

Trade, Regional Integration, and Free Movement of People

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Abstract

A building block of regional integration in Europe has been the development of supranational rights, particularly the rights of citizens of member states to live elsewhere in the community. Since the first free movement rights in the early 1950s, the concept of a common EU citizenship has hardened into law, most famously in the Court of Justice's oft-repeated assertion that "Union citizenship is destined to be the fundamental status of nationals of the Member States." By contrast, efforts to foster the free movement of people in groupings such as CARICOM, the Andean Community, MERCOSUR, and UNASUR have so far been relatively modest. Nevertheless, actors within each of those organizations have or are considering supranational rights, thus it is useful to ask about the prospects of common free movement rights and perhaps eventually citizenship, focused foremost on the right of member state nationals to live and work elsewhere within the community. The paper's underlying argument is that successful and stable regional integration efforts must include free movement rights for people.

Introduction

In a speech at Yale University about the Transatlantic Trade and Investment Partnership (TTIP) currently being negotiated between Europe and the United States, the European Commission Vice-President Viviane Reding argued that "a single market requires fundamental changes in which nation states cooperate. They must abolish their prerogative to establish border controls, excise customs duties, guarantee the free movement of people, goods, services and capital, etc. Overall, they must guarantee each of their own citizens and of every other member state of the European Union the same, Europe-wide enforceable rights." (Reding 2013) This idea that free movement of persons is central to the European project, and perhaps also other regional integration efforts, is something I find persuasive because I have been making similar arguments for a while (Maas 2005; 2007; 2009; 2013a; 2014a; 2014b).

The argument is that, alongside the economic logic of integration, European leaders share a political commitment to creating a common community of

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people, and that this commitment has gradually resulted in the creation of a common citizenship. The most important rights of the supranational citizenship involve free movement rights to live and work anywhere within the common territory, which is the foundation of a political community. Though always in tension with the desires of member state governments to maintain control over their borders and to decide who can live within their territory, the right of EU citizens to live anywhere within the EU is vigorously defended by central institutions such as the Commission and the Court. While it works in the European context, the relationship between trade agreements, regional integration, and free movement of people elsewhere is not always clear.

In this short paper I counterpoise the example of EU citizenship and nascent efforts in Latin America to develop forms of regional citizenship, to argue that successful and deeply rooted regional integration efforts must include free movement rights for people, and not simply the free movement of goods, capital, and services. The paper proceeds as follows: in the next section, I sketch the development of free movement rights in Europe. Then, I discuss some efforts to develop such rights in the Americas, emphasizing the distinct political dynamics at work in the two contexts. Then I raise some questions about the applicability of the European model in the Americas, before concluding with some brief thoughts about the role of national governments and supranational institutions in pursuing freer movement of people and a common citizenship in regional integration efforts.

Free Movement in Europe

The postwar federalist determination to introduce a supranational European citizenship to supplement national citizenship was reflected in statements such as Winston Churchill's 1949 call for a "sense of enlarged patriotism and common citizenship" for Europeans. The previous year, at a conference bringing together hundreds of Europe's most important leaders and thinkers, Churchill had said: "We hope to reach again a Europe...in which men will be proud to say 'I am a European.' We 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 wherever they go in this wide domain they will truly feel 'Here I am at home'." The 1950 Schuman Declaration spoke of "common foundations for economic development as a first step in the federation of Europe" a common market would create "a wider and deeper community" and "lead to the realization of the first concrete foundation of a European federation." The resulting 1951 Paris Treaty resolved "to establish, by creating an economic community, the foundation of a broad and independent community" – and alongside the treaty's free trade provisions also provided free movement for workers in the fields covered by the treaty – which were expanded significantly in the 1957 Treaty of Rome. Despite the gradual growth of European rights from the 1950s onward, EU citizenship's legal status

was confirmed only in the Maastricht Treaty, which entered into force in 1993. To some extent, this can be seen as a terminological delay. Indeed, Commissioner Davignon argued in 1979 that “the status of ‘Community citizen’ [was] officially recognized from the moment when the Treaties granted rights to individuals and the opportunity of enforcing them by recourse to a national or Community court” (Maas 2007).

