

**‘Heads I win. Tails you lose.’**

## **Migration and the Worker Citizen**

Everyone is talking about immigration. The impacts of migration on the social, the economic and the political are perceived as multifarious and profoundly disruptive. The proportion of people that move internationally, approximately 3 per cent of the world’s population<sup>1</sup> has long been stable but the meaning, significance and constitution of mobility have changed. The story is one of unparalleled movement and huge demographic change. This is analysed as presenting a direct threat to sovereignty and generating costs and benefits that must be traded off, posing a ‘tragedy of commons’, particularly in Europe, for national welfare states.

But the notion that migration is a peculiarly contemporary issue is consonant with global histories of trade, colonialism, transportation and vagrancy largely because, while people have indeed always moved, they have not always ‘migrated’. Arguably, what is novel is not the movement of people but the global expansion of the nation state form and the internationalisation of regimes of citizenship. Indeed, the broader context of the problematization of mobility is a nation state form in crisis, even as this form continues to be the frame through which public discourse understands the distribution and accountability of political and economic power.<sup>2</sup> It is a frame that is proving increasingly shaky. Borders have fallen, shifted, and proved difficult to police, and not just migration but global capital, finance and new technology are proving highly resistant to state regulation.<sup>3</sup> This is exacerbated by a crisis in representation, as political elites are felt to be ever more removed from the lives of the majority of the population.<sup>4</sup> These twin crises of the nation state and representation are intertwined, and for some the European Union (EU) has become representative of both. The migrant exemplifies the fluidity of the relations between nation, people, and state. In mainstream political discourse, the presence of migrants becomes emblematic of waning state

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<sup>1</sup>

UNPD

2013

<http://www.un.org/en/development/desa/population/migration/publications/migrationreport/migreport.shtml>

<sup>2</sup> N Rose *Powers of Freedom: reframing political thought* (CUP 1999).

<sup>3</sup> W Brown *Walled States, Waning Sovereignty* (New York Zone Books 2010).

<sup>4</sup> Wang Hui ‘The Decline of Representation’ (2013) <<http://backdoorbroadcasting.net/2013/10/wang-hui-the-decline-of-representation/>> accessed 20 April 2015.

power, which is seen as in hock to business, to human rights and to European interests, and of mainstream politicians' disengagement with everyday problems. Promises of strong control over immigration appeal to the hope of a national labour market and economy, a stable cohesive national society and representative democratic politics.

This suggests we must be cautious not only in gauging public mood and anxiety over immigration but also in terms of our research practice. Who is a 'migrant'? Why is it that we are far more likely to research Filipina nurses than North American 'bankers'? To what extent are we reifying policy subjects and contributing to the production of a certain kind of strongly imagined political bogeyman? What happens if we do not take the category 'migrant' for granted? Researchers are already beginning to explore this in relation to labour markets, examining how labour market regulation, labour segmentation, public policies on housing and transport, and social ideas of gender and race can help to produce niches for which certain types of migrant labour are particularly suited.<sup>5</sup> That is, rather than treating labour markets as stable systems which migration then impacts upon, using migrant workers as means to examine employment relations, labour processes, labour market institutions and so on. I think it is becoming increasingly important to do the same to the closely related field of welfare benefits, and this is what I want to start to do in this article.

In Europe the welfare state is deeply imbricated in mythologies of citizenship, and perhaps particularly so in British mythologies of citizenship. Arguably supporting the National Health Service (NHS) is probably one of the few generally agreed on shared 'British values'. In approaching the question of how to analyse the exclusions of migrants from the welfare state without reifying the category of migrant I will centralise not 'migrants' but citizenship in order to explore how differences between 'migrants' and citizens are forged and sustained in law and social practice. I will begin by examining how citizenship is made and what this reveals about citizenship as a legal status through considering firstly naturalisation and the laws and policies that govern how foreigners become citizens, and secondly immigration and enforcement practices which are the flipside of naturalisation in the ways they literally make the difference between migrants and citizens. I will argue that enforcement encourages the idea that legal citizenship equates to full inclusion. Yet citizenship as legal status does not grant full social inclusion, indeed migrants aside, it is clear that citizenship is being evacuated of much of its social content. For this reason I argue that immigration practices promote a

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<sup>5</sup> C Costello and M Freedland (eds) *Migrants at Work* (OUP 2014)

fantasy citizenship. Migrants are excluded from citizenship as a legal status, but increasing numbers of legal citizens are excluded from the benefits of citizenship because they are perceived as failing in some way to live up to its demands. The promotion of fantasy citizenship overlooks the multiple exclusions within formal citizenship and the possible connections between these and the exclusions generated by migration. Unemployment benefits exemplify an area of 'failed citizenship' where not reifying the difference between migrants and citizens can be analytically and politically productive, revealing the rise of the worker citizen which is problematic for both excluded and failed subjects. I will conclude by suggesting that, as well as a free standing subject of study, migration can be a lens through which to study societies. That is, to return to the concerns expressed previously, the constitution of the migrant as an excluded subject has important and sometimes negative consequences for citizens. In this way the study of migration is as important for what it reveals about 'us' as it is for what it reveals about 'them'.

