

Chapter 4

Citizenship and Free Movement in Comparative Federalism

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In a keynote address to the European Community Studies Association Canada (ECSA-C) 2004 biennial conference, Alberta Sbragia (2004) examined the balance between “shared rule and self rule” identified by federalism scholars and argued that the process of writing a constitutional treaty was prompting a significant movement on the part of the EU’s member states toward a greater degree of “shared rule” outside both the predominant supranational and intergovernmental models.¹ She suggested scholars should reexamine confederal kinds of “shared rule” arrangements rather than simply federalism conceived narrowly as the traditional form of division of powers within a federal government: “discussions of federalism in the European Union need to incorporate serious analyses of the confederal form of governance” (Sbragia 2004).

Sbragia’s argument for the relevance of reexamining different kinds of shared rule arrangements, most notably confederal models, was based on an analysis and evaluation of the draft constitutional treaty. She argued that the treaty did not represent a step toward a federation as traditionally defined but was a step toward a deeper and more sophisticated form of shared rule; not a step toward a *government* as traditionally defined in a federal state but instead a step toward more *governance* understood as expanded, deeper, and more intrusive shared rule (Sbragia 2004). Subsequent developments have proven Sbragia’s analysis largely correct: the balance between self rule and shared rule within the European Union has continued to tilt in the direction of the latter,

¹ One major author in the federalism literatures examined by Sbragia is Elazar, whose arguments can be found succinctly in (Elazar 1995).

sometimes dramatically so – and the form of that shared rule is more confederal than federal, more ‘governance’ than ‘government’ as traditionally defined in a federal state. In this contribution, I examine the difficult rise of shared rule over questions of citizenship and the free movement of people within a shared political space.²

Both in Europe and North America, the regulation of the movement of people, and issues of citizenship more broadly, have always interacted with federalism. In the United States, the Great Depression epitomized barriers on the movement of unwanted Americans from other states. But incentives and disincentives to crossing jurisdictional borders continue to exist today. Similarly, in Canada, interprovincial movement of people has been hampered historically as well as in the present day by the existence of ‘semi-sovereign’ provinces responsible for their own labor markets and welfare provisions, such as healthcare and education. In Europe, the movement of people between states was for the first half of the twentieth century purely an issue for international migration and international relations between sovereign states. But starting from the free movement rights granted to coal and steel workers (most significantly Italian workers) in the early 1950s (Maas 2005), through all the ups and downs of the slow rise of EU citizenship (Maas 2007, 2017a), the movement of Europeans within Europe has become more akin to internal migration such as occurs between provinces within Canada or states within the United States. Yet as demonstrated by populist and nativist responses, or even simply the innocent operation of

² Thus this contribution does not analyze the movement of people *into* the European Union, which is covered in this volume by (Jacoby and Jevtic-Somlai forthcoming), who identify a tradeoff between the desire to respond humanely to massive refugee flows into Europe and the capacity to integrate large numbers of refugees into national life.

governments working at different levels, this slow and ongoing transition towards a shared European citizenship with shared rights raises fundamental questions about the status of the nation-state and the role of national governments. As noted also in this volume by (Fabbrini forthcoming), the question raised by Sbragia in 1992 is still unanswered, namely “is it possible to ‘federalize’ the Community significantly while retaining a key policy-making role for national governments?” (Sbragia 1992, 258). Along these lines, the question should be asked to what extent it is possible or desirable to ‘Europeanize’ citizenship and free movement while retaining a key role for national governments.

Wanted versus Unwanted Migrants and the Question of Governance

Questions of citizenship and free movement have marked the EU throughout its evolution and are also key issues for federal states and scholarship in comparative federalism, the lens that Alberta Sbragia has examined throughout her career. “We must break free of the EU and take back control of our borders” declares a poster unveiled by UKIP leader Nigel Farage during the Brexit referendum campaign – and the continued free movement rights of British citizens in the EU and EU citizens in the United Kingdom remains a political hot potato in the Brexit negotiations (Maas forthcoming). “If You Ain’t Got the Do Re Mi,” sang Woody Guthrie in *Dust Bowl Ballads*, “The police at the port of entry say... Better get back to beautiful Texas, Oklahoma, Kansas, Georgia, Tennessee” – and the *Los Angeles Times* lauded the police presence at California’s borders as providing much-needed “protection against such swarms of two-legged locusts,” meaning jobless fellow Americans. “Nearly one in seven new welfare recipients in B.C. last year were from out-of-province,” affirmed *The Province* newspaper in 2016, arguing that, as “more homeless and unemployed people continue to arrive here, British Columbia should make it clear to other provinces that offloading their poor on B.C. is not acceptable.” These are manifestations of

