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Democratic Socialism, Citizenship and Migration: The Progressive's Dilemma?

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I. Introduction

In his work both as a scholar and public intellectual, especially through his affiliation with the Institute of Employment Rights, Keith Ewing has always been an exponent of social democracy or, as he to prefers, democratic socialism because this term puts the emphasis on democraticising the economy. Ewing sees democratic socialism as different from, and preferable to, liberal democracy because he believes that only democratic socialism can result in true self-government in the political, social and economic spheres and cultivate substantive equality for individuals.[1] This commitment informs his view of the goals of labour law, which are to promote democratic self-governance of work and greater economic equality.[2] For democratic socialists, citizenship has a distinctive social and economic content, and requires distinctive institutions, especially collective representation through autonomous organisations, to achieve it. The key political space for democratic socialists is the nation state, which is where citizens exercise popular sovereignty.

Globalisation, which is the process of greater economic integration across national boundaries, has been promoted and accompanied by a neo-liberal political discourse that prioritises markets over politics and emphasises market mechanisms and individual approaches to solving or handling economic and social problems.[3] Neo-liberal globalisation poses a profound threat to democratic socialism. It is 'in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterised by strong property rights, free markets and free trade.'[4] Neo-liberal

* I would like to thank the editors for their very helpful suggestions, although all errors and infelicities are my own. I would also like to thank Keith Ewing for introducing me to comparative labour law; I was a student in a comparative labour law class he taught in 1981/82 when he was visiting at Osgoode Hall Law School, which inspired me to become a labour law researcher.

[1] KD Ewing, 'Jeremy Corbyn and the Law of Democracy' (2017) 28 *King's Law Journal* 343.

[2] KD Ewing, 'Democratic Socialism and Labour Law' (1995) 24 *Industrial Law Journal* 103.

[3] J Fudge, 'Constitutionalizing Labour Rights in Europe' in T Campbell, K Ewing and A Tompkins (eds), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford, Oxford University Press, 2011) 244.

[4] D Harvey, *A Brief History of Neo- liberalism* (Oxford, Oxford University Press, 2005) 2.

restructuring at the national level is closely associated with supranational free trade agreements. These agreements, which include the Treaty on European Union, seek to insulate 'key aspects of the economy from the influence of politicians or the mass of citizens by imposing, internally and externally, binding constraints on the conduct of fiscal, monetary, trade and investment policy.'[5] Such agreements are designed to bind future governments (since they are very difficult to amend) and thus foreclose certain options, such as nationalisation of key economic or industrial sectors, that the populations of nation states may want to preserve or adopt in the future.

One impact of most trade agreements has been to put downward pressure on labour standards.[6] In the European context, Ewing has argued that the Court of Justice of the European Union's controversial decisions in *Laval* and *Viking* subordinated fundamental rights such as the right to strike and collective bargaining to the four freedoms in the Treaty on European Union, 'which related mainly to the rights of free enterprise to cross frontiers.'[7] For this reason he is very sceptical of supranational agreements that promote the free mobility of goods, services, capital and workers because he believes that privileging market freedoms undermines social democracy.

Globalisation, especially if accompanied by a web of free trade agreements, can pose an existential threat to democratic socialism by fettering democratic control over the economy. What I am interested in is where democratic socialists stand on the issue of migrant workers. When it comes to the treatment of migrant and citizen/national workers, Ewing is like most domestic socialists and calls for equal treatment. However the prior question, about who and how many to let in and keep out, is a much more difficult one. Labour migration poses a particular problem for democratic socialists, who are committed simultaneously to a cosmopolitan and inclusive approach to membership within the community, and to broad popular support for redistribution and a high commitment to social welfare.

The UK, along with many European countries, has seen popular unhappiness with the levels of migration increase, which has fuelled populist parties on the right, such as the UK Independent Party (UKIP), that have embraced an anti-immigration politics.[8] Since 2010, three quarters of Britons favour reducing migration, and migration, including the free of movement of workers in the EU, was a huge factor in explaining the outcomes of the 2016 referendum on membership in the EU, in which 51.9 per cent voted to leave.[9] The rise of anti-immigrant populist parties on the right has hurt social democratic parties 'almost as much as, and in some cases possibly more than, their rivals on the centre-right'.[10] Populist parties keep immigration on the agenda, a topic that rarely assists social democratic parties, and they appeal to working class voters who traditionally support social democratic parties.

[5] S Gill, 'Globalization, Market Civilization, and Disciplinary Neoliberalism' (1995) 24 *Millennium: Journal of International Studies* 399, 412.

[6] J Tham and KD Ewing, 'Labour Clauses in the TPP and TTIP: A Comparison without a Difference?' (2016) 17 *Melbourne Journal of International Law* 369.

[7] Ewing, 'Jeremy Corbyn and the Law of Democracy' (n 1) 357.

[8] I Krastev, *After Europe* (Philadelphia, University of Pennsylvania Press, 2017).

[9] C Woolfson, 'The Politics of Brexit: European Free Movement of Labour and Labour Standards' (2017) 45 *Themes on Migration and Ethnic Studies* 1.

[10] T Bale, 'Putting it Right? The Labour Party's Big Shift on Immigration Since 2010' (2014) 85 *The Political Quarterly* 296, 296.

