

Chapter 9

The Politics of Intra-European Movement



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9.1 Introduction: Intra-European Movement in an Era of Crisis

One need only consider the referendum that took place in Switzerland in 2014 on ‘mass-immigration’ and the referendum on membership of the EU in the United Kingdom (UK) in 2016 to understand the significance of free movement. The topic stalks the present and future of European integration and has become central to relations between European states. It is no exaggeration to state that the context surrounding the European politics of mobility in the twenty-first century is one of heightened tension and a gathering sense of uncertainty and crisis surrounding the future prospects for freedom of movement (Guild et al. 2015). This might perhaps have surprised those drafting the early treaties who saw free movement as a necessary and relatively unproblematic cornerstone of regional integration. This chapter will explore and analyse the politicisation of free movement, offering a conceptualisation of these politics as an interaction, or dialectical conversation, between two competing languages or ‘frames’ through which intra-European movement is conceptualised: solidarity and hospitality.

Aside from the theatrics of European Council meetings, and high stakes of national referenda, a key indicator of an increasing politicisation is the sensitivity and importance attached to what kind of language one uses to describe the international movement of persons within the European Union (see van Ostaijen 2016). The apparently pedantic insistence of the EU institutions to use the terms ‘mobile EU citizen’ and ‘mobility’ rather than migrant or migration is in fact an essential part of policy. It relates directly to the privileged status of European citizens within a formal system that guarantees free movement – they are supposed to be spared the

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label of ‘immigrant’. By contrast, the continued use of the language of immigration, alongside reference to (Eastern) European migrant or migration – particularly by older EU Member States – is revealing of political pressures to limit, dismantle or weaken the institution of free movement. The implications of this discursive battle over intra-European movement are thus much more than simply in terms of the choice of words. They reflect a competition between different political philosophies over intra-European movement that have inevitably influenced EU-level law and policy and have concrete impacts.

Although one can point to a gradual extension of rights to free movement along the course of European integration, the politics of intra-European movement have led to a series of decisions that are associated with negative short and long-term socio-economic impacts for certain Europeans. For example, transitional restrictions targeting the citizens of new member states in the first decade of the twenty-first century have had particular affects on these groups and their position in the European labour market (Currie 2007; Recchi 2015: 18). Despite the language of equality there is a distinct possibility that the EU’s free movement regime has created denizens alongside permanent legacies, structures, inequalities and hierarchies within European citizenship. In addition to this there have been important ramifications from what could be described as an accelerated politicisation – or ‘rollback’ - from the principle of free movement following the 2004 and 2007 enlargements. There is also the noticeable shift in the direction of travel with respect to the EU’s political economy away from ‘social Europe’ and towards a more neoliberal settlement. This can be traced to the Laval ruling in 2007 which was seen as a setback to the principle of equal treatment for workers, in favour of the rights of businesses and employers (to pay wages to workers from the newer Member States at a lower rate). There are now numerous and prominent examples where free movement has become central to some of the core dilemmas in European politics. Perhaps the best example is the case of France’s expulsion of European citizens on the basis of racial profiling in 2010 which brought direct confrontation between a founding Member State and the European Commission as ‘Guardian of the Treaties’. The affair brought under close scrutiny the basis upon which there could be any truth to the claims that integration was creating a ‘Europe of rights and values’ (Balch et al. 2014).

9.2 Explaining the Politics of Free Movement

Can existing theories of immigration politics or European integration offer an explanation for this politicisation of free movement? As with the topic of immigration more generally (Hollifield and Wong 2015), the politics of intra-European movement has only recently garnered significant interest from political studies scholars. Before that research tended to focus on efforts to develop a common immigration and asylum policy for non-EU citizens. Scholars largely internalised the EU’s conceptual separation of intra-European movement from extra-EU migration - something reflected in the institutional set-up of the EU. The increasing relevance of the

EU in matters of immigration (of non-EU citizens) post the treaties of Amsterdam, and particularly Lisbon, generated a number of interesting areas of research around immigration and Europeanisation (Faist and Ette 2007), and the emerging political economy of migration in the EU (Menz 2010). Studies have looked at how policy-making over immigration in Europe has changed since 2000 in a more ‘liberal’ or economic-interests basis, through, for example, the role of experts and expertise (Balch 2010), the significance of ‘strange bedfellows’, and ‘unholy alliances’ between political parties (Berga and Spehara 2013).

Considering the variation in the experiences of intra-European movement - and the national interests at play - across the North, South, East and West of the EU, it would theoretically be possible to generalise about different camps likely to be for or against further integration in this area. However, crude divisions into ‘sending’ and ‘receiving’ states are unlikely to remain permanent, as we have seen previously in the cases of Spain, Italy and Greece. A more fruitful approach might be to consider the relative fundamental ways in which intra-European movement is conceptualised by different actors in the European space, i.e. not reading off solely on the basis of national economic interests. This recognises the fact that narrow economic interests are likely to oscillate considerably depending upon a host of factors. For example, alliances between Member States and with the EU institutions over the issue and over time are likely to be dynamic and involve shifting coalitions of convenience. At any given time intra-European movement can be used by in an expanding economy to balance the books (Balch 2010) or in an instrumental way to reconfigure national policy systems (Paul 2013). The role of urban areas in this developing politics is also likely to vary. Europe is home to cities with greater and lesser influence both within and outside their national borders. While only relatively few are placed in the league of ‘global cities’ (Sassen 2005), many still feature the polarisation of primary and secondary labour markets, a growing dependency upon mobile workers, and reliance on cross-border, city-to-city, networks and transactions partly catalysed by Europeanisation (Favell 2008).

