

**Territory, Rights and Mobility: Theorising the
citizenship/migration nexus in the context of
Europeanisation**

by

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Abstract

The overarching objective of this dissertation is to conceptualise the spatiality of citizenship, which is approached here primarily in terms of territory and mobility, and their incorporation in the juridico-political system of distributing rights, through an exposure to its various others – especially to mobile subjectivity. In particular, it examines the changing patterns of territorialising space, distributing rights and regulating mobility in the intertwined politics of citizenship and that of migration in the EU. Building on the approach of critical citizenship studies, it assumes that the practices and discourses of othering have been constituent of the very foundation of modern citizenship, and understands citizenship at the interface between the governing structure and the acts of the governed that rupture, resist or appropriate it. In this framework, the thesis first of all looks at the spatial configurations of national citizenship by analysing the trajectories in which the interrelated concepts of territory, rights and mobility participate, and are reshaped, in the project of making the citizen and her various others.

The main part of the thesis investigates the ways in which the interrelations between these spatial dimensions of citizenship are reconfigured in a multiplied citizenship-migration nexus under the process of Europeanisation. It first looks at two different notions of territory – a statist one and a networked one – that are visible in the official discourses, yet it highlights the fact that the technologies that are supposed to produce each type of territoriality often converge. Thus I read the politics of Eurostar and the Channel Tunnel project as one that involves competing patterns of territoriality and manifests the dynamics between facilitated and obstructed mobilities at a moving border. However, the permeability of this border is partly enabled by the uneven and ambiguous configurations of Schengenland itself, and draws attention to the excessive forms of mobility that challenge and break with the official formulation of free movement rights. Thus we turn to the intricate relationship between mobility and citizenship in Europe following our dialogical approach: focusing on the

rationalities implied in the government of free movement on one hand, and the paths through which to redefine the right to mobility on the other. In the light of Rancière's reconceptualisation of rights and democracy, I present two examples each employing different strategies to politicise and mobilise mobility: one is through appealing to the universal, the other legitimating the particular. The politics of mobility is also seen as an endeavour of producing alternative spaces against the territorialised state-centric space to which the imagination of citizenship is usually limited. In discussing a possible global ethics, however, I argue that the dynamics between rights and citizenship are not bound to an emancipatory end. While the juridical system of differentiated rights is constantly challenged by those who claim that they have the rights they are denied to, once the 'achievements' of rights-claims are re-appropriated in the juridico-political form of citizenship, this form continues to reproduce boundaries and differential inclusions which shall again be contested. A self-critical global ethics therefore should be conscious about the imperfectability of citizenship and the impossibility of community.

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List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
CBPs	Common Basic Principles for Immigrant Integration Policy
CEAS	Common European Asylum System
CEC	Commission of the European Communities
ICRSE	International Committee on the Rights of Sex Workers in Europe
CMBP	Coordinamento Migranti Bologna e Provincia
EC	European Communities
ECHR	European Convention on Human Rights
ECSC	European Coal and Steel Community
EEC	European Economic Community
EP	European Parliament
ESDP	European Spatial Development Perspective
EU	European Union
GAMM	Global Approach to Migration and Mobility
ICTs	intra-corporate transferees
IR	International Relations
JHA	Justice and Home Affairs
QMV	qualified majority voting
SEA	Single European Act
SIS	Schengen Information System
SIS II	the second generation Schengen Information System
TA2020	Territorial Agenda 2020
TCN	third-country national
TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEN-T	Trans-European Transport Networks
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TREVI	Terrorisme, Radicalisme, Extremisme et Violence Internationale
UKBA	UK Border Agency
VIS	Visa Information System

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Introduction

Why, a dog, whenever he sees a stranger, is angry; when an acquaintance, he welcomes him, although the one has never done him any harm, nor the other any good. Did this never strike you as curious?

– Plato, *Republic*

This project is situated in the wider debates around the impacts of transnational migration and regional integration on the concept of citizenship which is hitherto centred on, if not conflated with, nationhood. These developments have rendered the supposed borderline between the citizen and its many others – the foreigner, the stranger, the migrant and so forth – increasingly difficult to maintain on one hand, and have driven the sovereign states and supranational institutions to invent new modalities of bordering on the other. However, while the problematic of the citizen's others may appear more pronounced than ever in an age of globalisation, this thesis starts from the assumption that the practices and discourses of othering have been constituent of the very foundation of modern citizenship (Balibar, 2004). To elaborate on this, I approach the spatial construction of citizenship through the conceptual lens of territory, rights and mobility – that is to say, on the territorialisation of space and the inscription of human mobility in the regime of distributing and differentiating rights. An historical and theoretical account of the forming of *the national* is both necessary and rewarding for understanding any transformations citizenship is, or might be, undergoing under new circumstances of the transnational and the postnational.

One of the most comprehensive transformations in this regard is brought about by the European Union (EU), which is widely seen as a laboratory for transnational or postnational forms of citizenship (e.g. Olsen, 2012; Shaw, 1998; Soysal, 1994; Habermas, 1996). Indeed, despite different understandings about the nature of the project of European integration, there is little doubt that the

conceptual and institutional construction of EU citizenship as articulated in the official treaties and interpreted in the judicial practice of the European Court of Justice (ECJ) can no longer be understood within the paradigm of the nation state. However, as a legal status Union citizenship remains a supplement to nationality of a member state, and the former dichotomy between citizens and aliens has become multiplied and fragmented, featuring an increasingly complex system of 'civic stratifications with differential access to civil, economic and social rights depending on mode of entry, residence and employment' (Kofman 2005: 453). While migration does set limits to a cosmopolitan vision of EU citizenship, the phrase 'the citizenship/migration nexus' employed in the title does not indicate a 'versus' relationship that views the problems 'caused by' or related to migration as external to (EU) citizenship; rather, it is intended to highlight the fact that the government of migration has been constitutive of the government of EU citizenship on one hand, and the political struggles around migration challenge and enact citizenship on the other. Against this background, the thesis sets out to examine the spatial, juridical and political configurations of EU citizenship, both as normative expectations and institutional construction, vis-à-vis the forms of otherness therein produced. More importantly, this immediately calls for coming to term with the various modes of contestations within and against this citizenship regime through traversing borders, claiming rights and exercising mobility. I do not, however, aim to formulate a more democratic or cosmopolitan European citizenship through these investigations. Rather, Europe is taken as a method, among other methods, through which it is possible to reshape a theory of citizenship from its borders, and in the terrain constantly (re)opened by the conflicts and exchanges between the governing structure and the moves against it.

Questions, theoretical foundations and methods

The overarching task set forth here is to theorise the spatiality of citizenship, which is approached here primarily in terms of *territory* and *mobility*, as well as their incorporation in the juridico-political system of distributing *rights*, through an exposure to its various others – especially to mobile subjectivity. This question is not only to be dealt with in the national (in theory)

and European (in practice) contexts, but also to be reconsidered in the context of a self-critical cosmopolitanism. Hence the first question entailed by this task is to comprehend the spatial configurations of national citizenship that spell out the persistence of the hegemonic link between citizenry and nationality. For so doing, I survey the trajectories in which the interrelated concepts of territory, rights and mobility constitute the project of making citizens and the figures of the non-citizen.

The second question, which informs the main part of the thesis, is to investigate the ways in which the interrelations between these spatial dimensions of citizenship are reconfigured in a multiplied, fragmented and 'postnational' citizenship-migration nexus under the process of Europeanisation. At stake is certainly the concept of EU citizenship, yet it is required to look not only at the institutional formulation of this novel form of membership, but also at the bordering practice, the further differentiated rights regime and the mechanisms of filtering mobility that are central to the construction of the 'European citizen' and her many others. This question also inherently involves accounting for the struggles that challenge, escape *or* appropriate the official formulation of the citizen-migrant dichotomy, and asks how they could be in turn considered as enacting citizenship in their own right. The last objective of this thesis is to reflect on a global ethics in the light of a number of critical writings on political cosmopolitanism and radical democracy. In particular, it concerns the positing of (territorial) space and movement in a theory of citizenship that thinks from and through borders.

The theoretical sources of the project are drawn primarily from two correlated fields: critical citizenship studies and the poststructuralism school in international relations (IR) theory. Two dialectical themes that have been developed in the former field, which will be reviewed in detail in Chapter 1, are crucial to the theoretical foundation of this project. One is on the mutual constitution of citizenship, or modern subjectivity, and its alterity (Isin, 2002; Odysseos, 2007); the other is on the dynamics between citizenship as a set of governmental strategies that produce exclusions and differentiated rights

(Hindess, 2000; Kofman, 2003) on one hand and the 'acts of citizenship' (Isin & Nielson 2008) through which non-members stage themselves as political beings on the other (Holston, 2008; McNevin, 2006, 2009; Sassen, 2002). The relational approach, nevertheless, does not disregard the institutional formulation of citizenship as a status of state membership and a set of formal rights; it instead views such formulation in non-static, dynamic, and even paradoxical ways. As Sassen has pointed out, while formal citizenship always produces and relies on patterns of exclusion, it is the practices of the excluded or differentially positioned groups that forced changes in the juridical and institutional scope of citizenship (2006).

Poststructuralism also provides us with a rich set of theoretical and methodological tools through which to rethink the nature of political community and the dialectics of insiders and outsiders. While poststructuralist scholarship seeks to deconstruct and historicise such concepts as sovereignty, boundaries and identity (e.g. Albert, Jacobson & Lapid, 2001; Dillon, 1995; Shapiro, 1996; Walker, 1993), as Walker reminds us, the point would be lost in the controversies about whether the principle of state sovereignty, which predominates our understanding of community and subjectivity, is 'here forever' or is 'about to disappear into some global cosmopolis'. The real question is instead 'the degree to which the modernist resolution of space-time relations' expressed by sovereign statehood 'offers a plausible account of contemporary political practices' (1993: 14). In a similar vein, the thesis is not primarily concerned with normative arguments either endorsing open borders (e.g. Carens, 1987, 1996; Abizadeh, 2006) or justifying democratic exclusions (Benhabib, 2007; Meilaender, 2001). Rather, the crucial task here is to comprehend the meanings and scopes of citizenship that have never solely occurred in the absolute space of sovereign states and never been fully expressed through institutional settings. And the nonsovereign and contingent manner in which 'citizenship is being experienced vis-à-vis migration' (Mhurchú, 2010: 373) is a vintage point that would allow us to do so. Nevertheless, this does not preclude an engagement with the 'global ethics' explored in the scholarly work that speaks of a political or democratic cosmopolitanism (e.g. Honig, 2001; Jabri, 2011).

Indeed, rethinking the space of citizenship from and through its borders immediately evokes an ethics in contrast to the 'sovereign-centred territorialising ethics' (Ashley & Walker, 1990: 394). This 'ethics of freedom', as Ashley and Walker call it, does not negate the sovereign-centred ethical discourses, but rather undertakes 'a patient work of questioning and listening that makes it possible for discourse to cross the territorial boundaries' that are supposedly exclusionary (ibid. 395). Thus we shall revisit the boundary problem emerged in the debates of normative democratic theory in order to 'question and listen' to the inclusivist response to this problem provided by some representative cosmopolitan writers.

Although the thesis is mainly theory-oriented, empirical studies will be involved in dealing with the second research question described above. In order to explore the discourses of an 'EU territory' and the discursive practice that formulates a 'right to mobility' at the EU level, I use the strand of discourse analysis that is particularly influenced by governmentality studies and poststructuralist methodology. As Walters and Haahr note, governmentality focuses on 'the materiality of discourse' and draws attentions to the materials such as charts, diagrams and reports through which 'the world is made visible' (2005: 7). Laclau and Mouffe reject the distinction between 'linguistic and behavioural aspects of a social practice' (1985: 107). Thus a discursive formation is not only studied as a *medium* for interpreting social reality, but also as a *practice* that constitutes such reality. In this light, I choose relevant policy papers, legal instrument and other publications, scrutinizing the modes in which the discourses of a 'common territory' are formed or muted; and in which the 'freedom of movement' is interpreted in competing ways.

Also under scrutiny are the counter-discourses produced by various types of contestation against the mobility and citizenship regime marked by the process of Europeanisation. In particular, I analyse the discursive strategies used by the No Border network, the sex workers' mobilisations and the Coordinamento Migranti Bologna e Provincia in relation to a conceptualisation of rights inspired by Rancière and a politics of space-making through Lefebvre. As a

complementary method, I also rely on semi-structured interviews with those whose relationship to state territory is marked by ambiguity: migrant workers, transit migrants stuck at the borders and activists. The sites of my interaction with the participants include the margin and the 'centre' of the Schengen space: Calais, France and Bologna, Italy. I have worked to capture both the unevenness and the continuity in the making of 'Schengenland' across different geographical sites; moreover, the narratives and contexts obtained through on-site interventions are juxtaposed with dominant, official definitions of citizenship, rights and freedom of movement. This method is also influenced by Feldman's proposal of 'nonlocal ethnography' (2012), which highlights the fact that the migration management apparatus today is no longer traceable through fixed connections between actors.

Literature review

The theoretical and empirical scope of this project speaks to a number of scholarly fields, which nonetheless could not be fully covered in this brief literature review. The dissertation proceeds in such a way that a review of critical citizenship studies and that of different approaches to theorising EU citizenship will be provided in Chapter 1 and Chapter 4 respectively. Thus I shall limit this section to three other question areas that are linked to our inquiries: the debates on the crisis of national citizenship; the literature in social and political theory that deals directly with the dualism of citizens and aliens; and lastly the discussions on EU citizenship with a focus on migration.

A. In the first question area, based on the scheme developed by Schuster and Solomos (2002), we can group different positions on the perceived 'crisis' of national citizenship according to two parameters (see table i): 1) the factual one concerning whether national citizenship is in decline or not; and 2) the normative one concerning how to judge the deemed transformation. It must be noted that this is only a simplified characterisation of competing claims regarding these questions, and it is by no means to reduce the complexity of the thought of each social or political theorist involved. One writer may approach these factual and judgemental questions from different perspectives and draw a

conclusion that embraces different positions in this table. The grouping shown here is no more than a way of mapping the major lines of argument for the purpose of convenience.

	Positive arguments	Negative argument
Decline of national citizenship	1. moderate Cosmopolitanism, trans-, post-, or de- national citizenship	3. liberal nationalism, communitarianism
Survival of national citizenship	2. liberal nationalism, multiculturalism	4. Critical IR studies, postcolonialism, radical cosmopolitanism

Table i: Positions on the state of national citizenship in times of globalisation

The first position is associated with the recent revival of cosmopolitanism in an age of economic globalisation, political interdependence and cultural diversity. For contemporary cosmopolitans, it is not only desirable but also possible to pursue a global democratic order (Archibugi, 2008), a more inclusive citizenship regime (Habermas, 1999; Heater, 1996; Sassen, 2006), and multiple identities that correspond to 'the negotiation of contradictory cultural experiences' (Beck 2002:18). The second and third tendencies share to a certain degree what Kymlicka (2008) has called the 'taming liberal nationhood' approach, which is in contrast to the 'transcending liberal nationhood' approach adopted by the first group. For liberal nationalists, we should, after all, preserve the framework of national citizenship, while trying to reduce its risks through various endeavours made both by (national) society and the state. Multiculturalism, as an idea or as a policy, is surely one of the most widespread methods for better 'taming' liberal nationhood, while not harming all the precious values of our national liberal democracy.

Relatively negative commentators (in the third group), comparing with the previous group, see more severe challenges faced by the nation state, based on a 'thick' concept of citizenship and a communitarian approach to cultural identity. From this perspective, increasing transnational migration is endangering the 'pact' between state and citizen and eroding the very distinction between citizen and alien. (Jacobson 1996:83) As mentioned before, some legal scholars contend that the acquisition of birthright citizenship by the children of illegal aliens is at odds with the modern spirit of consent and democracy (Schuck & Smith, 1985). Not surprisingly, the endangered national identity is a popular topic not only in academic knowledge production (e.g. Huntington 2004; Renshon, 2001), but also in mass media, public opinion and the rhetoric of politicians.

The last position, which finds its expressions among a number of critical studies in global politics, political science, sociology and humanities, is characterised by paradoxes and dilemmas. First of all, it is undeniable that "all three components of the nation-state (the nation, the state, and the hyphen) are undergoing profound and only partially convergent transfigurations" (Lapid, 2001: 24). However, scholars in this group are inclined to place the stress on the difficulty in comprehending the change and bringing about something new. At theoretical level, our political imagination is still locked in the uniquely modern understanding of political community that is embodied by the hyphen that connects 'nation' with 'state'. It is precisely the feeling of losing control that has driven nation-states to reassert national identity, territorial sovereignty and the hyphen between the two. Pessimistic viewpoints are also concerned with the structural inequality and domination in the states-system. As Albert and Brock points out, on the one hand, economic globalization is bringing about ever-growing exchanges of information that can no longer be controlled on state borders. On the other hand, '*national competitiveness*' becomes 'a major focus for ordering social relations'; the international division of labour is replaced with ethnic monopolization (2001: 30, italics in original). Since citizenship as legal status is still defined as, and as practice is conditioned by, membership of a national political community (whose boundaries coincide with the territorial

state), no wonder Stephen Castles observes that the current hierarchical nation-state system entails hierarchical citizenship. Following a famous quote of George Orwell, writes Castles: 'all passports are equal, but some are more equal than others' (Castles, 2005:691). While the starting point of this research is undoubtedly most sympathetic with the last position, it will contribute to this body of literature by conceptualising the practices of bordering entailed by the regime of EU citizenship that is *neither* simply an enlargement of the national *nor* a pioneer for the global.

B. One can generally identify two approaches to the question of the citizen/alien binary and to the boundaries of membership: one normative, the other dialogical. The normative approach first concerns the legitimacy or illegitimacy of democratic closure, and it further attempts to define the proper principles according to which inclusion of 'others' can be achieved. Regarded as the 'external' aspect of citizenship, the problem of justifying and accommodating boundaries is not naturally an issue for political philosophers. Rawls, for example, famously claims that his theory pertains only to the ideal democratic society, which should be viewed as a 'complete and closed social system' (Rawls, 1993: 40), a system that is self-contained, 'having no relations with other societies' (1993: 12). Walzer is among those contemporary political philosophers who start taking seriously the problem of distributing membership -- the primary good in human community that he considers to determine 'with whom' we make all other distributive choices, 'from whom we require obedience and collect taxes, [and] to whom we allocate goods and services' (Walzer, 1983: 31).

Having acknowledged this, Walzer reflects upon the criteria appropriate to two different processes taking place in the encounters between members and non-members: one at the threshold of the territory, which he refers to as 'the first admission' for convenience; the other or the second admission is for membership. At the first admission, he contends that members of a community shall have a collective right to shape the population. This right nonetheless must be subject to a 'double' control: 'the meaning of membership' and 'the principle of mutual aid'. At the second admission, or naturalisation, he insists on full and

complete inclusion of all residents on universalist and democratic grounds. It is not surprising that he strongly opposes the regime of guest workers in some European countries which denies full membership to resident aliens. He claims that 'no democratic state can tolerate the establishment of a fixed status between citizen and foreigner'. If a democracy turns into a world of members and strangers, the equality among the members is no longer equality but tyranny (ibid. 61).

The position held by Walzer in *Spheres of Justice* is later on viewed by Bosniak as one that endorses ethical territorialism, namely the conviction that 'rights and recognition should extend to all persons who are territorially present within the geographical space of a nation state' (Bosniak, 2007: 389). This is purportedly contrasted with another way of thinking how political authority ought to regulate admissions at the threshold and within the borders – the status-based one. Bosniak gives a comprehensive and dialectical account of how these two camps among 'the normative alienage theorists' differ from one another and what they have in common. While being more sympathetic to the 'territorial presence as basis for membership' argument, she is not unaware of the limits of this logic. After all, argues Bosniak, the compromise between 'hard-outside' and 'soft-inside' hardly resolve the tensions between 'liberal equality and national exclusivity that plague liberal theory' (Bosniak, 2006: 124). Her self-critical attitudes toward ethical territorialism are also resulted from the observation that territoriality is losing its ethical centrality in organising social and political life (Bosniak, 2007). From a Kantian perspective, Benhabib provides another important reflection on the boundedness of democracy and 'the rights of others'. Regarding the 'first admission', in her own words, Benhabib argues not for 'open but porous borders' (Benhabib, 2004: 221), which means while the rights of admission for refugees and asylum seekers should be guaranteed, it is the right of the self-governing democracy to regulate the transition from first entry to full membership. However, she sees herself as fundamentally different from the Rawlsian vision of peoples and Walzerian vision of communities for she considers that the self-constitution of 'we, the people' is a contentious and dynamic process. She maintains that both egalitarian liberals and

communitarians conflate the ethnos and the demos. Cultural pluralism, for Benhabib, is not only a reality, but also carrying normative values for the potential of democratic constitutionalism. The presence of others would urge the 'democratic legislatures to rearticulate the meaning of democratic universalism' (Benhabib, 2004: 212); and she believes that only strong democracies are capable of doing so.

Now let us turn to a different approach to citizenship and alienage which I call the dialogical approach. While the normative perspective presumes a given community (be it self-enclosed or dynamic) and debates over to what degree it ought to be open to the outside world and/or integrate the differences inside, this latter perspective puts the very opposition between inside and outside into question. Whereas for Benhabib, the making of 'we, the people' is a process of self-constitution; for Balibar, the domain of the community of citizens 'is a dialectics and not a constitution, a sociology, or a logic'. In the end, the question concerning the boundaries of the community or those of membership, writes Balibar, 'has no definite or ultimately definable solution'. Discussions in this group of literature thus highlight both the 'different historical modalities' which 'the institutionalisation of exclusion' in every institution of citizenship has been following, and the constituent movement emerging in the same structure of inclusion and exclusion, as embodied in 'the institution of a "border" of citizenship' (Balibar, 2004: 76-77). Drawing on the work of Jean-Luc Nancy and Jacques Racière, Balibar attempts to avoid repeating the initial choice between the republican ideal of community characterised by particularity and the 'regulative ideal' of a more inclusive community based on universal humanity, and to speak of a 'citizenship without community' (Balibar, 2004: 67).

Not only the coherent spatial and temporal image of community, but also the self-autonomous figure of the citizen is being questioned. In his genealogical studies of citizenship, Isin addresses the significance of citizenship's alterity – yet without accepting the apologetic discourses about the 'excluded' or the 'subaltern' normalised since the end of the last century. For Isin, historically and conceptually, 'the categories of strangers and outsiders' did not pre-exist

citizenship. It is not that once citizenship was defined, it started excluding them. Tracing the genealogies of citizenship from the Greek polis to contemporary cosmopolis, Isin demonstrates how 'citizenship and its alterity always emerged simultaneously' and 'constituted each other'. Slaves, for example, were not simply excluded from it, but 'made citizenship possible by their very formation' (Isin, 2002: 3-4). Furthermore, the constituent power of these 'other' categories is not only expressed by exclusion or threats. Honig gives a historical-theoretical account of the relations between democracy and foreignness through those somewhat 'positive' figures of the foreigner: as founder, as 'ideal immigrant', and as citizen. The question for Honig is no longer 'how can we resolve the problems of foreigners for democracy?', but 'why are democratic citizens often "threatened and supported by dreams of a foreigner" (Honig, 2001: 14) who might come to resolve the problems?'. These writings, along with many others (e.g. Isin, 2012; Odysseos, 2003; Rundell, 2004), present important theoretical insights this project shall build on.

C. There has been growing attention to the connection between EU citizenship and migration that was largely neglected (Perchinig, 2006) in the earlier literature. This connection has been addressed from varied perspectives including legal studies (Kostakopoulou, 2001a, 2002; O'Leary, 1996), political economy (Hansen & Hager, 2010; Schierup et al., 2006) and social and political theory (El-Tayeb, 2008; Kofman, 1995, 2005). As far as the rights and status of third-country nationals (TCNs) are concerned, the institution of Union citizenship has been criticised for favouring 'the scaling up of territorial boundaries and national belonging to the EU level', which renders 'the political bearings of those whose rights are limited' (Aradau et al., 2010: 946). Among the earliest critics of EU citizenship, Kofman casts doubts on a series of questions revealing the continued exclusions and new types of boundaries fabricated in the renewal of citizenship:

So does this mean that the extension of and debate about the renewal of citizenship in Europe will bring advantages to those groups that have been marginalized or excluded from it until now? Furthermore, does the answer to

this question presuppose a commonality in the nature of the critiques levelled against citizenship as it operates today? Will new political spaces operating at a variety of scales be capable of redressing the limits of citizenship and responding to the needs of the principal groups in question? (1995:122)

Critiques are also directed at the ethno-cultural articulation of identity and citizenship implied in the EU project (e.g. Hansen, 2000), which utilises migration both 'as a threat uniting the beleaguered European nations and as a trop shifting the focus away from Europe's unresolved identity crisis' (El-Tayeb, 2008: 650). However, it is precisely because the issue of migration makes explicit a territorial and culturalist formulation of EU citizenship that it is considered as an entry point towards a more democratic, inclusive and 'postnational' European citizenship. In this sense, as Huysmans notes, 'the struggle for migration rights' can be incorporated into a 'struggle for the transformation of the European Union into a republican democratic political space' (Huysmans, 2000a)¹.

While the fundamental association of EU citizenship with free movement has been commented on by many (e.g. Favell & Recchi, 2009.; Favell, 2008; White, 2008), there is relatively less attention being paid to the link between migration, mobility *and* citizenship. Existing interventions often focus on the limited access to free movement rights granted to TCNs and the immobility experienced by a large number of undocumented migrants. Aradau et al.'s recent papers (Andrijasevic et al., 2012; Aradau et al., 2010) set out to address this missing link through a political reading of mobility. They point out that in mainstream conceptualisations of Union citizenship, mobility is 'primarily locked within a socio-economic terrain that is seen as either non-political or only incipiently political' (Aradau et al., 2010: 949). Building on Simmel's sociology of exchange relations, they propose an alternative understanding of mobility as social and political practice which has the capacity to challenge the territorial and culturalist models of citizenship. Thus the mobilisations of mobility by marginalised citizens and migrants alike can be seen as 'acts of European

¹ The book cited here is a 'Kindle edition', and therefore page numbers are not available. This applies to all the kindle e-books cited in this dissertation.

citizenship' (ibid.). This political sociology of mobility is undoubtedly penetrating, which nonetheless also suggests that some critical questions regarding the governance of mobility and the practice of citizenship are rather underexplored in the literature. Large room is left, in particular, for scrutinising the incoherent ways territory is restructured via a conditional facilitation of 'internal mobility' (Chapter 5) and the formulation of a 'right to mobility' that is rigorously contested within and beyond the formal regime of citizenship (Chapter 6). We shall therefore take up these issues in the following chapters.

Structure of the dissertation

The dissertation falls into three parts under the titles of '*the national*', '*the European*' and '*the cosmopolitical*'. This structure by no means indicates a linear, progressive movement from the national to the global, or a 'continuum' as Habermas (1992) puts it. Rather, it is organised in such a way to reflect the unfolding of a series of different yet inherently correlated questions laid out in the previous section. They are correlated in that capturing the spatial configurations of national citizenship is necessary for understanding the novel (and not-so-novel) modalities of territorialisation and mobility management set in motion in the regime of EU citizenship; and that Europe as a method is illuminating for envisaging a global ethics that reimagines citizenship and community from borders.

Before the three parts, Chapter 1 outlines the conceptual map of the various meanings of citizenship. Following a relational understanding of citizenship as the incomplete interaction between structures of governance and sites of struggles, I shall explain why the conceptual triad of territory, rights and mobility could serve as a constructive lens into the spatialities of citizenship. Part I will subsequently use this lens to reflect on the trajectories in which modern citizenship is constructed vis-à-vis its otherness: the outsider, the mere subject and the migrant. These trajectories are always circumscribed by the framing of the modern territorial state on one hand, and they also contain the intent of moving beyond it on the other. Chapter 2 examines the processes of the territorialisation of space in respect to the double faces of sovereignty and to the

allocation of political membership. Chapter 3 works on historicising rights and mobility: it analyses the poverty of the language of universal rights as natural rights through Arendt, and reveals the various mechanisms of othering in the making of a distinct category of 'political rights'. The government of mobility, which works both in the production of territorial closure and in the maintenance of circulation, is seen as another integral feature of territoriality and as constituent of national citizenship.

Part II moves on to evaluate the continuities and discontinuities of the interrelations between territory, rights and mobility in the new settings under the process of European integration. Chapter 4 outlines the historical development and legal framework of EU citizenship, and also gives an overview of the EU's pursuit of a common immigration policy in the areas of admission, border control, migrant rights and integration. While there are distinct sets of legislation and policy instruments on citizenship and migration at a formal level, the following two chapters are intended to accentuate the fact that not only the government of citizenship and that of migration in the EU are intertwined, but also struggles around migration and mobility lie at the heart of enacting citizenship in Europe. In terms of the nature of the problematic, Chapter 5 corresponds to Chapter 2; and Chapter 6 to 3.

Chapter 5 examines the discourses (and lack of discourse) on EU territory, and compares the modes of border control in the so-called Schengenland to the conventional modes of bordering practice associated with state territory. In particular, I read the politics around Eurostar and the Channel Tunnel as one that involves competing patterns of territoriality and manifests the dynamics between facilitated and obstructed mobilities at a moving border. Chapter 6 has the governance and the politics of mobility at its centre of inquiries. It points out that free movement policies in the EU, or the political economy of mobility, imply not only the processes of securitisation and economisation that have been widely discussed, but also a mechanism of individualisation that posits 'the right to mobility' against social citizenship. However, with the help of Rancière's theory of rights and democracy, and through two examples each employing different

approaches to politicising mobility, I argue that the 'right to mobility' gains its strength only in the practices that tests the inscription of rights by appealing to the universal or legitimating the particular. Such a politics of mobility is also read as an endeavour of space-making, through which inhabitants stage themselves as citizenship with reference to an aspirational European or urban space.

Along this line, Part III considers the limits and potentials of cosmopolitanism after revisiting the boundary problem in normative democratic theory. It also returns to the key threads of the thesis: space and movement, and suggests their renewed roles in a global ethics that is aware of its own paradoxes and impossibilities.

Chapter 1 Citizenship: conceptions and contestations

Woman has the right to mount the scaffold; she must equally have the right to mount the rostrum, provided that her demonstrations do not disturb the legally established public order.

- Olympe de Gouges, *The Declaration of the Rights of Woman and the Female Citizen*

Like all the other essential and profound keywords in our political vocabulary, citizenship is without doubt subject to various controversies and continuous debates. At one end, we may have the narrowest perception of citizenship as ‘a kind of membership as well as a bundle of rights’ (Bauböck, 1994: 23); whereas at the other end, the most comprehensive perspective would conceive of citizenship as ‘a cluster of meanings related to a defined legal or social status, a means of political identity, a focus of loyalty, a requirement of duties, an expectation of rights and a yardstick of good social behaviour’ (Heater, 2004: 166). The ever-growing literature obviously has never produced a general agreement on the exact meaning of the term, but only enriched our understandings of the various meanings it carries. Although these understandings are highly diverse and sometimes even incompatible, I shall begin this chapter by teasing out the basic lines along which conventional discussions on citizenship are accustomed to unfold themselves. This is followed by an introduction to a body of literature that has been termed as ‘critical citizenship studies’. In light of the critical approaches to citizenship developed by earlier work, I argue that the triadic conceptual framework adopted in this project shall help us better comprehend the spatial and international dimensions that are internal to the concept and practice of citizenship.

1.1 Status, rights and practice

Many commentators hold the conviction that the concept of citizenship consists of at least two distinct aspects, and accordingly the study of citizenship

falls into two broad camps (Bauböck, 2010; Bellamy, 2001; Kymlicka & Norman, 1994). Following them, we can generally identify two strands in defining or approaching citizenship: one focusing on the legal status conferred by a bounded political community and a set of rights and duties associated with it, while the other on practices of democratic self-governance, including both institutional participation and civic engagement in daily life. This differentiation has been given different names in different contexts – and the signified also varies to a certain degree. Just to name a few, it appears as legal status versus ‘desirable activities’ in Kymlicka and Norman (1994); nominal versus substantial citizenship in Bauböck (1994); or simply formal versus informal in Bauder (2008). The varieties may also include another dimension: identity or belonging, treated either as a third element in addition to status and practice (Bellamy, 2008; Lewis, 2004), or being integrated into the ‘practice’ side (Holston & Appadurai, 1996; Joppke, 2010; Kratochwil, 1994). As citizenship in the modern state has been gradually conflated with nationality, the discourses of identity and belonging have gained more weightiness in the discussion of citizenship than ever before. But when referring to the conceptual origins of citizenship and the simplified binary of ‘active citizens’ and ‘passive citizens’, the status and rights versus practice way of mapping citizenship is still a conventional starting point.

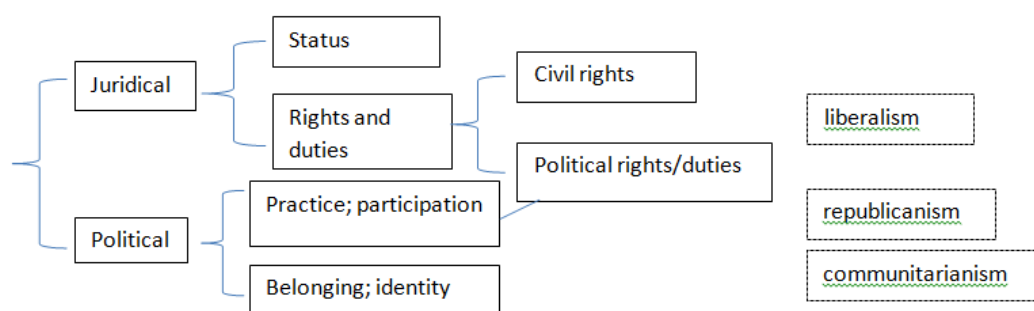


Figure 1.1 ‘Layers’ of citizenship and their relations to the theories of citizenship

Speaking of these interrelated yet separate components or ‘layers’ (Shachar, 2008) of citizenship is surely analytically helpful and necessary.

Nonetheless, the divide between juridical and political theorisations of citizenship functions much more than merely as an analytical tool. The profound implications of unpacking citizenship as status, rights and practice can take two forms, each having its limitations. Firstly, the contrast between rights-based and practice-based perspectives informs different schools in political theory that offer competing ideas of citizenship, constitutionalism and democracy: liberalism and republicanism. Nowadays we usually trace the origins of these different connotations of citizenship in ancient Greek and Roman traditions (Pocock, 1998). For the Athenians, citizenship primarily means that those who are qualified as citizens, as political beings, actively engage themselves with public affairs of the polis and thereby practice self-governance. The Roman legal thought provides another conception of citizenship centred on individual rights and formal equality under the law. More directly, liberal and republican conceptions or theories of citizenship take their intellectual resources from those canonical writers in the modern age – Locke and Kant for the former, and Rousseau for the latter (Hutchings, 1999). Faced with the plausible ‘waning’ of state sovereignty and the decline of national citizenship, those who associate citizenship with universal principle of humanity, from the Kantian tradition, tend to endorse an idea of global or cosmopolitan citizenship (Benhabib, 2004; Habermas, 1996; Linklater, 1999). In contrast, communitarians and a certain group from the republican camp (Bellamy, 2001, 2008; Miller, 1999) continue to highlight the exclusiveness of citizenship and the values that can only be realised through the bounded national community.

However, the debates between a relatively universalistic discernment of citizenship and a particularistic one may obscure some deeper paradox and ambivalence inherent to the concept and institution of citizenship: that modern citizenship is both individualising and collectivising; both universal and particular. Just as Brubaker’s study of the French Revolution, which simultaneously invented the nation-state and the citizen, shows us, the Revolution joined together citizenship as a general, abstract status based on civil equality, and citizenship as a privilege of ‘making participation in the business of rule’ (Brubaker, 1992: 43). Another signification of ‘we, the people’ – the

commencement of the self-constitution of democracy seen by Benhabib -- is indeed 'we, a people', 'one group among many competing groups of peoples', or 'a particular aspiring to a universal' (Walker, 2010: 78). Neither side in the debate between cosmopolitan and 'bounded' citizenship would deny the fact that, unlike in ancient or medieval times, in our world of states, individuals must possess citizenship of (at least) one state or another. Not possessing citizenship of a state is anomalous. If we limit ourselves to this strand of dispute, the legitimacy of the state as representing both a particular people and the idea of people as such remains unquestioned. What is in dispute is rather whether we should allow a wider universality -- a priority of the idea of people in general over a particular people.

While the differentiation between rights-based and practice-based conceptions of citizenship, which leads to liberalism versus republicanism in domestic politics and cosmopolitanism versus communitarianism in international relations (IR), has always gained a central position in political theory; the second form I would like to underscore -- the separation of legal status from 'substantial citizenship' -- has long been paid little attention. Kymlicka and Norman give an illustrative reason why 'formal citizenship' is not an issue for political theorists. They argue that a theory of the good citizen is independent of the legal question of what it is to be a citizen, 'just as a theory of the good person is distinct from the metaphysical question of what it is to be a person' (1994: 353). Legal status is an issue to be left to legal scholars, not political philosophers. It is thus not surprising that Rawls, as a political philosopher, sees no need to take into account any of those problems irrelevant to a self-sufficient society, such as 'unjust wars, immigration, and nuclear and other weapons of mass destruction' (1993: 12). Yet it does not take much effort to tell that such an observation of 'irrelevance' itself is grounded on a particular political belief. Elsewhere he makes this clear: the identity between a people and its territory must be maintained; 'people must recognize that they cannot make up for failing to regulate their numbers or to care for their land by conquest in war, or by migrating into another people's territory without their consent.' (Rawls, 1999: 8)

This claim paradoxically reveals the flawed nature of neglecting formal citizenship in political theory. This neglect surely has to do with ‘the endogenous bias of the discipline’ (Brubaker, 1992: 22) and the ‘territorial trap’ in political studies (Agnew, 1994), but it has other weakness than methodological one. Normatively, liberal political theory cannot avoid the question of membership – admission and transmission – if it holds the principle that political membership must be based on consent. Brubaker reminds us this unsettling question: ‘Why citizenship typically ascribed at birth?’ (Brubaker, 1992: 32) Why is citizenship granted unconditionally and undeniably to someone who is yet to express her consent? This is just one question among many others raised by the puzzle of state membership. Another typical critique in our time points to the so-called ‘illiberal border’ practice, which is considered inconsistent with those universalistic and egalitarian principles to which liberal democracies claim to be committed (Cole, 2000). Even more crucially, besides the normative inadequacy, separating the ‘external aspect’ of citizenship from the domain of the political ignores the historical dynamics between the two dimensions – formal status and political or everyday practice. The interaction has played an important role in the development of the institution of citizenship itself. On the one hand, citizenship as status always entails a structure of inclusion and exclusion within and among demarcated communities. On the other hand, citizenship as practice opens the terrain for rights claims to those who are formally excluded. It is the outcome of various processes of political, social and cultural struggles, with specific meaning conditioned by the configuration of these forces, and the institutional framework within which they are embedded. This point leads us to an assessment of the critical approaches to citizenship.

1.2 Perspectives of critical citizenship studies

Although there have been increasing references to an emerging field of critical citizenship studies (Isin & Nielson, 2008; Nyers & Rygiel, 2012; Squire, 2011), the exact denotation of such an expression remains vague. This nonetheless indicates the diversity and openness of critical and strategic reflections on citizenship that move beyond conventional methods, scope and vocabularies of the discussion. For the purpose of this paper, what I understand

by critical citizenship studies highlights in particular an intention to overcome the dualisms examined in the previous section – that between rights and practice; juridical and political; and other antinomies such as that of passive/active and public/private. This means not only to acknowledge that the legal status of citizenship has no ‘monopoly over the language of rights and responsibilities, or effective agency and political voice’ (Rigo, 2011), but also *not* to treat the figure of the citizen as either some ‘transcendental moral subject’ (Procacci, 2004: 346) or a status and subjectivity expressed in terms of absolute territorial relations (Mhurchú, 2010). Rather, those ‘specific figures’ of citizens and non-citizens ‘corresponding to different regimes of citizenship’ (Procacci, 2004: 347) are analysed in relational, contingent, and sometimes paradoxical manners. To be more concrete, one can find two main question areas in the research agenda of critical citizenship studies.

The first question area is interested in the processes – ‘those constitutive moments, performances, enactments and events’ (Walters, 2008: 192) – through which the ‘outsiders’ constitute themselves as political beings and hence citizens. Varsanyi names it an ‘agency-centred approach’, yet I would like to stress that this perspective does not preclude taking into consideration the structured field of power relations, which is the centre of enquiries for the second question area. The two have different focuses and perspectives; they nonetheless are conscious about the inseparability between the agency-centred problematic and the structure-centred one. One particularly constructive concept that has been developed in this area is ‘acts of citizenship’ (Isin & Nielsen, 2008). While acts certainly differ from status and entitlements, this notion is also in contrast to the category of ‘practices’, which according to Isin (2008) is a privilege or obligation of someone who is already defined as a citizen; but the category of acts exists in the very making of citizenship. Isin contends that mainstream discussions on the extent, content and depth (roughly understood as status, rights and identity) of citizenship ‘arrive too late and provide too little for interpreting acts of citizenship’. They arrive too late for ‘acts produce actors that do not exist before acts’; and provide too little for ‘the scene has already been created’ (2008: 37). The idea of ‘acts of citizenship’, naturally, is most employed to register the

political subjectivity of non-status persons – notably irregular migrants, refugees and stateless people. In addressing the significance of migrant activism as ‘creative ruptures and breaks’ (Isin, 2008: 36) in the given order, the established understandings of what counts as political subjectivity and the very concept of ‘the political’ are also interrogated. This is also closely related to Rancière’s theory of dissensus and subjectivisation, which I shall come back to in Chapter 6.

If the focus on the political subjectivity of non-members still resorts to the normative valence bound to citizenship – by claiming that non-status persons speak and act as citizens, the second perspective fundamentally questions the idealisation of citizenship as a symbol of emancipatory politics. Inspired by the Foucauldian theses of power and governmentality, this cluster of literature interprets citizenship as a set of strategies and techniques serving the purpose of ‘divide and rule’ (Hindess, 1998). Whereas the classic account of citizenship and the state is focused on sovereignty, wherein modern citizenship gives name to the proper subject as the members of sovereignty, Foucault gives a historical account of how the problem of sovereignty gave way to the art of government, and the ultimate end of the latter is population, as the new subject, instead of citizens (Foucault, 1991). In a widely cited paragraph, he defines governmentality as follows:

By ‘governmentality’ I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument. (2007: 108)

Walters suggest that one may call governmentality in this specific sense ‘liberal governmentality’ in order not to confuse it with a broader understanding of it as ‘the art of government’ and as a methodological tool (2012). The method of governmentality, according to Walters, enables us to understand governance ‘not as a set of institutions, nor in terms of certain ideologies’, but rather ‘as an eminently practical activity that can be studied, historicized and specified at the level of the rationalities, programmes, techniques and subjectivities which

underpin it and give it form and effect' (ibid.). Employing this method in studying citizenship, for example, scholars examine the mechanisms of citizenship functioning as 'a powerful instrument of social closure' (Brubaker, 1992: x) beyond its formal and juridical formulations. Specific programmes and rationalities of governing populations (citizens) have been examined such as the rise of the social (Donzelot, 1988; Owens, 2011; Procacci, 1991); securitisation, surveillance, and also policies of free movement (Bigo, 2002; Sparke, 2006; Zureik, 2005).

These tactics of citizenship as managerial regimes must also be contextualised in the international system of states. As Hindess suggests, the role of citizenship is not only about governing 'members of particular sub-populations', but also to render 'the larger population governable by dividing it into sub-populations consisting of the citizens of discrete, politically independent and competing states' (Hindess, 1998: 59). It is from this point of view that we find certain qualities of space – territory, borders and cross-border mobility – are of crucial importance to the forging of an inter-state system that allocates populations into supposedly homogeneous territories.

Yet taking one step further, I would like to stress again on the essential interconnectedness between these two approaches. As the literature on 'acts of citizenship' would notice the interaction between acts of non-citizens and the give regime or habitus of citizenship, the discussions informed by the method of governmentality also regard power as always 'intertwined with the subjectivity of individuals on whom it is exercised' (Procacci, 2004: 347). Thus citizenship can be depicted as 'a mobile surface of engagement between the practices of government and the universe of the governed which constantly tends to escape their grasp' (Donzelot & Gordon, 2008: 51). In Rancière's terminology, the former kind of practice can be considered to be part of the 'police' order, which refers to the system of distributing 'places and roles' and legitimating that distribution (1998: 28). The activities that seek to escape or break with the police order, on the other hand, are described by the term 'politics'. It exists 'when the natural order of domination', or the police order of distributing places

and roles, is ‘interrupted by the institution of a part of those who have no part’ (ibid. 11). To avoid confusions, in this thesis I use government or governance to refer to the first arena in which citizenship practices take place, and use ‘politics’ mainly to refer to the ‘political activities’ or acts of citizenship in an antagonistic sense following Rancière². Politics is also used to indicate the engagement and interactions between the two. Although these interactions may appear as a developmentalist narrative of democratisation and ever-expanding inclusion, for the practices and struggles of the excluded or differentially positioned groups have constantly forced changes in the juridical and institutional scope of citizenship (Sassen, 2006), it has to be noted that this historical dynamics does not entail any teleological end which will establish a ‘citizenship for all’. As we shall see throughout the thesis, ‘the dialectic of “constituent” and “constituted” citizenship’ (Balibar, 2004: 77) is a contradictory and incomplete process.

In sum, critical studies on citizenship not only take a relational and processual perspective³ that calls into question the previously dominant ‘ontology of stability and continuity’ (Lapid, 2001: 3) presumed in the theorisations of the concept, but also come to terms with *the international* expressed in citizenship and thereby test the internalist approach this field has been used to⁴.

² In other writings (e.g. Nancy, 1999; Edkins & Pin-Fat, 1999), this alternative understanding of politics centred on disagreement and difference might be called ‘the political’ (*le politique*), in contrast to ‘politics’ (*la politique*) in its customary sense as the distribution of power. I nonetheless choose not to use ‘the political’ systematically here, for this would require a more detailed account of the concept itself, which would exceed the scope of this thesis.

³ Lapid uses the pair of processism and relationalism (along with verbing) to encourage a methodological shift in IR studies (Lapid, 2001).

⁴ In his exploration of ‘the international’, Walker views it as a main component of modern politics. It signifies the kind of structural formations which is predicted ‘on the assumption that all of humanity, all the peoples of the world, can be brought within the jurisdiction of some modern sovereign state that can itself find its proper place within the community of modern nations, within what is now often called the multilateral world of the international, so that the modern individualized political subject can find its home, its space for freedom under the necessity of law;...’ (Walker, 2010: 47)

1.3 Territory, rights and mobility: mapping the triad

So far I have only commented on the relationship of citizenship to the nation-state in a fragmented way, yet this relationship is that which fundamentally distinguishes modern citizenship from those ancient forms of the notion. Central to the liberal framing of political modernity, originated in Europe and spread to the rest of the world with imperialism and colonialism, is the ambition to compromise universalistic principles of humanity with the nation-state that encompasses a territory and a people – conceived of both as a *demos* and an *ethnos*. As the national and the sovereign are held together by ‘a mostly mythical, yet rarely politically challenged or theoretically problematised, hyphen’ (Lapid, 2001b: 24)⁵, citizenship, now defined as membership of a state, is conflated with nationality.