### **Value and Citizenship**

Considering citizenship in relation to migration emphasises the importance of citizenship as formal legal status, and exposes the necessary exclusions of citizenship.<sup>6</sup> However, contemporary liberal states do not present themselves as arbitrary collections of people hung together by a common legal status alone. They make considerable normative claims for citizenship, claims that are rendered visible by migration. In the face of migration, states become nations, or at least communities of value, sharing common ideals, patterns of behaviour and culture.<sup>7</sup> This is clearly exposed in naturalization requirements which typically attempt to map formal citizenship on to a community of value and which help turn exclusion into a virtue by lending moral weight to exclusionary factors. Naturalising 'migrants' must prove, not just that they fulfill technical requirements, but that they are Good Citizens. Indeed, they typically have to demonstrate 'fantasy citizenship'. They may have to give evidence of particular forms of knowledge through passing a citizenship test for example, a test that many of those born into citizenship might not necessarily pass.<sup>8</sup> A 2012 US survey of 1,023 randomly selected natural born US citizens found that 1 in 3 failed the civics portion

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<sup>6</sup> L Bosniak, *The Citizen and the Alien: Dilemmas of contemporary membership* (Princeton University Press 2006).

<sup>7</sup> B Anderson, *Us and Them? The Dangerous Politics of Immigration Control* (OUP 2013).

<sup>8</sup> Test questions like: Which of these forts were part of Hadrian's Wall (choose any two answers): Housesteads; Skara Brae; Sutton Hoo; Vindolanda? Are likely to prove challenging to many, including UK born and educated British nationals.

of the naturalization test in contrast to the 97.5 per cent pass rate of naturalization applicants.<sup>9</sup> As well as knowledge, the moral character of applicants may also be scrutinized. Most states do not accept people who have criminal records as citizens, and many also have a ‘good character’ requirement. This latter has been increasingly tightly defined and can require express commitment to certain values such as gender equality and ‘tolerance’.<sup>10</sup> In the debate around the UK’s 2009 citizenship proposals, then Immigration Minister Phil Woolas was questioned about the proposal to reject naturalisation applicants who demonstrated ‘an active disregard for British values’. In his response here refused to rule out the possibility that protesting about British intervention in Afghanistan and Iraq might be treated as such a disregard: ‘As a point of principle... if you don't break the law and you are a citizen, that's fine. But if someone is applying to be a citizen to our country we do think that you should not only obey the law but show you are committed to our country’.<sup>11</sup> In the UK failing the good character requirement is the most common reason for rejecting naturalization applications, accounting for 34 per cent of rejections in 2013.<sup>12</sup>

Yet there is a ‘now you see it now you don’t’ quality to this normative value attributed to citizenship. Citizenship may be priceless but it can also be bought. Given the logics of contemporary liberal nationalism one might expect, for example, that naturalization applicants are resident in the state of application. However, states like Antigua waive residence requirements completely for high net worth individuals under ‘investor citizenship’ programmes. Malta only introduced a (12 months) residence requirement for investors who want to naturalise after pressure from the EU. While these are exceptions and most states do require non-citizens first to have the status of permanent or long term resident before applying for citizenship, the ‘Golden Visa programmes’ of many EU states offer accelerated access to permanent residence for the wealthy, thereby facilitating their path to citizenship. In the UK, a person who invests £10 million can obtain settlement after two years rather than the usual five, and citizenship after five years rather than six.

In the UK, as elsewhere, there are multiple ways in which it is easier for the wealthy to fulfill the conditions attached to naturalization than it is for the poor, or even the not particularly

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<sup>9</sup> See <http://www.prnewswire.com/news-releases/one-in-three-americans-fail-immigrant-naturalization-civics-test-149209975.html>.

<sup>10</sup> Dace Dzenovksa ‘Public Reason and the Limits of Liberal Anti-Racism in Latvia’ (2010) 75 *Journal of Anthropology* 425.

<sup>11</sup> A Travis, ‘War Protest Migrants May Face Passport penalties’ *The Guardian*, (London, 3 August 2009).