This push from the right puts pressure on social democratic parties to reconsider, if not change, their policies on immigration.

Even more troubling for democratic socialists is what has come to be known as the 'progressive's dilemma', which is the tension between diversity and solidarity.[11] This challenge, instead of coming from the right and from parties committed to preserving cultural traditions, is 'also emerging from the left and centre-left, which increasingly fear that multiculturalism makes it more difficult to advance the agenda of economic redistribution.'[12] Do diversity and multiculturalism undermine support for redistributive policies in social democracies? Is this dilemma structural or conjunctural? If the latter, are there, 'factors that mediate between ethnic diversity and solidarity, tipping the balance between inclusive or corrosive relationships in particular contexts?'[13]

I want to consider these questions by looking at Ewing's account of social democracy and its constitutional supports. In particular, I want to unpick his ideas of popular sovereignty and the status of the nation state in order to understand his conception of social democratic citizenship. I then turn to consider whether contemporary globalisation poses particular problems for democratic socialism before outlining the progressive's dilemma. After providing a typology of immigration policies, I outline the Labour Governments' and Party's immigration policies between 1997 and 2017 to see how democratic socialist governments and parties have sought to resolve the tension between inclusion/equality and exclusion/solidarity. The enduring nature of this tension suggests that its roots may lie within the prevailing conception of citizenship as much as with its social democratic manifestations. After exploring the different dimensions of citizenship, I suggest that social democrats need to constitutionalise institutions that are designed to countervail against the exclusionary practices of political democracy.

II. Democratic Socialism

In two articles, separated by 22 years, Ewing explicitly considered the relationship between democratic socialism, the constitutional supports needed to establish and to sustain it, and labour law.[14] The first was published in 1995, before the election of the Labour Party in 1997, and the second in 2017, after Jeremy Corbyn became leader of the Labour Party, signalling the Party's return to democratic socialism after its betrayal by New Labour under Blair. In these articles, Ewing explains what he means by democratic socialism, how he distinguishes it from liberal democracy and what he considers to be its essential constitutional supports. His understanding of democratic socialism is very similar in the two articles, but what has changed is his confidence in the European Union as an institution that contributes to democratic socialism. Ewing's growing concern that the EU is a neo-liberal force also reflects the Labour Party's changed position on the EU, from one of New Labour's embrace, to the

[11] D Goodhart 'Too Diverse?' (2004) February *Prospect* 30; N Pearce, 'Diversity versus Solidarity: A New Progressive Dilemma' (2004) 12 *Renewal: A Journal of Labour Politics* 79.

[12] K Banting, 'Is There Progressive's Dilemma In Canada: Immigration, Multiculturalism and the Welfare State' (2010) 43 *Canadian Journal of Political Science* 797.

[13] Ibid.

[14] Ewing, 'Democratic Socialism and Labour Law' (n 2).

Corbyn-led Labour Party's decision to abide by the referendum results in favour of the UK's withdrawal from the EU.[15]

Ewing distinguishes social democracy from liberal democracy. Unlike liberalism, which favours establishing institutions and norms to hold the state to account, democratic socialists see state power as necessary for democratising social and economic life. While democratic socialists are careful to protect the civil liberties of individuals, they want to ensure that the state has power to tame capital. Nor do they regard individuals as the only significant unit of moral worth, but, instead, see collectivities, such as unions, as critical actors and valuable in their own right.[16]

The constitutional vision of democratic socialism that Ewing fashions is built on three overarching principles: (i) the primary source of constitutional authority is the sovereignty of the people through elected representatives; (ii) the social democratic state should promote the social, economic, and cultural well-being of citizens; and (iii) the socio-economic goals must be implemented in a manner consistent with the civil and political rights of citizens.[17] These general constitutional principles are designed to harness the legal and administrative power of the state, and direct it at the realisation of social and economic equality of citizens. Although Ewing acknowledged that the UK's political Constitution does not embrace democratic socialism, he was confident that it could be accommodated. He observed that the UK's political Constitution 'was a means through which democratic socialist governments governed without serious impediment or restraint, with a wide range of recognisably democratic socialist initiatives being implemented by legislation between 1945 and 1951 in particular".[18] This legislation 'included the creation of the national health service and the public ownership of many of the important means of production, distribution and exchange.'[19]

In his 2017 article, Ewing reassessed whether the UK's political Constitution was fit for democratic socialism. He emphasised the extent to which 'social democracy is based on a different balance of values, on the role of different actors, and on the extension of liberal principles to different sites of struggle' than liberal democracy.[20] Social democracy is 'about securing and sustaining equality, and doing so by':

- embracing the state, concentrating on power rather than accountability;
- engaging social partners as well as parliamentarians in decision-making; and
- democratising the social and economic spheres in addition to the political sphere.[21]

The UK's political Constitution guarantees a key component of democratic socialism – universal suffrage, which ensures the political equality of all citizens. Parliament is the institution through which popular sovereignty is expressed and this is the reason why the doctrine of parliamentary supremacy is critical. However, the UK's political Constitution

[15] The Labour Party subsequently changed its position, and after the European Union Parliamentary elections in May 2019, it advocated a new referendum.
[16] Ibid.
[17] Ibid, 105.
[18] Ibid, 104.
[19] Ibid.
[20] Ewing, 'Jeremy Corbyn and the Law of Democracy' (n1) 344.
[21] Ibid.

does not go far enough to support social democracy because it fails to provide support for autonomous collectives such as trade unions to exercise rule-making power and it does not guarantee the equal status of civil, political, economic and social rights.