Thus the institution of national citizenship distributes membership in a demarcated territory that combines the doctrine legitimising the state – popular sovereignty, and that legitimising the nation – collective identity. However, this ideal correspondence between territory, self-governance, and collective identity has always been an ideal. And as Walker points out, it took ‘some centuries for the modern conception of citizenship to develop its ... association with notions of civil society, national obligations, democratic representations, political, economic and social rights, and so on’ (Walker, 1999: 179-180). Yet from the very beginning of the post-medieval era, when the logic of spatial differentiation was established along with the rise of a new understanding of rights appealing to ‘human nature’, the development of citizenship has been always troubled by the ‘great rift between a space of citizenship and some sense of a common humanity’ (ibid. 180), or the gap between Man and Citizen. Here is where we encounter the figures of the non-citizen. He or she could be a subject in the sense of not taking part in self-governance; a stranger who is different from ‘us’, or an outsider who has no or only conditional access to the territory of ‘us’. How are these

⁵ Benedict Anderson’s *Imagined Communities* is one of the most renowned scholarly reflections on the conquest of the state by the nation (and the other way round) from a social constructivist perspective (Anderson, 1991). In his later work he also speaks of the ‘impending crisis of the hyphen that for two hundred years yoked state and nation’ (Anderson, 1996: 8).

oppositions between citizenship and its otherness produced and questioned in modern political thought? In the following chapters I shall cope with this question from the vantage point of three chosen, interrelated concepts: territory, rights and mobility. Before going into details, it is necessary to justify these choices.

As stated earlier, a major theoretical purpose of this paper is to bring 'citizenship talk' into the field of international relations, a field that is dominated by the spatial framing of mutually exclusive state territoriality, and hence 'the ontological incommensurability between external and internal sovereignty' (Bartelson, 1995: 29). This ontological divide between inside and outside also determines the separation of IR theory from political theory: while the former is so much trapped by the notion of territory that it rarely asks its history or ethics, the latter has 'few resources for thinking about' terms such as democracy, citizenship and freedom 'beyond the territorial limits of the sovereign state' (Walker, 2003: 282). In both fields, as Lefebvre complains:

Curiously, space is a stranger to customary political reflection. Political thought and representations which it elaborates remain 'up in the air', with only an abstract relation with the soil [*terroirs*] and even the national territory... Classic liberalism... thinks and reasons 'non-territorially' [*ex-territorialement*], as a pure abstraction. (quoted in Brenner & Elden, 2009a: 360)

While both political theory and IR theory have an fundamental yet implicit assumption that territorial delimitations form a precondition for articulating such a relation between the individual and the state as citizenship, territory is taken either as marking the confines of theorisation and legitimation (in the former), or as an ahistorical, timeless incarnation of sovereignty (in the latter)⁶. With this somewhat paradoxical point in mind, I locate the spatialities of citizenship at the centre of my inquiry. It is also instructive to refer to the conceptual framework developed by Stein Rokkan (1999) in his analysis of boundary-building. Rokkan sees the necessity of analysing 'the interaction

⁶ Stuart Elden starts one of his many papers on territory with this unsettling statement: 'Political theory lacks a sense of territory, territory lacks a political theory' (Elden, 2010: 799).

between two types of space' in any study of territorial structure – the geographical space and membership space. We may hence approach the spatial order of citizenship in at least two aspects: on the threshold of the geographical space, state territoriality is exercised through 'the limitation imposed on the entry of foreigners' (Rigo, 2008: 152), or imposing conditions on cross-border *mobility*. Inside the physical boundaries, what is at work is the territoriality of membership space, which functions through, among other things, differential distribution of *rights*. The table below gives an illustration (by no means an all-inclusive one) of various sites in which practices of citizenship might occur:

Table 1.1 Fields of citizenship practice

	Geographical space	Membership space
Managerial regime (creating hierarchies)	Territorialisation of space; border and mobility controls	Differential rights/inclusion
Acts of citizenship (acting as equals)	Shared channels (border as connectivity; commodification of mobility)	Shared mediums (legal system; human rights discourse)
	Excessive border-cross mobility	Rights-claims against inequality and hierarchies;

The interrelations between territory, rights and mobility take also other forms. The most apparent and hence most discussed one is the tension between territorial sovereignty and a pre-political and universalist understanding of rights, which often points to the gap between the rights of Man and the rights of citizens, being state members, and the contradictions, as Brett points out, involved in the very expression of 'citizens' rights (Brett, 2003). Beyond this classic problematic, we shall also see the manifold roles human mobility has played in the development of national citizenship as an institution of managing population in a territory which is supposed to be 'spatially and culturally

coherent' (Hirst, 2005: 27), but which is not pre-givenly so. In fact, methodological nationalism, which according to Wimmer and Schiller refers to taking for granted the national framing of modernity, conceiving of nationally bounded societies as naturally given entities for study, and the territorialisation of social science imaginary (Wimmer & Schiller 2002), is accustomed to thinking of mobility across national borders as an 'exception'. In such a paradigm, migration appears to both social scientists and decision makers a 'problem', one that disturbs the principle of democratic citizenship within territorially fixed boundaries and cultural homogeneity. This in political theory, as mentioned earlier, one way of dealing with migration is to regard it as belonging to the domain of non-ideal society. The denial of the normality of migration simply overlooks the fact that 'where there are people, there is migration' (Eichberg 2006:258). Acknowledging the normality of human mobility and the autonomy of moving hence indicates a decisive break with methodological nationalism.

However, on the other hand, while the geographical movement of people across borders are normal and autonomous practices, they lead to profoundly political consequences. As we shall see in Part I, Human mobility has both helped consolidate a generalised codification of citizenship, and inevitably challenged the ideally stable and sedentary image of population entailed by this codification. Above all, it reifies the theoretical debates around the relationship between the sovereign power over territory and the individual right to territory. Let us now have a closer look at the ways these key concepts have participated in the forging of the paradigm of national citizenship, and the figures of the non-citizen they give rise to: the outsider, the mere subject and the migrant.

Part I

The National

Chapter 2 The territorial order of citizenship

The first man who, having enclosed a piece of ground, bethought himself of saying This is mine, and found people simple enough to believe him, was the real founder of civil society.

– Rousseau ([1754]2005: 61)

One of the earliest definitions of the state in the manner of modern social science was given by Austrian publicist Georg Jellinek in 1900: the state as ‘the triad of unities of population, territory and government’ (Kleinschmidt, 2006a: 3; Jellinek, [1900]1911: 292). This model has influenced many other social theorists and political theorists ranging from Max Weber⁷ to the representatives of those fairly new schools in IR studies. In one of the founding texts of constructivism in IR, the way Alexander Wendt defines the state is rather conservative in the sense that he does not significantly move beyond the Jellinek or Weberian fashion. Wendt specifies five properties of the ‘essential state’: ‘an institutional-legal order; an organisation claiming a monopoly on the legitimate use of organised violence; an organisation with sovereignty; a society; and territory’. He further explains that the first property follows the Marxist approach; the second and third Weberian; the fourth pluralist; and most interestingly, the fifth (i.e. territory) is common to all these different theories of the state (Wendt, 1999: 202). More concisely (and sharply), Hedley Bull describes the state as an independent political community that possess a government and ‘asserts sovereignty in relation to a particular portion of the earth’s surface and a particular segment of the human population’ (Bull, 1995: 8). Giddens formulates his understanding of the nature of the nation-state in an even more succinct phrase – a ‘bordered power-container’ (Giddens, 1985: 120).

⁷ ‘A state is that human community which (successfully) lays claim to the monopoly of legitimate physical violence within a certain territory, this “territory” being another of the defining characteristics of the state’. (Weber, 1994: 310-11)

Simply put, the state is about defining and establishing the relation between power and space. It has now become commonsensical that the modern state is defined by its sovereignty over and in a territory occupied by a collective of population which ideally constitutes the nation. In certain circumstances, the sovereign power may be more concerned with territory than population, when it struggles to take control over unpopulated land or sea which it considers strategically crucial⁸.

Yet, the politics of territory has been too easily reduced to territorial politics in international studies, which is nothing more than a 'mark' of *Realpolitik* in an anarchical state system. Agnew has famously called the reductive thinking 'the territorial trap' (Agnew, 1994). But as Elden suggests, moving beyond this trap might become possibly only through 'a historical conceptual examination', rather than simply avoiding it. To historicise territory and territoriality is to understand the ways in which the state and territory are 'mutually constitutive' (Lefebvre, 2009: 228). It is impossible to discuss the 'birth of territory'⁹ in general here, due to the scope and purpose of this paper. Instead, I approach the argument that the process of the territorialisation of space 'forms a precondition for the emergence of "politics" as such in the modern sense' (Balibar, 2009a:192) specifically through understanding the implications of this process for the practices and theories of allocating political membership.

2.1 Territory, sovereignty and membership

That spatial differentiation is the foundation of sovereign power, or any form of power, is imperatively elaborated in Carl Schmitt's attempts to recover the etymological origin, or the 'energy and majesty', of the word *nomos*. He argues that *nomos* is the Greek word for '... the first land-appropriation understood as the first partition and classification of space' and for the 'primeval

⁸ In a lucid elaboration on 'space and the state', Lefebvre asks: '[i]s not the secret of the State, hidden because it is so obvious, to be found in space?' He then claim that the state and territory 'interact in such a way that they can be said to be mutually constitutive' (Lefebvre, 2009: 228)

⁹ I borrow this phrase from Elden (2013).

division and distribution' (Schmitt, 2003: 67). Thus law, norm and peace all rest on partition, division and '*enclosures in the spatial sense*' (2003: 74). Schmitt's articulation of 'the *nomos* of the earth' as the primary source of law and the essence of political order is in fact not that shocking, if we consider that in geographical studies, there is a reductionist tradition that usually understands human territoriality 'as an expression of the "basic nature" of human beings in organizing their social life' (Paasi, 2003: 110). But Schmitt's argument is extremely important as one of the most explicit formulations of a certain kind of appreciation of territoriality, one that became naturalised over time after the profound transformation in the relationship between time/space and politics which started in late-medieval Europe.

Comparing to other characteristics that were gradually attached to the modern state and modern subject, such as nationhood, popular sovereignty, development of individual rights, social welfare and so on, territoriality was indeed the first to emerge. Magnus Ryan suggests that in tracing the medieval resources of such concepts as freedom and law, the most relevant shift is neither from 'feudal liberty' to 'state tyranny' nor from 'medieval constitutionalism' to 'absolutism'. Rather it is from 'non-territorial lordship to territorial lordship' (Ryan, 2003:59). From the fourteen century onwards, he notes, 'geography, domicile, special relationships dominate' the earliest discussions of citizenship. The territorial shift in political organisation was later on consolidated in what would be recognised as the beginning of the state system, the Peace of Westphalia in 1648, while the idea of the nation was yet to be invented. This is not to say the paradigm of the modern state began with the Treaties of Westphalia, since the centralising process in larger monarchies such as England and France, and the development of republican regimes in smaller city-states in Northern Italy existed before them (Elden, 2008). Yet the Peace of Westphalia did have definitive impacts upon the 'dual process of state formation and the creation of a system of states' (Hirst, 2005: 33): the confirmation of the supremacy of state sovereignty, or the 'free exercise of territorial right' (Treaty of Münster, Article 64) within a demarcated territory; and the mutual recognition of the autonomy of each sovereignty in its own affairs among all the

sovereign states. They would come to be defined as internal and external sovereignty in the IR vocabulary.

Let me now try to provide some clues for capturing the implications of this territorialisation of space for modern citizenship, or for the linkage between the individual and the state. In the first place, territoriality works through impersonalising power relations and abstracting space, and this abstraction is related to two faces of sovereignty which are not easily reconcilable: supremacy and autonomy. But territory does not only point to a geographical, conceptually 'emptiable' (Sack, 1986) space. When 'land' is combined with home, the hard, militant notion of territory may acquire a more emotional, sometimes poetic, image such as homeland, *patrie*, or *Heimat*, through a process of concretisation. Nowadays the affair of defending territory is thus often justifiably called 'homeland security'.

The impersonalising mechanism of state territoriality is the most obvious one. This means not least that the ruler's personal control of land and people is replaced with an absolute and abstract power named sovereignty with its spatial limits, an equally abstract idea of territory. Even though paradoxically, in order to disassociate an abstract sovereign power from the person who rules, to assert its indivisibility (as an individual – that which is indivisible), one must attribute to sovereignty a personality – either as the new 'prince' in Bodin, or the "Artificial Man" in Hobbes. Bartelson points out two different routes the conceptualisation of sovereignty and space can follow: either one takes territorial partitioning to be an essential feature of sovereignty; or the modern state is something whose 'sovereignty, independence and power all resulted from its territoriality' (Hertz, 1959, quoted in Bartelson, 1995: 30). But no matter which comes first, this aspect of territory corresponds to one facet of sovereignty as the supreme, decisive, and even divine power. In his classic theorisation of sovereignty, Bodin identifies the prince with the image of God, arguing 'the law of the prince must lie modelled on the law of God' ([1576]1955, Book I, IIX). The link between God and sovereign power, in Wendy Brown's

words, simultaneously produces 'the absolutism of sovereignty and hedge sovereign power with God's own law and beneficence' (Brown, 2010: 61).

However, there is another aspect to sovereignty that is connected to autonomy, self-governance, and concerning its mythic origin, social contract. Here we are confronted with one of the most fundamental puzzles of the concept of sovereignty – the uneasy relation between '*state sovereignty* and *popular sovereignty*' (Balibar, 2004c: 143). How could a supposedly unlimited power be limited by the democratic practice of its subjects? And how could a citizen be defined by his being free and at the same time his subjection to the sovereign? While Bodin still has to use a self-contradictory term as 'free subject' to describe the citizen 'who is dependent on the sovereignty of another' (Book I, VI), Rousseau is able to resolve the opposition between freedom and subjection by abolishing 'the distance between the people and "its" sovereignty' and identifying 'them with one another' (Balibar, 2004c: 151). The citizens 'obey no one but their own will; and to ask how far the respective rights of the Sovereign and the citizens extend, is to ask up to what point the latter can enter into undertakings with themselves, each with all, and all with each'. (Rousseau [1762]1993: 206) Following this perspective on the relation between the sovereign and the people, Jean-Denis Lanjuinais appropriately call citizens '*les membres du souverain*' (Agamben, 1998: 129). The impersonalising and abstracting feature of territoriality again plays a crucial role here, but in a different direction. It is only in a territorially defined unitary space that the collapse of the feudal system of privileges and statuses becomes the condition for establishing a new, immediate relation between the political community and autonomous, self-legitimizing individuals. Through submitting themselves to the territorial state, subjects are liberated from other forms of belonging and hierarchical relations, becoming individuals and citizens defined in universalistic and egalitarian terms.

Indeed, the irreconcilability of the two faces of sovereignty and the paradox in the territorial state as the mediator between the particular and the

universal have been much commented on¹⁰. But the ambiguity of territory has received relatively less attention. It may first appear that with regard to the supreme and decisive power, the right 'over' territory is viewed as an essence of state sovereignty; whereas with regard to popular sovereignty, 'the right to territory is an original entitlement of the citizens', and hence the state's right to territory is rather 'a reflexive right of the authority exerted over citizens' (Rigo, 2008: 151-152). But in theory, these two perspectives cannot be entirely separated since citizens are the 'free subjects' of the state. Even if the question as to where the power of the sovereign over its territory comes from could get answered in the liberal tradition, the other question can hardly get a satisfactory answer: what is the appropriate relation between fixed territory and mobile population? I will come back to the normative insights into territory, population and the political community later.

In practice, the relation between territory and membership is more complicated than a horizontal ordering of inside and outsider, and a vertical one of authority and subjects. Although territorialisation helps to form an internally inclusive and externally exclusive structure of membership, this structure of inclusion and exclusion is not solely based on territory. On one hand, it involves differential inclusion through the development of 'citizenship rights', which I will take up in the next section. On the other hand, as the state is hyphenated with the nation and citizenship with nationality, territory becomes space of belonging; becomes not only spatially but also culturally coherent (Hirst, 2005). In other words, the normalising power of the nation, which the 'state purports to represent' (Shapiro, 1994: 485), seeks to establish a geography of identity and affiliation. This endeavour would employ two other less spatial, yet definitely space-related concepts: homeland and soil.

2.2 Homeland and soil

We have mentioned earlier Rokkan's distinction between two types of space: the geographical and the membership space – 'one physical, the other

¹⁰ See, *inter alia*, Balibar, 2004c; Brown, 2010; Walker, 1999, 2010.

social and cultural'. In the case of the modern nation-state, this paradigm gradually 'merged the concept of citizenship with that of territorial identity' through a series of territorial retrenchment in military and cultural terms (Rokkan, 1999: 104-106). We have examined above the profound implications of territory as a spatial structuring of politics for state sovereignty and for citizenship. But this is incomplete insofar as we ignore the 'poetic power' (Stråth, 2003) of expressions such as homeland, which relies on the kind of border-making at work at non-geographical levels: through cultural, cognitive, narrative and other forms of boundary-building. It is in this respect that the discourses of homeland should be treated as more than an idiomatic synonym for the nation. While state territoriality appeals to abstractness and the sacred, the spatial figuration of the nation goes down to the concrete and earthly. Homeland, with all its 'powerful affinities' with family and intimacy, is more like a *place* than *space*: 'the home as *our* place, where we belong naturally, and where, by definition, others do not' (Walters, 2004: 241).

The identification of France and Germany as the representatives of two ideal types of nationhood – the civic nation and the ethnic nation – is also relevant to the different connotations of home and homeland, though this civic versus ethnic dichotomy has its very limits. The nation, as 'a universal model against universalism' (Delannoi, 1999: 77), must at the same time claim to universal humanity and a particular national identity. But analytically, this distinction may help us better understand the different ways the process of nation-building employ to channel the universal and the particular. Clearly, the *patrie* carries in the first place a political meaning. As Voltaire writes in his *Pocket Philosophical Dictionary*, the homeland is 'a good held whose owner, comfortably set up in a well-kept house, could say: ... I am part of the whole, a part of the community, a part of the sovereign power: this is my country' (Voltaire, [1764]1994: 26). During the debates on *jus sanguinis* in France in the 1880s, Senator Issac, who favoured a more expansive citizenship policy over restrict *jus sanguinis*, remarked: 'France is not only a race, but especially a *patrie*... she possesses that eminently colonial capacity of absorbing in herself the peoples to whom she transports civilisation.' (Brubaker, 1992: 102) In this

rhetoric, the *patrie* is a political community characterised by its immense cultural capacity of assimilating the others. In the German case, the term *Heimat* initially bore little connection to the nation or the larger political community. It was instead linked with dwelling and a family's property. That is to say, as Wilhelm Röpke insists, *Heimat* was the very opposite of technical-scientific reason; it was 'something organic, natural and naïve' (Petri, 2003: 309). But during the nineteenth century, the concept of *Heimat* shifted its meaning from the private realm to 'an ideological equilibrium' that 'manages to conceive of the nation as being composed, in a harmonic and sentimental way, of the regions' (Johler, quoted in Patri, 2003: 307). *Heimat* thus renders the idea of the nation more accessible and tangible.

Indeed, the terms for homeland in different languages certainly carry varied nuances and bear different relationships with the nation¹¹. But following different routes, they eventually arrive at a connotation that establishes an analogy between home and the nation-state, and hence provokes a concrete feeling of togetherness, an attachment to the homeland, and the passion to defend it. When the territory is under threat, it is then not simply a matter of defending the integrity of state territory, but protecting *our* land. The legitimating power of homeland was evident in the French Revolution, when the Assembly authorised itself the right to use emergency power as declaring *la patrie en danger*. The intimate, 'natural' feeling towards the homeland is easily intertwined with, and employed by, the 'artificial' sovereign power.

The other poetic dimension of territory, soil, is no less important than that of homeland. There are at least three usages of soil in its relations to collective identity and membership. One can find the first one in those early writings on national or racial characters in a scientific language. Montesquieu, for example, famously argues that environmental factors, such as climate, land and soil, determine to a large extent the disposition and even intellectual abilities

¹¹ Another interesting example is that in modern Chinese, the term for the state *guojia*, re-imported from modern Japanese *Kokka*, is a combination of two characters: one for state/nation, the other for home/family.

of a certain group of people. While Hume does not accept the dominant influence of climate on the characters of men, he also agrees that the people 'in very temperate climate' would be the most like to 'attain all sorts of improvement' (Hume, 1994). But this perception of the linkage between the nature and the 'temper' did not produce a permanent or organic nationality – for Hume, both physical and moral causes may alter the disposition of men, perhaps except for 'soldiers and priests'. In the nineteenth century, however, the emergence of the notion of the nation as an ethnic or *geno* group would change the previous naturalistic discernment of the link of the soil to the nation. The notorious blood-and-soil ideology was only an extreme illustration of it.

The third one – the juridical usage of soil is the oldest, yet the most difficult one to comprehend the full sense of it. In juridical terms, soil is technically another expression of territory, when related to the case of citizenship acquisition through the principle of *jus soli*. Agamben reminds us that the hated syntagm 'blood and soil' has its obvious, yet often forgotten juridical origin in the two criteria of citizenship acquisition in Roman law: *jus sanguinis* and *jus soli*. Whereas the traditional criteria 'had no essential meaning' except for 'only a relation of subjugation' in the *ancien régime*, they acquired a decisive importance with the Revolution, for the latter enshrined the principle of popular sovereignty. Citizenship, now naming 'the new status of life as origin and ground of sovereignty' (Agamben, 1998: 128), is acquired at birth either by *jus soli* or by *jus sanguinis*; and birth is exactly the etymological origin of 'nation'. Historically, granting citizenship by the principle of territory has been considered more expansive than the principle of descent. But unconditional *jus soli* has also been attacked, for example, in nineteenth century France, for it being arbitrary and implicating a revival of the 'feudal relic' treating 'man as a dependency of the soil' (Brubaker, 1992: 96).

In discussing the application of the principle based on soil or blood in practice, one has to keep in mind that measures taken by the state for appropriating the relation between territory and population are more strategic and less principled, even though they are likely accompanied by normative

justifications. In the era of contractualism and mercantilism, for instance, states and independent cities in Europe generally pursued immigration-generating policies to encourage new settlers (Kleinschmidt, 2003). In some countries, a largely unsuccessful regime of passport restriction was developed to prevent emigration (Torpey, 1999). In those cases of having successfully attracted immigrants, propagandists would conclude that the immigrants had, 'in a way, voted by their feet to conclude a contract with the rulers of the areas of their destination' (Kleinschmidt, 2006a: 26). By contrast, emigration of the subjects appeared to be a threat to the legitimacy of the government. The practical reason behind these measures, from the mercantilist perspective prevalent before the eighteenth century, was that the population was seen as 'the source of wealth' (Foucault, 2007: 97). Meanwhile, it is the fundamental component of military force, determining the war-making capacity of the state. As the new model of the nation-state was established in the French Revolution, the relationship between the former subject and now citizen and the state certainly changed. The necessity of defining French citizenship immediately arose, and the debate over the Civil Code was concentrated on the respective justification and merit of *jus soli* and *jus sanguinis*. While most representatives favoured *jus sanguinis* and conditional *jus soli* for they held that one needed a deeper attachment for the country to be a citizen, there were strong supporters of unconditional *jus soli*, such as Napoleon, whose argument was again based on military concerns. The obligation of conscription for the citizens, in some cases, becomes one of the most important concerns of the state.

In fact, not only state policies of distributing and spatialising membership are historically situated, so are the theories about them. Just as the perceived crisis of state sovereignty in the interwar period drove legal scholars such as Kelsen and Schmitt to rearticulate public law, the contemporary debates on open borders versus bounded democracy are largely stimulated by the unparalleled acceleration of transnational flows. Yet as I mentioned earlier, the 'crisis' of or the difficulty within national citizenship -- as a certain assemblage of rights and territorial identity -- is not entirely postmodern. Bearing this in mind I now turn to (though not being unaware of the danger of Eurocentrism) two canonical

writers and examine how they engage with the relationship between foreigners, territory and political community.

2.2 Insider and outsider: consent, property and hospitality

While in the ancient Greek, man is by nature political being and bears no 'natural' rights before or without the *polis*, the canon of modern liberal political theory starts from autonomous, self-interested individuals in a pre-political state of nature and concludes with a 'nation-friendly model of the social order' (Shapiro, 2008: 232). The 'grand thinkers' of (Western) political theory provide us with different versions of social contract, but however the emphasis shifts between the community and the individual, a form of consensual social contract is the dominant approach to the origin and legitimacy of political order, be it democratic or not. Bauböck regards 'consent' as the third principle of membership allocation after the other two: territorial residence and descent (Bauböck, 1994: 53). Yet the latter two, *jus soli* and *jus sanguinis* obviously predated the invention of consent theory, and theorists of social contract had also accounted for the legitimacy of these two principles from a consensual perspective. In this light, Locke's discussion of land, property and consent may offer us some unique insights into the question of territory and membership.

Political geographer Edward Soja argues that conventional Western perspectives 'on spatial organisation are powerfully shaped by the concept of property' (Soja, 1971: 9). This is probably nowhere more clearly demonstrated than in Locke's *Two Treatises of Government*. In the *First Treatise*, Locke gives a detailed, sentence-by-sentence attack on Robert Filmer's thesis of the divine rights of kings and patriarchalism. He repeatedly quotes and reveals the absurdity of the claim that 'Adam's children ... had their distinct territories by right of private dominion' ([1689]2003, §75-77, pp.49-51). Distinct territories, he then advances in the *Second Treatise*, are truly based on land ownership. The concept of property is brought into being from the necessity of appropriating the world – the earth and 'all inferior creatures' – which God has given to men in common. And the chief matter of property is not the fruits of the earth, or the beasts, but 'the *earth itself*' (§32, p.113). The making of the social contract is a

natural, pragmatic development for convenience of life. Although at the beginning there was no 'fixed property' in the ground people made use of, as land-owners 'incorporated, settled themselves together', and consequently, by consent, they 'came in time, to set out the *bounds of their distinct territories*, and agree on limits between them and their neighbours' (§38, p.116). Since land appropriation plays such a crucial role in the 'politics of origin', those who know nothing about enclosure would know neither about sovereignty. Seeing the American Indian as still 'a tenant in common' (§26, p.111), Locke contends that their kings are 'little more than generals of their armies' (§108, p.147). In a real commonwealth with full-fledged sovereignty, the government has a 'direct jurisdiction only over the land, and reaches the possessors of it' only as he 'dwells upon' and enjoy it. To the end of such enjoyment, the owner needs to submit himself to the government through merely a tacit consent. Because his obligation with this government is only based on possession, he is 'at liberty to go and incorporate himself into any other commonwealth' (§121, p.153) when he quit the previous possession.

Embodied in the notion of tacit consent is a seemingly passive understanding of the relation between the individual and the community, though, as Bauböck notices, it is not identical with subjection (Bauböck, 1994). For a man gives his (tacit) consent through his obedience to the law only insofar as he has any *possessions* or *enjoyment* of any part of the dominions of this government (§119, my emphasis). And when we consider the question of entering into a new society, it entails an active, express consent in actual engagement. Thus Bauböck comments that 'in its allocational consequences for citizenship, Locke's approach broadly resembles Rousseau's', for 'both determine consent in citizenship as active and explicit' (1994: 65). But he then concludes that the 'consent by admission' principle of membership allocation in Locke is clearly exclusive in two aspects: it excludes those who do not have the maturity of reason, such as the minors, lunatics and idiots; it excludes 'foreigners because they have no full and permanent interest in the commonwealth' (1994: 65). On the first point, as I will discuss in the next section, the bias based on rationality is one of the founding modalities of exclusion of citizenship. It concerns the boundaries within

the territorial borders, and creates the others within 'us'. The second point relates to the external boundaries of membership, which is indeed arguable. A principle of membership allocation strictly based on consent and territorial jurisdiction would exclude only those foreigners who have no full interest in the commonwealth, but on no account would exclude those who do. '.. foreigners by living all their lives under another government', writes Locke, 'enjoying the privileges and protection of it, though they are bound, even in conscience, to submit to its administration, as far forth as any denison; yet do not thereby come to be subjects or members of that common-wealth'. But he continues to say what could make a foreigner so:

Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that consent which makes any one a member of any common-wealth. (§122, p.157)

The problem raised by foreigners is one that concerns 'the beginning of political societies', and thus must be solved through a republican, Rousseauian approach to active and express consent, instead of 'a more moderate liberal version of social contract' (Bauböck, 1994: 63) But unlike republicans, Locke's perception of the rights of ownership as natural and thus pre-political rights would not presume the centrality of political belonging and social solidarity in his 'civil society' of individuals. In his case of the beginning of political society, just as in the theory of popular sovereignty, there resides a danger, or a radical move, which the state – in history rather than in theory – must protect itself from. For the latter, it is the danger of constituent power; for the former the threat to enclosure. It is not without irony that consent is constantly invoked by contemporary writers to argue against not only immigration – which means to Rawls 'migrating into another people's territory without their consent' (Rawls, 1999:8), but also birthright citizenship. Schuck and Smith, for instance, famously charge the acquisition of birthright citizenship by the children of illegal migrants as 'citizenship without consent' (Schuck & Smith, 1985).

When discussing issues such as foreigners' rights in today's world, Kant is a more frequent reference than Locke. His celebrated *Perpetual Peace* is frequently referred to by contemporary writers in favour of cosmopolitanism as one of the most significant inspirations. In this essay, Kant is able to avoid putting the enclosure of territorial states into danger while at the same time lead 'a state-oriented mode of global space' in accordance with his philosophical claim that human beings belong to the Kingdom of Ends. In achieving this, he does not touch upon the question as to under what condition a foreigner may become a member of 'any political community'. Quite to the contrary, a theory of universal hospitality must be founded on an ontological distinction between 'our' society and others, derived from the distinction between the self and the other.

The right to hospitality, in Kantian terms, is the right of 'a stranger not to be treated with hostility when he arrives on someone else's territory' (Kant, [1795]1970: 105), which is justified by the 'right to the earth's surface which the human race shares in common'. It is clear that the Kantian solution for a 'cosmopolitan right' is limited to the right to temporary permission of entry -- a right to resort or visitation (*Besuchsrecht*), but by no means a right to be a guest (*Gastrecht*), which would involve 'a special agreement whereby he might become a member of the native household for a certain time'. As he further emphasises, this natural right of hospitality, or 'the right of strangers',¹² does not 'extend beyond those conditions which make it possible for them to *attempt* to enter into relations with the native inhabitants' (1970: 106). But there is indeed a more imperative aspect to the right of hospitality, namely the host country may not refuse to receive the guest whose existence would be endangered upon refusal. This position has now been inscribed in international conventions on human rights, and generally accepted by political philosophers in all camps. Even trying to defend all the precious values of a closed community, Walzer has to agree that 'at the extreme, the claim of asylum is virtually undeniable'. But immediately he finds himself in an aporia: if this is normatively true, why only asylum? 'Why be

¹² '*die Befugnis der fremden Ankömmlinge*', in another translation it is better understood as 'the privilege of foreign arrivals'.

concerned only with men and women actually on our territory who ask to remain, and not with men and women oppressed in their own countries who ask to come in?' In the end, he frankly admits that he has no adequate answer to these questions (Walzer, 1983: 51).

It is intriguing to compare the different ways these two writers give accounts of the relation between the political community and the outsiders from the perspective of the 'possession' of land. For Locke, the appropriation of a land by a man would not prejudice any other man to the extent that there is 'still enough, and as good left'. This is perfectly true of both land and water (§33, p.114). This 'idyll of property acquisition' on an earth with vast, almost indefinite land has been condemned for implying a rationale of colonial expansion in the New World (Corcoran, 2007). By contrast, Kant's argument for the right of hospitality is expressly motivated by the awareness of the fact that the earth does not 'disperse over an infinite area'. The surface of the earth is limited, and developments in the means of transportation have brought closer different communities of man that used to be divided by oceans and deserts. As a moral principle, 'no-one originally has any greater right than anyone else to occupy any particular portion of the earth. This principle is set forth against the background of colonial conquest – the 'wrong treatment of the lands of peoples' by the "civilised" countries of Europe' (Kant, 1970: 106). But the relations of their works to colonialism are by no means simply 'for and against', as the racial thinking in both writers is unambiguous.

On the whole, Locke starts with land appropriation which puts an end to the common possession of the earth, yet arrives at an ambivalent delineation of a rather weak link between the land-owners (who may appear as the engaging foreigner) and a certain territory. And Kant starts with a universalist presupposition featuring mankind's common right to the face of the earth, concluding by a proposal of a cosmopolitan right limited by hospitality and a state-centred world federation which reinforces the imaginary of discrete territories as the containers of societies and peoples. Neither, indeed, has produced an alternative geopolitical imaginary to that monopolised by the state.

However, repeating over and over the omnipresent hegemony of statist thinking in liberal political theory would contribute little to envisioning new possibilities. It is equally unprofitable to merely reassert the claim that nations are the only rightful occupants of territory by rereading these texts (Miller, 2011).

I have sought to highlight the tensions between the competing claims of and about territorial sovereignty throughout this section. The dilemma in the decisionism of state sovereignty and the constituent power of popular sovereignty partly informs the uneasy relation between two approaches to territory: taking territory as an essence of state sovereignty, and taking it as the entitlement of each citizen. But with regard to membership, the territorial order of citizenship is at work in other spaces such as that of differential inclusion and of belonging. The individualist perception of the state's authority over territory as derived from the citizen's right to territory does not necessarily challenge this order, as in Kant. The category of territory is one that produces insiders and outsiders, but on the other hand, it becomes the site of generalising and abstracting social relations, and hence the mediator between different memberships. Seeing with the state, territory exemplifies the politics of space and the geography of power; but alternatively it is the multiple areas of fixation and circulation, differentiation and communication in and between societies understood from a non-substantialist perspective.

Chapter 3 Historicising rights and mobility

*A refugee has crossed
so many borders, he becomes
Invisible where countries change
their names. When he stops in the shadows
to catch his breath, pieces
of a border lace his shoes*

--David Chorlton, 'The Border'¹³

The association of the notion of citizen and that of rights has now become a universal norm, a key to understanding the modern concept of citizenship. However, from a historical perspective, the development of the idea of 'citizens' rights' has been inevitably struggling to reconcile the inherent conflict between its two constitutive notions: the citizen and rights. Brett contends that the early-modern articulation of rights involves a 'moral zone of non-coincidence' between 'nature (and its law and rights) and the city (with its laws and rights – understood as liberties, privileges, immunities, and powers)'. Thus, for instance, to claim the right to speak is saying 'not only that the law allows us to speak but that we ought to be allowed to speak'¹⁴ (Brett, 2003: 98). The language of rights has a radical edge as the doctrine of popular sovereignty does: one at the individual level and the other collective. Citizenship, which is attributed to man within the *civitas* instead of by natural law, serves as a means to neutralising this radical edge (Skinner & Str ath, 2003: 5). But on the other hand, its association with the language of rights renders citizenship always a potentially subversive concept that contests existing boundaries. In the first two sections of this chapter I survey two problematics entailed by the association of citizens and rights: the

¹³ The poem is from the collection *Outposts*, Chorlton (1994:30).

¹⁴ Here Brett is referring to Hohfeld's analysis of rights in his seminal essay *Fundamental Legal Conceptions as applied in judicial reasoning* (1917), see Brett (2003: 97).

so-called gap between Man and Citizen which differentiates rights-bearers and the 'absolute rightless'; and the category of political rights which differentiates citizens as political beings and mere subjects. In the last section I turn to the historical role of human mobility in the construction of national citizenship, and point to the problem of 'the right to mobility' which will be further investigated in the following chapters.

3.1. The rights of Man and the rights of Citizen

The paradox between the moral claim of universal humanity and the exclusive nature of territorial state is considered by some to be the fundamental inconsistency in liberal political theory (Cole, 2000; Seth, 1995; Walker, 1999). It gives rise to 'an unexplained gap between the universal man, which is its point of departure and the citizen or subject of a state, which is its point of arrival' (Seth, 1995: 48). One of the documents that laid the foundation for the modern ideas of citizenship and rights, the French Declaration of the Rights of Man and the citizen, in fact simultaneously confirmed the 'natural rights' of Man by virtue of being Man and enshrined the nation as the ultimate source of 'the principle of all sovereignty'. The 'nation' here obviously denotes the civic nation -- a political community in which citizens govern themselves¹⁵. If the principle of popular sovereignty is supposed to function to connect the allegedly natural rights of universal Man and territorial sovereignty of a certain national state, this connection is far from solving the paradox. As Agamben insightfully notes, it is even unclear whether the two terms in the title of this epoch-making document – *homme* and *citoyen* – name two autonomous being or 'form a unitary system in which the first is always already included in the second'. If the latter is the case, it follows that 'rights are attributed to man solely to the extent that man is the immediately vanishing ground of the citizen' (Agamben, 1998: 126-127). This comment is explicitly inspired by Hannah Arendt, who offered one of the most famous and powerful critiques of human rights right after the United Nations

¹⁵ Sieyès defines the nation in 'What is the Third Estate' as follows: 'What is a nation? A body of people who join together to live under common laws and be represented by the same legislative assembly.' (Sieyès, 1789)

adopted the *Universal Declaration of Human Rights* (UDHR) in 1948. Her central argument is that human rights are either the rights of the citizen (as a tautology) or the rights of those who has no rights (as a void).

To make sense of this argument one must start with her understanding of the human condition, that is the Aristotelian idea of human beings as speaking, and hence as political beings. For Arendt, the discourse of eighteenth century that presumes that rights spring from the 'nature' of man is degrading the political to nature – and there is 'nothing sacred in the abstract nakedness of being human' (Arendt, 1976: 299). In other words, 'apart from the institution of the community, there simply are no humans' (Balibar, 2007: 733). Human beings as merely human beings are never endowed with 'inalienable rights', for only 'individuals who are already members of a political entity' are the bearers of rights. What is written in the UDHR as well as in the French Declaration two centuries ago, for Arendt, is in fact not human rights, but rights of equal members of a political community. Furthermore, since national state is the only legitimate and universalised form of polity in modern age, what we call human rights are in fact the rights of national citizens. But if there is something we must call a 'human right' (in singular form), that would be the right to be a member of a political community, or, the right to have rights. Those who have lost the so-called rights of Man (deprived of the right to life, liberties or the pursuit of happiness, etc.) are not completely rightless. Rather, absolute rightlessness means the loss of that 'one' human right; means that one no longer belongs to any community whatsoever. (Arendt, 1976: 296)

Why does Arendt take such a strong position against the post-war effort to 'reanimate the idea of human rights as political foundation' (Menke, 2007: 739)? Her primary concern here is not the exclusion of foreigners, but the existence of 'stateless people', who are 'forced to live outside the common world' and are thrown back 'on their natural givenness, on their mere differentiation' (Arendt, 1949: 33). The 'absolute' outsiders, rather than relative outsiders who are still citizens of other countries, reveal the aporias of human rights. Elsewhere she points to the concept of 'human dignity' which is not endowed by nature, but

consists in the political-linguistic existence of human beings: 'Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity' (Arendt, 1949: 30). Since neither human dignity and citizens' rights in the guise of human rights are granted to man by nature, but derive from the making of the community – which is by no means 'organic', but founded through 'the reciprocity of actions' (Balibar, 2007: 733), and since the nation-state is the only universally legitimate community, the restoration of human rights could be achieved 'only through the restoration or the establishment of national rights' (Arendt, 1976: 299). Beyond this rather unpromising observation, Arendt does briefly speak of a 'new political principle' in the preface of *The Origins of Totalitarianism*, in which she claims that human dignity needs 'a new guarantee which can be found only ... in a *new law on earth*, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities' (Arendt, 1976: ix, my emphasis). But before these yet-to-come 'newly defined territorial entities' being invented, it seems that with Arendt's reasoning, there is no ultimate way to avoid the tragedy of being stateless and rightless.

Many contemporary works on refugees, undocumented migration and detention centres have confirmed and developed the thesis of Arendt and Agamben. In these studies, undocumented migrants, who live 'in the absence of any legal recognition' (Monforte & Dufour, 2011: 4)¹⁶, are the new stateless *par excellence* who again disclose the paradox between universal norms of human rights and the territorially confined citizenship regime of a particular nation-state only through which is it possible to articulate rights. From the Arendtian perspective, the predicament of non-status persons is not primarily the lack of concrete liberties and entitlements, but the deprivation of that 'one human right' – namely the right to membership of a political community or the right to have rights. In other words, the non-status is rendered as *homo sacer*, the depoliticised

¹⁶ And considering the etymology of the word 'person', from the point of view of the law and authority, non-status persons are 'non-persons' (Dal Lago, 2009).

bare life. The loss of the relevance of speech and the loss of all human relationship established by belonging to a community, as Arendt claims, amounts to the loss of the most essential attribute of human life. But the very process of depoliticising certain groups of the population is at the same time central to the maintenance of the political norms of sovereignty. In this respect, the international discourse of human rights not only through the institutional structure of the state system¹⁷, but also as immanent to state sovereignty. The locution of 'sacred and inalienable' human rights is silent vis-à-vis state sovereignty when 'it is no longer possible to conceive of them as rights of the citizens of a state.' (Agamben, 1998:126)

It is indeed crucial to underscore the inadequacy of human rights discourse in solving the plight of refugees, undocumented migrants and migrant detainees vis-à-vis the omnipresent bio-power of sovereign states. But this line of argument, too, is inadequate to account for varied forms of actually existing movements, demonstrations and acts, through which those who are denied formal citizenship constitute themselves as political beings. This is not unrelated to the limitation of the Arendtian critique of human rights itself. Her criticism is grounded on a rigid opposition between the realm of the political (of freedom) and the realm of private life (of necessity); or between *bios* (good life) and *zoe* (bare life). Does not this opposition risk itself only reinforcing the distinction between political beings and mere subjects articulated in the classic theories of citizenship? To explore this question, one needs to come back again to the modalities of exclusion and differentiation through the language of rights in the forming of citizenship.

3.2 Citizens and subjects

Our understanding of citizenship as comprising distinct sets of civil, political and social rights is very much indebted to T. H. Marshall's seminal essay

¹⁷ Given that international conventions and organisations are fundamentally based on the acknowledgement of the legal principle of territorial sovereignty, some legal scholars contend that the protection provided by the international human rights regime to undocumented migrants is significantly constrained. (Bosniak, 1991; Fekete, 2005; Morgan, 1989)

'Citizenship and Social Class' (Marshall, 1992) – in the 1950s, which is set out to examine the tension between the principle of equality in citizenship and the inequality of social class, and in a broader sense between democracy and capitalism. In so doing he outlines the processes by which citizenship rights historically developed in the British case. This model has been criticised for, apart from its unavoidable reliance on the framework of the (British) nation-state, appealing to a developmental and teleological language and discounting to a large degree the role of social struggles in the expanding of citizens' rights. As Rancière reminds us, universal suffrage 'is in no way a natural consequence of democracy' (Rancière, 2006: 298); nor is it a natural consequence of citizenship. Rather, citizenship in the ancient city state is a powerful instrument of naming those who are qualified to be political beings (or human beings at all) and who are not. While the transformation of citizenship into a nation-state institution establishes a general and abstract status that directly links the individual (as a citizen and a national) to the state, as an institution and as a concept, citizenship in modern politics never gives up its function as the machine of 'differential positionings' (Sassen, 2006: 290; see also Isin, 2002). From this point of view, citizenship involves a distribution of rights, in spatial and other terms. As noted earlier, the dynamics between the regime of differential inclusion and the struggles of the excluded is the key to understanding the institution of citizenship. I now attempt to reveal the similar theme in the theories of citizenship through the lens of political rights, which is initially what distinguishes citizens from subjects.

Sieyès offers one of the earliest elucidations of the boundaries between civil rights and political rights, and accordingly between full-fledged citizens and passive citizens in the era of national citizenship. According to this logic, 'natural rights are those rights *for* whose preservation society is formed, and political rights are those rights *by* which society is formed.' We can call them also constituted rights and constituent rights. As a general rule, Sieyès asserts that 'all inhabitants of a country must enjoy the rights of passive citizens', whereas women, children, foreigners and those 'who would not at all contribute to the public establishment must have no active influence on public matters' (Agamben,

1998: 130). The 1791 Constitution of France explicitly inscribed this logic in creating two categories of citizens: *citoyens français* and *citoyens actifs*. Regarding their relations to sovereignty, the former referred to all the subjects, and informed the conflation of citizenship and nationality in modern politics; the latter defined those who were not only subject to sovereignty, but also representing the very location in which sovereign power resided. Contemporary commentators often make the point that nationality has become less and less relevant for legally resident aliens to enjoy civil, social and economic rights, thus citizenship has become 'post-national' (Soysal, 1994). Yet as far as the jurisdiction of a state is territorially delimited, it is always integral to the liberal theory of citizenship that all the inhabitants of a territory, in Locke's terms, by submitting to its law, should enjoy civil rights and other privileges and protection under the law. The crucial point here thus is no longer the universal guarantee of fundamental rights, but the inherently restrictive idea of political rights.

Foreigners are certainly considered a major group who should not enjoy political rights, before and after Sièyes. In Bodin, aliens occupy the same position, with regards to political rights, as slaves do. When he describes citizens as free subjects, this expression entails that all citizens are subjects, -- but the reverse is not true. Not all subjects are citizens, for 'this is clear from the case of slaves', and 'the same applies to aliens' (Book I, XI). Hobbes defines the 'systems subordinate' as comprising political subjects and private ones. Private are those 'who are constituted by Subjects amongst themselves, or by authority from a stranger'. He gives a rather convincing reason for this: 'no authority derived from foreigner power, within the dominion of another, is Public here, but Private' (Hobbes, [1651]1998: 149). However, foreigners are not the only groups outside the lawful area of political rights. As I have mentioned in the previous section on territory, the structure of inclusion and exclusion implied in citizenship is not solely determined by territorial boundaries. Citizenship also produces its others within. At the beginning, this is justified by the discourses of rationality, property and a political anthropology derived from them. Both being the key concepts of Enlightenment thought, property and rationality are indeed inseparable. For

property inevitably involves 'the property of the self', which is 'the capacity of an individual to rationally dominate his passions and to discipline himself in order to be able to do that labour which constitutes in turn the foundation of every material property' (Mezzadra, 2006: 33). Both concepts are employed in drawing the lines between those who are qualified as citizens as political beings and those who are not, -- and hence can only be private subjects. The logic is also applied in the global scale to differentiate the civilised and the barbarian; or rather, the discovery of the 'uncivilised' world is constitutive of the construction of the autonomous, rational and sovereign subject of human rights.