nativism or protectionism against fellow citizens, but the Brexit referendum has resulted in a resurgence of Europhilia in the United Kingdom, California's "bum blockade" resulted in the US Supreme Court affirming the primacy of federal over state citizenship, and the British Columbia statistics prompted the province's Housing Minister to affirm that "We don't have border security here that says you can't come into British Columbia. If you arrive at a shelter here, we don't judge you by where you come from. We try to help you." In all three cases, then, the nativist or protectionist backlash against in-migration by fellow citizens sparked a counter-narrative of fellow citizenship. Adapting the comparative federalism lens developed by Sbragia demonstrates that questions of free movement and citizenship are fundamental not only in federations such as the United States and Canada but also in Europe.

Looking comparatively at internal migration policies reveals that governments generally favor rich people and want to attract them or retain them, while governments also generally discourage poor people to in-migrate and may encourage out-migration. It does not matter whether the government in question is municipal, regional, state, or otherwise: all governments engage in such calculations about the utility or desirability of residents and migrants. To the extent that this is true, attempts by some EU member states to attract wealthy Europeans and to discourage poor Europeans from in-migrating (or encourage them to out-migrate) are not at all unexpected, but can be analyzed through the lens of comparative federalism.

As an example from the United States, Puerto Rico has special tax incentives to attract millionaires and billionaires from the rest of the United States: zero tax on dividends, interest, and capital gains. Florida, too, actively works to attract wealthy Americans from other states – often with success. In 2016, the relocation of a single taxpayer (hedge-fund billionaire David Tepper) from New Jersey to Florida caused New Jersey's income to fall by hundreds of millions of dollars:

in “New York, California, Connecticut, Maryland and New Jersey, the top 1 percent pay a third or more of total income taxes. Now a handful of billionaires or even a single individual like Mr. Tepper can have a noticeable impact on state revenues and budgets.” (Frank 2016). Meanwhile, Connecticut holds discussions with top earners in hopes of keeping them from moving out of state.

The key point is that this type of competition among jurisdictions is nothing new: governments have long competed for “desirable” immigrants. For example, during the sixteenth century Dutch revolt, northern Dutch cities actively recruited refugees from the south (present-day Belgium, Luxembourg, and parts of northern France) with incentives and inducements including reimbursing moving costs, extending capital to (re)start businesses, making available manufacturing space, and tax incentives (Maas 2013b). The existing population sometimes envied these incentives, with complaints that the immigrants were “favored, advanced, and less taxed than residents” (ibid, 394). Dutch cities nevertheless competed with each other to attract the best immigrants. For example, Leiden in 1577 sent an agent to Gloucester, England, to attract southern Dutch linen and woolworkers, and the leaders of Haarlem in 1578 exhorted the Walloon community of London to relocate, promising to pay the salary of a French-speaking church minister and lauding their city’s stability and prosperity. These efforts to recruit refugees from the south paid off: by 1622 there were approximately 150,000 southerners residing in the Dutch Republic, approximately ten percent of the total population. Because most southerners settled in the cities, the concentration of immigrants in urban areas was much higher: an estimated one-third of Amsterdam residents, two-thirds of Leiden and Middelburg residents, and similarly significant groups in the smaller cities (ibid). What distinguishes contemporary efforts by governments to attract and retain desirable migrants from this historical example is today’s relative ease of

information, transportation, and communications technology – and of course the rise of the nation-states which generally guarantee the right to internal migration (Maas 2017c).

