

Boundaries of Political Community in Europe, the US, and Canada

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European Union citizenship, a central achievement of European integration, reconfigures the meaning of boundaries within Europe by superimposing a new political community over already-existing member state political communities. In this way, Europe becomes comparable to federal states such as the United States and Canada, which are usually viewed in terms of singular citizenship but which can be better understood through the lens of overlapping jurisdiction and multilevel citizenship. Case studies of the free movement of students and workers show that all governments must balance the desire for equal citizenship with demands for ‘own polity first’. Migration between US states or Canadian provinces raises worries about social dumping analogous to those raised by Euroskeptics concerned about EU free movement. Yet despite significant internal variation, overarching welfare programs assuage these worries about the ability of governments to control the boundaries of political community, and should be considered for Europe.

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Boundary-making is a central element of governance, epitomized in recent decades by the concept of citizenship, which relies on delineations between ‘us’ and ‘them’ to establish, as argued in the introduction to this special issue, “who is and who is not entitled to participate” in producing and consuming public benefits. Not only national governments engage in such boundary-making; subnational and supranational governments also assert jurisdiction through processes which distinguish insiders from outsiders, usually on the basis of some combination of legal status and residence.

Individuals who cross jurisdictional borders upset easy classifications and provoke

worries about possible exploitation by outsiders. It often makes little difference whether the outsiders are from another province or another country: migration across ‘internal’ boundaries can invoke similar political logics within a federal state such as the US, or within a multinational federation such as Canada, as are raised by migrations of EU citizens between member-states of the European Union. In a world of mobility and interconnectedness, a task of good government is to mitigate the negative effects of open borders. Without severely restricting free movement, it would be impossible to ‘take back control’ through borders, an idea based on an outdated myth (cf Della Sala, this issue); the political challenge is to find the appropriate balance between the equality promised by common citizenship and the diversity of local preferences, protected by the boundaries of political community.

The next section briefly describes the rise of a common European citizenship as a central achievement of the European idea, for which transforming the meaning of borders is a central aim. Because European citizenship creates rights-holders who can insist that their rights be enforced, it operates in ways analogous to the rise of citizenship in nation-states, particularly in terms of free movement. Thus the following section compares movement between EU member states with similar ‘internal’ movement between US states and between Canadian provinces. While migration between EU member states is generally increasing, interstate migration in the US and interprovincial migration in Canada are decreasing, despite barriers – such as significant language barriers, a lack of overarching European social welfare programs, and imperfect coordination between European welfare systems – that make migration between EU member states far more cumbersome than analogous movements between US states or between Canadian provinces. The next sections fleshes out the comparison

by focusing on the cases of students and workers. The final section builds on the comparison to consider the legitimacy of boundaries in Europe.

The European idea and rise of European citizenship

Free movement has been central the project of European integration ever since postwar bilateral labour migration accords were superceded by the European Coal and Steel Community, which established free movement as an individual right (Maas 2005). The rights to live and work anywhere within the common territory were guaranteed first to workers, then to members of their families, and eventually (via intermediate categories such as students, retirees, and others) to all European citizens and finally, via legislation and Court interpretation, arguably to all residents of Europe. Free movement reflects the aim of changing the meaning of borders – from Schuman’s (1963) aim ‘to take away from borders their rigidity and...their intransigent hostility’ to what Mitterand called his *grand projet*, to ‘turn the whole of Europe into one space’ (Tiersky 2003, 115). The idea of changing the meaning of borders and turning the European continent into one space is coupled with a political project to create a ‘broader and deeper community among peoples with a destiny henceforward shared’ (European Coal and Steel Community treaty preamble) a project symbolized by a shared European citizenship.

Though European citizenship was not formally introduced into the treaties until Maastricht (for a brief history, see Maas (2007)), the most important rights associated with the status date from the free movement rights for coal and steel workers in the 1951 Treaty of Paris, and the concept of a common European citizenship predates even this: Europe’s postwar political leaders were convinced of the necessity of creating a supranational community in which individual citizens would share a common status and identity. Leaders across the political spectrum shared the call for ‘a European group which could give a sense of enlarged patriotism and common citizenship to the

distracted peoples of this turbulent and mighty continent' (Churchill 1948) and, expanding on earlier proposals, proposed direct access for citizens to redress before a European court of any violation of their rights under a common charter and even 'a European passport, to supersede national passports and to bear the title 'European' for use by the owner when travelling to other continents' (Maas 2014).