Autonomous unions have, according to Ewing, a distinctive role to playing securing social democracy in the UK. In his 1995 article, Ewing referred to TH Marshall's classic essay, Citizenship and Social Class, which not only explained the importance of social rights for full citizenship, but how these rights were dependent upon trade unions. Marshall claimed that in the UK trade unions created a 'secondary system of industrial citizenship supplementary to the system of political citizenship' which is necessary for social citizenship.[22] In his 2017 article Ewing stressed that trade unions should not only participate in economic planning, but that they should 'also be involved in autonomous rule-making activity of a legislative quality.'[23] Thus, he saw the key challenge for democratic socialist constitutionalism as recognising 'not only the legitimacy of collective power, but also the legitimacy of collective institutions as sources of constitutional, political and legal authority'.[24]

Ewing's enduring commitment to democratic socialism has resulted in his increased scepticism of the EU as an institution that can propagate social democracy. In his 1995 article, he remarked that the Labour Party's process of fundamental revision 'has seen a major mood-swing with regard to membership of the European Union, it being quite clear that Labour in government would be a more committed participant, and much more willing to shape and embrace the social agenda of Brussels'.[25] He expressed his hope that the EU would achieve its social democratic potential, which was expressed in its commitment to full employment in 'a highly competitive social market economy' and to combatting 'social exclusion and discrimination' as well as its embrace of social dialogue.[26] This hope was later dashed. Ewing diagnosed the problem as resulting from a deep contradiction embedded in the Treaty of the Functioning of the European Union, 'namely that the social democratic values, procedures and policies have been casually undermined by the steps taken under Title VIII of the TFEU (economic policy) to pursue a neoliberal economic policy which is at odds with the values, procedures and policies referred to above.'[27] The decisions of the Court of Justice, which placed economic freedoms above fundamental rights, and the European Union, which imposed austerity on debtor states in response to the Eurozone crisis, reinforced his view that the foundation of social democracy is the 'equal participation of citizens (with all that that implies) and their representative institutions in making and administering the rules by which they are governed.'[28]

Popular sovereignty achieved through universal suffrage and bolstered by the doctrine of parliamentary supremacy remains the core constitutional supports of Ewing's vision of democratic socialism. He is sceptical of justiciable bills of rights that empower the courts and

[22] Ewing, 'Democratic Socialism and Labour Law' (n 2).
[23] Ewing, 'Jeremy Corbyn and the Law of Democracy' (n 1) 353.
[24] Ibid, 361.
[25] Ewing, 'Democratic Socialism and Labour Law' (n 2) 103. However, the Labour Party's embrace of the EU, which was at that time expanding its social dimension, came at the same time as the Labour Party gave up on the article in its constitution that committed it 'to the social ownership of means of production, distribution and exchange'.
[26] Art 3 of TEU and TFEU, Ewing, 'Jeremy Corbyn and the Law of Democracy' (n 1) 348.
[27] Ibid.
[28] Ibid, 362.

judges who are not accountable to Parliament.[29] However, he is not adverse to autonomous institutions, like trade unions, whose source of authority is not through parliamentary procedures.[30]

III. Migration and the Challenge for Democratic Socialism

A. Anti-Migrant Politics

In the two decades after World War II, in Western Europe the key actors were industrial unions, social democratic parties, sovereign nation states and large manufacturing firms, which were motivated to support autonomous collective action and protective and redistributive labour standards by mass mobilisation that was expressed in the workplace and the ballot box. Tariff walls and embedded liberalism created protective enclaves in which a virtuous circle of mass production and mass consumption in advanced economies could be forged and democratic socialist governments and policies could take root.[31]

The conditions today are profoundly different. Democratic nation states have, because of the power, instability and interconnectedness of finance capital and the constraints imposed by free trade and international monetary agreements, much less room to manoeuvre than they did in the past. Many private sector trade unions in the advanced economies appear to be in terminal, albeit slow, decline, and mass political and workplace mobilisation against capital is in most democratic advanced capitalist states increasingly rare because it has been so ineffective.

But it is more than neo-liberal economic policies and trade agreements that have accompanied globalisation that pose a profound challenge to social democracy. Some commentators attribute the erosion and, sometimes, collapse of support for mainstream social democratic parties across Europe to 'a fragmentation of political identities and the emergence of new populist movements operating outside the channels of Parliamentary government.'[32] Some of these political groups embrace nationalistic conceptions of civic identity and do not accept the 'normative ideal of universal human rights, especially where "non-citizens" are concerned'.[33] Post democratic political apathy has combined with populism and nationalism to create toxic politics that is not conducive to creating a political coalition that can sustain democratic socialism.[34]

In the UK, Carey and Geddes describe immigration and European integration as 'powerful undertows in contemporary British politics that raise profound questions; not least for connections between politicians and "the people"'.[35] Free movement of workers is a core freedom upon which the EU is based. Since the early 2000s much of the migration

