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Critical political economy, free movement and Brexit:

Beyond the progressive's dilemma

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Abstract

The progressive's dilemma suggests that a trade-off exists between, on the one hand, labour and welfare rights underpinned by solidarity and shared identity and, on the other hand, open immigration regimes. With reference to debates on free movement in the UK, it is argued: (1) that a progressive European critical political economy literature of the Left has a tendency to accept this dilemma and resolve it in favour of the former; (2) that it does so because it erroneously conflates the free movement of people with the (increasingly neoliberal) free movement of goods, capital and services; and (3) that it could and should treat human mobility as qualitatively different and, consequently, need not accept the terms of the progressive's dilemma. The argument has important implications for a progressive politics in general and for the Left's (particularly the Labour Party's) position in the UK on free movement (and, by extension, on Brexit).

Key words: free movement, EU citizenship, Brexit, the Left, progressive's dilemma

Introduction

While in government the UK Labour Party enthusiastically supported the free movement regime. But long before the Brexit referendum in 2016 many in the party had become critical of Blair's decision to open UK labour markets to new member states' citizens following the 2004 'big-bang' enlargement (Watt and Wintour, 24 March 2015). The numbers of people that came to the UK from Eastern Europe exceeded estimates (Dustmann et al., 2003)ⁱⁱ and many in the party have come to regard the decision as a spectacular 'policy failure': a defining moment in its electoral decline and in the drift towards Brexit. According to this perspective, the 2004 'failure' paved the way for a fused anti-immigration and anti-EU discourse that became increasingly prevalent following the economic downturn in 2007 and reached fever-pitch following the ending of transitional arrangements with Romania and Bulgaria in 2013. Despite efforts on the part of the Conservative-Liberal-Democrat coalition government to reform the rules associated with the right of EU citizens to claim benefits (Cameron, 26 November 2013) and Cameron's partially successful efforts to elicit concessions on free movement from other member states in the context of membership renegotiations, the issue remained live – and for many was the central issue (Duncan, 15 June 2016; Ipsos MORI, April 2016) – during the referendum campaign. The Leave campaign's core and highly effective trope – the need to 'take back control' – was for many voters perceived as most real and urgent in relation to the question of free movement. Post-referendum, the prioritisation of this issue meant that continued single market membership – which would require the maintenance of the status-quo on free movement – was ruled out by the May government (May, 2017: 4).

Accepting the contours of this narrative, Ed Miliband's former pollster has suggested that, "[t]here is a growing cultural gap between the way [traditional Labour] voters see the world and the

cosmopolitanism and utopian egalitarianism of much of the Labour Party... These voters believe that a government's first priority should be its citizens. They see no reason why citizens of other countries should have entitlements in the UK simply because they move here... They think Labour cannot comprehend these positions, let alone agree with them" (Morris, 2015). Apparently endorsing such concerns, many pro-Europeans and many formerly staunch defenders of free movement in the parliamentary party seemed to drift away from those ostensibly 'utopian cosmopolitan' positions at the end of 2016 (Bailey, 2016; Bush, 17 November 2016).

At the heart of this UK-centric debate in the Labour party sits a broader dilemma – the so-called 'progressive's dilemma' – that has been picked up and considered in a number of different ways across a range of sub-disciplines in the political and social sciences. The dilemma suggests a tension or trade-off between two aspects of contemporary political and social reality that progressives would be likely to endorse. On the one hand, labour and welfare rights underpinned by trust, solidarity and shared identity and, on the other hand, permissive or open immigration regimes and high levels of diversity (Alesina and Glaeser, 2004; Goodhart, 2013, Putnam, 2007). Among the first to assert the empirical reality of such a dilemma nearly three decades ago, Freeman (1986:51) suggested that, "migration has contributed to the Americanisation of European welfare politics." To the extent that this verdict is accepted as correct, it is perhaps unsurprising that many on the Left are at least circumspect when it comes to permissive migration regimes in general and the reality of freedom of movement in the EU in particular. They may be uncomfortable when suggesting the need for closure but this is instrumental to their pursuit of substantive social and welfare settlements. This tendency is present in some liberal nationalist political theory (Miller, 1995, 2016; Walzer, 1983) and echoed in some (neo)-republican EU studies work on post-national citizenship and free movement (Bellamy, 2008; Menéndez, 2009). According to political sociologist

Adrian Favell (2014a), such circumspection is also, at least implicitly, present in a body of European political economy literature of the Left – hereafter called ‘critical political economy’ (CPE). He criticises its particular conception of the way in which neoliberal market forces should be governed and constrained for implying a nationalist closure that cannot comfortably co-exist with the so-called ‘fourth freedom’. This nationalism or closure is in tension with a pro-migrant cosmopolitan position that many progressives, including Favell, would endorse: hence, the progressive’s dilemma.

