
5. The genesis of European rights

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1. CITIZENSHIP, EUROPEAN RIGHTS AND EUROPEAN INTEGRATION

The genesis of European rights has not been adequately explained.¹ Contrary to what many believe, arguments over European rights have been present since the start of European integration. This means that existing accounts of European Union citizenship do not adequately capture its origins and growth. European rights have political origins. A rights-based approach – breaking citizenship down into its constituent rights in order to examine their origins – explicates the politics surrounding the introduction and expansion of European rights. It thereby clarifies the nature of an important aspect of European integration, showing that European rights did not originate from the slow accretion of functional spill-overs, but rather resulted from agreements reached by government negotiators.

The existing literature on European rights can be divided into two general categories. The first comprises legalistic narratives of the gradual development of treaties, directives, regulations and court cases. This literature is typically divorced from any deep consideration of the political and economic context of the legal documents under consideration.² The second category of literature reflects the recent surge in interest in citizenship and has proliferated since the ‘introduction’ of European Union citizenship in the Maastricht Treaty of 1992. Existing work on EU citizenship presents it as a recent phenomenon whose precursors date from the 1980s,³ or at the most from the mid-1970s.⁴ By contrast, this chapter elucidates the political genesis of the key rights of EU citizenship, those concerning free movement of workers, in the initial negotiations that established the foundations of European integration in the early 1950s.

¹ This chapter was previously published in *JCMS the Journal of Common Market Studies* (2005) 43(5) 1009–25. Parts of earlier versions of this article were presented at conferences of the International Studies Association 2002; the Canadian Political Science Association 2002; and the European Union Studies Association 2003. My debts for assistance with the larger research project on EU citizenship on which this chapter draws are too numerous to mention. For comments specifically on this chapter, however, I thank Alan Milward, Gilles Grin, Christopher Chivvis and the anonymous referees. Any remaining shortcomings are my own.

² F. Burrows, *Free Movement in European Community Law* (Clarendon Press 1987); John Handoll, *Free Movement of Persons in the EU* (Wiley 1995).

³ Hans Ulrich Jessurun d’Oliveira, ‘Union Citizenship: Pie in the Sky?’ in Allan Rosas and Esko Antola (eds), *A Citizen’s Europe: In Search of a New Order* (Sage 1995); Epaminondas A. Marias, ‘From Market Citizen to Union Citizen’ in Epaminondas A. Marias (ed), *European Citizenship* (European Institute of Public Administration 1994); Jo Shaw, ‘The Many Pasts and Futures of Citizenship in the European Union’ (1997) 22(6) *European Law Review* 554.

⁴ Elizabeth Meehan, *Citizenship and the European Community* (Sage 1993); Carlos María Bru, *La Ciudadanía Europea* (Editorial Sistema 1994); Antje Wiener, *European Citizenship Practice: Building Institutions of a Non-State* (Westview 1998).

The virtue of a rights-based analysis of citizenship is that it connects and extends the two literatures discussed above: the work of legal scholars who trace the evolution of treaties, directives, regulations and court decisions, and the work of scholars who focus on contemporary EU citizenship.⁵ The focus is on the origins of European rights of free movement, because freedom of movement represents the core of contemporary EU citizenship.⁶ The analysis has important implications for our understanding of European Union citizenship, which ceases to be a contemporary phenomenon that dates only from the Maastricht Treaty,⁷ becoming instead a recent expression of the same kinds of political tensions and resolutions that have characterized the entire history of European integration.

The political push for rights predates the Schuman plan which led to the 1951 European Coal and Steel Community Treaty (ECSC; Treaty of Paris), but supranational rights in Europe originated in this Treaty's provisions for the free movement of coal and steel workers. In a political compromise, these provisions were included at the insistence of the Italian delegation, although other Member States delayed their implementation. The 1957 Treaty establishing the European Economic Community (EEC; Treaty of Rome) extended free movement rights to much wider categories of workers and specified in far greater detail how these rights would be realised.

Most commentators view the Treaty of Rome as the 'birth of Europe', yet the earlier Treaty of Paris not only established the Community's basic institutional framework,⁸ but also established the first legal provisions concerning free movement of labour. While free movement did not figure prominently in the ECSC Treaty negotiations, the promise of these rights provided the key incentive for Italian participation in the Community. Determining how these rights would be exercised took years to negotiate and even longer to implement, ultimately being outpaced by the wider category of free movement rights contained in the Treaty of Rome. Although it significantly broadened the scope of free movement rights, the Treaty of Rome's announcement of the free movement of workers – one of the four freedoms that comprise the internal market agenda – was reproduced from the Treaty of Paris. Thus, the Treaty of Rome should be viewed as simply the expansion of an already established framework of politically negotiated provisions that granted free movement rights. The rights that today form the core of EU citizenship date from the free movement provisions of the European Coal and Steel Community.

⁵ This chapter thus extends back the work of legal scholars who have perceptively argued that the Treaty of Rome's free movement provisions established an 'incipient' form of European citizenship: Richard Plender, 'An Incipient Form of European Citizenship' in Francis Geoffrey Jacobs (ed), *European Law and the Individual* (Elsevier/North Holland 1976) or that Union citizenship is the effect rather than the cause of increased mobility rights: Patrick Dollat, *Libre circulation des personnes et citoyenneté européenne: enjeux et perspectives* (Bruylant 1998).