The legal development of EU citizenship is relatively well known. In June 1985, on the same day that the Schengen treaty was signed, the European Commission issued a White Paper on Completing the Internal Market, which devoted a section to free movement, subtitled 'a new initiative in favour of Community citizens' (European Commission 1985, 25), arguing that it was 'crucial that the obstacles which still exist within the Community to free movement for the self-employed and employees be removed by 1992' and continued that 'measures to ensure the free movement of individuals must not be restricted to the workforce only' (ibid, 26). This idea, coupled with the Court's expansive interpretation of freedom of movement, provided the basis for the Maastricht Treaty's citizenship provisions (Anderson, den Boer, and Miller 1994, 107 cited in Maas 2007). Yet the idea of expanding the free movement rights that had grown since the 1950s also immediately faced opposition from those worried about mass immigration from new member states Spain and Portugal, and from anti-immigrant parties that presage the current growth in anti-Europeanism and nativism. The question of whether European rights and citizenship should supercede or operate alongside national citizenship has continued to influence debates about European integration, and shapes the role of boundaries in Europe.

Because it guarantees rights to live and work across the Union, EU citizenship can be seen as opposing state nationalism and promoting a supranational European identity. In this way, it can be interpreted as a polity-building effort analogous to state-

building; removing internal borders was a crucial condition for the successful rise of states (Deutsch 1957). Internal migrations, such as those from rural areas to cities during industrialization, did not cause nationalism, but did generate needs that nationalism could address – and the movement of people that spurred nationalism was migration *within* the state; one of the modern state's key functions was to facilitate the free flow of people within its boundaries (Maas 2013a, 16). Indeed the essence of full-fledged state citizenship, as distinct from earlier town or district citizenship, was its uniform applicability throughout the state's territory (Wiebe 2002, 20). Thus free movement within Europe, in which boundaries between the member states lose much of the restrictiveness they had during the first half of the twentieth century, could be seen as potentially leading to similar effects as the removal of internal boundaries within states had in the nineteenth century. Certainly the introduction of a shared EU citizenship builds a sense of common peoplehood, even though this remains weaker than the sense of peoplehood in most member states (Benhabib 2004, chap. 4; Smith 2015): in a recent Eurobarometer (Fall 2016), 67% of respondents feel they are citizens of the EU, and sense of European identity is growing.

Whether the fading away of boundaries between EU member states is normatively desirable or not is an open question. Lord Acton, writing in 1862, still claimed that the boundaries of states and nations should diverge so that states would always contain more than one nation (Acton 1948). By contrast, the principle of national self-determination that drew on US president Woodrow Wilson's Fourteen Points (Lynch 2002) and the end of the Austro-Hungarian, Russian, and Ottoman empires following World War I took the approach that each nation should have its own state, whose territory should be occupied by individual members of the nation.¹ Lebensraum, a concept originally drawn from German interpretations of Darwinian

biology and later popularized by the political geographer Friedrich Ratzel, who argued that successful nations would expand the boundaries of their state into new territories, later provided a justification for Nazi expansionism but (clearly) fell into disrepute after the Second World War. Yet recent developments – such as the Hungarian Status Law, extending Hungarian citizenship to ethnic Hungarians living in formerly Hungarian territories; or Russia’s extension of citizenship to Russian speakers in Georgia, Crimea, and elsewhere as a precursor to annexation (sometimes termed passportization) – signal a possible return to a more ethno-nationalist version of political geography, in which borders and boundaries once again harden, against the aims expressed by Schuman’s quotation above.

Internal free movement in Europe and other multilevel systems

In most political systems, internal migration is a much more important phenomenon than immigration or emigration. In the United States for example, although the proportion of interstate migrants is decreasing and that of immigrants is increasing, the former are still twice as numerous as the latter. Within the European Union, internal migration of EU citizens between EU member states is high on the political agenda, animates Euroskeptic and nationalistic parties, and was a key factor in the Brexit referendum result. Prior to the Brexit referendum, British Prime Minister David Cameron joined the leaders of several other EU member states in raising questions about unhindered freedom of movement within the EU, driven by a rising Euroskepticism that opposes mobility, often on the grounds that it benefits primarily elites, or conversely that only ‘welfare bums’ are interested in moving. Proposals to limit free movement within the EU remain different from the ‘bum blockade’ in the Great Depression, which stationed police officers at California borders to turn back poor migrants from the rest of the US, despite shared American citizenship.