The remainder of the paper takes Favell’s critique of CPE as its starting point to reflect upon the reality of the progressive’s dilemma in the particular context of EU free movement. First, it argues that Favell is correct to highlight the CPE tendency towards closure to human mobility and hostility to the ‘fourth freedom’, though this is only a *potential* tendency that is only occasionally made explicit in such a literature. Second, it suggests that in opting for an alternative resolution to the progressive’s dilemma based on a less critical understanding of neoliberalism, Favell is insufficiently sympathetic to the CPE critique of neoliberalism in Europe. Third, it makes the paper’s core argument that progressives – including Critical Political Economists – do not need to accept the terms of the dilemma, at least not in relation to the EU’s ‘fourth freedom’. In passing through the horns of the dilemma, not only is a progressive critique of marketization commensurable with support for that fourth freedom, it may be regarded as that which renders it politically sustainable in the long-term. The paper draws on the UK case to animate and clarify the argument and reflects on its implications for the Left in the UK in the context of Brexit debates.

Its contributions are threefold. First, it offers an empirically grounded analysis of the progressive’s dilemma, of interest to the broad range of sub-disciplines that have engaged with this phenomenon,

particularly by drawing CPE into the debate. Second, it speaks to the CPE literature, reiterating Favell's call for it to reflect on its potentially exclusionary ontology and associated politics. Contra Favell, it suggests this reflection does not necessarily draw CPE towards a neoliberal cosmopolitanism. Third, the implications of this argument are of direct relevance to UK policy debates and Brexit negotiations pertaining to free movement, particularly for the political Left.

Critical political economy and free movement

In an impassioned critique of what he variously calls a social democratic, Keynesian or 'Marxist' political economy literature on the EU – essentially a European CPE of the political Left – Adrian Favell has suggested that it is predisposed to a problematic methodological nationalism and political closure which is hostile to human mobility and the freedom of movement of people across borders. He has described scholars working in this tradition as “emotionally cosmopolitan, but viscerally nationalist in their conception of how markets are to be controlled or governed” (2014a:284) and suggested that, “[p]roponents of alternative political economies for Europe – re-imposing strong, top-down, state-governed controls on the factors of production and consumption, and labour market restrictions and protections – should own up clearly to the anti-European nationalist implications of their positions” (2014a:287)

Many working in the tradition that Favell identifies for critique would not recognize the charge. After all, the CPE literature tends to be interested primarily in diagnosis rather than prescription. In the broad context of Europe's political economy, the short version of this diagnosis is an increasingly neoliberal and financialised capitalist settlement with all that it entails for the current status and future prospect of a more social Europe. In the more specific context of questions of

mobility and migration in Europe, CPE – broadly defined – has concerned itself, in particular, with, on the one hand, the ways in which this neoliberal settlement has impacted government policy (Menz, 2013) and, on the other, the ways in which it has affected migrant and non-migrant subjects, particularly in a context of increasingly flexible labour markets (Dwyer et al., 2011; Maroukis, 2015). To the extent that prescription can be found within CPE, there is of course a long history of radical internationalism on the Left, encapsulated in Marx and Engel’s slogan ‘workers of *the world* unite’. This argument also takes social-democratic form in cosmopolitan prescriptions for the uploading of a social constitutional settlement to the EU or beyond (Habermas, 2001a, 2001b). Such perspectives would clearly reject the idea that CPE is pathologically predisposed to a nationalism that is hostile to human mobility; it offers a practical as well as ‘emotional’ cosmopolitanism.

However, in line with Favell’s critique, it is certainly the case that there is a strand of more pragmatically minded CPE that does, at least implicitly, betray a preference for the nation-state as the site of government for the control of the market. It is – like the Labour pollster quoted in introduction – critical of a ‘utopian’ Leftist internationalism on the basis of the ‘no-demos’ thesis; the idea that a social settlement cannot be achieved at the European or any other level above the nation-state because the solidarity and trust that might underpin such a settlement does not currently exist in such contexts (Streeck, 2014b). Rooted in a pragmatic conception of the art-of-the-possible, this literature is primarily concerned with the ways in which the EU and its antecedents has – via the making of markets and the introduction of a single currency and its rules based governance – undermined social settlements and democracy at the national level. Fritz Scharpf (2015, 2002, 2009), for instance, has argued that ‘market Europe’ undermines the ‘republican legitimacy’ of national government (2009:188). In other words, the EU has compromised the ability of member state governments, parliaments and, indirectly, national

populations to affect many kinds of substantive political change in line with a republican ideal. At the same time, this 'pro-market' orientation has eroded at least some of the national level social rights that are seen by many in this tradition as a "prerequisite of (or normative corollary for) *mass* democracy" (Wincott, 2006: 750-1). The Eurozone crisis has increased the pertinence of such critique. Even around the time of the Maastricht treaty, neo-Gramscian scholar Stephen Gill (1998) understood monetary union in terms of the pursuit of his notion of a 'new constitutionalist' initiative, "designed to lessen short-run political pressures on the formulation of [domestic] economic policy by implicitly redefining the boundaries of the 'economic' and the 'political'". The response to the crisis has involved for the most part the introduction of much tougher rules of constitutional enforcement, justified via the deployment of an emergency discourse of existential crisis (White, 2015); indeed, it has been claimed that Gill's new constitutionalism is today better conceived as an 'authoritarian constitutionalism' (Oberndorfer, 2015). While different perspectives on the political Left and within this academic literature proffer different possible routes out of these crises – none of them easily realizable – a growing number are suggesting that an orderly disintegration of the single currency should be contemplated given the intractable political obstacles to deeper fiscal (and political) integration – not least the aforementioned 'no demos' argument – and the socially, economically and politically deleterious effects of a prevailing monetary union reliant on competitive internal devaluations (Streeck, 2014a, 2014b).