<sup>12</sup> S Blinder, *Naturalisation as a British Citizen: Concepts and Trends* (Oxford Migration Observatory 2014).

wealthy. Citizenship and language tests in designated centres require travel which can be expensive, the training and the tests themselves also cost, as does acquiring proof of nationality of the state into which a person is born, not to mention the permanent residence and naturalization fees – the fee for a naturalization application in the UK is £906.<sup>13</sup> This will be on top of payments for visa renewals and between £956 and £2,000 for a settlement application. Furthermore, temporal limitations on all but the most highly paid non-European Economic Area (EEA) migrants make it extremely difficult for them to remain in the UK for long enough to apply for permanent residence. In effect visa renewal and length of stay limitations mean that immigration controls do the ‘dirty work’ of citizenship.<sup>14</sup>

Both immigration and citizenship laws differentiate between, on the one hand, the non-citizen high net worth individual, the brightest and the best, and on the other the non-citizen poor, the ‘low skilled’.<sup>15</sup> That is, integral to the fantasy version of citizenship is the value given to a person’s social and economic capital. This passes largely unremarked – after all Britain is looking for the ‘Brightest and the Best’. It does of course have consequences for citizens – for example, in May 2015 there were dire warnings from the Royal College of Nurses (RCN) that the requirement that non-EU workers will have to leave the country after six years if they do not earn more than £35,000 will “cause chaos for the NHS”, will waste tens of millions of pounds and have a significant impact on service delivery, i.e. to citizens who are patients. But perhaps more surprisingly what also is overlooked are the ways in which immigration restrictions directly create differentiated citizenship for legal citizens. For decades it has been very difficult for people on benefit to be joined by their partners and children under the ‘no recourse to public funds’ requirement. The reach of this injustice has expanded. UK nationals who do not earn a minimum of £18,600 are not eligible to sponsor a partner or spouse for entry and must earn even more if they want to sponsor dependent children. Notably £18,600 is substantially more than the national minimum wage (about £13,500). Of all British national employees, an estimated 43 per cent do not earn enough to qualify as a sponsor. The threshold has a significantly greater impact on women: 28 per cent of British male employees do not earn enough to sponsor a partner, but 57 per cent of British female employees do not qualify. Seventy two per cent of these women do not earn enough to sponsor a partner and

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<sup>13</sup> Renouncing British nationality requires payment of £144.

<sup>14</sup> C Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (New York Cambridge 2008).

<sup>15</sup> See for example Home Office, *A Points Based System: Making Migration Work for Britain* (White Paper, Cm r 6741, 2006).

two children. In this way, to put it at its most crude, low waged citizens find it much harder to exercise a right to family life than higher waged.

This can be analysed as the contemporary equivalent of the property qualification. Citizenship (or, in the past, subjecthood) has long been tied up with property ownership. Many of the rights considered fundamental to liberal citizenship today were previously the preserve of male property owners, and the self-ownership of the citizen was of central importance.<sup>16</sup> It was property that gave them a stake in society, and self-ownership that enabled their responsibility to others: 'Property as a moral space tied to integrity and self-government generates duties for others and connects the individual and the collective'.<sup>17</sup> Formal rights of citizenship, such as voting, were extended to those who were believed to own themselves and their labour, and for this reason the rights of black people, women, children, and so on were always troublesome. While the idea of citizenship as a privilege of the propertied classes seems outmoded, it is enjoying a resurgence when it comes to criteria for naturalization.

### **Citizens and the Impact of Controls**

Freedom from immigration controls is one of the marks of the citizen yet they are highly consequential for citizens as well as non-citizens, and it is not only those who are personally connected to non-citizens who are finding themselves affected by immigration controls. In recent years immigration enforcement has become part of everyday life in Britain. Citizens are not subject to immigration controls, but they are increasingly required to prove that they are citizens in order not to be so subject. The UK is in the grip of what Liberty has called 'an unprecedented collective extension of immigration responsibility'.<sup>18</sup> Citizens 'harbouring', facilitating illegal entry or deliberately employing an 'illegal immigrant' may be subject to criminal prosecution. Immigration is policed by airport staff, lorry drivers, registrars, employers, landlords, bank clerks, university lecturers, and others. Concerned members of the public are encouraged to report in a private capacity and can telephone hotlines to report illegality. In 2013 some 75,000 allegations were logged in the Intelligence Management Systems, which by February 2014 had resulted in 4,000 arrests and 1,000 removals.

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<sup>16</sup> B Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (CUP 2010).

<sup>17</sup> L Brace *The Politics of Property: Labour, Freedom and Belonging*, (Edinburgh University Press 2004): 10.

<sup>18</sup> Liberty's Second Reading Briefing on the Immigration Bill in the House of Commons 2013. Available from <https://www.liberty-human-rights.org.uk/sites/default/files/liberty-s-second-reading-briefing-on-the-immigration-bill-hoc-october-2013.pdf>.

In recent years immigration enforcement has become part of everyday life in Britain. Practices that would once have seemed heavy handed have become normalised, to the extent that they can become the subject of reality television. In 2008, when the UK Border Agency was reformed, the Home Office signed an ‘advertiser-funded’ deal with Sky TV enabling it to contribute to the costs of developing and making a fly-on-the-wall documentary series called *Border Force*. This promoted the work of immigration enforcement officers, following them on workplace raids, interrogating suspects, stopping people on entry and deporting people from removal centres. Thus citizens are enmeshed in the bureaucracy of immigration controls, both checked and checker.