Historically, interstate migration in the US and interprovincial migration in Canada were important in nation-building. Today approximately 27% of US residents were born in another US state than that of their residence, almost double the proportion (15%) of US residents born abroad. Yet interstate migration has been declining steadily for decades and is approaching its lowest level since the 1920s, with the percentage of Americans moving across state lines falling by about half since the 1990s.² Similarly, interprovincial mobility in Canada has also been declining.³ This is not true for all categories of people, however. While overall interstate migration in the US and interprovincial migration in Canada has decreased to the lowest levels in decades, the opposite is true for students: the number of US students studying in other states at public institutions is hitting all-time highs, with the number of first year students studying out-of-state doubling since 1986.⁴

The picture is more complicated for workers. US research shows that relatively high immigration to some US states causes a selective out-migration of lower-income US citizens, consistent with arguments that internal migrants respond to labour market competition from similarly educated immigrants by moving out of high-immigration states. In contrast, differences in state-level welfare benefits appear to exert only minimal effects (either push or pull) on interstate migration. Meanwhile, the Canadian experience demonstrates how stark differences in the regional economic situation can cause significant internal migration, although as Alberta's oil boom turns to bust as a result of the declining price of oil, its status as magnet is being reversed. Inteprovincial migration remains larger than immigration (approximately 320,000 interprovincial migrants versus approximately 270,000 international immigrants in 2015), while immigration is highly concentrated in and around the greater Toronto, Vancouver, and Montreal metropolitan regions. In Canada, immigration is a concurrent power, with

shared jurisdiction between federal and provincial governments, although Quebec is the only province to have asserted significant autonomy. In the US, by contrast, authority for immigration is purely federal – though this did not prevent the governors of a majority of US states from vowing not to accept Syrian refugees, earning a sharp rebuke from the Obama administration.

Multilevel rights and access to benefits

Most jurisdictions around the world seek ways to restrict access to social benefits to ‘insiders’ and exclude ‘outsiders’. It is far from obvious why any government would share its resources with real or (much more often) perceived ‘freeloading’ outsiders any more than necessary. Indeed, the idea of restricting benefits to ‘insiders’ enjoys considerable democratic legitimacy. Such restrictiveness occurs not only at the level of states but also often at other levels of government – any jurisdiction in which finite resources drawn from a finite population could be extended to people outside that population. In Canada, the Charter of Rights and Freedoms (1982) provides that Canadian citizens and permanent residents have the right to live and work in any province, but does allow ‘laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.’ In the United States, there is no constitutionally-protected right of US citizens to move to another US state, but courts since the 1970s have generally struck down all attempts by state and local governments to prevent the in-migration of US citizens and permanent residents from other US states (Longo 2013). Yet freedom of movement within the US federation and within the Canadian federation exhibits similar tensions as free movement within the European Union, as demonstrated by the cases of students and workers.

Students

Students occupy a liminal space because they are more mobile than the general population, which makes them particularly interesting for considering the boundaries of political community. In multilevel systems, midlevel jurisdictions such as states in the US, provinces in Canada, and Länder in Germany, often subsidize tertiary education – as of course they also do with primary and secondary education (though there the funding formulas are often more complicated and usually involve funding from local and/or national levels in addition to midlevel jurisdictions). Because they often provide most of the public funding for tertiary education, and because students in tertiary education tend to be more mobile than those in primary and secondary education, midlevel jurisdictions often seek to restrict access to subsidies. Some face limits on how they may discriminate between ‘home’ students and those from elsewhere within the political system, as is the case for German Länder and, as discussed below, to some degree within the European Union. Differential tuition fees do affect student enrollment: when several German states introduced tuition fees starting in 2006, admission applications from ‘home’ students dropped, particularly for those with better grades, who applied elsewhere (Dwenger, Storck, and Wrohlich 2012).⁵

Because of their liminal status, students have long been a particular concern for European institutions. The European Commission’s 1979 proposed Directive on a right of residence for member state citizens in the territory of other member states proposed abolishing all remaining restrictions on movement and residence but specified that member states could require anyone other than workers, the self-employed, and former workers who wished to stay after retirement to ‘provide proof of sufficient resources to provide for their own needs and the dependent members of their family’ (European Commission 1979, 14). Requiring non-workers to prove sufficient resources was

intended to discourage ‘population movements being undertaken with the sole aim of obtaining the most favourable social benefits’ (European Commission 1980, 3) – but the European Parliament argued that the Directive should extend free movement to students: ‘Students are like birds: they come, they fly away and should not be hindered to do so’ (cited in Maas 2007, 34).

Such openness towards students found legal expression in the European Court of Justice’s February 1985 decision in the case of Françoise Gravier, a French citizen who had moved to Belgium to study and applied for but was denied an exemption of an enrollment fee demanded of non-Belgian students.⁶ When she refused to pay, her school refused to enroll her and Belgium revoked her residence permit, prompting Gravier to file suit, citing discrimination on the grounds of nationality. Belgium argued that Community students who did not normally pay Belgian taxes should pay the fee and that since 1976 there had been more Community students in Belgium than Belgian students studying elsewhere in the Community, which burdened the Belgian budget. The Commission agreed that while the numbers of cross-border European students was small, Belgium was indeed the member state with the highest proportion of students from other member states. Denmark and the UK intervened to support Belgium, arguing that European law ought not prevent a member state from favouring its own nationals for access to education, scholarships and grants, social facilities, and tuition fees. Every member state, they argued, had special responsibilities toward its own citizens. The Court disagreed, reasoning that access to education is indispensable to free movement of persons and that imposing on European students a fee not imposed on home students discriminates on ground of nationality and is thus contrary to European law (Maas 2007, 36).

