

## Free movement and the difference that citizenship makes

*Willem MAAS*

### Abstract

Free movement in Europe differs from arrangements in other regional integration efforts because of the introduction of individual rights at the European level, later captured under the legal umbrella of European Union citizenship. In place of previous bilateral and ad hoc arrangements to manage migration between their states, Europe's political leaders created a new constitutional category: the European citizen, with rights that EU member states cannot infringe except under limited circumstances. The development of European rights means that free movement in Europe can be compared with internal free movement in other multilevel political systems, such as federal states, demonstrating the similar political logics at work in dissimilar contexts. One of the core values of shared citizenship is a project of equal political status, which is not always compatible with retaining local particularity. This is why central authorities in democratic systems almost invariably work to lower internal borders and boundaries, while local authorities often work to retain them, setting up potential conflicts.

### Introduction

From postwar bilateral labour migration accords and the Treaty of Paris establishing the European Coal and Steel Community to the present day, the project of European integration has been deeply shaped by the politics of free movement, first of workers, then of members of their families, then (via intermediate categories such as students, retirees, and others) to all European citizens and arguably, via legislation and Court interpretation, to everyone living in Europe.<sup>1</sup> Free movement reflects the aim of changing the meaning of borders – from Schuman's aim "to take away from borders

1. For example Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents; Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; and Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. A first version of this paper was presented at the Peoples and Borders conference at the University of Padua in November 2014. This research was supported by a Marie Curie International Incoming Fellowship within the 7th European Community Framework Programme, based at the European University Institute, whose support is gratefully acknowledged.

their rigidity and...their intransigent hostility”<sup>2</sup> to what Mitterrand called his *grand projet*, to “turn the whole of Europe into one space.”<sup>3</sup> The idea of changing the meaning of borders and turning the European continent into one space is coupled with a political project to create a “broader and deeper community among peoples with a destiny henceforward shared” (in the words of the European Coal and Steel Community treaty), a project that has gradually adopted the mantle of a shared citizenship. Starting from an overview of the evolution of this shared citizenship, this chapter asks what difference citizenship makes.

At the most basic level, European Union citizenship differs from arrangements in other regional integration efforts. For example, despite the North American Free Trade Agreement, Canadians, Americans, and Mexicans do not enjoy rights to live and work in each others’ countries; indeed, the United States federal government (to speak nothing of some state governments, such as that of Arizona) has invested significant resources into discouraging immigration from Mexico, and between 2009 and 2016 even Mexican travellers to Canada required a visa to be allowed entry. By contrast, citizens of EU member states do not require any permits or visas to live, work, or study in each others’ territory, and even the physical border checks have been eliminated for border crossings within the “Schengen” space which, as of this writing, includes twenty-two of the twenty-eight EU member states plus the four EFTA states, Iceland, Liechtenstein, Norway, and Switzerland.<sup>4</sup> But the introduction and rise of a common European Union citizenship has arguably had much more significant impacts on Europe than the elimination of such barriers and impediments. By substituting a common citizenship for what had previously been bilateral and ad hoc arrangements to manage migration, Europe’s political leaders created a new constitutional category: the European citizen, with rights that member states cannot infringe except under limited circumstances.

Free movement in Europe can be compared with free movement in other multi-level political systems, such as federal states. Doing so demonstrates the similar political logics at work in very dissimilar contexts. For example, some in European institutions such as the Commission lament what they see as the low numbers of people crossing borders to study or work, yet the rates in Europe are rising and are no longer disproportionately low compared to those in the United States (where the number of people moving between states has been declining steadily since the 1980s) or Canada (where for example less than ten percent of students study outside their home province and where the federal government often privileges hiring temporary

2. Schuman wrote “It is not a question of eliminating ethnic and political borders. They are a historical given: we do not pretend to correct history, or to invent a rationalized and managed geography. What we want is to take away from borders their rigidity and what I call their intransigent hostility,” my translation from *Robert Schuman*, *Pour l’Europe*, Paris 1963.

3. Cited in *Ronald Tiersky*, *François Mitterrand: A Very French President*, Lanham 2003, p. 115.

4. EU member states Bulgaria, Croatia, Cyprus and Romania are on track to eventually join the area. The United Kingdom and Ireland maintain opt-outs, though they have a Common Travel Area with no routine border checks for travel between them. The effects, if any, of the Brexit referendum on Schengen are unclear as of this writing. For more on Schengen, see note 54 below.

foreign workers over encouraging interprovincial mobility). Comparing Europe to other multilevel systems also highlights the political dynamics of migration, both internal and international: protectionist policies promoted by populist parties such as the Front national, the UK Independence Party, or the Danish People's Party are not completely different from political tensions surrounding free movement elsewhere.

A key motivating idea of this book is that "European migration policies and their impact on national societies and economies in the postwar period cannot be fully understood without taking into account the Community framework," an argument flowing from the related observation that "existing historiographical literature [...] has generally analysed the issue of migration from a national viewpoint" even though "[m]ovement of persons has been a key feature in the whole history of European integration."<sup>5</sup> The triple aims of my contribution to this book are to demonstrate 1) that freer movement of persons within Europe has indeed been central to the political project of creating an ever closer union of peoples since the immediate postwar era, 2) that the push for freer movement of people has developed alongside the idea of a supranational European citizenship that, in turn, has acquired constitutional status since the treaty of Maastricht, and 3) that the political dynamics surrounding intra-European migration are comparable to similar dynamics operating in other multilevel political systems.