One way to understand the politics of intra-European movement might be to link the different positions of national/EU actors on free movement with broader understandings around the process of integration – represented by the ‘ideal-type’ theories of neofunctionalism or liberal intergovernmentalism. This line of thinking might predict that supranational institutions will seek ever-deeper integration over free movement, while national/intergovernmental fora would be more cautious, seeing cooperation as contingent upon the higher priority of national interests (see, e.g. Wiener and Diez 2009). While this might be a somewhat out-dated conceptual division, it does map neatly on the migration/mobility distinction as it has developed institutionally. There is evidence that free movement of European citizens is seen as primarily driven by neo-functional/supranational forces while immigration (of third-country nationals) is characterised as something more intergovernmental. According to Boswell and Geddes, thinking on mobility in the EU is informed by two rival ‘paradigms’: “a liberal, free-trade-oriented paradigm emphasising the economic benefits of free movement; and a more state-centric, restrictive paradigm

premised on concerns about the impact of migration and mobility on the state's capacity to allocate socio-economic and political resources" (2011: 191).

Such a division provides a useful starting point or meta-narrative but it side-steps the previous point that states should logically be expected to swing between more expansive and more restrictive phases vis-à-vis intra-European movement. It could also be accused of betraying a normative slant, or bias against restrictive/communitarian arguments. One side is presented as relying upon a rational, economically beneficial, project (to further freedom of movement) while the suggestion is that the other is driven (less rationally) by ideology – populism, or nationalism – or perhaps more charitably, an 'interior ministry logic' pre-conditioned to resist the expansion of transnational rights (Bresso 2014). It is certainly the case that the principle of free movement is often defended in terms of economic efficiency and increasing productivity (e.g. the importance of increased mobility in the 'Europe 2020' strategy), but this in turn can be traced to an ideological framework. The next sections briefly sketch out the ways in which the ideas of solidarity and hospitality operate to construct and deconstruct arguments over free movement in the European space, before using these ideas to analyse the politicisation of intra-European movement in the twenty-first century.

9.3 Solidarity and Free Movement as Foundational

The importance of different frames for understanding a political issue become increasingly salient when a policy field is more contested (Schoen and Rein 1994). They help political actors to 'define problems', 'diagnose causes', 'make moral judgements' and 'suggest remedies' (Entman 1993). They are not always visible or recognised; they can be somewhat hidden – underlying and pre-conditioning our response to contemporary issues - pushing 'particular definitions and interpretations of political issues' in public debates (Shah et al. 2002). For the first of these, much as in the mythical story of Europa the virginal Phoenician princess, the 'founding principle' of free movement, and associated elements (non-discrimination, the Schengen area) is presented as something pure and beautiful, but fragile and vulnerable. Thus the deep concerns when Member States apparently prioritize national border control over 'solidarity' with other Member States, or betray the 'spirit' of Schengen (Carrera et al. 2011). From this perspective protecting the system of free movement has become synonymous with sustaining the European project or even the very 'idea' of Europe; its existence constantly under threat from populist and Euro-sceptic politicians and publics; the purity of the founding principles at risk of compromise and erosion via the illiberal forces that they wish to unleash (e.g. Bresso 2014).

This way of thinking effectively raises the stakes by entangling free movement with the whole question of the European project - the politics of free movement framed as a 'bell-weather' for the wider politics of European integration. This presents

the issue as somehow connected at the affective or emotional level to the very construction of the EU. Accounts of the development of EU free movement are framed within the narrative of the wider story of the development of European integration. So, these might point to a long history of obstacles and hurdles overcome, accomplishments made and rights won with the vision of frictionless mobility as an end-point, each step towards this end-point celebrated or marked as a moment of achievement.

The Treaty of Rome and the inclusion of the free movement of workers as one of the four 'freedoms' is the fundamental reference point, and the year 1968 emerges as an important watershed in the narrative (see, e.g. McMahon 2015). This was the point signifying an end to the first phase of the work post-Rome to actually establish free movement. It was at this point that the developing European polity had removed many of the restrictions on the movement of workers (through Regulation 1612/68). It also coincidentally came at the end of the first 'golden age' of European integration; after which, as we know, stagnation and intergovernmentalism came to dominate the European project in the 1970s. Neo-functionalism no longer appeared to explain the dynamics of European integration, but the return to a more cooperative phase in the 1980s demonstrated a kind of 'dialectical functionalism' where stagnation eventually acted as a spur to further integration (Corbey 1995).

