their quality of life and a yearning to go back home eventually.”⁵⁴ In the words of a 2017 report by the national government of India’s Working Group on Migration, it “is important to confront discrimination whenever it appears and reinforce the contributions that migrants make to their places of residence and reaffirm the rights of Indians to settle and work anywhere in India.”⁵⁵

Ordinary EU citizens seeking to move within the EU thus arguably have greater freedom than internal migrants in either China or India. And they may even have greater freedom in some cases than Canadian citizens seeking to move between provinces, or American citizens seeking to move between states. This is because many elements of rights and social services are the jurisdiction of states and provinces rather than national governments – including, crucially, access to regulated professions, which in the EU is handled through mutual recognition of creden-

52 “5. Nothing in sub-clause (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe.”

53 South Asia Alliance for Poverty Eradication, ‘Migration in South Asia: Poverty and Vulnerability’ (2020).

54 Varun Aggarwal and others, ‘The Integration of Interstate Migrants in India: A 7 State Policy Evaluation’ (2020) 58 *International Migration* 144.

55 Government of India, ‘Report of the Working Group on Migration’ 66, 67.

tials. For example, the Canadian Free Trade Agreement (between the provinces and federal government) that entered into force in July 2017 aimed to lower restrictions on the free movement of workers between Canadian provinces but does not apply to “social policy measures including labour standards and codes, minimum wages, employment insurance qualification periods, and social assistance”.⁵⁶ And a July 2019 meeting of Canadian premiers promised to “identify and address outstanding impediments to labour mobility,” but without providing any timeline.⁵⁷

In the United States, Americans “were defined by law and custom as local citizens, and local laws determined whether they could receive benefits or even move from one place to the next” until the 1960s.⁵⁸ It was only in the 1970s that consensus grew on the view that the “federal government bore some responsibility for migrants and that migrants, as national citizens, were entitled to the same rights and privileges as long-time residents. The contemporary welfare state and conception of national citizenship emerged out of these debates over internal migration.”⁵⁹ Despite the majority ruling on the 1999 landmark United States Supreme Court case on access to social benefits for US citizens moving from one state to another,⁶⁰ the dissent authored by Chief Justice Rehnquist (joined by Justice Thomas) pointed out that if states “can require individuals to reside in-state for a year before exercising the right to educational benefits, the right to terminate a marriage, or the right to vote in primary elections that all other state citizens enjoy, then States may surely do the same for welfare benefits.”⁶¹ That dissent did not win

56 Canadian Free Trade Agreement (2017), Article 701(2) available at <https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>.

57 Council of the Federation, ‘Premiers Committed to Strengthening the Economy Through Reducing Barriers to Internal Trade’ (2019) <http://www.canadaspremiers.ca/wp-content/uploads/2019/07/Internal_Trade_July10_FINAL-1.pdf>.

58 Elisa M. Alvarez Minoff, ‘Free to Move? The Law and Politics of Internal Migration in Twentieth-Century America’ (PhD dissertation, Harvard University 2013).

59 Ibid.

60 *Sáenz v. Roe*, 526 U.S. 489 (1999).

61 He continued that in his view “the durational residence requirement challenged here is a permissible exercise of the State’s power to ‘assur[e] that services provided for its residents are enjoyed only by residents.’ *Martinez*, 461 U.S., at 328.”

the day, but does highlight the fact that full free movement is not always possible – including for American students seeking lower ‘in-state’ tuition, another example where EU students have greater freedom than American or many Canadian ones.⁶²

6. Conclusion

Considered against a stylized ideal of national citizenship which provides full free movement and guarantees of equality across many dimensions, an assessment of EU citizenship’s achievements to date might emphasize its many shortcomings. A more nuanced comparison, however, demonstrates both that EU citizenship provides crucial support for the goals of European integration and that the theoretical ideal of equal citizenship has also not been achieved in practice elsewhere. Citing American scholarship, Daniel Thym reminds us that political responses to contemporary challenges must be embedded in social practices and patterns of identification if they want to have a lasting impact.⁶³ Similarly, the achievements of EU citizenship will eventually fade away to the extent they do not inspire identification with the European project, shared to some extent across all parts of the political spectrum. Integration-minded leaders should be heartened that a strong majority of Europeans (particularly young Europeans) favours harmonization of social welfare systems, and that intra-EU free movement has a generally positive perception in contrast to the generally negative connotations of immigration from outside the EU.⁶⁴ Perhaps the hope expressed by Churchill that

62 Because tuition charged to EU students from another EU member state is the same as that charged to domestic students, unlike the higher tuition charged to ‘out-of-state’ or ‘out-of-province’ students in the US and Canada. Indeed, when the UK was a member state, English students in Scotland paid higher tuition than students from other EU member states (who paid the same rate as Scottish students), in a classic example of reverse discrimination.

63 See Daniel Thym, ‘Sociocultural Deservingness and Economic Merit in the Evolution of Citizens’ Rights’ in this special issue.

64 Justyna Salamońska, ‘Mobilities against Prejudice: The Role of Social Transnationalism in Europe in Sentiments towards Immigration from Other EU Member States and from Outside the EU’ in Anna Triandafyllidou (ed), *Multicultural Governance in a Mobile World* (Edinburgh University Press 2017).

a European should be able to think 'Here I am at home. I am a citizen of this country too' everywhere in the EU remains elusive – but it is not necessarily more elusive than similar thoughts by a citizen of China, India, Canada, the United States, and so on. However imperfect, EU citizenship's facilitation of the freedom to travel, study, work, or simply live anywhere in the EU provides Europeans with greater freedom than they have had historically and than many others have comparatively.

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