We are now all familiar with the extraordinary case of the Haitian revolution, as both a challenge to and a manifestation of global colonial history. Inspired by the French Revolution and the *Declaration of Rights of Man and Citizen*, the rebels in Saint-Domingue immediately declared their independence from colonial rule and slavery. When this message was sent to Paris, Mirabeau spoke to the National Assembly that 'in proportioning the number of deputies to the population of France, we have taken into consideration neither the number of our horses nor that of our mules' (Chatterjee, 2007: 29). For the metropolitan officials, as being rational individuals and citizens, it is more than evident that neither the principle of popular sovereignty nor the rights of citizen was applicable to the colonial people. The French government subsequently sent a military force to Saint-Domingue and re-established colonial rule and slavery. In the context of colonisation, foreigners as immigrants also fall into a racialised category. The racialised immigration filtering policy of today could well find its precedent forms in history. In Natal, the British colony, for example, when migration restrictions were first introduced on the basis of property and language proficiency in 1897, the prime minister of the self-governing colony had to explain to the imperial authorities that 'it never occurred to me for a single minute that it should ever be applied to English immigrants', and that 'the main object of the proposed law is to prevent Natal from being flooded by undesirable immigrants from India'. (Cole, 2000: 30-31)

All these 'different modalities of exclusion that constitutes the founding moments of citizenship' (Balibar, 2004: 76) remind us that the construction of the citizen as political being has never been independent from the identification of the other: those who are incapable of being political and thus worth not citizenship. The borderlines separating them are never drawn by natural law, although without which citizenship cannot be articulated. But these lines, between political beings and 'merely human beings' in Arendt; or between citizens and subjects/foreigners in the theories and constitutional settings of citizenship, are not definite ones. Moreover, the language of rights serves as one of the most powerful strategies for those who are deemed as mere subjects to challenge and traverse these boundaries. We shall come back to this point later in Part II, with references to Rancière's reconceptualisation of rights and a specific focus on the 'right to mobility'.

3.3 Citizenship and mobility: the government of closure and circulation

Compared to territory and rights, mobility is a concept much less frequently associated with the constitution of citizenship, although this is under change in the recently booming literature on the freedom of movement and the politics of mobility (e.g. Aradau, Huysmans, & Squire, 2010; Blitz, 2007; Squire, 2011). Generally speaking, one can distinguish social mobility, which indicates the 'capacities to move along stratified social formations', from spatial mobility, which refers to the capacities 'to move across the borders of gated communities, fortified cities', state territories and other bordered spaces (Shamir, 2012: 1428). Similarly, the term 'movement' also carries the meanings of both social movement and physical/spatial movement. Some have argued that the two significations of mobility are not as unrelated as the way they are usually dealt with in social sciences. Aradau *et al.* hold an essentially sociological understanding of all types of mobility. Thus mobility is conceived of as 'a mode of sociality' based on exchange that works within 'a context marked by an intensification of the physical movements of people' (Aradau et al., 2010: 950). Regarding our previous discussion on the multiple structures of territoriality in organising membership, we can also see social and spatial mobility as crossing

different types of boundaries. This being said, the subject of this section is primarily border-crossing mobility, which nonetheless immediately entails social and political readings. Movements across borders are by no means 'less' social than social movements. The issue of mobility bears a profound relationship with the maintaining of territory and also appears as a terrain for rights claims.

In his detailed historical study on the invention of the passport, Torpey, adapting Weber's well-known phrase, describes an often neglected salient characteristic of the state as 'the monopolisation of the legitimate means of movement' (Torpey, 1999: 4-20). This monopolisation has gradually developed a number of tools and techniques that reinforce one another: such as the 'definition of states everywhere as "national"; the codification of laws establishing which types of persons may move within or across their borders, and determining how, when, and where they may do so; the stimulation of the worldwide development of techniques for uniquely and unambiguously identifying each and every person on the face of the globe' (Torpey, 1999: 7), and many others. But the majority of these tools were invented or systemised only from the late nineteenth century and early twentieth century. As mentioned earlier, population stability was not the primary concern of the polities in their control over territories before the seventeenth century. In the Middle Ages, it was difficult for both contemporary observers and retrospective historians to make a distinction between migration and travel. For if we take the intention of return as the criterion for distinction, the difficulty lied in that people who moved 'did not always declare their intentions' (Kleinschmidt, 2003: 51). Again, the regime of confessing the intention of travel to the state is another fairly new invention. Absolutist states in the early modern period sought to increase immigrants and prevent emigration through rather fragmented policies. In the *ancien régime* of France, for example, Louis XIV introduced an edict in 1669 that forbade all his subjects to leave the territory of France, unless 'those quitting the Kingdom' were in possession of a passport authorising them to do so (Torpey, 1999: 20). But even before this restriction was objected to by the revolutionaries, controls on movement were already under attack. Torpey records that in a

meeting of the Estates General in early 1789, the *cahiers de doléances* of the parish of Neuilly-sur-Marne contained a passage which worth quoting at length:

As every man is equal before God and every sojourner in this life must be left undisturbed in his legitimate possessions, especially in his natural and political life, it is the wish of this assembly that individual liberty be guaranteed to all the French, and therefore that each must be free to move about or to come, within and outside the Kingdom, without permissions, passports, or other formalities that tend to hamper the liberty of its citizens. . . (Torpey, 1999: 22)

This pleading for the freedom of movement echoes those earlier theories of territory, including Locke's I have examined before. In them territory is approached as a juridico-political concept that demarcates the spatial limits of state sovereignty. But territory is yet to be transformed into an objectified space to which the population has conditional access. Therefore in classic theories of the state, while the concept of territory is always given a central position, the concept of borders is barely mentioned. When the rationale of territory is shifted from spatial limits of authority to the control of flows across the borders¹⁸, which is a joint consequence of a number of interrelated processes such as the rise of both global capitalism and national economies, industrialisation and the accumulation of demographic knowledge, the relationship between territory and membership becomes heavily focused on 'access' and movement. In Brubaker's words, political territory presupposes membership by 'distinguishing those who enjoy free access to a particular state territory from those who do not' (Brubaker, 1992: 72). The connection of the idea of territory to the state control over human mobility points to the crucial role mobility and mobile people have played in the construction of an image of citizenship linked to closure and sedentariness.

The making of an even and coherent state territory involves not only imposing unified limitations on the entry of foreigners, but also removing

¹⁸ Enrica Rigo cites Italian legal scholar Donato Donati as exemplifying the theorisation of this shift in early twentieth century. Donati makes a further abstraction (i.e. after the previous abstraction from the personal domain of the ruler to an impersonalised power relation) of the notion of territory in the early twentieth century through the 'limitation imposed on the entry of foreigners'. (Rigo, 2008: 152)

internal barriers to free movement. The latter process historically includes both government-initiated migrations, or 'pioneer migrations', from densely populated areas to the less populated 'new lands' and voluntary migrations by and large from rural to urban areas. Planned migrations serve apparently as a means of nation-building, which aim at 'bringing land more securely under central state control' (King, 2010: 32), and promoting or building up a national culture in the former peripheries. The migratory movement accompanied by urbanisation is a rather different story. The rationalisation and systemisation of *Staatsangehörigkeit*, nationality or literally state-membership that is related to but non-identical with state-citizenship (*Staatsbürgerschaft*), in nineteenth century Prussia exemplified how increasing freedom of movement, following the liberation of the peasants, had brought authorities under pressure to codify a general membership status of the state. Brubaker sees the separation of membership and residence as at the heart of this transformation. For 'effective closure against the migrant poor' required 'a reversal in their causal relationship'. Membership would become the category independent from that of domicile or residence. The control over mobility across external borders and the employment of and the adaptation to internal movements render mobility integral to the politics of territory and citizenship. This politics works to place 'people on the move' in opposition to citizens as a sedentary population. In the state theory of Jellinek, who published the *General Theory of the State* in 1900, not only the people of states are sedentary; the characteristic of sedentariness 'also extends to the state itself' (Rigo, 2011; Jellinek, 1911: 290-293). The relationship between territory and population in earlier discourses is reversed.

Kleinschmidt argues that most of the intellectual underpinnings of current restrictive migration policies are inherited from nineteenth-century social and political theories, such as the organic perception of the nation-state and scientism that objectifies and stigmatises migrants as passive targets of 'anonymous factors of attraction and repulsion', or as a 'statistic mass'. All these help normalise the sedentary image of the population as a whole, and 'downgrade cross-border mobility to a deviant pattern of behaviour' for which explanations are deemed necessary (Kleinschmidt 2006b: 4). However, the rise

of hostility in the nineteenth century state theory against mobility existed side by side with the prevalence of economic liberalism. In fact, it was the century that experienced the largest scale of mass migration in history¹⁹. The relaxation of passport controls and the trend of free movement developed to such an extent that at the end of this age of great migration, a German student of the passport system made the following observation:

Because in recent times the position of foreigners has grown much different from before . . . most modern states have, with but a few exceptions, abolished their passport laws or at least neutralized them through non-enforcement . . . [Foreigners] are no longer viewed by states with suspicion and mistrust but rather, in recognition of the tremendous value that can be derived from trade and exchange, welcomed with open arms and, for this reason, hindrances are removed from their path to the greatest extent possible. (Torpey, 2001: 256)

The First World War decisively ended this trend and marked the beginning of the century of ever growing new technologies of mobility control and border surveillance. But the primary concern here is not about how and why this dramatic change took place. In highlighting these historical contingencies behind the administrative approaches to mobile population, we are led to another mechanism of territory that is driven not by closure, but by circulation. The 'liberal' period of mass migration in the nineteenth century and early twentieth century has definitely had enormous influences on the global economy and the demographic landscape of the modern world. However, state territoriality has not experienced much considerable change only because of the large-scale mobile populations in this period. Rather, it coordinates and makes use of human mobility. The modern use of territory, according to Sack's theory of territoriality, is based upon 'a sufficient political authority or power to match the dynamics of capitalism: to help repeatedly move, mold, and control human spatial

¹⁹ Known as 'age of mass migration', the period between ca. 1840 and ca. 1914 witnessed millions of transatlantic migrations from Europe and Asia to the Americas, intra-Europe migrations and comparable movements from China, Russia and India to Southeast Asia (Goldin, Cameron, & Balarajan, 2011). On the mass migrations from Europe to the Americas and Australasia between 1850 and 1914, see in particular Hatton & Williamson (1998).

organisation at vast scales' (Sack, 1986: 87). Territoriality produces boundaries that differentiate and exclude, but it also facilitates communication through boundaries – which is, unlike communication between organic communities in traditional societies, 'simplistic', for communicating now requires only 'one kind of marker or sign – the boundary' (Sack, 1986: 32).

Sack's theory of territoriality illustrates the general links between movement and territory mainly in social and economic terms, and Foucault provides us with a political perspective on the often neglected relation between sovereign power and circulation. He remarks that the traditional problem of sovereignty is the safety of the territory – conquering new territories or holding on the conquered, and Machiavelli exemplifies and also ends this line of argument. But the modern problem for sovereignty, in his view, has changed its nature:

Now it seems to me that through the obviously very partial phenomena that I have tried to pick out we see the emergence of a completely different problem that is no longer that of fixing and demarcating the territory, but of allowing circulations to take place, of controlling them, sifting the good and the bad, ensuring that things are always in movement, constantly moving around, continually going from one point to another, but in such a way that the inherent dangers of this circulation are cancelled out. (Foucault, 2007: 93)

The realisation of this logic – that of allowing and filtering circulation – has reached its most complex form in today's world. Economic liberalism celebrates a perceived borderless world, whereas critical political scientists and sociologists see the sovereign states building the walls to enclose themselves (Andreas & Snyder, 2000; W. Brown, 2010). The walls (in material or non-material forms) are less to mark the spatial limits of the sovereign power than to obstruct human mobility. But facilitating mobility, or '*laissez faire, laissez passer*', is equally important as, if not more important than, installing barriers. At the centre of the global governance of mobility is a sophisticated hierarchy of desired, normal and unwanted mobilities overlapped with the international

division of labour, and a set of growing techniques and cooperating regimes in order to distinguish between the good and the bad, freedom and security.

The term 'migrant' is often used in a way that bears a connection with the less favourable forms of movement in the global hierarchies of mobility. The social imagination of the migrant immediately combines the other forms of otherness of citizenship we have already inspected: the *foreigner*, who is at once remote and near (Simmel, 1971); and the *subject*, who is politically quiescent. But a migrant is not only a foreigner among us and a subject; he or she is a foreigner who raises problems, supposedly, to the 'host society'. This is not as self-evident as it appears today if we look at the term 'migration' itself: while foreignness and subjecthood both bear somewhat negative and social connotations, migration is defined by a neutral, even natural activity: moving from one place to another. The activity of migration is not only practised by human beings, but also numerous other species. In a smartly put title, Sutcliffe asks: 'Why can birds, whales, butterflies and ants cross international frontiers more easily than cows, dogs and human beings?' There are many reasons such as what I have shown – those referring to the control over territory as a matter of imposing limitation to the access to it; to a closed national society; to a homogeneous national culture and so forth. Underlying all these explanations is the methodological assumption that migration of human beings is deviance, whereas staying at the place where one was born is normal. From the viewpoint of the people who move, migration is yet another means of improving their life opportunities – by changing locations. But from the viewpoint of the administrators of the state, migration much be divided into internal and international sorts. While the former is less problematic¹, the latter is definitely is a problem for border control, management of population, the values of national citizenship, and increasingly for national security.

It is from that perspective of the individual that the Universal Declaration of Human Rights recognises that 'everyone has the right to leave any country, including his own, and to return to his country'. For the right to move is entailed by 'the right to life, liberty and security of person' which is the most essential

element of individual rights recognised by the UDHR. But from the perspective of the state, the UDHR remains silent on the right to enter a country, for that has to do with national sovereignty, which is what has enabled all the member states of the United Nations to vote on this declaration. The kind of freedom of movement defended here, indeed, is not that different from that was declared by the International Emigration Conference in 1889 – except that in 1889, not every nation is considered as ‘civilised’: ‘We affirm the right of the individual to the fundamental liberty accorded to him by every civilised nation to come and go and dispose of his person and his destinies as he pleases.’ (Goldin, Cameron, & Balarajan, 2011: 58). What is at stake in this unbalance between the right to emigration and the right to immigration is once again the dependence of the international regime and discourse of human rights on the norms and structures of state sovereignty (Bosniak, 1991). In contrast to the ‘limited’ rendering of the right to freedom of movement adopted by inter-governmental organisations, a growing numbers of scholars, activists and migrants have advocated for the unconditional ‘open borders’ and a freedom of movement for all in the past few decades (Abizadeh, 2008; Carens, 1987; Hayter, 2004). However, in light of the governmental rationality of facilitating and sorting mobilities, the ‘right to mobility’, just as human rights and political rights we have previously critiqued, can also be subsumed into a global, regional, or bilateral regime of mobility governance.

As we shall see in Part II, the ‘actually existing’ regime to guarantee the freedom of movement provided by the EU does not only turn the right to mobility to a fundamental character of EU citizenship, but also entail the securitisation and economisation of free movement that engenders the principles of democratic citizenship itself. I therefore shall argue that like other concepts central to our overall thesis such as citizenship, territory, and rights, mobility, too, should be understood in strategic, context-dependent and dialogical ways.

3.4 Summary

In Part I I have investigated how the categories of territory and mobility are involved in a foundational way in the spatial allocation of (state) membership, and how the category of rights operates as an apparatus of differentiating between Man and citizen, between political beings and mere subjects. However, while each of these concepts helps generate the dichotomies of self and other, here and there, and citizens and aliens in their incorporation into the principle of state sovereignty, each also contains the intent of moving beyond these binaries. Regarding the spatial allocation of membership, territory distinguishes insiders from outsiders, and also those who belong from those who do not. But the ideal of state territory as an exclusive and homogeneous space claimed by sovereignty is never fully realised. In the form of generalising and abstracting social relations, territoriality always involves multiple mechanisms that not only differentiate, but also mediate and communicate in and between societies. I have also looked at the poverty of the language of universal rights as natural rights through Arendt, and the making of 'political rights', a distinct kind of rights that differentiates the proper political beings and the mere subjects. Yet this critique is a necessary preparatory step towards a redefinition of rights and of the political, which is crucial to our theorisation of the politics of mobility in Europe.

In history, the governance of mobility contributed both to the production of territorial closure, hence to the codification of citizenship as a general status directly affiliated to the state, and to the maintenance of circulation which is above all an integral feature of territoriality. While appreciating the autonomy and normality of human mobility, I am nonetheless not endorsing a normative argument for the right to free movement, nor do I seek to idealise migration as a transformative power that will bring about a genuinely global citizenship (c.f. Hardt & Negri, 2000). Rather than either naturalising the opposition between the figures and counter-figures of the citizen or seeking to simply cancel it once and for all, it is more fruitful to consider the terms under which it is framed, contested and mediated. These inquiries into the dialectics within the modern concept of citizenship constitute the starting point from which I shall, in the next

state, evaluate the continuities and discontinuities of the interrelations between territory, rights and mobility in the new settings of the Europeanisation.

Part II

The European

Chapter 4 EU citizenship and common immigration policy: historical development and legal frameworks

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.

--- Robert Schuman²⁰

This chapter aims to outline the historical background and the legal framework of EU citizenship, and to summarize EU legislations in the field of immigration and asylum. While the dissertation stresses on a variety of mechanisms of the citizenship regime beyond institutional arrangements, this formal dimension is nonetheless indispensable to any attempt to address the politics of citizenship in a larger context. It provides the background against which citizenship is utilised as governing technology, claimed as an emancipatory ideal, or contested in daily experiences. In the model of national citizenship, immigration policy and citizenship policy are logically and practically connected, as sovereignty does not only determine the contents of political membership but also its boundary. According to Hammar, immigration policy of the nation-state thus primarily has two aspects: the control of immigration 'flows' and 'policy formulations which influence the condition of immigrants' (Hammar, 1985: x) To be more precise, the former regards *admission* to the territory, which involves both physical border controls and setting admission requirements; and the latter regards *integration* and conditions of citizenship *acquisition*.

²⁰ Schuman 1963, quoted in Maas (2007: 61)

Table 4.1 Composition of immigration policy

Policies 'on' the borders		Policies 'after' the borders	
Border control	Admission/Visa policy	Rights and Statuses	Integration Citizenship acquisition

It is clear that the EU started to develop its competencies in migration policy through implementing free movement of people (Geddes, 2000), which is nonetheless no longer deemed as an immigration issue. It was not until the 1998 Treaty of Amsterdam that immigration and asylum policy was brought under Community competence. After the 'communitarisation' of issues relating to third-country nationals (TCNs) by the Amsterdam Treaty, immigration and asylum were partly brought under Community competence. EU citizenship, free movement of people, immigration, external border control and many other categories are all brought into the umbrella policy field of creating an Area of Freedom, Security and Justice (AFSJ). Within the framework of the AFSJ, the EU has introduced a number of wide-ranging yet fragmented initiatives and legislative instruments pertaining to both dimensions of immigration policy – namely control and integration. Due to the very nature of EU citizenship as additional to and conditioned by national citizenship, migration policy formulated at the EU level does not involve the dimension of citizenship acquisition. However, the efforts made at the supranational level towards integrating external border control and harmonising admission and integration policies bear an important relation to what it means to be a citizen of the Union. Most notably, the normative expectation of EU citizenship to be de-linked from nationality and grounded on residence in fact often calls for higher degree of communitarisation in regard to the statuses and rights of TCNs. The profound bearing of immigrants on the meaning of EU citizenship will be highlighted in the last section of this chapter, which sets out to map the various trends in search for a theory of European citizenship.

4.1 Citizenship of the Union: historical background and legal framework

4.1.1 From Rome to Paris (1957-1986)

While citizenship of the European Union was officially established by the Maastricht Treaty (Treaty on European Union, TEU) in 1992, its institutional structure and further development ever since cannot be adequately analysed without a historical perspective. As is well known, the process of European integration started as an economic project driven by the overarching goal of establishing a single market. As the first European Commission President, Walter Hallstein unequivocally commented, 'its (that of the European Economic Community) whole philosophy... is liberal. Its guiding principle is to establish undistorted competition in an undivided market' (Hallstein, 1972, quoted in Hansen & Hager, 2010: 47). However, the Community legal order as established by the Rome Treaty (TEC) and the case laws in the earlier decades of European integration was not merely a reduced functionalist one. For instance, the Section on the Assembly in the original Rome Treaty provided that the Assembly shall 'draw up proposals for elections by direct universal suffrage' in all Member States (Art. 138(3); Art. 190(1) TEU). With the *Van Gend en Loos* case, the European Court affirmed that 'the community constituted an autonomous legal order, which bound Member States and gave rights to their citizens' (Durand, 1979: 3) in 1962.

Thus from the late 1950s to early 1970s, although the primary goal of the Community was to create an economic union, the views and initiatives on a political union or a 'Europe of citizens' were already visible in the legislation of the ECC and the juridical practice of the Court. Furthermore, the period witnessed some early yet important moves towards implementing free movement of labour, which started as a purely economic project yet later on became one of the essential aspects of EU citizenship. We shall go back to the legislative decisions on free movement of persons in more details later.

The Paris Summit Meetings in 1973 and 1974 are seen by many as marking a significant turn in the history of European integration from earlier

market-oriented approach to a more politically conscious one (Van Den Berghe, 1982; Wiener, 1997). For the first time, the term 'European citizenship' appeared in the official vocabulary of European integration²¹, and generated a discourse on citizenship at the supranational level thereafter. Along with citizenship, the highly controversial concept of 'European identity' was also, in Stråth's words, 'designed and decided' (2002: 388) at the Copenhagen Summit in December 1973. The interests of the European policy makers in forging a political identity of the Community can be seen as a response to a double crisis: a series of economic turbulence involving the end of the Bretton Woods system and the 1973 oil crisis at the global level, and an 'institutional crisis' resulted partly from the Community's incapability to cope with the global crisis as a political entity (Wiener, 1997). This international aspect to the new political agenda is reflected in the early configurations of both European citizenship and the related idea of European identity. In the *Declaration of European Identity* signed by the nine Member States in 1973, European identity was defined not differently from how national identity would be formulated by the nation-state: the text referred to the 'common heritage, interests and special obligations' of the Nine; and moreover, it emphasised that relation of the Nine who were 'already acting together' to 'the rest of world' (CEC, 1973). In a similar vein, one important initiative suggested by the 1974 Paris Summit was creating a passport union by the introduction of a uniform passport, which could serve as a medium both for fostering a sense of belonging and for accentuating 'the existence of the community as an entity' vis-à-vis non-member countries (CEC, 1974).

The communiqué of the 1974 Summit also indicated that a working party shall be established to study 'the conditions and the timing' under which the citizens of the Member States should be granted special rights (point 11 of the communiqué). Regarding this point, the Commission published a report in 1975 dedicated to the questions around the so-called 'special rights'. The report started by examining the meaning of the expression 'special rights', and considered that these rights should not be those which MSs have undertaken

²¹ Bulletin, EC Supp. 7/75

freely 'to grant and guarantee to all foreigner', which involve 'treat foreigners in the same way as nationals (CEC, 1975: 26). Thus they should not be those who have been laid down in the Convention for Protection of Human Rights and Fundamental Freedoms and those under private law. Also, since the right to vote or stand in elections to the EP and the right to become an official of the European Communities are 'real or potential rights acquired on the basis of the Community Teaties' (ibid. 27), this report understood 'special rights' referred to in the Paris Summit primarily as special political rights, i.e. rights to vote and to stand in municipal elections.

Another report produced following the request of the Summit was drafted by Leo Tindemans, then Prime Minister of Belgium. The Tindemans Report held an important place in generating the long standing discourse of 'a citizen's Europe'. Titled 'Report on European Union', it is an ambitious and overarching assessment on the necessary measures towards a European Union and on the renewal of the 'European concept'. It spoke not only about a 'common vision of Europe', economic and social policies, institutions and citizens' rights, but also the role of Europe in the world in the time of crisis. In Section IV 'A citizen's Europe', Tindemans proposed two courses of action: '*the protection of the rights of Europeans*', and 'concrete manifestation of European solidarity by means of *external signs* discernible in everyday life' (Tindemans, 1976: 26). The report did not comment on the 'special rights' of the individuals as members of the Union in particular. Instead, the emphasis of the 'rights of Europeans' here were fundamental rights, consumer rights and protection of the environment. With respect to the manifestation of a citizen's Europe in everyday life, it again proposed the removal of frontier controls as a corollary of passport union. The Tindemans Report may have a weak bearing on the 'rights' dimension of citizenship, yet a fairly strong focus was on the 'identity' dimension, echoing the spirit of the Copenhagen Declaration. Predictably, the accentuation of the 'we' feeling also pointed to 'our' relation to the rest of the world: 'our peoples are conscious that they embody certain values which have had an inestimable influence on the development of civilisation. Why should we cease to spread our ideas abroad when we have always done so?' (Tindemans, 1976: 11-12). The will

to make a 'common European voice in the world', to be heard, and to re-glorify the common heritage of 'our peoples' marked an emergent political consciousness of the Europhile leaders at that particular historical conjuncture. However, the Tindemans Report was examined at the Hague Summit (1976) without positive outcome. As Kadelbach notes, the election of the European Parliament (EP) through direct universal suffrage and the passport union would be the only real signs of 'a Europe for citizens' in the following years (2003: 8). Impetus towards a political union would turn into silence until the mid-1980s, and the legacy of the Tindemans Report would not be utilised until the 1988 Communication on 'a People's Europe'.

In summary, throughout the 1970s and the early 1980s European policy-makers felt the need to push forward the political dimensions of integration and to give the Community her own 'voice' on the global stage. European citizenship and discourses such as 'a citizen's Europe' were tabled in this context, but the formal resources of this 'citizenship' on the paper were rather limited.

4.1.2 From Single European Act to the Post-Lisbon era (1986-2009)

The milestone of the integration process in the 1980s was undoubtedly the signing of the Single European Act (SEA) in 1986, ratified 1987. Prior to this first major revision of the Rome Treaty, the Fontainebleau Council of 1984 appointed an *ad hoc* Committee for Institutional Affairs and also a Committee on a People's Europe. The final report of the former concentrated on reforming the institutional framework of Community and other measures towards the completion of a 'homogeneous international economic area' (Council EC, 1985). And the reports on a People's Europe examined the concrete steps for promoting the image and identity of the Community (such as introducing the Community flag and anthem), and the special rights that would be 'of direct relevance to Community citizens' in their everyday lives (CEC, 1985a). The Commission's *White Paper on the Completion of the Internal Market* (CEC, 1985b) set up a timetable, and the subsequent SEA laid out the legal, institutional and technical foundations for the market-making which was expected to complete by 1992.

The understanding of citizenship represented in the Single market Program is often interpreted as favouring a neo-liberal 'market citizen' informed by the overall logic of 'negative integration' (Leibfried, 1993). However, it is of crucial importance to note that the political right to vote at the local level gradually emerged on the agenda as an inevitable consequence of the practice of free movement. Worker-citizens who had made use of their right of free movement – and for whom the presence of the Community were of real relevance – would find themselves lost access to democratic participation that was still a privilege reserved for national citizens. The connection between 'mobility as functional' and the right to move, according to Wiener, did bring 'normative values into the otherwise market oriented discourse of the time' (1997: 12).

The eventual institutionalisation of EU citizenship in Maastricht hence did not imply a metamorphosis from the 'market citizen' to politically meaningful Community membership that took place over night. In the course of the making of the Single Market, the trajectories concerning different dimensions of Community citizenship had been unfolding: the strengthening of free movement; the discussion on the right to vote in local elections; and the continuing highlighting of 'European identity' in a number of documents inspired by the idea of 'a People's Europe'. Also noteworthy in this period is the 'European Social Model' promoted by Jacques Delors during his presidency to the European Commission, which is still frequently invoked in the scholarship on the prospect for a European social citizenship nowadays. But Delors' insistence on the social dimension of the Single market would turn out to be not compatible with the more important agenda of market liberalisation, even though with the achievement being the adoption of the Social Charter by the EP in 1989. Commentators from the Left would continue to critique the market-oriented and de-socialised underpinning of EU citizenship after Maastricht.

All these early developments related to European citizenship – freedom of movement, the right to vote and other political rights, and the view of 'a people's Europe' – were consolidated in the Maastricht treaty, which created the

European Union as well as citizenship of the Union. The Treaty claimed that the objective of the Union shall include 'to assert its identity on the international scene', and 'to strengthen the protection of the rights and interests of the national of its Member States through the introduction of a citizenship of the Union' (Art. 2 TEU). For this purpose, the Treaty provided for the legal concept of Union citizenship (Art. 17-21 TEU), which was established as a complement to national citizenship. This substantial step towards political integration ironically sharpened the already existing problem regarding the democratic legitimacy of supranational institutions. It was probably unexpected for Brussels that while the Community institutions had advocated for popular involvement for years, 'once such involvement started to germinate' much of it 'turned out to be an unpleasant surprise' (Hansen & Hager, 2010:5). The temporary ratification crisis of the Maastricht Treaty was followed by various debates on the democratic deficit of the EU both in academia and in the public discourse throughout the 1990s; yet it would repeat in history and this time leading to a failure.

The settings of EU citizenship in legislative terms did not undergo any significant change in the following Treaty amendments. Nonetheless, some legal scholars (Kostakopoulou, 2005) argue that the tactical interventions made by the ECJ from 1993 onwards have resulted in transformative institutional change of EU citizenship. More relevant to our purpose is the increasing importance of dealing with the 'third country nationals' on the EU agenda. External migration now came to raise a twofold question to the post-cold war European Union: on one hand, it was presented as a security issue for the intergovernmental cooperation in the area of immigration and asylum, which was one of the key responsibilities of the Third Pillar 'Justice and Home Affairs' (JHA) established by Maastricht. On the other hand, it was addressed as a democratic problem by those who are concerned with the integration of long-term legal residents at the EU level. The idea that EU citizenship should be decoupled from nationality and based on residence has thus been advocated by academics and NGOs for long. For the part of the supranational institutions, as will be shown later, the Parliament was definitely most in favour of a 'postnational' rendering of EU citizenship. It is also interesting to note that at the beginning of the new century,

the term of 'civic citizenship' started to appear in the discourse of the Commission, who suggested that in the longer term, the legal status granted to TCNs could be extended to 'a form of civic citizenship, based on the EC Treaty and inspired by the Charter of Fundamental Rights, consisting of a set of rights and duties offered to third country nationals' (CEC, 2000: 21).

Despite the demand, nonetheless, a residence-based framework of citizenship institution has never been put into motion. The only attempt to alter the status of Union citizenship in the Community legal order was not even close to a citizenship decoupled from nationality: the first draft of the Constitutional Treaty made an effort to parallel Union citizenship with national citizenship by introducing the idea that every national of the Member States enjoys dual citizenship (European Convention, 2002). Even this symbolic change was not included in the final Treaty establishing a Constitution for Europe (2004), which failed to enter into force due to French and Dutch referenda. While the Lisbon Treaty (2007) involved comprehensive reform in such areas as governing structure, decision-making process and legislation, the legal framework of Union citizenship remained the same except minor changes in wording²².

4.1.3 The legal framework of EU citizenship

Comparing to the complexity of the political and economic dynamics behind the evolving of Union citizenship, its legal framework as defined in the Community treaties may appear to be easier to describe. As the building of the Euro-polity is an open project, so is the construction of EU citizenship, which means current institutional settings are certainly subject to future changes. This being said, it is possible and instructive to take a static snapshot of the formal aspect of EU citizenship at this historical juncture: how the concept is defined in juridical terms and what resources it offers for claiming citizenship rights.

After the Lisbon Treaty, the primary provisions on EU citizenship are now contained in Arts 20-24 (ex. Art. 17-21), Treaty on the Functioning of the

²² See the following section on the verbal changes in the Lisbon Treaty.

European Union (TFEU, formerly TEC). Article 20 defines the fundamental nature of Union citizenship by referring to its relationship with national citizenship: 'Every person holding the nationality a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.' Similar sentences are also included in Article 8 of the Treaty on European Union (TEU), in Title II 'Provisions on Democratic Principles'. On the latter occasion, the formulation of citizenship of the Union in the TEU is preceded by a statement that the Union should observe the principle of the equality of its citizens in all activities. Although some hold that the replacement of 'complement' with 'additional' as a novel formula is 'both meaningful and intentional' (De Waele, 2010: 322), it remains unequivocal that nationality is the sole condition for Union citizenship, and that by definition Union citizenship does not have a parallel status to national citizenship in the legal order of the EU.

Articles 20-24 of the TFEU list four sets of 'special rights' uniquely associated with EU citizenship. Standing at the top of the list, the right of free movement, or 'the right to move and reside freely within the territory of the Member States' (Art. 20.2(a) TFEU), has crucial importance in relation to the concept of Union citizenship itself *and* to the enjoyment of other fundamental freedoms. The right of free movement has been generalised and consolidated in the Citizens' Rights Directive of 2004²³. As free movement forms one of the key threads along which the dissertation is organised, we shall go back to the evolution of free movement and its impact on citizenship in Europe in detail later. Apart from the right to move and establish, Articles 20-24 TFEU confer on all citizens of the Union certain political rights, which include the right to vote and to stand as candidates in elections to the EP and in municipal elections; the right to petition the EP and to apply to the European Ombudsman; and the right to information. Lastly, Union citizens are entitled to protection by the diplomatic

²³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158/77.

or consular authorities of any Member State in a third country in which their country of nationality is not represented (Art. 23 TFEU).

It is important to point out that according to Art. 21 TFEU, citizens of the Union enjoy the rights and are subject to the duties provided for 'in the Treaties', which are not confined to those mentioned in Arts. 21-24. Most notably, Union citizens enjoy derivative rights on the ground of the general prohibition of discrimination. In fact, the 'normative' or 'constructive template for Union citizenship' (Kostakopoulou, 2005) developed in the ECJ case law was primarily based on the principle of non-discrimination²⁴. In its far-reaching decision on the *Grzelczyk* case, the Court ruled that 'Union citizenship is destined to be a fundamental status of nationals of the MS, 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'²⁵. Yet as many have pointed out, an extensive interpretation of the idea of non-discrimination does not alter the fact that the principle only applies in a situation which involves border-crossing movement (Guild, 2005; Perchinig, 2006). The intricate relationships between EU citizenship and free movement shall be explored in detail in Chapter 6.

4.2 The formulation of immigration policy at the EU level

4.2.1 The long road to the Tampere Milestones

As mentioned earlier, although migration, in the form of free movement of workers, lied at the heart of the early developments of European integration, the categorical distinction between intra-Community mobility and external migration has been an essential characteristic of European immigration politics. The former has become a supranational principle constitutionalised in the *acquis communautaire*; whereas the latter has been dominated by intergovernmentalism,

²⁴ E.g. Case C-100/01 *Ministre de l'Interieur v Aitor Oteiza Olazabal*, Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*.

²⁵ Judgment of the Court of 20 September 2001, *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, para. 1.

even after the communitarisation of TCN issues by the Treaty of Amsterdam. Writing in 2000, Andrew Geddes claims that 'free movement is central to the contemporary EU, while immigration and asylum are not'. He continues to question: "Free movement of people is a core component of the building of a People's Europe. But who are the people? Migrants helped build and reconstruct European nation states. Just as surely as European integration rescued the nation state then so too did migration." (2000: 1) It is perhaps arguable whether or not migration has 'rescued' the nation state, yet without doubt it plays a critical part in the building of any political community. In the introduction, I have made it clear that a key premise of this dissertation is the so-called external boundary of citizenship is not external, but immanent to the construction of political membership. It defines 'who are the people' by differentiating 'here and there', 'us and them' in both geographical space and membership space. To provide the institutional background for approaching such differentiations in practice, this section will review the formulation of 'a common immigration policy' at the supranational level, and present the major legal instruments in the JHA areas.

Before the Maastricht Treaty, intergovernmental organisations concerning cooperation in the 'control' dimension of immigration policy were the TREVI (acronym for '*Terrorisme, Radicalisme, Extremisme et Violence Internationale*') group established in 1976, the Ad Hoc group on immigration set up in 1986, and the Schengen Agreement signed in 1985²⁶. Both the TREVI and the Ad Hoc group were composed of interior ministers of the Member States, and were set up to deal with international crime and asylum issues respectively. The agenda of the Ad Hoc group also covered illegal immigration as it agreed to penalties on carriers bringing unauthorised asylum-seekers to the EC countries in 1987 (Heisler & Layton-Henry, 1993: 164). At the supranational level, policy instruments regarding TCNs in this period were concentrated on migrant workers and especially long-term resident workers, whereby the possibility of extending the right of free movement to established TCNs was cautiously

²⁶ The implementation of the Schengen Agreement started in 1995.

assessed. The EP Resolution of 9 May 1985²⁷ called for the gradual extension of the rights enjoyed by workers from EC countries to TCN workers. In its 1987 *Resolution on discrimination against immigrant women and female migrant workers in legislation and regulations in the Community*, The EP stressed on the protection of the rights of migrant women and children, stating that the right to family unification should be applied to any person. It reaffirmed that freedom of movement should be extended to *all* TCN workers and their spouses who have been resident in a Member State for five years or more²⁸. On the part of the Commission, while being ‘aware of the exclusion of TCNs from the privileges associated with free movement and equal treatment’ (Kostakopoulou, 2002: 446), it failed to introduce meaningful reforms partly due to lack of competence. Moreover, migrant workers and asylum seekers were presented in the Commission discourses only as either passive recipients of workers’ rights or victims of violence and racism. In the 1985 *Guidelines on Immigration Policy* and the 1989 Commission Report on social integration of long-term migrants (CEC, 1985c; 1989), the perspective on TCNs as a participant in the political process of European integration was absent.

The institutional change brought about by the Maastricht Treaty absorbed previous mechanisms regarding extra-Community migration into the ‘Third Pillar’ – Justice and Home Affairs, which was typified by a mixture of strong intergovernmentalism and ‘elements of the Community method in a complicated and cumbersome decision-making process’ (Perchinig, 2006: 74). The commission adopted the *Proposal for a Council Directive on the right of third-country nationals to travel in the Community* (CEC, 1995) in 1995 which referred to the Schengen Implementing Convention and made it clear that the purpose of this proposed Directive is to complete the internal market. The draft Directive provides that a TCN who holds a residence permit issued by a MS may travel to other MSs for a period of not more than three months. Although this draft

²⁷ OJ 1985 C141/462.

²⁸ Art. 47, EP Resolution on discrimination against immigrant women and female migrant workers in legislation and regulations in the Community, OJ 16 Nov 1987 C305/74.

directive was not approved at the time, it did provide some resource for future development on this issue (e.g. Art. 62 TEU).

The 'Council Resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the Member States' (CEU, 1996) regarded only long-term resident TCNs as its targeted group, while excluding family members of EU citizens, refugees and also nationals of a third country which has a bilateral agreement on the conditions of entry, residence or employment with the MS in question. According to the resolution, third-country nationals should be recognised in each MS as long-term residents given that they have resided legally and without interruption in the territory of a MS for a period specified in the legislation of that MS or for more than 10 years. The resolution did not touch upon the right to travel; instead emphases were placed on economic and social rights which had been guaranteed by national laws and mentioned in the *Community Charter of Fundamental Social Rights for Workers*: long-term residents and their resident families should enjoy 'no less favourable treatment' than is enjoyed by nationals of that MS with regard to working conditions, membership of trade unions, housing, social security, emergency health care and compulsory schooling.

The Treaty of Amsterdam finally brought immigration and integration policies – including a number of issues formerly under the third pillar – under Community competence. This transfer was set out to be completed within a five-year transitional period after the Treaty's entry into force. Despite the opt-outs of Britain, Ireland and Denmark from the new provisions, and despite some scepticism about whether the objectives set forth in Amsterdam was realistic (Hansen & Hager, 2010), the Tampere European Council held in October 1999 would soon express the will of the Member State to create an area of freedom, security and justice by 'making full use of the possibilities offered by the Treaty of Amsterdam' (Tampere EC, 1999). At this 'first ever European Council focusing on JHA matters' (Monar, 2000: 125), the Council not only reaffirmed the importance of the creation of such an area, but also agreed on the policy orientations and priorities that will allegedly make it a reality. These priorities

have essentially remained unchanged in a booklet titled *'Living in an area of freedom, security and justice'* published by the Council in 2005 (CEU, 2005): a common EU asylum and immigration policy; a genuine European area of justice; a unionwide fight against crime; and stronger external action. It is clear that Tampere Conclusions were ambitious in both of the two dimensions (control and integration) of immigration policy. On the control side, Tampere called for a common policy on asylum and immigration, which entailed 'a consistent control of external borders to stop illegal immigration'. In regard to the integration side, 'a more vigorous integration policy' should aim at granting legal resident TCNs 'rights and obligations comparable to those of EU citizens' (Tampere EC, 1999).

Following the Tampere conclusions, a five-year 'Action Plan' in the AFSJ – the Tampere Programme (1999-2004) was launched. It would be succeeded by the Hague Programme (2005-2010), and the latter by the Stockholm Programme (2011-2016). A number of initiatives were introduced at EU level in the area of immigration and integration throughout the decade. However, although the 'spirit of Tampere' has been constantly invoked, the ambitious goal of establishing a common migration policy put forward in Tampere is far from being accomplished – legally binding instruments are largely limited, and the level of policy convergence remains rather low. Towards the end of the Tampere Programme, the Commission published an assessment of the Programme which considered the main obstacles to achieving 'the original ambition' to be 'institutional constraints' and 'a lack of sufficient political consensus' (CEC, 2004: 5). The same document also evaluated the various challenges to the AFSJ affairs posed by the 2004 enlargement.

However, despite the inevitable gap between 'political ambitions and political realities' (Halleskov, 2005: 2000), one could still observe certain discursive and practical tendencies in the EU's efforts to realise the Tampere mandate that have been developed steadily in a phased manner. Throughout the three five-year plans, fundamental rights and EU citizenship have been always listed at the top of all priorities, and the AFSJ project is framed as a matter of the citizens' genuine interests. The Hague Programme nicely formulated a 'balanced

approach' to migration management, which meant developing a common immigration policy address the situation of legal migrants at the Union level on the one hand, and strengthening the fight against illegal migration on the other. In the former respect, emphasis has been placed on economic migration and 'maximising the economic benefit of legal migration' (CEC, 2009). This position was first spelled out in the Commission's green paper on an EU approach to managing economic migration (CEC, 2005a) and further strengthened in later developments such as the blue-card project and the advocacy of circular migration. In the latter case, fighting illegal migration has been connected with terrorism and transnational crime, as well as the objective of building a 'modern, integrated border management system' (CEC, 2009: 7). These trends shall be further scrutinized in later chapters. What I confine myself to doing in this section is again taking an up-to-date snapshot of the evolving institutional setting and legal framework of an expanding area under the name 'EU immigration and asylum policy'.

4.2.2 The institutional architecture and legislative instruments of EU immigration policy

At the institutional level, the Lisbon Treaty can be 'seen as the culmination of the changes' (Balch & Geddes, 2011: 24) began at Amsterdam – they began with the transfer of some former third pillar (Justice and Home Affairs) issues, including those pursuant to immigration and asylum, to the first pillar. Under the scheme of Amsterdam, issues pertaining to Justice and Home Affairs were distributed between the first and third pillars. The legislative tools available to the first pillar included regulations, directives and decisions, while under the third pillar there were conventions, common positions and framework decisions. Framework decisions, according to the TEU, shall 'be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect' (Art. 34 TEU). Furthermore, EU and national legal instruments that fell into the third pillar areas (such as juridical cooperation in criminal matters and police

cooperation) did not subject to the review and interpretation of the European Court of Justice.

With the removal of the three-pillar structure of EU governance, the Lisbon Treaty again made a significant impact on the institutional architecture of EU immigration policy by introducing new provisions on decision-making mechanisms and legislative procedures. Juridical cooperation in criminal matters and police cooperation shall be 'treated under the same kind of rules as those of the single market' (CEU, 2009: 1), and legislations in these matters shall also be subject to the review of the ECJ. Moreover, with respect to voting rules, some main JHA areas – including part of the rules on short-stay visas and residence permits, legal immigration and others – have been moved from voting with unanimity in the Council to qualified majority voting (QMV) in the Council and full co-legislative powers of the EP ('co-decision'). Asylum policy and 'illegal immigration' had been subject to QMV and 'co-decision' by the EP before the Lisbon Treaty, since 2005. Although these sub-fields of the JHA are now generally subject to the same rules, these rules governing each aspect have been historically evolved through different paths from the establishment of the three-pillar system until the post-Lisbon era. As Balch and Geddes observe, the institutional setting of the EU's migration and asylum policy cannot be easily captured by 'a simple intergovernmental versus supranational dichotomy' (2011: 25). There is certainly a trend towards the supranational logic, characterised by the qualified majority voting and capacity of the EP, in the policy-making mechanism, yet the Member States have been able to continue to play a central role in the JHA area through what Wallace (2005) calls 'intensive transgovernmentalism'. That is, state actors with a strong sectoral (Interior Ministry in this case) focus have a dominant influence on policy-making, yet they also intensively interact with other actors such as other MSs and the EU. In the following we shall summarize the most relevant legislative and policy instruments adopted by the EU, which indeed reflect those classic interests and concerns of the nation states with regard to their borders.

As mentioned before, immigration policy of a nation-state usually incorporates two dimensions: control/admission and integration. The EU has introduced a number of wide-ranging instruments in both dimensions. However, in terms of 'hard law', EU legislative measures on the 'control' side – including border controls, visas and 'illegal migration' – have been much more developed than those on the rights of legal immigrants and their integration. The historical reason for this may lie in the fact that the intergovernmental cooperation on 'policing and security aspects' of free movement among EU Member States can be dated back to the TREVI group set up in late 1970s (Heisler & Layton-Henry, 1993: 164). More importantly, legislative instruments in this field have taken the Schengen Agreement of 1985 and the Convention implementing the Schengen Agreement of 1990 as their basis. The Convention established the primary principles for the management of Schengen borders, introducing a number of concrete measures including the Schengen Information System (SIS). The provisions which constituted the Schengen *acquis* received a new legal basis in conformity with the relevant provisions of the TEEC and TEU through the Council Decision of 20 May 1999.²⁹ The Schengen *acquis* has not only been incorporated into the body of rules governing the EU, but also remains 'the sole reality of community law in this area' (CEC, 2002: 5). The Commission set out several objectives regarding integrated management of the external borders of the EU in its 2002 Communication, and they have been largely accomplished. Among them the most important ones are: 'a common corpus of legislation' – which was responded by the adoption of the Schengen Border Code in 2006³⁰; and 'a common co-ordination and operational co-operation mechanism', which would be provided by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

²⁹ Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*, OJ L 176/17, 10 July 1999.

³⁰ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, OJ L 105/1, 13 Apr. 2006.