⁶ European Commission, *Report of the High-Level Panel on the Free Movement of Persons (Veil Report)* (Office for Official Publication of the European Communities 1998).

⁷ Joseph H.H. Weiler, *The Constitution of Europe* (Cambridge University Press 1999).

⁸ Berthold Rittberger, 'Which Institutions for Post-war Europe? Explaining the Institutional Design of Europe's First Community' (2001) 8(5) *Journal of European Public Policy* 673–708.

2. FROM THE SCHUMAN PLAN TO THE ECSC TREATY

A rights-based view of citizenship allows us to break citizenship down into its constituent parts and thereby to examine the rise of citizenship from the very beginnings of European integration. Today it is conventional wisdom that freedom of movement had to be introduced in order to ensure a common market.⁹ The logic is clear for free movement of goods and capital. But even if it is conceded that individual mobility is a desirable goal in an economic community, it does not automatically follow that free movement provisions should be enshrined as individual rights. The assertion that an EU citizen who moves to live or work in another Member State is exercising a new transnational right is incontrovertible.¹⁰ Because extending European rights to individuals constrains Member States to respect those rights,¹¹ states should prefer not individual rights but rather bilateral or multilateral agreements as a means of enhancing individual mobility. It is thus not easy to explain why national governments should be willing to grant rights to individuals rather than simply working out intergovernmental bargains on an ad hoc basis.¹²

The political push for specific European rights predates the Schuman plan. In Italy in 1943, the Movimento Federalista Europeo envisaged the creation of a European ‘continental’ citizenship alongside national citizenship, consisting of direct political and legal relationships with a European federation. The ‘Milan programme’ – drawn up by Giovanni Gronchi, later President of the Italian Republic; Count Stefano Jacini; and labour union leader Achille Grandi – called among other things for the legal equality of the citizens of all states and the ‘option to take out European citizenship in addition to national citizenship’.¹³ Similarly, the Dutch ‘European Action’ group called for European citizenship to supplement national citizenship, and the 1948 Hague Congress of the European Movement resolved that an essential ingredient of union was direct access for citizens to redress before a European court of any violation of their rights under a common charter.¹⁴

In this context, the first concrete steps to European integration were initiated with the announcement by French minister Robert Schuman on 9 May 1950 – the tenth anniversary of the German invasion of France, the Netherlands, Belgium and Luxembourg – of a plan for an

⁹ Frits Bolkestein, ‘De uitbreiding en het effect ervan op de vrijheden van de interne markt’ *Beraad voor de bouw* (2000) http://europa.eu.int/comm/internal_market/en/speeches/spch363nl.pdf.

¹⁰ Commission of the European Communities, *Freedom of Movement for Persons in the European Community* (OOPEC 1982).

¹¹ Lisa J. Conant, *Justice Contained: Law and Politics in the European Union* (Cornell University Press 2002).

¹² Alan Milward argues that ‘when Italian governments selected emigration as a priority policy choice, an interdependent international order advanced such policies better than an integrationist one’, in *The European Rescue of the Nation-State* (Routledge 1992) 437, but this is a politically incomplete picture. The policy choice of emigration is much better served through supranational institutions than ad hoc bargains. In terms of the historical record, as will be shown below, Italian negotiators pushed very hard to achieve an integrationist solution: they were primarily responsible for including free movement rights in the treaties.

¹³ Piero Malvestiti, ‘There Is Hope in Europe’ in Addresses delivered on the occasion of the inauguration of the High Authority of the European Coal and Steel Community, 16–23 September (Publications Department of the European Communities 1959) 58.

¹⁴ Gary T Miller, ‘Citizenship and European Union: A Federalist Approach’ in Lloyd C Brown-John (ed), *Federal-type Solutions and European Integration* (University Press of America 1995) 371–2.

ECSC. Some believed that the Schuman plan would narrow the scope for independent state action and possibly herald the eventual demise of state sovereignty.¹⁵ Nevertheless, negotiators focused almost exclusively on economic issues. Free movement of labour played a minor role in the bargaining between the potential Member States in the summer and autumn of 1950. The sole exception was Italy, for which the issue was of enormous importance: the promise of free movement for workers was a key reason for Italian participation in the ECSC.¹⁶ Although political support for the 'European idea' and the economic desire to acquire raw materials cheaply also figured, the principal incentive for Italian participation in the Schuman plan was 'to permit export of its surplus labor'.¹⁷ Indeed, for 'at least fifteen years after the war, the primary interest of most Italians in a European federation was the hope of finding an outlet for the emigration of large numbers of their excess population'.¹⁸