Despite the *Gravier* decision, student mobility still faced obstacles. The 1979 draft residence Directive had been amended many times but the Commission finally decided in 1989 to propose three separate Directives, one each for students, retired persons, and non-working citizens – each justified on the basis of a different treaty Article. Differences in the legal basis of legislation matters because they are subject to different voting procedures; the Commission proposed that the students and retired persons Directives would require only qualified majority voting, while the Directive on economically inactive citizens would continue to require unanimity. Yet the Council decided to have all three continue be covered under the treaty provision on which it had been impossible to reach agreement over the preceding decade, requiring unanimity. This satisfied the British government that the Directives would ‘prevent abuse’ and that ‘the number of people who might take advantage of the directive [would not] significantly increase the numbers of persons entering the United Kingdom.’⁷ In response, the European Parliament sued the Council over the draft student Directive, arguing that the Community had competence concerning the free movement of students.⁸ The Commission did not join the Parliament’s action; after eleven years of legislative haggling, it was unwilling to jeopardize the agreement that had finally been achieved (O’Leary 1996, 381). Parliament won its case against the Council, and the legal basis of the student Directive was changed back to the non-discrimination Article from the Council measures Article, even though the Directive’s contents remained unchanged. Parliament may have wanted scope to launch future challenges of the Directive’s provisions—which would be easier if it was based on non-discrimination (qualified majority) rather than Council measures (unanimity)—or Parliament may have selected free movement rights for students as an easy case with which to strengthen its role in the legislative process. Regardless, the disagreement was rendered obsolete with

the inclusion in the Maastricht treaty of free movement rights for all EU citizens, including students, under the umbrella of EU citizenship.

Yet a right to move does not necessarily mean a right to receive public assistance, an issue considered in a case concerning Rudy Grzelczyk, a French citizen who had moved to Belgium for university studies and applied for the same financial allowance granted to Belgian students.⁹ The allowance was initially granted but then withdrawn because Grzelczyk was a student rather than a worker. The Belgian court asked the ECJ whether European citizenship and the principle of non-discrimination allowed the Belgian government to refuse assistance to EU citizens. The social services authority argued that EU citizens were not entitled to claim social benefits because existing legislation required individuals to possess sufficient social security protection. Belgium and Denmark concurred, submitting that EU citizenship did not give citizens new or more extensive rights to social security. Belgium added that its student assistance grant was an instrument of social policy, unlinked to vocational training, and hence outside EU competence. France argued that extending the principle of equal treatment to all EU citizens, rather than simply workers, would establish total equality among all EU citizens, which would be difficult to reconcile with national citizenship rights. Portugal argued that, because of EU citizenship, Europeans were no longer simply economic actors in an economic community, and the distinction between workers and others was thus no longer valid. The UK countered that, though Grzelczyk suffered discrimination on the grounds of his nationality, EU law allowed such discrimination in matters of social rights. In its decision, the Court held that discrimination solely on grounds of nationality is prohibited and that states' social security rules must be read in conjunction with EU citizenship provisions. 'Union citizenship is destined to be the fundamental status of nationals of the Member States,'

it ruled, ‘conferring on them, in the fields covered by Community law, equality under the law irrespective of their nationality’ – a formulation since oft-repeated, and the most famous formulation of EU citizenship’s legal status (Maas 2007, 65).

Despite the ruling, member states remained reluctant to extend benefits to students from other member states. For example, in 2002 the Dutch minister of education justified restricting the number of scholarships available to Dutch students to study outside the Netherlands by citing recent ECJ rulings enabling non-Dutch students to temporarily move to the Netherlands, qualify as ‘Dutch,’ and then return home to study, while receiving Dutch scholarships (Maas 2007, 103). The government further claimed that this strategy was available not only to residents of the EU but also to residents of candidate member states such as Poland and associated states such as Morocco.¹⁰ The logic of this example illustrates the continuing strength of a limited view of who ‘we’ are: other EU citizens may be closer than non-EU citizens, but neither group is truly ‘one of us’. In this context, enlargement and the addition of millions of new European citizens problematizes once again the question of the borders of the EU, both internal and external (see the article by Lacey and Bauböck, that by Closa, and that by Shaw, in this volume).

Nevertheless, students continue to be at the forefront of debates about Europeanisation, for example participants in the European Community Action Scheme for the Mobility of University Students, a program better known under the acronym Erasmus. First enacted in 1987, the program fosters student exchanges and mobility within Europe by funding study outside the student’s own member state (European Council 1987). Well over three million students have since participated, though one recent study finds incentives for less-performing students to participate (Varela 2016). Other studies find that participation in an Erasmus program leads to significant

increases in identification as European and identification with Europe (Mitchell 2015), and that mobile students also tend to be more politically engaged than those who stay in their country of origin (Siklodi 2015).