Everyday bordering also has consequences for the subjectivities of citizens. Enforcement, naturalisation and controls are typically imagined as variations on the theme of weeding out unsuitable applicants, but they can also be analysed as key mechanisms for creating differences in the first place. Immigration and citizenship law do not simply control the movement of ‘migrants’, but they are critical to the production of migrants and of citizenship as a social field. The law and its practice does not just give immigration flows a particular character but actively produces social relations. Enforcement is as it were the flipside of naturalisation, reminding migrants of their ‘deportability’, to use Nicholas De Genova’s term<sup>19</sup>, but it also reminds citizens that they are not deportable. Highly visible enforcement of the kind that we are increasingly witnessing does not only cause fear in migrant communities, it serves to tell citizens that citizenship has a value. It is, after all, in the name of protecting the citizenry that these controls are being implemented. Enforcement may be inconvenient, but citizens have nothing to fear. The effect of this normalisation of immigration enforcement is to reify citizenship and seemingly stabilise the privileges of formal citizenship status. The new emphasis on enforcement brings into relief certain citizens’ rights, reminding citizens that they are on the right side of the line, and that this is no small privilege.

Citizenship’s privileges are commonly expressed in terms of rights. Citizens have rights that migrants do not, which is why migrants must be checked up on. However, when we look a little closer at some of these rights it seems that their value largely arises from the contrast with migrants who do not have the rights, rather than having a value in themselves. For example, the 2014 UK Immigration Act introduced a future requirement on landlords to

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<sup>19</sup> N De Genova ‘Migrant “Illegality” and Deportability in Everyday Life’ (2002) 31 *Annual Review of Anthropology* 419.

check their tenants have the ‘right to rent’.<sup>20</sup> This ‘right to rent’ had not been previously formulated, it was not conceived of as a right that citizens formally had. Neither was it a right that migrants were denied. Citizens and migrants alike simply rented, they did not avail themselves of their right to rent. The introduction of the right to rent did not bring with it facilitated access to housing in an overcrowded private rental sector. Indeed many citizens find that certain properties are not available to people claiming housing benefit, social tenants can be penalised because the properties have more bedrooms than they can claim for (‘the bedroom tax’) and private tenants may find landlords reluctant to rent to claimants. In practice, the citizens’ ‘right to rent’ only means something when contrasted with non-citizens not having it. The right to rent constrains non-citizens but it does not enable citizens.

The ‘right to work’ is similarly a commonplace of public debate around immigration. The right to work is first and foremost the right of the citizen. That the state should give citizens priority access to the labour market, and only then should jobs be available to non-citizens is a fundamental principle of labour migration policy. The right to work, whom it is held against, its relation to rights at work and what kind of right it is, are highly contested issues in academic literature.<sup>21</sup> However, it is notable that in public debate the phrase ‘right to work’ appears largely in terms of immigration. That citizens have a right to work is treated as unproblematic. However, while immigration marks the national labour market as a space of privilege for citizens where jobs are preserved for them, welfare benefits can transform it into a disciplinary area within which they may be compelled to take up work.<sup>22</sup> For migrants work is a *right* that they should not automatically expect to be granted, but for citizens, work can be a *duty* that some fail to fulfil.

Thus not only naturalization, but immigration controls and their enforcement entrench a fantasy version of citizenship imagining all citizens as fully and equally included. However, it is undeniable that in practice citizenship is highly differentiated – after all, if it were not, there would be no reason for anti-discrimination laws. As Elizabeth Cohen has argued, for all its claims to equality, citizenship has, from Ancient Greece onwards, always been partial: ‘citizenship does not make a citizenry equal. In fact, it appears to institutionalize both difference and inequalities, albeit in sometimes unexpected ways’.<sup>23</sup> Workplace raids and

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<sup>20</sup> Immigration Act 2014 Part 3 chapter 1.

<sup>21</sup> V Mantouvalou (ed) *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015).

<sup>22</sup> A Paz-Fuchs ‘The Right to Work and the Duty to Work’ in V. Mantouvalou *ibid* pages 177-194.

<sup>23</sup> E Cohen, *Semi-Citizenship in Democratic Politics* (CUP 2014).



random document checks, the requirement to produce passports to employers, health services and the Driver and Vehicle Licensing Agency affect citizens and non-citizens alike, but Black and Minority Ethnic (BME) citizens are more likely to be checked up on than those who are regarded as white. Immigration and naturalisation laws turn attention well away from the gendered, classed and racialized borders within formal citizenship even as immigration enforcement helps to create differentiated citizenship, by bearing down disproportionately on the low waged and unemployed and on BME citizens. It is important for those engaged with migration issues to remember that the legal status of citizenship does not in itself guarantee equality. Matters of differentiation, or marginalisation within citizenship, and of exclusion from citizenship are rarely considered together even as they clearly overlap, particularly in questions of racism and immigration.