The considerable political capital invested in completing the single market in the late 1980s led to further moves to enhance freedom of movement within the EU. This effort opened up the next 'golden age' in European integration, and various extensions to rights of free movement in the 1990s. The timing of these extensions, and the associated creation of European citizenship, took place at the same time as Europe was faced with new political challenges following the fall of the Berlin Wall. Undoubtedly the high-point of this second golden-age (or at least the beginning of the end) is signified by the milestone Directive 2004/38 which provided permanent residence rights for long-term EU movers and formalised what had been hitherto established through ECJ case-law. However, despite the apparent inevitability of 2004/38, there are plenty of examples of obstacles and hurdles along the way meaning that 'true' free movement is still far from the reality (Zelano – this book Chap. 4). These include significant resistance in the 1990s when attempts following Maastricht to go further on freedom of movement were thwarted by countries such as Britain and Denmark – e.g. Portugal's doomed 'European Citizens Charter'. The Amsterdam Treaty also contributed little to the expansion of free movement rights.

So, on closer inspection of the history of freedom of movement reveals that it has actually been a case of one step forward, one step back. Another example is with the introduction of more 'supranational' forms of decisionmaking in this area following the Treaties of Nice (2001) and Lisbon (2007). It could be argued that this means greater accountability and legitimacy for policymaking in the EU (e.g. Kaunert et al. 2013), but this needs to be weighed against the French and Dutch rejection of EU constitutionalism and the limited reforms of Lisbon. This can hardly be said to have ushered in a third 'golden age' even if the incremental institutional changes

might have lessened the iron grip of the EU's intergovernmental institutions who prefer policies affecting migrant rights be made 'behind gilded doors' (Guiraudon 1997).

9.4 The Enduring Metaphor of Hospitality

Competing with this is an alternative liberal communitarian frame of social justice where control of non-citizens is closely associated with the maintenance of the nation-state (Walzer 1983). This is the idea of immigration as hospitality: a paradigm that requires that the welcome of the other is always conditional; a metaphor that has become so embedded that we often forget it is a metaphor (Rosello 2002). From the very first immigration systems the idea of hospitality has endured and allowed states to make sense and justify the expansion of controls on international movement (Balch 2016). In the context of liberal democratic states, the presence of non-citizens creates dilemmas around community, membership and principles such as equality and universality (Dauvergne 1999). This situation has led to the development of a range of different arguments within the liberal tradition to 'resolve' these dilemmas - justifying or accounting for the priority of citizens, and the exclusion of non-citizens - e.g. on the basis of economic, security or cultural well-being of the state (Bader 2005). The success of these kinds of arguments has been based on the ability for state actors to equate the arrival of newcomers with threats to the state as nation or community. Talking about immigration, as Sayad puts it, means thinking about the state and that it is 'the state that is thinking about itself when it is thinking about immigration'" (Sayad 2010: 166)

Ideas about hospitality, while referring to the state, have a deeply transnational resonance, travelling across Europe from receiving to sending states, West to East, North to South. The same arguments justifying controls on any international movement - including intra-European movement and refugees - are shared, copied and repeated across the region (Balabanova and Balch 2010). One of the most potent examples is in the notion that immigration should be controlled on the basis of domestic social justice. This argues that immigration threatens the state because immigrants will naturally deplete scarce welfare resources and must therefore be controlled for the public good. A debate which emerged in the US in the 1990s. Milton Friedman (1997) famously remarked in an interview that 'it's just obvious that you can't have free immigration and a welfare state'. The US economist Borjas also argued that 'welfare programs will probably attract persons who qualify for subsidies and repel persons who have to pay for them. A strong magnet effect, combined with an ineffective border control policy, can literally break the bank' Borjas (1999: 114). The connection between these arguments and the enlargement of the EU into countries with much lower income levels in the 2000s led to similar arguments about the 'end of the welfare state' for Europe (Sinn 2002).

This, it is argued creates a 'progressive dilemma' for those on the left, because while they might be in favour of universal rights and equal treatment, the spectre of

immigration threatens all the protections and support previously established via the welfare state (Goodhart 2004). However, these arguments are based on a series of myths about the impacts of immigration. They rest upon an underlying assumption that immigration is partly driven by a desire to take advantage of generous welfare systems in destination countries. Research into the behaviour of intra-EU migrants has challenged this ‘welfare magnet’ hypothesis. The evidence would suggest that newcomers from other EU member states tend to be less likely (than host-country nationals) to avail themselves of welfare benefits and public services (Eurofound 2015). Indeed, this suggests a need for additional support for EU mobile citizens who often find themselves at a disadvantage both in the job market and in terms of societal integration.

The metaphor of hospitality allows states to frame European citizenship and free movement not only as undermining domestic social justice, but as an opportunity to launch political attacks that work in the interests of those seeking to assert the power and identity of the state. This is one of the reasons why hospitality has remained the dominant frame within which discussions of immigration take place (Balch 2016). As Doty (2003) points out, the positioning of politicians regarding the restriction immigration can be linked logically with state-building strategies. The focus, and insistence on, immigration control as a central task of government, is itself an act of statecraft, produces further demands for a (national) centralisation and extension of governmental powers (Ibid). In stark contrast with this restrictive impulse, it is through the aggressive removal of restrictions and greater levels of free movement that the EU gains some of its scarce and valuable sources of popular support, especially from younger European citizens (Recchi 2015). Central to both sides is the struggle over nothing less than the legitimate exercise of political power: the risks and rewards are therefore high.