### Postwar free movement and citizenship

The first myth to be dispelled is that the idea of European citizenship was an invention of the Maastricht Treaty, an idea shared by many legal commentators as a result of the fact that the term was not introduced into the treaties until Maastricht.<sup>6</sup> In fact, the great majority of Europe's postwar political leaders were convinced of the necessity of creating a supranational community in which individual citizens would share a common status and political identity. For example, Winston Churchill called for "a European group which could give a sense of enlarged patriotism and common citizenship to the distracted peoples of this turbulent and mighty continent."<sup>7</sup> In a speech preceding the 1948 Hague Congress he presided, Churchill said: "We hope to reach again a Europe... [in which] men will be proud to say 'I am a European.' We hope to see a Europe where men of every country will think as much of being a European as of belonging to their native land... [And] wherever they go in this wide

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5. From the call for papers for the conference which brought together the authors in Padua.

6. For a sense of those arguments, see *Willem Maas*, *Creating European Citizens*, Lanham 2007, especially chapter 3, "Maastricht's Constitutional Moment."

7. Winston Churchill, Speech Delivered at the University of Zurich (Sept. 19, 1946), in: *Winston Churchill, The Sinews of Peace: Winston Churchill's Post-War Speeches Collection 198–202* (Randolph S. Churchill ed., 1949). In the same speech, Churchill also called for the creation of "a kind of United States of Europe."

domain... they will truly feel ‘Here I am at home.’”<sup>8</sup> The Hague Congress gathered some 750 delegates from across the political spectrum including Churchill, three former French prime ministers, François Mitterrand, Konrad Adenauer, Harold Macmillan, Altiero Spinelli and his wife Ursula Hirschmann, Walter Hallstein, Salvador de Madariaga, Raymond Aron, and other leaders in the field of politics, academia, business, religion and others; it resolved that an essential ingredient of European union was direct access for citizens to a European court guaranteeing their rights under a common charter and also proposed “a European passport, to supersede national passports and to bear the title ‘European’ for use by the owner when travelling to other continents.”<sup>9</sup>

Many of the Hague Congress speeches focused on common citizenship, such as the intervention by Hendrik Brugmans, co-founder and first president of the Union of European Federalists (and later Rector of the College of Europe from 1950 to 1972) who argued that “we are agreed here that we must organize a European political consciousness, in which alone federal democracy can work. This European public opinion will not be the sum of individual national public opinions, it will be something *sui generis*, an occurrence quite new in history, the discovery of common citizenship of Europeans as such.”

This idea of a shared European citizenship was not invented at the Hague Congress, either.<sup>10</sup> Indeed, in Italy in 1943, the *Movimento Federalista Europeo* (European Federalist Movement) envisaged the creation of a European continental citizenship alongside national citizenship, consisting of direct political and legal relationships with a European federation.<sup>11</sup> In the Netherlands, the European Action group also called for a European citizenship to operate beside that of nationality. Similarly, plans drawn up by Giovanni Gronchi (later President of Italy), Count Stefano Jacini (Senator and later president of UNESCO), and labour union leader Achille Grandi, called for the “option to take out European citizenship in addition to national citizenship.”<sup>12</sup>

8. Winston Churchill, Speech Delivered to the Congress of Europe (May 10, 1948), transcript available in the Netherlands National Archives, catalog 2.19.109 Europese Beweging in Nederland en Voorangangers, inv. 95. Cited in *Willem Maas*, European Union Citizenship in Retrospect and Prospect, in: Engin Isin and Peter Nyers (eds.), *Routledge Handbook of Global Citizenship Studies*, London 2014, pp. 409–17.

9. Ibid.

10. The arguments in the rest of this section are discussed in more detail in *Maas*, *Creating European Citizens*, above note 6, especially pp.12-17 and in *Willem Maas*, *The Genesis of European Rights*, in: *Journal of Common Market Studies* 43 (2005), pp. 1009–25.

11. *Anthony Pagden*, *The Idea of Europe: From Antiquity to the European Union*, Cambridge UK 2002. The MFE was co-founded by Altiero Spinelli, later European Commissioner for Industry (1970-76), Deputy in the Italian Parliament (1976-1983), and Communist Member of the European Parliament (1979-86). Imprisoned between 1927 and 1943 for his opposition to Mussolini, Spinelli in 1941 on the island of Ventotene co-wrote the eponymous Ventotene Manifesto, which argued that a “free and united Europe” was necessary because national sovereignty caused war.

12. *Piero Malvestiti*, *There Is Hope in Europe: Addresses Delivered on the Occasion of the Inauguration of the High Authority of the European Coal and Steel Community*, 16-23 September, 1959, Luxembourg 1959, p. 58.

Many political leaders made similar speeches, but progress towards actual inter-governmental agreements started with French Foreign Minister Robert Schuman's announcement on 9 May 1950—the tenth anniversary of the German invasion of France, the Netherlands, Belgium, and Luxembourg—of a plan for a European coal and steel community, a proposal with idealistic aims. The Schuman Declaration stated that “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity”; the Declaration thus aimed at the “coming together of the nations of Europe”. Though some believed that the Schuman Plan would narrow the scope for independent state action and possibly herald the eventual demise of state sovereignty,<sup>13</sup> negotiators focused almost exclusively on economic issues. Free movement of workers had low significance in the bargaining among the potential member states in the summer and fall of 1950, except for Italy. The promise of free movement for Italian workers to live and work elsewhere within the Community was a key reason for Italian participation in the ECSC.<sup>14</sup> In the earlier OEEC and Franco-Italian Customs Union negotiations, Italy had presented emigration requests for large numbers of unskilled workers but in return received only limited offers for skilled workers. Although political support for the “European idea” and the economic desire to acquire raw materials cheaply also figured in the negotiations, the principal incentive for Italian participation in the Schuman plan was “to permit export of its surplus labor.”<sup>15</sup> 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.”<sup>16</sup> The issue of labour migration was broached by the Italian negotiator, Paolo Taviani, who later wrote that free movement rights for workers constituted a fundamental principle of the Community. Its realization was the key condition for Italian participation, and Taviani even envisioned creating a single European ministry of labour.<sup>17</sup> During the negotiations, Taviani pushed for a better deal on migration by suggesting that the High Authority, the precursor to the European Commission, should have the power to set and enforce wage levels across the Community.<sup>18</sup> 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