### **Immigration and welfare: the rise of the worker citizen**

Access to the welfare state is one of the key equalisers of citizenship, and along with the right to be present on UK territory, it is a marker of British citizenship. Non-citizens cannot assume welfare support as a right, even though their waged labour in practice can be critical in keeping down welfare costs and providing skills in the health and education sectors. The welfare state is, like naturalization and enforcement, a point where citizenship is made. Yet citizens with legal status are finding welfare rights they took for granted circumscribed. This is clearly evident in the case of unemployment benefits where citizens are often excluded by an increasingly harsh sanctions regime. There has been an increase in the use of sanctions for failure to comply with work-related conditions. In written evidence submitted to the House of Commons Work and Pensions Committee inquiry into benefit sanctions policy, David Webster found that the total of sanctions issued to people claiming Job Seekers Allowance and Employment Support Allowance before reconsiderations/appeals in the year to June 2014 was an estimated 1,030,000.<sup>24</sup> Lone parents, disabled people, and the under 25s are

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<sup>24</sup> Evidence available from

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/benefit-sanctions-policy-beyond-the-oakley-review/written/16442.html>

particularly vulnerable.<sup>25</sup> In the summary of his evidence Webster described the system as: “a huge secret penal system, rivalling in its severity the mainstream judicial system but without the latter’s safeguards”.<sup>26</sup> ”.

For someone who works on immigration this is eerily familiar territory. Prime Minister David Cameron has often referred to immigration and welfare benefits as ‘two sides of the same coin’<sup>27</sup>, and it seems as if it is worth investigating the connections between them. Two sides of the same coin is an interesting analogy as it is impossible to see both sides at the same time. How can we connect the exclusions from formal citizenship and the exclusions within formal citizenship? The perceived relation between unemployment benefit and immigration has two elements. On the one hand it alludes to the anxiety that immigrants are taking unemployment benefit without paying into the system. Here the welfare scrounger migrant is counterposed to the hardworking British who has paid in through taxes, but finds the pot unfairly diminished. On the other hand it also indicates the claim that unemployment benefits act as a disincentive for citizens to take up jobs which are then taken up by migrants. Here the go getting migrant is contrasted with the lazy Brit, suggesting that activating British labour supply is an important element in limiting the participation of migrants in the labour market. Both in their different ways bring together anti-welfarist and anti-immigration arguments very powerfully.

A tradition starting with T.H. Marshall<sup>28</sup> has analysed the welfare state as the culmination of social citizenship. Indeed in Europe more generally, social welfare entitlement is critical in assessing the content of citizenship. Yet the claiming of unemployment benefit is dishonourable. The rise in anti-migrant rhetoric has run alongside a marked intensification of the demonization of the non-worker, the idle, the person who cannot be bothered to get up in the morning. Thus those who claim benefits are increasingly subject to public excoriation that parallels the excoriation of migrants. Those who are unemployed are increasingly depicted as shirkers and non-contributors. Like migrants, the unemployed are imagined as having

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<sup>25</sup> E Watts, G Fitzpatrick, G Bramley and D Watkins, ‘Welfare Sanctions and Conditionality in the UK’ (2014) Round-up Joseph Rowntree Foundation <<http://www.jrf.org.uk/publications/welfare-sanctions-and-conditionality-uk>> accessed 20 April 2015

<sup>26</sup> Webster, *ibid*

<sup>27</sup> David Cameron immigration speech 25<sup>th</sup> March 2013. Available from <https://www.gov.uk/government/speeches/david-camerson-immigration-speech>.

<sup>28</sup> T H Marshall, *Citizenship and Social Class and Other Essays* (CUP 1950).

problems of culture that can stretch through the generations, but unlike migrants, the unemployed are often not mobile enough, stuck in housing estates or in front of flat screen TVs, not prepared to get on their bike. While it is one of the paradigmatic rights of all UK citizens to have a right to social assistance, accessing this right is often presented as failing to live up to the virtues of citizenship. These kinds of arguments are often situated within appeals to ‘fairness’, which inform negative comments about both migrants and claimants, invoking a barely masked competition for rights and resources. For example the foreword to *Enforcing the Rules*, an outline of the five-year enforcement strategy stated: ‘the fact that many immigrants... end up in shadowy jobs in the grey economy undermines the terms and working conditions of British workers. That’s not fair. It chips away at the social contract and fabric of our country.’<sup>29</sup>

Conditionality has always been a feature of public assistance, but its scale and scope has expanded. The introduction of Job Seekers’ Allowance (JSA) in 1996 brought with it increased monitoring of claimants’ job seeking behaviour and this has developed into the new ‘claimant commitment’ that is a requirement of Universal Credit. Rights to social assistance that were in the aftermath of the Second World War premised on universalism, albeit the universalism of the liberal able-bodied male subject, are now distributed on the basis of preparedness to work. Welfare provision is increasingly viewed as obstructing rather than facilitating a well-functioning labour market. Offe examined what he called the ‘recommodification’ of labour, the requirement to sell one’s labour through the market, as a means through which the social rights of citizenship were being transformed and their relation to property rights more exposed.<sup>30</sup> As Hartley Dean put it: ‘It is not that social rights are being extinguished, rather that they are being made less democratic and more akin to the property rights of classical jurisprudence’.<sup>31</sup>