(FRONTEX), established by Council Regulation of 26 October 2004³¹. Further steps were taken to strengthen the EU's technological borders. The Council Decision 2004/512/EC established the Visa Information System (VIS), which finally started operating in October 2011. The system is designed to share a common platform with the second generation Schengen Information System (SIS II), which is under development for the time being.

Measures on integrated border control are closely related to those on preventing, combatting and removing 'illegal migration'. In particular, as Baldaccini and Toner comment, repatriation of irregular migration is the subject that has received 'a disproportionate focus' (2007: 12). This far-reaching policy field has been developed over time to include three sub-fields: co-operation between Member States in the expulsion of TCNs who are deemed illegal, setting common standards in the implementation of expulsion, and negotiating readmission agreements with third countries (Balzacq & Carrera, 2006). Regulations and policy initiatives have been adopted also in other aspects of irregular migration such as combating human trafficking and sanctions against employers and transport operators (see table 3.2).

Apart from tightening its external borders, the EU has also attempt to set common rules, or to establish some minimal principles, for the admission of family members of resident TCNs, students and researchers, labour migrants and asylum seekers. Admission through the right to family unification (Directive, 2003/86/EC) and admission of third-country students (Directive, 2004/114/EC) and researchers (Directive, 2005/71/EC) are now subject to common rules. Yet it is far from possible 'to arrive at common rules for the admission of workers from outside the Union' (CEC, 2007a: 4). An exception is the case with 'highly qualified workers', who are regulated at the Community level by Directive 2009/50/EC, which introduced the so-called 'Blue Card' system. Another Directive targeted at 'normal' workers was adopted in 2011 after long-term

³¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L349/1, 25 Nov. 2004.

negotiations. This so-called 'Single Permit Directive' (Directive/2011/98/EU) sets out to establish a single application procedure for a single permit for third-country workers and a common set of rights for them. However, the degree of harmonisation provided here is minimal. The added value of the Directive is primarily procedural, that is to simplify the application procedure for migrant workers by allowing for the possibility to obtain a combined title of both residence and work permits within a single administrative act. But all the substantial aspects of the application are still to be decided by the MS and its national law. The time limit for reaching a conclusion on a complete application is as long as four months, and this limit is subject to a number of derogations. In particular, the Directive states that 'the single application procedure shall be without prejudice to the visa procedure which may be required for initial entry'³². This means that Member States 'retain significant room for manoeuvre given that long-term visa policies remain their exclusive competence' (Pascouau & McLoughlin, 2012: 3). Furthermore, the Directive defines a list of 12 categories of TCNs to whom it shall not apply. They include people such as seasonal workers, posted workers, self-employed workers, intra-corporate transferees (ICTs), and those who can enjoy rights of free movement under bilateral agreements between EU countries and third countries. In 2010, the Commission issued two proposals (CEC, 2010b, 2010c) for Directives on the conditions of entry and residence for seasonal workers and ICTs.

The 'management' of economic migration is often interpreted in relation to the EU's overall economic action plans, contained in the Lisbon Strategy (2000-2010) and Europe 2020 strategies, which are centred on growth and employment. The perspective on the European employment strategy was already mentioned in the Hague Programme; and in the later Stockholm Programme, it was more clearly foregrounded that '[i]mmigration has a valuable role to play... in securing the EU's strong economic performance over the longer term', and it 'has great potential to contribute to the Europe 2020 strategy, by providing an additional source of dynamic growth' (CEC, 2010a: 6). In the

³² Art. 4, Directive/2011/98/EU, OJ L 343/6.

meanwhile, Stockholm Programme also called upon the MSs to introduce 'flexible admission systems' that are both responsive to the needs and volumes determined by each MS and facilitate better matching between needs and skills (European Council, 2010). In addition, it has been repeatedly³³ emphasised that MSs should implement policies for labour migration based on the principle of 'Community preference' – a principle that is defined as follows:

Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market. (CEC, 2005a: 4)

While many MSs chose to exempt certain types of labour migration from this principle, the European Pact on Immigration and Asylum stressed that both the MS and the Commission should implement policies for economic migration that respect 'all the needs of the labour market of each Member States', and consider 'the impact it may have on other Member States' (CEU, 2008: 5).

The emphasis on the overall benefits of economic immigration for the 'vitality and competitiveness of the EU' (CEC, 2011a: 4) is in line with another trend that has become increasingly spelled out in the area of migration governance: that is the issue of 'mobility' has appeared equally important as, if not more important than, the issue of migration in the agenda-setting discourses. With a focus on circulation, partnership and flexibility, the Commission's proposal on a 'renewed Global Approach to Migration and Mobility' (GAMM) highlights the concept of mobility, which is presented as a 'much broader' one than that of migration (CEC, 2011a). The proposal frames existing 'visa dialogues' between the EU, the MSs and third countries as 'mobility partnerships', among which EU-Africa, Eastern Partnership and EuroMed Partnership are some priorities. The implication of this 'mobility-turn' for the border, migration and

³³ See for example CEC (2004); CEC (2007a); CEC (2008) and CEU (2008).

citizenship regimes in the EU shall be a central target of our inquiries in the following chapters.

Asylum is another subject pertaining to the control/admission dimension of immigration policy. The Tampere Council set a long-term goal of establishing a 'Common European Asylum System' (CEAS) based on the full application of the Geneva Convention³⁴. It also provided a step-by-step instruction on how to achieve this ambition. In the shorter time, priorities shall be determination of the responsible state, common standards for 'a fair and efficient asylum procedure', minimum conditions of reception and 'the approximation of rules on the recognition and content of the refugee status' (Tampere EC, 1999: 3). In this spirit, several new legislative measures – regarding minimum reception conditions (Directive 2003/9/EC), asylum procedures (Directive 2005/85/EC) and qualification (Directive 2004/83/EC) – were adopted in the first phase (1999-2005). As for determination of the responsible state for a certain asylum claim, the former Dublin Convention, signed in 1990, was turned into the Dublin Regulation (or Dublin II Regulation, Regulation 2003/343/CE) which lists a set of criteria to determine responsibility and also provides mechanisms of transfer. The Dublin Regulation and the Eurodac Regulation (Council Regulation No 2725/2000), which authorises the EU to operate a central database of applicants' biometric information for implementing the Dublin Regulation, together form the Dublin System. The priorities of the second phase, according to Tampere, were establishing a common asylum procedure and a uniform status for those are granted asylum protection. These goals were recalled in the Hague and Stockholm Programmes. However, at the current moment, the development in this area is limited to the revision of existing regulations that mainly lay down minimum standards for procedural matters. The new Qualification Directive (2011/95/EU) shall enter into force in December 2013; and new versions of the

³⁴ This ambition was further formulated as 'making the EU a single protection area for refugees' in the Commission's Green Paper on the future CEAS (CEC, 2007b).

regulations on Eurodac and on the minimum standards for reception conditions, and asylum procedures will become applicable in 2015³⁵.

Let us turn to the other dimension of EU immigration policy: regulations on the statuses and rights of resident TCNs and integration policy. As the Commission remarked in 2007, attempts at harmonising the rights of legal immigration 'have been reduced to the bare minimum' (CEC, 2007a: 3). The most important instruments are the two Directives on the right to family reunification (Directive, 2003/86/EC) and on the status of TCNs who are long-term residents (Directive, 2003/109/EC), both adopted in 2003. The former Directive is concerned with both admission and the rights of TCNs. In the words of the ECJ, it 'imposes precise positive obligations on the Member States' (para. 60, Case 540/03) with respect to authorising a person enter and reside in its territory by defining an individual right to family reunification. However, some derogation provisions in this Directive have received serious criticisms for they collide with Article 8 of the European Convention on Human Rights (ECHR) on the right of family life as a fundamental right, and Article 14 of the ECHR that covers the principle of non-discrimination (Carrera, 2006; Sitaropoulos, 2006). Three provisions – Arts. 4.1, 5.5 and 17 – were challenged by the European Parliament which applied for annulment of them before the ECJ³⁶, but the action was unsuccessful. Art. 4.1 is of particular relevance here as it also pertains to the EU's approach to immigration integration. The last sub-paragraph of this article allows the Member States to verify whether a child aged over 12 years meets 'a condition for integration' provided for by its existing legislation, and therefore to exclude those who do not meet the condition.

The latter Directive defines long-term resident TCNs as non-EU nationals who have legally resided for a continuous period of five years, and grants them an EU-wide single status embodied by a standardised permanent residence permit. Long-term residents who have acquired this status will enjoy equal

³⁵ They are Regulation No 603/2013, Directive 2013/33/EU and Directive 2013/32/EU.

³⁶ Case 540/03, European Parliament v. Council.

treatment with national citizens regarding access to employment, education, welfare benefits, *et cetera*. Further, they may enjoy the right of residence in another MS under certain conditions, such as involvement in an economic activity or studies. For migrate workers, as mentioned earlier, Community law regulating issues such as working conditions are in principle applicable to all workers irrespective of their nationality. It should go without saying that the European Charter on Fundamental Rights also applies to all affected persons irrespective of their nationality. However, these facts also reflect that EU legislations on the rights for general TCNs are largely based on existing national and international legal frameworks for protecting the rights of resident aliens. The aforementioned 'Single Permit Directive' has indeed taken as one of its two objectives to provide 'a common set of rights' with third-country workers, but the significant limits in its scope and added-value echo the limitation of the long-term residents Directive. Article 12 of this Directive lists eight areas in which third-country workers shall enjoy equal treatments, which include working conditions, freedom of association and membership of workers' organisations, education and vocational training, branches of social security, *et cetera*. They are almost identical to those fields related to the right to equal treatment enjoyed by long-term residents as provided for by the long-term residents Directive. If comparing the 'common set of rights' granted by the Single Permit Directive with the 1989 Community Charter of Fundamental Social Rights of Workers, the former involves a considerable number of restrictions. Above all, the right to equal treatment in these specified fields should be 'strictly linked to third-country national's legal residence and the access given to the labour market in a Member State'³⁷ Regarding educational and vocational training, states may restrict equal treatment and deny grants and loans for third-country workers. Family benefits may not be granted to workers who have been authorised to worker in the MS for a period of six months or less, to TCNs who have been admitted for study, or to TCNs who are allowed to work on the basis of a visa³⁸.

³⁷ Preamble (21), Directive 2011/98/EU, OJ 23 Dec. 2011, L 343/3.

³⁸ Art. 12.2(b), Directive 2011/98/EU, OJ 23 Dec. 2011, L 343/8.

Finally, the EU's involvement in integration policy has been led by the so-called 'soft policy' (in contrast to hard law) approach. This is effectively represented by the 'Common Basic Principles for Immigrant Integration Policy' (CBPs) adopted in 2004 by the JHA Council. The CBPs include eleven points in total which focus on such issues as mutual accommodation by all immigrants and national citizens, respect for the basic values of the EU, employment, and basic knowledge of host society's culture. Following the Hague Programme and the subsequent Stockholm Programme, the Commission issued two Communications on 'a common agenda for integration' in 2005 and 2011 respectively. The 2005 Communication focuses mainly on the implementation of the CBPs, stating that the adoption of the CBPs has been driven by the recognition of the fact that 'failure in one individual Member State may have negative consequence for the others and for the EU as a whole' (CEC, 2005b: 15). The latter Communication goes further and proposes three key areas to achieve effective integration – considered there as a way of realising the potential of migration: integration through participation, more action at local level, and involvement of country of origin. It also makes several recommendations regarding the future development of a 'flexible tool-box' such as 'European modules' and common European indicators to support and evaluate national and local integration policies (CEC, 2011a).

It seems to be in line with the normative vision of the EU that integration should be coordinated at the local level and supranational institutions should only provide a general framework. However, the emergence of the 'integration conditions' in legislations has cast certain shadows on the soft policy approach. The long-term residents Directive and the family reunification directive are the first EU laws that expressly refer to integration conditions. As mentioned before, Art. 4.1 of the latter allows the MS to exclude the children of TCNs aged over 12 given that they do not meet integration requirements. Hence Kostakopoulou and others see the year of 2003 as a turning point at which a new conception of integration in the EU legal order took its root. They contend that 'a shift from equal treatment to conditioned membership' as conceptions of integration has already taken place at the national level, and since 2003 the shift has been

'uploaded at the European level' (Kostakopoulou, Carrera & Jesse, 2009: 168). It may appear ironic that the new conception of mandatory integration itself does not conform to the 'basic values of the EU' (one of the CBPs), which are supposedly centred on equality and diversity.

However, when it comes to normative reflections, a number of other issues around citizenship and immigration in the course of European integration would arise. These interrelated processes, consisting of the institutional and discursive construction of EU citizenship on one hand, and the development towards a common immigration policy on the other, inevitably lead scholars and public intellectuals alike to debate vigorously about whether one can discern a democratic and inclusive citizenship regime emerging beyond the container of national society. Next section will therefore attempt to navigate between these promising or pessimistic pictures of EU and/or European citizenship drawn by legal, social and political theorists.

<i>on crossing the borders</i>		<i>after crossing the borders</i>
Border control	Admission	Rights and Status
<p>Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention</p> <p>Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.</p> <p>Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.</p> <p>Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more member states, of third-country nationals who are the subjects of individual removal orders.</p> <p>Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders.</p> <p>Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).</p> <p>Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.</p> <p>Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.</p> <p>Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (EUROSUR).</p>	<p>Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers</p> <p>Council Regulation (EC) No. 2003/343 of 18 February 2003 (the Dublin II Regulation) – establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states.</p> <p>Council Directive 2004/83/EC of 29 April 2004 (the Asylum Qualification Directive) on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection</p> <p>Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status</p> <p>Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.</p> <p>Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.</p> <p>Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection</p> <p>Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted</p> <p>Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection</p>	<p>Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;</p> <p>Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;</p> <p>Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.</p> <p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.</p>

	<p>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.</p> <p>Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.</p> <p>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.</p>
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Table 4.2 Key EU legislations in the AFSJ field adopted in recent years (2000-2013)

4.3 EU citizenship theorised: navigating between the national, the post- and the trans-national

In his essay 'European citizenship', Andrew Durand (1979) made one of the earliest interventions on the emerging concept of European citizenship with existing legal categories. Before the buzzwords such as postnational or transnational citizenship became popular, Durand used a conventional – albeit no longer that conventional in today's view – point of reference: federal citizenship of the United States. In this framework, the relationship between federal and state citizenship in the US context is comparable to that between Community and national citizenship in the EEC. For instance, he noted that Article IV of the US Constitution, which contains provisions on the rights of state citizens, can be compared to the principle of non-discrimination in the EEC. And the privileges of federal citizenship provided for by the 14th Amendment bear resemblance with the 'special rights' linked to Community citizenship. In both cases, according to Durand, it was 'the rules on non-discrimination which were historically the most important' (1979: 5). He thus insisted that it is important to keep the dual structure, i.e. to keep the two types of citizenship distinct in the EEC as in the US. There are certainly significant differences between the far-from-mature European citizenship and US citizenship at the time of his writing. But by limiting the discussion to two cornerstones of 'federalist citizenship' as he understands it: a general right of free movement and the principle of discrimination, Durand managed to articulate a European (fairly limited in terms of geographical scope) version of a juridical federalist citizenship.

In Chapter One I have reviewed alternative conceptions of citizenship that challenge the connection between citizenship and the nation-state: they are named after adjectives such as 'postnational', 'denationalized', 'transnational', 'cosmopolitan', and 'global'. The emergence and increasing use of these languages can be seen as a response to various globalising and localising forces that are simultaneously undermining the individual's political and/or cultural allegiance to the nation-state. Although not all of the commentators on new conceptions of citizenship make reference to the practice of EU citizenship, some do regard it as at least carrying some characteristics of postnational or

transnational citizenship, if not cosmopolitan (Benhabib, 2004; Cornelisse 2010; Habermas 2001). However, there are also scholars who do not directly engage with the literature on alternative conceptions of citizenship beyond existing models, but ground their reflections on the unique experience of European integration 'with theoretical and historical givens' (Kostakopoulou, 2001: 98).

To develop a typology of EU citizenship theories thus does not simply involve sorting out affirmative or negative answers to the question as to whether EU citizenship is, or ought to be, a postnational alternative to the traditional paradigm of national citizenship. Instead, these vastly distinct interpretations of EU citizenship can be organised along several axes: 1) juridical or political conceptions of citizenship; 2) sociological or philosophical conceptions of citizenship; 3) taking the framework of national citizenship as the point of reference or applying other categories such as universal human rights. However, my typology of normative theories of EU citizenship is primarily based on the distinction between 'inward-looking' and 'outward-looking' approaches. Cotta and Isernia (2009) propose to interpret citizenship as having two dimensions: the horizontal one and the vertical one (see Figure 3.1). The first delimits the boundary of a political community in terms of membership; and the second allocates power and representation within it. The regime of EU citizenship certainly adds one more layer onto both dimensions: democratic participation and representation in the Euro-polity; and the newly drawn boundary between EU citizens and third-country nationals. The inward-looking approach deals with the political and juridical aspects of EU citizenship mostly in the context of its internal boundaries, although the word 'internal' only makes sense in the context of an internal-external dichotomy. And an outward-looking approach would enquire into both internal and external boundaries. However, this is a differentiation only along the horizontal dimension. When giving account to each approach, I will also notice the difference between rights-based and practice-based understandings of citizenship.

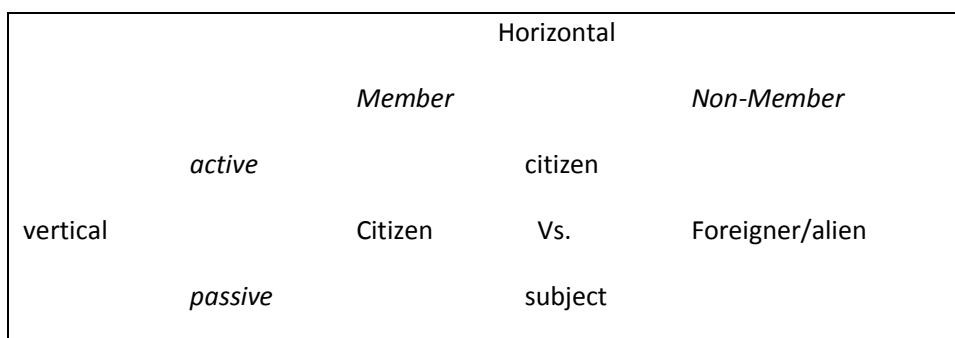


Figure 4.1 Cotta and Isernia on the dimensions of citizenship (2009: 76)

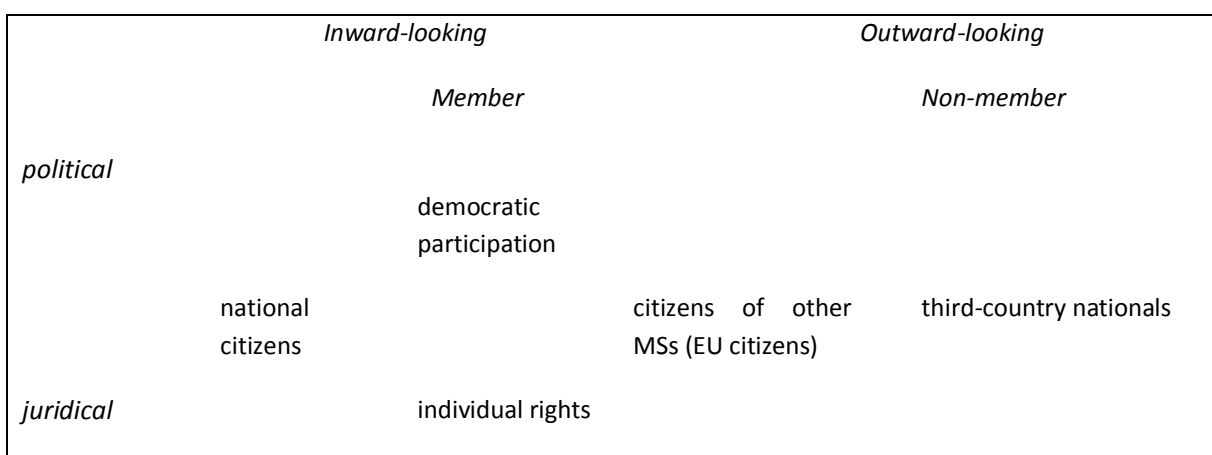


Figure 4.2 Dimensions involved in normative analyses of EU citizenship

4.3.1 The inward-looking approaches

If we consider only the ‘internal aspects of European citizenship’ – to borrow the terminology used by Richard Bellamy and Alex Warleigh (2001), the distinction between juridical and political understandings of (national) citizenship is still valid to a considerable degree. From a juridical perspective, EU citizenship is principally taken as formal status and a set of individual rights; whereas conceptualising works on a political register focus more on the relationship between citizenship and democracy, and hence on the prospect for a European political identity. This does not mean that these two perspectives would generate completely contrasting views of EU citizenship. Rather, they focus on certain question areas and seek to articulate a descriptive or ideal model of EU citizenship within that question area.

The 'limited federal citizenship' model. In response to the questions on formal membership and resources of individual rights, a cluster of scholarly works has interpreted EU citizenship through what can be called a 'limited federal citizenship model'. As mentioned earlier, Durand is a forerunner in thinking this new category of membership as having some important characters of a multi-national federal citizenship. However, even more than three decades have passed since then, many find that these federalist characters have not come of age. In this model, the focus is on the mixed nature of EU citizenship -- which is certainly shaped by federal arrangements on the one hand, and even more importantly, by the infrastructure of national citizenship and national sovereignty on the other. First of all, when looking at its nature as formal membership, one would immediately notice that the relationship between EU and national citizenship is an inverted federal structure, and there is hardly a de-linking of citizenship from nationality. Secondly, in regard to individual rights, one could indeed apply the Marshallian framework for analysing citizenship rights here and identify a series of civil, political and social rights, among which constitutionalised political rights in European and local elections are often considered the most relevant indicator of a postnational EU citizenship. However, according to Olsen, a representative writer on this model, supranational political rights are far from materialising in 'political structures analogous to national political systems in an institutional sense' (2011: 12). He regards civil and social rights enjoyed by EU citizens under the condition of cross-border movement as 'transnational rights', in contrast to both supranational and cosmopolitan rights – as the first is based on nationality, the second on supranational treaties, and the last is supposed to be based on personhood (Olsen, 2011). Bauböck (1997)³⁹ even contends that under current settings, apart from the franchise for the European Parliament, the formal rights granted by Union citizenship are no more than 'a watered-down version of external citizenship and of denizenship', for external citizenship involves diplomatic protection in a third country and denizenship also guarantees free movement/residence and the local franchise.

³⁹ Bauböck also gives important insights into the 'external aspects' of EU citizenship in terms of formal status and rights, which will be reviewed later.

The model of multilevel governance and multi-channel participation. In this strand of literature, the reference point is no longer the existing category of federal citizenship, but the overcoming of federalism through political pluralism. As Elizabeth Meehan puts it, this 'new kind of citizenship' is neither national nor cosmopolitan but is 'multiple in the sense that the identities, rights and obligations' are expressed through 'an increasingly complex configuration of common Community institution, states, national and transnational voluntary associations, regions and alliances of regions' (1993: 1). Antje Wiener and Jo Shaw offer some early and comprehensive accounts of the 'postnational' patterns of EU citizenship from the perspective of both institutional practice and identity formation. Wiener describes the practice of citizenship in the EU as in a 'fragmented style' (1997). She argues that modern citizenship practice is traditionally embedded in a 'centralised institutional organization of the nation-state', and characterised by the combination of rights, a shared understanding of belonging and access to participation (ibid. 548). However, in the case of EU citizenship, the Union itself is not a centralised institution; and the three dimensions of citizenship practice in her analytical framework – rights, access and belonging – are undergoing a gradual fragmentation: Union citizens may claim rights or gain access to political participation at multiple levels. They may also simultaneously belong to one local community of a nation-state and a national community of the other. Thus for Wiener, this fragmented and postnational citizenship practice is anything but a modern one, even though it has to be 'derived from modern experiences' (ibid. 551).

Shaw shares a similar minimalist and moderately optimistic understanding of the idea of 'postnational' citizenship. In her words, the term 'postnational' in the EU context is intended to signify 'that whatever form "membership" of the EU may take in the future, it is likely to evolve in the ways which do not replicate the experience of state-based national citizenship' (1998: 294). Although both Shaw and Wiener seek to challenge the perception of EU citizenship as merely a package of rights, they have each given specific insights into the similarity and difference between the new set of rights enabled by EU citizenship and those related to the nation-state. Wiener (1997) notes that unlike

in the context of national citizenship, where rights are granted on egalitarian and universalistic basis, the developing patterns of Union citizenship generate the kind of rights which are not only 'special', but also 'specialized' over time and practice. Shaw follows the Marshallian model of civil, political and social rights, identifying the 'resources' for each category in the juridical arrangements of Union citizenship. In this analysis, civil rights are constituted through the 'existence of the European Community as a "community of law"' (Shaw, 1998: 299); the resources of political rights are not only located in limited electoral rights, but also, crucially, the right of access to the documents of EU institutions. Shaw admits that the social aspect of EU citizenship at this stage is rather underdeveloped, but she nonetheless sees both new possibilities and constraints in the areas of employment and production. The focus of Shaw's recent work (2007; 2009) has been particularly shifted to political rights, as she considers that the constitutionalisation of the EU essentially requires granting mobile Union citizens voting rights in the regional and national elections. This is in line with the institutionalist approach generally employed in the literature of multilevel governance, for extended electoral rights would help facilitate creating concrete interconnections between the multilevel constitutional orders that are integral to the overall structure.

The model of 'taming liberal nationhood'. If the previous two models concentrate primarily on the juridical dimension of citizenship, where citizenship as democratic practice is touched upon as a matter of *rights*, the following two models highlight the limitations or potentials of EU citizenship as a *political* project that needs to be examined against thicker understandings of concepts such as nationhood, identity and democracy. For liberal nationalist, thinking of EU citizenship as postnational is not only unrealistic but also undesirable, as the 'basic framework of liberal nationhood' is essential to the organisation of our political life and to the realisation of liberal democratic values. Will Kymlicka (2007) describes this strand as the 'taming liberal nationhood' approach, in opposition to the 'transcending liberal nationhood' one. As a scholar in support of the first approach, Kymlicka argues that there are various ways to reduce the inherent risks of liberal nationhood while preserving

its framework: such as adopting a multicultural conception of nationhood, or adopting geopolitical arrangements that could subdue aggressive tensions among states (2007: 130). Furthermore, the processes of European integration, according to him, are in fact instantiations of the taming liberal nationhood model. Kymlicka also optimistically observes that Europeanization is still 'morally progressive' precisely '*because* it is consolidating and diffusing liberal nationhood' (ibid. 132, italics in the original). Although this position is considered by some as the 'liberal nationalist' model (Papazoglou, 2010), it is notable that the interpretation of Union citizenship in terms of 'taming' rather than 'transcending' national citizenship may also be based on a republican, instead of liberal, understanding of citizenship⁴⁰.

For republican nationalists, citizenship is not only about 'membership of a given system and possession of the entitlements that follow', but more importantly concerned with the constitutional practices enabled by such membership to challenge and change 'the general shape of the polity' (Bellamy, 2001: 65). In their earlier work, Bellamy and Warleigh (2001: 59) see in the regime of EU citizenship an ethos of 'cosmopolitan communitarianism', 'whereby communitarian attachments are modified by a cosmopolitan regard for equality of concern and respect'. However, it has become clear in Bellamy's later work that, for him, it is national communitarian attachments, rather than cosmopolitan modification, that remain at the centre of modern democratic practice. Focusing on the core values of citizenship – rights, participation and belonging, Bellamy (2008) argues that neither rights nor participation would be sustainable at the European level without a strong sense of belonging. In other words, EU rights are not rights of citizenship unless citizens 'have a say in defining their sphere, subjects, styles and scope and resolving the many differences they have about all of these' (ibid. 607), which essentially requires a European public sphere and demos. And EU level participations, in his view, do not constitute the activity of a 'European demos', but instead reflect processes through which the 'various *demos* of the EU negotiate the terms of their co-existence' (ibid. 591). In the same

⁴⁰ For the distinction between liberal and republican perceptions of citizenship, see Chapter 1.

way as Kymlicka concludes that EU citizenship is progressive exactly because it seeks not to replace liberal nationhood, Bellamy also maintains that the complementary status of Union citizenship is the 'most sociological plausible and normatively acceptable' (ibid. 590) choice, and that any attempts to go beyond this status would undermine the achievements of citizenship which have developed within each Member State.

The model of constructing a European demos or demoi. In this perspective, scholars not only share the optimistic vision expressed in the model of multi-level governance, but also attribute more political and normative significance to European citizenship, which is considered as a tool to transcend exclusionary nationalism and provide institutional as well as identitarian resources for transnational democracy. Thus the interpretation of EU citizenship is often connected to the construction of a European *demos* or multiple *demoi*, and relatedly the building of a European-wide public sphere (e.g. Habermas, 1999; Schnapper, 1997; Wiener 1998; Weiler, 1999; Meehan 1993). As one of the most eminent advocates of postnational democracy, Habermas takes a clue from the distinction between the civic conception of the nation and the ethnic one, arguing that 'differentiation could occur in a European culture between a common *political* culture and the branching *national* traditions of art and literature, historiography, philosophy and so forth' (1994: 33, italics in the original). Drawing on his philosophical theory of communication and communicative action, Habermas expects a European public sphere to emerge from 'an interpenetration of mutually translated national communications' (ibid. 17). That EU citizenship should *and* could be based on a common political, rather than cultural identity is a position shared by many other republican theorists of postnational democracy or 'demoi-cracy' (Besson, 2006), who criticise the 'no-demos' thesis by emphasising the distinction between *ethnos* and *demos*. Weiler (1995), for instance, also traces the roots of the no-demos thesis to an organic understanding of peoplehood which conceives *demos* only in ethnic and statal terms. He then makes a case for a Kantian-inspired idea of supranationalism and an alternative model of European membership, in which each individual would belong to multiple *demoi* 'on different subjective factors of identification' (1995:

253). To be more concrete, in his theory of the multiple *demos*, individuals are invited to 'embrace the national' in the strong sense of 'organic-cultural identification' on one hand, and to embrace the European in terms of 'European transnational affinities to shared values which transcend the ethno-national diversity' (Weiler, 1998: 34) on the other.

Although Habermas and Weiler have given different answers to the trend-setting question 'does Europe need a constitution', their disagreement might be not as significant as it appears. Indeed, Weiler's version of 'multiple *demos*' differs from the Habermasian idea of constitutional patriotism in the sense that the former stresses on the distinctness of each nation/people⁴¹, whereas the latter highlights the importance of a European collective consciousness based on civic solidarity⁴². They nonetheless argue against the 'no-*demos*' thesis on the same ground – by distinguishing the ethno-cultural understanding of *demos* from the civic one and suggesting that EU citizenship should be based on the second one. Furthermore, while in support of a European constitution, Habermas does not hold that postnational democracy could be provided by 'the substrate of a supposed "European people", but by the communicative network of a European-wide political sphere embedded in a shared political culture' (1999: 153). On the other hand, Weiler also emphasises a 'civilisatory dimension' in his model of multiple *demos*, and that should lead us to see the Treaties not only as 'an agreement among states', but as a 'social contract' among the individual nationals of those states (1998: 34-35). It is thus fair to say that the *demos* and the *demos* proposals share the same moderate position regarding the relationship between nationality and European political identity, which stands at the middle between cosmopolitan thinkers and liberal nationalists.

The theoretical perspectives on EU citizenship reviewed in this section are focused primarily on an extended vertical dimension – in other words, on the

⁴¹ Weiler admits that his analysis of supranationalism has 'no ontological independence but was part and parcel of the national project, in some way its gate keeper' (1998: 34).

⁴² For a defence of Habermasian constitutional patriotism against Weiler's multiple *demos* and other perspectives, see Lacroix (2002).

relationship between political memberships or identities at national and European levels, while the horizontal dimension – the relationship between EU citizens and citizens of non-EU countries – is largely ignored. As Weiler explains, ‘concepts of Member State nationality and European citizenship are totally interdependent’ (1998: 34), and this complete interdependence is precisely the underlying presupposition in this branch of debates on the vertical dimension of EU citizenship. To question this premise would mean to touch upon the external aspect of democracy and citizenship, and for democracy theorists such as Habermas, maintaining the boundary between members and non-members is crucial for the ‘ethical-political self-understanding of citizens of a particular democratic life’ (2001: 107). However, another cluster of scholarship takes up the questions related to this very boundary, exploring the various ways to articulate a democratic EU citizenship from the borders and the margins.

4.3.2 The outward-looking approaches

Turning to the horizontal dimension of Union citizenship, the outward-looking approaches look at the status, rights and ‘acts’ of third-country nationals, and evaluate the role of migration in the transformation of citizenship and of the political community itself in contemporary Europe. As mentioned in the first chapter, when it comes to the status and rights of immigrants, many commentators tend to be fairly critical about the postnational ‘promise’ of EU citizenship. Peo Hansen points out that the ‘ethno-cultural articulation’ of European citizenship works to ‘culturalise’ the concept of ‘Europe’, and whereby to exclude the Union’s non-white and non-Christian populations (2000). Exposing the link between postnationality and postcolonialism in the European project, Fatima El-tayeb argues that migration gains an important position in the debates around EU citizenship as it functions both as a threat uniting the European nations and as ‘a trope shifting the focus away from Europe’s unresolved identity crisis’ (2008: 650). However, there are still political and legal theorists who expect, on different grounds, that the presence and practice of immigrants would make a significant impact on the prospect for postnational citizenship/democracy.

The denizenship and civic citizenship model. A predominant theorist in citizenship and migration, Rainer Bauböck's solution for a more equal and inclusive EU citizenship is a form of European denizenship justified by his theory of stockholder citizenship (1997; 2005). Introduced initially by Tomas Hammar (1990), the term 'denizenship' describes 'the legal status of long-term resident foreign nationals who enjoy most rights of citizenship', and thus turns the rigid line between citizens and aliens into 'a grey zone of transition' (Bauböck, 2005: 683). In contrast to the territorial principle and the principle of affected interests⁴³, Bauböck supports voting rights for non-citizen residents (and non-resident citizens) according to the stakeholder principle, which according to him combines insights from liberalism and republicanism. Stakeholdership should be inclusive to the degree that 'societal ties emerging from long term residence and from links between sending and receiving countries' (Bauböck, 2000: 20) are fully considered, but should not be over-inclusive as to allow automatic naturalisation. Bauböck contends that this genuine form of denizenship renders citizenship more expansive not by abandoning citizenship as a condition for voting, but by asserting 'a distinct conception of local citizenship' (2005: 686) acquired on the basis of residence.

In this spirit, Bauböck's proposed ideal model of EU citizenship is an application of the stakeholder principle at both national and European levels. He first reviews several possible reforms of EU citizenship regarding the formal status and rights of TCNs (Bauböck, 1997): the reform that eventually replace national citizenship with Union citizenship; allowing automatic and direct access to Union citizenship for long-term TCNs; and the third option: making this direct access optional, meaning TCNs could acquire Union citizenship either at the national or European level. He notes that the second option would seriously devalue EU citizenship in the eyes of citizens, as it will be disconnected from the idea of 'consensual membership in a political community' (ibid. 14). And the third proposal, in his analysis, would not resolve this problem. A second avenue for naturalisation would discourage Member States to reform their citizenship

⁴³ For the details of each principle, see the Introduction.

laws and for TCNs, becoming citizens of their country of residence would be less appealing. Therefore, Bauböck proposes a set of reforms that largely rely on existing institutions to preserve the value of the political community. But they would make Union citizenship more inclusive by supplementing (rather than replacing) it with a 'harmonized status of Union denizenship for resident aliens for third countries' (ibid. 14-15). Other measures include establishing harmonised rules for acquisition of national citizenships on the Union agenda, and institutionalise the general toleration for multiple citizenship among member states and dual citizenship with a third country. Although as shown earlier in this chapter, the degree of harmonisation regarding the status and rights of TCNs introduced by the long-term resident Directive is rather limited, Bauböck considers that the Directive can be seen as 'an incipient form' of EU denizenship. Another concept that could help create harmonised residence-based membership on the European level is 'civic citizenship', which first appeared in the official discourse in 2000. On some major issues such as equal treatment, local voting rights and the guarantee of fundamental rights, the picture of civic citizenship depicted by the Commission does not differ much from denizenship, which is perhaps the reason why this notion has received little theoretical attention. Perchinig nonetheless observes that the concept of European civic citizenship 'might be the missing link between Union citizenship, antidiscrimination policy and EU migration policies' (2006: 81). Basically, the key promise of the proposal of harmonised denizenship or civic citizenship is to establish a sort of European-wide status, which is decoupled from nationality, for TCNs without substantially modifying the current institutions of national and EU citizenship. However, as far as formal rights are concerned, this 'European' dimension adds little to the set of civil, social and political rights already enjoyed by resident aliens under national laws and the protection provided by international human rights law.

The universalist Kantian model. Another way of formulating a more inclusive European citizenship with regard to the 'outsiders' is making recourse to the universalist human rights regime and cosmopolitan justice. Among the earliest advocates of postnational citizenship, Yasemin Soysal's scrutiny of the

emerging 'postnational membership' in Europe (1994) treats EU citizenship *per se* as no more than one particular transnational arrangement among many others. The postnational model of membership put forward by her, with empirical reference to the incorporation of guestworkers into host societies in Western Europe, is based on 'universal personhood'. Even though the organisation of membership remains the nation-state, this new model should have its source of legitimacy from the transnational community instead of the nation-state itself (ibid. 140). The transnational community is composed by various international organisations and other types of 'world-level interaction', international laws that 'ascribe universal rights to persons regardless their membership status in a nation-state', and in particular the international refugee and asylum-seeking regime (ibid. 144-147). In this context, Soysal considers that EC law provides the most comprehensive enactment of a transnational membership status for citizens of the Member States, despite that this status does not apply to 'non-EC migrants'. Nonetheless, the point of postnational membership based on universal personhood is to disconnect the entitlement to rights from national citizenship through consolidating transnational arrangements that 'set norms, frame discourse and engineer legal categories' (ibid. 149) in relation to the rights of migrants and refugees.

Seyla Benhabib also highlights the uncoupling of rights from the status of citizenship in the EU and regards it as a feature of the 'disaggregation of citizenship' (2004; 2005; 2008). But her understanding of 'disaggregation' goes beyond the enjoyment of rights to refer to the possibilities for individuals to 'develop and sustain multiple allegiances and networks' across national boundaries (Benhabib, 2004: 174). However, she warns that multiple allegiances and transnational networks are not necessarily democratic. Along with other normative political theorists (e.g. G. W. Brown, 2010; Fine & Cohen, 2002), Benhabib seeks to reconcile universal norms with territorially exclusive democratic institutions by appealing to the spirit of Kant, which requires a combination of moral universalism and cosmopolitan federalism. The latter still requires democratic nationhood as its foundation but the demos of a nation-state should be bound by democratic attachments rather than cultural identity. She

also offers a ‘postmetaphysical reformulation’ of the Kantian principle of rights through ‘discourse ethics’ (Benhabib, 2004), which is centred upon the discursive processes through which norms, and especially institutional arrangements based on these norms, are validated by all those who would be affected. The discourse ethics of Benhabib can be seen as a development of and an amendment to the Habermasian discursive democracy, as the latter does not take into account questions regarding the boundaries of democracy⁴⁴. In this theoretical framework, her evaluation of the achievements and limits of European citizenship largely resembles that of Soysal’s. While admitting that the human rights violation against refugees and undocumented migrants is still significant, she comments that generally speaking, the dynamic ‘toward narrowing the divide separating human rights from citizens’ rights’ within the EU is obvious, and the trends toward integrating third-country nationals into the EU’s rights regime is ‘quite irreversible’ (ibid. 167). While the universalist model offers an inspirational vision on the rights of others, it nonetheless tends to exaggerate the inclusivity of the rights regime in an ostensibly post-national Europe. As many legal scholars have pointed out (Bosniak, 1991; Cornelisse, 2010), the protection provided by the international (including European) human rights regime to certain populations – such as refugees, asylum seekers and undocumented migrants – considerably constrained, exactly because international conventions and organisations are fundamentally based on the principle of territorial sovereignty⁴⁵.

The ‘constructive citizenship’ model. The theory of ‘constructive citizenship’ proposed by Theodora Kostakopoulou deserves special attention as it sets out to bridge legal theory and critical citizenship studies. As a ‘paradigm of citizenship beyond the nation-state’ (Kostakopoulou, 1996: 343), constructive citizenship illustrated by Kostakopoulou is not only a domicile-based membership, but also

⁴⁴ Bonnie Honig (2008: 124-125) notes that this is a ‘minor amendment’. In her view, Habermas does not attend to ‘constitutions as expressions of particularity’, whereas Benhabib does emphasise ‘the act of political self-legislation as an act of self-constitution in which the “we” defines itself as a “we” in relation to a territorial setting’.

⁴⁵ See Chapter 3.

a more ambitious effort to redefine the relationship between citizenship and related categories such as identity, rights and democracy. In contrast to the universalist approach, a theory of constructive citizenship should neither 'ignore the reality of structures of inequality by an appeal to universalism' (ibid. 347), nor should it rely on the communitarian discourse of homogeneous society. A democracy without an essentialist conception of community, according to this approach, should respect the multiple identifications of citizens should not require members of society to be total citizens. Inspired by Sheldon Wolin, Kostakopoulou suggests that democratic participation should ideally be exercised by 'all those who express a will to share actively in a common experience rather than in a common life' (ibid. 353). Constructive citizenship, in a way, is a normative conceptualisation of the 'radical potential' she believes exists in the institution of Union citizenship⁴⁶, but the relevance of this concept is not only rooted in normative propositions, but also proved by concrete political and judicial practices. Through a close reading of the ECJ's judicial activism, Kostakopoulou (2005) argues that the expansive and principled interpretation of Union citizenship provided by the Court in a series of cases is based on normative reasoning rather than instrumental calculations. Claiming that Union citizenship ought to be 'a fundamental status of the nationals of the Member States' (ibid. 264), the Court has managed to constructively respond to the normative aspirations for decoupling the right to free movement from economic status. In the *Carpenter* and *Baumbast* cases, European judges also applied this constructive and rights-based template for citizenship to situations involving third-country family members of EU citizens, and provided an interpretation of Article 18(1) EC that would create 'directly effective rights' for third country family members enforceable in national courts (ibid. 257). The ECJ is viewed here as an active institutional designer in the development of EU citizenship; and its judicial activism has played a central role in realising the potential of EU citizenship according to the normative spirit of European integration as it

⁴⁶ That is to say, as such Union citizenship has a constructed (instead of natural or objective) nature, and it also implies a potential 'for new transformative politics beyond the nation-state' (Kostakopoulou 2007: 643).

understands. In this way, Kostakopoulou's theory of constructive citizenship combines radical theories of citizenship, which interrogate the established meanings of rights, identity and territory, and an institutional constructivist approach to the role of the ECJ in the institutionalisation of Union citizenship.

The contentious approach. As some key arguments and methodologies of critical citizenship studies have been introduced before, I would like to underline here those reflections specifically cast upon alternative articulations of European citizenship, which usually begin by criticising the exclusionary effects of European integration. It is argued that the Maastricht template of EU citizenship and the parallel discourse of European identity re-utilise a homogeneous conception of political community and reproduce a postcolonial condition in Europe (e.g. Kofman and Sales, 1992; Bhavnani 1993; Kofman, 2002; Hansen, 2002; Adamson et al., 2011; Mezzadra, 2006). Hence suffering from these exclusionary effects are not only large groups of foreign population already residing, or intending to reside, in Europe, but also ethnic minorities and second-generation immigrants already holding formal citizenship status. However, is it still possible to speak of the 'radical potential' of EU citizenship while acknowledging the various processes of exclusion it entails? Some critical scholars have attempted to respond to this question by deconstructing familiar connections between citizenship and other conceptions such as identity, community and borders. Invoking the work of Jacques Derrida (1992), Luisa Passerini (2002) reflects on the idea of European identity between a position that completely negates its possibility and one that formalises it in ethno-cultural terms⁴⁷. She instead calls for forms of identity that 'recognise difference within ourselves, our worlds, and the world' without losing a sense of 'self' (ibid. 208).

As a long-standing observer and critic of European citizenship, Étienne Balibar has also sought to reconsider the conditions under which it would be possible for 'Europe' as a polity to become 'democratic'. On the one hand, he points out that the Maastricht definition of European citizenship gives rise to

⁴⁷ On the critique of European identity, see also Stråth (2002); Walker (2007).

new forms of discrimination as it adds an 'extra layer' to the citizen/alien dichotomy inscribed in the national space and thus contributes to development of a 'specifically "European" racism' (2004: 44). On the other hand, Balibar sees necessity in rethinking democracy and constitutionalism in Europe, as 'borderland' (2009a), beyond the nation-states as closed communities. In this view, there exists a chance for Europe to become a space in which the democratization of democracy itself may take place⁴⁸, and this entails, among other things, the 'democratization of frontiers' (Balibar & Collins, 2006). The construction of a democratic Europe requires a distinctly evolved concept of 'federation' that will 'invent a way out of the classic dilemmas' of 'sovereignty and subsidiarity' (2009b: 212), and a transnational 'co-citizenship' that reclaims universality in a way different from teleological and abstract cosmopolitanism. For at the heart of Balibar's philosophy of citizenship and community, as we have discussed earlier, is a permanent 'contradictory process' shaped by the dialectics between 'insurrection and constitution' (2004: 77) that assumes no definitive ends such as a cosmopolitan man. The issues of borders and translation occupy an increasingly important position in his recent work on citizenship, and their reciprocal and conflictual character corresponds to the imaginary of transnational co-citizenship, defined as 'a reciprocity in the recognition of rights or *intercitoyenneté* among members of different states' (Balibar, 2009b: 17). These observations share a great deal with the recognition of a 'necessity of Europe', presented in the works of Carlo Galli (2001) and Friese, Negri and Wagner (2002). Common to this cluster of scholarship is the acknowledgement that although the current configuration of EU citizenship tends to depoliticise and discriminate against certain groups of population, there is an urgent 'necessity of Europe', which must be understood as a political space reinvented on the basis of difference rather than identity.

⁴⁸ 'It would then become more visible that Europe as a polity can exist only if it represents a more advanced (more complete, more effective) form of democracy than was the case with Nation States in their recent history' (Balibar 2009b: 17).