[29] Ibid, 355.
[30] Ibid, 362.
[31] J Fudge 'The Future of the Standard Employment Relationship: Labour law, New Institutional Economics and Old Power Resource Theory' (2017) 59 *Journal of Industrial Relations* 374.
[32] Krastev (n 8) 97.
[33] Ibid.
[34] C Crouch, *Post-democracy* (Cambridge, Polity, 2004).
[35] S Carey and A Geddes, 'Less Is More: Immigration and European Integration at the 2010 General Election' (2010) 63 *Parliamentary Affairs* 849.

to the UK has been from other members of the EU or the EEA, and immigration has been relatively high since then.[36] UKIP, claiming that political elites are out of touch with ordinary people, led the call to leave the EU, and it derives its support from people who are opposed to immigration.[37] Immigration raises questions about economics – who wins and who loses – from specific policies, but is also raises critical cultural questions of national identity and belonging.[38] Views about immigration are increasingly polarised in the UK.[39]

Faced with anti-immigration politics, Bale claims that social democratic parties have three ideal-typical strategies:

> The left-of-centre can try to hold its existing, relatively liberal-internationalist position by unashamedly making the case for tolerance of migration and multiculturalism. Or it can try to defuse the situation by trying to play down the issues championed by the radical right in favour of those issues (normally on the so-called "state-market" dimension) that favour the centre-left. Or else it can adopt the radical right's agenda and hope to close down the issue space on the other ("authoritarian–libertarian") dimension by arguing that migration must be limited and multiculturalism tempered by an increased emphasis on "integration"; that done, politics can, fingers crossed, get back to "normal".[40]

As we will see, the Labour Party has tried these different strategies at different times.

B. The Progressives' Dilemma

The public's increasing concern about immigration and the rise of UKIP has prompted political scientists to consider 'wider questions about society and community in contemporary Britain.'[41] While nationalism is often seen as the preserve of the right and populist parties, liberal nationalists also believe that an idea of the national or national identity is necessary for engendering the trust and norms of reciprocity needed to support redistribution for both a welfare state and liberal democracy to function.[42] These liberal nationalists advocate a form of civic nationalism that is not embedded in an ethnic idea of the people and that can bind together people otherwise divided by economic and ethnic differences.[43]

[36] B Duffy, 'Perceptions and Reality: Ten Things We Should Know About Attitudes to Immigration in the UK' (2014) 85 *The Political Quarterly* 259.

[37] A Geddes, 'The EU, UKIP and the Politics of Immigration in Britain' (2014) 85 *The Political Quarterly* 289, 292.

[38] M Skey, '"How Do You Think I Feel? It's My Country": Belonging, Entitlement and the Politics of Immigration' (2014) 85 *The Political Quarterly* 326.

[39] Duffy (n 36).

[40] Bale (n 10) 296.

[41] C Leddy-Owen, 'Liberal Nationalism, Imagined Immigration and the Progressive Dilemma' (2014) 85 *The Political Quarterly* 340, 340.

[42] Ibid, 340.

[43] Banting (n 12) 801, referring to B Barry, *Democracy and Power: Essays in Political Theory* (Oxford, Oxford University Press, 1991); D Miller, *On Nationality* (Oxford, Oxford University Press, 1995); D Miller, 'Multiculturalism and the Welfare State: Theoretical Reflections' in K Banting and W Kymlicka (eds), *Do Multiculturalism Policies Erode the Welfare State?* (Oxford, Oxford University Press, 2006); R Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America* (Cambridge MA, Harvard University Press, 1998); Y Tamir, *Liberal Nationalism* (Princeton NJ, Princeton University Press, 1993).

Social democrats also appreciate the need to develop bonds of solidarity as a condition for a functioning welfare state, one which is designed to reduce class divisions. Reflecting on post-war Britain, Marshall regarded a sense of community, one that transcended racial or ethnic identities, as critical for the welfare state. He wrote that 'citizenship requires a bond of a different kind, a direct sense of community membership based on loyalty to a civilisation that is a common possession.'[44] This account of community as the glue for solidarity is very similar to a liberal nationalists conception of civic nationalism.

Leddy-Owen's explains that generally immigration does not pose problems for liberal nationalists except 'when the rate of immigration is so high' that resources and 'mechanisms of integration [such as schools and other state services] may be stretched beyond their capacity'.[45] When 'the absorptive capacities of the society in question' are stretched so that crucial mutual trust and 'shared sense of nationhood' then it becomes legitimate to reduce the immigration rate'.[46] Drawing on the threat that immigration can pose to liberal nationalism, in his 2013 book, *The British Dream: Successes and Failures of Post-war Immigration*, David Goodhart argued Britain has reached the point at which it was no longer able to integrate the high numbers of immigrants entering its territory. According to him, the high rate of immigration combined with multicultural polices and a commitment to diversity undermine the idea of a British nation. He claims that the left in Britain today faces the 'progressive's dilemma' in which they must choose where they stand in the trade-off between ethnic diversity and solidarity.[47] Thus, in order to preserve social democratic ideals about the welfare state he recommends that immigration should be restricted and integration policies should be emphasised.[48]

IV. Charting the Labour Party's Stance on Labour Migration

On the basis of his study of the UK's policies on labour migration under successive governments from different parties, Bernard Ryan has identified four ideal types, which are a combination of immigration controls for labour migrants and labour market regulation.[49] Treating them as different axes, he evaluates immigration controls on how restrictive they are to labour migrants and assesses labour market regulation in terms of how protective it is to workers. Egalitarianism is an ideal policy that combines open migration with a high degree of labour market regulation. It grants migrants the right to work and to equal

[44] TH Marshall, 'Citizenship and Social Class' in TH Marshall and T Bottomore (eds), *Citizenship and Social Class* (London, Pluto Press, 1950) 8.