Perhaps no issue regarding students is more politically sensitive than tuition, particularly concerning ‘foreign’ students. Standard annual tuition at universities in Quebec is currently \$2294 for Quebec residents, but \$7031 for students from the rest of Canada. At universities in neighbouring Ontario, there is only one rate for all Canadian students (and a higher rate for international students), including those from Quebec.¹¹ But Ontario recently introduced grants to students from lower-income families – a program restricted to Ontario residents. Similarly, tuition fees at universities in Scotland are more heavily subsidized and thus considerably lower than those in England, particularly in recent years, as the British government has reduced the amount of public subsidies going to universities and encouraged universities to raise their tuition fees. This sets up an obvious opportunity for students from England wishing to study for less than they would pay at an English university, but Scottish universities charge students from England, Wales, and Northern Ireland higher tuition rates in order to make up the difference in funding. The principle of non-discrimination on the basis of nationality has become a central element of European Union citizenship, however, and this principle prohibits privileges for ‘home’ students that are not available to students from other EU member state. The result is that EU students pay the same low rate as those from Scotland, while those from England pay considerably more – which is allowed as national governments are entitled to engage in ‘reverse discrimination’ against their own citizens (Maas 2014). As the number of EU students studying at Scottish universities has increased, there are regularly stories in the media about worries that

Scottish students are being squeezed out as there are not enough places to take all applicants from Scotland; an example of limited access to a finite public resource.

Public universities in the United States have similar two-tiered tuition structures, with much lower 'in-state' tuition rates than the rates available to students from outside the state. But one significant development in the United States is the emergence of regional consortia, so that what emerges is a third tier: preferential access to those not quite 'insiders' but not full 'outsiders' either. For example, through the Midwest Student Exchange Program, a multi-state tuition reciprocity program, 'public institutions agree to charge students no more than 150% of the in-state resident tuition rate for specific programs; private institutions offer a 10% reduction on their tuition rates.'¹² Similar regional tuition reciprocity programs exist in New England, the western states, and the southern states. Of course the easiest way to avoid paying the higher out-of-jurisdiction tuition is to establish in-state residency. Various consulting services have emerged to assist students in establishing residency in the jurisdiction in which they wish to study – where the requirements can vary from 24 months in Alaska to six months in Arkansas to no specific durational component whatsoever in Tennessee.¹³ Meanwhile, states like Arizona, California, and Vermont have such strict requirements that most people will be unable to satisfy them.¹⁴

North of the US border, one of the ways to qualify as a resident of Quebec for the lower tuition rate is simply to provide proof of having been born in Quebec – or even simply proof of having been born to Quebec parents outside Quebec.¹⁵ This suggests almost an internal *jus sanguinis* approach to Quebec status; birth in Quebec (or to Quebec parents) entitles the individual to life-long privileges not available to other Canadian citizens. This raises a general question about the legitimacy of different ways of counting 'members' of sub-state jurisdictions; given the equality aims of national

citizenship, what kinds of internal differentiation are justifiable or desirable? One answer is given by a parliamentary motion proposed by Geert Wilder's Freedom Party in the Netherlands in November 2016, according to which Dutch students should be allowed to register before EU students in programmes of study with quotas.¹⁶ The education minister had explained that discriminating between Dutch and other EU students was not allowed (because that would be discrimination on the basis of nationality), but almost one-third of members of parliament supported the motion, including the Socialist Party, which had proposed a similar motion in 2014, as well as the Christian Democrats, who argued that, since only 25% of EU students stayed to work in the Netherlands following graduation, their spots should better be taken by Dutch students.

Workers

Workers who cross borders should generate less political opposition than students, because they undeniably contribute to the host state by paying income and other taxes. The Treaty of Rome extended free movement rights to workers (and members of their families, and former workers) and a venerable tradition of EU law cases before the formal introduction of EU citizenship considers questions such as what constitutes work and who qualifies as a worker in order to benefit from these free movement rights. This is not to say that free movement of workers is seamless. One issue concerns mutual recognition of professional credentials, for Europeans who received training in another member state than the one in which they wish to reside.¹⁷ Of course intergovernmental agreements have to be reached on what qualifies as equivalent training or experience, but this process is subject to political manipulation (Riemsdijk 2013).