According to Favell CPE "cannot support informal economic activities which seek to avoid the taxation and regulation that pay for communitarian re-distribution and labour protection. The 'illiberal' upshot *has to be* that states should control and regulate borders" (2014: 277). This assertion certainly appears to be consistent with Scharpf's 'republican legitimacy', which would seem to entail the delimiting or bordering of a *demos* or political community such that it can

democratically determine its own (socially cohesive) fate. This community would legitimate the regulation and control of various mobilities across national borders, including in the EU context the ostensibly indivisible four freedoms of goods, capital, services and people. CPE has explicitly critiqued the first three of these freedoms and, if not explicitly then by inference, suggested a need to control them. With respect to goods it has, for instance, been critical of the ways in which the European Court of Justice (ECJ) and then the single market project came to regard not only private actors but also national rules as potential impediments to their free movement (Joerges, 2005; Scharpf, 1996, 2015). With respect to services, it has been critical of attempts to promote the freedom of establishment of service providers in ways that would *de facto* undermine domestic corporate regulation, corporate taxation policies, labour law and collective bargaining (Genschel et al., 2011; Höpner and Schäfer, 2012:443). With respect to capital, this literature has been critical of the pursuit of a one-size-fits-all – for the most part ‘anglo-liberal’ or neoliberal – model in relation to corporate governance and capital markets, which favours finance and potentially undermines certain varieties of capitalism, particularly those that are more inclined to protect labour interests (Clift, 2009; Mügge, 2010).

As regards the mobility of people – the core concern here – CPE has, in general, been less explicit in its critique of this ‘fourth’ freedom. However, the potential for such mobility to adversely impact upon ‘republican legitimacy’ – in other words, the possibility of a *delimited demos* to control its own affairs – is regarded by some as pertinent to this mobility. Höpner and Schäfer (2012) are among the few working within CPE to express something approximating this view explicitly. Drawing on the terminology of legal scholar Agustín Menéndez (2009) they suggest that there is a risk that the free movement of persons and an associated right of non-discrimination – including with respect to accessing public services and welfare – makes the EU ‘more human’ but also at least contributes to

making it 'less social'. For them the obligation that the principle of non-discrimination places on member states to grant social rights may have systemic effects, putting pressure on governments to retrench welfare. As they put it, "[u]ndermining the reciprocity between rights and duties puts both the effectiveness and the legitimacy of national social policy under pressure" (Höpner and Schäfer, 2012:447-8). Its effectiveness is potentially put under fiscal strain and its legitimacy might be questioned by citizens who reject the entitlements of non-citizens. We see then a communitarian tendency from some working in the CPE tradition to accept the terms of the aforementioned 'progressive's dilemma' and seek to resolve it in favour of closed social settlements.

One way around this issue could be to permit free movement but also some discrimination of migrants. Ruhs (2013) has shown empirically that the progressive dilemma exists in practice globally; that 'the price of rights' – particularly free and equal access to labour markets and social and economic rights for migrants – is greater closure of both state territories and labour markets. He cautiously endorses limiting rights to certain migrant groups (in a well-regulated way that outlaws exploitative practices). He suggests that, in our non-ideal world, migrants who value entry and work above all else prefer this system. CPE may indeed endorse some forms of discrimination in the context of EU free movement, particularly in terms of restricting access to certain public and welfare services.ⁱⁱⁱ Discrimination with respect to labour market regulation and rights is, however, far more problematic from this perspective. Unlike Ruhs, CPE literature is not primarily concerned with a utilitarian weighing up the pros and cons of this reality for migrants. It is interested primarily in the impact of such a regime on citizens. It would be concerned that discriminatory labour regulations could create social dumping, wage competition and contraction. Consider, for instance, the fairly widespread CPE critique of the ECJ's Laval judgement – and subsequent restrictive trade union reforms in Sweden – which effectively endorsed a degree of labour market

discrimination between national and non-national workers and opened the way for social dumping in the Swedish labour market (Davies, 2008; Höpner and Schäfer, 2012; Lindstrom, 2010).^{iv}

In the recent context of crises of mobility – a refugee crisis and a free-movement dominated Brexit debate – some scholars working within the CPE tradition have made more explicit their adherence to the logic of the progressive’s dilemma and their commensurate choices with respect to human mobility. Wolfgang Streeck (2016b, 2016c) is among them. Focusing on the structural consequences of human mobility, he regards Merkel’s initially permissive policy towards Syrian refugees as an immigration policy by the back door designed to sustain a low-wage economy in Germany and the decision of Blair in 2004 was, for him, about, “pressur[ing] British workers, in particular at the lower end of the wage scale, to become more ‘competitive’” (2016a:1). From this perspective, he considers legitimate the emphasis on immigration in the context of the Brexit referendum campaign:

Looking across the Channel at the Continent, British voters may *rightly* have been afraid of being burdened with yet another quasi-constitutional, democratically unchangeable obligation unconditionally to open their borders and their labour markets, not just to immigrants from other, less prosperous EU member countries but also to whoever would demand entry as an asylum seeker or refugee (Streeck, 2016b:5)

Seeking to understand the logic of the Brexit vote, Helen Thompson has similarly suggested a dynamic whereby the Eurozone crisis, “turned Britain into an employer of last of resort for the economically dysfunctional and politically rotten currency union... As migration to Britain from the periphery of the euro zone increased from 2012 so UKIP’s political fortunes rose” (Thompson,

2016:2; see also 2017). Neither scholar, it should be said, is primarily concerned with free movement of people. Their broader insights are invaluable in terms of understanding the outcome of the referendum or the current conjuncture in Europe's political economy more generally. But to the extent that free movement is invoked, they reveal a readiness to accept the logic of the progressive's dilemma without recourse to concrete evidence; migration will *obviously* impact adversely on national labour markets and this will lead *inexorably* to politicization of the issue. Perhaps pushed by events, these discourses on Brexit and the refugee crisis come close to explicitly 'owning up' to Favell's charge that a European CPE literature supports a nationalism that – from another, more cosmopolitan, progressive perspective – has problematic political implications for human mobility. Accepting the need for a choice between the 'human' and the 'social', these authors – along with growing ranks in the post referendum Labour party – privilege the latter.

An alternative resolution of the progressive's dilemma

In contrast to the CPE literature that he critiques, for Favell, "the *progressive* novelty of the EU... lies ... in its promise of an *unbounded cosmopolitan and post-national politics and society*... Less not more state has been the EU's greatest achievement: bringing liberalism and individualism as an antidote to the deeply ingrained fascist impulses of European governments and (especially) bureaucracies" (2014a:285). He presents the market as a condition of possibility for the promotion of these preferences and, while certainly not an apologist for neoliberalism, he is critical of those Critical Political Economists who fail to disaggregate its various aspects and effects through the use of the term neoliberalism. He is not alone in acknowledging the constitutive importance of the expansion and creation of a European common market and the possibility of the post-national or post-Westphalian order in Europe, which is central to European integration's defining narrative (see

also, Parker and Rosamond, 2013). From this perspective, market-making processes place important and positive limits on states and underpin individual liberties in the face of state oppression and violence. Such a view accords with a post-war German 'neo' or 'ordo' liberalism that was explicitly normative in its attempt to 'reverse' the relationship between the market and the state, placing the latter under the supervision of the former (Foucault, 2001). Such ideas fed into certain conceptions of European integration and find expression in a contemporary defence of the EU as non-majoritarian regulatory state (Majone, 1996; for an important CPE critique, see Wincott, 2006).

From Favell's particular cosmopolitan perspective, critique of the tendency towards closure inherent in nationalist CPE is not surprising. In relation to the 'fourth freedom', a combination of flexible labour markets and open borders have facilitated human mobility, which has, from his perspective, had marked economic and social benefits. Such mobility may, for Favell, hold out a variety of benefits and emancipatory potential. As he has said,

A more, rather than less, open international labour market may, under certain conditions, bring more benefits to all – the migrant, the receiving state and even the sending state: in terms of social mobility and the circulation of human capital, skills and education; the complementary filling of sectoral demand (in the case of jobs not taken by native workers) and/or the entrepreneurial creation of new employment niches by business-minded migrant workers; and (in some cases) the circulation of capital back to the sending state (through remittances, return investment) (Favell, 2014a:278)

Elsewhere Favell (2008a) has explored the potential benefits for intra-EU movers in his research on the lived experiences of EU-15 movers. With respect to the UK, the decision to open borders in 2004, far from a mistake, is interpreted as a positive move that had significant benefits for the UK in terms of driving economic dynamism – employers attracted ‘overwhelmingly young, mobile, skillful and employable’ migrants from new member states – as well as societal and cultural benefits (Favell, 2014b). This was certainly the way in which the New Labour government portrayed the move at the time.

From a CPE perspective, of course, Favell’s cosmopolitan position in general and his *celebration* of human mobility in particular is highly problematic given its deference to flexible labour markets. It is unsurprising in this respect that, as noted above, Streeck is as withering in his critique of a ‘cosmopolitan moral rhetoric’ as Favell is of the nationalism he perceives in the CPE literature. Streeck’s analysis of migrant and female (2016a: 216-220) inclusion in labour markets reduces identity politics to its role in serving capital’s particular contingent ends. The cultural politics of very real importance to many (Fraser, 2001) is ignored (or reduced to an overly generalised ‘false consciousness’) in this analysis.