The issue of labour migration was broached by Taviani, the Italian negotiator, who later wrote that free movement rights for workers constituted a fundamental principle of the Community. Its realisation was the key condition for Italian participation, and Taviani even envisioned creating a European ministry of labour.¹⁹ During the negotiations, Taviani pushed for a better deal on migration by raising the spectre of a High Authority with the power to set and enforce wage levels across the Community.²⁰ As this was an important issue for the other potential Member States, the negotiations proceeded with 'the Italians using the issue as a bargaining counter for a resolution on the migration question and the Dutch and Germans resolute in keeping HA powers to an absolute minimum'.²¹ Because Dutch and German negotiators were concerned that the High Authority would overturn the delicate compromises that had been achieved domestically, they were ready to capitulate to the Italian demand for a flexible resolution to the migration question.²² Like Italy, the Netherlands and Germany were labour-exporting countries in the early 1950s, and thus did not foresee any problems.²³

Opposition might have come from the only potential Member States which had significant numbers of foreign coal workers: Belgium (70,594 foreign workers in 1951) and France (56,535). In Belgium, more than two out of every five coal workers were non-Belgian, primarily Italian. In France, the proportion was half that of Belgium: foreigners accounted for

¹⁵ Paul-Henri Spaak, 'The Integration of Europe: Dreams and Realities' (1950) 29(1) Foreign Affairs 95.

¹⁶ Giuseppe Pella, *La Comunità Europea del Carbone e dell'Acciaio: Risultati e Prospettivo* (Edizioni 5 Lune 1956); Vedi F Serra, 'Alcune osservazioni sulla presenza della rappresentanza degli interessi nella delegazione italiana al Piano Schuman' in Andrea Ciampani (ed), *L'altra via per l'Europa: Forze sociali e organizzazione degli interessi nell'integrazione europea (1947-1957)* (Franco Angeli 1995) 132.

¹⁷ Henry L. Mason, *The European Coal and Steel Community: Experiment in Supra-nationalism* (Martinus Nijhoff 1955) 5.

¹⁸ F. Roy Willis, *Italy Chooses Europe* (Oxford University Press 1971) 150.

¹⁹ Paolo Emilio Taviani, *Solidarietà atlantica e comunità europea* (Edizioni Atlante 1954) 176-80.

²⁰ Ruggero Raniero, *Italy and the Schuman Plan Negotiations* (European University Institute 1986) 22.

²¹ Richard T. Griffiths, 'The Schuman Plan Negotiations: The Economic Clauses' in Klaus Schwabe (ed), *Die Anfänge des Schuman-Plans, 1950/51* (Nomos 1988) 42.

²² Albert Kersten, 'A Welcome Surprise? The Netherlands and the Schuman Plan Negotiations' in Klaus Schwabe (ed), *Die Anfänge des Schuman-Plans, 1950/51* (Nomos 1988) 296.

²³ Daniel Vignes, *La Communauté européenne du charbon et de l'acier : Un exemple d'administration économique internationale* (Georges Thone 1956).

one out of every five coal workers.²⁴ Most of these workers were Polish, and thus unaffected by any potential ECSC Treaty provisions. Bolstered by strong public support for the Schuman plan, and intent on forging a deal, the French delegation under the leadership of Jean Monnet was willing to grant concessions.²⁵ The Belgian position was a pragmatic one, concerned more with the fate of its ailing coal and steel industries than the prospect of even more immigration of workers.²⁶ Indeed, if coal mines were to close, it seemed likely that foreign workers would return to their countries of origin.

The Italian delegation was keen to promote the freedom of movement of its nationals elsewhere in Europe. In the earlier Organization for European Economic Co-operation (OEEC) and Franco–Italian customs union negotiations, Italy had presented emigration requests for large numbers of unskilled workers, but received only limited offers for skilled workers. Since there were already between 70,000 and 80,000 Italian coal and steel workers in the other five prospective ECSC Member States, the Italian negotiators argued that, failing labour mobility on a general scale, it should surely be possible to achieve a sectoral arrangement.²⁷ The delegation received strong support from Italian parliamentarians such as Christian Democrat Deputy Bima and Grupo Misto Senator Merzagora, who regarded the ultimate outcome of the negotiations as the achievement of a political goal they had long desired.²⁸ The Italian delegation was successful in its effort to include free movement rights in the draft Treaty, and the first steps to free movement rights for workers in the area that would become the European Economic Community were enshrined in the ECSC Treaty. Article 69 of the final Treaty announced that ‘Member States undertake to remove any restriction based on nationality upon the employment in the coal and steel industries of workers who are nationals of Member States and have recognised qualifications in a coalmining or steelmaking occupation, subject to the limitations imposed by the basic requirements of health and public policy’.

Because of these limitations, the Italian success in including freedom of movement for labour was thus tempered. Here in nascent form were the restrictions on freedom of movement for the purposes of health and public policy that still today provide Member States with the power to limit free movement rights.²⁹ Rather than being forced to admit workers, Member

²⁴ Communauté Européenne du Charbon et de l’Acier, *Recueil Statistique de la Communauté Européenne du Charbon et de l’Acier* (Haute Autorité 1953) 54.

²⁵ As early as October 1950, French public opinion favoured the Schuman plan by a margin of two to one, despite being rather ill-informed about its contents: Institut français de l’opinion publique, *Sondages: Revue française de l’opinion publique* (1951) 13(1) 23; Raymond Racine, *Vers une Europe nouvelle par le plan Schuman* (La Baconnière 1954); Jean Monnet, *Mémoires* (Fayard 1976).