Another issue is the extent to which a worker's legal right to free movement means equal access to decision-making power; one recent study of the extent to which

migrant workers' access to social rights relates to their taking on decision-making roles in trade unions finds that numerous obstacles to effective participation persist (Thomas 2016). Meanwhile, a study of Polish workers in the UK and Ireland found that they were typically employed at levels below their qualifications and also faced discrimination, exploitation, and a chilly political climate (Johns 2013). This chilly political climate towards workers from other EU member states certainly played a role in the Brexit referendum, but its political salience predates this: who can forget the iconic figure of the Polish plumber, invoked in the 2005 French referendum on the EU constitutional treaty, and earlier negative images of workers from other EU member states. This may be because the social model of work-based forms of social solidarity, epitomized by the notion of work as a mode of social inclusion, started declining with the rise of neoliberalism (Schmidtke 2012).

At the same time, the primacy of national citizenship is being challenged by multilevel forms of citizenship, in which rights and the associated political identities operate at more than one level (Maas 2013b, 2017). This is of course true for the European Union, with EU citizenship, but it is also true in federal states where welfare provision is shared between the central and regional authorities. In Canada, for example, the *Canada Health Act* has gradually become a central element of Canadian political identity and what it means to be Canadian (cf Della Sala in this issue). The Act is federal legislation even though, under the constitution, health care is a provincial responsibility. Efforts to co-opt the identification of health care through symbolic means such as provincially-branded health cards recall the equally symbolic introduction of a European Health Insurance Card, introduced as 'another piece of Europe in your pocket,' alongside the Euro currency.

The most significant difference between free movement in Europe and free movement within the US or Canada is that the linguistic, cultural, economic, and political differences between the states in Europe are so much more significant than those between American states and Canadian provinces. One particular reason why there has not been as much free movement in Europe as in the US or Canada is the problem of coordinating welfare systems, which differ sharply among EU member states. Yet here too interstate migrations in the US and interprovincial migrations in Canada face coordination problems, such as the case of individuals who move being denied some forms of health coverage for several months.¹⁸ And the rising mutual recognition of credentials in Europe means that the mobility of workers in many professions is easier between EU member states than between Canadian provinces, where provincial licensing bodies often erect high barriers to Canadians from other provinces.

Nevertheless, free movement rights are enormously popular, not only in the US and Canada, but also in Europe: strong majorities in every EU member state (including the UK) believe that the right of Europeans to live and work across the EU is a good thing (Standard Eurobarometer 86, 2016). This fact should make us more sanguine than alarmist about the prospects for European integration and a European political identity arising in tandem with national and subnational political identities. More fundamentally, sovereignty impacts political identities because it is a construction of the international system, epitomized in borders. But rising mobility complicates political identities and privileges not only multilevel but also multiple identities.

Legitimacy of boundaries

The image of students 'gaming the system' in order to establish residency and benefit from lower in-jurisdiction tuition rates, or of out-of-province internal migrant workers

denied health coverage or access to jobs, raises the wider question of the legitimacy of boundaries. All political communities are systems of exclusion as well as inclusion: asserting control over the movement of people was not a sufficient precondition of statehood, but was a necessary precursor of the sovereign state (Salter 2003, 14–15). In other words, scholars of state development usually assert that establishing borders and the means of controlling movement across those borders is necessary for state sovereignty. For those who see the European Union as adopting elements of state sovereignty, this means that it, too, should engage in border management (leaving aside the question of which agency actually does so; whether the member states, the EU border agency Frontex, or some combination or alternative). Thus Frits Bolkestein (2004, 22) warned that the EU ‘requires an outer limit, a fixed border. This is a major problem. Europe does not like to talk of ‘inside’ or ‘outside’. That is considered egoistic, anti-social and lacking in solidarity: in short, not in keeping with the European ideal.’

Bolkestein was writing as much about the cultural borders of Europe as its physical borders, but controlling borders is also an internal matter. After signing the Schengen agreement in 1985, the Belgian secretary of state for European affairs said that the agreement’s ultimate goal was ‘to abolish completely the physical borders between our countries’ – and this appeared to be quite successful since its implementation in 1995, though recent events place that success in question. Schengen (which is about border control rather than rights) is paired with the right of Europeans to live and work throughout the common territory. But these rights have only existed in full form for a very brief period of time. Despite the existence of EU citizenship, domestic political concerns trumped European rights upon accession of ten new member states in 2004 (and also Romania and Bulgaria in 2007): twelve of the fifteen

old member states—the exceptions were Ireland, Sweden, and the UK—decided to restrict access to their labour markets, and Poland, Slovenia, and Hungary adopted reciprocal restrictions. The phase-in was incomplete because the transition arrangements covered only workers seeking employment with a company based in an existing member state. Workers posted abroad, independent contractors seeking to relocate, and independent contractors wishing to provide services were not covered. Indeed, anyone not seeking employment from an existing member state company gained residence rights immediately upon accession. Nevertheless, the European Parliament (2001, point 35, cited in Maas 2007, 81) supported transition periods in ‘regions where workers are likely to commute across borders,’ in order to ‘secure an urgently needed socially sustainable integration process.’