As an example of governments encouraging the out-migration of unwanted people, San Francisco has been expanding a program that buses over 1000 homeless people out of the city annually (Sabatini 2016).³ Similarly, New York City also pays for destitute residents to ‘return,’ usually to other parts of the United States, most notably Puerto Rico (Bosman 2009). In a system in which state and local governments are responsible for welfare provision, encouraging the out-migration of people who are ‘burdens’ and encouraging the in-migration of people who are ‘contributors’ makes financial sense. It may also make political sense. But seen from the perspective of the political system as a whole, such movements are zero-sum: one jurisdiction’s loss is another’s gain, and vice versa. This raises fundamental questions about the relationship between citizenship and federalism, questions which can be examined comparatively.

Citizenship and Comparative Federalism

Federalism exists in uneasy tension with citizenship. Indeed, the question of what ‘federalism’ means when it comes to the delineation of different peoples in a space or territory that is both shared and distinct can never be resolved completely. In “American Federalism and Intergovernmental Relations,” Sbragia argues that federalism in the United States should be understood as a conflict between territorial and functional politics. National institutions such as Congress are organized by functional areas, while the representation of the interests of subnational

³ Since February 2005, The City has provided nearly 10,000 homeless residents Greyhound bus tickets — also a \$10 per travel day allowance for food — to cities across the United States under Homeward Bound, the bus ticket home program (Sabatini 2016).

governments “involves the insertion of territorial criteria into that functionally dominated process. Given the structural dominance of functional politics in the American national arena, and the weaknesses in the system by which states and local governments represent their own interests, it is not surprising that federalism as a value has become of secondary importance in Washington” (Sbragia 2008, 240).

In the European Union, by contrast, territorial politics is much more enshrined because of the dominant role of the European Council and of the member states continuing to act directly rather than through centralized policymaking. One way of capturing this is to view governance in the European Union as a process that has evolved from a simple model based on hierarchical policymaking to a much more complex system of governance that employs both hierarchical and non-hierarchical governance modes (Tömmel 2016). Beyond both territorial and functional politics, the EU “engages in processes of meta-governance in order to transform fundamentally the economic and social organisation of the member states” (Tömmel 2016, 410). Indeed, a longer-term analysis of the evolution of European governance over many decades demonstrates that the key achievement of European integration in the realm of policymaking is a radical transformation in governance which transcends simple notions of hierarchy and may take the form of direct intervention or the establishment of guidelines or norms, in which governance is shared by multiple institutional actors across multiple levels (Caviedes and Maas 2016).

According to Sbragia, the key to understanding the politics of federalism within the United States is the conflict between territorial and functional interests: the “ ‘institutional self-interest’ of subnational elected officials has to do with maintaining as much authority and control as they possibly can over their own geographic area. By contrast, the interest of Congress lies in exercising national control in functionally defined policy areas” (Sbragia 2008, 244). This conflict between

the territorial and functional interests shapes federalism not only in the United States but also in the European Union, where common institutions such as the Commission and the Court – one might add the European Central Bank, the European External Action Service, or even the European Court of Auditors – work to harmonize policies across the Union (Cini 2016; Guth 2016; Chang 2016; Dominguez 2016; Stephenson 2016).

Furthermore, in Europe just as in federal states, there is competition between levels of government. In the United States, as Sbragia argues, levels of government compete with one another: “Mayors want a direct relationship with Washington, whereas governors argue that states are best equipped to allocate resources to lower levels of government. Counties for their part argue that they are the critical local units” (Sbragia 2008, 255). And since in many areas the federal government does not itself deliver services, “the competition among other governments to be the key service provider in any policy area can be fierce,” and partisan divisions can also be important (ibid).

This mirrors in many ways the situation within the European Union, where central authorities similarly do not themselves deliver services. As described below, however, governments both in Europe and in federal states also often engage in ‘offloading’ responsibilities that are expensive or not rewarding, for example by denying responsibility for providing services to certain people or groups of people.

Another of Sbragia’s intellectual concerns, mirroring developments in the real world, has been the relationship between political identity (which is still largely presumed to be national) and supranational institutions. As she notes, many scholars “have focused on the problem posed by the lack of a European identity, the lack of a European public sphere in which citizens of different

nationalities could debate with one another, and the lack of feelings of solidarity across national boundaries” (Sbragia 2005, 168).

While acknowledging the lack of feelings of solidarity across national boundaries – which today, fifteen years later, looks less like a lack than a relative paucity, given the growing feelings of supranational solidarity raised by the Brexit process (Maas forthcoming) – as a problem, Sbragia affirms that even a lack of demos would not stop the debate about democracy: those “arguing for greater democracy at the EU level have been listened to since 1979 when the European Parliament was directly elected for the first time. Since then, the power of the European Parliament has been consistently expanded” (Sbragia 2005, 168).