More specifically, while Favell emphasizes the way in which human mobility can be positive for movers, receiving states and sending states, this is just one side of the story. For CPE, it is not the most significant side. First, the migrant may not be a wholly willing mover, but forced by economic (or political) necessity. Focusing on EU migrants, evidence suggests that many in recent significant waves – east-west and, more recently, south-north movements – do not perceive such mobility as a first preference. Notably, Favell himself elsewhere acknowledges the potential for such groups to experience tough working conditions, noting that, “‘new Europeans’ are in danger of becoming a

new Victorian servant class for a West European aristocracy of creative-class professionals and university-educated working mums” (Favell, 2008b:711). Indeed, such fears are a stark reality in many unregulated sectors of the generally highly liberalised UK labour market, with migrant workers including EU citizens particularly vulnerable (Maroukis, 2015). With respect to south-north movers in the context of the economic crisis, the name of the Spanish emigrant youth movement ‘no nos vamos nos echan’ (we didn’t leave, they threw us out) captures something of the feelings of at least some in this category.^v Second, the receiving state and particularly ‘native’ workers in certain sectors may experience migration not as making a positive contribution, but, as competition for welfare state provision and wage repression (though, as discussed below, aggregated evidence may differ from the local reality or perception of such experiences). Third and finally, sending states may feel that a ‘brain drain’ effect outweighs the economic benefits accruing from remittances (Nedeljkovic, 2014).

Like the CPE literature he critiques, Favell seems to accept – in his 2014 piece at least – the choice presented by the progressive’s dilemma. But in contrast to CPE’s emphasis on the ‘the social’, Favell champions ‘the human’. Favell privileges, even *fetishizes*, the human subject as mobile, because this is the human capable of delivering a pluralist cosmopolitan reality. This vision sees emancipation in the sociological reality of the unbundling of territory and demos.

Beyond the progressive’s dilemma

A large empirical literature on the progressive’s dilemma suggests that it may be contingent on a variety of factors (see Kymlicka, 2015). Cutting through its complexity, *perceived pace of change* in a given society seems particularly important. In turn, these perceptions depend on the relationship

between more concrete material factors and what we might call intersubjective factors. The former refers to such factors as numbers of immigrants, speed of immigration, the nature of the welfare system (for instance, contributory or not (Ruhs, 2015)) and the financial costs of immigration (calculable in a variety of ways). The latter refers to the cultural and psychological capacity for mutual trust or sympathy to emerge between migrants and receiving societies, such that the former come to be regarded as part of the latter. The relationship between these factors is itself politically contingent. Some societies will be willing and able to absorb greater numbers of migrants and accept larger costs. Others will be more sensitive to change. Some (individuals and societies) will be willing to extend the scope of solidarity and deservingness to migrants and some will not; some will place conditions on that deservingness by adopting a concept of solidarity based on a contractual/contributory economic arrangement; some will emphasise a cultural affinity; and some will adopt a concept based on need. Moreover, perceptions and policies change depending on the individual or group to whom such solidarity is extended (for evidence on the political contingency of 'deservingness' see, van Oorschot, 2006). In short, identifying the circumstances in which the dilemma is in any sense real and those in which it is not is far from straightforward.

It is generally true, however, that less dramatic spikes in the numbers of incomers will delimit the reality of the progressive's dilemma both materially and intersubjectively. As political theorist Joseph Carens notes in his defence of *the right* to free movement (2013), the number of movers will be lower where individuals have the possibility to prosper and pursue their version of the good life without moving. This is likely to require relatively low levels of inter and intra state inequality and poverty and widespread political freedoms. Carens is operating in the idiom of ideal theory with respect to the global situation pertaining to migration. As Ruhs' (2013) empirical work shows, the feasibility of sustaining *both* open borders *and* substantive social settlements that are open to

migrants is low in prevailing conditions of global inequality, widespread poverty, political turmoil and hostility towards migration in receiving states. Open borders would likely precipitate movements that would impose an unsustainable pace of change on receiving states in current conditions and this is why more open states tend to delimit access to rights for migrants. To move beyond the dilemma would require radical cosmopolitan solutions geared towards global social justice; the kinds of solutions that many on the contemporary Left – including the ‘republican’ CPE literature – regard as dangerously utopian. In short, the ethics may be more difficult in relation to, for instance, Europe’s refugee and broader ‘border crisis’ (Vaughan-Williams, 2015) or the politics of migration more generally (Parker and Brassett, 2005).

However, Carens’ ideal may be more plausible in the EU context and for intra-EU mobility. Here a right to movement and his ‘communities of character’ may not be in conflict. Only 1-3% of EU citizens reside in an EU state other than that of their nationality. Inequalities between EU member states have grown with recent enlargements and the economic crisis, but are small relative to the global situation and this probably largely explains the small numbers of movers. Moreover, cultural commonalities and the discursive framing of intra-EU migration in terms of ‘EU citizenship’ may foster mutual intersubjective adaptability (Bruzelius et al., 2014). From this perspective intra-EU mobility does not result in rapid societal change – it does not substantially impact on nation-states as peoples in terms of labour markets or welfare settlements. The exceptionalism of the EU – in terms of combining openness to (intra-EU) migrants and access to rights on a non-discriminatory basis (Ruhs, 2015) – is not necessarily unsustainable.