Socially sustainable integration is difficult to define, particularly in the context of changing borders, such as that of EU enlargement, where the shape of the polity is affected (cf Lacey and Bauböck in this issue). Since the end of the Second World War, state border changes in Europe have been relatively rare. The reunification of East and West Germany in 1990, the dissolution of the Soviet Union in 1991, the dissolution of Czechoslovakia in the ‘velvet divorce’ of 1993 and the protracted dissolution of Yugoslavia (independence of Slovenia, Croatia, and Macedonia in 1991 and Bosnia and Herzegovina in 1992; dissolution of union between Montenegro and Serbia in 2006; independence of Kosovo in 2008) were the most important, now joined by Russia’s annexation of Crimea in 2014, and a minor border adjustment between Belgium and the Netherlands in 2017. Unresolved are a range of border-related questions that would flow from the departure of all or part of the UK from the EU (see Shaw, this issue). The political focus remains on migrants, individuals who cross borders, whether internal or external. Here it is clear that governments use migration to legitimize divergent policy

responses; one study of national labour migration strategies finds that member state governments use EU free movement to justify distinctive national migration control agendas (Paul 2013). Similar political dynamic operate outside Europe, not only in the cases of the US and Canada discussed above, but also in analogous arrangements between Australia and New Zealand (McMillan 2014) and various emerging supranational free movement regimes within Latin America (Maas 2015).

The question posed in this special issue is about the sustainability and legitimacy of Europe's boundaries. In democratic systems, the question of boundary sustainability is subordinate to that of legitimacy; boundaries are sustainable as long as they enjoy legitimacy, but inevitably crumble if they lose legitimacy – an insight that can be dated all the way back to Plato (1992, 98) yet remains relevant at a time when EU institutions assert authority even over member state decisions concerning naturalization and denaturalization (Maas 2016).¹⁹ The best way to analyze this may be through the lens of nativism, a preference for the local rather than the foreign or different. Yet distinctions between insiders and outsiders are not limited to the sphere of international relations; fear of the foreign or different can operate also within political systems. In both the United States and Canada, candidates for political office often feel the need to emphasize their local roots, to distinguish themselves as 'real' candidates, in opposition to those from other states or provinces, or simply from another city. This is a question of political identity. Despite years of research, the drivers of political identity remain poorly understood, and it remains unclear why some identities gain ground while others lose ground (Tilly 2005). The short answer is that we do not understand as much as we should about how and why some stories of peoplehood enjoy more success than others. Individuals have multiple identities. Many are tied to geography, but of course individuals also have identities along other dimensions: gender, religion, class,

ethnicity, family status, and all kinds of other categories that anti-discrimination legislation is meant to supercede. The question then becomes, what is the relevant political community? This is a pernicious problem in systems of multilevel citizenship, in which both identities and governance are multilayered (Bierbach 2015; Maas 2017).

Conclusion: 'Internal' Borders in Europe, the US, and Canada

In light of growing Euroskepticism, Europe's political leaders must work to reinvigorate the European idea that supported the gradual growth of a European citizenship existing in tandem with member state citizenships. This means countering myths promoted by resurgent nationalist movements that promise border controls will restore national sovereignty. In an interdependent world, political leaders must demonstrate that walls and hard borders are antithetical to civilized values, just as postwar European leaders recognized that eliminating discrimination based on nationality is an essential element of a common European citizenship. Sustaining the European idea also means undergirding the legal rights of EU citizenship with concrete social assistance for those who move between member states within the Union. Worries about social dumping and welfare tourism appear to be exaggerated, but introducing basic pan-European social entitlements, such as a European unemployment insurance program that would be financed by European rather than destination-state funds, would reassure publics skittish about the imagined dangers of internal European migration.²⁰ In the United States and Canada, internal migration between states or provinces also raises worries about social dumping and welfare tourism, but the existence of common welfare programs blunts and assuages these worries – even though the implementation and administration of concrete social entitlements usually entails significant variation between states and provinces. For example, current rules allow European jobseekers to receive home-state unemployment benefits for up to six months while looking for a job in another member

state; but unemployed people in Quebec lose their benefits after only 7 consecutive days outside the province.²¹ Rather than any particular finalité politique, fiscal federalism entails constant negotiation between governments at different levels, but relative security for individual citizens.