13. P. H. Spaak, “The Integration of Europe: Dreams and Realities,” *Foreign Affairs* October (1950): 95. This paragraph and the next draw on *Maas*, *The Genesis of European Rights*, pp. 1012-1013
14. *Giuseppe Pella*, *La Comunità Europea del Carbone e dell’Acciaio: Risultati e Prospettivo*, Roma 1956; *Francesca 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)*, Milan 1995, pp. 137–48. Cited in *Maas*, *The Genesis of European Rights*, p. 1012.
15. *Henry L. Mason*, *The European Coal and Steel Community: Experiment in Supranationalism*, The Hague 1955, p. 5.
16. *F. Roy Willis*, *Italy Chooses Europe*, New York 1971, p. 150.
17. *Paolo Emilio Taviani*, *Solidarietà atlantica e comunità europea*, Milan 1954.
18. *Ruggero Ranieri*, *Italy and the Schuman Plan Negotiations*, EUI Working Paper No. 86/215 (Florence: European University Institute, 1986), p. 22.

to an absolute minimum.”<sup>19</sup> Because negotiators from the Netherlands and West Germany were concerned that the High Authority would overturn domestic economic compromises, they agreed to the Italian demand for a flexible resolution to the migration question, at least partially because, like Italy, the Netherlands and West Germany were labour exporting countries in the early 1950s.<sup>20</sup> Indeed, West Germany also favoured the emigration of German-speaking workers from central and eastern Europe (the last waves of the postwar expulsions of German-speaking populations towards West Germany) to neighbouring European countries, as well as the recruitment of workers from Italy – a proposal which some German leaders later saw as way to combat the ‘poison’ of Communism in Italy.<sup>21</sup> 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 one out of every five coal workers. Most of these foreign workers in France were Polish, and thus unaffected by any potential ECSC treaty provisions.

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19. Richard T. Griffiths, *The Schuman Plan Negotiations: The Economic Clauses*, in: Klaus Schwabe (ed.), *Die Anfänge des Schuman-Plans, 1950/51*, Baden-Baden 1988, p. 42.

20. Albert Kersten, *A Welcome Surprise? The Netherlands and the Schuman Plan Negotiations*, in: Klaus Schwabe (ed.), *Die Anfänge des Schuman-Plans, 1950/51*, Baden-Baden 1988, p. 296; Daniel Vignes, *La Communauté européenne du charbon et de l’acier: Un exemple d’administration économique internationale*, Liège 1956. Cited in *Maas*, *The Genesis of European Rights*, p. 1013.

21. Emmanuel Comte, “La rupture de 1955 dans la formation du régime européen de migrations,” *Relations internationales*, no. 166 (2016): 137–58. In the 1953 elections, the Italian Communist Party received 22.6% of the vote. Comte argues that proposals to extend the free movement of workers in the 1955 Messina conference that would lead to the Treaty of Rome (as opposed to the negotiations over the earlier Treaty of Paris) were driven primarily by West German rather than Italian negotiators.

*Number and proportion (% of total labour force) of foreign coal workers<sup>22</sup>*

	1950		1951		1952	
Germany	3,243	0.7%	3,500	0.8%	3,796	0.8%
Belgium	55,750	36.4%	70,594	43.4%	70,510	43.7%
France	58,106	20.4%	56,535	20.0%	53,728	19.5%
Saar	135	0.2%	116	0.2%	119	0.2%
Netherlands	4,285	9.1%	3,969	7.8%	3,888	7.2%
Total	121,519	12.2%	134,714	13.2%	132,041	12.8%

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 to the other prospective member states; and 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.<sup>23</sup> The Belgian position was a pragmatic one, more concerned with the fate of its ailing coal and steel industries than the prospect of increased immigration of workers.<sup>24</sup> Indeed, if coal mines were to close, it seemed likely that foreign workers would return to their countries of origin rather than settling permanently. 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 for coal and steel workers.<sup>25</sup> The Italian delegation received strong support from 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.<sup>26</sup> The Italian delegation ultimately succeeded 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

22. Adapted from , table 6, p.54. Cited in *Maas*, *The Genesis of European Rights*. Data for France includes employees. No available data for Luxembourg. The numbers for Italy are negligible.

23. Institut français de l’opinion publique, *Sondages: Revue française de l’opinion publique* 13 (1951); *Raymond Racine*, *Vers une Europe nouvelle par le Plan Schuman*, Neuchâtel 1954; *Jean Monnet*, *Mémoires*, Paris 1976, cited in *Maas*, *The Genesis of European Rights*, p. 1013.

24. *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*, Baden-Baden 1988, pp. 271–84; *Alan S. Milward*, *The Belgian Coal and Steel Industries and the Schuman Plan*, in: Klaus Schwabe (ed.), *Die Anfänge des Schuman-Plans, 1950/51*, Baden-Baden 1988, pp. 437–54.