Nevertheless, the issue of free movement in the EU clearly *has been* politicized in recent years, particularly since the 2004 enlargement and particularly (though certainly not exclusively) in the

UK. Moreover, this migration *has* appeared to change material realities. The numbers of EU nationals coming to the UK certainly did increase rapidly after 2004 – a nearly 120% increase between 2004 and 2013, the biggest change across all EU-15 member states (Ruhs, 2015: 11-12) – driven by a combination of the New Labour government’s opening of domestic labour markets to new member state nationals, the relative flexibility of those markets and the decision of other large states (particularly Germany) not open in the same way. Migrant access to benefits has proved particularly controversial in the UK, where many social security and in-work benefits – such as tax credits that supplement low incomes – are non-contributory. In short, migrants can access certain benefits without necessarily ‘paying in’ to the system. In local contexts which received large and rapid inward flows of migrants, large majorities voted ‘Leave’ in June 2016 (Clarke and Whittaker, 2016), citing, for instance, local pressure on public services. And finally, some studies have reported that EU migration has repressed some wages in low-skilled, low-pay occupations, which coheres with widespread public assumptions and concerns about the effects of migration on labour markets (Nickell and Saleheen, 2015; Dustmann et al., 2013).

These ostensibly material realities are clearly important, but should not be overstated. Against them, there is significant macro-level evidence that EU nationals in the UK are overall net contributors in fiscal terms and so not a net ‘burden’ on public services (Dustmann and Frattini, 2014). There is also no reliable evidence of widespread ‘benefit tourism’ by EU nationals in the UK and they claim fewer benefits than UK nationals (European Commission, 2013; Portes, May 2016). While potential access to non-contributory benefits creates *the possibility* for EU nationals to be portrayed as benefit tourists – drawing *from* rather than contributing *to* the national economy (in a way that would arguably be more difficult in more contributory systems (Ruhs, 2015)) – such portrayals are largely based on anecdote, not evidence. Moreover, although certain low-skill, low-

pay occupations and sectors may have experienced wage repression and labour market competition, the causal importance of migration in this context has been estimated as, at most, extremely minimal (Nickell and Saleheen, 2015) and there is no evidence of either phenomenon when considering EU migration as a whole (Migration Advisory Committee, 2014, Wadsworth et al., 2016: 7-9). These econometric studies challenge misconceptions pertaining to the (negative) effects of migration on labour markets that are rooted in the 'lump of labour fallacy' – the notion that there is a fixed amount of work within an economy. They emphasise that migration increases the demand for labour – through the generation of new economic activity and jobs – as well as the supply, so wages will not necessarily fall as a consequence of migration as is often assumed and may even rise. Studies also highlight that decisively determining the causal effects of migration on labour markets (as distinct from numerous other factors) is methodologically extremely difficult (Ruhs and Vargas-Silva, 2015: 5).^{vi} Finally, it is notable that Ireland experienced materially very similar circumstances to the UK – it opened labour markets in 2004, received large inflows and has a largely non-contributory benefits system – but there has been far less negative politicisation with respect to EU migrants (Ruhs, 2015: 29).

Even in a context where there has been increasing migration, the exceptionalism of the EU *need not* be unsustainable; the progressive's dilemma *need not* be real. The politicization of the issue in the UK has been based largely on intersubjective understandings that do not correspond with the material realities precipitated by free movement. It is notable in this respect that the total percentage of EU migrants in the UK is hugely over-estimated by the British (on average the perception is 15% versus 5% in reality (Ipsos MORI 2016)). This is unsurprising in a context of widespread anti-EU and anti-migrant media rhetoric and feeling. Unlike media in other member states, the pro-EU language of 'EU citizenship' is rarely deployed in the UK (Bruzelius, et al., 2014)

with the pejorative EU 'migrant' often preferred. And certain strands of the tabloid press have consistently demonized newcomers from post-2004 enlargement member states. This negative message on free movement has been endorsed by growing ranks of mainstream politicians across the spectrum, including by successive governments. Notably, following the 2016 referendum, an advisor to David Cameron acknowledged that, "we failed to find any evidence of communities under pressure ... There was no hard evidence ... [I]t was clear that immigration is at best just one of several factors that are putting pressure on public services, along with globalization, deindustrialization, automation and aging populations" (Korski, 24 October 2016). And yet Cameron made the issue central to his efforts to renegotiate Britain's EU membership prior to the referendum – securing the possibility of a so-called 'emergency brake' (European Council, February 2016)^{vii} – and it remained central during the campaign itself. A number of ostensibly progressive and otherwise pro-EU commentators (Goodhart, 2013) and politicians (Mason, 4 August 2014) had long before 2016 lent their support to the highly debatable notion that free movement had become a legitimate issue of concern.

