

**The European Union and the Politics of Migration: An Interdisciplinary
Examination of the Intersections of Migration, Citizenship and Statelessness**

Paul Williams

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Faculty of Humanities, Brock University
St. Catharines, Ontario

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Abstract

In 2016, the United Nations High Commission for Refugees (UNHCR) recorded that 5,096 people died attempting to cross the Mediterranean from North Africa to Europe. So far this has been the peak in the total number of deaths. However, the journey has become more dangerous, as the UNHCR reported that in 2018, 1 out of every 18 people who crossed the Mediterranean died, an increase from 2017, which saw 1 out of every 42 people that crossed the Mediterranean dying. The Migration Crisis on Europe's southern border is only one aspect of a politics of migration that is a fundamental characteristic of the European Union (EU) and its right of the free movement of peoples. Rather than being understood as a contemporary development, this dissertation argues that the EU entails a crisis of the movement of peoples whose complexity and multi-faceted nature can be understood by going back to Hannah Arendt's theoretical analysis of the inter- and post-war periods. This dissertation makes the case that the European Union and its Member States are struggling to resolve problems of migration (the social and political inclusion of migrants) which require us to draw on multiple theoretical and political frameworks of understanding that place the issues of migration and statelessness at the centre of the discussion.

This dissertation presents an interdisciplinary analysis of a larger migration crisis that speaks to (and threatens) the heart of the project of European integration, from the integration of national economic sectors within a coal and steel community after the Second World War to a supranational political community, which includes transnational Union citizenship and the free movement of peoples. This dissertation attempts to forge new avenues of discussion concerning European integration and issues of social and political exclusion by highlighting the situation of the Roma (as migrants with Union citizenship). The experience of the Roma in Europe highlights the ongoing crisis, on a practical and theoretical level, of 'statelessness', a situation depicted by Arendt and reformulated by thinkers like Jürgen Habermas and Rosi Braidotti. It is a goal of this dissertation to develop new angles in which academics and political actors can analyze the intersections of migration, citizenship and the issue of statelessness in the 21st century, both on theoretical grounds and in practical discussions of alleviating social and political discrimination and exclusion.

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Introduction

“Europe will not be made all at once, or according to a single plan.”

- Schuman Declaration (May 9, 1950)

“Europe is a necessity.”

- Antonio Negri (2008)

“[The European Commission] were unable to keep the United Kingdom in Europe, and they were unable to keep the migrants out of Europe. Both of those were grave errors: historic mistakes. The question is what will come after them. That is what citizens will decide ... It seems – all signs appear to indicate – that migration will be the most important issue for the future.”

- Viktor Orbán, Prime Minister of Hungary (2018)



(left: on May 25, 2016 a fishing boat overfilled with refugees overturned off the coast of Libya, photos by the Italian navy; right: a temporary Roma camp in 2014, without electricity or running water, outside of the French city Champs-sur-Marne, photo by the BBC)

In its formation, the European Union (EU) was fundamentally designed to ease the flow of goods, services, capital and, importantly, peoples between countries. It was a slow, piecemeal approach beginning after the Second World War, in which its founders sought to integrate national economies and lay the groundwork for deeper transnational political action. A major step was eliminating border control mechanisms between Member States called the Schengen Area (officially becoming European law in 1997). However, the photographs above are meant to show the many ways borders still operate within and at the periphery of the EU. A goal of this dissertation is to discuss the reemergence of border controls by EU Member States and the condition of statelessness

faced by migrants, even those like the Roma (commonly and pejoratively referred to as ‘Gypsies’), with Union citizenship. Importantly, although this dissertation features a multifaceted theoretical discussion of migration and citizenship, the issues of discrimination and social and political exclusion faced by migrants is a practical problem facing contemporary EU politics and is central to this interdisciplinary analysis. Two major issues at work in this dissertation are the Migration Crisis and the situation of the Roma within the EU.