The Treaties of Paris and Rome already prohibited any discrimination based on nationality among nationals of the member states, but the transformation of free movement rights from being defined and promoted in economic terms to being placed at the core of a new European citizenship was gradual. Free movement rights for workers were first justified in terms of enabling the free movement of labor and then as a measure to complete the single market. But they were extended and expanded even after the workers’ movement sufficient to support the common market had been achieved. This broadening of individual rights coincided with the growth of EU citizenship, which took decades to reach fruition—from postwar discussions to the Maastricht Treaty. Despite substantial support in the 1970’s for introducing European citizenship, the Community’s first enlargement (the UK, Ireland, and Denmark in 1973) stymied the process, but the two subsequent enlargements (Greece in 1981, Spain and Portugal in 1986) reinvigorated it. The eventual adoption of EU citizenship resulted not from Commission pressure but rather from bargaining among member states—including the three new Mediterranean members—and between member states and the European Parliament. With the Single European Act (SEA) in 1987, the Parliament had gained the power of co-decision, which helps explaining why the member states could afford to ignore the Parliament’s citizenship proposals before the SEA but accepted them in the discussions preceding Maastricht. Today approximately 14 million Europeans live in another EU member state, and intra-European migration increasingly resembles internal rather than international migration.

Free Movement in Latin America

The introduction and expansion of free movement rights culminating in a common citizenship took decades to achieve in Europe. Analogous efforts in Latin America are nascent and will likely require many years, and similar political commitment. Currently the largest regional cross-border – not including internal migration, which can often be at least as important as international migration (Maas 2013b) – migrant communities are the Colombians in Venezuela and Ecuador, Nicaraguans in Costa Rica, Haitians in the Dominican Republic, and Paraguayans, Bolivians, and Chileans in Argentina, together accounting for over half (about 2.2 million) of the total 4.09 million intra-Latin American migrants (IOM 2012). This is, however, still less than the number of Latin American-born individuals residing in the European Union, around 4.29 million. Of these nearly 4.3

million Latin Americans in Europe, well over half reside in Spain (over 2.6 million people, chiefly from Ecuador, Colombia, Argentina, Bolivia, Peru, Venezuela, Brazil, the Dominican Republic, Uruguay, and Paraguay), with the next most important destinations the United Kingdom (424,000 individuals, chiefly from Jamaica and Brazil), Italy (358,000 individuals, chiefly from Ecuador and Peru), the Netherlands (335,000 individuals, chiefly from Suriname and the Netherlands Antilles), and France (156,000 individuals, chiefly from Haiti). Thus we can see both historical ‘brain drain’ to Europe (chiefly Spain) and North America (chiefly the United States) as well as more recent intra-regional migration.

There have been various efforts over the years to promote free movement of people within Latin America. The most advanced of these efforts are found in CARICOM and in UNASUR, which is in the process of consolidating the previous efforts of the Andean Community and of MERCOSUR:

CARICOM

The Treaty of Chaguaramas established the Caribbean Community and Common Market in 1973, superseding the Caribbean Free Trade Association, which in turn had replaced the West Indies Federation. The Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy (CSME), was signed in 2001. According to the article 45 of the revised treaty: “Member States commit themselves to the goal of the free movement of their nationals within the Community” (CARICOM 2001). Free movement of people is seen as “an essential factor in an ever closer union among the people of CARICOM Member States.” Article 45 on free movement “entails the right to seek employment in any Member State and the elimination of the need for work permits and permits of stay,” but its implementation has been subject to constant delays.² Of particular note is the CARICOM passport, which is a common format that has been gradually introduced since 2005 and, according to an official press release “is seen as a defining symbol of regionalism” (CARICOM 2009). Despite this rhetoric, however, the development of freedom of movement within CARICOM appears relatively limited.

Andean Community

The Andean Pact was created by Bolivia, Chile, Colombia, Ecuador, and Peru by the Cartagena Agreement of 1969 and renamed the Andean Community (Spanish: Comunidad Andina) in 1996. Chile became an observer in 1976, while Venezuela joined in 1973 but left again in 2006 to join MERCOSUR. The Communi-

² For more information see document at:
http://www.caricom.org/jsp/single_market/freemovementskills_socialsecurity.pdf and
 table, and
http://www.caricom.org/jsp/single_market/fulloperationalisationfreemovement.pdf.

ty's Decisión 504 of 2001 created a standard-format Andean passport for use in the member countries. Furthermore, in Decisión 545 the Community approved an Andean Labor Migration Instrument which provides for the relative free movement of workers between member states, as well as banning discrimination based on nationality against workers from other Community member states. In terms of its provisions, Decisión 545 resembles the early free movement provisions of the European Union.