The question for progressives in general is whether, in this context, it is acceptable to capitulate to the terms of the progressive's dilemma and, in so doing, contribute to their further (intersubjective) constitution. For progressive politicians, when the dilemma is understood to be real by the electorate, it is certainly tempting to treat it as real and respond in its terms. From this perspective, the electoral dilemma for the Labour party is: do they appeal to an archetypical New Labour pro-EU, pro-migration (neo-)liberal cosmopolitan *or* to an Old Labour anti-EU, anti-migration pro-social nationalist? As noted in introduction, since the Brexit referendum there is a growing inclination in the party to opt for the latter; crudely, the social and national over the cosmopolitan and human. But any conviction politician interested in the evidence and concerned with both the 'human' and

the 'social' must surely reject the choice, particularly when the evidence compellingly supports such a rejection. In this context a pro-social cosmopolitan position is not an oxymoron.

Certainly scholars – in the CPE tradition or elsewhere – should resist the logic of this dilemma when it is at best rooted in limited evidence. Indeed, when we appreciate the complex interweaving of material realities and intersubjective understandings, then a progressive CPE should be extremely cautious about an apparent *correlation* between migration and socially deleterious outcomes and not to assume that the former has in any sense *caused* the latter. To accept this causal logic is to endorse an ontology of the migrant as 'human capital' to the detriment of the real-world migrant as human *tout court*. It is to embrace the diagnosis that neoliberal markets are driven by the mobility of such 'capital' (see for instance Friedman (1978: 3)) and the EU's concomitant claim that free movement is an *indivisible* part of the internal market and its four freedoms. It is to endorse the view of some UK employers of migrants primarily as functionally important to the sustenance of labour market flexibility (Rolfe and Hudson-Sharp, 2016). In short, when a pro-social CPE accepts the progressive's dilemma, it endorses a reductive and dehumanising neoliberal ontology of the migrant, even as it diametrically opposes neoliberal prescriptions. The upshot is that it establishes migration (and migrants) as an inexorable problem.

A more human(e) progressive ontology would reject the causal logic described above. It would understand mobility not as *cause*, but (in large part at least) as *consequence or effect* of broadly neoliberal market realities. From this perspective, the focus of critique (and reform) for CPE ought not be those who are mobile, but the neoliberal labour markets and other structures – including the other three freedoms – that have to a large extent driven (or even necessitated) their (and other human) mobility. This shift in discourse enables a progressive to distinguish between the EU's first

three freedoms or mobilities and the fourth; to treat mobile persons as qualitatively distinct – indeed, *divisible* – from mobile goods, capital and services in terms of their effects. From this perspective, it is entirely consistent to support a right to EU free movement and non-discrimination on the one hand (‘the human’) and advocate some kind of increased controls of the other three freedoms and enhanced labour market protections and regulations on the other (‘the social’). In line with Carens, the more pro-social outcomes associated with such moves would likely limit actual mobility through constraining an important driver. In Sweden, this outcome seems to have been achieved in relation to EU free movement, which (along with the UK and Ireland) opened its labour markets in 2004. Inward migration from the new member states was far less substantial than in the other two countries after 2004, largely as a consequence of its much more protected and regulated labour markets (Ruhs, 2015: 18).

Regarding migration as primarily a consequence of, rather than cause of, neoliberalism would lend itself to an ethic of unconditional solidarity based on need. In the current context, this means a concern with the reality of the destitution of many non-national EU citizens (and, indeed, other migrants) in the UK and elsewhere, *in addition to* a solidaristic ethic based on reciprocity or contract (as it pertains either to EU citizens as *co-workers/contributors* or to citizens as *co-nationals*). Concretely, this perspective allows the political Left and CPE scholarship to critique (rather than support) moves by member states – in a context of increasing legal uncertainty at the European level (Blauberger and Schmidt, 2014) – to increase discrimination within the free movement regime. These are moves which in the UK context have delimited the category of EU non-national resident eligible for non-discrimination to an ever stricter conception of ‘worker’, with disproportionately adverse impacts on groups of EU citizens with more limited or patchy

formal labour market participation, such as women (especially those engaged in reproductive labour) (O'Brien, 2013:1668, 2015) or Roma (Parker and López Catalán, 2014).

This human(e) ontology would also regard migrants – and indeed non-migrants – not only in terms of their economic subjectivity, but also in terms of other identities, including their subjectivity as potential *citizens* (Parker, 2012; Parker, 2013). In other words, it would recognize that migrants are motivated to move by an array of factors – not simply economic – and, when settled in their new home, they are potentially much more than (human) capital. Indeed, as well as rejecting the crude notion that migrants are agents of a neoliberal order, we should also embrace the possibility that they can be allies in the critique and reform of neoliberalism. Contra the progressive's dilemma, the mobility of people might be regarded not as an inexorable threat to, but as potentially enhancing, existing communities of fate. To be clear, this argument does not suggest that important tensions between mobility and discrete social settlements do not also have the potential to arise within the EU citizenship regime, or that discrimination and exclusion will never be justified or required in order to uphold valuable and valued communal programmes or policies.^{viii} Rather it is to argue that such trade-offs ought not be regarded as generalizable or inexorable, but as contingent on shifting material realities and, in particular, on the intersubjective understandings that emerge in relation to those realities.