Claiming unemployment benefits is becoming a point of behavioural intervention. Conditions imposed on ‘work seekers’ include mandatory participation in employment-related programmes, job search interviews, and unpaid work placements. While the House of Commons united in mourning the sad death of former Liberal Democrat leader Charles

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<sup>29</sup> Home Office *Enforcing the Rules: A strategy to ensure and enforce compliance with our immigration laws* (HMSO, London 2007)

<sup>30</sup> C Offe *Contradictions of the Welfare State* (MIT Press 1984).

<sup>31</sup> H Dean, *Social Rights and Human Welfare* (Routledge 2015).

Kennedy, no such understanding of the challenges of alcoholism has been forthcoming with respect to people on welfare benefits. The Conservative Party's 2015 manifesto proposed that '[p]eople who might benefit from treatment should get the medical help they need so they can return to work. If they refuse a recommended treatment, we will review whether their benefits should be reduced'.<sup>32</sup> Those suffering mental health problems, the obese, people with drug dependency issues, along with migrants, are all likely to find it increasingly difficult to access social support. Like naturalising migrants, formal citizens are finding that they too are required to achieve certain standards, and we are witnessing the rise of the worker citizen. Recent changes include the rise in pensionable age, tough disability and sickness regulations and tightening requirements on lone parents. This means particular adult groups, women, older people and citizens who are sick or with disabilities are increasingly no longer considered legitimately inactive. Recommodification is cast as inclusive of women, of carers, of the sick and disabled, of older people. They too have value, for they too can work. The worker citizen produces two forms of undeservingness: idleness 'the mother and root of all vices', and not belonging, manifest in the contemporary figures of the benefit scrounger and the migrant. Those who do belong (citizens) are idle, and those who are not idle (migrants), do not belong.

The worker-citizen has another guise as 'The Taxpayer'. It is often the taxpayer rather than the citizen to whom the government says it is accountable, both in relation to the welfare state and in relation to immigration. The taxpayer has added virtue at a time when tax evasion by wealthy individuals and large companies has been acknowledged as scandalous. The taxpayer has become the symbol of an ordinary hard working person who has been ripped off by the wealthy, but also by the idle poor. The Taxpayer also makes explicit the internal exclusions of the citizenship, and the continuing importance of the relation between citizenship and property.

### **The EU Citizen as the Worker Citizen**

This suggests that there is some truth in the observation immigration and welfare benefits are indeed 'two sides of the same coin'. The relation between them is of increasing importance with the rise in anxiety about EEA/EU migrants and their perceived threat to the welfare

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<sup>32</sup> Conservative Party Manifesto 2015: 28.

state. The EU citizen is paradigmatically a worker citizen. Free movement of EU citizens is one of the four fundamental freedoms of the EU, but the right to remain in an EU member state for longer than three months is principally the prerogative of EU *workers*. After three months, residence is contingent upon people not becoming an ‘undue burden’ on the country of residence.<sup>33</sup> Now that the mobility of EEA nationals within the EU can no longer be controlled through immigration laws, this restriction is being actively deployed as a mechanism for controlling the mobility of EEA nationals via limiting access to welfare benefits. As the Department for Work and Pensions (DWP) press release put it: ‘The British public are rightly concerned that migrants should contribute to this country, and not be drawn here by the attractiveness of our benefits system’.<sup>34</sup> In 2014 it became evident that there was an intention to refuse EU nationals access to Universal Credit. When challenged by the Social Security Advice Committee about the potential hardship this could cause for families the Secretary of State replied that the Government’s policy was to:

...shape future EEA migration activity so that people do not migrate to the UK until they have a job (or if they still wish to come without a job they can fully support themselves until they find work).<sup>35</sup>

Attempts to control and channel the mobility of the poor through limiting their access to alms or to poor relief have a long history in both Europe and the UK.<sup>36</sup> The 1662 Poor Relief Act sanctioned the removal of *incomers* ‘likely to be chargeable to the Parish’ and ordered that poor relief or work could only be given to those who were settled in a parish or who were in their parish of birth. Those who were mobile were not qualified for relief in their parish of temporary residence; if they were to beg, they became sturdy beggars and could be pursued as vagrants. More recent policy changes develop from restrictions devised in the 1990s to prevent ‘welfare shopping’. In many EU states these anxieties resulted in the introduction of Habitual Residence Tests (HRT) designed to demonstrate applicants were legally resident and were intending to remain in their host state for a reasonable period of time.<sup>37</sup> In 2004,

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<sup>33</sup> Directive 2004.38/EC Article 6.1 and 14.1.

