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Introduction

THE GUARANTEE OF free movement in Europe derives its name from a pastoral village in Luxembourg where vineyards cover the rolling hillsides and the remains of a castle dating from the medieval era still stand. The village, Schengen, lies on the banks of the Moselle River, at the tri-point border where France and Germany touch Luxembourg—a place of apt symbolism for the abolition of borders among European countries.¹ There, as the twentieth century drew to a close, the signing of a multilateral treaty affirmed a commitment to create a cosmopolitan European territory, an area where people and goods would be free to move across national frontiers without hindrance, a Europe without borders.

Schengen was the name Europeans gave to this territory of free movement. So unusual was its creation that the European Commission sought to clarify, in a factsheet explaining the value of the “Free Movement of People,” that Schengen was not a new member of the European Union but a place that had been founded as “an area of document-free circulation.” What the factsheet did not delineate were the limits of free movement—how undocumented foreigners were barred from circulating freely in Schengen. But it gave notice that a transnational system of surveillance operated to track “suspect persons” in this borderless area.²

Acclaimed as a symbol of a united Europe, the Schengen treaty signed in 1985 brought together five countries—France, West Germany, Luxembourg, Belgium, and the Netherlands—in an intergovernmental agreement to dismantle their internal borders. The treaty

[1]

set forth the guarantee of free movement, promoting economic and social union by lifting barriers against the flow of goods and people across the frontiers of Schengen. The preamble of the treaty declared that the “ever closer union of the peoples of the Member States of the European Communities should find its expression in the freedom to cross internal borders for all nationals of the Member States and in the free movement of goods and services.”³ At once, the Schengen treaty extended the principles of free market exchange to the border crossing of people and restricted the free movement of persons to Europeans. The critical word was “nationals.”

So closely is Schengen tied to a triumphal account of European union that the birth pangs of the project of free movement have been all but obscured. Formed at the twilight of the Cold War, Schengen appeared to embody the values of liberal internationalism, the promise of a European community of nations where people, goods, capital, and information all would circulate freely.⁴ The “spirit of Schengen” entered the language of international politics.⁵ The states that brokered the treaty proposed Schengen as a geopolitical model of European freedom, a barrier “against all totalitarianisms.”⁶ Schengen is now so interwoven into the fabric of European law that it requires an endeavor of historical recovery to understand the perplexities of the guarantee of free movement of persons at the time of its emergence.⁷

This book is the first to undertake that task; it explores the genesis of Schengen’s free movement guarantee and the conflict over its boundaries. It traces how the free movement of persons developed as a concept linked to the market but distinct from economic life, a concept that expressed aspirations for European citizens’ rights but that took on new meaning against the backdrop of decolonization and the burgeoning human rights discourse of the postwar era.⁸ The account moves from the negotiating table at European summits to the judge’s dais in courts of law to the street protests of undocumented immigrants who laid claim to the right of free movement reserved for nationals within the Schengen area. In exploring origins, this book is not an account of Schengen once the treaty came fully into force, in 1995, and thereafter became joined to European Union law, as the dismantling of borders deepened the dilemmas posed by the bloc’s eastward expansion. Nor is this book about the

refugee crisis sweeping Europe in the twenty-first century. Such topics have been ably examined by others: journalists, economists, and political scientists.⁹ Yet to tell the story of a cosmopolitan right of free movement casts new light on Schengen's significance in the making of the European Union.¹⁰ No less, it reveals how Schengen became a site of conflict over the guarantee of free movement. It recasts understanding of migration and globalization, as well as of citizenship and human rights.¹¹

Indisputably, Schengen opened a new chapter in the globalization of economic exchange by eliminating border controls within Europe. It advanced the achievement of a single market for goods, capital, labor, and services inaugurated by the Rome Treaty of 1957, which founded the European Economic Community that formed the basis of the European Union.¹² It expressed the aspirations of ascendant neoliberalism in removing barriers to the operation of the free market.¹³ At the same time, Schengen made concrete a political ideal of democratic civic solidarity among the continent's peoples that France's president, François Mitterrand, christened "Citizens' Europe."¹⁴ West Germany's chancellor, Helmut Kohl, welcomed the "ever closer union of European peoples" that became enshrined in the Schengen treaty.¹⁵

But Schengen's crucial innovation was to classify the bearers of transnational freedom of movement simply as persons—not as economic actors. That shift, I argue, marked a turning point in the European development of free movement, giving a humanist cast to a market paradigm. The shift would amplify a form of personal liberty entailing the "power of locomotion," in the classic statement of Sir William Blackstone on fundamental rights, "of changing situation, or moving one's person to whatsoever place one's own inclination may direct."¹⁶ Such liberty would also prompt new forms of state surveillance, heightening conflict over the right of border crossing. For undocumented migrants, free movement lay at the heart of the search for recognition. In the words of a leader of that search, Madjiguène Cissé, a Senegalese woman who sought to live in Paris, every person possessed the right "to travel, to migrate, to circulate, to receive and be received."¹⁷