²⁶ Michel Dumoulin, ‘La Belgique et les débuts du Plan Schuman (mai 1950–février 1952)’ in Klaus Schwabe (ed), *Die Anfänge des Schuman-Plans, 1950/51* (Nomos 1988); Alan Milward, ‘The Belgian Coal and Steel Industries and the Schuman Plan’ in Klaus Schwabe (ed), *Die Anfänge des Schuman-Plans, 1950/51* (Nomos 1988).

²⁷ William Diebold, *The Schuman Plan: A Study in Economic Cooperation 1950-1959* (Council on Foreign Relations 1959); Ruggero Raniero, *Italy and the Schuman Plan Negotiations* (European University Institute 1986) 22–3.

²⁸ Communauté Européenne du Charbon et de l’Acier, *Le Traité C.E.C.A. devant les Parlements Nationaux* (Assemblée Commune, Division Etudes, Information et Documentation 1958).

²⁹ Thus Articles 39 and 46 of the Treaty of Amsterdam (on free movement of workers and the right of establishment, respectively) specify that these rights continue to be ‘subject to limitations justified on grounds of public policy, public security or public health’. The point is not teleological; the current utility of these restrictions clearly cannot explain their inclusion at the beginning of the process of integration. Rather, free movement provisions have been subject to restrictions from their inception, although the

States could invoke health issues or public policy in order to limit access to domestic labour markets. Another potential source of restriction was the ambiguous definition of ‘recognised qualification’. Section 2 of Article 69 provided that ‘Member States shall draw up common definitions of skilled trades and qualifications therefor’, which left significant room for restrictive interpretation. Finally, a key institutional barrier was the fact that the role of the High Authority was limited to co-ordinating and advising: according to the Treaty, the Member States were responsible for drafting and implementing the Treaty’s free movement provisions. One reason for this arrangement may have been the Italian preference for announcing principles in the treaties, while postponing the details about administration and implementation.³⁰

3. RATIFICATION AND IMPLEMENTATION

As was true during the negotiations – where only the Italian delegation placed much emphasis on labour mobility – the question of the free movement of workers remained a minor one during the various national debates on the ratification of the ECSC Treaty.³¹ Still, some parliamentarians, such as Communist members of the French Assemblée Nationale Bonte and Patinaud, Communist member of the French Conseil de la République Primet, and Communist Belgian Senator Glineur, reproached the Treaty’s authors for desiring to bring about a ‘deportation’ of labour. Communists were worried that workers would ‘become nothing more than simple merchandise’.³² Indeed, Communist parties in all the parliaments of the Member States were opposed to the proposed Treaty. For example, the French Communists saw the Treaty as a tool of American foreign policy.³³ Dutch Christian Democrats argued that free movement of workers would create moral problems as families were uprooted.³⁴ A German socialist member of the Bundestag pointed out that Article 69 was unclear about whether workers in

legal and practical restraints on freedom of movement have been gradually disappearing since these first attempts in the 1950s.

³⁰ Giacinto della Cananea, ‘L’Italia e l’Europa: la politica “comunitaria” nel periodo iniziale del processo di integrazione (1952–1967)’ in Erik Volkmann Heyen (ed), *Die Anfänge der Verwaltung der Europäischen Gemeinschaft* (Nomos 1992).

³¹ Communauté Européenne du Charbon et de l’Acier, 1958 (n 28).

³² Communauté Européenne du Charbon et de l’Acier, 1958 (n 28) 131.

³³ Americans ‘would again deport French workers with the aid of the Treaty’s clauses guaranteeing free movement of labour. American capital and its tool, the Ruhr industrialists, would soon control the [High Authority]. A huge army of French unemployed would be created to provide slave labor for American bases in France, where atom bombs and bacteriological weapons would be stored’, according to Henry L. Mason, *The European Coal and Steel Community: Experiment in Supra-nationalism* (Martinus Nijhoff 1955) 30. Beyond the rhetoric, the key concern was that the freedom of movement provisions would equate workers with goods and capital and make them ripe for exploitation. French communists had long remained opposed to European unification. A September 1957 public opinion survey found that 55 per cent of French communists thought that a union of France with the other five ECSC/EEC states was of little or no use (5 per cent thought it was indispensable; 25 per cent thought it was somewhat or very useful; 15 per cent did not respond), compared to only 11 per cent of socialists (31 per cent indispensable; 46 per cent somewhat or very useful; 12 per cent no response) and single digits of partisans of the other parties: results from Institut français de l’opinion publique, *Sondages: Revue française de l’opinion publique* (1957) 19(3) 12–13.

³⁴ Representatives Maenen (KVP) in the Second Chamber and Vixseboxse (CHU) in the First Chamber according to Communauté Européenne du Charbon et de l’Acier, *Le Traité C.E.C.A. devant*

the coal and steel industries who moved to another Member State would be authorised to seek alternative employment in the host state if their employment were disrupted by strikes.³⁵ In the end, though, none of these concerns prevented the Treaty of Paris from being ratified in all the Member States.