First, beginning in 2014, there has been an influx of migrants attempting the dangerous boat trip across the Mediterranean to reach Europe’s coast (primarily, Italy and Greece). The photographs on the left depict the sinking of a fishing boat off the coast of Libya in 2016 carrying over 500 people and resulted in a reported five deaths (Italian Navy, 2016). In 2016, the United Nations High Commission for Refugees (UNHCR) recorded that 5,096 people died attempting to cross the Mediterranean from North Africa to Europe. So far this has been the peak in the total number of deaths. However, the journey has become more dangerous, as the UNHCR reported that in 2018, 1 out of every 18 people who crossed the Mediterranean died, an increase from 2017, which saw 1 out of every 42 people that crossed the Mediterranean dying.¹ The Migration Crisis on

¹ Yearly data compiled by UNHCR.

Years	Arrivals	Dead or Missing
2018	141,475	2,277
2017	185,139	3,139
2016		

Europe's southern border is only one aspect of a politics of migration that is a fundamental characteristic of the EU and its right of the free movement of peoples. The second image is of a makeshift Roma camp outside the French city Champs-sur-Marne from 2014. The French government had declared their more permanent encampment to be illegal and after evicting the Roma residents and bulldozing their homes, the police dug large holes into the ground to stop resettlement (BBC, 2014). The home pictured did not have electricity or running water and since it was illegal, Roma children were no longer allowed to attend school because they lacked a legally recognized residence.

Today the borders in Europe are mostly invisible. The EU's Schengen Area requires its countries to abolish internal border controls, while creating a single customs union with a common external border.² Born from intergovernmental conferences, the Schengen Area is a requirement for all future Member States and includes four non-EU states (Iceland, Norway, Switzerland and Liechtenstein). Although the EU's Member States originally conceived of an internal market that called for the free movement of workers, free movement within the Schengen Area was permitted to all, including the right to residency to EU citizens and their families.

373,652
 5,096
 2015
 1,032,408
 3,771
 2014
 225,455
 3,538

² As of the end of 2018, both the Republic of Ireland and the United Kingdom have been granted opt-outs, while the four most recent EU Member States are negotiating their entry.

A useful starting point for this discussion is historian Tony Judt's (2011)³ dismissal of what he considered the "foundation myth of modern Europe." (41) Judt argues that the European community was designed as an economic agreement, pushed forward by American influence in the region and by national self-interest. A goal of this dissertation is to establish that, while economic coordination and intergovernmental cooperation, along with self-interest, serve as important governing mechanisms of the EU, the notion that transnational social and political cohesion are not foundational or fundamental characteristics for a European community is not only untrue but contributes to a deepening of social and political exclusion and the discrimination of peoples based on ethno-cultural and religious characteristics (often the divide between nationals and non-nationals). In Chapter 4 I discuss the situation of the Roma communities in the EU, as an example that demonstrates the difficulties in maintaining separate national strategies for the social integration of historically oppressed groups.

After the Second World War, the free movement of peoples, goods, capital and services became a slowly implemented but necessary step for ensuring both a common market and stability and peace on the continent. EU founding fathers Robert Schumann and Jean Monnet argued that tentative but eventual steps among Member States to incorporate sections of their economy could and should lead to a revolutionary new political community in Europe. In Chapter 3 I will examine Monnet's (1978) writing on the foundation of the EU and combat the position that the European Community was only designed to be a merely economic agreement. This gradual, piecemeal approach did have success and became European legislation with the Citizens' Rights Directive

³ Originally published in 1996.

2004/38/EC, which ensures the rights of Union citizens to “move and reside freely within the territory of the Member States.” An important feature of this directive is the “prohibition of discrimination on grounds of nationality” and the requirement of equal treatment for all Union citizens and their families (Directive 2004/38/EC, 6 & 20). Much more will be said about this directive in Chapters 3 and 4 and on the EU and the situation of the Roma peoples in Europe, respectively, but I believe it is important to begin this dissertation with the assertion that the EU has established a political community with free movement and citizenship rights of anti-discrimination as a foundation. The Member States of the EU are obligated to respect the individuals living and moving freely across the continent and act within a political community that seeks to create greater social cohesion among the peoples of the Union.