4.3.3 Summary

In this chapter I have traced the historical development of EU citizenship and Community immigration policy, summarised the legal framework and institutional architecture of each field, and reviewed different approaches to theorising EU citizenship with or without references to its external dimensions. As our relational understanding to citizenship, as introduced in Chapter 1, places emphasis on the mutual constitution of citizenry and its alterity, and to the extent that the construction of EU citizenship involves similar processes of homogenisation and identitarian discourses as implicated in the making of national citizenship, we insist that the often neglected link between Union citizenship and migration must be addressed in a theoretically conscious way. This means not only to merely ‘take into consideration’ the status, rights and ‘integration’ of TCNs, but more importantly to comprehend the ways the government of citizenship and that of migration are fabricated into one another. Furthermore, what is at stake is not the juridical formulation of Union citizenship as defined in the Treaties and interpreted by the Court⁴⁹, but more broadly the reconfigurations of citizenship in supranational governmental practices on one hand, and the rewriting of citizenship through locally-, nationally, and transnationally-organised acts against the new modes of fragmentation, stratification and exclusion on the other. In this sense, our take on the citizenship/migration nexus in Europe certainly shares to a large degree with the ‘contentious approach’ reviewed above. Yet the entanglement of the politics of citizenship and that of migration is scrutinised here with a distinctively spatial focus. Thus the following two chapters will be devoted to unpacking two themes that are central to the geopolitics of citizenship under the conditions of European integration: one is on the discourses of EU territory and the making of Schengenland, the other is on the double depictions of the right to mobility.

⁴⁹ This is to say the juridical definitions are not important. In fact in the following chapters I pay close attention to these definitions in light of the dialogical approach to citizenship.

Chapter 5 Territory and the making of Schengenland

'Breakfast in Brussels, lunch in London, dinner in Paris.'

--- *'Metropolitan'*, Eurostar's onboard magazine

In his well-known study on intra-EU free movement, Adrian Favell starts the book *Eurostars and Eurocities* by describing the experience of taking a Eurostar train: 'The world is familiar, but strange. The new currency you hold can be used everywhere. You arrive in another new city. European modernity rises up around you... You feel liberated. Eurostars.' (Favell, 2008: 1) However, this chapter will offer a rather different picture of Eurostar, one that features electrified fences, diplomatic tensions and migrant struggles. The symbolisation of the high-speed rail service has to be understood in the new geography of Europe, which is considered as involving two seemingly opposite processes: the so-called deterritorialisation and reterritorialisation (Brenner, 1999; Rigo, 2005). Not coincidentally, the representative framings of European citizenship are also typically connected to two highly contrasting imaginations of the European space – a 'cosmopolitan Europe' (Beck & Grande, 2007) that does not negate the meaning of borders but at least reduces their significance, and a 'Fortress Europe' (Armstrong & Anderson, 2007; Kofman & Sales, 1992) in which borders are everywhere. But neither of these generalizations alone could accurately capture the complex mechanisms of spatial restructuring in Europe.

The central inquiries of this chapter are therefore to trace the remaking of territoriality at the EU level, and to explore how the way an 'EU territory' is constructed, discursively and beyond – through the implementation of free movement, influences the configuration of EU citizenship and its others. For so doing, I will investigate in particular the employment of 'territory' in the official discourses, and from there explore the novelty of EU borders by historicising and deconstructing the internal/external dichotomy. Lastly, I seek to show the conflicting characters of EU territoriality through a case study on the geopolitics of Eurostar and the Channel Tunnel. I conclude by discussing the ways in which

the ambiguous territoriality and border-making regime influence the citizenship/migration nexus.

5.1 The discourses of 'EU territory'

The substantial impact of European integration – above all the removal of internal barriers to the movement of good, capital, service and people – on sovereignty and territoriality has become the subject of increased attention in political and international studies. Political scientists, geographers, and EU experts struggle to comprehend the transformation in the nature of territory and state borders in the European Union, whose external borders have already been modified during the writing of this dissertation. The vision of a 'neo-medieval empire' (Zielonka, 2003; Anderson, 1996) draws an analogy between the 'fragmented, multi-level and often border-crossing authority systems' (Anderson, 2007: 9) in pre-modern Europe and the territorial structure in our late-modern times. While medievalism is intended to capture the overlapping of authorities at different levels and the heterogeneity within the region, the 'empire' metaphor accentuates the flexibility of its external frontiers as manifested in the enlargement process. In Anderson's view (2007), the narrative of the EU as an empire also indicates Europe's position vis-à-vis other powers on the world stage. The 'Fortress Europe' metaphor, on the other hand, is often used to describe or criticise the increasingly reinforced control on the movement of people in the EU's external border zones, especially in the Mediterranean area.

If the 'medieval empire' and the 'fortress' metaphors still draw on the past experiences of the nation-state, the borderless, cosmopolitan, or network-based readings of the EU's spatial order claim to anticipate the future based on the unprecedented present. Although the borderless world has long been an image welcomed by those who chant for economic globalisation, the discourse of a borderless Europe is particularly supported by the accomplishment of its economic integration and market-building policies. The cosmopolitan and network perspectives seek to add more societal dimensions to that image. The 'network Europe' advocated by the former Commission President Prodi (2000), for example, is designed to be a 'fluid, dynamic, and interconnected Europe in

which civil society plays an active role in governance'. In all these visions, the European Union or Europe – the confusion between the two is also a subject of inquiry – is represented as 'a unified political space' (Delanty & Rumford, 2005: 120) rather than simply an aggregation of nations or regions. Each of them is helpful in understanding a certain aspect of the changing European geopolitics, but the significant differences between these conceptualising perspectives seem to discourage us from drawing the whole picture. Or, is it possible at all to articulate the characters of the European political space in a coherent and consistent manner? My approach to this rather ambitious question is to first of all analyse the cluster of meanings attached to territory and other spatial concepts such as 'Schengen' in the discourses of EU institutions. As I have noted in the section on methodology, this approach will allow us to trace the evolving categories of territory and borders in the self-definition of the EU as a political entity, which also has substantial consequences in practice.

There are a number of space-related references in a wide range of policy fields the EU is engaged in. For instance, we have seen the Commission's plan to construct a 'European education space', a 'European planning space' and 'European technological zones' (Delanty & Rumford, 2005: 122). But to serve our purpose, which is to investigate what kind of new territoriality is emerging in the political project of European integration, I identify two clusters of official literature that are of particular importance – the first is related to the Area of Freedom, Security and Justice, and the second is around the Territorial Agenda of the EU in the field of spatial planning and territorial development. When reading the regulations and policy instruments within the AFSJ agenda, one immediately encounters the uses of territory at two levels. In most cases, and especially in legally-binding regulations, the term refers to the territory of the Member States. Only on a few occasions 'the territory of the EU' or 'EU territory' is used, and mainly in non-binding policy documents. The latter expression appears mostly in the following three contexts. Firstly, it is used in regulations concerning the common status of resident TCNs, which are the long term residence Directive and the Blue Card Directive. The 'territory of the Member States' are used for the most part in the long term residence Directive, as in all the other EU laws in this

area. The ‘territory of the Community’ and ‘of the union’ are adopted in regard to the withdrawal of the long-term resident status in the event of absence from the Community territory (Art. 9(1), Directive 2003/109/EC), and in regard to the removal of third-country nationals on the ground of public security (Art. 22(3), *ibid.*). Here the relevance of the Union territory as a spatial denominator is counted only in negative terms, as it is deployed only in the context of absence or removal. It gained more positive meaning in the Blue Card Directive, in which the minimum period of residence for Blue Card holders is calculated ‘within the territory of the Community’ (Art. 16(2), Directive 2009/50/EC). It is notable that all the other EU Directives and Regulations in the AFSJ field have no reference to territory of the Union, including those aiming at integrated border management such as the regulations on Schengen Borders Code⁵⁰ and on the establishment of Frontex⁵¹. This indicates that ‘EU territory’ lacks sufficient legitimacy to be formulated as a legal category in the context of ‘hard’ territorial control, which is still, at least at the juridical level, the preserve of state sovereign power. But the EU has nonetheless moved constantly towards harmonising its external border controls without defining a common ‘EU territory’ in the legislation.

Thus we can see a growing usage of ‘EU territory’ or ‘territory of the Union’ in policy documents and communications, although they are still much less frequently referred to than the territory of the Member States in the AFSJ field. The second context in which this term is employed is concerning ‘access to Europe’, which covers external border control mechanisms, combatting illegal migrants, transnational crime and terrorism agenda, and more generally the movement of persons within and to the EU. The booklet *‘Living in an Area of Freedom, Security and Justice’* published by the Council for the purpose of public communication is exemplary here as throughout the text, the determiner of ‘territory’ is the Union itself instead of the Member States. It carefully balances

⁵⁰ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders.

⁵¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

the need to provide TCNs with access to EU territory for 'tourism, study or employment and cross its internal borders' so long as 'they have suitable documentation' (CEU, 2005: 24), and the necessity for the Union to prevent individuals from entering 'its territory illegally' (ibid. 29). While these two aspects have both gained momentum in the official discourse, the latter certainly weighs more than the former in the 2008 Commission Communication on 'A Common Immigration Policy for Europe'. In this document, all the three appearances of 'EU territory' are pertaining to the reinforcement of control – more specifically, to extraterritorial filtering before travellers' departure for the EU. The 2010 Stockholm Programme, on the other hand, uses 'Union's territory' on two occasions: one is regarding access to Europe 'in a globalised world' that the European Council considers should be 'made more effective and efficient' (European Council 2010: 5), the other is on disaster management. Crucially, the Commission's Action Plan implementing the Stockholm Programme makes it clear that '... the control of access to its [i.e. the EU's] territory' has two objectives – to 'facilitate mobility' and to 'ensure a high level of internal security' (CEC, 2010a: 6). One may conclude that the discursive construction of EU territory is characterised by the dual imperatives of mobility (which is equalised to freedom time to time) and security. However, I shall come back to this later to show that this can be further complicated.

Finally, the third context in which the EU as a territory is narrated is the Common European Asylum System (CEAS). We have seen that the EU space under the setting of border management is configured as an endangered territory effected by unauthorised transnational flows and a desirable destination for international tourists, businessmen, workers and so forth, yet in the context of asylum it has gradually acquired another new spatial dimension, which is the 'area of protection'. The Hague Programme called for studies to be conducted on joint processing of asylum applications 'within the Union' and 'outside EU territory', and in the latter case the study should be in consultation with the United Nations High Commissioner for Refugees (European Council 2005: 4). However, as the UNHCR and the Commission insisted that such processing must take place within the EU, only the first study was conducted. Its

final report was published in 2013 under the title ‘Study on the Feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the EU’ (Urth et al. 2013). As the central problem being dealt with in this report is the processing of asylum applications ‘jointly conducted by two or more Member States, or by the European Asylum Support Office, with the potential participation of the UNHCR’, it seems logical that the ‘territory of the EU’ is added to the initial phrasing in the Hague Programme, and appears in the title defining the jurisdictional space of the subject in question. Besides merely jurisdictional delimitations, EU territory in the CEAS context is also at times given some normative connotation. For instance, it is stated in the Tampere conclusion that it would be against ‘Europe’s traditions’ to deny ‘such freedom to those whose circumstances lead them justifiably to seek access to our territory’ (Tampere EC, 1999: para. 9). In a similar spirit, the European Pact on Immigration and Asylum ‘solemnly’ confirms that ‘any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union’ in application of the Geneva Convention (European Council, 2008: 11). This normative image of the EU space is further consolidated in the discourse of an ‘area of protection and solidarity’ in the Stockholm Programme.

By tracing the usage of ‘EU territory’ and its synonyms in AFSJ-related regulations and policy instruments, it is fair to say that in this specific policy field the term hardly has anything to do with the new, networked or fluid notions of territory proposed by some theorists (e.g. Leitner et al., 2002; Bonditti, 2004). When it comes to border controls, visa policies and even asylum applications, EU territory signifies merely ‘the sum of the territories of the Member States’ (Bialasiewicz et al., 2005: 346). Whether the determinative is the Union or the Member States, territory is articulated above all in its statist ‘hard’ sense, organised around the traditional area of state territorial control such as border management and other securitisation measures. But it is instructive to consider the emergence of ‘EU territory’ in the regulations on the status of third-country nationals. When the task of establishing a common status for non-citizen residents is put forth, the classic correspondence between territory and

population is unavoidably brought to the fore, even though defined only in technical and administrative terms.

The meaning of territory produced in the documents on Territorial Cohesion is, by contrast, more fitted into a transnational, decentralised, and network-based understanding of territory. In this cluster of literature, not only the 'territory of the EU' has a prominent visibility, more general expressions such as 'Europe's territory' and 'European territory' are also employed regularly. The inception of the 'Territorial Agenda' can be traced back to the European Spatial Development Perspective: Towards Balanced and Sustainable Development of the Territory (ESDP) agreed on in 1999, which stated that the 'territory' is a 'new dimension of European policy' (CSD, 1999: 7). The ESDP proposed a number of recommendations for achieving a balanced, sustainable and polycentric spatial development, listing 'more balanced competitiveness of the European territory' (ibid. 10) as one of the fundamental goals of European policy. The idea of territorial cohesion was emphasised in the Community Strategic Guidelines on Cohesion adopted in 2006, which claimed that 'promoting territorial cohesion should be part of the effort to ensure that all of Europe's territory has the opportunity to contribute to the growth and jobs agenda' (CEU, 2006: 29). Through the Lisbon Treaty, a new Title XVIII on 'Economic, social and territorial cohesion' (the Title was formerly named 'economic and social cohesion' in the TEC) was incorporated into the TFEU; and the revision to the previous version of this Title also includes a section defining the substance of territorial cohesion:

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions. (Art. 174 TFEU)

As Bialasiewicz et al. have argued, the use of 'territorial cohesion' in the EU's constitutional treaties evokes an '*aspirational* understanding of Europe' and emphasises that 'Europe's diverse spatialities do not operate in isolation from each other' (2005: 345, italics are original). The emphasis on territorial diversity

is more pronounced in the documents produced under the ‘Territorial Agenda of the EU’, a policy framework based on the cooperation among Ministers responsible for spatial planning, developed together with the Commission. The framework was first adopted in 2007 and a second one (TA2020) was agreed on in 2011. Intriguingly, unlike in the AFSJ literature where territory is always ‘possessed’ (indicated by the preposition ‘of’) either by the Member States or the Union, here ‘territories’ in the plural form often stand alone, or, are preceded by geographical or socio-economic modifiers such as rural, urban, peripheral and sparsely populated. The Agenda calls for more ‘territorial connectivity’ with reference not to the states, but to ‘individuals, communities and enterprises’ (TA2020, para. 35). In a way the overall text can be read as a manifestation of postnational notions of territory and territoriality, in which the ‘discrete, bounded and nationally-constituted’ (Delanty & Rumford 2005: 120) imaginary of space seems to indeed fade away, and be replaced by ‘polycentric’, ‘cross-border’ and ‘connected’ forms of spatiality.

It may appear to some that the hard, discrete and statist notion of territory remains prevailing in the field dealing with the ‘external’ dimension of territory, whereas the more inclusive and aspirational notion of territory has emerged in relation to the internal. Although this claim is partly true, it is undeniable that a large number of AFSJ issues are concerned with the abolition of internal frontiers, and the Territorial Agenda also addresses the governance of immigration and integration of regions along external borders of the EU. To better understand the contrasting framing of territoriality at the EU level, we have to reconsider the construct of the internal/external dichotomy in the EU, along with other pivotal spatial concepts such as borders and the ‘Schengen Area’.

5.2 The internal/external dichotomy and the ‘novelty’ of EU borders

The categorical distinction drawn between internal and external borders has a substantial impact on the conceptualisations of borders and territoriality in the EU. The two seemingly opposite processes of deterritorialisation and

reterritorialisation are observed to characterise the vanishing of internal borders on one hand, and the reproduction of borders in the changing frontiers of the EU on the other. Critical scholars also investigate into the underlying rationalities of each process, thus the former is driven by the logic of market-building, privatisation and flexibilisation, and the latter by the imperative of securitisation (Bigo, 2010; Huysmans, 2000b; Walters, 2006). The approaches to border management are therefore qualitatively different: one is hard, restrictive, and concentrated; whereas the other is diffused and dispersed. While these observations are certainly insightful, it is important to bear in mind that the rationalities and the modes of control in both types of border-making – internal and external – are often overlapped. Instead of analysing the differences between the characteristics of internal and external borders as if they were independent from one another, I consider that what is at stake here is the processes through which these differences are produced, and the ways the technologies that are supposed to govern each type of borders converge. This framework allows me to explore the continuities and dissimilarities between territoriality in the EU and in the national context.

If, as Lefebvre claims, state and territory are mutually constitutive, so are territory and borders. Through borders, sovereign power demarcates its inside and outside, and thereby territorialises space. However, let us be reminded that national borders used to be competed with a range of other types of borders in history. The nationalisation and the naturalisation of borders – that is, the process of ‘homogenising the state’s frontier’ along with the standardisation of its internal space (Walters, 2002: 566) – constituted an integral part of the nation-building project itself. Speaking of the French case, Foucher comments that ‘nation and territory, currency and market, were the end products’ (1998: 238) of a political homogenising process. The significance of state borders eventually came to outweigh all the other kind of borders not only on political and economic basis, but also culturally and ideologically. The state border thus becomes what we conceive of them now – a ‘distinct, marked and sometimes fortified line in the landscape’ (Langer, 1999: 35).

One could argue that similar processes of homogenising the internal space and fortifying the external frontiers have contributed to the making of the EUropean political space, if not an EU territory. The former mechanism is principally associated with the abolition of internal frontiers, which started initially as a part of the Single Market project, but gained more political priority than the market-building later on. Offering an ‘area of freedom, security and justice without internal frontiers’⁵² to its citizens is claimed in the TFEU to be the second fundamental objective of the Union, preceding the third one on the internal market. More ironically, although the Single Market project, being the primary goal of the European Economic Community, launched a number of measures on reducing barrier in economic and trade areas, the most important step towards the removal of ‘internal frontiers’ is considered to be the Schengen Treaty (Bialasiewicz et al., 2005), which was initially an independent initiative from the official EEC agenda. Although the Council now expressly states that ‘the corollary to the abolition of internal borders is the strengthening of the Union's external borders and the definition of a common visa, asylum and immigration policy.’ (CEU, 2005: 5), and such a ‘corollary’ is presumed and naturalised in all the post-Amsterdam instruments in the AFSJ field, the negative correlation between internal and external border controls was not that self-evident in the beginning. In fact, it was brought into light along with the association of free movement with border control, which did not appear in full force at the EU level until the 1980s, when the Schengen Agreement was incepted. Among the transformations that started to take shape during the same period is the categorical distinction between the internal and external borders of the Community. Didier Bigo contends that other important moves include the attempt to ‘redefine who is a refuge’, ‘the use of the term “immigrant” instead of the term “foreigner”’ and crucially, the highlighting of the distinction between Community members and TCNs as non-members (2008: 20). This spells out the

⁵² The Article reads: ‘The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.’ (Art. 3 TFEU)

relations between territory, borders and human mobility that I have explored in the second Chapter, which argues that the actual management and maintenance of physical borders in modern times is primarily conducted by sorting mobilities, or by regulating differentiated access of people and goods to a state's territory.

Thus by historicising the internal/external dichotomy in the EU politics of borders and mobility, we could conclude that the homogenising of the internal place and the fortifying of national borders has been, at least to some extent, reproduced and scaled up to a larger geographical area. Klaus Eder even argues that there is not a case of deterritorialization, but a 'pure case of territorial institutionalisation' which has happened in any national political community (Eder, 2006: 260) Another similarity between EU and national territoriality lies in the continuing mechanism of 'allowing and filtering circulation', which is considered by Foucault as characterising the emergence of a new problem for state sovereignty from the nineteenth century⁵³. Speaking of the EU or Schengen space as a fortress first of all overstates the capacity of supranational institutions to act in the area of border and immigration control. Furthermore, it neglects the rationale underpinning some of the recent initiatives such as the 'global approach to migration/mobility' and the Blue Card scheme: facilitating the mobility of the needed is just as important as, if not more important than, keeping the unwanted/undesirable out.

However, although the process of border-making in the EU resembles that under the national settings in the above sense, borders and territoriality in the EU have shown decisive novelty in the following aspects. First of all, while the borders themselves are hardly deterritorialised if we take into account the elements of connectivity and communication that are already inscribed in state territoriality, the modes of border control are considerably so. Peter Andreas (2000) discusses the 'deterritorialisation of control' as a general trend in border and immigration control in the Global North. But this trend is strengthened by deeper structural reasons in the EU comparing to the case with the nation-state,

⁵³ See Chapter 3.3.

where the deterritorialisation is mainly driven by technological developments. The structural reason lies in the fact that the naturalisation of its external borders is far from complete and successful. As we have seen in the previous section, even the term 'EU territory' has not been accepted as a legally effective category in the regulations on integrated border controls. This determines that the operation of border management at the Union level is essentially based on building networks, connecting dots and nodes, and maintaining large-scale biometric databases. The same can be said about the trend of 'pixelisation', a term that has been coined to capture the feature of digitalised border control. In Philippe Bonditti's words, borders are 'pixellated' as they 'shift from a line to a set of points of connection distributed around the earth – points of connection at which people are controlled through connections to a central database' (2004: 478). While this is without doubt applicable to the EU case, I would like to make the point that here borders are 'pixellated' not only because of technological advancement which seems to be the unavoidable *Zeitgeist* everywhere, but also because of the way the EU external borders are defined. According to the Schengen Borders code, the 'external borders' of the Union refer to 'the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders' (Art. 2.2, Regulation 562/2006). Yet central to the actual management of external borders is the concept of crossing point, which means 'any crossing-point authorised by the competent authorities for the crossing of external borders' (Art. 2.8). It is at these points, of which a great majority are airports and sea ports, that border checks and surveillance are performed. Moreover, the list of 'all' border crossing points of the EU, which virtually make up its external borders, is maintained on the basis of the Member States' notifications to the Commission (Art. 34.1). On the current list, for example, London Waterloo Station is counted as an authorised French border crossing point, and Gare de Bruxelles-Midi is regarded as part of the Belgian land border. The fact that the list is maintained and updated only through the Member States' notification allows for the possibility for the states to 'picking and choosing' their sovereign borders, as Parker and Adler-Nissen (2012) have nicely put it. While states

always had multiple ‘planes of bordering’ (ibid.) in history, the making of EU external borders provides a new plane on which ‘picking and choosing’ becomes an institutional mode of bordering.

Secondly, the frontiers we are looking into are not only non-continuous, but also uneven and ambiguous. The most apparent (but often ignored) ambiguity comes from the mismatch between an arguably existent ‘EU territory’ and the ‘Schengen area’. As mentioned earlier, the Schengen Agreement was initiated not as an official Community measure, but was later incorporated into the *acquis communautaire* in 1999, and provided the fundamental structure for integrated border management in the EU. However, the so-called Schengen area excludes certain EU countries⁵⁴ and includes also several non-EU countries⁵⁵. But as the ‘territory of the EU’ has not gained notable discursive authority, it is often confused with, or replaced by, a more precisely defined geographical space – the Schengen area. On the official webpage introducing the Schengen area to the public, it is stated that ‘the Schengen area represents a territory where the free movement of persons is guaranteed’⁵⁶. The Action Plan for the Stockholm Programme declares that ‘the Union will pursue an integrated approach to the control of access to its territory in an enlarged Schengen area’ (CEC, 2010a: 6). Intentionally or not, the phrasing connects the territory of the Union to the Schengen Area without drawing an equation between the two. In both cases, we see the explicit tendency to frame Schengen as a territory, but not necessarily EU territory. The patterns of spatial differentiation are in fact defined according to different legal frameworks: some internal borders of the EU are Schengen external borders and accordingly are heavily controlled, while others are to the contrary.

⁵⁴ Currently they are the United Kingdom and Ireland that maintain opt-outs, and four other countries – Bulgaria, Croatia, Cyprus and Romania, which are scheduled to join in the future.

⁵⁵ They are Iceland, Liechtenstein, Norway and Switzerland. Monaco, San Marino and the Vatican are *de facto* parts of the Schengen area.

⁵⁶ Available at

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm.

Even borders that are deemed ‘internal’ in both frameworks are not managed in a homogenous manner⁵⁷; and controls might be reintroduced on occasions of ‘crisis’⁵⁸. The last feature of the changing European border regime(s) I would like to underscore here could be described as a ‘horizontal’ hierarchisation. If the territorialisation of space in the national context, as analysed in Part I, depends on the hierarchisation of spaces at a vertical dimension – arranging the urban, the region, the nation, and the state as hierarchical and mutually exclusive bodies politic (Isin, 2007), the way the ‘EU territory’ is configured involves hierarchies of space both vertically and horizontally. In Mezzadra’s words, some countries are ‘less external’ to the EU than others, and the distinction between inside and outside is ‘a matter of degrees’ (Mezzadra & Neilson, 2003, para. 7). Rigo (2002) has shown, for instance, that agreements on expulsion between EU countries and third countries generate a ‘flow of expulsion’ that is able to expel unauthorised migrants eastwards step by step. The issues of free movement and equal treatment rights related to migrant workers from the Central Eastern European countries, which will be examined in next chapter, reveal that the relativity of the internal and the external characterises not only the EU’s geographical borders, but also social and legal borders. Moreover, as we shall see in the following study on a snapshot at the Schengen frontiers, the conflicting logics of governing internal and external borders are often inseparable in practice.

⁵⁷ The joined cases of Aziz Melki and Sélim Abdeli , regarding the constitutionality of a French national law authorizing identity checks at the land border of France, is revealing about the legal and political complexities in the ‘abolition of internal borders’. The Court ruled that national legislation conferring on the police authorities of a Member State the competence to unconditionally check the identity of persons in the internal border zone is in breach of Article 67(2) TFEU as well as Articles 20 and 21 of the Code. But this does not mean that the police authority should cease to carry out identity checks at the border zone. Rather, Member States are required to ‘modify their legislation so as to limit the exercise of police powers in relation to location, specific means of transport and time’ (CEC, 2010d).

⁵⁸ For instance, in April 2011, France temporarily re-established border controls at the French-Italian border to prevent the ‘flow’ of immigrants into France, following the outbreak of mass protests in North Africa.

5.3 A snapshot at the Schengen border: a political reading of Eurostar

As an internal border of the EU and external border of the Schengen Area, the English Channel is marked by simultaneous processes of border reinforcing (as related to immigration control) and dispersing (as related to free movement). The fast-rail link, as part of the Trans-European Transport Networks (TEN-T), is supposedly an infrastructural contributor to the aspirational notion of EU territory we have discovered in the idea of territorial cohesion. But scrutinising its construction, operation and symbolization will complicate this picture by revealing competing perceptions of borders and renewed hierarchies of mobility. For so doing I shall start with a brief survey of the historical context in which the project of the Channel tunnel link was proposed and implemented.

5.3.1 The Channel tunnel project

The earliest proposals on building a fixed link across the English Channel can be dated back to the nineteenth century, but the first substantial steps were taken only after the Second World War. The Channel tunnel Study Group was formed in 1957 and it published the 'Proposals for a Fixed Channel link' in 1963. In July 1966, a joint statement approving construction of a Channel tunnel was announced by British and French leaders. Although some preliminary progress was made afterwards, the economic crisis in the 1970s led the British Government to unilaterally abandon the tunnel project. In 1981, British Prime Minister Thatcher and French President Mitterand revived the project by officially issuing another joint statement; and further feasibility study was conducted accordingly. In the context of changing relations between the UK and the EEC, the tunnel agreement was finally concluded between the UK and France in 1984, and the Treaty of Canterbury signed in 1986. This Anglo-French Treaty set out the governance structure of the Channel tunnel and awarded a 55-year concession to Transmanche-link – a company established through the merger of France-Manche and the English Channel tunnel Group in July 1985. Eurotunnel became its appointed administrative parent company subsequently.

Another agreement known as the Sangatte Protocol was signed between the two parties in 1991, with the title 'Protocol concerning frontier controls and policing, co-operation in Criminal Justice, public safety and mutual assistance relating to the Channel Fixed Link'. This agreement established the so-called 'juxtaposed controls', which provided that French border authority could set up checkpoints at Cheriton in Kent and British authority would operate at Coquelles. These arrangements would be studied as a prototypical form of extraterritorial migration control (Ryan & Mitsilegas, 2010) later on. The network of juxtaposed controls was extended to include Belgium according to a tripartite agreement signed in 1993.

The tunnel was eventually opened in 1994 by Queen Elizabeth II and Mitterrand with a highly symbolic ceremony. The two heads of the state each took a train from London and Paris, until the two trains met literally nose to nose on the same track. They then cut the ribbons to the sound of their respective national anthems, which were followed also by the EU theme 'Ode to Joy'. The event was perceived by the mass media in a highly symbolic way as well: a comment from the BBC news noted that 'the tunnel is the first land link between *Britain and Europe* since the last Ice Age about 8,000 years ago' (Darian-Smith, 1999, italics are mine). Not only the conceiving and unfolding of the Channel tunnel project, but also the regulations concerning its governance structure, indicate that the project is not merely an Anglo-French cooperation, but a European one. While the English side was worried about its 'national identity' vis-à-vis mainland Europe (Darian-Smith, 1999; Sparke, 2000), and the French saw it as emblematic of an ever closer community with a single 'nervous system'⁵⁹, the Commission would bring the tunnel railway link into its ambitious initiative of a Trans-European Transport Network.

⁵⁹ In the words of Mitterrand, 'the Channel tunnel ... is nothing less than a revolution in habits and practices; ... the whole of Community Europe will have one nervous system and no one country will be able indefinitely to run its economy and its society from the others' (Darian-Smith, 1999: 2).

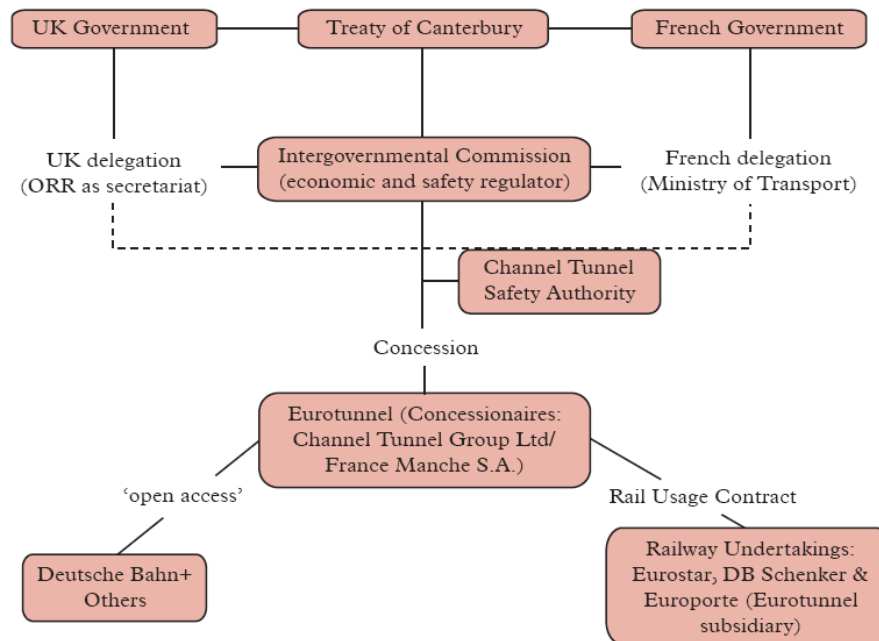


Figure 5.1 Governance structure of the Channel Tunnel (source: House of Lords, 2010: 19)

As the illustration above shows, according to the Treaty of Canterbury which specified the governance structure of the Channel tunnel, an intergovernmental commission (IGC) composed of British & French delegations was set up to function as an overall supervisor. But disputes among members of the IGC ‘were to be arbitrated by a tribunal sitting in Brussels’ (Darian-Smith, 1999: 216), thus the ultimate control only partly lie with national governments. Another ‘European character’ of the project is more directly related to our central interest in the making of EU/Schengen territory, which was not paid enough attention before the involvement of Belgium into the network, as the Franco-Belgian borders are not considered ‘external’ either in the EU or in the Schengen area. Thus the compatibility between the regime of extraterritorial immigration control established by the tripartite agreement and the TEC became an issue of controversy.

Debates over the potential conflicts between the notion of ‘control zone’ (*zone de contrôles*) and the Schengen Agreement as well as the provisions on free movement in the EU Treaty were recorded in the Senate of Belgium. The ‘control zone’, according to the Sangatte Protocol, means ‘the part of the territory of the host State’ within which ‘the officers of the adjoining State are empowered to

effect controls'⁶⁰. More specifically, as far as the Belgian part of the rail network is concerned, it refers to the two terminal stations (in Brussels and London) and on the moving train, where the officials of the other contracting party are authorized to carry out checks. Belgian government invoked the fact that both France and Belgium are signatories of the Schengen Agreement, and Article 7 of the TEC provided for the free movement of persons within the EU. During the negotiation with other two parties, Belgium insisted the position that while acknowledging that at the time, the implementation of free movement was far from completed, it 'will still follow as closely as possible the provisions of the Schengen Agreement and the Treaty establishing the European Community'⁶¹. Hence at the request of Belgium, a new article (Art. 27) was added which states that Community law prevails over the provisions of the Agreement and the Protocol. In particular, Belgian government made a unilateral declaration which states that 'the Agreement and the Protocol does not prejudice the willingness of Belgium to implement the Schengen Agreement'⁶². All control measures provided by the Schengen Agreement on entry to and exit from Schengen countries will be applied in the Brussels-Midi station. The explanatory memorandum on the occasion of their ratification at the Federal Parliament further explained that Brussels-Midi must be regarded as an external border of the Schengen area, and while Belgium does not waive its right to carry out checks on board, it has decided that the majority of checks would take place before departure at Brussels-Midi⁶³.

⁶⁰ Art. 1(g), Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic Concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link.

⁶¹ Document législatif n° 1-396/1, Sénat de Belgique. Available at <http://www.senate.be/www/?Mlval=/publications/viewPub&COLL=S&LEG=1&NR=396&PUID=16778954&LANG=fr>

⁶² Ibid.

⁶³ The original text reads:

'Dans la situation actuelle, le Gouvernement du Royaume de Belgique considèrera, pour les trains circulant sans arrêt entre le Royaume-Uni et la Belgique, la gare terminale de Bruxelles comme un point d'entrée et de sortie du territoire du groupe des pays de Schengen où seront appliquées les mesures frontalières de contrôle prévues par les accords d'application de Schengen. Le

Thus even before the passenger service was opened, the complexity and ambiguity of border control in the EU was already manifested in this short section of the Schengen borders. This border, cut across by a tunnel, should be by no means reminiscent of those heavily surveilled meta-borders such as the US-Mexican and the Spanish-Moroccan ones. Rather, it is supposed to be represented by connection and communication – even the accompanying regulations on juxtaposed controls highlights such terms as ‘speed’, ‘fluidity’ and ‘competitiveness’. But the following development around the tunnel and its passenger service (Eurostar) would feature remarkable diplomatic tensions and desperate struggles just as in those militarised borders.

5.3.2 From stowaways to the Lille loophole: migration, security and Britain’s ‘insular identity’

The first tensions were generated by the fear from the British side that there existed a great number of unauthorised travellers arrived in London without proper papers. Parliament records show that it was believed that ‘for several years, people trying to enter our country without adequate documentation have been misusing the Eurostar service’⁶⁴. As the French railway company SNCF was not held responsible for conducting documentation checks under French law, the two countries pursued a solution to implement an additional protocol to the original Sangatte Protocol, which installed pre-embarkation immigration checkpoints at the terminal stations of the Eurostar in the UK and France. This agreement was signed in 2000, and a tripartite one was signed with Belgium in 2004. However, this solution did not put an end to the public anxiety and press hysteria related to the ‘misusing of the Eurostar service’ and of the tunnel itself.

Gouvernement du Royaume de Belgique souhaite, en outre, souligner que la signature des présents Accords ne préjuge pas de l'interprétation qu'il accorde à l'article 7A du Traité sur l'Union Européenne.’ Déclaration du Gouvernement du Royaume de Belgique, in Document législatif n° 1-396/1, *ibid.*

⁶⁴ Column 1125, Lords Hansard of 16 March 2001. Available at <http://www.publications.parliament.uk/pa/ld200001/ldhansrd/vo010316/text/10316-05.htm>

In the period between 1999 and 2002, public and governmental anxieties about the Channel tunnel in the UK were particularly pointing to the Red Cross reception centre located in Sangatte, a shelter to temporarily host people who were believed to be on their precarious journey to Britain. Sangatte and train or freight stowaways frequently made the front page in newspapers, with sensationalist and exaggerated titles such as ‘illegal immigrants try to storm Channel tunnel’ (*The Telegraph*, 27/12/01) or ‘Help us stop the flood of illegal migrants, pleads Eurotunnel’ (*The Telegraph*, 20/02/01). Occasionally the press representation also had a focus on humanitarian sentiments and concerns about interruption of the rail service, but the stigmatisation of the Sangatte centre was the major message to convey. After refused entry to the centre, then shadow Home Secretary Ann Widdecombe expressed her support of the demands of Eurotunnel, the company that owns the tunnel and operates freight and car shuttle services therein, that the centre be closed. She also accused the French government of closing its eyes while ‘the Sangatte migrants “smuggled” themselves into Britain’ (Schuster, 2002). Another striking scene accompanying the portrayal of Sangatte as a ‘waiting room for the thousands of people who attempt the illegal crossing each month’ (O’Neill, 2001) was the securitisation and militarisation of the railway infrastructure. Eurotunnel spent two million pounds on reinforcing security measures such as dog patrols, carbon dioxide checks on lorries and a 6-foot high razor wire fence at the freight terminal⁶⁵ (*The Telegraph*, 20/02/01). In short, as Walters puts it, the widespread public perception fuelled by sensationalist journalism was that the country had become a ‘soft touch’ for bogus asylum seekers (2004: 238). And this formed the background against which the UK home office released a White Paper titled ‘Secure Borders, Safe Haven’ in 2002.

The Red Cross reception centre was finally closed in 2002, following the meeting between then British Home Secretary David Blunkett and French Interior Minister Nicolas Sarkozy. But the security paranoia associated with the

⁶⁵ In discussing third parties in border control, Guiraudon mentions that Eurotunnel ‘appointed a senior British Army officer, General Sir Roger Wheeler, who commanded British land forces, to improve security so as to prevent foreigners from entering the UK illegally’ (2006: 76).

image of the 'misused' tunnel continued, and reached another climax at the end of 2011, when BBC discovered leaked internal correspondence among the employees of the UK Border Agency (UKBA). These emails mentioned that 'illegal migrants' could use the so-called 'Lille loophole' to enter the UK without going through immigration checks. The term 'loophole' denoted the fact that passengers boarding a train in Brussels with a ticket to Lille would not need to show a passport or ID to the UKBA officers, and documents check was not performed on board or upon arrival at the time. The report especially provided the details about the following story:

One UKBA officer describes an incident in April at a Brussels station where he stopped two Iranians who he said "bore all the hallmarks of Lille loopholers".

After they were questioned the Belgian police intervened.

One officer shouted: "This has got to stop. You are not in Britain now, you are in Schengen. If they make a complaint you will be arrested." (Cox, 2011)

Needless to say, this little drama again stimulated strong public sentiments on Britain's vulnerable frontiers and a feeling of losing sovereign power. The press emphasised that the UK government alone could not close the loophole, which is to say the country could not safeguard its own border. In response, the UK government demanded the Eurostar company stop selling tickets for the Brussels-Lille route from December 2011, which was certainly against the interest of Belgium and France. A tripartite meeting was held in Brussels subsequently in February 2012, in which the other two parties expressed their strong opposition to removing the stops at Lille and Calais from the Brussels-London route. It is noteworthy that Belgian Prime Minister Elio Di Rupo referred to the development of the whole Euroregion in particular, insisting that the decision would be of great consequence for the entire Euroregion which encompasses Kent, Nord-Pas de Calais, Wallonia and Flanders. The French side also underlined the importance of maintaining 'quality rail services' in Nord-Pas de Calais with regards to its specific geography and

international positioning⁶⁶. Thus upon negotiations the stops at Calais and Lille were maintained on the Brussels-London route, but accordingly the UK decided to carry out additional post-arrival checks on passengers travelling from Brussels, Calais and Lille, which was still a far-from-satisfactory solution⁶⁷. For any measure that increases time spent on conducting immigration and security checks would be at odd with the vision of a competitive rail market, which was the initial motivation behind the Channel tunnel project. A report published by the House of Lords European Union Committee on the European rail market included a special chapter on the governance of the Channel tunnel. It noted that the security and immigration requirements for using the Eurostar service were already too 'onerous', which negates 'some of the advantages of train travel over flying' (House of Lords, 2011: para. 87). Moreover, although Eurostar sought to extend its service to Germany and the Netherlands, it was estimated that neither country was friendly to the idea of UKBA officers performing controls on their territory. The report hence recommended alternative time-saving measures such as on-board checks, an increased reliance on the UK's e-Border system, and the use of Advanced Passenger Information (ibid. para. 89).

⁶⁶ Question écrite n° 23707 de M. Jean-Claude Leroy, publiée dans le JO Sénat du 14/06/2012, p.1358.

Available at <http://www.senat.fr/questions/base/2012/qSEQ120623707.html>

⁶⁷ The Eurostar company had to regrettfully inform its customers that 'please allow an extra 30 minutes in your travel plans if travelling from these destinations'.



Map 5.1 Euroregion in the English Channel area (Source: Sparke, 2000: 196)

The controversies and the tensions caused by the manner of border controls in the Channel tunnel area reflect a range of concerns – among them are: immigration, security, competitiveness and freedom of movement. They run into conflicts with one another under certain circumstances when these different rationalities were concentrated in this unique border zone. It is unique first of all because of its material structure – the actual borderline was replaced with a tunnel, which simultaneously connects and distinguishes between territories. This ‘bridge’ has a more significant impact on the territorial identity of the UK than the Continental parties, for historically the sense of insularity has been integral to it and has affected the patterns of migration control in Britain. For a long time the idea of a cross-channel tunnel was not welcome at all in the country and especially in Kent. This is perhaps partly connected to the collective memory about Napoleon’s plan to invade England by a tunnel 200 years ago. But more importantly, the English Channel appears to be the physical and cognitive borderline of the geopolitical identity of England (less so for Welsh, Scotland and Northern Ireland). The construction and operation of the Channel tunnel, used to be seen by English observers ‘less as a modernist triumph and more as an intrusive continental penetration of sovereign island soil’ (Darian-Smith, 1999:

2)⁶⁸. For the UK government, the rail link raises particular difficulties to its traditional manner of immigration control – which is considered by itself to be of a liberal tradition. In justifying Britain’s refusal to join Schengen and its opt-out in the Amsterdam Treaty, the Home Office has claimed that Schengen reflects a continental tradition ‘where because of the difficulty of policing long land frontiers, there is much greater dependence on internal controls such as identity checks’ (1998, para. 2.9). By contrast, British immigration control has been traditionally concentrated at the ‘external’ border, and it is argued that frontier controls ‘match both the geography and traditions of the country and have ensured a high degree of personal freedom within the UK’ (ibid.). Although the relation between patterns of immigration control and personal freedom is doubtable here, this historical background illustrates that concrete geographical attributes of territory interacts with the social perception of territory, and together they shape the way how inside and outside are defined and maintained.

5.3.3 Contested mobilities and moving borders

William Walters recently proposed the concept of ‘viapolitics’, an idea that invites us to investigate the vehicular as: ‘1) a contested visual field which has become quite central to official and popular imagination of migration, borders, illegalities, etc., and 2) a mobile governmentality, that is a site of power relations operating on the scale of the vehicle and its movements’ (2011b). Our examination of the politics of Eurostar has certainly touched upon the first point. The second point is also relevant here, for as mentioned earlier, the external borders of the EU are in fact composed by a great number of sea ports, train stations and airports. However, so far the story has only been told from the perspectives of the governments and the consumers of mass media. Curiously

⁶⁸ Protests have been accompanying the Channel tunnel project from the conception stage to its final opening (c.f. Darian-Smith, 1999). A reader’s comment on the ‘Lille loophole’ story on the Daily Mail website is also telling: ‘I was against the tunnel right from the beginning. I argued the case very strongly at the time that Britain should remain an island, as it has been ever since the sea level on the Continental Shelf rose and flooded Doggerland around 6,500 BC. Good fences make good neighbours and there’s no better fence than the sea.’ Retrieved from <http://www.dailymail.co.uk/news/article-2107043/Lille-loophole-lets-migrants-slip-UK-passport-70-time.html>

enough, there are no reliable figures of how many unauthorised border-crossers have successfully made it to the other side of the Channel. What we know is only based on what has been reported – usually in lines filled with security paranoid and humanitarian sympathy.

But what would the scene look like in the eyes of the ‘pitiful’ stowaways, or for the temporary inhabitants of the Sangatte reception centre and later on in the ‘Jungle’ of Calais (Eurin, 2010; Rygiel, 2011)? First of all, crossing the channel, either by boarding a Eurostar train or by hiding in freights, is only one part of their moving strategy among many others. As a local activist told the author, the average period for those who seek to reach England through the Channel staying in Calais is around two months: ‘They try somewhere else, like Dunkirk, or they leave’⁶⁹. Even a successful journey through the Channel would not necessarily mark the end of their ‘unfree’ movement. Due to the lack of sufficient documents, they may still face the possibility of being deported from or detained in their destination country⁷⁰. But this leads to my second point, although this specific border-crossing, failed or succeeded, does not appear particularly significant comparing to other forms of border-crossing in their *chosen* moving strategy, the act of unauthorized crossing nonetheless immediately puts the entire system of border control into question, and at the same time ‘oblige’ the sovereign power to go back to coercive and disciplinary actions. While it is not the occasion to discuss the forces of excessive mobility here, which will be instead treated in detail in next chapter, I would like to highlight that if the sovereign practice of bordering relies on the logic of turning ‘bridges’ (both the vehicle and the tunnel itself) into borders, the contestation of such practices works precisely in a capacity to turn this logic the other way around. Just as the image of the tunnel can be symbolised by the media as a route of invasion, border transgressors may also give symbolic meanings to the tunnel through their collective acts. On the Christmas day of 2001, for instance, two waves of approximately 550 asylum

⁶⁹ Interview with P in Calais, 17 February 2013.

⁷⁰ Hearing my interest in Eurostar, Afghani asylum seeker A laughed and said: ‘I met a friend in Rome. He said he sit on top of the train and made it to England. But he was sent back to Italy after that. I never tried because it’s too dangerous.’ Interview in Calais, 18 February 2013.

seekers 'tore down three electrified fences' and 'invaded the Channel tunnel'. According to the Guardian, 'some walked more than a mile into the tunnel before being caught by police' (Webster 2001). Rather than aiming at actually reaching Britain on foot, this 'riot' is better to be considered as an act of resistance that makes use of the materiality of this infrastructural facility, hence reinventing the constituent meaning inscribed in the tunnel as connector.

In fact, the imagery of the vehicle itself has been consciously employed in a number of migrant activisms, such as the Boat4People project in the Mediterranean border zone, and the UndocBus in the United States. The space created by the railways, trains and stations constitute a *border on the move*, at which surveillance as well as resistance takes place in a more or less 'moving' fashion. The difficulties faced by the administrators in attempting to close 'loopholes' are caused not only by the imperatives of competitiveness and speed, but also by the characteristics of train travel *per se*, which allow for not only a border continuum, but also a continuum of subversive forms of mobility.