Solidarity and hospitality emerge as very useful and powerful ideational weapons. They underpin the politics, and the language, that frame intra-European movement, but neither is entirely consistent with either the history of integration in this area, or the actual experience and governance of European mobility. On the one hand, the achievement of freedom of movement through European integration is radical - it demands states recognize the ‘rightful presence’ of other European citizens in their territory. As such it actively challenges the ubiquitous conceptualisation of immigration as ‘hospitality’ (for a local example of this, see Squire and Darling 2013). Yet on the other, notwithstanding the discourse of rights there are serious doubts over the EU’s cosmopolitan credentials (Brown 2014). Concerns include the treatment of certain (‘new’ or Central/Eastern) European citizens when they choose to exercise free movement. While the right to move is considered the main benefit of European citizenship the lived reality of workers from the ex-Communist regimes has not always been a positive experience (IOM 1998; EPRS 2014). Also, despite the progressive removal of physical and bureaucratic barriers to movement for certain groups of persons, countervailing restrictions and obstacles to movement remain remarkably resilient (and tend to be extended) when it comes to the movement of other, non-EU, citizens.

9.5 The Politicisation of Intra-European Movement in the Twenty-First Century

How have these competing ideas featured in the developing political story around intra-European movement? One paradox is that the local level has emerged as central to arguments about impacts even though city-regions have found that ‘their role in European policy-making is limited if not irrelevant’ (Perulli 2012). Research into the political economy of managed migration tends to ignore the urban level, preferring to consider the role of non-state actors or organised interests such as employers’ groups (Freeman 2006, Menz 2010). This next section explores the politicisation of this topic, and how the urban level has featured, by focusing on the key contemporary battles over the ‘prize’ of free movement – both real and symbolic – in the twenty-first century, looking at the instruments and strategies of the EU and its Member States.

The power and penetration of ideas about hospitality become apparent when we consider how political conflicts over intra-European movement have developed. In discussions around internal movement within the EU by European citizens, connections with other forms of international movement constantly emerge. This is because free movement is applicable to parts of Europe’s periphery (e.g. Norway, Switzerland), highly relevant to others (e.g. new and aspiring members) and non-EU migration is simply impossible to separate in the debate – it represents the wider migratory environment in which such discussions take place. The political changes that took place in North Africa in 2010/2011 and the ensuing conflicts in Syria/Iraq provide a backdrop of pressure and crisis that politicians can present as existential threat. They raise the prospect of large-scale immigration from outside Europe and put pressure on the trust and solidarity between states that have reduced border checks. One response has been a wave of states threatening Schengen suspensions which directly affects freedom of movement for all European citizens. In 2011 the Franco-Italian affair saw France re-introduce border checks in response to Italy’s deal with Tunisia that resulted in the issuance of residence permits to people who had arrived previously. Then, weeks later, there was the reaction of Denmark, reinstating controls on its border with Germany and Sweden, citing a rise in ‘trans-border crime’. This prompted serious concerns about an absence of solidarity between Member States, the threat to freedom of movement, and a ‘race’ away from ‘the principles of proportionality, solidarity, accountability and fundamental rights’ (Carrera et al. 2011).

These concerns proved to be accurate when in 2015–2016 the migrant crisis was blamed by a long list of states for temporarily reintroducing border checks (via the invocation of Article 25 of the Schengen Borders Code¹). Coupled with the actions by Hungary to raise its borders with Croatia and Serbia, and the launching of infringement proceedings against the same country over its asylum arrangements

¹Allows Schengen states to ‘exceptionally and immediately reintroduce border control[s] at internal borders’ when ‘urgent action’ is needed

(EC 2015), the sense of crisis at the EU level became palpable. This was well articulated in the ‘State of the Union’ speech given in Strasbourg by the European Commission president, Jean-Claude Juncker. He complained about the behaviour of the Member States to restrict freedom of movement within the EU and appealed emotionally for this to be reversed, referring to memories of the Second World War and arguing that ‘walls and fences have no place in an EU Member State’ (Juncker 2015).