This dissertation seeks to follow the path of European integration and argues along these lines: the EU is not a passive organization of “mere coordination” (as Monnet (1978: 35) maintains and as Judt counters (2011)). My dissertation will attempt to forge new avenues of discussion concerning European integration and the issues surrounding social and political exclusion and discrimination by showcasing the ways migration (the movement of peoples in Europe, both those that are considered legal and illegal) has affected national and European politics. The movement of peoples, primarily, but not exclusively, within the politico-institutional framework of the EU must also be accompanied by guaranteed rights, often understood as citizenship. Although historically tied to the Western European nation-state, the EU has (somewhat) decoupled citizenship from notions of homogeneous nationhood. Union citizenship is a guarantee surrounding the free movement of persons protections against discrimination based on origin.

Three primary scholars provide the theoretical basis of the dissertation: Hannah Arendt, Iris Marion Young and Jürgen Habermas. Although each will not be the sole author featured in each chapter (nor is the aim to provide a wholesale assessment of their thought), they provide the theoretical underpinning for examining the intersections of migration and citizenship, including conceptualizing statelessness and political activity. I believe these three are important democratic theorists, each focusing on the intersections of human rights, citizenship and state power, including the transformational power of democratic political activity. Arendt's discussion of statelessness in Europe is the starting point for the dissertation as it serves to illustrate state power over the issue of migration and the profound significance of political activity. Importantly, she points to a failure on behalf of Western European states in inter- and post-war years to live up to their own democratic principles, including the extension of the Rights of Man. Although I will not be engaging in a historical analysis of her work from the context of the inter- and post-war years, I believe her conceptualization of statelessness leads us to have some understanding of political activity that actively seeks to include previously ignored or suppressed communities. Second, Iris Marion Young conceives of a politics of difference that does not exist solely within the confines of the power of the nation. Minority groups may require representation in society and in the decision-making bodies in a way that challenges any notion of a homogeneous nation. Young is crucial for critiquing elements of the conceptions put forth by the scholar Jürgen Habermas. Habermas is important for understanding the gradual development of a post-national constellation (or the interacting of local, national and supranational actors and the weakening of certain powers of the state, including taxation). Habermas' analysis of the EU helps illuminate the ways the EU

functions and how it seeks legitimacy through both technocratic decision-making and through providing a new form of citizenship rights across states. Importantly, as a scholar he has become an actor in the European political discussion by advocating for a European constitution (something EU voters in France, Luxembourg, Netherlands and Spain rejected in 2005). However, Habermas' understanding of the European public sphere is not without criticism for attempting to recreate a homogeneous, albeit transnational, political community. In the final chapter, I examine scholars such as Étienne Balibar and Rosi Braidotti, looking at how they advocate for new forms of transnational democratic practices, which could function within Habermas' European constitution, but also help to recognize that the EU operates as a heterogeneous space. Reading these scholars around the issues of migration and citizenship helps to illustrate the practical revitalization of EU citizenship that promotes local and transnational democratic activity (particularly in border regions) as an important policy proposal that the EU should and can promote.

It is important to stress this dissertation is an interdisciplinary analysis, centred around the problem of statelessness and social and political exclusion of migrants in Europe. It blends central tenets put forward in Joe Moran's (2002) study of interdisciplinarity and Iris Marion Young's (2000) framework she refers to as "situated conversation." Interdisciplinary examination, in this dissertation, is designed to follow strands of thought across theoretical frameworks by centring the discussion around contemporary social and political problems that could not be solved within one academic discipline. As Moran (2002) argues, interdisciplinarity is not meant to create an universal synthesis across disciplinary thought, nor am I seeking to find a unified theory between theoretical frameworks. What I am interested in doing, as Young (2000: 14) writes of her

notion of “situation conversation,” is to build chapters on the idea they contribute “to a set of overlapping conversations” of different theories and approaches. The Migration Crisis and the situation of the Roma are dynamic problems touching on multiple levels of government and across economic, social and political dimensions. I want to draw on different theoretical frameworks for these problems. This may mean removing the theorist from their historical context, such as Hannah Arendt, but with the aim to ground how we understand and act on these contemporary problems in a coherent interlocutory approach.