[45] Leddy-Owen (n 41) 340 quoting Miller, *On Nationality* (n 43) 98.

[46] Ibid.

[47] D Goodhart, *The British Dream: Successes and Failures of Post-war Immigration* (London, Atlantic, 2014).

[48] A recent book published by a group of Labour MPs reflects this view, arguing that a cosmopolitan approach risks alienating the communitarians who make up the majority of social democracy's constituents. They urge Labour to develop a patriotic and communitarian approach to politics. S Kinnock and J Jervis (eds), *Spirit of Britain, Purpose of Labour: Building a whole nation politics to reunite our divided country* (London, Labour Future Limited, 2018).

[49] B Ryan, 'Labour Migration after Brexit: New Questions, New Answers? Migration after Brexit: The Challenge for Labour Standards' (London, Institute of Employment Rights, 15 March 2017).

treatment with citizen workers, who are entitled to a broad range of enforceable labour rights. Labour protectionism restricts migration at the same time that it provides a range of labour standards. It views migrant labour as increasing competition in the labour market, which runs contrary to commitment to provide labour rights to citizens workers in order to protect them from the market and competition. The common dimension of these different ideal types of labour migration policies is to protect the labour and living standards of national workers.

By contrast, 'light touch' labour regulation, otherwise known as low labour standards, is the shared element in both economic liberalism, which favours open migration, and popular nationalism, which restricts migration. Economic liberalism believes that the labour supplied by migration and flexible labour markets will benefit national workers in their role as consumers, whereas popular nationalism emphasises the costs of migration to national identity and social provision while targeting labour regulation at clear abuses.

Most social democrats adopt either an egalitarian or labour protectionist approach to labour migration and labour regulation since their goal is to protect the labour and living standards of citizen workers. As we will see, a range of factors, including the rise of right wing anti-immigration politics, influenced how the Labour Party balanced maintaining an inclusive and open labour migration policy with protecting the interests of citizen workers.

Since the late 1950s, the Conservative Party has presented itself as more representative of public opinion on the issue of immigration – 'opinion which is for the most part ambivalent and at times actively hostile' – than the Labour Party.[50] Consequently, since the 1960s Labour has sought to balance efforts to control the numbers of migrants entering the UK in order to work and to settle, and promoting equality for ethnic and racial minorities. Overt racism and anti-immigrant opinion led the incoming Labour Government, with Conservative support, to impose immigration restrictions, although it broke with the Conservative Party by enacting the Race Relations Act 1965, which outlawed public discrimination.[51] Labour regarded this dual approach of restricting immigration while promoting integration by combatting race discrimination as essential for maintaining 'good race relations.'[52] Essentially, Labour adopted a labour protectionist immigration policy.

The balancing act that had characterised Labour's stance on immigration since the 1960s broke down when New Labour was elected in 1997. Under Blair's leadership Labour's position was that immigration is good for the economy. At the same time, the Labour Government was tough on asylum seekers.[53] The government not only shifted to managed migration, establishing a Migration Advisory Committee composed of academics to examine the economic impact of immigration policy, it decided not to impose transitional controls on workers from the eight states which joined the EU in 2004. Managed migration, which emphasised skilled workers and filling sectoral labour shortages, boosted Labour's business friendly credentials and marked a decisive break with the Conservative policy of restricting immigration.[54]

[50] Bale (n 10) 297.
[51] S Spencer, *The Migration Debate* (Brighton, Policy Press, 2011) 25.
[52] B Ryan, *Labour Migration and Employment Rights* (London, The Institute for Employment Rights, 2005) 13.
[53] Carey and Geddes (n 35).
[54] A Balch, *Immigration and the State: Fear, Greed and Hospitality* (Basingstoke, Palgrave Macmillan, 2016) 161.

The Blair Government also introduced a raft of individual employment rights, including a new minimum wage and paid vacations, which workers could enforce by bringing claims to employment tribunals. But, it only tinkered around the edges of the UK's very restrictive trade union legislation. Despite building a floor of statutory labour rights, given the very deregulated labour market that it inherited from the Conservatives, New Labour could continue to boast that Britain has a very lightly regulated and flexible labour market.[55]