It is interesting to note that in 2016 national politicians such as Austria’s then-Chancellor Werner Faymann justified the reintroduction of external border controls as the only way to save Schengen, and by extension, the EU. One analysis could be that the system as a whole has demonstrated its flexibility, and that despite the developments since 2010 intra-European movement of European citizens is relatively unaffected. The actions of the Member States mostly followed the rules set out in the Schengen Borders Code (SBC) and so one could argue that reports of Schengen’s demise are somewhat exaggerated (Guild et al. 2015). There is an assumption that the aim is to restrict extra-EU migration rather than intra-European movement. However, it is in this context of uncertainty and fear over migration flows from outside the EU that certain Member States have been making the argument that intra-European movement is adding to the ‘burden’ at the local level, in certain parts of the EU. The long Schengen crisis of 2010–2016 was a period when transitional restrictions for some Eastern Europeans were being lifted across the Union. There is also the issue of the highly public attempts by Switzerland and the UK to re-negotiate free movement rules in favour of enhanced national autonomy. The Swiss case took two years to resolve, but in late 2016 an agreement was reached by a joint committee. It demonstrated that by withholding some of the benefits attached to Switzerland’s relationship with the EU (participation in EU programmes such as Horizon 2020 and Erasmus) pressure could be applied to maintain free movement (Maurice 2016).

As part of preparations for the UK’s referendum on EU membership that country’s government made explicit moves to revisit and potentially reconfigure intra-European movement and modify some of the core elements of freedom of movement. The UK’s demands echoed those outlined in a letter sent to the Council presidency by four countries in 2013 and revolve around access to welfare and public services by other European citizens. This restrictive tone regarding intra-European movement has been coupled with an increased eagerness on the part of the same Member States to identify and punish those who ‘abuse’ the system (Eurofound 2015).

The deal eventually struck by the UK with its European partners in early 2016 proved insufficient to win the referendum for Cameron, but in the process it opened up the possibility for changes to the EU citizens’ Directive, the EU Regulation on free movement of workers, and the Regulation on social security (Peers 2016). The referendum debate also saw the issue of Turkey’s prospective membership of the EU raised, taking advantage of the ongoing negotiations with that country around the relocation of refugees. A ‘Leave’ campaign poster warned that 76 million Turkish citizens would soon enjoy free movement, despite the slim prospects of Turkey’s membership.

While the UK's referendum result meant that changes to intra-European movement were no longer guaranteed to go ahead they have been placed on the negotiating table in any future political wrangling over free movement. They may not have represented a wholesale revision, and they would not have required treaty amendment, but they did represent a perceptible shift in the politics of intra-European movement. They effectively offered up the possibility that a greater level of conditionality could be re-inserted into the rules on freedom of movement. They emphasised one more time that the welcome of other European citizens remains fundamentally conditional, and ultimately that the principle of free movement would always be trumped by the powers of states to restrict and intervene in order to control intra-European movement.

Post the financial crash there have been a series of cases where Schengen States have re-introduced border checks, EU states have increased border controls, and demands have been made for greater recognition and mitigation of the impacts of intra-European movement. These moves have gained considerable media attention because the stakes have been perceived as heightened due to the context of a general crisis of legitimacy faced by the EU (Longo and Murray 2015). They are also qualitatively different from other examples since the 1990s where increased checks were regularly brought in by Member States, e.g. during significant political meetings or large sporting events (see EC 2010b: Annex I).

As one of the core tenets of integration, the EU has developed a number of instruments, methods or 'weapons' to embed, protect, strengthen and even encourage free movement and intra-European movement. Recchi (2015) draws on Lowi to categorise these into three main types. The first are 'constituent' and include the construction of European citizenship and monetary union which aim to dissolve barriers through the fabric of treaties and institutional arrangements. The second are 'regulatory' and include directives on free movement and other practical steps such as the mutual recognition of qualifications between member states. Finally there are 'distributive' policies which include the creation of mobility grants and schemes such as Erasmus that encourage greater intra-European movement.

Of these strategies it is probably the first, backed up by a doctrine of the primacy of EU law and the interpretation of the treaties (where there are of course expansive declarations on the principle of free movement) that has been most successful in enabling the idea of free movement to be pushed forward, via judgements of the ECJ. The key principles established through ECJ case-law up to 2004/38 include (a) non-discrimination and equality of treatment; (b) recognition of all insurance periods independently of the country of employment; (c) exportability of acquired rights; and (d) application of the law of the country of employment (*lex loci laboris*) (Ferrera 2005, 100–4). However, it is notable that the ECJ 'won' these rights for individuals rather than them being established via a more recognizable democratic process. Boswell and Geddes argue that this top-down process of establishing rules on free movement, notwithstanding the 'high-flown' rhetoric on citizenship from the Commission, has resulted in less penetration among the EU's residents – hardly impacting upon the conception of political membership as something national (Geddes and Boswell 2011: 190). Plus the public appeal of free movement has been

somewhat damaged following rulings such as the Laval case² where the politics of judicialisation have taken a decidedly neoliberal turn. These and other judgments have led some to accuse the court of prioritizing market freedoms over the protection of workers rights (Dølvik and Visser 2009).

Turning to the Member States, what have been the main options in terms of responding to the EU's developing rules on free movement? How have they been able to claim 'ownership' and victory for their citizens? How successfully have different Member States pushed their interests? How well have they been able to react or adjust? Although the principles underpinning free movement are a *sine qua non* of EU membership, the Member States actually have significant scope and latitude. This is because the EU is neither able or willing to opt for a strongly supranational system of governance in this area. Not only would such an approach be politically impossible, it runs contrary to the concept of subsidiarity.