25. *William Diebold*, *The Schuman Plan: A Study in Economic Cooperation 1950-1959*, New York 1959; *Ranieri*, *Italy and the Schuman Plan Negotiations*, pp. 22–23.

26. European Coal and Steel Community, *Le Traité C.E.C.A. devant les Parlements Nationaux* (Luxembourg: Assemblée Commune, 1958).

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,” thus laying the groundwork for the future free movement of workers.<sup>27</sup>

Despite optimistic assessments immediately following the finalization of Article 69's provisions, the agreement's full implementation would be 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 blocked the entire process by postponing its ratification until June 1957.<sup>28</sup> 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 Italian delegates between 1952 and 1957. Most of the speeches by Italian members of the Common Assembly (the supranational parliament created by the Paris treaty) concerned issues related to migration, in particular the delay in working out Article 69's provisions.<sup>29</sup> 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.”<sup>30</sup> 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,” the political interest shown during the ECSC negotiations persisted in Italy.<sup>31</sup> The delayed introduction of free movement raised such ire among the Italian delegates 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 future Rome treaty. The question of free movement rights was the sole policy issue in a document otherwise 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

27. ECSC treaty article 69, cited in *Maas*, *The Genesis of European Rights*, p. 1020.

28. 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.” 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*, London 1994, p. 175.

29. *Mason*, *The European Coal and Steel Community: Experiment in Supranationalism*, p. 100.

30. *European Coal and Steel Community*, Bulletin from the European Community for Coal and Steel, Luxembourg 1954. Cited in *Maas*, *The Genesis of European Rights*, p. 1017.

31. *Confederazione Italiana Sindacati Lavoratori*, *La politica sociale della Comunità Economica Europea*, Rome 1959, pp. 70–71; *Willis*, *Italy Chooses Europe*. Cited in *Maas*, *The Genesis of European Rights*, p. 1017.

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.”<sup>32</sup> The Common Assembly further proposed to insert into the future Rome 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. The aim of all these proposals was, in the words of Jean Monnet, the “fusion of the European peoples.”<sup>33</sup> The next section briefly traces the political pressures for freer movement of workers forward to the present, demonstrating how the free movement of workers ultimately resulted in a shared citizenship as suggested by postwar thinkers and leaders such as those quoted above.

### From free movement of workers to free movement of citizens

Learning the lessons from the difficult and delayed enactment of the ECSC’s free movement provisions, proponents of freer movement ensured that the Treaty of Rome extended the scope of free movement provisions to all workers (except for those employed in the public service), in the process also recasting the earlier employment provisions as individual rights rather than bilateral agreements between states.<sup>34</sup> The Treaty of Rome gave workers the right to move freely within Community territory to accept employment, to reside in any member state to work, and to continue residing there after having been employed. Though member states could avoid having to implement mobility rights based on public policy, health, or security concerns, these free movement rights were much more extensive and fundamental than those of previous bilateral agreements – and employing the language of rights ensured they would be much more difficult to infringe than simple agreements which could be amended regularly. Bilateral agreements were important in the early years, but the difficult experience of enacting the ECSC provisions demonstrated the need to simplify free movement decisionmaking in the Treaty of Rome.<sup>35</sup> The ECSC treaty had left member states responsible for drafting and implementing free movement provisions, but the Treaty of Rome empowered the Commission – the successor to the High Authority – to make proposals to achieve free movement for workers, rather than relying on member states to do so.

32. *Gerhard Kreyszig*, Révision du Traité instituant la Communauté Européenne du Charbon et de l’Acier, Strasbourg 1958, pp. 24–25. Cited in *Maas*, *The Genesis of European Rights*, p. 1018.

33. Entry in *Diary of Jean Monnet*, 5 August 1956 (“la fusion des peuples européens”) consulted at the archives of the Fondation Jean Monnet pour l’Europe, Lausanne, cited in *Willem Maas*, *The Origins, Evolution, and Political Objectives of EU Citizenship*, *German Law Journal* 15 (2014): 176.

34. The first part of this section expands on *Maas*, *Creating European Citizens*, pages 17–22.

35. *Federico Romero*, *Emigrazione e integrazione europea 1945–1973*, Rome 1991.

The new mobility rights were implemented in three stages. The European Parliamentary Assembly – the successor to the Common Assembly<sup>36</sup> – advocated immediately introducing free movement, claiming that delay would risk “provoking a dangerous disequilibrium between the economic and the social measures being undertaken by the EEC, which would harm the move to speed up economic recovery.”<sup>37</sup> The economic climate was propitious: unemployment in the six member states decreased from 2.8 million to 1.5 million between 1958 and 1964 despite a substantial inflow of non-Community workers, allowing full implementation of free movement for Community workers by 1968, ahead of schedule.<sup>38</sup> Despite the introduction of free movement rights, however, only a small portion of all migration—that of the Italian emigrants after the mid-1960s—was actually governed by the new supranational procedures rather than bilateral agreements.<sup>39</sup> Indeed, within the Community, “the only important movement beyond the phenomenon of frontier workers was that of Italian labor.”<sup>40</sup> High economic growth across most of the Community meant that most member states were relying on increasing numbers of foreign workers, leading to calls for faster implementation of free movement provisions so that Italian workers could move more easily. As a 1960 parliamentary report (the Rubinacci report) noted, since Italy was the only member state with “sufficient reserves of labour to satisfy both its domestic as well as foreign needs. . . it is in the interest of the Community as a whole to adopt measures that would facilitate the employment of Italian labour in the other Community members.”<sup>41</sup> At the same time, the Italian Commissioner Lionello Levi Sandri was confident that the implementation of the Treaty of Rome’s free movement provisions would bring to fruition hopes and endeavours which have for many years past been preparing the ground for the final abandonment of the traditional concept of emigration based on the system of bilateral and multilateral agreements. This system inevitably tended to sacrifice the ideal of non-discrimination against migrant manpower to the varying needs of the receiving countries and would not therefore have been adaptable to the objectives of the Treaty and to the new spirit of European solidarity which is an important element in its structure. For this soli-