This observation remains true, even in sensitive areas such as citizenship and free movement, though this underscores the necessity of developing robust new types of institutional arrangements to enable democratic control over policymaking in what Sbragia terms a postnational democracy. Whereas national democracy was closely linked to a nationally defined demos, “post-national democracy may in fact distinguish itself from its national predecessor by incorporating within itself the lack of such ‘we-feeling’. New types of institutional arrangements will need to be developed in order that post-national democracy might be able to coexist with the lack of a political community” (Sbragia 2005, 169).

As shown below, territorial identities and sovereignty are not nearly as fixed or immutable as often assumed by scholars of international relations and IR-inspired analyses of European integration. Instead, a comparative politics approach – particularly a comparative federalism approach such as that championed by Sbragia, which analyzes governance rather than government and recalls confederal models rather than being fixated on particular federal models – demonstrates the complexity and the fluidity of policymaking in multilevel settings. And of course economic

integration, though core, was never the only purpose of European integration; as I have argued elsewhere, European integration involves not only economic cooperation but also a political project of transcending borders and building a European community of people (Maas 2007).

Free Movement and Federalism

Classic research in political science established that full-scale mobility of persons “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” (Deutsch 1957, 53–54). As the examples of the United States and Canada show, mobility even in these democratic states is not entirely full-scale; but Deutsch and his coauthors are certainly correct to insist on the primary importance of the free movement of persons. In Europe today, there is opposition to migration generally, and specifically to perceived welfare tourism. But member states have been remarkably successful at limiting access to benefits for migrant Europeans, using welfare policies to limit mobility of poor or otherwise undesirable EU migrants (Geddes and Hadj-Abdou 2016; Schenk and Schmidt 2018; Lafleur and Mescoli 2018). One group which epitomizes the quandary facing member state governments and EU institutions are the Roma: the European Commission has taken significant steps to ensure that member states no longer engage in illegal expulsions of Roma, yet at the same time governments at all levels continue to limit the European rights of free movement and residence for Roma, leading to the conclusion that a weak Commission will likely continue to allow member states to engage in ethnically discriminatory policies against people who provide an easy scapegoat (Gehring 2013; Parker and López Catalán 2014). In many member states, support for free movement and EU citizenship remains the prevailing political message, but governments at some levels stoke fears about “poverty migration” or “welfare tourism” requiring

limits on EU free movement (Mantu 2017). As noted above, Sbragia reminds us that different levels of governments compete with each other – and this is true also for citizenship.

Except for the middle of the twentieth century, when alternative levels had largely been subsumed or were not considered relevant, the reigning form of citizenship was multilevel.⁴ Though the origins of unitary state citizenship can be traced back to Westphalia, local citizenships dominated in most countries until relatively recently. Common citizenship supplanted earlier forms of plural rather than singular citizenship in the United States only after the Civil War and the Fourteenth Amendment (1868) and state-level entitlements remain important today; German and Italian citizenship simply did not exist before the unifications of Germany and Italy in 1871. In Latin America, independence and state-building processes occupied most of the nineteenth century and it would be anachronistic to speak of homogeneous citizenships. The Austro-Hungarian, Ottoman, and Russian empires all featured forms of local status and rights that differed depending on territorial location or social membership. European colonial empires were characterized by forms of subjecthood in the colonies that were generally inferior to those in the metropole. Only since the end of World War I did unitary nation-states spread around the world; most of the world's states are less than one hundred years old and many are considerably newer.

These relatively recent mutations of sovereignty affect citizenship deeply. As Sbragia has argued, when a territorially based political identity is recognized as sovereign in the international arena, “the problems of constructing democratic governance with its overtones of some kind of majoritarian impulse are exacerbated” (Sbragia 2005, 171). Within the EU, giving greater autonomy to the territorially defined groups becomes particularly problematic because economic

⁴ This paragraph draws on (Maas 2017b).