For those aspiring and new member states where the possibility of exercising the right of free movement is popular, the EU emerges as a powerful actor: a gatekeeper to membership and a system that imposes (but also limits the effect and duration of) transitional arrangements and other obstacles. Of course the EU institutions only develop policies in areas where a competence is established or agreed. The only possibility of seriously altering this balance would be through treaty change, which seems unlikely but not out of the question. More feasible is the option of reaching some kind of EU-wide agreement to restrict or limit the application of free movement and thereby control intra-European movement, which would naturally mean negotiation via the Council. This was the kind of settlement arrived at over the 2004/2007 enlargements, with the imposition of transitional arrangements for citizens of those new member states. This emerged as a compromise in the negotiations around the 2003 Act of Accession when the language used to justify restrictions referred to the 'potential to seriously disturb the labour markets in the Member States' (EC 2001: (2)). This was a decision taken against available research that suggested such arrangements would have little long-term impact on migration patterns, leading most observers to argue that the issue was made on the basis of a political rather than social or economic logic (Lang 2007). The inability for the UK and others to secure significant limitations on free movement rights after the 2004/2007 enlargements could reflect the shifting balance of negotiating power within the Council, where studies have shown that smaller states can be surprisingly effective (Golub 2012).

In terms of post-hoc reactions, when there is an apparent clash or conflict between national arrangements and ECJ judgements, there are a number of options beyond straightforward compliance/non-compliance. These include the more difficult tactic of trying to shift the future direction of integration at the EU level or the more pragmatic method of re-regulating at the national level in order to 'contain' domestic impacts (Blauberger 2012). In addition, there is considerable scope for 'grey' compliance – even where there is apparently clear guidance for Member States about how they should treat mobile EU citizens, there is the question of interpretation. For

²C-341/05, December 2007

example, the language inserted in the Directive 2004/38 creates a distinction between ‘genuine’ free movement as opposed to its ‘abuse’ without offering any concrete definitions of what would constitute either. This matters because the Directive requires the provision of social welfare and protection only for those who ‘genuinely’ make use of free movement, and allows for Member States to put in place safeguards against ‘abuse’ and the prospect of ‘unreasonable burdens’ on their welfare systems. All of this can naturally be defined and decided upon in the national interest, however narrowly the government of the day chooses to understand that, and notwithstanding the prospect of a future ECJ judgement that policies are incompatible with EU law.

Outside the Commission, Council and ECJ there are of course other venues in the EU sphere that have become battlegrounds for the politics of free movement. The European Parliament has tended to echo the Commission’s fierce defence of the principle of free movement – issuing statements against national political leaders calling for the right to be changed or restricted (EP 2014), or questioning the continued imposition of checks in the Schengen zone (EP 2017). The increase in the powers of the EP post-Lisbon and the widespread success of Eurosceptic parties in the 2014 elections opens up the possibility that this normative position could be challenged. However, the new populist MEPs initially failed to create formal groupings within the parliament, although they have since attempted to change attitudes, put pressure on mainstream parties, and obstruct parliamentary proceedings (Grabbe and Groot 2014: 38).

9.6 Impacts and the Role of Local and Urban Spaces

The local level – urban areas, cities, city-regions – has emerged as an important terrain for all sides in the political struggles over free movement (Nicholls and Uitermark 2016). This is because, as Bucken-Knapp et al. (2018) demonstrate, there has been a general absence of policies at either national or local levels to manage the impacts of free movement. This policy vacuum has eventually led to multiple actors jumping in to promote their own preferred solution. In the case of certain national governments, it opened the way for local impacts to serve wider arguments against the principle of free movement. Notable in this context was the intervention of April 2013 with a joint letter to the European Council Presidency from Austria, Germany, the Netherlands and the United Kingdom. This underlined their belief that freedom of movement was not an unconditional right, and claimed that ‘a number of municipalities, towns and cities in various Member States are under a considerable strain’ and that intra-European movement ‘burdens the host societies with considerable additional costs, in particular caused by the provision of schooling, health care and adequate accommodation.’ The letter also went on to assert that ‘a significant number of new immigrants draw social assistance in the host countries, frequently without a genuine entitlement, burdening the host countries’ social welfare systems.’

(Mikl-Leitner et al. 2013) The letter then demanded a veritable array of legal and non-legal actions to be drawn up including EU funding and sanctions (Ibid).