36. The European Parliamentary Assembly was renamed European Parliament in 1962.

37. Assemblée parlementaire européenne, “Rapport sur le règlement relatif aux premières mesures pour la réalisation de la libre circulation des travailleurs dans la Communauté” (Rubinacci Report) 1960, p. 9.

38. Cormac O’Grada, *The Vocational Training Policy of the EEC and the Free Movement of Skilled Labour*, *Journal of Common Market Studies* 8 (1969), pp. 79–109; European Council, “Directive 68/360 of 15 October 1968 on the Abolition of Restrictions on Movement and Residence within the Community for Workers of Member States and Their Families”; European Council, “Regulation 1612/68 of 15 October 1968 on Freedom of Movement for Workers within the Community”. Cited in Maas, *Creating European Citizens*, p. 19.

39. Federico Romero, *Migration as an Issue in European Interdependence and Integration: The Case of Italy*, in: Alan S. Milward et al. (eds.), *The Frontier of National Sovereignty: History and Theory, 1945-1992*, London: 1993, p. 34.

40. Altiero Spinelli, *The Eurocrats: Conflict and Crisis in the European Community*, Baltimore 1966, p. 108.

41. European Parliament, “Rapport Sur Le Règlement Relatif Aux Premières Mesures Pour La Réalisation de La Libre Circulation Des Travailleurs Dans La Communauté (Rubinacci Report).”.

parity presupposes the existence of a Community labour market, from which should not be disassociated the series of policy measures laid down in the Treaty for the better use of the Community's human potential, and in which full and absolute equality of treatment will lead to the rapid replacement of the notion of the "emigrant" by that of the "European worker."<sup>42</sup>

After expressing the hope that the concept of emigrant would cede place to the new concept of "European worker" with a positive connotation, Commissioner Levi Sandri continued by arguing that the migrant worker must everywhere feel his European citizenship to be a source of strength and pride. For this, in the last analysis, must and will be the most important political and social result of the liberalization of the labour market: to the extent to which it is attained, we shall all be made to appreciate the effective range of European solidarity and the progress of the idea of unity.<sup>43</sup>

In other words, Levi Sandri argued that European citizenship and the idea of unity would result from free movement rights for workers. In a precursor to present public opinion – where free movement rights continue to be enormously popular across the European Union<sup>44</sup> – free movement rights enjoyed widespread popular support: majorities in all member states favoured being allowed to work wherever they wished in Europe, while allowing workers from other countries to do the same. The highest support was in Italy (78%) while the most opposition was in France (32%). Among workers, support for such rights ranged from a high in Italy (82% in favour, 7% against, 11% did not know) to a low in France (50% in favour, 35% against, 15% did not know). Germany (72%, 9%, 18%), Belgium (69%, 18%, 13%), and the Netherlands (69%, 21%, 10%) were in the middle, while Luxembourg was not surveyed.<sup>45</sup>

The achievement of free movement for workers caused one observer to assert that Community workers were now no longer "foreigners" nor even "*gastarbeiter*" (the German term guest workers, which suggests circular or return migration rather than possible permanence), but had rights to work and would lead to a new form of citizenship.<sup>46</sup> Another observer had made the same point even before full implementation: free movement was "a field in which the citizens of the Six will progressively

42. *Lionello Levi Sandri*, *The Free Movement of Workers in the Countries of the European Economic Community*. Bulletin EC 6/61, 1961, pp. 5–6.

43. *Ibid.*, p. 10.

44. Opinion on free movement is surveyed twice annually in the standard Eurobarometer survey. The most recent survey available as of this writing (published in July 2016) shows that 79% of Europeans support "the free movement of EU citizens who can live, work, study and do business anywhere in the EU" – ranging from a high of 95% in Latvia to a low of 63% in the United Kingdom. Available at <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2130>.

45. *Gallup International*, *Public Opinion and the European Community*, *Journal of Common Market Studies* 2 (1963), pp. 115, 123.

46. *Eberhard Grabitz*, *Europäisches Bürgerrecht zwischen Marktbürgerschaft und Staatsbürgerschaft*, Cologne 1970, p. 7.

be treated as if they had not French or Italian, but Community citizenship.<sup>47</sup> Sharing this hope, the Parliament and the Commission were enthusiastic proponents of prompt implementation. Walter Hallstein, the first president of the European Commission, called the achievement of free movement for workers one of “the most spectacular points in the programme which is to lead to the integration of Europe.” He continued: “On the basis of this success alone, the Community could claim the right to call itself the ‘European Economic and Social Community’. The consequences in terms of constitutional policy are incalculable. Do they point to the beginning of a common European ‘citizenship’?”<sup>48</sup>