Conclusion

Refusing the inexorability of the progressive's dilemma allows us to reject a stark choice between the 'human' and the 'social'. We do not have to choose between a cosmopolitan neoliberalism and flexible labour markets as a condition of possibility for the emancipation of EU migrant labour and

a communitarian closure to migrants as a condition of possibility for social labour markets and welfare. Within the context of free movement of persons in the EU the exceptionalism of open borders and non-discriminatory access to substantive rights is currently sustainable. Even in the UK case where the issue has been most controversial and politicised, the evidence suggests a net economic positive impact of EU migration. In such circumstances it is neither inconceivable nor utopian that principled progressive political actors would seek to persuade the electorate of the broader positive impact of such migrants and of the benefits of the regime that facilitates their movement (and, indeed, all EU citizens' potential movement).

That said, it is important to acknowledge that such exceptionalism is *not necessarily* politically sustainable in the longer term; it could become materially (as well as intersubjectively) unsustainable in a context where both inequalities and movements of people grow very rapidly. CPE scholarship has skillfully elucidated the structural factors in a contemporary 'crisis' global and European capitalism that are precipitating and are likely to further precipitate social inequalities within member states, exacerbate economic imbalances and inequalities between them (for instance, Streeck, 2014a) and prompt at least some human mobility. As noted in the first section of the paper, these literatures have identified what has been called an emergent executive or Hayekian federalism (Höpner and Schäfer, 2012) – particularly in the context of EMU and its crises – and at once emphasized the absence of the thick transnational solidarities required to build an alternative (social)-democratic federalism. This analysis explains the rejection of cosmopolitan thinking of the sort associated with Habermas (2001) and, to the extent that they engage in prescription, a reassertion by many pragmatic CPE analysts of a greater level of nation-state autonomy (Scharpf, 2015), a possible reversion to national currencies (Streeck, 2014a) and – to the extent that the issue is engaged – some constraints on the free movement of people. However, the

first of these prescriptions need not require the last. In other words, broadly republican preferences need not imply a rejection of the status quo on free movement when we accept the *divisibility* of the four freedoms and refuse the inexorable logic of the progressive's dilemma. Moreover, to the extent that the first prescriptions are able to stall or ameliorate growing inequalities within and between states and guarantee secure employment – thereby delimiting mobility – they may even be *supportive of* a politically sustainable *right* to mobility. Such a position allows us to, “keep our distance both from market-besotted neoliberals and from those who seek to ‘defend society’ (replete with hierarchy and exclusion) from the market” (Fraser 2013: 5). In a period characterized by both rampant marketisation and an exclusionary (and often ethno) nationalism, the importance of the political Left situating as such could hardly be greater.

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ⁱⁱ One of the authors of those predictions, Dustmann, has noted that the estimates were based on the assumption that all member states – crucially, including Germany – would open their labour markets in 2004. When this is taken into account the estimates may still have been under, but by a far less significant amount.

ⁱⁱⁱ Note that such discrimination *is* already possible within EU law and, as prominent EU legal scholars have noted, these possibilities may have been significantly understated in political discourses in the UK, including during the Brexit referendum campaign (Davies, 18 August 2016; O'Brien and Pech, 2 November 2016). For instance, the treaty and secondary legislation makes clear that movement and non-discrimination is not unconditional and recent ECJ rulings have made more explicit these limits, effectively removing the right to reside – and therefore claim even subsistence forms of social support – from individuals whose sole purpose for moving is to claim benefits (see, for instance, Dano 2014, Alimanovic 2015 and UK vs Commission 2016).

^{iv} The case essentially brought to a head tensions between the principle of EU-level service sector mobility and competition – enshrined in the ‘third’ freedom to provide services – and respect for national collective bargaining in determining pay and working conditions in member states – which seemed to be protected by rules on minimum standards in the Posted Workers Directive. The ECJ ruled in favour of the former and this has been the object of widespread critique by many working in the CPE tradition. Many regarded it as permitting social dumping. Inasmuch as it led to reforms in Sweden that delimited the right of unions with respect to foreign organisations – reforms that were considered by the European Committee of Social Rights and the International Labour Organisation to not comply with relevant provisions on collective bargaining – such concerns were vindicated. This and other cases such as the 2004 debate over the ‘country of origin’ principle in the initial proposals for the Services Directive are indicative of the problems with discrimination from this perspective. Such discrimination not only results in poorer living and working conditions for migrants, it also has the potential to impact social systems more generally.

^v <http://www.nonosvamosnosechan.net/>

^{vi} Whatever those effects on labour markets, the data suggests that UK labour markets are currently highly reliant on migrant (including EU) workers (ONS, 2017)

^{vii} This introduced the possibility for member states to restrict access to non-contributory in-work benefits for a maximum period of four years subject to European Council approval. Circumstances in which the application of the brake would have been permissible are those where the scale of immigration “affects essential aspects of [a member state’s] social security system, including the primary purpose of its in-work benefits system, or which leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services.” (European Council, 2016: 21)

^{viii} For instance (and to offer one concrete example) legitimate concerns have arisen in relation to the obligation to offer publically funded medical training to non-national EU citizens and its potential to exclude nationals and/or delegitimize public provision and funding of doctors (De Witte, 2012: 709, Dougan, 2007).