“integration requires a ‘level playing field’ for all economic actors regardless of their nationality or claims to uniqueness” – which is why subsidiarity concerning competition policy, the single market, and trade and monetary policy are explicitly precluded (ibid). In the area of citizenship and free movement, too, the search for closer coordination and common guidelines flows from functional needs inevitably generated by superimposing a new supranational political community over existing territorially based national communities (Maas 2016) in ways analogous to the construction of federal states such as the United States and Canada.

The United States

The European Commission has suggested that interstate mobility in the United States is a model to be emulated when fostering intra-EU mobility, but actual interstate mobility has been declining steadily in the US: the annual mobility rate between states (the proportion of US citizens who change their residence from one state to another each year) dropped from 3.5% in the 1950s and 3.4% in the 1970s to only 1.6% more recently.⁵ It is unclear what caused the change, but one hypothesis is housing: as the cost of housing has risen, people are more “tied” to where they live. This is true in the market sector (housing that costs 1.7 times annual income is easier to trade than housing that costs 3 or more times annual income).⁶ It is even more true for the non-market sector:

⁵ See Brookings analysis of annual mobility rates.

⁶ In 1950 the median U.S. home cost 2.2 times the annual median household income; by 1990 it was still 2.2 times, but households were more likely to be dual-earner rather than single-earner (which inhibits mobility, because it is harder to relocate two jobs instead of only one). By 2010 – even after a severe drop in housing prices – the median U.S. home cost 3.3 times annual median household income.

someone living in rent-controlled or subsidized social housing may be even less likely to move for employment or family reasons (the main reasons people move) than those who have market-rate housing.

As noted above, during the Great Depression, when many unemployed and poor US citizens attempted to move from Dust Bowl states to California and other states in search of opportunity, the police chief of Los Angeles, James Davis, marched 136 police officers to the borders of California in a so-called “bum blockade,” wherever roads and railways entered California from Arizona, Nevada, and Oregon.⁷ The *Los Angeles Times* lauded the police presence at California’s borders for providing much-needed “protection against such swarms of two-legged locusts.” Characterizing jobless fellow US citizens as “two-legged locusts” was a particularly stark image, but other newspapers referred to job-seekers as “criminals,” “troublemakers,” “parasites,” “enemies of society,” and deplored the “influx of undesirables” from other US states.⁸

The “bum blockade” was not the first example of a conflict between federal and state protection of rights in the United States. For example, the US Supreme Court in *The Slaughter-House Cases*, ruled that “there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.”⁹ The existence of these two levels of citizenship could result in competition between the two levels, as predicted for other policy realms by Sbragia.

⁷ <http://thislandpress.com/2016/11/10/the-anti-okie-panic/>

⁸ <http://thislandpress.com/2016/11/10/the-anti-okie-panic/>

⁹ 83 U.S. 36 (1873)

In contrast with most other federations, freedom of movement between states in the United States is not guaranteed by the constitution. Many scholars consider the fact that freedom of movement within the United States is not mentioned in the constitution a sign that it was so clearly intended as a freedom that the drafters of the constitution did not think it needed to be stated,¹⁰ with free movement intrinsic to the very nature of federalism.¹¹ Others contend that it was omitted deliberately, since Article IV of the Articles of Confederation (1781), the Constitution's precursor, did include freedom of movement: "to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states...shall have free ingress and egress to and from any other state."¹²

¹⁰ A.P. van der Mei, "Freedom of Movement for Indigents: A Comparative Analysis of American Constitutional Law and European Community Law," *Arizona Journal of International and Comparative Law* 19:3 (2002), 810, writes: "The omission of a reference to the right to travel, which encompasses both the right to cross inter-state borders and the right to migrate, has never been seen as a denial of the right. On the contrary, the framers of the Constitution probably took the right to travel so much for granted that they considered any reference to the right superfluous...The right simply exists and the absence of an explicit reference to it may, if anything, symbolize how deeply the notion of freedom of movement is rooted in American thinking" (Longo 2013; Maas 2013a).

¹¹ S.F. Kreimer, "The Law of Choice and Choice of Law: Abortion, the Right to Travel and Extraterritorial Regulation in American Federalism," *New York University Law Review* 67:3 (1992): 451-519 cited in (Longo 2013).

¹² Articles of Confederation (1781) (Art. IV, §1).