The repercussions of this policy of economic liberalism regarding immigration were not felt until the Labour Government entered its second and third terms, when the UK experienced an 'unprecedentedly intensive and utterly unplanned wave of immigration, particularly (though by no means exclusively) from Eastern and Central Europe'.[56] This large-scale migration led to anti-immigration frenzy in the media, and the Labour Government responded by imposing transitional restrictions for the citizens of Bulgaria and Romania in the 2007 enlargement of the EU and tightening immigration controls for third country nationals.[57] At the 2007 party conference, where he took over the leadership of the Party and government from Tony Blair, Gordon Brown proclaimed 'British jobs for British workers'.[58] Moreover, in the run up to the 2010 general election, Labour adopted a much more restrictive approach to labour migration policy, which consisted of a points-based system for higher-skilled migrants, a reliance on EU migration to plug labour market gaps in lower-skilled employment and a closed door to non-EU, lower-skilled migration.[59] The Conservatives took an even more restrictive stance to immigration, proposing an annual limit on the number of non-EU economic migrants admitted into the UK to live and work. They also pledged to apply transitional controls as a matter of course in the future for all new EU Member States.[60]

Concern about high rates of immigration increased public support for UKIP and drew support away from Labour. Immigration and the UK's economic problems combined to result in Labour loss of the general election of 2010.[61] The Coalition Government under David Cameron promised to reduce migration numbers from hundreds of thousands to tens of thousands. In 2012, Theresa May, who was appointed Home Secretary in 2010, announced her intention to create a hostile environment for illegal migration at the same time as her government dramatically restricted labour migration from outside of the EU. The Coalition Government adopted a popular nationalist approach to immigration policy.

By contrast, the Labour Party initially attempted to diffuse the anti-immigration sentiment by diverting attention to enforce labour standards and the hardship created by the Coalition Government's austerity policies. Labour's leader Ed Miliband acknowledged that the Labour Government's decision not to impose transitional controls on new Member States in 2004 was a mistake. He claimed that what was needed was 'tougher labour standards to do more to protect working people from their wages and conditions being undermined' and to move the British economy away from low-skilled foreign labour. However, this concession

[55] P Davies and M Freedland, *Towards a Flexible Labour Market: Labour Legislation and Regulation since the 1990s* (Oxford, Oxford University Press, 2007).
[56] Bale (n 10) 297.
[57] Balch (n 54) 162.
[58] Bale (n 10) 300.
[59] Carey and Geddes (n 35).
[60] Balch (n 54) 164.
[61] Carey and Geddes (n 35).

did not quiet the growing concern within the Party that labour migration, including from the EU, should be limited as it is putting 'pressure on wages, welfare, housing and public services in this country. Above all', they continued, 'such a move would prove to voters that we are intent on regaining control of our own borders'.[62] Miliband seemed to assume that Labour could and would do nothing about free movement of labour for EU citizens. Just before the 2015 election, Labour adopted the Coalition's cap on skilled labour, fully returning to its traditional labour protectionist immigration policy.[63]

The outcome of the 2015 election hinged on which party could be seen as taking control over immigration.[64] When the Conservatives won by a small majority, Prime Minister David Cameron made good on his promise to hold a referendum over the UK's continued membership in the EU. In the run up to the vote, Cameron negotiated a deal with the EU on free movement that would restrict migrants access to certain kinds of benefits and allow the UK to impose a break on newly arriving EU labour migrants.[65] This concession to free movement did not stem anti-EU public opinion and in June 2016, 51.9 per cent of votes cast favoured leaving the EU. While immigrants and not labour policies were blamed for wage stagnation, it is clear that the objection to immigration was not solely economic; 'matters of identity were equally, if not more strongly, associated with the Leave vote – particularly feelings of national identity and sense of change over time.'[66]

Under Jeremy Corbyn's leadership the Labour Party initially pledged to abide by the results of the referendum and to leave the EU.[67] Theresa May, the Prime Minster after Cameron's resignation, vowed that Britain would leave the EU and she intensified the hostile environment for all, not just illegal immigrants. In the snap election called for 2017, both parties had to make their positions on labour migration, from within and outside the EU, clear. This proved to be a more difficult challenge for Labour than the Conservatives because of Labour's previous support for free movement and the EU. Corbyn's economic agenda, which included public procurement, public ownership and strategic investment would likely be incompatible, to varying degrees, with EU competition rules.[68]

In its 2017 election Manifesto, the Labour Party accepted the EU referendum results as requiring the end of freedom of movement for EU citizens in UK.[69] However, it promised to guarantee that all existing non-British EU nationals would have the right to remain after Brexit. Labour refused to 'scapegoat migrants' and 'blame them for economic failure', and instead held the Conservative and Coalition Government's austerity policies accountable.[70] In contrast to the Conservatives, it also refused to impose, numerical targets on the number of migrants admitted to work and to settle on the UK, in favour of 'fair rules and reasonable management' that 'will not discriminate between people of different

[62] Bale (n 10) 300.
[63] Ibid.
[64] Woolfson (n 9) 5.
[65] Ibid.
[66] Ibid. 6, quoting K Swales, 'Understanding the Leave vote' (*NatCen Social Research*, 2016) 2 https://whatukthinks.org/eu/wp-content/uploads/2016/12/NatCen_Brexplanations-report-FINAL-WEB2.pdf.
[67] It changed its position, and committed to holding a referendum, after it was trounced in the 2019 European Union elections.
[68] Woolfson (n 9) 2.
[69] Labour Party Manifesto, *For the Many, Not the Few* (*Labour Party*, 2017) 28.
[70] Ibid, 28.

races or creeds'.[71] Labour promised to replace the existing income thresholds for migrants with a requirement that migrants cannot access public funds. The new system would balance 'economic needs against controls and existing entitlements,' and decisive action would be taken to end the 'exploitation of migrant labour undercutting workers' pay and conditions'.[72] Labour undertook to step up labour enforcement generally and to guarantee and improve labour standards. Moreover, for what dislocation was caused by migration, local communities could appeal to an enhanced Migration Impact Fund. Under Corbyn the Labour Party has strengthened its commitment to a labour protectionist immigration policy, although the policy contains significant strains of egalitarianism.