<sup>34</sup> <https://www.gov.uk/government/news/minimum-earnings-threshold-for-eea-migrants-introduced>

<sup>35</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410245/secretary-of-state-to-paul-gray-090315-uc-eea-nationals.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410245/secretary-of-state-to-paul-gray-090315-uc-eea-nationals.pdf).

<sup>36</sup> B Anderson ‘Precarious Pasts, Precarious Futures’ in eds C Costello and M Freedland *ibid*.

<sup>37</sup> See: European Commission DG Employment, Social Affairs and Equal Opportunities *Practical Guide on the Applicable Legislation in the European Union (EU), the European Economic Area (EEA) and Switzerland*.

when it was one of only three EU states to open its labour markets to citizens of new EU member states the UK introduced a Right to Reside requirement as a pre-requirement for demonstrating ‘habitual residence’. These two tests have had significant consequences for EEA nationals who want to claim welfare benefits. Between 2009 and 2011 the majority of applications for tax-funded income-related benefits from nationals of the states that joined the EU in 2004 were disallowed because they failed the right to reside and the habitual residence tests (71 per cent in 2009, 69 per cent in 2010, and 67 per cent in 2011). This kind of refusal rate should not be read as meaning that refused applicants return to their country of origin, any more than the 1662 measures led migrants to return to parishes of origin. The Social Security Advisory Committee (SSAC) in its report published in November 2014 noted that the expectation that those who failed to find work would leave the UK was likely to be unrealistic and anticipated increasing homelessness and rough sleeping.<sup>38</sup>

Because EU nationals are not subject to immigration controls, habitual residence requirements are imposed via national social security regulations, meaning these requirements have consequences for nationals returning after a period of residence abroad as well as mobile EU citizens.<sup>39</sup> The SSAC drew the attention of the government to this problem, and they responded by permitting an exception of those who had paid UK national insurance contributions on the grounds that they had ‘recently contributed to the UK economy whilst being posted to work abroad, thus maintaining their connections to the UK’.<sup>40</sup>

The high numbers of benefit refusals for migrants will have further increased thanks to changes introduced in early 2014. The DWP press release stated:

For the first time, migrants will be quizzed about what efforts they have made to find work before coming to the UK and whether their English language skills will be a

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<sup>38</sup> *The Housing Benefit (Habitual Residence) Amendment Regulations 2014 (S.I. 2014 No. 539): SSAC report*

<sup>39</sup> Leah Green, ‘Britons travelling or studying abroad refused benefits on return’ *The Guardian* (London 21 May 2014).

<sup>40</sup> S Kennedy *Measures to Limit Migrants’ Access to Benefits* House of Commons Briefing Paper Number 06889, 17 June 2015

barrier to them finding employment. Migrants wanting to claim benefits will have to provide more comprehensive evidence at the point of their claim. This might include what measures they have taken to establish themselves in the UK by looking at their housing and family situation or by looking at what ties they still have abroad. They will also have to provide more evidence that they are doing everything they can to find a job.<sup>41</sup>

Those EEA migrants who have previously worked in the UK but lost their job can claim JSA as a worker only if for the three months before making their claim they have been in ‘genuine and effective’ work. From 1 March 2014 one of the tests for work being genuine and effective was that earnings exceed the national insurance threshold for three months.<sup>42</sup> This is £153 a week after 7 April 2014.<sup>43</sup> Given EEA nationals’ concentration in low waged jobs in sectors such as hotel and catering, cleaning, agriculture and social and childcare, where zero-hours contracts, agency and temporary working are rife, this kind of threshold is likely to prove challenging. The DWP press release gave an example of a horticultural worker on a zero hours employment contract who earned £56 a week in his first week of employment, nothing in his second two weeks, and £25 in his fourth week of employment. ‘A Decision Maker decides Mr A’s work activities were marginal and ancillary, and so he was not a worker who could retain that status’.<sup>44</sup> While earning below this threshold does not mean that the applicant is automatically excluded from benefit, they are subject to a more detailed assessment with attendant possibilities for refusal.<sup>45</sup>

A person who passes this test can claim for a maximum of 6 months, before being required to pass a Genuine Prospect of Work (GPoW) Test.<sup>46</sup> To pass this they must provide ‘compelling evidence’ that they will receive an offer ‘imminently’<sup>47</sup> for work of a type that is considered ‘genuine and effective’. To be eligible for benefit, an EEA national must have a genuine

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<sup>41</sup> DWP Press Release 13th December 2013.

<sup>42</sup> S Kennedy *ibid*

<sup>43</sup> This sum is considerably more than the wages for apprentices. Apprenticeships are heavily promoted, but in April 2014 were paying as little as £2.73 an hour, or just over £100 a week, that is well below the ‘genuine and effective’ threshold.

<sup>44</sup> DWP Press Release 13th December 2013.

<sup>45</sup> S Kennedy *ibid*.

<sup>46</sup> S Kennedy *ibid*.