Hallstein echoed his Vice-President, Lionello Levi Sandri, the Italian Commissioner who had written in 1968 that free movement of persons “represents something more important and more exacting than the free movement of a factor of production. It represents rather an incipient form—still embryonic and imperfect—of European citizenship.”<sup>49</sup> Altiero Spinelli later explained that the achievement of free movement rights within Europe had been possible because there was such high demand for workers “in the other five countries and in northern Italy as soon to make the flow of Italian workers from the south insufficient and to induce the various countries to open their gates to the immigration of workers from the Iberian peninsula, from Greece, Turkey, and the Maghreb.”<sup>50</sup> Indeed, following the introduction of free movement rights the level of Italian emigration to the other member states actually fell rather than increasing, and never subsequently regained anything approaching its 1965 level.<sup>51</sup> As Italian emigration declined, so did immigration in the other member states: the total volume of Community workers entering each member state had been declining since 1956, except in Italy—where the numbers were negligible but rising—and Germany, whose economy was booming and which replaced France and Belgium as the main destination of Italian emigrants.<sup>52</sup> European rights were necessary to fully achieve the goal of opening Europe’s borders not simply to goods, services, and capital but also to people, but by the time the rights were instituted the most urgent need had passed.

As I have shown elsewhere, support for extending the scope and expanding the content of the rights of migrant European workers ebbed and flowed over the years, from Italian Prime Minister Giulio Andreotti’s 1972 suggestion that “We could as of now decide to establish a European citizenship, in addition to the citizenship which the inhabitants of our countries now possess,” through the 1973 accession of Den-

47. *Uwe W. Kitzinger*, *The Politics and Economics of European Integration: Britain, Europe, and the United States*, vol. Revised (New York: Praeger, 1963), 46.

48. *Walter Hallstein*, *Europe in the Making*, London 1972, pp. 173–74. Hallstein was Commission president from 1958 until 1969.

49. Lionello Levi Sandri, “Free Movement of Workers in the European Community, *Bulletin of the European Communities* 11/68, p. 6.

50. *Spinelli*, *The Eurocrats: Conflict and Crisis in the European Community*, p. 108.

51. *Heather Booth*, *The Migration Process in Britain and West Germany: Two Demographic Studies of Migrant Populations*, Aldershot 1992, p. 19.

52. *Helen S. Feldstein*, *A Study of Transaction and Political Integration: Transnational Labour Flow within the European Economic Community*, *Journal of Common Market Studies* 6 (1967) p. 31.

mark, Ireland, and the UK, which tempered enthusiasm, to increasing support following the accession of Greece followed by Portugal and especially Spain.<sup>53</sup> The citizenship proposals spearheaded by Altiero Spinelli for the Single European Act were not enacted because the member states could not reach agreement, but the Schengen process was started to abolish physical borders within the European space,<sup>54</sup> and the Maastricht Treaty finally enshrined European citizenship in the treaties.

Some questioned whether the Maastricht Treaty really “broke new ground”<sup>55</sup> with the concept of EU citizenship, arguing that Union citizenship was introduced only as a “cynical public relations exercise,” a “symbolic plaything without substantive content”: “citizenship of the Union is not really a citizenship at all, but just some fancy words on a piece of paper” that in any case did not confer any new rights and would remain “an elite preserve.”<sup>56</sup> Legal scholars generally agreed with the position that, even if we “take the entire gamut of rights ... granted under the treaties to European citizens, we would be struck by the poverty of provisions normally considered as political and associated with citizenship.”<sup>57</sup> European policymakers disagree, arguing that a key merit of the “Maastricht Treaty is that, by recognizing the right of Union citizens *inter alia* to move and reside freely in the territory of another Member State, it pointed to a new objective: to extend, without any discrimination, the right of entry and residence to all categories of nationals of Member States.”<sup>58</sup>

53. *Maas*, Creating European Citizens. Especially chapters 2 and 3.

54. The Belgian secretary of state for European affairs affirmed that the ultimate goal of the Schengen agreement was “to abolish completely the physical borders between our countries” and Luxembourg’s minister of foreign affairs said that the agreement marked “a major step forward on the road toward European unity,” directly benefiting the nationals of the signatory states, and “moving them a step closer to what is sometimes referred to as ‘European citizenship’.” Cited in *Willem Maas*, Freedom of Movement Inside ‘Fortress Europe,’ in: Elia Zureik and Mark B. Salter (eds.), *Global Surveillance and Policing: Borders, Security, Identity*, Portland 2005, p. 234. Schengen arguably came about not merely because of economic calculations (though the desire to reap the economic benefits of increased mobility no doubt played a role) but because of the political will to create a Europe with free travel, as exists between US states, or Canadian provinces, or most other within-country travels. For an argument that Schengen was promoted primarily by French president François Mitterand in concert with German chancellor Helmut Kohl, see *Simone Paoli*, France and the origins of Schengen: an interpretation, chapter 15 of this book.

55. *Richard Corbett*, *The European Parliament’s Role in Closer EU Integration*, Houndmills 1998, p. 327. Corbett argues that the Maastricht Treaty “broke new ground with the concept of Union citizenship”.

56. J. H. H. Weiler et al., *Certain Rectangular Problems of European Integration. Working Paper WP-24* (European Parliament, Directorate General for Research, 1996), 20; *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*, London 1995, p. 82; *Elsbeth Guild*, The Legal Framework of Citizenship of the European Union, in: David Cesarani and Mary Fulbrook (eds.), *Citizenship, Nationality and Migration in Europe*, New York 1996, p. 30; *Mathew Horsman and Andrew Marshall*, *After the Nation-State: Citizens, Tribalism and the New World Disorder*, Hammersmith, London 1994, p. 133.

57. *J. H. H. Weiler*, *The Constitution of Europe*, Cambridge 1999, p. 326.