Ratification did not automatically mean that coal and steel workers could freely move within ECSC territory. Goods had been immediately subject to free movement. In contrast, Article 69's commitment to worker mobility could be implemented only by unanimous agreement between the Member States. Negotiations over its detailed provisions began in March 1953 as the High Authority appointed a committee of experts to propose the best means of implementing Article 69. The committee reported in November, when the High Authority endorsed its findings and called an intergovernmental conference.³⁶ The HA's efforts to facilitate worker mobility among the six Member States were spearheaded by the social affairs commission. One of the High Authority's four general commissions, the social affairs commission was responsible for a panoply of policies intended to raise the standard of living, only one of which was freedom of movement. On the basis of the work done by the committee of experts the previous autumn, the social affairs commission took a first step towards co-ordination on Article 69 by convening an intergovernmental conference of the labour ministers of the six Member States in May 1954. Although the meeting reportedly took place in a 'cordial atmosphere', its only outcome was 'to raise certain imperfections in the Treaty and to partially make clear how Article 69 should be revised', although the Commission heralded the meeting as 'a first step towards a new and fruitful process of interinstitutional collaboration'.³⁷ Nevertheless, the draft agreement did provide the basis for further discussions over the summer and autumn.

These discussions ended in a relatively narrow interpretation of Article 69. The Italians had continued to push for wider interpretation while opposition grew elsewhere as industries in the other states, particularly France and Luxembourg, underwent technical conversions which reduced the demand for coal and steel workers.³⁸ This caused the Italians to focus efforts on creating a more general market for labour that would not be restricted to coal and steel workers.³⁹ The HA's report at the conclusion of the negotiations lamented their prolonged

les Parlements Nationaux (Assemblée Commune, Division Etudes, Information et Documentation 1958) 131.

³⁵ The representative, Birkelbach, was concerned about workers' rights in the event of a strike : reported by Communauté Européenne du Charbon et de l'Acier, *Le Traité C.E.C.A. devant les Parlements Nationaux* (Assemblée Commune, Division Etudes, Information et Documentation 1958) 132. The focus of this kind of concern later shifted to the question of whether or not a worker originally admitted to work in the coal and steel industry could later change occupation: reported by High Authority of the European Coal and Steel Community, *Second General Report on the Activities of the Community* (Publications Service of the European Coal and Steel Community 1954) 171.

³⁶ High Authority of the European Coal and Steel Community, *Second General Report on the Activities of the Community* (Publications Service of the European Coal and Steel Community 1954) 169.

³⁷ Communauté Européenne du Charbon et de l'Acier, 'Rapport sur l'application du traité instituant la Communauté européenne du charbon et de l'acier pendant la période du 1er Janvier au 30 avril 1954' (Assemblée Commune, Service d'études et de documentation 1954) 9.

³⁸ European Coal and Steel Community, *Bulletin from the European Community for Coal and Steel* (Publications Service of the European Coal and Steel Community 1954) 168.

³⁹ The HA co-operated with the International Labour Office to convene a meeting of experts in Geneva to study a draft European social security convention for migrant workers, according to High Authority of the European Coal and Steel Community, *Third General Report on the Activities of the Community* (Publications Service of the European Coal and Steel Community 1955) 159. And the Spaak

nature but presented the agreement 'as a first step towards the creation of a "common market" for labour'.⁴⁰ The Council of Ministers approved the revised draft agreement on 8 December 1954, although its implementation would depend on parliamentary ratification in each of the Member States.⁴¹ Administrative details were finalized in the months that followed, and a final agreement on free movement was reached in more than twice the time it had taken to negotiate the Treaty itself. The High Authority reassured anyone worried about potential mass migrations that 'comparatively few workers [would] immediately avail themselves' of the labour cards. Rather, it estimated that any significant labour migration would have to be preceded by 'reconversions and marked technical changes [to] area labour markets'.⁴²

Although the HA and the Italian government had strongly urged that the definition of worker qualifications be interpreted broadly, other governments succeeded in limiting the application of the Treaty to certain skilled workers: only 300–400,000 of the Community's 1.4 million coal and steel workers qualified for the international work permits which would allow them to move freely. The international permit allowed these skilled workers to seek employment in other Member States without being held up by the red tape generally governing the immigration of labour. A contemporary American observer reported enthusiastically on early efforts made to 'enable these workers to enjoy all the social security benefits of the receiving country, thus preventing the discriminations that have frequently been practised against aliens in the past' and to 'improve co-ordination between the various employment organizations in the Member States so that workers in one country may know more easily whether jobs are available elsewhere'.⁴³

Despite such optimistic assessments immediately following the agreement on Article 69's provisions, full implementation of the agreement was delayed until after all the Member States had ratified it. Italy, Belgium, France and the Netherlands ratified the agreement by the end of 1955. However, the German Bundestag delayed ratification until May 1956 and Luxembourg stymied the entire process by postponing its ratification until June 1957.⁴⁴ As a result, the agreement on free movement of workers finally took effect in September 1957, four and a half years after work on it had begun. This delay proved a constant irritant to the Italians between

subcommittee favourably assessed the various efforts of the Council of Europe, the European Political Community and the OEEC to facilitate worker mobility, concluding that the establishment of a common European labour market should be introduced gradually, according to Comité intergouvernemental créé par la Conférence de Messine, *Inventaire des organismes existants dans les domaines visés par la résolution de Messine* (European Community for Coal and Steel 1955).