The most cited constitutional source for freedom of movement was the Privileges and Immunities Clause (Art. IV), which protects federal rights from state infringement, but a minority of justices placed it within the Commerce Clause (Art. I), which enables federal oversight over inter-state commerce (Longo 2013). This ambiguity was extended in the landmark *Edwards v. California* case, decided in 1941, which struck down a California statute attempting to prosecute anyone who knowingly brought poor non-residents across state lines. As Justice Robert H. Jackson (later the chief United States prosecutor at the Nuremberg Trials) wrote in the judgement, to deny freedom of movement to the poor would “introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship.”¹³ Longo (2013) argues that *Edwards* was groundbreaking, but did not resolve disagreement over the legal basis of freedom of movement, which continues today.

Canada

¹³ *Edwards v. California* 314 U.S. 160 (1941, 181-183). Jackson continued that restricting free movement “would prevent a citizen, because he was poor, from seeking new horizons in other states. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the right of national citizenship, a serious impairment of the principles of equality...[it] is a privilege of citizenship of the United States protected from State abridgement, to enter any State of the Union either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this it means nothing.”

Just as in Europe and the United States, internal freedom of movement within Canada has a contentious history. Compared with US states, Canadian provinces face fewer restraints from the federal government in terms of financial resources or scope for policy differences. Importantly, Canadian provinces are responsible for labour market regulation, leaving the federal government's role restricted to fostering general rights of citizenship. The 1999 Social Union Framework Agreement (SUFA) declared that: "All governments believe that the freedom of movement of Canadians to pursue opportunities anywhere in Canada is an essential element of Canadian citizenship. Governments will ensure that no new barriers to mobility are created." But this was lukewarm language, since repeated at regular summits of the provincial premiers.

For example, the conclusions of the July 2019 summit meeting of Canada's premiers affirmed that provinces and territories would prioritize action to "identify and address outstanding impediments to labour mobility" – but with no specific details or timeline (Council of the Federation 2019).

Meanwhile, the Canadian Free Trade Agreement (CFTA), an intergovernmental trade agreement that entered into force in July 2017, promises to reduce measures that restrict or impair the free movement of workers within Canada but does not apply to "social policy measures including labour standards and codes, minimum wages, employment insurance qualification periods, and social assistance,"¹⁴ – leaving significant room for policy deviation by the provinces and territories.

¹⁴ 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>

Under the heading “Mobility Rights,” section 6 of the Canadian Charter of Rights and Freedoms, part of the Constitution Act of 1982, provides that “Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right to move to and take up residence in any province; and to pursue the gaining of a livelihood in any province.” But the Charter specifies that these rights are subject to “any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.” This means that the free movement rights in the Canadian constitution are not unlimited; indeed, the restrictions inserted into the text make free movement rights in Canada similar in many ways to free movement rights within the European Union. The political dynamics are comparable.

An example illustrates these political dynamics.¹⁵ Only days after the 1995 Quebec referendum, the government of Canada’s westernmost province of British Columbia imposed a 90 day residency requirement on persons entering the province before they would be eligible to receive social assistance.¹⁶ Successive British Columbia governments had long complained of social dumping; in a poor fiscal climate exacerbated by funding cuts from the federal government, other provinces, notably Ontario (Canada’s largest province by population) and Alberta (bordering on British Columbia and hence relatively easy to move from) were reducing their social benefits, resulting in an influx of Canadians moving from other provinces and claiming social assistance in British Columbia. The direct challenge to free movement in Canada posed by British Columbia’s 90 day residency requirement was ultimately resolved in 1997 by an agreement between the federal and British Columbia governments in which the federal government agreed to compensate British

¹⁵ This paragraph and the next two draw on (Maas 2013a).

¹⁶ Order in Council No. 1348 of 2 November 1995.

Columbia for “the special pressures faced by B.C. as a result of internal migration.”¹⁷ The agreement also set the stage for the SUFA by promising a review of internal mobility within Canada.

