

## What is Labour Citizenship and Why does it Matter in the Europe Union?

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“Testing EU Citizenship as Labour Citizenship: From Cases of Labour Rights Violations to a Strengthened Labour-Rights Regime” (LABCIT) project is co-funded by the Europe for Citizens Programme of the European Union. We start from the position that a decent wage and working conditions are necessary for promoting full citizenship and the democratic participation of all European Union citizens. As such, the project aims to “test” the ability of European citizenship to be extended to work, favoring the respect of social and labor rights which form labour citizenship. We perform the testing through analyzing “extreme” cases of labour violations and exploitation in several EU countries, aiming to understand which existing and new instruments can be used for strengthening the protection of workers' labour rights.

There has been much discussion in recent years around the concept of European Union (EU) citizenship, as a novel form of political membership designed to overlay national citizenship. Normative expectations of EU citizenship are often associated with the market project of European integration, which marches alongside – yet at tension with – the idea of a pan-European social space. I argue that **the association of EU citizenship with markets is a serious problem for labour rights in the EU, which can only be countered through labour citizenship.** The realization of a strong, pan-European labour citizenship is an essential component of the development of a pan-European social space, because the political will to support an EU social space depends on the growth of powerful EU level social actors with leftist agendas.

The economic crisis that threatens the European Union is directly related to the lack of a pan-European redistributive policy. Notably, a pan-EU welfare system involving transfer payments would resolve the current economic crisis in a permanent, sustainable and just manner. Such a solution, however, is inconceivable without a strong left-wing actor at the EU level, and such an actor cannot come into existence without the growth of strong and pervasive sentiments of pan-European labour citizenship. This puts the onus away from decision makers in Brussels and national capitals, who cannot really be expected to act on ideas outside the *Realpolitik* of the moment, and instead on unions, NGOs and workers themselves, who need to be the ones to live and practice transnational European labour citizenship. Labour citizenship cannot be granted, it can only be taken.

#### Practicing Labour Citizenship in a Globalized Market

Simply put, “Labour Citizenship” is a challenge to the idea that people can be reduced to saleable commodities. Citizenship generally carries decommodifying implications, because it grants rights and imposes obligations which cannot be bought and sold, limiting the depth of the market’s reach into society. **Labour citizenship, then, is the specific manifestation of citizenship rights in the workplace, which contests the commodification inherent in deregulation and marketization of labour.** It is in opposition to market citizenship which is a sort of anti-labour citizenship, built around a hegemonic discourse promising wealth and freedom via market deregulation, but in fact delivering and legitimating coercive interventions that undermine worker power and worker welfare. As Somers (2011: 30) writes, this involves using “market incentives” to force individuals into “utility maximizing behaviour”, with markets becoming instruments of repression and control in the workplace and society. Within the EU, the influence of the neo-liberal market ideals justifies a specific formulation of European Union citizenship which undermines the collective organizational power of labour and the regulatory power of the state, and supports autonomous market behaviour.

I have argued elsewhere that this type of “market citizenship” is a mirage (Lillie 2016). The concept assumes citizens can and do realize their status in society through market means; citizenship in this definition means the ability to act autonomously in the market place. As Aihwa Ong points out, increasing emphasis on “market norms of citizenship” and governance ensures that the security of citizens, their well-being and quality of life, are increasingly dependent on their own capacities as free

individuals to confront globalized insecurities by making calculations and investments in their lives” (Ong 2006: 551). The problem is that in practice, without some form of non-market rules to hold powerful actors in check, workers cannot enforce contracts with their employers. They enter the market as supplicants, rather than as actors capable of navigating different employment options and using their market power to obtain good conditions and market-level wages. **The result of freer labour markets is not fully empowered individuals interacting voluntarily and equally in a global market place, but more often that workers’ citizenship rights are limited and contested, while many employers make a strategy of systematically cheating their employees.** In my research groups’ recent investigation of posted work, we found many such examples (Lillie and Sippola 2011; Wagner and Lillie 2014; Berntsen and Lillie 2015); similarly, the current LABCIT project teams have also uncovered many such cases.

National labour law systems have long recognized that workers confront their employers in the labour market at a structural disadvantage, in terms of both market power and knowledge. The problem is that these national systems are bypassed or overruled by a European regulatory system which prioritizes market norms. National industrial relations systems – the vehicles by which labour citizenship has been realized – are not dismantled as such, but rather made irrelevant thus leaving workers exposed. Mobile workers have been the most vulnerable to this sort of regulatory gerrymandering. In particular, what comes through time and again is that practical enforcement of workers’ rights is spotty, that employers do not regard enforcement efforts as legitimate and therefore do not cooperate in them, and that the so-called dirty “bottom” of the labour market is not just a pathological aberration but an integral part of the system.