Under the Schengen treaty, all "the peoples" who counted as nationals of European Community states became free to traverse

the internal borders of the Schengen area. This capaciousness differed from the terms of the Rome Treaty, which predicated unchecked border crossing on economic activity pursued within a common market, allowing free movement only for lucrative purposes, such as employment—and only to economic actors, such as “workers.”¹⁸ It also differed from the 1948 Universal Declaration of Human Rights, which safeguarded movement within the territory of a single nation, along with the right to leave and return to one’s country, provisions echoed by a 1963 protocol to the European Convention on Human Rights.¹⁹ Conceptually and geographically, therefore, Schengen transformed the principle of free movement, extending it from the arena of the market and the area of the nation to the transnational space of Citizens’ Europe. That shift in meaning gave deeper legitimacy to economic integration by lodging the utility of the internal market within the flourishing of a cosmopolitan European community.²⁰

By no means, however, did Schengen envision unrestricted free movement. The treaty’s guarantees were at once expansive and exclusionary: expansive in applying to people, but exclusionary in including only European nationals. The shift from a purely economic to a humanist paradigm of free movement was restricted by citizenship. The liberty of moving one’s person inside a Europe without borders would depend on belonging to a European state.²¹ From the outset, the vision of cross-border free movement was hedged by alarm about foreign migrants; the exclusionary logic appeared in Schengen’s earliest blueprints, as the treaty-makers laid the ground rules for detecting non-Europeans and compiled lists of countries posing immigration risks, whose peoples they termed “undesirables.”²² Thus was launched a security regime aimed at fortifying Schengen’s external borders, blocking illegal immigration, and tracking the movement of foreign nationals. Implementing free movement gave rise to new modes of surveillance—a computerized Schengen information system used to issue alerts on people and goods—that augmented the power of member states and inter-governmental agencies to prevent the border crossing of migrants classified as “aliens.”²³ With this surveillance system, Schengen also provided a model for the European community, spurring the development of a transnational policing infrastructure, including

the European Union Agency for Law Enforcement Cooperation, known as Europol, and the European Border and Coast Guard Agency, known as Frontex.²⁴

As Schengen widened the ambit of free movement, then, it gave new force to the exclusion of nonnationals of European countries. The treaty required the Schengen states to harmonize immigration restrictions and act jointly to police the common territory and adopt rules distinguishing between Europeans and non-Europeans.²⁵ And as the status of foreign migrants grew more precarious, such measures became a catalyst for the uprising of Europe's undocumented denizens who called themselves *sans-papiers*—"without papers." As the Schengen treaty took effect, the *sans-papiers* movement arose in France, and spread across Europe, shaped by colonialism's afterlives and formed by refugees, asylum-seekers, exiles, and workers of all kinds deemed alien—immigrants from countries mostly in West Africa and the Maghreb.²⁶ The *sans-papiers* refused to be categorized as an alien presence within the Schengen area, claiming free movement as a human right—a right attached neither to citizenship nor to the market. The *sans-papiers* mobilization also forms part of Schengen's history, a countermovement to the nationalism that would intensify with the rise of the Great Replacement narrative—*Le Grand Remplacement*—that conjured fears of immigrants of color overrunning the European community.²⁷

The plan for Schengen came into being slowly, developing over the course of more than a decade: from a European Council meeting in Fontainebleau in 1984, which set the stage for the drafting of the Schengen treaty a year later; to the adoption in 1990 of a convention implementing the treaty, which took full effect in 1995; to the signing of the Treaty of Amsterdam in 1997, which incorporated Schengen into European Union law, entering into force two years later. In 1999, the European Parliament termed Schengen an "experimental garden" for all of Europe.²⁸

Yet the Schengen area has never been coextensive with the European Union or with its forerunner, the European Community.²⁹ Borders came down first among the five countries that framed the treaty. Today, the area includes twenty-five of the twenty-seven European Union members, encompassing more than 400 million people and twenty-nine European nations, extending from Portugal

and Spain to Romania, Poland, and Finland—across a territory that was divided by the Iron Curtain at the time of Schengen’s founding.³⁰ According to the European Parliament, Schengen was the “key milestone in establishing an internal market with free movement of persons.”³¹