58. *European Commission*, Report of the High Level Panel on the Free Movement of Persons (Veil Report), Luxembourg 1998.

### European Citizenship and Comparative Multilevel Citizenship

Despite common assertions that European Union citizenship is *sui generis* and unique, comparative analysis demonstrates that it is but one form of supranational or multi-level citizenship, part of a general phenomenon of divided and overlapping sovereignties.<sup>59</sup> As discussed above, European citizenship grants the rights to live and work freely within the territory of the member states but there is continual attention to limits imposed on these rights. Similarly, national constitutions in other democratic systems usually guarantee rights to internal free movement but often also limit these rights: Germany's Basic Law declares that all Germans shall have the right to move freely throughout the federal territory, but specifies that this right may be restricted if the absence of adequate means of support would result in a particular burden for the community; Canada's Charter of Rights and Freedoms similarly declares that Canadians have the right to move to and take up residence in any province but specifies that this right is subject to any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services; and India's constitution states that all citizens have the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India, but also subordinates these rights to "reasonable restrictions."<sup>60</sup> The question then becomes who decides what constitutes a reasonable restriction.

Consider the conclusion that "Governments will eliminate...any residency-based policies or practices which constrain access to post-secondary education, training, health and social services and social assistance unless they can be demonstrated to be reasonable" – a statement that sounds as if it were written by the European Commission, admonishing member states to simplify freedom of movement. In fact, it is from the 1999 intergovernmental negotiations on Canada's social union, which also concluded that "the freedom of movement of Canadians to pursue opportunities anywhere in Canada is an essential element of Canadian citizenship" which, except for the reference to Canadians, similarly sounds like a statement by the European Commission or Court.<sup>61</sup> Those intergovernmental agreements developed from a conflict between Canada's federal government and several of its provinces concerning migration, both internal and external. Only days after the 1995 Quebec referendum (in which Quebec voters narrowly voted not to seek independence), the government of Canada's western-most province of British Columbia imposed a three-month residency requirement on Canadians entering the province before they were eligible to receive social assistance. Successive British Columbia governments had complained of social dumping; in a poor fiscal climate exacerbated by funding cuts from the federal government, provinces such as Ontario (Canada's largest province by popu-

59. *Willem Maas*, *Multilevel Citizenship*, forthcoming in Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, Maarten Vink, eds., *The Oxford Handbook of Citizenship* (Oxford University Press, 2017).

60. *Willem Maas*, *Free Movement and Discrimination: Evidence from Europe, the United States, and Canada*, *European Journal of Migration and Law* 15 (2013), pp. 91–110.

61. *Ibid.*

lation) and Alberta (bordering on British Columbia and hence relatively easy to move from; particularly as Alberta's Premier boasted about providing one-way tickets to "welfare bums"), were reducing their social benefits, resulting in an influx of people claiming social assistance in British Columbia. This direct challenge to free movement in Canada was ultimately resolved in 1997 by an agreement between the federal and British Columbia governments in which the federal government agreed to compensate British Columbia for "the special pressures faced by B.C. as a result of internal migration," as well as providing British Columbia with extra resources to help integrate new immigrants from abroad.<sup>62</sup>

In the United States, too, questions of citizenship and internal migration remain salient: the 1999 United States Supreme Court decision in *Saenz v. Roe*, involving a mother receiving social assistance who moved to California but was initially denied continuation of her benefits, reaffirms federal rather than state jurisdiction over citizenship and social rights; but, in dissent, Chief Justice Rehnquist joined by Justice Thomas opined that the "right to travel and the right to state citizenship are distinct, non-reciprocal, and not a component of the other. This case is only about the right to immediately enjoy all the privileges of being a California citizen versus the State's ability to test the good faith assertion of the right."<sup>63</sup> This relatively recent example—there are others, such as the efforts of cities such as New York and San Francisco and states such as Hawaii to encourage US citizen social welfare recipients to move to other parts of the US—recalls earlier contestation over internal migration. For example, during the Great Depression many US states maintained strict vagrancy laws and required long periods of residence before which US citizens moving from other parts of the country could qualify for social assistance; in 1936, Los Angeles Police Chief James Edgar Davis even set up a border patrol (dubbed the "bum blockade") of over 100 police officers stationed at sixteen checkpoints along the California border, which Davis promised would stem the flow of poor families from Oklahoma and other Dust Bowl states, saving California millions of dollars in welfare payments and criminal prosecutions.<sup>64</sup> California's 1937 "anti-Okie" amendment to its welfare law (targeted at poor American migrants from Oklahoma, Kansas, Colorado, Texas, Arkansas, Missouri, New Mexico, and elsewhere seeking a better life in California) prompted an appeal to the Supreme Court, which ultimately ruled the amendment unconstitutional. Writing for the majority, Justice Jackson (who would later become the chief prosecutor at the Nuremberg trials) wrote that the effect of the California law would be that "those who were stigmatized by a State as indigents, paupers, or vagabonds [would] be relegated to an inferior class of citizenship. It would prevent a citizen, because he was poor, from seeking new horizons in other states. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the

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62. Ibid.

63. *Saenz v. Roe* 526 U.S. 489 (1999).