5.4 Conclusion: Citizenship without territory, free movement without freedom

Let me conclude our journey with Eurostar by first summarising some of the claims I made earlier. The case study reaffirms the fact that Schengen and/or EU territory has no homogenous or coherent frontiers, and the area of free movement is an area marked by highly stratified mobilities. As Verstraete bitterly writes, 'in a space of unlimited mobility for a very limited group of people – white propertied nationals – borders are abundant, the production and consumption of 'others' immense' (2003: 243). But the making of the two bordering mechanisms – the processes of debordering and rebordering – and the production of facilitated and obstructed mobilities are not only simultaneous, but also overlapping. They could take place in the same border zone, where controls remain localized and concentrated, but the purpose of border control is no longer fixing or delimiting. Instead, borders are produced and maintained through linking, bridging, and above all, moving.

Similarly, the two notions of territory we discussed earlier are also interwoven. On the one hand, the guarantee of fast and competitive rail services is linked to the development of the Euroregion and more generally to the building of the TEN-T, which is underscored in the Spatial Development Perspective and the TA2020. Both documents are read as representative of the postnational or transnational interpretation of diffused territory. In fact, in their geopolitical study on the projection of political visions in the making of Europe's 'physical space', Jensen and Richardson take both ESDP and TEN as key components in the emergence of a 'European spatial vision', which represents neither an 'utopia' – a borderless transnational space, nor a 'dystopia' – a 'Fortress Europe'. They instead describe such a spatial vision as a 'monotopia', an 'ordered and totalised space of zero-friction and seamless logistic flows' (2004: 2-13). However, on the other hand, this project of making a zero-friction and totalised space relies on the invention of new techniques of control, as involved in the operation of the transnational rail service we have examined, which spell out a 'traditional', securitised and statist rendering of territoriality.

It is also crucial to point out that although policy makers have to prioritise 'faster service' or 'securer borders' in given situations, the two discourses are not exactly in opposition. As Didier Bigo argues, security is no longer the opposite of freedom. Rather, all the new technologies invented in the security industry have been justified for the purpose of 'enhancing freedom' (2011a). It is precisely this dual logic of security and freedom that brings the configurations of EU citizenship and TCN status in the same framework of mobility governance. In other words, although arguments about 'market citizens' (Lehning, 1997) and 'securitised migration' are both powerful (Bourbeau, 2011), an approach of deconstructing the internal/external binary would lead us to recognise that both categories are subject to a simultaneous transformation of commodification and securitisation. In this light, we can finally evaluate the redefined relationship between territory, citizenship and migration in the EU context.

The key concept in question is not only a 'citizenship without constitution' (Guild, 2007), but also a citizenship without territory. As noted earlier, the

decisive differentiation political territory makes in relation to political membership is to distinguish those who have unconditional access to it and those who do not. However, there is no corresponding 'territory' to EU citizenship, which is defined by nationality of the Member States and the right to free movement. Regarding and the first aspect, only the territory of the Member States is of relevance. And concerning the second, in strict legal terms, the spatial delimitation of the right of Union citizens to 'freely move and reside' is still 'the territory of the Member States' (Art. 21 TFEU). Moreover, this right of access to territory is by no means unconditional. It might be restricted on grounds of public policy, public security or public health. In some cases, a Union citizen might be expelled from her/his country of residence given that, for instance, she/he is believed to 'become an unreasonable burden on the social assistance system of the host Member State' (Preamble (16), Directive 2004/38/EC).

Thus the conditionality of the right to mobility, which reflects the percolation of security concerns in the construction of rights, leads to a restrictive vision of citizenship; yet in contexts where the logic of free movement prevails, we see instead a fairly expansive framing that brings Union citizens and TCNs together along the line of mobility. The European Pact on Immigration and Asylum in fact begins with a praise of free movement. It acclaims that the creation of a wide area of free movement has 'provided an unprecedented increase in freedom for European citizens and nationals of third countries, who travel across this common territory' (European Council, 2008: 2). Furthermore, although 'EU territory' is not employed in the legislation regarding Union citizenship and citizens' rights, it is referred to, as mentioned earlier, in certain regulations on the status and rights of TCNs. It is the Other, instead of the Self, that raises the urgent need to define a 'common territory'. Finally, as long as mobility is concerned, unauthorised and unwelcomed others do make their way to the territory, of a certain Member State or of the Union, by appropriating exactly the same rules established by the commodification of mobility: travelling without frontiers as long as you pay at the start (Verstraete, 2003: 244). The ambiguous formation of the Schengen space and its reliance on free movement does not only condition the way EU citizenship is configured, but also renders excessive and

subversive forms of mobility possible. The various forms of mobility and their places in the judicial system of distributing rights will be precisely the target of our inquiry in the next chapter.

Chapter 6 Between the governance of mobility and the politics of mobility

Political activity is whatever shifts a body from the place assigned to it or changes a place's destination. It makes visible what had no business being seen, and makes heard a discourse where once there was only place for noise; it makes understood as discourse what was once only heard as noise.

--- Jacques Rancière (1999: 30)

Siamo una comunità anche se raccontiamo storie individuali, siamo uniti anche se viviamo in una società segregata, siamo in movimento anche se ci viene detto che dobbiamo stare al nostro posto.

--- Laboratorio *On the Move*⁷¹

It is now generally accepted in the literature of EU studies that free movement is not only an essential right associated with EU citizenship – listed as the first right enjoyed by Union citizens in Article 20(2) of the TFEU, but also, from both political and juridical perspectives (Maas, 2007; O'Leary, 1996), a defining character of it. However, due to the central position of free movement in the institutional architecture of EU citizenship, it is also considered to be its 'most important limitation' (Shaw, 1998:298), for the realisation of the 'substance' of Union citizenship is to a large extent depending on mobility. Some even argue that in the absence of moving, 'citizenship of the Union contributes little to the social status and day-to-day experience of Community nationals' (Ackers & Dwyer, 2002:3). On the one hand, free movement is considered by some as crucial to the construction of a European civil and political society (Recchi & Favell, 2009). On the other hand, free movement policies are also

⁷¹ 'We are a community even though we tell individual stories; we are united even though we live in a segregated society; we are moving (on the move) even though we are told that we have to be at our place'. Retrieved from <http://labonthemove.wordpress.com/progetto-2/>.

related to one of the most fundamental contradictions of EU citizenship regime: the boundaries for citizenship defined by nation states do not match those defined by the EU. The puzzle of free movement and EU citizenship is also complicated by the 'East-West' migration after the 2004 enlargement and the metaphor of 'fortress Europe' that has been spoken of since the early 1990s.

The most visible administrative approach to - and accordingly much academic discussion about - the issue of human mobility in the EU have been resting on an ontological distinction between its internal and external dimensions: the former sorted under the category of free movement, and the latter 'migration'. And for political theorists, the former field seems to need more politicisation to realise the democratic ideal of EU citizenship, whereas the latter field is over- politicised or securitised. However, this dualised order, just as the distinction between internal and external borders we have explored in the previous chapter, has only been achieved over time and not without internal contestations. In this chapter, I shall first survey the historical evolution of free movement provisions in the European Community, with a focus on the emergence of the rights discourse and the gradual sedimentation of separating internal migration - renamed as free movement - from the external. This is followed by an attempt to analyse what the 'right' in the right to free movement mean in juridical practices. I argue that this interpretation of rights must be contextualised in a political economy of mobility that jeopardises social citizenship.

Following the dialogical approach to citizenship suggested earlier, I look at mobility as an instrument of government which allows us to understand the differentiating mechanisms at work in the regime of EU citizenship on one hand, and examine its role in the various forms of resistance against and within this regime on the other. In particular, I attempt to bring mobility back to the domain of the political through Rancière's reconceptualisation of rights and the subject of rights. While the rights approach is not without limits, I argue, with two examples each employing different strategies to politicise mobility, that the strength of the concept of rights lies not in their inscription in law, but in the ways the inscription is invoked and challenged by appealing to the universal or

legitimizing the particular. I also read such politics of mobility as an endeavour of (alternative) space-making, which reveals rooted, transnational, and denationalised manners in which citizenship is enacted by those who are usually considered as merely objects in the sovereign practice of bordering and othering.

6.1 Freedom of movement and EU citizenship

The right of free movement is the first ‘supranational right’ (Maas, 2005) generated by the project of European integration; and it has been argued that the implementation of free movement played an important role in the emergence of a citizenship agenda at the Community level (Wiener, 1997)⁷². To trace the relation between free movement and EU citizenship, one has to go back to the early stage of European integration, even before the vocabulary of European citizenship being invented in the 1970s. As Hansen and Hager (2010) have noted, although the current perception is that free movement is not an issue of migration, and that the relationship between ‘migration policy’ and ‘citizenship policy’ at the supranational level did not come into being until the 1990s, this viewpoint has not become common until quite recently. That is to say, the literature up until the 1980s predominantly frames free movement promoted by the EEC as migration policy, and people who migration within the Community as migrants (Collins, 1975; Miles, 1993). Upon a closer scrutiny of the early development of free movement initiatives, we will also find that as an instrument to encourage intra-Community labour migration, it was not introduced as a matter of ‘right’.

Although Willem Maas (2005) regards the free movement provisions in the Treaty establishing the European Coal and Steel Community (ECSC) as the ‘genesis of European rights’, it is evident that such provisions were not set out in a framework of rights in the original ECSC treaty. As Maas (2005) and other historians of European integration have hinted at, the inclusion of these provisions was mainly pushed for by the Italian delegation, of whom a political priority at the time was to find ‘an outlet for the emigration of large numbers of

⁷² See also 3.1.2, this dissertation.

their excess population' (Willis, 1971, quoted in Maas, 2005: 1012). The proposal did not arouse strong oppositions from other negotiators, as other potential Member States were facing a growing labour demand in the coal and steel sector. As a result of negotiations, Article 69 of the ECSC Treaty, under Chapter VIII titled 'Wages and movement of labour', provided: 'the member States bind themselves to renounce any restriction based on nationality against the employment in the coal and steel industries of workers of proven qualifications for such industries who possess the nationality of one of the member States; this commitment shall be subject to the limitations imposed by the fundamental needs of health and public order.' The same Article also mentioned the need for the signatories to adapt immigration regulations and the prohibition of discrimination in working conditions between 'national workers and immigrant workers' (Art. 69, ECSC Treaty), which all made it clear that these specifically constrained provisions on labour movement were established as providing Community inputs into certain aspects of the Member States' migration policy.

The move from the ECSC Treaty to the Rome Treaty was a significant one, in that not only a clearly articulated 'freedom of movement' was extended to all workers within the Community, but also the employment of the language of rights in regulating labour mobility started to emerge. However, at this stage, the right 'to move freely within the territory of Member States' came only after the right 'to accept offers of employment actually made', and the right to free movement was effective only for the purpose accepting the aforementioned offer (Art. 48(3) TEEC). It is also remarkable that in the Treaty of Rome, free movement provisions generally refer to 'workers' as the beneficiaries without specifying any requirements on nationality. However, it was the national governments who later on interpreted this ambiguity according to their own interests, by limiting the beneficiaries of free movement to workers who are Member-State citizens only, in the actual implementation of the EEC provisions (Geddes 2000; Hansen & Hager 2010). Such a shift, according to Kostakopoulou (2001b), can hardly be explained by the then economic conditions that certainly would not benefit from the exclusion of a large part of the Member States' labour force from free movement. It can only be understood in the light of shared

ideological assumptions about immigration that began to 'replace earlier discourses extolling the economic benefits' of immigrants in domestic political arenas (ibid. 183). As a result, the secondary legislation on free movement adopted in the 1960s (Regulation 1612/68 and Directive 360/70⁷³) reinterpreted the right to free movement as confined to workers who are nationals of the Member States.

While the free movement of workers was still rather limited in Regulation 1612/68, the document nonetheless marks an important step forward in achieving the transitional goal regarding free movement set out in the Treaty of Rome. Freedom of movement was now recognised as 'a fundamental right of workers and their families', and its freedom was framed here not only in a negative sense – meaning move freely without barriers within the Community in order to pursue employment, but also with substantial socio-economic requirements aiming at the abolition of discrimination and equality treatment. Moreover, terms such as 'immigrant' and 'migrant' workers that were used in the free movement provisions of the ECSC Treaty and the Treaty of Rome were no longer present in the 1968 Regulation. Instead, three categories of workers were identified as 'national workers', 'foreign nationals' and 'nationals of the other Member States', and they were given differentiated access not only to mobility, but also to employment opportunities. As Article 4 of the Regulation provided, 'provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking ... shall not apply to nationals of the other Member States.' That is to say, the rationale of what was later on called 'the principle of Community preference' was also incorporated, although less explicitly, in this early stage of free movement policies in the Community. Hansen and Hager point out that this rule was welcomed by Italy yet opposed by West Germany, due to their different demands of exporting or importing foreign labour. But since 'the intra-Community labour migration would come nowhere near meeting West

⁷³ Prior to these, Regulations 15/61 and 38/64 were adopted in 1961 and 1964 respectively, but were later on replaced by Regulation 1612/68.

German labour demands' (2010: 50), the German opposition did not alter the agenda. After all, the Commission itself was keen on establishing preferential rights, in addition to the right of free movement, for Member-State nationals, for it was convinced that such a principle would encourage intra-Community labour migration in relation to labour migration from outside the Community (ibid.; Colins, 1975).

To summarise these early developments of free movement, it was introduced at first as an instrument of labour migration policy to stimulate intra-Community labour movement, but began to gain a 'rights' dimension in the Treaty of Rome. The ambiguous articulation of the free movement rights was translated into more exclusive rights available only to workers of Member-State nationality in the secondary legislation, which was not initially perceived by the Treaty of Rome. Kostakopoulou contends that the sedimentation of the Member States' favoured interpretation obscured the contingent nature of this shift, and concealed 'the system of possible alternatives', such as 'the conditioning of free movement on residence' (2001b: 183-184). While this is a penetrating insight, it has to be noted that at this stage, the 'dualised' order in governing internal and external mobility was far from stabilised at the Community level. The Commission's Action Programme in favour of migrant workers and their families, submitted to the Council in 1974, is an illustrative example here, as it dealt with 'internal' and 'external' migrant workers along the same line towards improving their social and economic rights. It invoked the Council Resolution of 24 January, 1974, which called for measures to be taken to achieve 'equality of treatment for Community and non-Community workers, as well as for members of their families, in respect of living and working conditions, wages and economic rights' (CEC, 1974b: 14). It observed, in particular, that comparing to Community migrant workers who were better protected under Community legislation, third-country migrant workers were in a less favourable situation in terms of mobility and socio-economic rights. The Programme went further to touch upon other social issues related to labour migration, such as the shortage of housing, that might lead to the concentration of migrants with 'the associated risk of racial tensions and xenophobia', and even deportation, which was critiqued for being

‘at the complete discretion of the authorities’ (ibid. 13). The Commission then suggested that equality of treatment between third-country workers and Community workers should be achieved ‘*by progressive stages*’ (ibid. 17, italics in original). It is fair to say that these visions were characterised by a marked attentiveness to substantial social rights, which were considered as a precondition for and safeguard of ‘freer’ labour mobility.

Prior to the eventual introduction of Union citizenship in the 1990s, four separate regulations on free movement were adopted⁷⁴, following a trend to gradually grant the right of movement and residence to a wider group of population, which was extended from workers to more broadly defined economy-related groups such as service providers, retired people, and students. A general right to free movement for all nationals of the Member States would finally be established with the Maastricht Treaty, which gave a constitutional form to EU citizenship, and directly linked the right of free movement to the newly established citizenship status. It was only until this time that the freedom of movement began to be transformed from a socio-economic right, mainly defined with regard to equal treatment in employment, to one that bore simultaneously economic as well as *political* significances. The Commission produced its first report on the citizenship of the Union in 1993, in which it discussed all the rights associated with Union citizenship in the following order: the right to free movement, the right of residence, voting rights in municipal elections and in the European elections; diplomatic and consular protection; the right of petition and access to the Ombudsman (CEC, 1993). The report emphasised the political mandate of the Union beyond economic integration, claiming that ‘for the first time, the Treaty has created a direct *political* link between the citizens of the Member States and the European Union such as never existed with the Community, with the aim of fostering a sense of identity

⁷⁴ They were Council Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of a Member State with regard to establishment and the provision of services; Council Directive 90/364/EEC on the right of residence, Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity, and Council Directive 90/366/EEC on the right of residence for students.

with the Union' (ibid. 2, italics in original). And the generalised right to free movement must be understood in accordance with this new political link, for it became now 'placed against the background of a new concept, that of citizenship of the Union'; it is now 'conferred on all nationals of Member States by virtue of their citizenship of the Union' (ibid. 3). It might appear surprising that only until this time did the Commission start to connect the abolition of controls on persons at the Union's internal borders to the issue of free movement, by considering the former to be 'a most suitable means' to achieving the latter. As mentioned in the previous chapter, the abolishing of internal borders was tabled as an integral part of market-making project, yet the decisive step taken in its regard was the Schengen Agreement. Thus the distinction between internal and external borders, as a matter of 'hard' territorial sovereignty, and the dualised system of governing internal and external mobilities, initially as a measure of market-building and now constituent of the citizenship regime, each evolved through different paths but now converged. With the Treaty of Amsterdam that integrated the Schengen Agreement into the framework of the EU, and that brought the JHA issues under Community competence *on the ground* of free movement, the means and scale of free movement in the EU context became even more multifaceted.

The developments of free movement in the Post-Amsterdam period were focused on updating secondary legislation to ensure that the generalised right to free movement be guaranteed for all Union citizens, which was concluded by Directive 2004/38/EC, and the granting of 'free movement rights' to resident TCNs. The Commission's 2001 proposal clearly asserted that '[A] genuine area of freedom, security and justice is unthinkable without a degree of mobility for third-country nationals residing there legally, and particularly for those residing on a long-term basis' (CEC, 2001: 8). This mobility of a certain 'degree' was introduced with the adoption of the long-term residence Directive in 2003. At the same time, as we have seen in Chapter 4, inward migration from third countries has been increasingly framed as a problem of mobility, and 'mobility of TCNs' has been considered to be 'of strategic importance' to the Commission's GAMM

initiative (CEC, 2011b: 3)⁷⁵. The framing of migration in terms of mobility and the articulation of a 'global approach' to mobility re-bring 'free movement' and 'migration', two policy areas that used to be identical at the very beginning but became rigorously distinct over the course of European integration, together under a new agenda of growing importance to both, which is mobility governance.

Along with the right of free movement, the principle of 'community preference'⁷⁶ has been also formally extended to long-term resident TCNs. In other words, long term residents shall now enjoy preference regarding opportunity of employment over newly arriving migrants in their country of residence. According to the Commission's green paper on an EU Approach to managing economic migration, this move will enable the EU to 'count on a "stock" of manpower that has already started to integrate' (CEC, 2005a: 6). It further envisaged that this principle can 'also be extended to those who have already worked for some years in the EU before returning temporarily to their own country' (ibid. 7), which later on developed into a concept of 'circular migration' favoured and promoted in the official discourses (c.f. Hansen & Hager, 2010: 176-183). To the extent that free movement was tabled first of all as an issue of labour migration, it cannot be reduced to an abstract and absolute right to move across borders. Free movement policies aimed initially at homogenising access to the labour market across borders, by which workers are able to move without being treated differently in terms of opportunity and socio-economic rights. However, the creation of this 'right' has generated a further stratification and hierarchisation of mobility, reflected not only in the conditions of entry and residence, but also more importantly in the conditions of employment, and the extension of the Community preference principle is a vivid demonstration of this multiplied system of stratification.

In this section we have surveyed the evolvement of free movement provisions and shown that the differentiating of internal and external mobility,

⁷⁵ See Chapter 4.2.

⁷⁶ See Chapter 4.2.

just as the categorical distinction made between internal and external borders, has been constructed over time and shaped by historical contingencies. As an instrument to facilitate intra-Community migration, free movement policies did not initially have a strong connection to nationality but only to economic activities. Through its generalisation as a 'right' of Member States nationals and finally through its 'marriage' with Union citizenship, the right of free movement became increasingly important in creating the hierarchy of mobility between Union citizens, long term TCN residents, temporary migrants and other categories of populations. Moreover, while free movement was initially framed in the context of social rights with regard to equal treatment at work, its new status as an essential right of Union citizens and its connection with the making of the Single Market obscured the earlier social dimension; and the tension between mobility and social rights has been in fact intensified, as we shall see below, after the new 'East-West' migration after the 2004 enlargement. Facing all these complexities in the politics of sorting wanted and unwanted mobilities, let us now turn to the dual faces of 'free movement', or mobility on an EU register: one presents free movement as a matter of rights; the other as a governmental strategy.

6.2 Unpacking the multidimensionality of 'free movement'

6.2.1 The nature of 'rights' in the rights of free movement

I have argued earlier that human mobility, through its interaction with borders and territory, has played a crucial role in the crystallisation of national citizenship. From this perspective, the positioning of free movement at the heart of both academic and institutional debates on EU citizenship reflects a degree of continuity comparing to the national context. The analogy has been actually drawn by Durand in 1979, who compared the EU case with the US one and argued that 'historically the most important internal privilege of United States citizenship was the right of a United States citizen to pass freely from state to state and take up residence in a state temporarily or permanently' (1979: 6). Thus before scrutinising the various interpretation of free movement rights offered by the European judges, I would like to briefly review the famous case of

Edwards v. California Durand referred to, as the different perceptions of free movement in relation to US federal citizenship involved in this case are exemplifying.

Fred Edwards was a resident of California, who left his home in Marysville in December 1939, heading for Texas to bring back his brother-in-law Frank Duncan, an unemployed resident of Texas. The two came back to California in January 1949, and Duncan remained unemployed for a few days before getting relief from the Farm Security Administration. Edwards was then convicted in the court of Marysville township of violating the Welfare and Institutions Code of the State of California in February. Section 2615 of the Code read:

Every person, firm or corporation, or officer or agent there of that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanour.

The case was finally taken to the Supreme Court of the United States, and the Court ruled in November 1941 that the section of the Welfare and Institutions Code in question violated the US constitution. Yet even more interesting than the judgement, to our purpose, was the different grounds on which the judges argued against the California statute. Justice Byrnes' argumentation was that the statute was 'an unconstitutional burden on interstate commerce', and from the perspective of *commerce*, the mobility of Duncan should be ensured just as that of 'orange, farm machinery, or capital' should be so treated. Justice Douglas, in contrast, insisted that the right of a person to move freely within the United States was not protected by interstate commerce law, but rather 'an attribute of *personal liberty*' protected by the 14th Amendment to the Constitution. The perspective of Justice Jackson differs even more from that of Justice Byrnes. He argued that the migration of a human being 'do not fit easily into my notions as to what is commerce', and 'to hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights'. He instead held that the right to mobility is derived from Duncan's US *citizenship*, although in

itself the right to mobility is not an unlimited personal liberty. Justice Jackson concluded:

This court should, however, hold squarely that it is a privilege of citizenship of the United States protected from State abridgment, to enter any State of the Union either for temporary sojourn or for the establishment of permanent residence therein. ... If national citizenship means less than this it means nothing.⁷⁷

I have reproduced the Edwards case in length here, for the reason that the contrasting approaches to the right of mobility represented by each judge are surprisingly comparable to the different framings of free movement in the EU. With regard to the making of the internal market, freedom of persons (workers) and freedom of goods, service and capital are considered in the same breath, which is exactly based on the economic logic of promoting interstate commerce as in Justice Byrnes' opinion. Article 20(2) of the TFEU is an express formulation of Justice Jackson's standpoint that the right to mobility is a constituent part of citizenship. Some juridical practice of the ECJ, especially from 1998 onwards (D. Kostakopoulou, 2005), also falls into the same line⁷⁸ by challenging the Member States' interest in maintaining economic activity as the condition for the enjoyment of free movement rights. However, the legal basis of free movement has always been an issue of controversy at the Court. For instance, in the Konstantinides case of 1993, Advocate General Jacobs went so far as to endorse a more expansive and universalist notion of citizenship rights than what was provided by the Treaty:

A Community national who goes to another Member State as a worker or self-employed person ... is entitled not just to pursue his trade or profession and to enjoy the same living and working conditions as nationals of the host State; he is in

⁷⁷ 314 U.S.160(1941), quoted in Durand (1979: 6).

⁷⁸ See for instance Case C-214/94 Boukhalfa v Federal Republic of Germany [1996] ECR I-2253;

Case C-194/96 Kulzer v Freistaat Bayern [1998] ECR I-985. Kostakopoulou (2005) provides an account of what she considers as 'judicial activism' in the ECJ's discursive practices through a comprehensive analysis of the case-law.

addition entitled to assume that, wherever he goes ... he will be treated in accordance with a common code of fundamental values, in particular those laid down in the European Convention on Human rights. In other words, he is entitled to say '*civis europeus sum*' and to invoke that status in order to oppose any violation of his fundamental rights⁷⁹.

Not quite surprisingly, given the institutional, legal and ideational 'immaturity' of EU citizenship at the time, this aspirational reading of free movement rights was not adopted by the Court, who instead ruled the case on the basis of the commercial ties between the applicant and his clients. This judgement, along with others, have led legal scholar Ian Lee to conclude that 'fundamental rights remain a constraint upon and not the essence of EU law', and the rights 'which *are* the essence of EU law are rights which serve an ulterior purpose: the reinforcement of the common market' (1999, italics in original). 'The legacy of market citizenship' (Everson, 1995; Shaw, 1998) has been indeed a frequently presented critique against the interpretation of free movement rights, by Member States and supranational institutional actors alike, as conditional upon certain economic activities. However, there is another aspect to 'market citizenship', which makes the cluster of meanings of free movement rights in the EU legal order more complex, and more contested, than the typology of rights in the US case we have seen above.

The peculiarity of the right to free movement in the EU lies in that it was closely tied to social and labour rights at the beginning, and became de-socialised in the course of market-making and also influenced by the establishment of the general link between free movement and Union citizenship. The social dimension of free movement is most comprehensively explicated in the Community Charter of the Fundamental Social Rights of Workers, in addition to the documents surveyed in Section 1, which is applicable to all workers irrespective of their nationality. It is stated at the very beginning of the Charter that '[E]very worker of the European Community shall have to right to freedom of movement

⁷⁹ Case C-168/91 *Konstantinides v StadtAltensteig* [1993] ECR1-1191, 1211.

throughout the territory of the Community⁸⁰, and this right shall 'enable any worker to engage in any occupation or profession in the Community in accordance with the principle of equal treatment as regards access to employment, working conditions and social protection in the host country'⁸¹. Indeed, even from the perspective of market building, merely removing physical barriers between national borders would not necessarily encourage people to migrate. Without equality of treatment, the 'freedom' in freedom of movement can only be a form of 'negative liberty' at best, and serve as a target of exploitation and an excuse for social dumping at worst. The de-socialisation of free movement has become more problematic than ever with the growing intra-EU labour migration from the Central Eastern European (CEE) countries to the EU-15 countries, for the precarious situation experienced by workers, especially posted workers, from the CEE countries, who are entitled to free movement as EU citizens, have particularly spelled out the tension between the 'right' to mobility and social rights.

Apart from inadequate legal guarantees in partially de-territorialised labour markets, deep concerns are also brought about by the juridical practice of the European Court of Justice in the area of free movement rights. Indeed, as Shuibhne's book-length treatment of 'EU free movement law' (2013) has shown, the implementation of free movement law before the ECJ is hindered by fragmentation and incoherence. The free movement rights of the applicants are usually discussed 'as relating to *either* migrant workers *or* the status of citizenship' (ibid., italics in original), or both, yet each way of framing produces different interpretations between the right to free movement and the right to equal treatment. The tension between the two was especially spelled out in the ECJ's decision on the Laval case (C-341/05)⁸², for example, which has been criticised as prioritising a neo-liberal understanding of international mobility

⁸⁰ Here it is also one of the few occasions on which 'territory of the Community' is referred to.

⁸¹ Arts. 1; 2, Community Charter of the Fundamental Social Rights of Workers.

⁸² Also highly influential and controversial is the Viking case (C-438/05 International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti [2007] ECR I-10779).

over the national framing of labour rights (Lillie & Greer 2007; Woolfson & Summers 2006).

To briefly summarise the case in question, Laval is a Latvian construction company who won the contract to build a school in Vaxholm, Sweden. When the company sent posted workers to Vaxholm for this purpose, the Swedish construction unions sought to make Laval sign up to collective agreements covering working conditions, pay, holidays, insurance and so on. Laval refused such request and the construction site was consequently 'blockaded' by the unions. The case was referred to the ECJ by the Swedish Labour Court, and the main argument of the applicant Laval is that its freedom to provide services had been infringed. The ECJ ruled in 2007 that while taking collective industrial action is 'a fundamental right', this right must nevertheless be 'reconciled with the fundamental freedoms guaranteed by the Treaty'⁸³. Furthermore, it concluded: 'the right of trade unions of a Member State to take collective action [designed to raise the pay and conditions of posted workers above legal minimums] ... is liable to make it less attractive, or more difficult, for such undertakings to carry out construction work in Sweden, and therefore constitutes a restriction on *the freedom to provide services* within the meaning of Article 49 EC'⁸⁴. Trade unions, activists and scholars alike have all pointed out the negative effects of the decision on social and labour rights: a large floating population of mobile workers, from CEE countries and beyond, may have little access to workplace rights or channels through which to express their voice (Davesne, 2009; Woolfson & Sommers, 2006). The criticisms raise the point that nowadays a great portion of labour mobility occurs as posted work under the freedom of movement of services, rather than of workers (Dølvik & Visser, 2009; Dølvik et al. 2013). The nature of posted work contract not only enables employers to deny workers access to certain host-society rights and employment norms, and also led the Court to reason that the presence of Latvian workers in

⁸³ Judgment of the Court, Case C-341/05.

⁸⁴ Judgment of the Court, Case C-341/05, italics mine.

Sweden, for example, is not a matter of practising their freedom of movement, but one of the employer's freedom to provide service.

But the undermining of social and labour rights under circumstances of cross-border mobility is not only an issue associated with the phenomenon of posted work, but essentially rooted in the shifting geographies of capitalist production at a global scale (Silver, 2003), which involve 'the process of global outsourcing' and increased demand for mobility and flexibility. As Arnold and Bongiovi note, these processes 'have diminished workers' bargaining power and rights across different countries and contexts' (2012: 3). Against this background, what such examples as the Laval case reflect is not only incoherent implementations of free movement *law*, but also a larger question of '*the political economy of free movement*' (Schierup et al., 2006: 65, italics in original) that shapes the governance of both internal and external migrations – increasingly narrated as mobility – in the EU. Workers are increasingly encouraged to move as individual market actors, but constrained and repressed as collective ones (Berntsen, 2013). This prompts us to approach free movement through the method of governmentality, which nonetheless does not disregard the relevance of the category of rights. Rather, it enables us to historicise categories of individual rights and social rights as related to the institution of citizenship, and also to rethink the relationship between social citizenship and free movement.

6.2.2 Governing the social through mobility

The governmentality approach views free movement as a mode of government, which combines specific governing strategies, and a form of political reason at work in a multi-layered system of international mobility governance (Bigo, 2011a; 2011b; Walters & Haahr, 2005). It certainly warns against claiming the triumph of free movement over borders and territorial differentiations, which we have carefully examined in the previous chapter. But it also seeks to complicate the claim that free movement policies *only* contribute to creating a 'fortress Europe', an image we have also confronted earlier. While the argument itself is not false, which is reflected in the relative lack of mobility for legally resident TCNs and the immobility of undocumented migrants,

deportees, and those who are stuck at the border zones, it may risk in subscribing to the logic that the negative correlation between internal and external mobility is inevitable. Ugur, for example, unequivocally claims that the exclusionist stance against third-country nationals (also known as immigrants) is 'both a necessary condition for and a result of free movement on the basis of nationality' (Ugur 1995: 194). But seeing this as a corollary – in correspondence to the strengthening of external borders, too, being framed as a 'corollary' to the removal of internal borders by the Council (CEU 2005) – will lead us to the classic myth about the inside/outside dichotomy of a liberal democracy: that a bounded democracy can be effectively inclusive inside and exclusive outside and liberal theory is immune to the problem of boundaries. And our review of the evolution of free movement rights in the EU has revealed that the differentiation of internal and external migration at the Community level is by no means a natural or inevitable movement. Thus the governmentality approach is interested in exploring in what ways mobility is deployed as a strategy of governance crisscrossing the internal and external division, and the consequences whereby brought about.

Examining free movement as a mode of government is not only informed by the Foucauldian literature on governmentality (Bigo, 2011a; Walters & Haahr, 2005), but also influenced by the so-called 'mobilities turn' in the fields of mobility and border studies (e.g. Adey, 2006; Jensen & Richardson, 2004; Salter, 2013). Bærenholdt (2013) has coined the term 'governmobility' to formulate the research agenda of mobility studies that are open to the method of governmentality – an agenda that should focus not only on the government *of* mobility, but also 'government *through* mobility' (2013: 26, italics in original). Most relevant to our key concern here, which above all pertains to the production of citizenry and its others, are the discussions that investigate the implications of the emergence of free movement as a form of political reason, or an 'imperative', as Bigo puts it (2005), for citizenship and its correlated concepts such as rights and freedom. In this range of literature, the two most powerful and interwoven arguments are respectively centred on securitisation and economisation.

Bigo provides some of the most illuminating work with regard to the mechanisms of securitisation through reframing freedom as 'speed and comfort' (2011a). Seeing 'EUrope' as 'enlarged borderzones', he observes that mobility is now translated into a discourse of 'freedom of circulation', which at the same time entails that 'freedom is subordinated to unease' and suspicion of the other (ibid. 31). Furthermore, the 'governmentality of unease' (Bigo 2002) extends the suspicion and policing to one's self -- the figure of the citizen, causing 'uncertainty about the boundaries of the self' (Bigo 2011a). A growing body of scholarship on the biometric border -- the 'turn to scientific technologies and managerial expertise' (Amoore, 2006: 336) in mobility management -- can be read along the same line. A higher degree of mobility, or speed, is pursued and 'secured' through biometric technologies and networks of information sharing. Drawing on the case of the US VISIT programme, Louise Amoore even argues that the biometric border is becoming 'an almost ubiquitous frontier' that requires the transformation of each citizen into a 'homeland security citizen' (ibid.). On the theme of economisation, criticisms have been focused on the explicit or hidden conditionality of the kind of 'free movement' encouraged by the EU on the involvement in economic activities and this results in what some have called 'market citizenship' (Everson, 1995). Comparing the meaning of 'freedom' in the EU treaty with more classic notions of freedom such as those in the United States Declaration of Independence, Walters & Haahr (2005) argue that in contrast to liberty as 'a transcendental source' in the latter, freedom in the Treaty of Rome serves only as an instrument of government, but not 'an end in itself' (2005: 43-44). This holds true also for the notion of 'rights' in those contexts. They have examined, for example, the right of establishment laid down in the Treaty, which is not 'as any individual, universal right', but an instrumental one: a right to 'stimulate economic processes' and to 'define a certain room of possibility for economic mechanisms to carry out their workings and produce their effects' (ibid. 46). This interpretation also reflects one viewpoint in the typology of 'the right to mobility' we examined earlier.

It is crucial to keep in mind that the processes of securitisation and economisation are always interwoven in practice, and also in the literature

sketched above. We have seen these two rationalities being fabricated in the umbrella project of creating an area of 'Security, Freedom and Justice', in which the freedom, comfort and security of economically active citizens are always 'necessarily' accompanied and completed by the fight against various types of non-citizens: such as illegal immigrants, terrorists and human traffickers. As Matthew Spark (2005) contends, the coupling of economic liberalisation with securitisation forms a 'neoliberal nexus', and any account of the 'privileged business class citizenship' has to be contextualised via its exclusionary counterparts. Indeed, our reading of the (via)politics of the Eurostar and the Channel Tunnel is also exemplary in illustration this neoliberal nexus. However, I would like to take a step further and examine one dimension of free movement that has been largely missing in the governmentality-informed critiques. If the two themes reviewed above are respectively organised around governing 'unease' and governing the market through mobility, what we need to address now is governing *the social* through mobility.

There are several reasons for our specific inquiry into the question of the social with the tool of governmentality. First of all, as mentioned earlier, the curious state of free movement as a right, or a set of 'rights' and 'freedoms', bears an ambiguous relation with social rights over the course of its evolution. Secondly, this directs our attention to an aspect of citizenship that has been unexplored so far in this dissertation: that is what is known as social citizenship after the seminal essay of T. H. Marshall (1992). The concept of social citizenship is usually considered as comprised of institutions of the national welfare system, and the idea of national solidarity, and the provision of social rights as a distinct category of rights. Because of its dependence on the institutional and cognitive framework of the territorial nation-state, scholars in labour studies and industrial relations have argued that the territorial restructuring in Europe resulted from the practice of free movement is de-socialising citizenship. Looking into the fragmentation of social citizenship will show us that under the current boundary-opening processes within the Single Market, the shifting structure of social inclusion/exclusion and equality/inequality does not coincide precisely with the hierarchy of national citizens, EU citizens and TCN workers. Finally,

rethinking social citizenship through the lens of governmentality sheds new lights on not only the nature of social rights, but also the relationship between rights and citizenship in general.

In Marshall's classic analysis, the task of social citizenship is primarily to reconcile the contradiction between the egalitarian ideal of democracy and class inequality under industrial capitalism. The responses adopted by the state to this contradiction included policies against poverty, regulations on wage and working conditions, free education and so on, which together entailed two simultaneous processes: the socialisation of liberal economy, and the nationalisation of former provisions based on membership of 'local communities and functional associations' (Marshall 1992: 14). What is later on called social citizenship is thus established based on these regulations on state interference with the market, concrete welfare provisions made available to the whole 'society', and above all nation-wide social solidarity. However, it would be misleading to consider the development of social rights as a natural continuation of civil and political rights. Marshall traces the emergence of social citizenship in Britain back to the middle of the nineteenth century, which is also the period in which '*society*' itself as an object began to gain the meaning it has nowadays (Rose, 1996), and the *social realm* started to appear as a distinct sphere (Owens, 2012). Writing on the rise of the Social question in nineteenth century Germany, Owens argues that the German 'social realm' was conceived (by Bismarck) as an entity 'to be monitored and regulated through social policy', and thereby a dangerous population effected by 'the antagonism between capital labour' could be integrated into a national society (2012: 3).

The invention of social rights, or the social dimension of citizenship, hence must be historicised in these specific conjunctures. As Procacci puts it, social rights 'mark a rupture, originating in the space opened up within the political rationality of liberal rights and law, a space they were unable to fill' (2004: 350). They have followed a different logic from liberalism, as in the case civil rights, and republicanism, as with political rights. In addition to the autonomous individuals being the bearers of rights, the creation of social rights requires that society itself is now 'acknowledged as the subject of its own claims,

needs, interests, and rights' (ibid.). But curiously enough, as a strategy to govern collective, social 'problems' such as poverty, unemployment and homelessness, social rights is 'every bit as much a question of a *production of individuality*' (Balibar, 2004: 164, italics in original). In other words, they are always 'negotiated collectively but acquired and guaranteed individually'; and the model of social citizenship is 'simultaneously collectivizing and individualizing' (ibid.). These accounts provide a theoretical background against which we can now scrutinise the nature of the perceived 'de-socialisation' of citizenship resulted from the implementation of free movement policies in the EU.

The initiative of free movement policies in the EU, as reviewed before, arose out of an economic demand; it supported the mobility of workers as factors of production (along with the mobility of capital, goods, and services). Yet the insertion of the provisions on the abolition of discrimination and equal treatment serves not only the purpose of facilitating labour circulation, but also as a minimal means to render the social dimension of citizenship visible at a Community scale. The momentum can be seen as a continuity of the development of social citizenship in the national framework, which is perceived as a solution to the conflicts between the logic of the market and that of social cohesion (Procacci, 2001). But the process could not be simply reproduced or transplanted in a top-down manner at the European level, for the historical embedding of the negotiations and struggles for social rights into the specific spatial-temporal structure of each nation-state determines that an institutionalised 'European social citizenship' of some sort is largely implausible (Balibar, 2004). Thus the EU has been putting forward the boundary-opening process of national labour markets, through freedoms of movement, without the competences that would enable the creation of a unified and balanced framework for the realisation of social citizenship rights across all Member States. Against this background, the individual-rights-based approach to free movement -- and to workers' rights related to free movement -- adopted by the Commission and the ECJ becomes a double-edge sword. As we have seen in the previous section, while its framing as fundamental rights gives new political meanings to the notion of Union citizenship, recognising freedom of movement

only in the scope of individual rights in fact hampers the citizen-workers' capacity to act collectively, for the national framework of collective bargaining is muted in the circumstances involving cross-border mobility.

The posted workers' marginalised position in terms of social citizenship rights, which is transformed to cross-border individual rights at the price of the legitimacy of collective subjectivity, is certainly indicative of the new stratifications and hierarchies *within* the boundaries of EU citizenship: some are more equal than others. But the 'trade-off' between rights and mobility (Ottonelli & Torresi, 2010) affects those who move as individual migrant workers and TCN workers as much as they do to posted workers from the CEE countries. Viewing from the perspective of global economy, as Sassen comments, these migrations form one of the two global labour circuits 'respectively at the top and at the bottom of the economic system': at the top is the hypermobile 'transnational managerial and professional workforce', whereas at the bottom is an 'amalgamation of mostly informal flows' consisting of both authorised and unauthorised workers (Sassen, 2011: 56-57). Circulation and individualisation mean quite differently to these two circuits. They may enable the former to enjoy a 'cosmopolitan' lifestyle and the feeling of being a world citizen who left all boundaries behind (Kofman, 2007). Yet for the latter, this circuit is favoured and urgently needed by the global economy precisely because compromised social rights and employment norms become a condition upon which their circulation is allowed to happen, and the logic of individualisation implied in such practice as free movement in the EU tends to dismiss every possibility for transnational collective negotiations to reset the norms. The model of circular migration, a new form of temporary migration recently being promoted by the Commission, must be examined vis-à-vis this demand for mobile and flexible labour force as well. It has been claimed that this model has a 'clear advantages for destination countries, countries of origin and migrants' (CEC 2007a: 10). However, evidences have already been documented (Pajnik, 2010; Marchetti, 2013) which prove that the conditions of circulation render social citizenship nearly 'impossible' for temporary and circular migrants – with EU citizenship or not, regular or

irregular, for their lack of channels of influence in the workplace closes off the path through which social rights were negotiated and claimed in history.

On the surface, the negative impact of the political economy of free movement on social rights are born out the tension between the historical embedding of the citizenship institution into the framework of the nation-state (Ferrera, 2003) and the increasing transnationalisation and partial deterritorialisation of economic life. However, having viewed social citizenship as an apparatus of government that is simultaneously ‘individualising and collectivising’ (Balibar, 2004), we recognise that the crisis of social rights under conditions of cross-border mobility is to be understood in relation to the existing transformation which is termed by Procacci (2001) as ‘individualisation of welfare’. In this sense, prioritising the right to free movement serves as an effective tool to (un)govern the social⁸⁵, to produce ‘discrete and autonomous actors’ (Rose, 1996: 328) and privatise work-related venues and social relations. What is at stake is not only EU citizenship – the supranational institution, but also citizenship itself as an ideal about democracy and equality. Moreover, we are invited to rethink the relation between rights and the construction of the citizen subject. In Chapter 3 I have presented some of the historical operations in the categorisation of rights, and especially in the making of the proper subject of political rights. In this section the right to mobility as debated in the courts and the invention of social rights is also interrogated. From this perspective, citizenship is presented as a ‘difference machine’ (Isin, 2002) that produces differential inclusion by distributing or allocating rights. But this is only part of the story, both for mobility and for rights. In the following I will give an account of the other part: that is on the politicisation of mobility against the official definitions of free movement and its bearings on citizenship.

6.3 Enacting (European) citizenship through politicising mobility

As we have explicated in Part I, the dialectic approach to citizenship urges us to focus not only on how it is formulated by law and debated in the courts, but

⁸⁵ As Rose puts it, there is a shift towards governing ‘without governing society’ (1996: 328).

also on the various ways its institutional forms are contested and disrupted by those constituted outside. It is in these moments of disruption that the universality of rights is claimed in contrast to the differentiation of rights, and mobility is mobilised, or politicised, to question the securitisation and privatisation of mobility in the government of free movement. In this section, I shall first look at the Rancière's philosophy of rights and democracy, which provides the theoretical ground on which struggles around mobility can be posited at the centre of the politics of citizenship. I then examine the constraints and potentials of politicising mobility in certain concrete contexts, which will resist the temptation of romanticising mobility or migration on one hand, and open up the terrain to think of mobility and space beyond the framework of rights on the other. The latter point shall bring me back to our broader concern with the relationship between space, community and citizenship.

6.3.1 Rancière and the 'Rights of Man'

In order to grasp the political significance of the claims-making around mobility and migration, let us start with Rancière's discussion on the subject of the Rights of Man. This discussion begins as a critique of Arendt and her depiction of the stateless people in *The Origins of Totalitarianism*, which has been considered inconsistent with her 'agonistic and performative' perception of politics as elaborated in *The Human Condition* (Beltrán, 2009). By completely depoliticising the stateless – those whom 'nobody wants even to oppress' (Arendt, 1976: 296), she effectively excludes the possibility for stateless people to act in the public realm, or the common world, in the same way as she speaks of the plight of slaves, a plight not because of the deprivation of their liberties, but because of the loss of *the possibility of fighting for freedom* (ibid. 297, emphasis mine). This conclusion is viewed by Rancière as a 'vicious circle' (Rancière, 2004), since it merely 'reasserts those who are worthy or not worthy of doing politics that was presupposed at the very beginning' (ibid. 306).

Those who are worthy doing politics, for Arendt, could only be the members of a political community in which individuals have already recognised each other as equal and distinct beings. Politics, in its authentic form, takes place

only in a public realm of equals. Therefore she makes a rigorous distinction between liberation and freedom: whereas freedom as such is the political way of life and it only exists among equal members of the polis, liberation can only be negative, and it is a struggle to be free from oppressions in the conditions of inequality. Although Arendt admits that in reality the desire for liberation is often inseparable from the desire for freedom, for 'the acts and needs which liberation demanded from them threw them into public business, where, intentionally or more often unexpectedly, they began to constitute that space of appearances where freedom can fold its charms and become a visible, tangible reality' (Arendt, 2006: 23), she insists that the two are not the same. It is from this archipolitical viewpoint that Arendt does not recognise the poor who live out of necessity and struggle for economic improvement as political agency. She agrees with John Adams that the predicament of the poor, apart from the problem of 'self-preservation' which is considered by Arendt to be merely negative safeguards, is that 'they are out of the sight of others' (Arendt, 2006: 59). But in her view this point could be hardly acknowledged by the poor themselves, for the poor who are dominated by mere needs are disqualified from political life so that they can hardly see what they have been deprived. The dividing line between individuals who are worth a political life and who are not worth one is thus perpetuated.