<sup>47</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/324534/m-15-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324534/m-15-14.pdf) 15.2

chance of finding genuine and effective work in the labour market sector that is relevant to them – because they do not belong. In contrast, as the guidance for JSA decision makers on sanctions makes clear, resident UK nationals must be prepared to do any work, irrespective of whether it is genuine and effective, and whether this is available in a sector that is of interest to them - because they are idle. This is a new take on ‘British Jobs for British Workers’ and seems a somewhat perverse outcome for a system that is supposed to have as its aim the protection of jobs for nationals.<sup>48</sup>

The concept of genuine and effective work also heralds the idea that the ‘worker citizen’ is a certain type of worker, and not everyone who works, UK, EU or Third Country National counts as a virtuous worker, even if they are formally employed in the labour market. In the current renegotiations of EU mobility, in work benefits are coming under scrutiny. While EU migrants are in practice unlikely to apply for or receive unemployment benefits, data on tax credits obtained from the UK’s Department of Work and Pensions show that, as of March 2013, 415,000 of the total 2.45 million claimants of tax credits were not UK nationals.<sup>49</sup> This share is roughly equivalent to the share of non-UK nationals in low-waged employment in the UK, which makes sense given that tax credits are means-tested and aimed at low-income earners.

At first sight it seems that the consequences of withdrawing working tax credit from EU migrants is, if achievable, a means of lowering fiscal costs and not thereby making migrants more desirable workers than UK nationals, as presumably the costs to employers would remain the same, whether UK or EU nationals. That is, here is a ring fenced means of cutting benefits without hurting UK nationals. However, we should not forget that written into Universal Credit legislation is the principle of ‘in work conditionality’. In April 2015 a pilot was launched affecting 15,000 universal credit claimants working less than 35 hours a week

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<sup>48</sup> It draws attention to questions about the quality of the jobs that are being ‘protected’ and reflects a more general contradiction, as often it seems that the jobs protected for UK nationals are ‘low skilled’ rather than ‘high waged’ and employers who are offering jobs that pay more than £120,000 do not have to advertise in the UK before opening up to global competition.

<sup>49</sup> M O’Connor, *Fiscal effects of migration to the UK: Working Tax Credit claimant numbers* available from <<http://strongerinnumbers.com/komposersitelocal/NonUKreportfinal.pdf>>



on the minimum wage - typically earning a salary of less than £12,000 a year.<sup>50</sup> These claimants can now have their benefits sanctioned if they are deemed not to be trying hard enough to get higher paid work or part time workers who refuse to take on extra hours.

Social welfare entitlements are critical for assessing the content of national citizenship. O'Brien has argued with reference to Zambrano<sup>51</sup> that EU citizenship can be reduced to a simple right to be present, which is 'an extremely minimal interpretation of "genuine enjoyment" of a citizenship right'<sup>52</sup>. The same can be said for current policy on EU citizens and income based JSA.

## Conclusion

Across Europe, citizenship is increasingly cast as being deserved by hard working, self-reliant individuals prepared to take responsibility for themselves, whether they are formal or aspiring citizens. Attention to the predicament of the EU migrant as a 'worker citizen' suggests however that it is not sufficient to be working to count as a worker, but a person must be earning above a certain amount to be genuine and effective, or they will be cast as a taker, someone who is not putting enough into the system. Migration and welfare benefits are indeed two sides of the same coin. Considering EEA/EU nationals is an opportunity to stop flipping the coin over, and enable an analysis that can incorporate both sides as relational rather than oppositional.

The widening engagement of citizens in enforcement, calls for British jobs for British workers, claims to protect welfare benefits from the depredations of migrants, all contribute to the production of fantasy citizenship, imagining that citizenship, if you have it, means equality. The fantasy citizenship of real inclusion, that promises, once you have permanent residence or citizenship everything will be alright. But it will not. Fantasy citizenship makes

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<sup>50</sup> The Universal Credit (Work-Related Requirements) In Work Pilot Scheme and Amendment Regulations 2015

<sup>51</sup> *Zambrano v Office national de l'emploi (ONEm) Belgium*. Case C-34/09

<sup>52</sup> C O'Brien, 'I trade, therefore I am: legal personhood in the European Union' *Common Market Law Review* 50 (6). 1643. 2013

migrants exceptions and discourages a politics and an analysis that finds commonalities between migrants and differentiated citizens, even as it makes this analysis more urgent. Fantasy citizenship reifies an axis of difference, implicates citizens in the making of that difference, promises to protect citizens from that difference, as if that difference were the only one that matters, as if this is enough and everyone should be grateful for it.

Migration and its contemporary problematization then offer a means of inquiry into the contemporary politics of the relations between state, nation and people in Europe. This article is in part interesting in exploring the potential for analysing migration, not as a free standing subject of study, but as a lens through which to study contemporary society and politics. It interrogates what the conditions of 'migrants' reveal about the economic, social and political status of citizens and the states where they live. It suggests that our anxiety about a tragedy of the commons means that we miss the potential for a common tragedy.