The immediate response of European Parliament and European Commission was both defensive and dismissive. Hannes Svoboda (from the Progressive Alliance of Socialist and Democrats in the European Parliament) opposed the proposals and Cecilia Malmström (then-Home Affairs Commissioner) complained of the equation of immigration with mobility which she declared like comparing ‘apples and oranges’ (see Hansen 2015). The eventual, rather more measured, formal response from the Commission was a Communication conceding increasing mobility caused ‘challenges for local communities’ (EC 2013: 3). In contrast to the escalatory language of the joint letter, proposals to address the absence of policies or clear priorities for governance at the local level consisted of a series of concrete actions. There were attempts to limit and clarify definitions for social security ‘abuse’ and ‘fraud’ and also discussion of ‘errors’ by officials and citizens in making and processing claims (EC 2013: 9). The help offered to local authorities to meet these challenges came in the shape of training and exchange of best practice, with funding for social inclusion through the European Social Fund (ESF) for ‘marginalised communities, in particular Roma’ (ibid. 11). However, the Communication emphasised the joint responsibility of the EU and Member States to counter negative public perceptions of intra-European movement that were ‘not based on facts’ (EC 2013: 13). Perhaps unsurprisingly considering the ‘top-down’ way in which it has been constructed (Geddes and Boswell 2011: 190) a survey of sub-national authorities found little awareness of the rules around European Citizenship at the local level (CSES 2012). There is little evidence that any special measures have been put in place by Member States to improve social inclusion at the local level. Inclusion policies towards European citizens, such as they exist, tend to rely on services or institutions dedicated to all foreign citizens (Ernst and Young 2014). For the European Commission here is a problem of not enough Europe, or of obstacles to freedom of movement - a situation where the benefits of European citizenship need to be better communicated or implemented.

The Commission strategy has been to concede as little as possible with regards to conditions or changes to the core principles of freedom of movement. The response to the 2013 letter was technical in character – much of the communication was dedicated to clarifying and re-stating the rules – followed by the commissioning of expertise and consultations to produce additional knowledge and support to counter the Member States’ claims. A 2010 EU Citizenship Report identified a ‘gap’ between the ‘rules and the reality’ faced by European citizens ‘particularly in cross-border situations’, and called on local authorities to promote European citizenship (EC 2010a). The Committee of the Regions (Europe’s assembly of local and regional representatives) suggested that local and regional authorities could place pressure on their national governments to remove obstacles to implementation, and as a means of ‘eliminating the EU’s democratic deficit’ (CoR 2011). The EU’s other consultative bodies such as the European Economic and Social Committee (EESC) likewise are better set up to feed in problems of non-integration,

where published opinions match closely with Commission priorities to expand free movement, rather than as a conduit for concerns over that movement's impacts.

A study carried out for the European Commission on the local impacts of free movement concluded that 'the overall evidence' on the impacts of intra-European movement 'suggests that this situation is not placing major issues and burdens on the local communities or local public services' (Ernst and Young 2014: (4). The research looked at how six European cities (Barcelona, Dublin, Hamburg, Lille, Prague and Turin) dealt with the issue and among its key findings were that more should be done to facilitate intra-European movement because 'practical and legal obstacles continue to limit the effective exercise of free movement rights' (Ibid: 6).

Notwithstanding the publication of such research backing up the Commission position on intra-European movement and 'welfare tourism', the gap between the positions outlined in the 2013 letter and its response persists and continues to re-surface. A good example is provided by the long negotiation carried out by the UK government in preparation for its 2016 referendum on membership of the EU. One of Prime Minister Cameron's four demands for a 're-negotiated' settlement included provisions to limit access to in-work welfare benefits for European citizens exercising their right to freedom of movement. Cameron pointedly ignored the plea made by the Commission in its Communication and exaggerated both the problems of mobile EU citizens abusing the benefits system, and the idea that welfare acted as a 'magnet' for further migration. His meetings with other European leaders provided a useful snapshot of the European politics around freedom of movement. They certainly proved that the letter of 2013 was not indicative of a gathering consensus over 'welfare tourism'. Instead, the negotiations were instructive of the complexity of political negotiation around intra-European movement. Cameron's tour of Europe confirmed that every Member State has its own interests and concerns vis-à-vis European free movement its challenges. Germany's Merkel was happy to join with UK complaints about welfare 'abuses' but was keen to defend the principle of free movement and non-discrimination against Cameron's wider demands (Mason and Oltermann 2014). For sending countries like Poland there was the obvious interest in protecting large numbers of their citizens working abroad (Krajewski and James 2016). Ultimately, the eventual deal, complete with a 'safeguard' for 'exceptional inflows' of European citizens and further declarations on welfare 'abuse' (EUCO 2016) proved insufficient for the UK government to secure its favoured result in the 2016 referendum. Subsequent statements regarding the 'Brexit' negotiations have indicated that UK politicians are willing to relinquish membership of the Single Market to escape any obligations regarding free movement (May 2017).

9.7 Analysis and Conclusions

The topic of intra-European movement can be connected to an increasingly long-term crisis of political legitimacy in the EU and among European liberal democracies. Politics is a battle of ideas, and in conflicts over intra-European movement

each side will naturally seek to use the topic to maximise their legitimacy and symbolic resources. As we have seen, the principle of free movement and increased levels of intra-European movement shifts patterns of legitimacy and support for political authority at different levels, albeit by alternative routes. In the case of nation-states this can be via in the form of resistance to supranational rule-making and demands for conditionality on the part of those receiving newcomers, or alternatively for the protection of rights already won for those whose nationals reside elsewhere in the EU. For the former, the battle over free movement has become a convenient way to assert national identity and the right to welcome through the language of hospitality. This speaks to populist demands for a re-assertion national political control and acts as a proxy for age-old arguments about state sovereignty. For those seeking to enlarge support for European integration, free movement can become central to demonstrating common European values and the politico-cultural benefits of European integration (ibid: 188) (see *Pioneur Project - Rother and Nebe 2009*).