As a second example: preferential hiring practices are a longstanding issue between Ontario and Quebec, with Quebec often restricting Ontario construction workers from working in Quebec on the basis that they do not meet Quebec’s training standards. In the late 1990s, six times as many Quebec construction workers in Ontario than Ontario workers in Quebec (Gomez and Gunderson 2007), and tension peaked when the government of Quebec excluded Ontario contractors from bidding on the construction of a new casino in Hull, immediately across the river from Ottawa (located in Ontario). The Ontario government promptly passed the 1999 *Fairness is a Two-Way Street Act*, resulting in hundreds of Quebec construction workers being dismissed from Ontario projects. Ontario also hired more inspectors to ensure Quebec workers were meeting health, tax, and labour regulations. The law was ultimately repealed as a result of negotiations between the two provinces, and similar interprovincial negotiations continue to mark Canadian federalism. For example, the Joint Labour Mobility Committee monitors progress in achieving full worker mobility under the *Ontario-Quebec Trade and Cooperation Agreement*, signed in 2009 and revised in 2015, and now subject to the CFTA.

In a key difference with free movement in Europe, federal involvement in free movement of Canadian workers is quite limited due to the constitutional division of powers which gives

¹⁷ British Columbia Government Communications Office: “PM, Premier Settle B.C. Residency Dispute, Agree to New Co-operation on Mobility, Immigration and Asia-Pacific,” available at <http://www2.news.gov.bc.ca/archive/pre2001/1997/0475.asp>

provinces (rather than the federal government) the authority to regulate employment and services, including professions. The Supreme Court of Canada generally upholds the constitutionality of provincial statutes in core areas of provincial responsibility, including labour policy, education policy, social policy, election acts, and public safety (Kelly 2005, 195 and the section entitled “Reconciling Rights and Federalism”). Because of this, there is a tension in Canada between the overarching Canadian citizenship and policies and laws which assert provincial difference. This means that “Canada will continue to combine features of both a territorial and a plurinational federation into the indefinite future” (Resnick 2012, 182), a conclusion which very much resonates with the tension between governance and government identified by Sbragia.

Europe

The rise of EU citizenship over decades of European integration means that the EU now increasingly resembles a federal state in terms of internal free movement. Just as in the United States and Canada, central authorities work to safeguard the rights of citizens to move unhindered while decentralized jurisdictions often attempt to attract desirable individuals and repel undesirable ones. This development has been far from easy or linear, and in fact generated and continues to generate political opposition as well as support (Maas 2007, forthcoming). Yet facilitating free movement of persons within Europe has been central to European integration since its origins and developed alongside a supranational European citizenship, meaning that the political dynamics surrounding intra-European migration are now comparable to similar dynamics operating in other multilevel political systems (Maas 2017a).

Wong and Irrera (this volume, forthcoming) may be correct that a large part of the explanation for postwar European integration lies in the efforts of west European states to counteract the loss of national sovereignty by building common European institutions to reinforce

national institutions which had lost capacity or legitimacy (compare Milward 1992, 2006). But a complementary impetus for European integration has also always been a political project to create, in the words of the European Coal and Steel Community treaty, a “broader and deeper community among peoples with a destiny henceforward shared.” In place of previous bilateral and ad hoc arrangements to manage migration between their states, successive generations of political leaders in Europe created a new constitutional category: the European citizen, with rights that EU member states cannot infringe except under limited circumstances (Maas 2017a).

Wong and Irrera’s observation that political leaders at member state and EU level have different views on the uncertainty and urgency of the immigration pressures facing Europe and hence also have different views about appropriate responses fits within the general phenomenon of the inevitable conflicts that occur between different levels of government in multilevel polities, as Sbragia investigates in the United States as well as Europe from the perspective of comparative federalism.

The key point to take away from comparative federalism research is that free movement of people cannot be completely separated from the free movement of goods, services, and capital that defines a common market. Of course no large political community of the size or scope of the United States, Canada, or the EU has uniform free movement for all of these ‘four freedoms’; indeed, individual states and EU institutions themselves have either created or permitted the creation of direct and indirect barriers to mobility that undermine the promise of free movement (Carens 2013). But working to dismantle barriers to the free movement not only of goods, services, and capital but also of people defines a common political community in contrast to a simple free trade arrangement (Cameron 1992; Garrett 1998; Egan 2001; Schütze 2017). While a free trade

arrangement can be modified or terminated with relative ease, the process of creating or dismantling a political community is much more difficult.