⁴⁰ High Authority of the European Coal and Steel Community, *Third General Report on the Activities of the Community* (Publications Service of the European Coal and Steel Community 1955) 157–8.

⁴¹ Henry L. Mason, *The European Coal and Steel Community: Experiment in Supra-nationalism* (Martinus Nijhoff 1955) 101–2.

⁴² European Coal and Steel Community (n 38).

⁴³ Derek Curtis Bok, *The First Three Years of the Schuman Plan* (Princeton University Press 1955) 56.

⁴⁴ Luxembourg's contemporary resistance on matters of migration has deep historical roots. For example, in 1953 the Luxembourg Christian Socialist deputy Margue feared 'a rash and unreasonable migration which would do more harm than good to both the labour market and the standard of living of the workers', according to the Meeting of the Common Assembly, 13 May 1953, p.83, cited in Dirk Spierenburg and Raymond Poidevin, *The History of the High Authority of the European Coal and Steel Community: Supranationality in Operation* (Weidenfeld and Nicolson 1994) 175.

1952 and 1957. Most of the speeches by Italian members of the Common Assembly concerned the migration issue, in particular the delay in working out Article 69's provisions.⁴⁵

The Italian preoccupation with migration may be explained by these numbers: ECSC officials calculated in 1954 that

present labour migration across frontiers within the Community is confined to Italian agricultural labourers employed in Belgian coal mines. Some 40,000 of the 150,000 miners in Belgium are Italians. Most of the Italian workers in the Belgian mines, however, regard their employment as temporary. The other main group of migrants are some 12,000 workers who live near frontiers of the Community nations and now can cross at will for work without encountering obstacles.⁴⁶

Though some Italian economists discouraged the idea that 'opening the frontiers could free a massive emigration of Italian workers and eliminate unemployment in a flash',⁴⁷ the political interest shown during the ECSC negotiations persisted.

The delayed introduction of free movement raised such ire that the Common Assembly included the issue in its constitutional proposals for rewriting the ECSC Treaty as a result of the negotiations taking place on the European Economic Community. The question of free movement rights was the *only* policy issue in a document otherwise solely concerned with the relationship between the High Authority and the new institutions that the proposed new treaties would introduce. Dissatisfied with the application of Article 69, the Common Assembly concluded that the Member States were acting too slowly to implement free movement rights for coal and steel workers. Therefore, it proposed that the High Authority should take over from the Member States the responsibility to establish 'common definitions of skilled trades and qualifications', propose immigration rules and settle 'any matters remaining to be dealt with in order to ensure that social security arrangements do not inhibit labour mobility'.⁴⁸ The Common Assembly further proposed to insert into the Treaty a new article giving the High Authority the power to propose measures to address possible disproportionalities between the supply of and demand for labour.⁴⁹

The Common Assembly's faith in the High Authority may have been somewhat misplaced. Encouraging greater free movement of labour did not appear to be a key priority for the High Authority. Instead, it focused on combating unemployment and constructing adequate housing for coalminers and steelworkers. President of the High Authority Jean Monnet saw free movement of workers as only one of a number of ways to achieve better living and working conditions for workers across the six Member States.⁵⁰ This was true despite Monnet's earlier, well-known rhetoric about uniting Europeans by focusing not on states but on peoples. Nevertheless, the social affairs commission was persistent in the face of Member

⁴⁵ Mason (n 41) 100.

⁴⁶ European Coal and Steel Community, *Bulletin from the European Community for Coal and Steel* (Publications Service of the European Coal and Steel Community 1954).

⁴⁷ Confederazione Italiana Sindacati Lavoratori, *La politica sociale della Comunità Economica Europea: Atti del terzo convegno di studi di economia e politica del lavoro* (1959) 70–1; F Roy Willis, *Italy Chooses Europe* (Oxford University Press 1971).

⁴⁸ Gerhard Kreyssig, *Révision du Traité instituant la Communauté Européenne du Charbon et de l'Acier* (Communauté Européenne du Charbon et de l'Acier 1958) 24–5.

⁴⁹ Kreyssig (n 48).

⁵⁰ Jean Monnet, *Les États-Unis d'Europe ont Commencé: La Communauté Européenne du Charbon et de l'Acier, Discours et Allocutions 1952–1954* (Robert Laffont 1955).