64. *Elizabeth McCormick*, The Oklahoma Taxpayer and Citizen Protection Act: Blowing Off Steam or Setting Wildfires, *Georgetown Immigration Law Journal* 23 (2009), pp. 293–363.

right of national citizenship, a serious impairment of the principles of equality.”<sup>65</sup> Despite this ringing endorsement of federal citizenship, emerging scholarship demonstrating that, like debates over immigration and civil rights, conflicts over internal migration raise questions about what rights should attach to national citizenship and “the relationship between local and national citizenship.”<sup>66</sup> Meanwhile, the legal enforcement of the right to internal migration in the United States remains tenuous: “After over 200 years of decisions, it is clear that the Court generally supports the right to travel, but cannot agree on why, or under what conditions it can be curtailed.”<sup>67</sup>

The point of these comparative examples is to show that the supremacy of central/federal/EU over local/provincial/state/member state citizenship remains uncertain and open to political contestation. The political dynamics surrounding migration, both internal and external, are not *sui generis* or unique in Europe but can fruitfully be compared with similar dynamics in other multilevel political systems.<sup>68</sup> One result of such comparison is to demonstrate that European migration policies in the postwar period can indeed be understood only within the context of European integration.

### Conclusion: Quandaries of Citizenship and Free Movement

By gradually substituting individual rights based on a common citizenship for what had previously been bilateral and ad hoc arrangements to manage migration between European states, Europe’s political leaders created a new constitutional category: the European citizen, with rights that member states cannot infringe except under very limited circumstances. Though perhaps continuing to be seen as largely symbolic in some aspects,<sup>69</sup> the free movement provisions of European citizenship are enforced by supranational institutions with real authority and at least a modicum of bureaucratic capacity.<sup>70</sup> Attempting to further develop the concept of EU citizenship by creating European citizens and encouraging them to use their rights is a role undertaken by the European Commission and the European Parliament, undergirded by the Court of Justice, which has over the years also promoted an expansive reading of European rights. The most notable current formulation, repeated time and again with

65. *Edwards v. California* 314 U.S. 160 (1941), at 181-3.

66. *Elisa M. Alvarez Minoff*, *The Age of Internal Migration: Destitute Migrants, Liberal Reformers, and the Transformation of American Citizenship, 1930-1972*, book proposal on file with author, 2014.

67. *Matthew Longo*, *Right of Way? Defining the Scope of Freedom of Movement within Democratic Societies*, in: Willem Maas (ed.), *Democratic Citizenship and the Free Movement of People*, Leiden 2013, pp. 31–56.

68. *Willem Maas*, (ed.), *Multilevel Citizenship*, Philadelphia 2013.

69. *Willem Maas*, *Another Piece of Europe in Your Pocket: The European Health Insurance Card*, in: Colin J. Bennett and David Lyon (eds.), *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective*, New York 2008.

70. *Willem Maas*, *Equality and the Free Movement of People: Citizenship and Internal Migration*, in: Willem Maas (ed.), *Democratic Citizenship and the Free Movement of People*, Leiden 2013.

the same wording in a series of Court judgments since 2001, is that “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.”<sup>71</sup>

There is debate about how much of this is rhetoric and how much is not, underlining a potential or actual move away from the common assumption that only unified, territorial nation-states can provide the solidarity and social citizenship necessary for redistributing resources – a debate that touches on EU citizenship as well as nascent efforts at creating similar supranational efforts elsewhere, such as South America.<sup>72</sup> Let me suggest that European citizenship still often falls short as a “fundamental status,” given continuing discrimination against European citizens not only by individuals and groups,<sup>73</sup> but also by governments, most notably toward Roma and other “undesirable” European citizens.<sup>74</sup> Furthermore, despite the rise of European citizenship, immigrants continue to migrate to national polities and become European largely by virtue of incorporation into national states.<sup>75</sup> This remains true even though we can identify a Europeanization of citizenship: treaty language and jurisprudence safeguards the ability of member states to exclude individuals despite shared EU citizenship, but member state competence concerning citizenship must be exercised in accordance with the treaties and even member state decisions about naturalization and denaturalization are amenable to judicial review carried out in the light of EU law.<sup>76</sup> Balancing the rights of individual European citizens to move, consume services, or find employment or housing across the entire territory of the EU on the one hand, with the desire on the other hand of member state governments to maintain some degree of preferential treatment for their own citizens, will distinguish the politics of EU rights for the foreseeable future.<sup>77</sup>

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71. *Grzelczyk*, case C-184/99, ECR 2001 I-06193 (20 September 2001).

72. *Willem Maas*, *Varieties of Multilevel Citizenship*, in: Willem Maas (ed.), *Multilevel Citizenship*, Philadelphia 2013, p. 5; *Willem Maas*, *Trade, Regional Integration, and Free Movement of People*, in: Joaquín Roy (ed.), *A New Atlantic Community: The European Union, the US and Latin America*, Miami 2015, pp. 111–21.

73. *Michael Johns*, *Under-Appreciated, Under-Employed and Potentially Unwelcome: The Long-Term Future of Polish Migrants in Ireland and Britain*, in: Willem Maas (ed.), *Democratic Citizenship and the Free Movement of People*, Leiden 2013, pp. 91–113.

74. *Jacqueline Gehring*, *Free Movement for Some: The Treatment of the Roma after the European Union’s Eastern Expansion*, in: Willem Maas (ed.), *Democratic Citizenship and the Free Movement of People*, Leiden 2013, pp. 143–74.

75. *Willem Maas*, *Migrants, States, and EU Citizenship’s Unfulfilled Promise*, *Citizenship Studies* 12 (2008), pp. 583–95.

76. *Willem Maas*, *European Governance of Citizenship and Nationality*, *Journal of Contemporary European Research* 12, no. 1 (2016), pp. 532–551.

77. *Maas*, *Equality and the Free Movement of People: Citizenship and Internal Migration*.