Seeing this as a problematic circle, Rancière resets the question of the subject of the rights of Man, or the subject of politics, by first of all denying that they are definite or permanent subjects. He contends that the rights of man are not the rights of 'a single subject that would be at once the source and the bearer of the rights and would only use the rights that she or he possesses' (2004: 302). It is the subject, or more accurately 'the process of subjectivisation, that bridges the interval between two forms of the existence' of rights' (ibid.). The first form is the existence of written rights that inscribe a free and equal community; and the second refers to the rights of those 'who make something of that inscription': who open up a dispute about what is given (ibid. 303). This is to say, for instance, they could claim that they are deprived of the rights they have according to the Declaration of Rights. Rancière regards this opening up of a dispute as 'dissensus',

and a political subject is 'a capacity for staging such scenes of dissensus'. Yet political subject is not a name for a pre-decided group; they emerge only in the interval opened by the difference between man and citizen, between 'the inscriptions of rights' and 'situations of denial'; and they not only put to test 'the power of political names', but also put together the two worlds – the world where those rights are inscribed and the world they are denied (ibid. 304).

We have both the political subject (the citizen) and the concept of rights redefined here. Defining the political subject by the process of subjectivisation avoids drawing a clear-cut borderline between those who are qualified to be a free and equal member and those who are not. Relocating rights between the two forms of their existence allows us to perceive that they can become 'a means of expanding the category of citizenship' (Papadopoulos et al, 2008: 5) – a reversal of the Marshallian narrative – in the staging of 'nonexistent' rights (Rancière, 1999: 25) by those who are denied them. In the same way as the power of rights never derives from the mere fact of them being written in law, neither democracy nor citizenship, according to this agonistic and dialogical point of view, can be identified with a juridico-political form. As Rancière puts it:

This *does not mean* that it is indifferent to them. It means that the power of the people is always below and beyond these [juridico-political] forms. Below, because these forms cannot function without referring in the last instance to this power of the incompetent that founds and negates the power of the competent, to this equality that is necessary for the very functioning of the inegalitarian machine. Beyond, because the very forms that inscribe this power are constantly reappropriated, by the play of the governmental machine itself, into the "natural" logic of those entitled to govern, which is a logic of indistinction of the public and the private. (2006: 298-299, emphasis mine)

Democratic politics, therefore, involves not only traversing the border between the legitimate rights-bearers and the absolute rightless, but also challenging the boundary between the political/public, the social and the private realms. The claims of social rights, in this regard, can be seen as a practice of the latter kind: fights over wages and working conditions are never issues only belonging to the social realm; it is first of all a fight against the 'distribution of the

political and the social' and hence a fight 'to deprivatise' the wage relation (ibid. 299). Disregarding the 'politicality' of what are normally deemed as 'social issues'⁸⁶ – those including working conditions, housing, health care and so forth – is not only rooted in a rigid opposition between the public and private realms, but also relating to the normalisation of certain part of sociality as assigned to each category: the matters of labour and wages are *assigned* to the private realm, whereas representative democracy stands for authentic politics. However, the struggles against privatisation and the process of enlarging the public sphere do not equal to a vision of 'progressive inclusion' which will eventually achieve a 'citizenship for all'. Democracy, claims Rancière, 'has no natural consequence', for it is a mixed form of two opposite logics: that of the police and of politics, or, 'a broken link' between the government legitimated by 'natural' competence and the power of the incompetent to negate that legitimation (ibid. 288). Speaking of the example of universal suffrage, Rancière argues that it was 'born of oligarchy, redirected by democratic combat, and perpetually reconquered by oligarchy' (ibid.). Democracy is thus defined in the dynamics between the *redirection* of its juridico-political form by democratic struggles and the *reappropriation* of the achievement of these struggles by the juridico-political machine.

Rancière's conceptualisation of rights, the subject of rights and democracy is most pertinent to accounting for the claims and practices of 'those who have no part' (Rancière, 2007: 99)⁸⁷. The undocumented migrant is undoubtedly one of these figures *par excellence*. The influential sans-papiers movement in France (McNevin, 2006, 2011; Hayter, 2004), the nationwide demonstrations of undocumented migrants in the United States (Beltrán, 2009; Butler, 2007), the hunger strike in makeshift migrant camps of Calais (Millner, 2011; Rygiel, 2011), and various other stages of migrant movements worldwide have all provided

⁸⁶ In *On Revolution* (Arendt, 2006), the poor appear to Arendt hardly capable of perceiving that their real predicament is invisibility, for they live mostly in the realm of necessity and suffer the misery from that. Even considering those who see clearly the importance of public appearance – and there are numerous proves of their presence across the world, if strictly following the Arendtian approach to 'the social', asking for improvement of living and working conditions is still not a politically relevant issue.

⁸⁷ See for example Balibar, 2004; Millner, 2011; Nyers, 2003; 2006; Schaap, 2011.

powerful evidences which highlight the political subjectivity of those who are not recognised as members of the political community by law. The scholarship engaging with these contestations of citizenship also often shares the approach of ‘acts of citizenship’ that we have introduced in Chapter 1. In fact, Isin’s capturing of citizenship as strategies that construct privileges and otherness on one hand, and the acts of ‘insurgent citizenship’ that call the ‘naturalness of the dominant virtues’ (2002: 275) in to question on the other resembles Rancière’s account of democratic politics illustrated above. In this framework, it is through the very act of demonstrating that ‘they have the rights they have not’ (Rancière, 2004: 302) that they are enacting the rights they have not. To borrow the words of Shaap, who comments on the *sans-papiers* movement in France, the undocumented ‘enact the right to have rights when they speak as if they had the same rights as the French nationals they address’ (Schaap, 2011: 34). The act-centred approach also reminds us Arendt’s discernment of the political as performance and as it alone: neither its motivation nor its achievement could conceive greatness, for greatness ‘lies only in the performance itself’ (Arendt, 1998: 206)⁸⁸. However, what seems to me most intriguing is not the act or the performance itself, but the employment of the category of rights in these acts.

If we ask the question as to whether the rights claims of non-citizens necessarily ruptures ‘the very terms of reference to which our conceptions of political belonging is limited’ (McNevin, 2009: 166), the answer is probably no. Although there certainly are claims based on a discourse of universal rights, typically on human or humanitarian rights with regard to vulnerable populations, the agenda of migrant mobilisations is often framed by the forms of belonging associated with the nation-state. The political engagement of established ‘legal’ migrants, which is concentrated on the right to permanent residency and citizenship acquisition, as many defenders of liberal nationhood have argued (Kymlicka, 2008; Koopmans & Statham, 1999), is by and large not interested in challenging the institution of national citizenship as the dominant locus of

⁸⁸ See Beltrán (2009) and Krause (2008) for an ‘Arendtian perspective’ on the movement of undocumented migrants.

belonging and representation. The claims-making of the undocumented is also inclined to appropriate, strategically or not, the discourses and vocabularies they seek to challenge in the first place – by referring to British or French national identities, for example. It is thus declared in the *Manifesto of the Sans-Papiers*: ‘we came to France because we had been told that France was the “homeland of the Rights of Man”... We produce wealth, and we enrich France with our diversity’. (Hayter, 2004: 143) The discourse reiterates, almost unavoidably, one of the dominant responses the nation-state has to immigrants: either they ‘are valued for what “they” bring to “us” – diversity, energy, talents’ and so on, or ‘they are feared for what they will do to us’ (Honig, 2001: 116).

It is therefore crucial to acknowledge that the process of political subjectivisation takes place not in a normative, philosophical terrain, but in concrete historical, spatial and socio-cultural contexts, and *performance* cannot be entirely separated from *motivation* or *achievement*. As Soguk reminds us, migrant subjectivity often has to rely on particularistic vocabularies such as race and culture to accommodate themselves to the processes of statist territorial democracy (Soguk 1997: 315). The contradictoriness, however, is not only about migrant subjectivity, but also about the dependence of democratic struggles on the category of rights⁸⁹. The mediation of rights, according to Andrijasevic *et al.* (2012), works ‘through an individualising process turning subjects into rights holders who then also need access to the judicial (administrative) system where they can claim their rights’ (2012: 594). Rights claims of those who are marginalised in the judicial system, therefore, have to simultaneously interrupt and reinscribe the juridico-political form of citizenship that is grounded on differentiated access to rights and the hierarchy of statuses. Despite this, the very moment at which the privatised migrants stage themselves as legitimate rights holders is still moment of ‘becoming political’ (E. F. Isin, 2002), and because of the definitional connection between migration and mobility (or movement), it also constitutes moment of politicising mobility. It is in the politicisation of mobility, which goes beyond the demands for regularisation and membership

⁸⁹ Hence it also points to the limitation of the ideal of democratic citizenship itself. See Chapter 7.3.

status accorded by the existing judicial system, that the limits of EU citizenship, which as analysed earlier grounds itself on an ambiguous formulation of the right to free movement, are tested.

6.3.2 Mobility, rights and the politics of space-making

Let us now consider in what sense we are speaking of the politicisation, or the politics, of mobility, and why it ruptures ‘the national order of things’ (Malkki 1995). At the most explicit level, the politics of mobility refers to the mobilisations that expressly claim freedom of movement for all and defy the discriminatory effects of borders, which for instance can be seen in the slogans such as ‘No borders’, ‘*Kein Mensch ist illegal*’, or ‘*pour un monde sans frontières*’. This claim of free movement for all is fundamentally different from the many varieties of the rhetoric of ‘a borderless world’ including the one famously presented by Kenichi Ōmae (1990), for this rhetoric of globalisation as border-eliminating processes limits ‘movement’ to only certain forms of mobility favoured and ‘approved’ by the state and capital. But the claim of those who practice *excessive* mobility about their ‘right to move’ and ‘to stay’⁹⁰, is precisely against the double mechanisms of control and circulation required by the logics of national security and capital accumulation.

Thus in the second sense, the politics of mobility indicates the practices of migratory movement that structurally exceeds current ‘(re)bordering practices’ (Mezzadra, 2011) and insert the subjectivity of migrant labour at the heart of the capitalist mode of production. This first means the transgression of actual physical borders – scaling the fence at the Mexican-US border or boarding a trans-channel freight at the French-UK border – is understood as political and the transgressors as political subjects rather than ‘economically desperate’ individuals (Andrijasevic & Anderson, 2009: 363). But the politics of mobility goes beyond the physical border zones, just as the bordering practice reaches far beyond the geographical borderlines and extends to the entire territory. It refers

⁹⁰ These rights are mentioned in an open letter written by a group of African immigrants in Europe (No border, 2011).

to, to quote Mezzadra and Neilson (2013), 'the set of everyday practices by which migrants continually come to terms with the pervasive effects of the border, subtracting themselves from them or negotiating them through the construction of networks and transnational social spaces'. Thus it involves the confrontation not only with the securitising processes of erecting walls and fences, but also with the 'political economy of free movement' which we have examined above in the EU context, which entails addressing exploitation and inequalities precisely facilitated by labour mobility. This is why the No border network describes its aims not only in terms of free movement, but also with a strong emphasis in a 'transnational perspective of global social rights' (No border, 2007). Workplace and urban communities are contentious spaces that are as critical as, if not more critical than, the geographical borderlands for border and mobility struggles.

Lastly, the politics of mobility ultimately brings to the fore the 'autonomy of migration', a concept that has been paid growing attention in political and sociological studies of migration. Papadopoulos *et. al* suggest that the autonomy of migration forces us to understand migration as a social movement, rather than 'a mere response to economic and social malaise'. Although it is certainly not isolated from social and economic structures, migration must be instead viewed as 'a creative force within these structures' (2008: 202). The shifting perspective from the 'pull' and 'push' factors that seem to have an 'objective' influence on migration to the subjectivity of migrants highlights the political terrain opened by migratory movement itself. Mezzadra goes further to propose the 'right to escape' (2001; 2004) to capture what is at stake behind an individual motion of 'desertion from the field where those "objective causes" operate' (2004: 270). Migratory movement, writes him, are '*social* movements in the full sense', for it is a reclaiming of a 'right to escape', which 'constitutes a material critique of the international division of labour and marks profoundly the subjectivity of the migrant also in the country where she/he chooses to settle down' (*ibid.*)⁹¹. Comparing to the first two forms of politicising mobility described above, the

⁹¹ Palidda also argues that the act of migration is a 'de facto attempt to act free' (Palidda, 2008, quoted in Oliveri, 2012: 800).

right to escape is the most implicit one, for it is most of the time an unconscious claim. However, when migrants explicitly make claims about their rights to free movement and equality, they may also politicise their 'escape' as a 'voice'. For example, this stance is powerfully conveyed in an open letter written by a group of African immigrants in Europe:

Our own movement, the movement of migration, and the struggles we fight every day in Europe can be one of the resources creatively used by these movements, in an attempt to build up new transnational spaces of freedom and equality. We freed ourselves from colonialism, today we must free ourselves from every oppression in Africa and from the exploitation of migrant labour in Europe! We already have chosen to migrate and many more will migrate. Whoever choose this route now, aiming at freedom, must know that freedom is not a gift. We must fight for taking it. We do not want to be victims, we want to be protagonists, and the space of our freedom, today, is the space of our common struggle! (No border, 2007)

It is crucial to bear in mind that the politics of mobility, in all the forms set out above, and the regimes of mobility control co-managed by the nation-states, supranational entities and international organisations are mutually constitutive (Hyndman, 2012; Squire, 2011). Scholars have also pointed to the ways in which labour migrants assert their autonomy by utilising, rather than abandoning, the objectification of labour (De Genova, 2009) and the 'circular motion' (Mezzadra & Neilson, 2013) inherent to the operation of global capital. But the relation between struggles around mobility and the category of rights, or the judicial articulation of citizenship, seems to be more puzzling. Two thought-provoking alternative perspectives on mobility have sought to complicate the agenda of incorporating human movement into the framework of universal rights. De Genova radically insists that the 'freedom of movement' must be understood *not as a right*. It is instead 'a figure *par excellence* of life, indeed, life in its barest essential condition'. Regarding freedom of movement as an ontological condition of human life, he argues that it has to be distinguished from a juridical 'human right' or a metaphysical 'natural right', as well as 'any of the ways that such a liberty may have been stipulated, circumscribed, and domesticated within the orbit of state power'.

By contrast, Aradau and Huysmans offer a political reading of mobility that acknowledges the importance of the legal regime and of universal rights to actualising the ‘democratic quality’ of mobility practices (2009). In their reading, mobility is primarily approached as ‘a form of sociality and interaction’ among strangers and ‘brought about by money and exchange’ (ibid. 590). Invoking Simmel, they argue that sociality in modern times is defined by the relations of circulation and exchange through the mediation of money. Yet the capacity of mobility as a social practice to enter the political and democratic field depends on the involvement of rights as a vehicle, for ‘mobile people work upon structures of power by claiming rights upon public and private authorities’ (ibid. 593). However, they note that the working of rights as a vehicle towards democratic practice has important limitations, for it requires access to the judicial systems and has to rely on law, which often particularises the universal by denying rights to certain groups of population, and ‘neutralises the stakes in a conflict by converting a struggle between parties into a dialogue between mediators’ (ibid. 595). Thus they apprehend the second way in which mobility unpacks its political potential: that is the ‘mob’, or mass politics. This refers to the capacity of the masses of individuals to ‘mobilise numbers into a political force’ which challenges the ‘primacy of legal reasoning’ (ibid. 599). They conclude that both forms of political practice activated by mobility – universal rights and mass politics –inscribe the abstract principle of equality.

Both of these critical insights on mobility and rights are illuminating and profound. And in fact, I have touched upon the dependence of the employment of rights on the existing legal apparatus, which is pointed out by Aradau and Huysmans, in the previous section. However, my intention is to navigate this critique to another direction. I have highlighted the embeddedness of struggles around mobility into the ‘regime of legality’ that produces rights and rightlessness (De Genova, 2009: 461), even though they simultaneously ruptures the very same regime. It is clear that in migrant movements in reality, the contestation against the legal structure that illegalises and marginalises certain mobile populations is often achieved through *appropriation*, rather than a straightforward negation. The migrant self-organisations and solidarity

networks not only denounce the legitimacy of any borders and papers – the geographical and institutional composition of citizenship, as expressed in the phrase '*sans papiers ni frontières*', but also provide concrete information and guidance on how to cope with the administrative violence to the interests of migrants in precarious situations and how to access legal remedies⁹². Moreover, the 'instrumental use of rights', as Rigo puts it, aims at gaining 'advantages or recognition by the legal system' (2011); and the reform in immigration laws and gaining remedies before the court is normally considered to be a victory, at least a partial one, in the agenda of migrant mobilisations. Federico Oliveri propose to consider migrants' appeal to the existing legal framework as part and parcel of the self-critical mechanism of democratic law (Oliveri, 2012), but we can also see it in the light of the double depiction of rights as elaborated by Rancière. Rights in both De Genova and Aradau and Huysmans refer primarily to their positivist form in law, and hence the limits of them as mediation emerge from the structure of power that underpins law. Yet as argued by Rancière, the strength of rights 'lies in the back-and-force movement between the first inscription' of them and 'the dissensual stage on which it is put to test' (2004: 305). I shall now turn to two examples that demonstrate slightly different ways in which the strength of rights is brought out: one is the European Conference on Sex Work, Human Rights, Labour and Migration held in Brussels, 2005, which has been also discussed by Aradau *et al.* (2010) and Andrijasevic *et al.* (2012); the other is the community-based migrant struggles in Bologna. I analyse these two specific dissensual stages as acts of citizenship not only through rights, but also in relation to the politics of space-making.

A rights perspective beyond positivist rights

We can identify two schemes for contesting the dominant regime of legality, which indeed turns rights to privileges and underpins differentiated citizenship (Holston, 2011), by bringing to bear the very language of rights. The first one is, evidently, to challenge differentiated rights by claiming 'the right to

⁹² See, for example, the brochure '*Sans papiers organize against deportation: what to do in case of arrest?*' in French, English, Arabic and Chinese. Available at <http://sanspapiers.internetdown.org/>

universality as such' (Žižek, 2005); and the second is to base the legitimacy of claims on the particular: on 'use, practice, productivity, settlement, and custom' (Holston, 2011: 335). The mobilisation of sex workers in 2005 and especially one of its major achievements – the *Declaration of the Rights of Sex Workers in Europe* (ICRSE, 2005) is an extraordinary instantiation of the first scheme. The declaration was endorsed by 120 sex workers and 80 allies from 30 countries at the European Conference on Sex Work, Human Rights, Labour and Migration in October 2005, and was later presented to the European Parliament. It declares at the very beginning that this declaration is 'not a demand for special rights to be given to sex workers' (ibid., emphasis mine). Rather, it claims to those rights that 'all individuals within Europe, including sex workers, enjoy under international human rights law'. Though being a minority group in broader society, the drafters of the declaration do not ask for 'minority rights' in a particularistic fashion. They create exactly the agents of universality of the social itself. It does not demand for special rights for migrant sex workers either, but emphasise that migrant workers are particularly vulnerable to abuse, exploitation and rights violation.

The Declaration regards itself as merely identifying 'human, labour and migrants rights that sex workers should be entitled to under international law' (ibid.) and that have been universally agreed to uphold for all citizen. Yet the political subjectivity of sex workers therein claimed also derives from their role as workers, thus is based on use and productivity. Stressing on sex work as labour, the Manifesto demands that sex work as gainful employment should enable migrants to apply for work and residence permit and that both documented and undocumented migrants be entitled to full labour rights. The declaration, along with the *Sex Workers in Europe Manifesto*, argues against the point held by some that remunerated sex remains part of their private sphere, and by which denies the double privatisations of sex work. It hence calls into question the regime of EU citizenship, as Andrijasevic et al. have noted, because 'it uses the rights framework in order to hold various subjectivities together across different genders, types of sex work, and immigration status' (2012: 507). The drafters bring together 'human, labour and migrants rights' in line with each

other, for they are in separate categories in law, but in the same category in migrant and non-migrant workers' act of constituting themselves as political agencies. Whereas human rights embody the abstract principle of equality, labour and migrants rights draw on the inequality of the social order.

Another emphasis of the Declaration is the issue of free movement, which is articulated here beyond the right of EU citizens. The freedom of movement for sex workers in Europe is very much restricted due to the criminalisation of sex work and the discourse of anti-trafficking, which often depicts sex workers as victims. By declaring that '[N]o restrictions should be placed on the free movement of individuals between states on the grounds of their engagement in sex work' (ICRSE, 2005), the activists traverse the boundaries of EU citizenship through 'a claim for mobility' that transcends 'instituted limitations to free movement' (Andrijasevic et al., 2012: 508). Interestingly, while the Court of Justice virtually denies the right of collective bargaining to the Laval workers on the basis of them being service providers, the sex workers here exert their capacity for collective action, and claim their freedom of movement, exactly by formulating sex work as a service job. This formulation reverses the rhetoric and practices that render labour 'a tractable object' by affirming 'the primacy of labour as subject' (De Genova, 2009: 446). It also seizes upon the primacy of mobility in order to turn it against the securitisation and economisation of free movement that is constitutive of the current regime of EU citizenship. It is in this sense that these mobilisations of mobility imply at the same time, as Andrijasevic et al. (2012) suggest, a disruption as well as an enactment of European citizenship.

If central to the mobilisation agenda of sex workers are universal rights and transnational social space, the principal battlefield for the migrant struggles in Bologna is above all the everyday experience of precariousness and the local/urban space. Whereas the first case represents a scheme that contests differentiated rights with the abstract principle of equality, the second scheme seeks to give material substance to the emptiness of formal equality presumed by human and citizenship rights. The particular practice of the Coordinamento

Migranti Bologna e Provincia (CMBP) is only one example among many others that employ the second scheme in order to destabilise the established boundaries of rights. Two areas of everyday life lie at the heart of the socio-political agenda of the CMBP and its related collectives: one is fighting against precarity in workplace, which is the major concern of the collective '(S)connessioni Precarie'; and the other is reclaiming a 'right to urban life', to use Lefebvre's terminology (1996), which is consciously engaged with by the workshop 'On the move'.

'On the move' brings together a group of young people, of which a great majority are children born to immigrant parents facing the risk of being illegalised under the Bossi-Fini law, to develop projects and initiatives that are able to 'produce change in the city' where they 'live, work and study'⁹³. Identifying themselves as the 'generation on the move', the participants of the workshop interpret 'move' both in its social and physical senses. When asked why this name of the workshop was chosen, a participant of Egyptian origin answered: "'on the move" represents us, we make movements; this is how we fight for our rights"⁹⁴. While the workshop engages with a number of initiatives addressing issues on migration, it does not regard formal citizenship as the primary objective of the struggle for those who are usually considered as 'second-generation immigrants'. In fact, they tend to avoid framing the larger problem of institutional racism as a 'migration problem'. An Italian girl who is active in the workshop frankly commented: 'I don't like the word 'migrant'. I'm losing some of my friends because of the law'⁹⁵. Combining the social and geographical meanings of 'movement', 'On the move' generates a discourse on citizenship that traverses the boundary between citizens and migrants drawn by law and intensified by institutional racism:

⁹³ Retrieved from <http://labonthemove.wordpress.com/progetto-2/>.

⁹⁴ Interview with M in Bologna, 10th December 2012.

⁹⁵ Interview with F in Bologna, 10th December 2012.

We will go down the street together, Italians and foreigners born in Italy or elsewhere, to say that the rights of citizenship should be the rights of all; that exploitation and insecurity are everyone's problem, and that the future we want to create must belong to everyone. ... It's not a matter of cultures that should learn to talk to each other, nor is it a matter of people who should learn to live together: we do this every day. It's a matter of institutional racism, which should be knocked down, because it creates first and second class citizens and separate them to exploit our labour more easily. (On the move, 2012)

This appeal was launched on the occasion of the migrant general strike, or an Italian 'day without immigrants', on 1 March 2012, which was first mobilised in 2010 after the unrest in Rosarno in 2010⁹⁶. Many have argued that Rosarno functions as a turning point in migrants' struggles in Italy (Cobbe & Grappi, 2011; Oliveri, 2012), which stimulated a new round of nation-wide movements against the criminalisation and exploitation of migrant labour. Yet we have to understand the crucial importance of labour issues to migrant struggles in Italy in a longer trajectory which dates back to the early 1990s. Between 1991 and 2010, the percentage of migrant workers in the labour force increased more than five times, and the pattern of immigration in the country is heavily influenced by a large sector of informal or underground economy (Oliveri, 2012). A 'more or less permanent mobilisation' (Mezzadra & Neilson, 2003: para. 4) against the Bossi-Fini law, which restricts the rights of migrants through, among other measures, conditioning their legal status upon employment contract, was triggered ever since the introduction of the law in 2002. And the question of migration has become integral to the struggles of broad social coalitions against austerity, flexibilisation and informalisation⁹⁷. It is against this background that the collective '(S)connessioni Precarie' grounds their approach to rights on the everyday practice and materiality, which rigorously distinguishes itself from the

⁹⁶ Rosarno is a small town in the region of Calabria, where a great number of migrants were employed informally as seasonal workers in the agricultural sector at the time when the uprising took place. For more details on the event, see Rigo (2011) and Mometti & Ricciardi (2011).

⁹⁷ As the Coordinamento per lo sciopero del lavoro migrante in Italia (2010) claimed prior to the general strike of 1 March 2010: 'Today, no labour struggle can avoid to take into account the centrality of migrant labour.'

framing of human rights: 'It [the discourse of human rights] tends to isolate migration issues from labour movements and [the] socio-political system. It moralises and culturalises migration, turning them to static objects of political charity. We do not fight for ethical principles, for victims; we fight together as protagonists'⁹⁸, as a member of the collective put it.

Attending to the concrete situations of exploitation, precarity and invisibility experienced by authorised, unauthorised and citizen workers alike, the collective engages with a critique of citizenship that is always 'not enough': 'citizenship liberates people so that they won't fight for specific rights, which are the essence of struggle. It's important that formal equality doesn't translate into any kind of material equality, which is prevented through the governance of the labour market'⁹⁹. Yet in this attempt to subvert the 'entrenched systems of inegalitarian citizenship' (Holston, 2011), the category of 'specific rights', which must be perceived in opposition to 'special rights' or privileges, is strategically employed in order to 'transform their needs into citizen rights' (ibid.). Following Rancière, we could argue that what is at stake in formulating specific rights is making explicit and resisting the *multiple* privatisations of migrant workers: migrants, in contrast to citizens, have been portrayed as politically inactive: 'they were invited not to interfere with their hosts' political and collective affairs'; and they 'had only an economic role in the host society: to work and to produce' (Martiniello, 2006: 83). The second layer of privatisation is precisely based on their role as labourers, which is considered *only* economic and irrelevant to the public sphere. Furthermore, as noted earlier with the Laval case, increased mobility and flexibility demanded by the market and encouraged by the state and supranational institutions has rendered the generation of collective subjectivity even more difficult. Thus the reconceptualisation of rights pursued by '(S)connessioni Precarie' and many other locally based collectives focused on migrant labour concerns not only the right to mobility *per se*, but also the rights related to, generated by and hindered by mobility. Through reconceptualising

⁹⁸ Interview with S in Bologna, 12th December 2012.

⁹⁹ Ibid.

rights in terms of use, productivity and every day, the juridical and identitarian boundaries of citizenship is destabilised, yet it is precisely this destabilisation that is able to register new conceptions of citizenship.

Citizenship and space-making

In concluding this chapter, I would like to propose another perspective on the bearing of the politics of mobility on citizenship, and whereby to connect the inquiry of this chapter to the issues of territory explored in Chapter 5. The perspective is inspired by a wide range of scholarship investigating the spatial construction of citizenship and of the political (e.g. Isin, 2002; Sassen, 2006; Brenner, 2003), and in particular by Lefebvre's writings on the production of space and on the city. Accordingly we are invited to reflect on the political scenarios opened up by different kinds of 'outsiders' not only through the lens of (universal and specific) rights, but also as processes of space-making within and against the restructured spatial order that has framed them as (immanent) outsiders. There is certainly little room in this project allowing us to engage with Lefebvre's comprehensive theorisation of the problematic of space, yet as the focal point of our investigation is not space as such, but how it is produced and contested in citizenship practice through references to the specific spatial categories of *territory* and *movement*, I shall only briefly introduce some of the key concepts in Lefebvre's writings that will illuminate this aspect.

In *The Production of Space* ([1974]1991), Lefebvre makes a key distinction between *dominated* and *appropriated* space: the former is a space 'transformed – and mediated – by technology', yet it gains its full meaning only when juxtaposed with the 'opposite and inseparable concept of *appropriation*' (1991: 164-65, italics in original). Appropriated space goes against the capacity of state power and private capital to produce dominated and abstract space; it is a space in which 'the work may shine through the product, use value may gain the upper hand over exchange value... as the imaginary and the utopian incorporate the real' (ibid. 348). In his systematic study of the state and of 'state space' (2009), Lefebvre also highlights the role of the state in producing abstract space in accordance with the geographies of capitalist modernity: it participates

in the fragmentation, homogenisation and hierarchisation of space (Brenner & Elden, 2009a). More importantly, scholars have surveyed the re-scaling, rather than disappearing, of these mechanisms in an age of 'globalisation' characterised by a 'multidimensional process' of reterritorialisation (Brenner, 1998; Elden, 2006). In this light, the construction of an EU territory we have examined in the previous chapter can be seen as part of the rescaling process aimed at homogenisation and hierarchy on one hand, yet at the same time marked by new modalities of territorial control on the other.

For Lefebvre, one 'path' towards the transformation from domination to appropriation is the politics of *autogestion*, which can be translated as self-management, yet it is not a 'recipe' to be put into action immediately or a 'magic formula' (2009: 134) that will solve all the problems. Brenner and Elden emphasise that Lefebvre's *autogestion* is less a 'fully formed postcapitalist institutional framework' than a 'political orientation through which various sectors of social life' might exercise new forms of decentralised democratic control (2009b: 16-17). The objective of this orientation lies in 'the collective management and social appropriation of the space of production and the space of everyday life' (Lefebvre, 2009: 120). These insights direct our attention to the vital role of space both in governmental strategies *and* in political struggles, or, in both fields of citizenship practice. As Neil Brenner puts it, '[t]he viability of all transformative political strategies depends crucially upon their ability to produce, appropriate and organise social space.' (1997: 152) This is because, all sorts of social associations -- 'groups, classes or fractions of classes' -- cannot constitute themselves, or recognize one another, as "subjects" unless they generate a space' (Lefebvre, 1991: 416). The generation of space is to be understood here in relation to the concept of *inhabitançe*, which simultaneously depends on and exceeds the physical occupation, or dwelling, of space. It is on these conceptual grounds that the 'right to the city', probably the best-known aspect of Lefebvre's work, is proposed. Since we have invested much in interrogating the dialectics of 'rights', it seems proper now to draw attention to the qualities of 'the city' as the social and political space that initially gave birth to citizenship. The right to the city, as conceived of by Lefebvre, cannot be

reduced to a 'visiting right' or 'a return to traditional cities'; it 'can only be formulated as a transformed and renewed *right to urban life*' (1996: 158, italics in original). He understands urban life, or the urban, as the '*oeuvre* of its citizens' instead of a 'closed book'. The oeuvre of urban life is not a 'well-defined subject' (1996: 117, italics in original) but one that is constantly reshaped by its inhabitants with 'assembly, encounter and simultaneity' (1991: 149). It is in and through the city that 'other forms of management' of space – *autogestion* or self-management– are experimented, which run 'counter to the state as well as to political parties', and produce appropriated space in 'territorial units, towns, urban communities, regions' and so on (1996: 416).

Lefebvre's spatial writings may first of all prompt us to think of migrant struggles focused on urban communities as claiming the right to the city and as practices of urban citizenship. However, urban citizenship here does not refer to a legal status 'below' national citizenship according to a scalar understanding of bodies politic, such as cities, regions, nations, states and so on, which assumes 'exclusive, hierarchical and ahistorical relationships' among them (Isin, 2007: 211). Rather, it calls for restoring the essential meaning of 'being a citizen' as 'inextricably associated with being *of* the city' (Isin, 2002: 283, italics in original). The city implies spaces in which 'strategies and technologies of citizenship are being played out' (McNevin, 2006: 147), and in which privilege and marginality is most conveniently amplified, but it also allows for spaces of difference, encounters and simultaneity, through which citizenship is experienced in a manner different from the homogeneous and hierarchical articulation of citizens and aliens assumed by the sovereign state. Mobility comes to the centre in this battle over the production of space: it in fact forms the condition of the crucial qualities of urban life itself. It is mobility that creates strangers and differences; it is through transforming mobility to a medium of forming identities and claiming rights that 'strangers' constitute themselves as citizens. As we have seen in the example of the CMBP, the agenda of migrants' self-management is above all centred on undertaking a genuine capacity to participate in urban life: ranging from providing basic information about living in this city and free language classes with 'migrants arriving at Bologna with or without papers', to collective

actions aiming at 'claiming our own space' in the supposedly apolitical sectors of social life such as education and music¹⁰⁰. In Lefebvre's words, the strategy is lending 'great impetus to the introduction of the antipolitical into the political' (1991: 416), and whereby promoting a *political* critique against the machines of citizenship that engender, rely on and seek to assimilate alterity.

However, the city is not the only space that is being remade in the governance of and struggles over mobility. As Anne McNevin reminds us, marginality, illegality and otherness are implicated *at once* in the city, the territorial state and 'the space of the global political economy' (2006: 146, italics in mine). In our case, they are specifically generated by the supranational institutions of the EU in the discourses and practices related to the Schengen space, the European border regime and a territorially and culturally exclusive conception of EU citizenship. Precisely because of this, simultaneously, a European transnational space emerges as a central and inevitable framework of reference for all the projects aiming at rupture, or escape from, the increasingly complex regimes of border control and civic stratification. The mobilisation of sex workers in 2005 was clearly one extraordinary example that reframed the geographical *and* social concept of 'Europe' as an innovative space in which 'solidaristic and agonistic strategies' (Isin, 2002: 285) can be set in motion. There are many other ways in which Europe as 'an *alternative space* within the global horizon', as Galli puts it (quoted in Balibar, 2009a: 191), is imagined and constructed. What I would like to highlight here is the fact that the necessity of a European space recognised in border and mobility struggles, whether taking place in subnational, national or transnational arenas, is *not* directly based on abstract cosmopolitan or constitutional principles, but rather first of all stimulated by the Europeanisation of border and migration policies that continue to develop externalised and deterritorialised patterns of control. The

¹⁰⁰ Interview with M and F, members of On the Move, 10 December 2012, Bologna. They also mention that they were happy to sing the political songs written by themselves during the migrant general strike on 1 March.

transnational 'flow of expulsions', as mentioned in Chapter 5, calls immediately for a 'transnational chain of actions'. Hence so declares the 'No border' network:

We believe that claims and demands aimed at national governments and institutions are not sufficient any more to fight this system. ...With the pretext of preventing clandestine migration, the EU is waging a real war against people's free movement. This is why the European space has to be turned into a battlefield for the rights of migrants. (2006)

It must be noted that describing the city and Europe as different sites of space-making does not imply a linear, exclusive and hierarchical relation between these spaces or bodies politic. On the contrary, they are always fabricated within and through each other, both in the production of dominated space and in the democratic struggles for a space of encounters and differences. The everyday contestation against the regime of (il)legality hosted in the city simultaneously calls into question the geographical, social and legal boundaries of Europe, and the transnational chain of actions is always part and parcel of the urban struggles in which solidarity takes a concrete form. Both arenas are also condensed expressions of the global, moulded by globalised systematic distributions 'of people in general to territorial spaces in particular' (Walker, 2003: 277) on one hand and polarised circulation of labour and capital on the other. Being conscious about the global dimension of any situated, everyday form of struggle, however, does not mean to neglect the 'heterogeneous material networks and settings' (Mezzadra & Neilson, 2013) across countries, regions and sectors. As '(S)connessioni Precarie' makes clear in its special edition on 'global (dis)connections': 'precarity is a matter of class, a transnational class whose potential force doesn't stem from its pretended homogeneity, but from the actual differences that makes it up' (CP, 2011). These different ways in which Europe, the global, and the urban spaces are questioned and envisaged by those who therein inhabit and who are disadvantageously positioned in law bring to light an ethics beyond the binary of 'cosmopolitanism versus patriotism', and subjectivities beyond 'instrumental versus affective citizenship' (Honig, 2001: 105). In this sense, the making of 'other' spaces through struggles around mobility challenges the cosmopolitanism that renationalises by an 'ordinary

cosmopolitanism' with democracy and denationalisation at its heart; and opens a critique of European citizenship by rewriting citizenship in Europe.

Part III

The Cosmopolitical?

Chapter 7 Reimagining citizenship from the borders

-- *If it has (indeed) arrived...*

-- ... *then, one has perhaps not yet recognised it.*

-- *Derrida (2005: 23)*

This thesis has explored the (re)configurations of citizenship and its multiple others by focusing on the territorialisation of space, the distribution of rights and the regulation of mobility in both national and European contexts. In this last Chapter, I will go beyond the EU case and turn to a broader and more fundamental question, or set of questions, in political theory: in what sense we could speak of a global ethics, or the *cosmopolitical*, in a connected world of difference; and what this global ethics could tell us about the boundaries of political community and membership, or, the boundaries of 'us'. Hence to start with, I shall revisit the paradox of democratic boundaries that has been a central question in the cosmopolitan literature, focusing on the responses offered by such scholars as Habermas, Benhabib and Bauböck. However, I critique the inclusivist approach to the boundary question by holding that the crucial task of envisaging the cosmopolitical is not simply redefining the proper relations between 'self and world, self and other, this community here and that community there' (Walker, 1999: 179), as if they are all sovereign and autonomous entities, but to acknowledge and comprehend the profound ways us and them are mutually constituted in the founding moments of every political community. In other words, instead of determining the borders of citizenship, it calls for reimagining citizenship from the (undetermined) borders. For this purpose, I finally return to the key threads of this thesis: space and movement, and re-evaluate their roles in the global ethics 'to come' by engaging with some writings in critical IR studies and radical democracy.

7.1 On the boundary problem, or, on self and other

7.1.1 The boundary problem revisited

The so-called 'boundary problem' (Whelan, 1983; Song, 2012) of democratic citizenship first caught the attention of democratic theorists when the principle of national self-determination became an international norm, for the question is rooted in the understanding of democracy as self-government. As Ivor Jennings wrote about the paradox concisely in the 1950s, 'the people cannot decide unless somebody decides who are the people' (1956: 56). But new interests in dealing with or conceptualising the boundary problem have been fuelled in recent years, as both the boundaries of state territory and those of the *demos* are increasingly problematic vis-à-vis a range of transformations related to what we call globalisation and deterritorialisation. By dealing with the boundary question, political theorists seek to provide normative justifications for political boundaries which are previously – and continue to be on many occasions – taken as a prior, neutral and natural existence.

To put it simply, the nature of the paradox is: the boundary of a democratic community should be decided by the *demos*, yet the *demos* can only make decisions when its boundary has been determined. Although this paradox seems to exist only in theory, as the boundaries of all the societies we are dealing with seem to be already decided by national boundaries, Hayward argues that a corresponding question is also invoked – by the very idea of 'democratic citizenship' – in reality: 'while democratic principles urge the expansion of the *demos*, civic ideals impel the closure of the political "we"'. As he believes, 'it is not just 'people', but 'we, the people' who form a more perfect union' (2007: 181). Who, then, should be included in 'us' – the people who have constituent power to rule themselves? The various responses offered by democratic theorists to this question generally attend to two types of state practice: one is border control; the other is the inclusion or exclusion of non-citizen residents, which is mainly expressed in legal terms by the granting of permanent residence status and citizenship. It is interesting that political theorists consider border control *also* as an issue of boundary problem, as the initial articulation of the paradox refers

only to the boundary of the people, not that of the territory in which the people inhabit. The inevitable involvement of geographical borders in the debates again reveals that the fixation of the 'relationship between identity and space' (White & Gilmartin, 2008: 395) lies at the heart of the construction of any political society, yet this has often been overlooked or taken for granted in democratic theory.

One of the responses to the question is to expand the scope of inclusion according to certain normative principles: such as that of 'all affected interests' and that of coercion. The former principle has been endorsed by contemporary scholars such as Robert E. Goodin (2007) and Ian Shapiro (1999), and also discussed by earlier theorists such as Robert Dahl. In *After the Revolution?*, Dahl admits that '[t]he Principle of Affected Interests is very likely the best general principle of inclusion that you are likely to find'; the principle determines: 'Everyone who is affected by the decisions of a government should have the right to participate in that government' ([1970]1990: 49). Elsewhere he seems to adopt a different version that is closer to the coercion principle: '[E]very adult subject to a government and its law must be presumed to be qualified as, and has an unqualified right to be, a member of the demos' (1989: 127). But common to both positions is that the principle applies, precisely and implicitly, inside a territorial jurisdiction, and does not lead to any form of world government, even though Dahl briefly mentions the 'Pandora's box' the principle would unlock: for instance, the claim that people in Latin American should be allowed to participate in US elections might be justifiable (1990: 51). But he does not respond to this claim further.

Goodin (2007), in contrast, has examined all the possible implications of the all affected interests principle, and charged a variation of it – the 'all actually affected' principle as incoherent. It is incoherent, according to Goodin, for it repeats the circularity in the original boundary problem: 'which interests are "actually affected depends on who gets to vote."' (2007: 53) He instead adopts a broadest and most expansive interpretation of the 'all affected' by formulating an 'all possibly affected interests' principle, which entails that 'we will have to give a say to anyone who might possibly be affected by any possible decision arising

out of any possible agenda'. A coherent application of this would, as one can imagine, ultimately demand that everyone in the world is entitled to vote on 'any proposal or any proposal for proposals' (ibid. 55). As this version of global democracy appears difficult to operationalize, Goodin also gives some alternatives to enfranchising everyone that he considers to be the second and the third best options: a 'world government, federal in form' and 'lateral claims to compensation'. Even with these amendments, the 'possibilistic' rendition of the all affected interests principle offered by Goodin is still radically expansionary to the extent that one might say: including all the possibly affected to make decisions on all possible proposals would make it impossible to make any decision on any proposal. The basic idea of the 'coercion' principle, advanced by Arash Abizadeh (2008; 2010) and Claudio López-Guerra (2005) is that all those subject to coercion should have a say in how political power is coercively exercised. While López-Guerra's (2005) argues that expatriates should be disenfranchised on the ground that they are no longer subject to the state's coercive power, Abizadeh's focus is on the right of 'foreigners' who are outside a state's territory to participate in the democratic institutions that make decisions on this state's border policy. Abizadeh (2008) regards border controls as a form of coercion, as they would invade the autonomy of those who otherwise could have been able to enter the territory freely. Both liberalism and democratic theory, he argues, share the view that 'coercive state practices' must 'either be eliminated, or receive a justification consistent with the ideal of autonomy' (2008: 40), which requires the democratic participation of those whose autonomy has been violated. But he goes even further to make the case that the demos 'to whom democratic justification is owed' (ibid. 45) is, in contrast to the prevalent perception, unbounded. For Abizadeh, the very existence of the boundary and externality paradox is only the artefact of 'the democratic theory of bounded popular sovereignty', which views the 'people' as pre-politically constituted, corporate, and thus bounded. He contends that this theory is unable to answer who the people is, and to overcome the incoherence, we should follow a form of coercion principle that claims 'political power is legitimate only insofar

as its exercise is mutually justified by and to those subject to it' (ibid. 47) – including both members and non-members.

Both the all affected interests and the coercion principles have been criticised for failing to account for issues such as identity and solidarity in democratic community, and accordingly for devaluating citizenship (Miller, 2009; Song, 2012). For the elaboration of these principles offered by the authors we discussed above concerns the interests affected or coerced by every specific policy-making, which would lead to different compositions of the demos for different proposals, and hence render citizenship irrelevant. In this regard, Rainer Bauböck's membership-focused approach to the boundary problem is particularly worth reviewing. Unlike the previous principles that are for determining the 'people', Bauböck's stakeholder principle is for determining citizenship, based on the presumption that '*everybody has a right to equal membership in a self-governing political community*' (2009: 478, italics are original). Stakeholders, in his formulation, are 'those who have an interest in membership grounded in the circumstances of their lives', which means a person's life is 'shaped by living under a specific authority' from a life-course perspective (ibid. 450). Bauböck considers that this criterion would avoid the over-inclusion problem inherent to the all affected and coercion principles, and limit the scope of inclusion only to those who 'are willing to link their future with that of the polity and to share the responsibilities and burdens of self-government' (ibid. 479). He also regards this as institutionally more feasible than the others, for it can be achieved through a combination of denizenship rights for non-citizens and sufficient legal access to citizenship status through *ius soli*, *ius sanguinis* and *ius domicilii*. While this solution seems to be normatively adequate and practically realisable, I shall turn to Benhabib's treatment of the boundary problem before moving onto the limits of this 'liberal inclusivist' (Ottonelli & Torresi, 2010) approach.

Reframing the boundary problem as a 'constitutive dilemma', Benhabib (2004, 2007) takes into account not only democratic legitimacy, but also universal human rights, in her efforts to define the right to 'just membership'.

She distinguishes between 'normatively acceptable' and 'normatively problematic' restrictions on membership from a 'discourse-ethical' perspective, which means that 'ascriptive and non-elective attributes' such as race, gender, religion and so on should not be reasons for exclusion, whereas 'length of stay, language competency, a certain proof of civic literacy, demonstration of material resources and marketable skills' can be acceptable, even though can be abused by governmental practices, as they reflect the scope or 'schedule' of rights across concrete historical, cultural and jurisprudential traditions (2007: 446-447). In addition to this, she also proposes 'democratic iterations', which are empirical processes of 'public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualised' both in formal institutions and in the civil society (2004: 179). From a normative stance that combines an universalist principle of human rights and a particularistic one on bounded democracy – that is democratic iteration as a tool for mediating between 'the interests of all those affected and the democratic citizens' (2007: 449), Benhabib argues for porous, instead of open, borders. She further emphasises that porous borders, or in Bauböck's words 'moderate closure' (2007), are not the second-best solution in a non-ideal world, but are required by the nature of democracy and the principle of freedom. By the proposal of 'democratic iterations', Benhabib does not give a definitive criteria – such as the affected, coercion and stakeholder in Goodin, Abizedeh and Bauböck – for drawing democratic boundaries, but only suggests the procedures through which to 'mediate' the inside and the outside¹⁰¹.