State intransigence and delay, its efforts duly reported in the Common Assembly's updates.⁵¹ These effects were favourably received. The social affairs commission noted with satisfaction that the EEC Treaty offered the chance to correct the restrictions which had been placed on free movement of workers on the basis of a restrictive interpretation (especially by the Council decision of 8 December 1954) of Article 69 of the ECSC Treaty.⁵²

4. FROM PARIS (ECSC) TO ROME (EEC)

Despite the slow progress on liberalising restrictions on the movement of workers, mainstream political actors across Europe were united in supporting the ECSC's striving for 'efficiency and distribution of labour' in order to achieve the goal of a 'sound economy based on a rational distribution of labour in a free market'.⁵³ This goal was seen as a desirable objective, and one that could be expanded to other economic sectors. In 1954, the governments of the six Member States began to consider a new economic initiative that would complement the ECSC. The Dutch were pressing for a general economic common market, against the view of the Belgian government – supported by French ministers, Jean Monnet, and others – that further co-operation should occur by economic sector, extending the ECSC into transport and forms of energy other than coal and steel. On 20 May 1955, the Benelux governments presented a joint proposal combining the sectoral and common market approaches. This proposal was considered at the special meeting of the ECSC Council of Ministers at Messina on 2 and 3 June 1955. At Messina, the ministers established an intergovernmental committee headed by Belgian Foreign Minister Paul-Henri Spaak to prepare a report on the feasibility of a common customs union and a common atomic energy agency. They further agreed to adopt the Benelux programme, modified for more gradual implementation.⁵⁴

The Benelux itself represented a successful experiment in the free movement of workers. Even though a *de facto* common market in labour had been operational in the Benelux since the end of the Second World War, no Treaty had been signed to formalise this arrangement

⁵¹ Communauté Européenne du Charbon et de l'Acier, 'Rapport fait par Mlle M.A. Klompé sur les relations extérieures de la Communauté et le développement de celle-ci envisagé à la lumière de l'évolution politique actuelle (Document no. 4)' (Assemblée Commune, Service d'études et de documentation 1954).

⁵² Communauté Européenne du Charbon et de l'Acier, 'Rapport de M. Bertrand sur la migration et la libre circulation des travailleurs dans la CECA. Rapport no. 5, novembre 1957' (Assemblée Commune, Service d'études et de documentation 1957); Assemblée parlementaire européenne, 'Rapport sur le règlement relatif aux premières mesures pour la réalisation de la libre circulation des travailleurs dans la Communauté, Document 67' (1960) 8–9.

⁵³ Council of Europe, *First Joint Meeting of the Members of the Consultative Assembly of the Council of Europe and of the Members of the Common Assembly of the European Community of Coal and Steel, Official Report of the Debate, 22 June 1953* (Consultative Assembly 1953) 71.

⁵⁴ For some governments, including that of the United States, establishing a common approach to atomic energy was more important than any other form of co-operation. Thus, according to Secretary of State John Foster Dulles, the United States did not attach to the common market proposals the same 'immediate security and political significance as [it did] to Euratom', although it also recognised that a common economic market might 'contribute constructively to European integration', which was useful in tying Germany to western Europe according to Peter M.R. Stirk and David Weigall, *The Origins and Development of European Integration: A Reader and Commentary* (Pinter 1999).

by the time the ECSC foreign ministers met in Messina. Furthermore, the number of workers making use of this common labour market remained relatively small. Nevertheless, a Benelux social affairs commission was working on a proposal which would formally eliminate the need for worker and employer permits, regulate labour shortages and surpluses and introduce the principle of equal treatment for nationals of any Benelux country.⁵⁵ This proposal acquired legal force in 1957, thereby establishing the first coordinated system for the free movement of workers within the future EEC.

As the ECSC free movement provisions continued to be obstructed, proponents of greater European integration pushed instead for expanding rights to many more categories of workers in the approaching Treaty establishing the EEC. A large part of the impetus for the growing focus on workers' freedom of movement can be found in the report submitted by the Spaak committee. The report argued that undistorted competition would lead to monetary stability, economic expansion, social protection, a higher standard of living and quality of life, economic and social cohesion, and solidarity among the Member States.⁵⁶ In the Spaak committee's view, these goals depended on the undistorted competition of which freedom of movement for workers formed an integral part. Free movement of workers was required for the other objectives to be achieved, and the committee argued that '[w]e should not overestimate the scale of movements of labour that would occur in a common market without any barriers'.⁵⁷ The committee's recommendations contain the genesis of the 'market citizen'⁵⁸ who bears rights as an economic rather than political actor.

While the Treaty of Paris had limited freedom of movement to workers with 'recognised qualifications in a coalmining or steelmaking occupation', the final text of the Treaty of Rome expanded the scope of the free movement provisions to cover all workers, with the exception of those employed in the public service. Freedom of movement for workers now entailed

the right [...] to accept offers of employment actually made; to move freely within the territory of the Member States for this purpose; to stay in a Member State for the purpose of employment [...] [and] to remain in the territory of a Member State after having been employed in that State. (Article 48 EEC)

The Treaty of Rome did leave room for Member States to restrict these rights in implementing regulations: Member State governments could avoid implementing free movement rights based on public policy, health or security grounds. Still, the new rights went well beyond any arrangements provided for in bilateral agreements. Although bilateral agreements were clearly more important in the early years,⁵⁹ the experience of negotiating the ECSC provisions laid the groundwork for the Treaty of Rome's free movement provisions. This is clear from the Treaty negotiating drafts referring extensively to ECSC Article 69, from the fact that many

⁵⁵ Comité intergouvernemental créé par la Conférence de Messine, *Commission du Marché Commun des Investissements et des Problèmes sociaux, sommaire de conclusions no 3* (European Community for Coal and Steel 1955) 94.