The freedom to live and work anywhere within the common European territory is the most significant right of EU citizenship, is what Europeans think of first when asked what the EU means to them personally, and remains enormously popular. The freedom to disregard ‘internal’ borders in Europe approximates a key right in democratic states around the world: the freedom of citizens to live and work anywhere within the territory of their state. These rights are guaranteed by international human rights norms (‘Everyone has the right to freedom of movement and residence within the borders of each State’ – declares the Universal Declaration of Human Rights; ‘Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence’ – echoes the International Covenant on Civil and Political Rights) and also by many national constitutions. But all political systems must balance the desire for equal citizenship with legitimate local demands for diversity. As this article has shown, the boundaries of political community remain unsettled not only in Europe but also in the United States and Canada, large federal states which have been wrestling with diversity and internal borders for a long time.

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¹ Thus Wilson argued, for example, that a "readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality" (IX), that an "independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations" (XIII), and that a "general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike" (XIV). "Fourteen Points" speech by president Wilson to Congress, January 8, 1918.

² <http://www.nytimes.com/2013/12/15/magazine/why-are-so-many-americans-staying-put.html>

³ https://www.td.com/document/PDF/economics/special/jb0613_interprovincial_migration.pdf

⁴ <http://www.nytimes.com/interactive/2016/08/26/us/college-student-migration.html>

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- ⁵ The fees were politically unpopular and the Länder that had introduced them gradually eliminated them again; Lower Saxony was the last to reverse tuition fees, in 2014.
- ⁶ Case 293/83 *Gravier v Ville de Liège* [1985] ECR 593, 13 February 1985.
- ⁷ UK House of Commons, *Debates*, 8 February 1990, column 1103, cited in Maas 2007, 41.
- ⁸ Case C-295/90 *European Parliament v Council* [1992] ECR I-4193, cited in Maas 2007, 41.
- ⁹ Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193, 20 September 2001, cited in Maas 2007, 64.
- ¹⁰ “Quotum voor studiebeurzen in het buitenland,” *RNW Nederlands Nieuws*, 21 June 2002.
- ¹¹ At York University, tuition for Canadian students is \$6221 per year, slightly below the average rate for Ontario universities; YorkU’s tuition rate for international students is \$12,780 to \$13,571 (depending on the program), significantly below the average rate for Ontario universities. The University of Ottawa charges international students \$21,711 while the University of Toronto charges \$27,240 to \$35,280 (depending on the program). The chief difference seems to be that YorkU offers international students guaranteed employment as teaching or research assistants and will charge the lower rate even to students who do not choose such employment, while the other universities provide competitive tuition rebates which are not guaranteed. Statistics Canada data for the 2015-2016 academic year, available at <http://www.univcan.ca/universities/facts-and-stats/tuition-fees-by-university/>
- ¹² See <http://msep.mhec.org/>
- ¹³ For example <http://www.finaid.org/otheraid/stateresidency.phtml>
- ¹⁴ <http://www.nytimes.com/2014/07/05/your-money/paying-for-college/chasing-in-state-tuition-as-colleges-tighten-rules.html>
- ¹⁵ “A birth certificate (the long form) issued by the Directeur de l’état civil after January 1, 1994, with the notation «Certifié conforme» or Certified even if the student’s actual place of birth was outside Quebec.”
- ¹⁶ Motie van het lid Beertema over het voorrang geven aan Nederlandse studenten bij numerusfixusbeleid.
- ¹⁷ The relevant legislation is the Professional Qualifications Directive (Directive 2005/36/EC), amended in 2013 by Directive 2013/55/EC.
- ¹⁸ <http://www.theglobeandmail.com/news/national/home-care-coverage-gap-remains-for-patients-who-move-provinces/article32489673/>
- ¹⁹ Plato wrote “As long as it is willing to remain *one* city, it may continue to grow. But it cannot grow beyond that point.”
- ²⁰ Many academics and economists have been promoting the idea for awhile, and are being joined by EU officials (see for example the 2014 speech by László Andor, European Commissioner for Employment, Social Affairs and Inclusion, “Basic European unemployment insurance: Countering divergences within the Economic and Monetary Union” available at http://europa.eu/rapid/press-release_SPEECH-14-635_en.htm) and member state governments (see for example the Italian Ministry of Finance document “European unemployment insurance scheme”, available at http://www.mef.gov.it/documenti-allegati/2015/note_unemployment/note_unemployment_insurance_2015_5OCT.pdf).
- ²¹ For example, the Commission in its 2013 EU Citizenship Report (COM(2013) 269 final) exhorts member states to make full use of the existing rules allowing 6 months of benefits, in order to not penalize mobility and increase opportunities for jobseekers. Meanwhile, changes made in 2015 mean that recipients of social assistance in Quebec lose their benefits if they spend more than 7 consecutive days, or a cumulative total of more than 15 days per month, outside the province. (The previous limit, passed in 2004, was one month.) This measure affects primarily people born outside Quebec, who may be absent for family reasons such as a funeral: Denis Lessard, “Aide sociale: une mesure pénalise les bénéficiaires nés à l’étranger”, *La Presse*, January 12, 2017.