As the Labour Party has shifted from Blair's Third Way – a form of very 'light' social democracy – to Corbyn's much more explicit democratic socialism, its immigration policy has shifted from economic liberalism through to labour protectionism with a humanitarian emphasis. This very significant shift of Labour's policy stance towards greater labour protections for all workers and towards humanitarian concerns for refugees suggests that it considers the threat that immigration poses to the UK to be solely economic. However, 'a substantial literature suggests that anti-immigration attitudes in Britain are far more influenced by ideas surrounding "symbolic" threats – to culture, values and identities – than by "rational" personal economic interests or actual levels of immigration'.[73] This symbolic threat is much harder for Labour, which has long been committed to multiculturalism and inclusion, than the Conservatives, who are content to see ethnic and national identity blur, to combat. Moreover, studies suggest that 'these symbolic threats relate to imagined immigration and unreliable secondary information' and thus cannot be counteracted by an easy appeal to the facts.[74] Declining social trust seems to be linked to perceptions of migration, especially as they have been framed in nationalist media and political discourse, than to actual negative experiences of immigration.[75] While the hierarchies of belonging in Britain are still to a large extent constructed on the basis of racial and ethnic difference, they are beginning to change. Ethnic minorities born and brought up in Britain, including Sikhs, Hindus and Muslims, support tighter migration controls, and minorities are more willing to identify themselves as British.[76] It appears that British identity is gradually shifting from being an ethnic to civic marker.[77]

V. Democratic Socialism and the Dimensions of Citizenship

Migration poses a particular challenge for democratic socialists because of their commitment to inclusiveness, solidarity and equality, and antipathy to ethnic and racial versions of national identity. What migration does is reveal the different dimensions of citizenship – the political principle of democracy, the juridical status of legal personhood,

[71] Ibid.
[72] Ibid.
[73] Leddy-Owens (n 41) 345.
[74] Ibid.
[75] Leddy-Owens (n 41) 346.
[76] Skey (n 38) 330.
[77] However, in light of calls for greater devolution and Scottish nationalism, 'English', which is a much more exclusionary category than British', may be gaining importance as an identity, Skey (n 38) 331.

and the social status of membership. Political theorist Jean Cohen explains that these dimensions 'can and do come into conflict, and that every historical synthesis entails a set of political choices and trade-offs that tend to be forgotten once a conception becomes hegemonic'.[78] The democratic conception of citizenship puts political equality and participation at its centre, but it is also particularising and exclusionary because it requires a defined demos, which entails distinguishing between members and non-members. The democratic dimension is narrower than the juridical dimension, which conceives of the citizen as the legal person who is free to act by law and expect the law's protection. This component is inherently universal, and, according to Cohen, 'it is on this basis that transnational or global citizenship is at least conceivable'.[79] However, the very universality of the juridical dimension of citizenship tends to depoliticise and undermine solidarity. It is in tension not only with the democratic dimension, it also fits uneasily with the membership dimension, which hinges on notions of identity, belonging and community. Cohen emphasises the '"elective" affinity between a strong democratic stress on citizenship as the self-rule of a sovereign demos (which presupposes membership) and a communitarian stress on belonging and identity'.[80]

Cohen argues that the three elements of the citizenship principle appeared to map congruently onto each other in the terrain of the constitutional, national, territorial and welfare state. In the period after World War II, with embedded liberalism, these three dimensions appeared to be compatible within the political space of the nation state. T H Marshall's conception of social citizenship exemplifies the democratic socialist conception of citizenship which is anchored in the national state. Marshall foregrounded the universal nature of citizenship, while at the same time linking citizenship to the principle of equality in ways that promoted social integration and inclusion. The underlying tension between juridical and democratic dimensions was easy to ignore so long as the 'cultural identity of the demos [was] construed as a nation.' But, if, as Cohen suggests, attention shifts from Marshall's 'focus on the substantive rights of citizenship … to the formal dimension of membership' then citizenship becomes an instrument of social closure and exclusion because the nation state can exclude those who are not its members.[81] The background presumption of this paradigmatic conception is that citizenship involves membership in a sovereign, territorial nation-state within a system of states. Here Hannah Arendt's insight that 'the attribution of exclusive territoriality and inviolable sovereignty to each nation state over internal matters contributed to the willingness of states to deprive non-citizens of basic rights and to threaten the rights of national minorities, even if they were citizens' is crucial.[82] Cohen highlights the exclusionary side of citizenship, one that democratic socialists, who emphasise the political dimension, tend, unlike their conservative counterparts, to minimise.