⁵⁶ Comité intergouvernemental créé par la Conférence de Messine, *Rapport des Chefs de Délégation aux Ministres des Affaires Étrangères* (European Community for Coal and Steel 1956).

⁵⁷ *Rapport des Chefs de Délégation aux Ministres des Affaires Étrangères* (n 56) 88.

⁵⁸ Michelle Everson, 'The Legacy of the Market Citizen' in Jo Shaw and Gillian More (eds), *New Legal Dynamics of European Union* (Oxford University Press 1995).

⁵⁹ Federico Romero, *Emigrazione e integrazione europea 1945-1973* (Edizioni Lavoro 1991).

negotiators had participated in the ECSC negotiations and from the Spaak committee's earlier work examining the ECSC provisions on freedom of movement.⁶⁰ Unlike the Treaty of Paris, the Treaty of Rome set a clear deadline for implementing free movement. Article 49 of the Treaty of Rome provided that as 'soon as this Treaty enters into force, the Council shall, acting on a proposal from the Commission and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about, by progressive stages, freedom of movement for workers'. The article therefore granted the Commission – rather than the Member States, as was the case with the ECSC Treaty – the power and the responsibility to propose measures required to bring about freedom of movement for workers. The Treaty of Rome thus contained an expanded version of the labour provisions originally announced in the Treaty of Paris six years previously.

5. CONCLUSION

European Union citizenship is often presented as a recent invention. By breaking citizenship down into its constituent rights, however, we can trace its genesis back to the earliest years of European integration. Although the political push for European rights predates the Schuman plan, the European Coal and Steel Community Treaty contained the foundation of what today forms the core of right of Union citizenship: freedom of movement. The political origins of European rights are evident from the ECSC Treaty negotiations and ratification and implementation debates. Article 69 of the Treaty provided that Member States would remove all restrictions based on nationality on the employment in the coal and steel industries of workers who were citizens of Member States and who had recognised qualifications in a coalmining or steelmaking occupation. The determination of what constituted a recognised qualification, however, was left to intergovernmental bargaining: Member States had to agree to common definitions, and the resulting agreement then had to be ratified by each of the Member States before it would come into effect. In the final agreement reached in 1954, only 300,000 of the

⁶⁰ Thus, for example, the 22 January 1957 negotiating draft discusses who should be covered under the term 'national worker' and suggests adopting the interpretation of ECSC Article 69, Chefs de Délégation document 257, replacing document 156 of 10 January 1957, reported in Comité intergouvernemental pour le Marché Commun et l'Euratome, *Rédaction approuvée par le Comité des Chefs de délégation le 22 janvier 1957 concernant Titre III Chapitre 3 La libre circulation des travailleurs* (European Community for Coal and Steel 1957). Furthermore, the Italian delegation once again tied the issue of free movement of workers to another sensitive issue, this time by threatening to block agreement on the free movement of capital unless a safeguard clause proposed by the delegations from France and Luxembourg was removed (Chefs de Délégation meetings of 1, 8–9 and 17–18 February 1957). Several members of the Italian delegation had participated in the ECSC negotiations or the work of the OEEC according to F. Roy Willis, *Italy Chooses Europe* (Oxford University Press 1971) 56. Earlier, the Spaak committee had noted that the experience of the ECSC established that it was not necessary to eliminate economic distortions before lowering the barriers to the free movement of workers, according to Comité intergouvernemental créé par la Conférence de Messine, *Commission du Marché Commun des Investissements et des Problèmes sociaux, sommaire de conclusions no 3* (European Community for Coal and Steel 1955), 8 September 1955, Document 191. And a sub-committee of the Spaak committee extensively studied the ongoing ECSC experience according to Comité intergouvernemental créé par la Conférence de Messine, *Rapport présenté par M.J. Doublet au nom de la sous-commission des problèmes sociaux* (European Community for Coal and Steel 1955), 23 September 1955, Document 277.

Community's 1.4 million coal and steel workers were deemed qualified to move freely, and the agreement was not ratified by all the Member States until 1957. The delay frustrated many participants, particularly the Italian negotiators, whose primary interest in European integration was facilitating the emigration of large numbers of Italian workers to the rest of Europe. The difficulties in reaching a common definition of who would qualify for freedom of movement, and the slow ratification of the intergovernmental agreement after it had finally been reached, may help explain the much stronger free movement provisions of the Treaty of Rome. This expanded the scope of the free movement provisions to all workers, with the exception of those employed in the public service, and granted the Commission – rather than the Member States, as was the case with the ECSC Treaty – the power and the responsibility to propose measures required to bring about freedom of movement for workers. Furthermore, the Treaty of Rome set a clear deadline for the implementation of the free movement of workers, who gained the right to move freely within the territory of the Member States to accept offers of employment, to stay in a Member State to work, and to remain there after having been employed in that state. The obligation placed on governments to eliminate distinctions based on nationality (Paris) thus became the right of workers to free movement (Rome), which continues today to form the nucleus – subsequently expanded and transformed – of EU citizenship.