Workers are typically recruited in their home country by a contractor or work agency. This firm presents the posted worker with a contract governed by the laws of the country where that firm is incorporated, which is normally the country where the worker is from. Alternatively, it may be a country chosen by the employer, where the firm has a letterbox subsidiary. Sometimes workers are allowed to read their work contracts, sometimes not. Sometimes there are two contracts with different conditions to be presented to different authorities. The CJEU Advocate General<sup>1</sup> (AG) portrays this process of selecting a jurisdiction for governing the contract law as one of mutual agreement. He describes the decision process in the case of some Polish electricians sent to Finland as such: “the parties that have concluded the employment contracts have expressly chosen Polish law as the law that ought to govern the terms of employment of the workers concerned.” This follows the market view of individual workers as autonomous market actors; (it is worth noting in this case, that despite the views of the AG, the CJEU gave an advisement to the national court which favoured the union).

However, in practice it is the employer who chooses the country in which to base the work contract — sometimes even changing the governing law of the contract without informing the worker. This decision has implications for the labour standards and social security that apply. It is absurd to believe that individual workers are navigating the intricacies of international labour law themselves, or that there is some kind of negotiation or agreement occurring around it. At best, they are given a deal and

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<sup>1</sup> Case C-396/13, *Sähköalojen ammattiliitto ry v. Elektrobudowa Spolka Akcyjna*, 2014 EU:C:2014:2236 (opinion of A.G. Wahl).

they can take it or leave it; at worst, the deal does not have clear terms or is deceptive. If the workers are unable to enforce contracts by themselves; unions, NGOs and government labour inspectors sometimes fill the gap. However, these interventions are too infrequent and uncertain to ensure employer compliance. **Violations of labour laws and collective agreements among employers of transnational workers are more the norm than the exception.**

A well-functioning labour market, to say nothing of a just society, requires decommodified forms of citizenship – granting rights and obligations which are universally accessible and inalienable. Thus, labour rights too must be both universal and inalienable. How this works out in practice is inevitably an imperfect process of conflict and negotiation. On the one hand, David Ellerman (2005) argues that employment contracts generally imply a certain level of alienability of rights: “the employment contract is the mini-Hobbesian contract for the workplace”. Ellerman’s theoretical concern is simply to develop an argument that employment contracts always involve compromises around rights. On the other hand, the trade union maxim “an injury to one is an injury to all” illustrates the point that one worker “selling” his or her labour rights essentially means selling all workers labour rights, because of the way competitive labour markets work. **Drawing a line for maintaining some rights, while allowing others to be subject to negotiations, whether individual or collective, is the field where the exact composition of labour citizenship is determined.**

Thus, there is a recursive process between legal rights and active citizenship, with one supporting the other. In order to gain the right to strike, one may need to go on strike, but going on strike is easier if one has the right to strike. In Marshall’s (1992) classic analysis, the realization of industrial citizenship incorporates the working class into the polity, helping to resolve the problem of exclusion from effective citizenship due to poverty. Labour and industrial citizenship are close conceptual cousins – such that I will leave aside a discussion of their potential differences and use them interchangeably here in order to engage with Marshall and others who have analysed industrial citizenship.

#### Industrial Citizenship

The concept of **industrial citizenship**, as Mueller-Jentsch (1991) points out, is an assertion of social control over market forces, reflecting the power and interest configurations of workers and managements within particular production processes, and articulating these structures with national state forms (Crouch, 1993). Class identity mingles with other forms of identity (Smith, 1993), and interacts with other collective civil, political and social rights. National citizenships, which cross class lines, do not necessarily match with the logic of class struggle, which defines a collective working-class ‘us’ opposed to a ruling-class ‘them’. Industrial citizenship reconciles belonging within a particular state and society – in harmony, or at least *détente*, with the national ruling class – with opposition to that very same ruling class. The institutional manifestations of labour/industrial citizenship therefore emerge in terms of class compromises. In connecting, integrating, and empowering workers in the management of the polity, industrial citizenship is a vehicle for and an outcome of class compromise: it is an implicit acceptance of the legitimacy of the polity, and the community behind it, and rejection (or at least deferral) of revolutionary visions of social transformation. This is what C. Wright Mills (1948) meant when he called trade unions ‘managers of

discontent'. This is a potential vehicle for the European Union's legitimacy as well; the "Social Europe" idea, despite its shortcomings, nonetheless involved integrating trade unions into important roles as social partners in European decision making. This made many new resources for transnational union cooperation available, but also the danger of union co-optation into EU agendas (Martin and Ross 2001).