The critical point of Cohen's argument is that the three dimensions of citizenship are in essential tension and cannot be resolved by the same institutions or within the national scale.[83] Because, unlike conservatives, social democrats are committed to inclusion, they

[78] Ibid.
[79] Ibid, 249.
[80] Ibid, 250.
[81] Ibid, 253.
[82] Ibid, 253.
[83] Ibid, 265.

face a dilemma when dealing with migration. The principles of political citizenship – popular sovereignty – is not well suited for protecting non-citizens. Thus, democratic socialists need to consider the rights of non-citizens to reside, to work and to participate in social life in the UK when developing a constitutional framework. Ewing claims that it is only possible to achieve social citizenship by embracing the state, engaging social partners in decision-making and democratising the social and economic spheres.[84] These mechanisms need not be confined to citizens. Yet, the only institutions that Ewing identifies as critical to democratic socialism are the universal franchise, parliamentary sovereignty and autonomous trade unions. These institutions are critical for ensuring the political and membership dimensions of citizenship. But while membership in the demos must be limited in order to keep it active and vital, the presence of large numbers of non-citizens in most countries means that many people who are subject to the law had no say in authoring it. For this reason, migrants must be protected by international human rights that are enforced by institutions that are not subject to the will of the majority.[85] Human rights provide an important resource for deepening and disaggregating the juridical dimension of citizenship from the other two components.

Democratic socialist need to consider other mechanisms and institutions to ensure that the political and membership dimensions of citizenship do not become exclusionary of non-citizens. What kinds of autonomous and membership-based organisations can represent non-citizens? What kinds of institutions need to be embedded and constitutionally protected into order to enable non-citizen residents to participate in social dialogue? How do we democratise the social and political space? The right to vote in local government elections based on residence is a step in the direction of giving migrants democratic voice. Regardless of the precise institutional configuration, what is clear is that the components of citizenship need to be embedded in a variety of institutions – including parliaments and courts – if the rights of migrants are to be protected.

It is also important to take into account of how institutions may shape attitudes. Drawing on the work of political scientists who explain the feedback loops between policies, institutions and public opinion, Banting reminds us:

> policy regimes set a frame which helps shape attitudes, and expands or narrows the opportunities for political elites to mobilize the darker side that exists in any democratic citizenry. Phrased in another way, how much cultural glue a society needs depends not only on the extent and nature of diversity as such, but also on the ways in which public policies structure the distribution of benefits and burdens across a diverse population.[86]

Policy feedback includes the ways programs and institutions both 'distribute material and political resources across different groups and the larger interpretive implications about politics and the welfare state implicit in their structure and operation'.[87] Banting explains that policy regimes influence public preferences in three ways: generating negative feedback from the public and triggering direct changes in policy; altering the nature of information flows to the public by, for example, targeting particular groups of beneficiaries make

[84] Ibid.
[85] Ibid, 264.
[86] Banting (n 12) 814–5.
[87] Ibid, 802.

their dependency more visible; and policies, especially those celebrating cultural motifs and symbols, may influence the public's sense of national identity. This approach, instead of treating 'diversity as an independent variable that affects the welfare state', inverts 'the question to ask how the welfare state shapes diversity'.[88]

Thus, it is also crucial to consider whether and how the policies and institutions that give the British welfare state is distinctive shape influence the public's commitment to diversity and immigration. How welfare programs are structured – means-tested or universal, general revenue or contribution based – influences whether or not immigrants are seen as a drain on, or contribution to, the host society. Integration and cultural policies are also significant to whether or not immigrants are considered to be 'them' or 'us'.

VI. Conclusion

Migration poses a particular challenge for democratic socialists because democratic socialists are committed to inclusion *and* equality. The problem is that 'in an age of migration, democracy has begun to act as an institution of exclusion, not inclusion.'[89] Democratic socialists need to consider constitutionalising institutions that will help to minimise the tension between the different dimensions of citizenship. Because of their commitment to autonomous forms of collective power and democraticising economic, political and social life, social democrats have the greatest capacity to defeat authoritarian populism. If economic shocks like austerity and the financial meltdown are linked to the rise of authoritarian populism then social democratic policies are an important antidote to rising anti-immigrant sentiment.[90] The Labour Party's 2019 Election Manifesto decisive rejection of the strategy of the 'demonisation of migrant workers' and explicit commitment to 'a humane immigration system' and re-regulating the labour market rejects is a step in a progressive direction.[91] It is also possible that the progressive's dilemma is not 'the appropriate question to pose' and that the nation is not as liberal nationalists and democratic socialists presume 'the basic structure of society'.[92] Class structures or competition between rising and established elites may have a greater influence on solidarity than nationality. This is another reason why democratic socialism of the kind Ewing advocates is a necessary, if not sufficient, step for ending exclusionary, anti-immigrant populism.

[88] M Smith, 'Diversity and Canadian Political Development' (2009) 42 *Canadian Journal of Political Science* 831, 837.

[89] Krastev (n 9) 14.

[90] D Rodik, 'What's Driving Populism?' (*Social Europe*, 23 July 2019) www.socialeurope.eu/whats-driving-populism.

[91] Labour Party Manifesto, *It's Time for Real Change* (Labour Party, 2019) 70.

[92] Leddy-Owens (n 41) 346.