Schengen, however, has drawn less attention from historians than have other landmarks of European economic and political integration, from the founding of the European Coal and Steel Community in 1952 to the accession of former Eastern Bloc states to the European Union, starting in 2004.³² The making of Schengen receives only glancing mention in leading scholarship on the European Union, with stress on the economic dividends to member states.³³ Nor is the origin of Schengen’s fraught guarantee of free movement explored in depth in pathbreaking studies that trace the long roots of European border rules, illustrate the significance of national security in European planning, probe the challenges of multiculturalism, examine the uncertainties of democracy, and place migration at the center of Europe’s history since the Second World War.³⁴ Summarily, the limit of the guarantee is captured in *Postwar*, Tony Judt’s grand synthesis. “The Schengen Treaty was a boon for the citizens of participating states, who now moved unhindered across open borders between sovereign states,” Judt wrote. “But residents of countries outside the Schengen club were obliged to queue—quite literally—for admission.”³⁵ What remains unexamined is how that limit became defined—how arguments over state sovereignty and national security and individual rights pervaded the prolonged work of treaty-making—and how Schengen’s pairing of freedom and exclusion became contested.

For the most part, the study of Schengen has focused not on origins but on the operation of the treaty, and has been the province of political scientists, sociologists, geographers, criminologists, and international relations theorists.³⁶ Attention to the consequences of opening borders has led to influential yet disparate conclusions—chief among them that Schengen represents a mainstay of internationalism, an instrument of capital accumulation in Europe’s internal market, a cornerstone of a repressive “fortress Europe,” and an impetus for *Sicherheits hysterie*, or “security hysteria.”³⁷ But

Schengen makes no appearance in leading works on economic globalization that address the outcomes of European integration.³⁸

The inception of free movement in Schengen's creation is therefore one of the great unstudied projects in postwar European history.³⁹ My aim in exploring that project is to reveal the cruel anomalies of human movement in a world where capital and commodities travel globally with far less restraint and where national citizenship is an enduring precondition for the exercise of fundamental rights.⁴⁰ This Schengen story sets the development of the treaty, a complex administrative instrument, against the backdrop of global events—the fall of the Berlin Wall, an increase in migration flows across the Mediterranean world, intensifying fear of international terrorism, cycles of economic recession and recovery, and the legacies of anti-colonialism. All shaped the terms of free movement. Revolutionary change in Europe in 1989 became a turning point in Schengen's emergence, opening new frontiers for migration across Europe. The waning of the Cold War meant that the guarantee of free movement would apply in a world of newly permeable borders. How the tearing down of the Berlin Wall figured in Schengen's creation has been an untold story.

This book is made possible by the opening of government archives that hold the history of Schengen's creation. Diplomatic memoranda, confidential annexes, draft agreements, meeting notes, and private correspondence disclose the treaty-making: the long, often rancorous debate over the terms of free movement, as well as the negotiation of issues of sovereignty, transnationalism, and the rule of law. Because of regulations barring access to many diplomatic records for thirty years, much of this paperwork, archived at the Council of the European Union and the European Commission as well as at state agencies, has not previously been examined. Evidence of the experience of the *sans-papiers* is harder to discover. But litigation in European courts and newspaper accounts of street protests and memoirs written by *sans-papiers* leaders offer a vantage point on the conflict over the principles of freedom and exclusion inscribed in the Schengen treaty.

Many of the actors in this account were Schengen's architects—foreign ministers, heads of state, and local administrators, with

a prominent role played by officials from France and West Germany, the historic adversaries that led the treaty-making. Others were influential Euroskeptics—legislators, philosophers, historians, lawyers, and journalists. Some made a living by moving goods across Europe’s internal market—truckers and shippers. And others were foreigners seeking to exercise free movement in the Schengen area—among them spokespersons for the *sans-papiers*, migrants who challenged the boundaries of citizenship and criticized European integration as a neocolonial enterprise. All became brokers of ideas that crossed borders.

To study Schengen is to take seriously the notion that it was, as the treaty-makers said, “a laboratory.” But what sort of laboratory? In the words of a Dutch state secretary for foreign affairs, Pieter Dankert, it was a laboratory “for the enterprise ‘free movement of persons.’”⁴¹ To Schengen’s exponents, the corps of diplomats and their legislative supporters, the dismantling of internal borders would transform a continent devastated by world war into an area of liberty, democratic pluralism, and Pan-European peace.⁴² That cosmopolitanism remained joined to the world of the market. As this book seeks to show, the laboratory of free movement always was meant to promote trade, giving moral legitimacy to the development of an unfettered European single market. But only nationals of Citizens’ Europe were to cross borders as freely as capital and goods. As this book seeks also to show, Schengen was a laboratory of free movement always meant to join Euro-nationalist rules of exclusion with neoliberal principles of market freedom. And from that laboratory emerged both a transnational security apparatus protecting Schengen’s boundaries and the unrest of undocumented migrants claiming free movement as a human right.

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