MERCOSUR

In 1991, Argentina, Brazil, Paraguay and Uruguay signed the Treaty of Asunción, creating the Southern Common Market, or MERCOSUR. The 1994 Protocol of Ouro Preto amended the Treaty of Asunción and transformed MERCOSUR from a Free Trade Area into a Customs Union. Free movement rights within MERCOSUR started in 2002 when the member states signed the Residence Agreement, which finally entered into force in 2009 after ratification by Paraguay's Senate. The Agreement is intended to resolve the situation of irregular migrants from within the region and "has transformed the migration regime for South Americans" because nationals of member or associate states "may reside and work for a period of two years in another member state if they have an identification document and a clean criminal record" (Acosta, Arcarazo and Geddes 2014).

Similar to the early years of European integration, the Agreement also provides "the right to work and equal treatment in working conditions, family reunion or access to education for children"; and it is even more generous than the early European free movement provisions because "sufficient resources do not represent a condition sine qua non" and the "permit may then be transformed into a permanent one after two years" if applicants can prove they have sufficient resources to sustain themselves in the territory of the host state. Bolivia (which is in the process of becoming a full member) along with Chile, Colombia, and Peru also observe the Residence Agreement. Venezuela became a full member in 2012 but (as of this writing) has not yet implemented the Agreement, nor have Associate members Ecuador, Guyana and Suriname.

Besides the Residence Agreement, of particular note within MERCOSUR is the Citizenship Statute, signed in 2010, which provides an action plan for full implementation on common citizenship on the thirtieth anniversary of the signing of the Treaty of Asunción, in 2021. The Citizenship Statute has three main objectives: free movement of people within the region; equal civil, social, cultural, and economic rights and freedoms for citizens of member states (comparable to non-discrimination on the basis of nationality); and equal conditions of access to work, health, and education (MERCOSUR 2010). Although the Statute sets some parameters for achieving these objectives, its decision-making procedures appear to be largely intergovernmental, based on bargaining between the

member states. Thus a prediction based on the European experience is that further institutionalization will be necessary for these objectives to be realized.

UNASUR

The Union of South American Nations, usually known by its Spanish acronym UNASUR (Unión de Naciones Suramericanas; Portuguese: União de Nações Sul-Americanas, UNASUL; Dutch: Unie van Zuid-Amerikaanse Naties, UZAN), is a consolidation of MERCOSUR and the Andean Community – both discussed above – together with every other country on the South American continent except for the French Guiana, which is an overseas territory of France. In the area of migration, there is a policy of officially welcoming but covertly rejecting irregular migrants, which seems paradoxical when viewed from the lens of Europe or North America, where the official discourse emphasizes rejection while the reality is more liberal (Acosta Arcarazo and Freier forthcoming).

The UNASUR treaty lists one of the Union's objectives as "the consolidation of a South American identity through the progressive recognition of the rights of nationals of a Member State resident in any of the other Member States, in order to achieve a South American citizenship" (Art. 3i), and this idea is frequently repeated by government leaders. Most recently at the December 2014 summit, UNASUR general secretary Ernesto Samper emphasized that "We have approved the concept of South American citizenship. This should be the greatest register of what has happened". UNASUR citizenship includes creating a "single passport" and common educational rules to give South Americans the right to live, work, and study in any UNASUR country, similar to free movement within the EU (Robertson 2014). Together, the Andean Community, MERCOSUR, and UNASUR provide an exciting venue for the potential development of a continent-wide supranational citizenship.

Future Prospects

A key reason for the success of European integration is the rise of individual free movement rights, which gives concrete rights and entitlements to citizens of all EU member states and prohibits discrimination based on nationality (Maas 2013c). Despite this success, however, the limits to European citizenship remain evident – such as the limited extent to which EU citizens have rights to access social assistance in a member state other than that of their nationality (Verschuere 2014). In any case, the "right of EU citizens to enjoy full social rights in their host state is closely related to their engagement in the performance of economic activities, as either workers, self-employed or service providers" (Mantu 2013: 463). Within North America, Canada's travel visas for citizens of Mexico are an affront to the idea of creating a common community and the egre-

gious misregulation of Mexican immigration to the United States also shows the limits of NAFTA free movement provisions. However, free movement efforts in Latin America show more promise.