The final comparative point relevant for this chapter is that political ties across territorial boundaries are strengthening in Europe, in ways analogous to the manner in which such political ties strengthened when separate British colonies united to form the federal United States and, later, a federal Canada. A November 2018 flash Eurobarometer survey found that 59% of Europeans trust the EU while only 42% trust their national government, continuing a trend towards more trust in the EU. In terms of social rights, a strong majority of Europeans favor harmonizing European social welfare systems: the 2017 Eurobarometer survey found 64% in favour, 26% opposed and 10% don't know, continuing a trend of increasing support for Europeanization – and younger respondents (those aged 15-39) favored harmonization more than older respondents (those aged 55+), 67% to 61%.¹⁸ The Schuman Declaration's determination to lay the “common foundations for economic development as a first step in the federation of Europe” foresaw that a common market would create “a wider and deeper community” and “lead to the realization of the first concrete foundation of a European federation.” Since then, Europe has been transformed profoundly and the coexistence of ‘shared rule’ and ‘self rule’ analyzed by Sbragia (1992, 2004) is undeniable, even in the area of citizenship and free movement.

Conclusion

¹⁸ The question was: “Today, each European 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?”

One of Alberta Sbragia's seminal contributions to the comparative study of Europe argued that it is "nearly impossible to overestimate the importance of national boundaries as key organizers of political power and economic wealth" in the EU, largely because the "ties across territory are relatively weak in critical areas" (Sbragia 1992, 274). This chapter demonstrates that political tensions that are represented by borders and boundaries characterize not only Europe but also federal systems such as the United States and Canada, and that the ties across territory may be strengthening in Europe, in ways analogous to the way in which they developed earlier elsewhere. Europeans have been attempting to manage free movement within a common European political space – which raises issues such as rights of residence, access to employment, rights of political participation, mutual recognition of credentials (see Van Riemsdijk 2013), and social security and welfare benefits – since the establishment of the European Coal and Steel Community. During that time, the economic logic originally used to justify freedom of movement—that economic integration requires free movement of labor—has been replaced by a political one: a common EU citizenship requires free movement rights not only for workers ever increasing categories of people. EU citizenship grants rights throughout EU territory not only to limited categories of workers but to all member state citizens and members of their families. In this light, the question inspired by Alberta Sbragia's work on comparative federalism concerns the extent to which it is possible to 'Europeanize' citizenship and free movement while retaining a key role for national governments.

Sbragia is correct in her exhortation to scholars to reexamine older confederal models of "shared rule" rather than fixating on the extent to which the European Union approaches the model of any contemporary federal state, such as the United States (or Germany, or Brazil, or India, or Canada, etcetera). Reexamining confederal models of citizenship reminds us that decisions about

membership need not be exercised solely by the central authority but can in fact be decentralized and left to local authorities – indeed this remains the practice in Switzerland today, although even in Switzerland the federal government has been playing more of a role than in the past.

Democracy assumes a political community, and citizenship is a means of delineating who does and who does not belong to the political “people” – but the introduction of EU citizenship over already-established national citizenships transforms citizenship in Europe into a multilevel phenomenon (Maas 2013c, 2017c). Scholars of European integration have generally accepted as an unexplored assumption that national identities are relatively fixed. But as eminent social scientists such as Max Weber long ago pointed out, differences in national sentiment are both significant and fluid: the ‘idea of the nation’ is empirically “entirely ambiguous” and the intensity of feelings of solidarity is variable (Weber 1946, 175). As of this writing, we see the veracity of this claim in places such as Scotland (in light of the 2016 Brexit referendum), Northern Ireland (in light of that same referendum), Catalonia (in light of several officially unrecognized referendums), across central and eastern Europe (whose post-Soviet political identities remain mutable), and elsewhere. Furthermore, successive EU-wide opinion surveys show increasing numbers of Europeans identifying with Europe – certainly far more than was imagined even a few years ago.

A comparative federalism lens such as that developed by Alberta Sbragia demonstrates that questions of citizenship and free movement are fundamental not only in federal states such as the United States and Canada but also in the European Union. Cases such as the role of borders and migration in the Brexit debates, the popularity of the “bum blockade” during the Great Depression in the United States, and interprovincial migration in Canada demonstrate the enduring tension between “shared rule” and “self rule” over the movement of people and the question of who is entitled to participate in politics as a citizen.

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