This chapter has demonstrated how the contemporary struggles over this topic in the European space presents puzzles for all sides. One of these revolves around the obvious difficulties, tensions and/or incongruity in creating and sustaining a parallel regional politics of intra-European movement (based on one of the ‘four freedoms’ of the 1957 Treat of Rome) alongside one of immigration (the ‘common immigration policy’ promised by the Lisbon Treaty). This conceptual separation has clearly not been entirely absorbed at all levels. The very idea of a policy framework targeting intra-EU ‘mobility’ rests on a set of assumptions regarding the ability of political actors at the sub-EU level to successfully separate one kind of international movement from, inter alia, non-EU, irregular, asylum-seeking, or family-related migration. This raises the question of whether, and to what extent, the politics of intra-European movement can - at the EU, national and sub-national levels - really be characterised as something distinct or ‘new’ when compared with the usual business of (national) immigration politics and policy-making.

Another puzzle is at the local level – where the outcomes and consequences of intra-European movement are actually experienced. A key benefit of the project of which this book is an output is its focus on the urban setting and the specificities of CEE migration. This chapter problematized the assumption that politics around free movement can ever be ‘resolved’. The topic reveals the limits and boundaries of European integration, the way in which international movement remains a key battle-ground for competing interests and ideas in the European political space. One of the observations has been that, despite the apparent ‘flattening’ of difference through transnational rights, structure and hierarchy can become re-imposed at the nation-state level because of the dominance of a paradigm of hospitality, e.g. through transitional arrangements and the discourse of welfare chauvinism. This is crucial because we know that notions of fairness and justice remain central to the struggle for legitimacy by political actors. As Zelano (2018) points out, the Commission has more recently demonstrated a greater willingness to talk of fraud around free movement, implicitly moving towards the language of hospitality. This concession to the language of fairness, implying an abuse of states ‘generous’

benefits, has been adopted in the absence of evidence that such a problem is significant.

The local has become the site of tensions between a purportedly progressive establishment and expansion of principles and rights for European citizens to move, live and work in other EU countries (e.g. through the ECJ) and arguments about impacts that result from mobility – the people and places that experience or ‘deal’ with it. Sub-national political units have become the battleground where this plays out, while they are often emasculated in terms of a lack of policy tools to govern and manage free movement. A key question is then how the urban implications can become incorporated into the politics of intra-European movement. As is explained elsewhere in this book, there are consequences that can be traced to a relative absence of a prominent or coherent policy agenda at the EU level which incorporates a narrative of impacts, or the urban implications of mobility. These consequences include the development of ad-hoc arrangements that for some have failed to address the consequences of the ‘big-bang’ enlargements of 2004/2007. These characteristics are especially notable if we pause to consider the central role which the urban environment plays in immigration patterns, where cities are known to be ‘a major factor in shaping the trajectories and effects of immigration’ (Nicholls and Uitermark 2016: 878). As scholars have demonstrated, there is a politics of venue-shopping where the EU is convenient for actors to avoid national constraints (Guiraudon 2000), but it is also convenient for governments to apportion blame where there is policy failure.

The case of intra-European movement demonstrates the complex, and sometimes unequal, outcomes of subsidiarity. The absence of a supranational governance system emphasises the central role that national governments maintain in European decision-making and in the interpretation and implementation of European rules. In this context we find that references and claims about the local and urban level from all sides are more instrumental than based on evidence - or on any genuine reflection of sub-national claims. Indeed, the discussion as it has developed at the European level tells us relatively little about the actual impacts of intra-European movement at the local level; rather it says more about the politics underlying the articulation of deliberative processes in the EU. These politics have real effects for European citizens. The result of conflicts and compromise over intra-European movement has been to construct a kind of social denizenship for mobile European citizens by those Member States that have been the main receivers of this kind of movement. The problems with the political claims based on ideas of solidarity or hospitality is they simply serve as convenient conceptual short-cuts in the debate over free movement, enlargement and labour market effects. They have political consequences and may not accurately reflect the migratory reality of intra-European movement - deliberately exaggerating some features while obscuring others. The balance reflects the continued dominance of the national paradigm, with myths such as the Polish plumber or Romanian strawberry picker tending to operate in the service of national interests (Sobis et al. 2015).

Returning to the opening point in this chapter about language, the vocabulary used to discuss these issues - ‘migration’ as opposed to ‘mobility’ - can be clearly

linked to competing paradigms for understanding freedom of movement, its impacts, sustainability and future in policy terms. We should be aware in discussions of uncritically following the divisions set by state actors and be fully conscious of the ways that policy decisions affect EU and non-EU citizens, and their subjection to regimes of mobility and migration respectively. Otherwise we risk creating the spurious impression that, at least at the EU level, the question of who should be allowed to move between EU states, and on what basis, is – or can ever be – finally settled in political terms.

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