One difficulty in comparing current developments in Latin America with the historical development of free movement rights and citizenship in the European Union is that concepts such as democracy appear to be understood differently in the two regions. For example, central governments in MERCOSUR appear “less committed to democratic consolidation based on citizenship and social inclusion than the EU assumes and, as a result, EU pro-democracy policies resonate less than expected. Local civil society actors, in contrast, do identify with EU understandings of democracy” (Grugel 2007). This matters because introducing a concept of ‘citizenship’ – as MERCOSUR and UNASUR do explicitly and the Andean Community and CARICOM do at least implicitly by focusing on free movement rights for workers – means negotiating not only intergovernmental agreements and photo opportunities for heads of state and government but also procedures and practices which will impact individuals throughout the region. Across Latin America, the construction of a citizenry has long been tied to the nation-building project yet, despite efforts to develop ‘modern’ citizenship, “the boundaries of citizenship in the region have been circumscribed by racial, spatial, class-based, and gendered hierarchies,” the development of civil and political rights is hampered by weak democratic institutions and rule of law, and social rights reflect persistent poverty, inequality, and lack of universal access to basic social services (Meltzer and Rojas 2014: 253).

The initial drafts for the TTIP negotiations pay passing mention of free movement for individuals, but focus mostly on mobility that is useful to business, such as intra-corporate transfers.³ Similarly, despite promises in early drafts, the final treaty text of CETA, the agreement between the European Union and Canada, also does not mention a general free movement right for individuals but limits mobility provisions to temporary workers connected with business.⁴ This relative absence of free movement provisions in the two trade agreements is regrettable, because inclusion would likely have strengthened the popular support for the agreements, as well as intensifying the benefits of freer trade. This is because the volume of trade increases greatly the more people know each other.

As John Helliwell has shown, the effect of a border is many times greater than that of geography or distance: one explanation for so-called “border effects” emphasizes that it is “cheaper and easier to operate within networks of shared norms and trust, and that the density of such networks declines with distance, especially as one crosses national borders” (Helliwell 2002). Networks and shared norms depend on two features: first, the movements of people, because

³ For more detailed information see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>.

⁴ For more detailed information access http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf.

personal contacts establish and maintain networks and trust; second, formal institutions to supplement informal personal networks.⁵ So, too, we should expect that trade agreements will be more effective if they include provisions for the freer movement of people, not simply the freer movement of goods or capital. Furthermore, besides their anticipated positive effects on regional integration, free trade agreements might become more politically palatable if ordinary citizens can see the benefits not just for businesses and large corporations but also for themselves and others like them. This means that free movement should not simply be for goods or services or capital but also for people.

As the experience of NAFTA shows, alongside that of the emerging free movement regimes in Latin America, such a transition will not be easy to achieve. However, the counterexample of Europe provides some grounds for optimism, although in Europe the decades-long process of ever-expanding free movement rights culminating in European citizenship, though supported by national political leaders committed to creating a shared community, was guided and amplified by strong supranational executive (European Commission) and judicial (European Court) authorities, which for the moment are non-existent or embryonic in the Americas. The prediction, therefore, is that it will be difficult for free movement of persons in the Americas to quickly come to resemble internal rather than international migration, as has happened in Europe. Examples ranging from the denaturalization of Dominicans of Haitian origin to the continuing problematic status of Mexicans in the United States – contrast the hardening of the US-Mexico border with the softening and outright removal of border controls within Europe’s Schengen zone – support this thesis, although the rhetoric of free movement and shared citizenship in CARICOM, the Andean Community, MERCOSUR, and UNASUR may yet prove such pessimism unwarranted.

Conclusion

A key element of regional integration in Europe has been the development of supranational rights and a common European citizenship. Since the first free movement rights for coal and steel workers in the early 1950’s, supranational rights for EU citizens have been extended to ever greater categories of people, reflected in the European Court’s oft-repeated assertion that “Union citizenship is destined to be the fundamental status of nationals of the Member States.” By contrast, efforts to foster individual free movement in CARICOM, the Andean Community, MERCOSUR, and UNASUR have so far been relatively modest. Nevertheless, each of those integration efforts are considering supranational rights, thus it is useful to ask about the prospects of common rights and perhaps

⁵ Under formal institutions, Helliwell includes “laws and the administration of justice, the design and implementation of standards, and the efficiency and quality of essential services, including (especially) health and education but also including the classic utilities – water, heat, light, power, and communications.”

eventually citizenship, focused foremost on the right of member state nationals to live and work elsewhere within the community.

This paper has argued that successful regional integration requires states to extend free movement rights to individuals, rather than simply promoting the free movement of goods, services, or capital. Against the backdrop of EU citizenship, the paper assessed current efforts underway in Latin America to create regional rights, including most notably free movement rights and citizenship analogous to those found in Europe. A tentative conclusion is that, while supranational rights are difficult to achieve, they help provide legitimacy for what would otherwise be simply free trade agreements with no benefits for ordinary citizens and therefore that the rise of common free movement rights perhaps coupled with a common citizenship is an important indicator for the success of regional integration beyond mere trade agreements.

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