#### Strike Leverage and Solidarity: the Power of Collective Action

Working-class power, at its basis, depends on the capacity to strike, and the economic leverage of the strike 'weapon'. Strike leverage is the ability of each side in a collective negotiation to strike or to 'take' a strike (Walton and McKersie, 1965). In most collective negotiations a settlement is reached with no strike taking place, because strikes are expensive for both sides. However, both sides are (usually) aware of what the likely outcome of a strike would be, and this knowledge sets the framework for discussions: the side which knows it has the disadvantage will normally concede more (Hicks, 1932). This is important because union strike leverage depends on the ability of the union to stop production; if the management can continue production during a strike, it will have less interest in offering an attractive settlement to the union. Stopping production implies having as much of the workforce out on strike as possible and on the picket line, to make it more difficult for the management to bring in replacements or to continue partial production using supervisors.

The collective bargaining settlements resulting from the (usually implicit) threat of work stoppage do not involve wages only, but also many other aspects of industrial democracy: grievance procedures, work safety, equal treatment. In this respect, **industrial citizenship's effective manifestation is due to and through the power of collective action; it permits, demands and enables active worker participation in a political-economic process.** The ability to conduct this collective action effectively, however, depends on defining and delimiting labour markets and arenas of competition and organizing around those, to define 'us' and 'them' in class terms, and to prevent unorganized groups of workers from entering into those labour markets. Industrial relations systems, and thus industrial citizenship, came into existence as outcomes of national level class compromises, as ways of 'normalizing' strike activity, with the goal of containing it in a 'web of rules,' minimizing its disruptive power (Dunlop, 1958).

Thus, national labour movement structures relate back to processes of class formation in worker communities and on shop floors. Labour historians and sociologists have studied how relations in workplaces and communities build ties of solidarity among workers (cf. Thompson, 1963; Brody, 1993; Koo, 2001). When conflicts emerge at work, the solidaristic bonds of common working-class identity enable effective actions, particularly, as in the case of strikes, where these entail risks and economic hardships. While in any given situation there are many factors that can come into play, in general, the more solidarity there is among a given group of workers, the more strike leverage the workers have, and the better settlement the union can expect (Walton and McKersie, 1965).

'Solidarity' is expressed as mutual aid and adherence to a pattern of behaviour that corresponds and adds to trade union strike and bargaining strategy, which reflects norms (usually) arrived at through democratic centralist procedures, and is a basic power resource of the labour movement. Unions serve

as ‘schools of class struggle’; raising consciousness among workers that their interests are best served via collectivist ideology. Working-class identity is in part strategically and socially constructed, but also reflects and incorporates other identities: the community the workers live in or come from, the occupational community of the craft and/or profession, or in the case of ethicized labour markets, the ethnic group from which the workforce is drawn.

Although there are (usually) some internationalist and universalist elements to **working-class consciousness**, these tend to be secondary. For example, as Mulinari and Neergaard (2005) observe from interviews of immigrant union activists in Sweden, many native Swedes assume that immigrants cannot be full participants in the collective historical experience of the Swedish working-class struggle. Unions have a (constrained) strategic choice about who to include and who to exclude in their collective representations (Penninx and Roosblad, 2000). Although embedded in various pre-existing sources of identity, there is also a strategic aspect to how unions go about constructing identities and ‘building solidarity’ in ways that maximize leverage, given the existing political and economic context. **Therefore, individual adherence to collectivist “trade union” behaviour and ideology is the underpinning of labour citizenship, and achieving it is not a matter for labour rights in Brussels (important thought those are), but rather for winning the hearts and minds of workers.**

In “Towards Transnational Labour Citizenship” – one of the few academic essays using the term labour citizenship (as opposed to industrial, economic or occupational citizenship) – Jennifer Gordon (2009) argues that migrant workers in the United States should explicitly state they will support and uphold the labour standards of the country where they want to work as a condition of their being granted work visas. While her proposal may seem (and probably is) a bit idealistic and unrealistic, she does drive straight the heart of the matter: migrant workers are cheaper and more accepting of bad treatment than natives, and any sustainable solution to the problem of representing their rights requires the migrant workers themselves to accept and promote solidarity, working class identity and labour citizenship norms. In accepting poorer treatment, they hurt not only themselves, but also the native workers, who also have a stake in this matter. There must be collective understandings about wage norms, collective agreements, strike breaking and union membership, which can be enforced. Union organizations need to encompass and include migrants, and to assume their roles as “schools of class struggle”. NGOs have their role here as well. Much progress by union organizations has been made in recent years, both in terms of mentalities being more accepting of migrants, and strategies being better targeted to help them, but in the end the solution lies in the organization, mentalities, and ideologies of the migrant workers themselves. In other words, labour citizenship in the European Union needs to be built from the bottom up.

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