While the varied responses to the boundary problem we have seen are grounded on different principles, and have different suggestions regarding territorial border policies – open, porous, and conditionally open, they all challenge the idea that borders are pre-politically decided and seek to establish

¹⁰¹ Aleinikoff describes the unsolved problem of circularity in the following way: 'Quite simply, no conversation can answer the prior question of who should participate in the conversation – or, at least, it cannot do so without leaving itself open to the question of who should participate in the conversation about who should participate in the conversation about who should . . . you get the idea'. (2007: 427)

certain criteria for deciding the scope of inclusion on the ground of normative claims that are universally applicable – freedom, equality and autonomy. Ottonelli and Torresi (2010) have termed this approach as a ‘liberal inclusivist’ one, an approach that is in contrast with liberal egalitarianism, as the latter denies the normative implications of borders and membership. If we look beyond the boundary problem, the liberal inclusivist response belongs to a broader strand of scholarship that is known as cosmopolitanism, which also suggests, in addition to more permeable borders for each liberal state, a range of institutional arrangements at the global level such as a world federation, strengthened individual participation in international institutions and effective protection of universal human rights. As the leading examples of the cosmopolitan literature show (Held 1995; Habermas 2001; Archibugi 2008), a cosmopolitan world order does not entail the erasure of state border, but should be achieved through a greater degree of democracy both *within* and *between* states. Even in the radically expansive versions of the all affected interests principle and the coercion principle (Goodin 2007; Abizadeh 2010), we are frequently confronted with the familiar dualisms such as those of member/non-member and of citizen/foreigner. In the following I would like to examine the limitations of this approach in addressing the crisis of citizenship in front of various forms of heterogeneity and fragmentation.

7.1.2 The limits and dialectics of cosmopolitanism

An obvious social reality that all of the aforementioned reflections on just borders/membership fail to come to term with is temporary migration. As Ottonelli and Torresi note, the issues of temporary migration is largely unexplored in normative theory ‘because of their apparent intractability within’ the inclusivist framework (2010: 6). If the inclusivists reject the assumption of liberal egalitarianism that migratory movement only takes place in a non-ideal world, and accept that people ‘might still have reasons for moving and pursuing their happiness in a country different from their own’ (ibid.) even in a perfectly ideal world, then it should follow that people also have reasons for pursuing their life in a foreign country for a shorter, longer, or indefinite period. **Both**

Benhabib and Bauböck consider the length of residence as a normatively acceptable restriction for access to formal citizenship, which means those who stay for a shorter period, deemed as temporary migrants, do not have 'the right to membership'. But if we push further the length of residence thesis, another normative question emerges as to through what processes, and by whom, the 'just' length of residence for access to citizenship can be legitimately decided. In the end, the inclusivist approach to the boundary problem is about where to draw the lines – spatial and temporal lines. The dilemma of temporary migration is only the paradoxical *surface* of the institutional and discursive practice of essentialising the binary of citizens *versus* aliens, which continues to reinvent itself on the basis of a 'modernist resolution of space-time relations expressed by the principle of state sovereignty' (Walker 1993: 14). As Teubner notes, paradoxes 'do not arise as disturbances in the ideal world of thought, but, as "real paradoxes" in real society, bring the relations into a dance' (2006: 54). That the temporal dimension of bordering practice is accepted as a norm reveals how accustomed we are to this spatio-temporal resolution that has come to delineate the possibility of the political.

While cosmopolitan thought has a much longer tradition in both Western and non-Western history, the contemporary revival of cosmopolitanism is a response, among many others, to the perceived crisis of the correspondence between a series of concepts such as the nation, the state, territory, citizenship and identity that have been the essential qualities of political modernity as we know it. Walker (2010) suggests that there are two primary ways of framing universality in modern political discourses: either it is the system or structure of sovereign states and the world is described as 'one system, many states', or, it is framed as humanity as such: 'one humanity, many peoples/people' (2010: 77). We have seen the endeavours to combine these two framings of universality – by combining a legalist discourse of cosmopolitan federalism, which requires the centrality of membership, and a moralist one of universal humanity, which requires determining membership in a way that accords to the principles of freedom, equality and autonomy – into a coherent narrative in the cosmopolitan approach to the boundary problem. But this coherence could not sustain itself in

the margins of sovereign power, in the zones of indistinction (Agamben, 1998) and indeterminacy (Huysmans, 2008), in the (spatial and temporal) border areas beyond the opposition of inclusion and exclusion.

The progressive narrative of global politics endorsed by cosmopolitanism involves 'more or less inclusively' drawing the borders between us and them, without reflecting on the way in which these borders – and the 'borders of our imagination', to borrow Mezzadra's words (2006: 36) – are historically conceptualised. Also taken for granted here is the analogy between the autonomous subject and the sovereign state, which is embodied by the institution of national citizenship grounded simultaneously on the claims of universality and of particularity. The analogous framing of 'man', 'state' and the inter-state system in Kenneth Waltz (1959) has been considered as a classic formulation of neorealism in IR scholarship, but the cosmopolitan account of the relations between the subject, the sovereign and the world order does not challenge the analogy; nor does it address the contradiction or interdependence between statist political community and universal humanity; but instead envisages a progressive move from the national to the global that can be viewed as a 'continuum', as Habermas puts it (1992). In response to Sassen's critique of the binarism of the national and the global in *The Rights of Others*, Benhabib holds that while this binarism is problematical, 'alternative configurations of political membership at the present are not more defensible' (2007: 445). In other words, although overcoming the binary might be a philosophical question worth engaging with, national membership remains for her the most plausible legalistic form of citizenship. Walker ironically asks: 'after all, what other categories could there possibly be?' (1993: 131)

It is the incapability of modern political theory and practice to imagine 'other categories' that has produced subjectivities and identities that do not fit into 'the citizen-subject model of personhood' (Campbell & Shapiro, 1999: xiii) or the statist structure of inclusion/exclusion. They are refugees who are outside the reach of universal human rights, migrants who have not yet decided for how long they will stay in the new country they now call home; they are strangers,

flows, and circuits. On the surface, the stranger is disturbing because she/he brings the outside into the inside' and calls into question a community's most familiar categories such as 'us and them, friends and enemies, proximity and remoteness, sameness and difference' (Månsson, 2008: 160). However, as I have emphasised, strangeness is not external to a community; it is instead entailed by and fabricated in the categories we take for granted in conceptualising the modern subject such as autonomy and identity. In her study of the subject of coexistence, Louiza Odysseos (2007) questions self-sufficient subjectivity by articulating a *relation* rather than an *opposition* between otherness and selfhood. Invoking Ute Guzzoni, Odysseos points out that the notion of autonomy, as an essential quality of the modern subject, has been 'related to mastery over otherness' (2007: xxxi). Similarly, the supposedly autonomous subject of human rights, which is recognised as both a moral principle and part of the institutional infrastructure of cosmopolitanism, has also been interrogated (Kapur, 2006).

It must be added that to address the limits of cosmopolitanism is not only a philosophical question, but also a political and historical one. That is to say, what this approach fails to engage with – as exposed above, including the state-centric imaginary of global space, the analogy between individual autonomy and state sovereignty, and the relations of domination within the modernist understanding of selfhood – does not only render it problematic as a normative discourse, but also have concrete groundings and consequences in practice. The moralist and universalistic dimension of it, as reflected in the project of human rights, has been criticised by many¹⁰² for its depoliticising effects and for its complicities 'in global structures of domination' (Jabri, 2007: 715). The legalistic configuration of national membership, as we have seen in the boundary problem, ignores the forms of exclusion beyond formal citizenship on the one hand, and fails to theorise the possible ways in which citizenship is enacted or experienced by those who are not counted as citizens by the sovereign state on the other. The former is instantiated in the practices of institutional racism (Balibar, 2004), for example, as well as in 'the social exclusion of the global poor', which is explored

¹⁰² See for example Bhambra & Schilliam (2009); Douzinas (2007) and Jabri (2007; 2011).

by Nancy Fraser as a form of injustice arising at the intersection of several scales (2010). The latter aspect has been documented by a growing body of literature on the political mobilisations of migrants and refugees interpreted as ‘acts of citizenship’ (Chimienti, 2011; E. F. Isin & Nielsen, 2008; McNevin, 2011). So long as it disregards the exclusionary and differentialist moments in the idea of universal rights, cosmopolitan responses to global migration would be largely limited to top-down affairs that are likely to reproduce previously existing power relations; and would fail to sufficiently appreciate the political significance of migrant agency.

However, in concluding this section, I would like to make the case that the normative and legalistic accounts of membership are nonetheless pertinent to our task to reshape a political theory of citizenship that brings the borders to its centre. First, while the legalistic formulation of citizenship is certainly always ‘a form of inclusion that depends of a clear pattern’ of exclusion, by distinguishing between member and non-member, presence and absence, those who are affected interests and who are not, etc. , it frames the conditions under which contestations and resistance take place. It is in this sense that the approaches of critical citizenship studies become crucially relevant. As discussed in Chapter 1, this emerging field focuses on the dialectic between the differential positionings of certain groups of population enabled by formal citizenship as a governmental apparatus and the struggles that challenge this structure of differential inclusion and that have expanded the institution formal citizenship. This ‘expansion’ should not be understood as ‘a developmental politics of democratisation’ (Walker, 1999) that will eventually include all – workers, the poor, women, and now foreigners, but rather always an incomplete process. We have discussed Rancière’s theory of democracy in Chapter 6, which sees for example universal suffrage as born out of the conflicts between its redirection led by democratic combat and the re-conquering of it by oligarchy. (2006: 298)¹⁰³. Costas Douzinas

¹⁰³ Costas Douzinas offers a similar account of the historical trajectory of human rights: ‘It was argued above that natural and, later, human rights were conceived as a defence against the dominations of

offers a similar account of the historical trajectory of human rights: whilst 'human rights were conceived as a defence against the dominations of power and the arrogance and oppression of wealth', after their '*institutional inauguration*, they were hijacked by governments that understood the benefits of a moral-sounding policy'. (2007: 33, emphasis mine). But democratic struggles, as we have explicated through probing 'the right to mobility', have to make claims about, speak to, and appropriate the juridico-political forms of representation through languages of citizenship and rights.

Secondly, the moralist principle of universality framed by cosmopolitanism, as a powerful legacy of modernity, can be seized upon and turned against a 'discriminatory universality' (Kapur, 2006). While the latter participates in the global structure of inequality as 'the cosmopolitanism of government' (Jabri, 2011); abstract universality has been always invoked by the dominated, the excluded or the oppressed to claim their rights on the ground of unconditional equality; – for Rancière (2010), politics as such concerns the paradoxical presupposition of equality. Thus Vivienne Jabri (2007) calls for a 'political cosmopolitanism' that challenges the liberal interpretations of solidarity premised on 'a hierarchical conception of the international' (2007: 725), and redefines the terrain of the universal not as assumed, but as always in negotiation. The acts of migrant workers and 'unauthorised' border-crossers examined in Part II are excellent examples to show that the politics of solidarity can generate 'an excess to the concept' (Jabri, 2011) of cosmopolitanism as articulated in liberal political philosophy. Honig offers another way of thinking of a 'democratic cosmopolitanism' committed to located, rather than homogenising universalism: one 'in which cosmopolitans risk their cosmopolitan (and nationalist) principles by engaging others in their particularities, while at the same time defending, (re)discovering and (re)articulating located universalisms such as human rights and the equal dignity of persons' (2001: 67).

power and the arrogance and oppression of wealth. After their institutional inauguration, they were hijacked by governments that understood the benefits of a moral-sounding policy'. (2007: 33)

In the same way as Douzinas claims ‘human rights have only paradoxes to offer’ (2007: 33), we can argue that so does cosmopolitanism. The paradox not only refers to the contrast between the cosmopolitanism of government and that of the governed, but also characterises the never-ending interactions between the two. The new forms of exclusion inscribed in the cosmopolitanised order of national, supranational and global mechanisms of governance do not exhaust the possibilities for politics. They allow for ruptures, escapes or ‘loopholes’ to emerge both in the margins and at the centre of these mechanisms. And as we have seen, migrant movements rely on the legalist language of citizenship and formal inclusion, and migrant subjectivity is continuously caught into the paradox between universality and its recourse to particularistic categories of race, ethnicity, religion and so forth. One could also consider that the tension between the legalist discourses and the universal claims in cosmopolitanism is rendered a ‘productive’ paradox, in the processes of their constantly contesting each other.

7.2 On space and movement, or, on here and there

If we are indeed brave enough to envisage a ‘cosmopolitanism to come’ (Douzinas 2007) – one that is self-conscious about its own paradoxes and the impossibility to resolve these paradoxes once and for all, how does this vision bear on our understanding of the political community and citizenship? In this section I return to the key concepts I have been dealing with throughout the thesis, and suggest some paths through which to think of them ‘from the borders’.

7.2.1 From space to territory and back again

It is hardly deniable that when critical IR literature starts to reflect on the ‘territorial trap’ (Agnew, 1994), the concepts of territory and territoriality have been mainly criticised and denaturalised as a construct of exclusion, enclosure and arbitrariness. They are often presented in such phrases as ‘territorial sovereignty’, which is claimed by the state to be self-legitimising, or beyond the rule of democratic legitimation (Cornelisse, 2010); and ‘territorial relations’ which are defined by horizontal and linear borders that are meant to guarantee

separations of ‘a self from the world’, and of a citizen from the aliens and the barbarians (Walker, 1999: 179). However, as Nisha Shah puts it, the literature that seeks to overcome the territorial trap has produced a ‘subsequent trap of understanding territory primarily as the “physical substratum” of the sovereign state’, while ignoring territory as a spatial principle of assembling political authority and public good (Shah, 2012: 57). Stuart Elden also suggests that one needs to interrogate both the presupposed definitions of territory as a ‘bounded space’ and of the state as a ‘bordered power container’ (Elden, 2010). In other words, seeing territory only in physical/geographical terms risks neglecting other mechanisms – such as circulation, inclusion and connectivity – brought about by territory as ‘a political technology’ (ibid.), which operates not only at the geographical level, but also at juridico-political and economic levels¹⁰⁴. If we look at the differentiating role of territoriality in determining formal citizenship, the curious case remains that *ius domicilii* and *jus soli*, which are territorial principles, are generally considered more ‘inclusive’ than *ius sanguinis* (Bauböck, 1994; Bosniak, 2006; Bauder, 2013), for the last one corresponds to the idea of a political community bounded by ethnicity or ‘blood’.

Bosniak has coined the term ‘ethical territoriality’ to refer to the conviction that ‘rights and recognition should extend to all persons who are territorially present within the geographical space of a national state simply by virtue of that presence’ (2007: 389), arguing that this principle is valuable in its potential to acknowledge ‘the real attachments people develop in their daily lives’ (ibid. 409). But it has to be noted that here the enjoyment of rights and recognition by virtue of ‘being here’ – as opposed to by virtue of legal status as citizens or aliens – does not entail access to citizenship on the basis of residence; it is instead intended to render formal status less relevant in the individuals’ enjoyment of rights. Bosniak in fact self-critically points out that ethical territorialism may perpetuate alienage which still functions as a conditionality of the noncitizen’s presence in the territory. However, some other legal and political theorists have taken a step further to argue that domicile should be a

¹⁰⁴ C.f. Chapter 2.

primary criterion for distributing political citizenship. Dora Kostakopoulou (2008), for instance, endorses a conception of citizenship that is oriented toward a shared future rather than a shared past, proposing that the intention of a person to permanently reside in a territory alone should lead to citizenship acquisition, and citizenship would expire if such intention changes. Harald Bauder (2012; 2013) attempts to extend the domicile principle to temporary residents as well, for he maintains that they, too, 'have a moral claim to citizenship based on their contributions to the communities in which they reside' (2013: 6). Since Kostakopoulou interprets 'domicile' on the basis of the intention to *permanently* reside, she also notices that the territorial character of this principle might be in odd with increasing mobility experienced and demanded by individuals. By making the domicile principle accommodate all residents present on the territory irrespective of their intentional or actual length of residence, Bauder considers this to be a solution to the paradox emerged in Kostakopoulou's proposal: in his words, it appears paradoxical that 'a territorial citizenship principle' is designed to accommodate 'human mobility across territories' (ibid. 6).

But what exactly is paradoxical here? Foucault stresses on the fact that 'territory is no doubt a geographical notion, but it's first of all a juridico-political one: the area controlled by a certain kind of power' (Foucault, 2007: 176). Yet one can also turn this statement the other way round: territory is no doubt a juridico-political notion, but first of all a geographical one. It embodies a principle of juridico-political 'differentiation' (Ruggie, 1993) based on geographical boundaries rather than, I would argue, a principle of closure. As territoriality classifies 'by area rather than by kind or type', such as kinship, ethnic ties and religious beliefs, it helps 'make relationship *impersonal*' (Sack, 1986: 33, italics in the original). Sack regards the modern city as primarily an 'impersonal community', for the criterion for belonging is domicile (ibid.). However, this is not the case for the nation-state: while the modern states have adopted the territorial principle to establish and differentiate units of jurisdiction, it does not, under current circumstances, fully endorse a territorial principle in determining membership of the political community. It is argued that

territorial, spatial and impersonal relationship is not enough for generating the identities, allegiances and the 'bonds' that are required by the national democratic community (Miller, 2008; Song, 2012). *Ius domicili* advocated by scholars such as Kostakopoulou and Bauder, on the other hand, reflects an attempt to coherently establish the principle of territoriality as the sole rationale for distributing membership in a territorial community, which in fact *not* paradoxically, accommodates communications and mobility across borders.

The point here is not so much in whether this principle shall provide a better or more inclusive institution of citizenship in practice, but rather in the possibilities generated between territoriality as a political technology of control *and as a spatial expression of impersonal or abstract relationships. The latter is crucial for any democratic community to the extent that 'democracy is always about living with strangers under a law that is therefore alien' (Honig, 2001: 39).* Thus, to account for the spatial restructuring of political community under the new circumstances of global 'flows' does not entail negating the significance of territory or anticipating the disappearance of territorial sovereignty. Rather, what is at stake here is to contextualise the new modalities of territorial control – modalities that are often described as networked, diffused and pixelated – in the genealogy of 'an existing spatial-political configuration' (Elden, 2006: 62) on one hand¹⁰⁵, and to re-grasp the political conceptions of space from the expression of territory that are constitutive of the democratic community on the other. When Balibar (2009a) makes the claim that the transformation of space into territories forms a precondition for modern politics as such, it is evident that territory in this context equals state territory and implies territorial sovereignty. The project to *restore the political meanings of space from territory* – which is always rendered 'monopolistic' and 'homogeneous' when conflated with sovereign power – *takes as a starting point that 'territory cannot be reduced to either national territory or state territory' (Sassen, 2013: 21).* It entails not only conceptualising the space encompassed by state borders (and borders

¹⁰⁵ For a brief genealogical analysis of territory in relation to the technologies of mapping, see Elden (2006); Cox (2013) gives an historical account of territory and scale.

themselves) in non-sovereign and heterogeneous manners, but also politicising other types of territorial space: the city, the work place, the region, and the globe.

With regard to the first approach, Walker and Bigo (2007) have suggested a different topology of international relations through the metaphor of the Moebius strip. They note that the topology expressed in modern political theory is 'profoundly shaped by the delimitation of a circle' (ibid. 734), a circle defined by linear boundaries separating an inside and an outside. In contrast, the boundaries of a Moebius strip are 'not clearly oriented in space', and the differentiation of inside and outside is dependent on the relative position of the observer. The strip nonetheless has its borders, which cannot be fixed to an assumed location, nor can they 'be displaced by enlarging or diminishing a circle' (ibid. 736). The analogy of the Moebius strip is employed here to offer an alternative spatial account of international relations beyond binaries of inside and outside, presence and absence, citizens and foreigners, and so forth, and the authors indeed view the concept of territory as a quality of that dualistic system they seek to overcome. But as we have seen, the nature of space relations represented in the concept of territory is not monopolised by fixity and closure; it also assumes circulations and connections. As Cox and others point out, there is no necessary contradiction 'between relational views of space' and the category of territory (2013: 46). With this in mind, the Moebius strip can be in fact taken as a method of engendering the relational views of space that are previously concealed in the sovereignty-dominated articulation of territory.

Concerning the second approach, namely that which comes to term with other types of spatial locus other than the state around which democratic practices might be set in motion, we have already presented some extraordinary examples of claiming and validating alternative spaces through mobility struggles in Chapter 6. While I have proposed, following Isin (2002), to rethink the fundamental relationship between citizenship and the city beyond a legal and institutional formulation of urban or local citizenship, it is nonetheless instructive to consider some of the arguments along the institutionalist line. Bauböck (2003), for instance, puts forward a reform at the constitutional level

that could formalise the status of local citizenship based on residence and disconnect it from national citizenship. This arrangement is distinct from traditional federalism on the ground of this disconnection and also because of its acceptance of multiple local citizenships. However, in accordance with his theory of stakeholder citizenship, Bauböck casts doubts on the idea that 'urban citizenship could simply bypass the national level and become a basis for building institutions of global democracy' (ibid. 156). For him, strengthening the autonomy of the city and disconnecting local membership from national one are ways of fostering cosmopolitan practice *within* the nation-state, and thereby 'some of the exclusionary features of national citizenship' (ibid. 157) can be overcome. Monica Varsanyi (2006) has instead examined the existing mechanisms of formal inclusion at local and state levels (as opposed to the federal level in the United States), through which non-citizens including undocumented migrants enjoy a variety of rights as residents of sub-national communities. Although she contends that the interrogation of urban citizenship cannot be separated from the larger project of challenging the nation-state as the 'hegemonic container of citizenry', Varsanyi underscores the fact that local citizenship policies are 'paradoxically made possible by the legal framework of the nation-state' (ibid. 244), rather than the international regime of human rights. Interestingly, invoking Don Mitchell, she charges the 'agency-centred approach'¹⁰⁶ to citizenship as not yet grounded 'in the actual legal and social exigencies of city life' and operating mainly on the 'normative, idealist plain' (Mitchell, 2005: 86, quoted in Varsanyi, 2006: 240).

While the focus on the actual legal and administrative inclusion of non-citizen residents certainly has its merits, the limits of this approach resemble those of the inclusivist response to the boundary question we have discussed earlier. Juridical and administrative arrangements alone do not give a sufficient account of the political practices that contest and appropriate precisely these arrangements. Furthermore, interpreting local or urban citizenship only in juridical and institutional terms and within the framework of national citizenship

¹⁰⁶ Such as the 'act of citizenship' approach, see Chapter 1.

reinforces a scalar, hierarchical imagination of space. Isin (2007) uses ‘scalar thought’ to capture the way we understand the relationships among modern bodies politic – cities, regions, states, federations, etc. – as exclusive and hierarchical. Citizenship, he argues, always overflows, decodes and recodes these bodies politic ‘and traverses their rigid and inflexible constitution’ (2007: 219). The critique of scalar thought, nonetheless, is not to depict a ‘flat’ world in which capital circulation eliminates all boundaries and hierarchies; rather, it insists that scales ‘can no longer be conceived as pregiven or natural arenas of socially interaction’, but are viewed as ‘*historical products*’ (Brenner, 1998: 460, italics in original), and urges us to investigate the ways ‘a politics of scale’ has been produced through the ‘multiscalar configurations of territorial organization’ (ibid. 459). Hence the demand of conceptualising how citizenship practices traverse the hierarchy of spaces (in the form of territories/jurisdictions) is not ‘normative and idealist’, but profoundly historical and political.

7.2.2 The city, the citizen and the impossible community

To recapture and utilise the centrality of space in our political life against the hegemonic space expressed by the notion of state territory, therefore, entails reviving the definitional link between the city and citizenship beyond the juridical configuration of formal local/urban citizenship. Isin asserts such a link in the following way:

The city is neither a background to these struggles *against which* groups wager, nor is it a foreground *for which* groups struggle for hegemony. Rather, the city is the battleground *through which* groups define their identity, stake their claims, wage their battles, and articulate citizenship rights, obligations, and principles. (2002: 283-284, italics in original)

In this light, I would like to draw attention to the affinity between the reconceptualisation of the *city* and that of *community* itself. Starting from Lefebvre’s interpretation of ‘the urban’ as ‘plurality, coexistence and simultaneity’ (1996: 109), we are also invited to eventually engage with the philosophical inquiries into community itself, and into subjectivity, which rework them in terms of difference, multiplicity and relationality.

Understanding the city as ‘the *ensemble of differences*’, Lefebvre argues that ‘the right to difference’ is an indispensable companion to the right to the city. This difference must be distinguished from ‘induced differences’, which are ‘differences internally acceptable to a set of “systems” which are planned as such, prefabricated as such’ (1991: 396). They are enabled by repetition or the repetitive, which is essential both for capitalist production and consumption and for the bureaucratic power of the state. While ‘an *induced* difference’ remains ‘a set or system generated according to a particular law’ and is ‘constitutive’ of that system, a produced difference ‘presupposes the shattering of a system; it is born of an explosion; it emerges from the chasm opened up when a closed universe ruptures’ (ibid. 372, italics in original). Yet difference also differs from ‘particularities’, which according to Lefebvre are ‘defined by nature and by the relation of the (social) human being to this nature’ (2005: 111). He warns that ‘[t]o assert particularities as such under the guise of differences sanctions racism, sexism, separations and disjunctions’, and suggest that history can be in part read as continuous oscillations between ‘the conquest of particularities’ and ‘the flourishing of differences’ (ibid.).

Thus in Lefebvre, the meaning of difference is based only on the ‘actual struggles’ that establish differences beyond both natural characteristics and differentiations ‘induced within existing abstract space’ (1991: 64). The demand of the right to difference brings what is on ‘the margins of the homogenised realm’ (ibid. 373) to its very centre. I would like to read this theory of difference – perceived not only as an quintessential quality of ‘ways of living urban life’, but also a means through which to confront the forces of homogenisation and fragmentation – along with Nancy’s accounts of being ‘singular plural’ (2000) in an ‘inoperative community’ (1991). This shall drive us from thinking the urban towards the reconceptualization of community and subjectivity as such¹⁰⁷.

¹⁰⁷ Coward (2012) travels through this problematic the other way round: moving from Nancy’s account of reticulated multiplicity to rethinking materiality and subjectivity in the urban environment. Nancy also writes about the city as ‘community without common origin’ (2000: 23).

In *The inoperative community*, Nancy puts forward a critique of the thinking of community as 'essence', as a collection of atomistic individuals, and as a '*common being*' (1991: xxxviii, italics in original), whereby he also deconstructs the classic binary between community and the individual. Community names a relation or a specific existence of 'being-in-common', through which are we 'brought into the world'. But the 'common' is not a substance 'shared out' among presumed individuals. Rather, the relation of being-in-common 'gives rise to the existence of being-self' (1991: xxxvii). Writes Nancy: 'the mode of existence and appropriation of a "self" is the mode of an exposition in common and to the in-common', and '[o]nly a being-in-common can make possible a being-separated' (ibid.). The thinking of community as essence, as a single thing, which denotes a 'normative fetishisation of being-in-common' (Balibar, 2004), calls for the mythic space of *communion*, or a politics of what he calls 'immanentism'. A communion works on 'a unique and ultimate identity' through creating some substance *or* subject – such as 'homeland, native soil or blood, nation, a delivered or fulfilled humanity, absolute phalanstery' and so on (Nancy, 1991: 15), whereas being-in-common, or community, means 'no longer having, in any form' such a substantial identity; it means 'sharing this "lack of identity"' (xxxviii). In other words:

It [community] is not a communion that fuses the egos into an Ego or a higher We. It is the community of others. ... Community therefore occupies a singular place: it assumes the impossibility of its own immanence, the impossibility of a communitarian being in the form of a subject. In a certain sense community acknowledges and inscribes - this is its peculiar gesture - the impossibility of community. A community is not a project of fusion, or in some general way a productive or operative project - nor is it a project at all. (1991: 15, italics in original)

What is in question, after all, is not only community, but also Being 'itself'; or better put, Nancy calls into question at once Being and community, for 'Being' must be defined as relational, 'as non-absoluteness', and as 'community' (ibid. 6). Drawing on and proceeding from Heidegger's thought on the finitude of Being (*Dasein*) – its difference from itself, Nancy rearticulates the finitude into political

terms (Fynsk, 1991)¹⁰⁸. An impossible community, or a community without community, certainly disputes any communitarian politics that seeks to turn community into a 'common being', yet it equally problematizes the concept of the individual and the conceptualisation of citizenry in terms of 'individual', autonomous, and unitary subjectivity. The ontology of being *as* being-with radically challenges the understanding of relationality as 'a matter of individual atoms occurring together in the world' (Coward, 2012: 475). The fundamental problem with this understanding is, as Nancy puts it, it 'tends to forget that the atom is a world' (Nancy, 1991: 4). It is a world defined by a 'reticulated multiplicity', or by being singular plural (2000: 9). That is to say: 'being cannot *be* anything but being-with-one-another, circulating in the *with* and as the *with* of this singularly plural coexistence' (ibid. 3).

What this coexistential analytic entails, hence, is not thinking of the relations between the citizen *and* others as 'ties that bind an otherwise unencumbered individual' (Coward, 2012: 475) – in such a thinking relationality appears as 'the secondary and random dispersion of a primordial essence', be it ethnicity, rationality, property or any other qualities associated with modern citizenship. Rather, it entails that alterity has to be taken as 'originary' and irreducible (Nancy, 2000: 12). If we are to envisage a global ethics, in this light, it must be firmly grounded on perceiving multiplicity and alterity as the origin, rather than some secondary characteristics, of community and subjectivity (citizenship). It warns against any attempt to construct a 'community of immunity' (Balibar, 2011) that reduces differences to diversity and indeed closes itself to the political, whether imagined in a local, national or global space. Nor does it seek to create a transcendental 'citizen of the world', which used to be projected through the figures of 'the Worker, the Proletarian, the Woman, the Nomad' (ibid. 12) and so forth. In other words, it must recognise the impossibility of community and the incompleteness of being a citizen, a '*hybrid*

¹⁰⁸ See also Wall (2012): 'There is no *Dasein* without difference. Difference is the *sine qua non* of existence. Difference is destroyed in communion, by each adhering to the absolute essence. The 'immanentist' logic of communion is therefore the attempt to sacrifice difference(s).'

political actor or a *'composition of differences'* in Balibar's terms, 'whose capacity virtually extends to the whole world', and therefore who is at once cosmopolitical and located (ibid., italics in original). It is incomplete, because our being-in-common undoes the very principle of the absolute-subject, and also because it is continuously reshaped by the historical dynamics which participate in or escape from the projects of creating transcendental subjects and communal communities.

7.2.3 The right to mobility, and the power of rights

The question of re-inscribing spaces, geographical and socio-political, within and beyond the dominated space forged by sovereign power and the inter-state system could not avoid confronting the question of mobility, which as such brings into light alterity that is always internal to the self – the 'I' and 'we' – but that was previously unseen. In fact, the city-community itself is formed initially as 'a place of migration' by strangers and aliens, 'receiving multiple mobile subjectivities' and then formed as a polis in which 'difference proliferates and mix' (Coward, 2012: 471)¹⁰⁹. The territorial order of national citizenship also functions through filtering mobility, whereby only citizens have unconditional access to the territory. Hence as we have seen, the debates on the boundary of the *demos* necessitates a debate on 'open', 'closed', or 'porous' physical borders, which points to the question as to whether there is an unconditional 'right to mobility' across national borders.

However, throughout the thesis I have emphasised that neither 'rights' nor 'mobility' should be attributed a grand narrative of either domination or emancipation. They must instead be understood, just as the category of citizenship itself, in strategic, dialogical and context-based ways. Before speaking of a right to mobility as a condition for the cosmopolitical, we have to comprehend the ways in which rights and mobility are rendered differentiated rights and sorted mobilities, which are integral to the apparatus of government. I

¹⁰⁹ Max Weber also observes that all cities 'in world history were founded by the settling together of strangers and outsiders' (Isin, 2002: 12; Weber, 1921).

have carefully examined arguably the only 'actually existing' regime of guaranteeing free movement across national borders, which is provided by the EU Treaties and the Schengen Agreement, and shown that in this complex regime of governing *through* mobility, freedom is transformed to an individualised right to free movement, and mobility has become a key factor in social stratification that either facilitates or hinders 'rights'. The latter trend is certainly not unique to the EU experience. As Bauman points out, as a perpetually 'scarce and unequally distributed commodity', mobility has become the 'main stratifying factor of our late-modern or postmodern times' (Bauman, 1998: 2). Despite all the revolutionary and romantic images some may add to migratory movement and 'migrancy', those who enjoy the highest freedom of movement, and who are the closest to a 'world citizen', are the premium members of the frequent flyers' clubs, rather than the mass packing themselves in a rickety boat to cross the Mediterranean sea.

On the other hand, being cautious about a one-sided celebration of mobility is also a necessary step towards a grounded appreciation of the various ways mobility is recast as a means, an objective, and a manifestation of political struggles against the dispersed, fragmented, and even digitalised regimes of mobility control. This means first and foremost to appreciate the normality of physical, geographical and bodily movement as such, and the politicality of those forms of movement that rupture the system distributing mobility as scarce and unequal commodity. Movement is 'normal', and hence migration is not an issue of exception for democratic theory, for 'so long as there are people, there are people on the move', for human life is 'inseparable from the uninhibited capacity for movement' (Genova, 2010). It is at the same time political, when it enacts a right to escape, and enables 'the multitude' to gain 'the power to affirm its autonomy' through 'an apparatus of widespread, transversal territorial reappropriation' (Hardt & Negri, 2000: 398)¹¹⁰. Yet this appreciation must be

¹¹⁰ However, Hardt and Negri seem to go too far in crediting the transformative power of 'human migrancy' and migrants, which is portrayed as the new proletariat of the world: 'a spectre haunts the world, and it is the spectre of migration' (ibid. 213). In their writing, migrants as the multitude have

grounded, in the sense that it needs to analyse the complex interaction between government and ‘the politics of the governed’ not merely as a relation of opposition. Rather, the movements that contest government ‘can operate not externally to modes of bordering but by means of “a series of exchanges” and “reciprocal supports” (Walters, 2011a: 153)¹¹¹. They may share similar languages, discourses and techniques, which is nonetheless considered as weaknesses in some cases yet as strength in others. For example, the mobilisation of mobility often involves reinscribing the vocabularies of national identity and cultural politics it is intended to challenge in the first place. Yet it may also seize upon the most salient strategies of government – the commercialisation of human mobility, the demand for circulation inherent to capital, and the legal systems that produce rights *and* rightlessness, and make them ‘into a resource rather than an obstacle’ (Mezzadra & Neilson, 2013) for bringing mobility, authorised or unauthorised by the state, into the domain of the political.

The category of rights occupies a central position in bringing into being a politics of mobility. As Aradau and Huysmans have argued (2009), articulating a universal right to mobility is both empowering and subject to limitations, because the notion of rights as determined by law reproduces a ‘distinction between masses and citizens’, the former referring to the group of people who are either denied rights or whose ‘capacity to effectively claim rights’ is severely limited (ibid. 595). This critique resembles the critique of human rights as either being rootless, or having to rely on the norms of sovereign statehood that are essentially particularistic and exclusive (Arendt, 1976; Bosniak, 1991). Indeed, claiming that free movement is a fundamental right everyone is entitled to faces the same predicament as the discourse of human rights and/or natural rights does. It is either a tautology if national constitution has already confirmed the

the power to ‘reappropriate control over space and thus to design the new cartography’. And ‘*the general right to control its own moment is the multitude’s ultimate demand for global citizenship.*’ (2000: 400, italics in original). And I have argued earlier against the temptation to associate any specific figure with a grand narrative of emancipation.

¹¹¹ Here Walters is making a reference to Foucault (2007).

freedom of movement within the borders, or a void as it is not effectively guaranteed by any authorities. However, the right to mobility gains its strength in migration movements exactly because it is *not* a positivist right, just as human rights should not be understood as positivist rights enlisted by international conventions – in other words, not ‘the product of legislation’, but something being invoked to set the limit to legislation (Bauman, 1995: 15). We have seen in Part II that through Rancière, rights could be understood in the gap between their two forms: their inscription in law and the politics that puts that inscription into test. It is also instructive to think of the right to mobility in a similar way as Lefebvre elaborates the ‘right to the city’ and ‘the right to difference’.

Lefebvre posits the ‘right to the city’ in contrast to the ‘right to nature’, which is associated with the commercialisation of leisure, as the latter sells and consumes nature only in terms of its exchange value. Nature becomes ‘the ghetto of leisure pursuits, the separate place of pleasure and the retreat of “creativity” (1996: 158). It is equally important not to confuse the right to mobility with the pursuit for experiencing the (colonial) exotic. And the ‘right to difference’, writes Lefebvre:

... is a formal designation for something that may be achieved through practical action, through effective struggle – namely, concrete differences. The right to difference *implies no entitlements* that do not have to be bitterly fought for. This is a ‘right’ whose only justification lies in its content; it is thus diametrically opposed to the right of property, which is given validity by its logical and legal form as the basic code of relationship under the capitalist mode of production. (1991: 396)

This is precisely how the right to mobility is employed in putting into test the declared laws and ‘founded rights’ (Bauman, 1995): not only by appealing to universality as such, to the presupposition of absolute equality in Rancière’s terms, but also through producing concrete differences and making explicit the establishment of inequality.

However, the concrete ways in which the right to mobility is claimed in the struggles around mobility and migration bear an intricate relationship with the judicial system of rights. On the one hand, as Rigo argues, the exercise of

rights by ‘illegal citizens’ immediately ‘exceeds the formal institutional and juridical recognition that they might otherwise acquire as rights bears’ – such as the partial and conditional inclusiveness provided through employment, family reunification rights and protection rights (2011), even though this exceeding of the juridical realm is more than often achieved through making use of this coding of partial inclusiveness. On the other hand, mobility struggles are also inclined to re-appropriate the regime of legality through, for example, focusing on the agenda of regularisation or obtaining legal remedies before the court, which is usually measured as an achievement. As in other forms of democratic struggles, so long as the achievement of mobility struggles is incorporated into the juridico-political form of citizenship, the conflicts between written and exercised rights, or between the ‘power of rights and the rights of power’¹¹² shall begin again.

Soguk is certainly right when he points to the ‘paradoxicalness’ of immigrant subjectivities: ‘their capacity to force radical changes in various sites of territorial governance’ and their ‘vulnerability’, which is ‘harnessed through the vocabularies of race, ethnicity, religion and culture to various politico-administrative projects useful for the very sites of governance in which’ immigrants find themselves (1997: 315). Yet this ‘paradoxicalness’ seems to be less about the ‘vulnerability’ of migrant subjectivity than about the *imperfectability* of citizenship itself. Reimagining citizenship from the borders endorses neither an idealisation of the migrant nor that of the citizen-subject. It instead sees citizenship always in a relation of being-with (hence incomplete) and in a terrain perpetually opened by the conflicts, imbrications and dynamics between government and resistance (hence imperfect). A global ethics that is committed to thinking citizenship from the borders might be called a ‘cosmopolitanism to come’, but not in the sense of ‘a future or final reality on the verge of fulfilment’ (Nancy: 71). It is to come not in expectations but in the very present, in every present encounter with the other and the self.

¹¹² ‘The power of rights and the rights of power’ is the name of a workshop, convened by Louiza Odysseos and Anna Selmeczi, held at EWIS (European Workshops in International Studies) 2013, 5-8 June, Tartu.

Conclusions

The chance of human togetherness depends on the rights of the stranger and not on the answer to the question who is entitled – the state or the tribe – to decide who the strangers are.

--- Zygmunt Bauman (1995: 15)

During the last months of writing this dissertation, on 3 October 2013, a tragic shipwreck off the shore of Lampedusa, a small Italian island in the Mediterranean Sea and at Europe's southern borders, made headline news across the world. The disaster killed 'more than 360' people, most of whom were originally from Eritrea and Somalia (BBC, 8/11/13). The victims were called 'migrants', although they did not survive their migrating journey. While this disaster was not the first and the death toll at the Mediterranean Sea had been notoriously high in the last decades¹¹³, the massive number caught unprecedented media attention and forced Italian authorities to react. The government promised a state funeral, which nonetheless had not been fulfilled (Davies, 2013), and decided to posthumously grant the victims Italian citizenship (Tejan-Cole, 2013). This tragic event is an extreme illustration of all the stark facts that the celebrators of economic globalisation seem blind to: borders are closed, mobility can be fatal, and citizenship is an irony.

Indeed, despite all the new trends such as deterritorialisation, post-national rights, and the perceived 'decline' of sovereignty brought about by the ostensibly ubiquitous power of globalisation, I begin this thesis by emphasising the *persistent* centrality of the paradigm of national citizenship in our understanding of political life. As Walker puts it, modern statist communities 'express the very conditions under which we have organised ourselves as

¹¹³ According to Fortress Europe (2012), as of 19 September 2012, at least 19, 144 people lost their life along the European borders. Among them 14,309 were killed trying to cross the Mediterranean Sea and the Atlantic Ocean.

properly modern subject, as people capable of acting collectively, democratically and rationally to ensure our very capacity to act as agents aspiring to something better' (2010: 75-76). Defining the relations between the individual and the state, modern citizenship has both emerged from and contributed to a territorially defined international order – which can be depicted through a map with 'a quality of simplicity and clarity that almost resembles a Mondrian painting' (Bauböck, 1997: 1). However, while the interstate system that allocates populations to discrete territories appears to be simple and clear, state boundaries have never been the exact container of possible politics – in other words, they have never been 'well-bounded' or 'closed to contesting interpretations' (Ashley & Walker, 1990: 387)¹¹⁴. Ultimately, the motivation behind this intellectual journey is to take a look at the tensions and contradictions indicated in the claims about and of the statist (or suprastate) community and its proper subject – the kind of membership sovereignty seeks to spatialise and normalise – from the borders.

I have chosen a set of interrelated concepts, which constitute the thread of the dissertation on the whole and connects each part to one another, to approach the spatialities of citizenship. Territory differentiates between inside and outside, the political and the international, marking the delimitation of the political community. Rights differentiate between citizens and bare life, while also dividing citizens under formal equality into substantially unequal classes. Mobility enables citizens and bear lives to cross territorial boundaries, blurs the boundary between inside and outside, and raises questions about difference, strangeness and foreignness that touch upon the core principles of democratic citizenship. As a general framework, I draw on the approach of critical citizenship studies, understanding citizenship in the interactions and exchanges between the governing structure and the movements that seek to escape and contest its grasp. I find this dialectics at work also in the trajectories of our three

¹¹⁴ What Lefebvre observes about abstract might be applicable to state space as well: 'Abstract space is *not* homogeneous; it simply *has* homogeneity as its goal, its orientation, its 'lens'' (1991: 287, italics in original).

key concepts coming to formulate the spatialities of citizenship: the territorialisation of space, and the incorporation of mobility and circulation into the regime of rights. These trajectories have been first examined at a theoretical level (Part I), then explored empirically with reference to the specific practices of border and mobility governance in the EU and above all to the regime of EU citizenship (Part II), and finally brought into the discussion about a global ethics (Part III).

The interrelations between territory, rights and mobility, and the ways they shape the citizenship/migration nexus, have been undergoing significant yet fragmented changes under the conditions of European integration. We have looked at the discourses of EU territory, in which mobility plays a critical role in the de-bordering and re-bordering processes, in Chapter 5, and the intricate relationship between mobility and rights in Chapter 6. To reveal the intertwining of the government of citizenship and that of migration, we have emphasised the historical contingencies behind the categorical distinction being made between internal and external borders (Chapter 5) as well as internal and external mobility (Chapter 6). While two different notions of territory – a statist one and a networked one – are visible in the official discourses, I have stressed on the fact that the technologies that are supposed to produce each type of territoriality often converge. The case of Eurostar and the Channel Tunnel project offers us a vintage point from which to observe the making of a *moving border* at which the rationale of closure and that of circulation meet. However, the permeability of this border is partly enabled by the uneven and ambiguous configurations of Schengenland, and achieved by maximizing the function of borders (in the forms of vehicles, railways and the tunnel) as connectivity. The excessive forms of mobility (initially engendered by immobility) taking place at the border not only force state actors to move *back and forth* between a harder and a more flexible mode of bordering/territorialising, but also raise significant questions about the official formulation of free movement rights, which constitute a defining character of EU citizenship.

Thus in Chapter 6 we have investigated the governmental rationalities implied in free movement policies on one hand, and the paths through which to redefine the right to mobility on the other. Looking at the nature of 'rights' in free movement rights in juridical and discursive practices, I argue that while the logic of securitisation implied in free movement continues to discriminate against migrants or TCNs, the logics of economisation and individualisation hinder the social rights of mobile workers, with EU citizenship or not, who lose access to collective bargaining as a consequence of or precondition for 'exercising' free movement. This jeopardises the universalist and egalitarian principles implied in the ideal of democratic citizenship as such. However, we have also seen that mobility can be brought back to the domain of the political in various stages where citizenship is enacted by those who are disadvantageously positioned by law. In the light of Rancière's reconceptualisation of rights and democracy, I have examined two examples in which different approaches to politicising mobility are employed: one is focused on universality and absolute equality; the other makes reference to the particular such as labour, use and productivity. The politics of mobility is also an endeavour of making alternative spaces: the European and the urban spaces are invoked, narrated and produced against the territorialised state-centric space to which the imagination of citizenship is usually limited. This nonetheless does not mean that the category of rights is bound to be emancipatory. Throughout the thesis I have sought to show that the dialectics of citizenship and rights operates at multiple levels: citizenship involves strategies and arrangements on the basis of differentiated access to rights; these arrangements are disrupted by the contestations of those who claim that they have the rights they are denied to; yet once the 'achievements' of rights-claims are re-appropriated by the juridico-political form of citizenship, such a form continues to reproduce differentiated inclusion based on a hierarchy of status that attempts to monopolise the relationship between the citizen and the territory.

We have further explored the limits of the moralist and legalistic approach to political membership implied in the cosmopolitan, inclusivist response to the boundary problem. However, the concept of cosmopolitanism

might generate an excess to itself if it listens to, rather than silence, the resonances and dissonances produced in the clashes and transactions between the juridical and the political; the universal and the particular. With regard to our conceptual framework focusing on space and movement, this also requires us to recapture the centrality of space in understanding the political against the hegemonic space expressed by the notion of state territory, and to contextualise the right to mobility in the paradoxical process of subjectivisation, which defines not only migrant subjectivity but also the citizen-subject herself. We then finally arrive at, or only begin, the task of thinking of a global ethics that continuously works on the imperfectability of citizenship and the impossibility of community.

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C-194/96 Kulzer v Freistaat Bayern

C-214/94 Boukhalfa v Federal Republic of Germany

C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet

C-438/05 International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti

C-540/03, European Parliament v Council of the European Union.

Joint Cases C-188/10 (Aziz Melki) and C-189/10 (Sélim Abdeli)

Appendix II List of legislative instruments

- Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community
- Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families
- Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services
- Council Resolution of 21 January 1974 concerning a social action programme
- Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity
- Council Directive 90/366/EEC on the right of residence for students
- Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

Council Regulation (EC) No. 2003/343 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states.

Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more member states, of third-country nationals who are the subjects of individual removal orders

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research

Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (EUROSUR)

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

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

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

Appendix III list of interviewees

- A. 2013, interview conducted in Calais, 17 February 2013.
- F. 2012, interview conducted in Bologna, 10 December 2012.
- M. 2012, interview conducted in Bologna, 10 December 2012.
- P. 2013, interview conducted in Calais, 17 February 2013.
- S. 2012, interview conducted in Bologna, 12 December 2012.