Each chapter of the dissertation will seek to build on what I believe is the intersection of migration and citizenship, examining both theoretical and practical political problems in the burgeoning post-war European political community and the contemporary EU. An important feature of this dissertation is to challenge the existing political, philosophical and historical literature on the EU and the topic of immigration. This dissertation presents a unique transdisciplinary assessment that mixes European history and politics with a theoretical understanding of identity and migration. Rather than engaging in one pre-existing discussion from a unitary perspective, it provides an arena for a larger, multiple perspective discussion of European integration and the issues of social and political exclusion and discrimination. Discrimination of minority groups is increasingly an issue of European politics and the responsibility of the EU. Moving forward, the solution to these crises should not be found in the history of separate national strategies and national self-interest, but understood as a politics of migration concerning the EU and its Member States. I believe it is important to reframe academic and political discourses on the EU away from its heavily technocratic and bureaucratic

operations and towards an emphasis on the peoples engaging in their rights as EU citizens or having those rights curtailed.

In the first chapter, I examine Arendt's conceptualization of statelessness found mainly in her book, *The Origins of Totalitarianism*. Her understanding of the inter- and post-war years in Europe provides a unique entry into a reading of the founding of the EU and the problems facing contemporary Europe. Arendt's works helps to both establish a criticism of the modern democratic state, and stress the necessity of having and engaging in one's political community as a fundamental human right. Weaving together Arendt's philosophical writings on the human condition and her political writings is necessary for gauging and understanding her conceptualizations of statelessness and the right to have rights, both of which are fundamental in discussing the changing dynamics of human rights and membership. Arendt's (1973: 275) dictum, "the nation conquered the state," presents a limit to human activity and the closure of a political community.

Chapter 2 bridges this theoretical discussion by examining the literature on membership politics in Europe and the shifting pressures on the state by what Jürgen Habermas terms, the post-national constellation. Although Arendt provides a broader, more theoretical examination of the politics of migration, this chapter will provide a closer examination of France and Germany as examples of differing policies towards immigration and inclusion. Rogers Brubaker's (1992) concept, the "idiom of nationhood," helps frame this discussion of membership politics and bring Arendt's writing on the importance of the nation into a more contemporary discussion of possible liberalization and counter renationalization measures. Importantly, I stress that, while the liberalization of membership policies has allowed greater inclusion of non-nationals, it

remains within the institutional structures of the state and even dependent on an ongoing conception of the nation. However, Habermas' understanding of the post-national constellation will bring to light important changes in national and international politics today, including new forms of democratic representation that may allow greater protections of social and political rights.

In Chapter 3 I examine the formation of the EU, focusing on the importance the free movement of persons has played in providing legitimacy to the massively technocratic and bureaucratic organization. The founding fathers Robert Schumann and Jean Monnet provide a historical perspective on why and how the EU formed, stressing the belief that creating transnational social and political cohesion was a fundamental characteristic of the union (countering Judt's intergovernmental perspective). Although Judt's analysis is useful in examining the ways international cooperation lead to the formation of the European community, it underscores the unique dynamics at play between Member States that develops into the community method of policy development and legislation. The formation of the EU gradually found political expression through Union citizenship and providing the right of the free movement of persons.

Chapter 4 attempts to bring to light an underdeveloped and mostly over looked European people – the Roma. Often ignored in major academic literature (including notable scholars, like Saskia Sassen, Étienne Balibar and Rosi Braidotti) and suppressed in the national political arenas across Europe (even globally), the Roma provide an interesting case study in a discussion of citizenship, migration and statelessness. Importantly, I believe engaging in a study of the Roma helps to correct this academic and political erasure and provides a deeper understanding of the ways migration and ethno-

cultural and religious discrimination intersect. Europe has become the location for a confrontation between notions of national sovereignty and identity and the fundamental characteristics of the EU. What remains a major obstacle to easing or removing the social and political exclusion of minority groups is notions of national identity and the EU's focus on fully separated national integration strategies. Discrimination against the Roma and other migrants has become bound up with European integration and the politics of migration at play in Europe.

The dissertation ends by discussing what I argue is the greatest threat to European cohesion to date – the Migration Crisis. It is precisely the greatest danger to the EU because it speaks to the heart of Union citizenship and the core of the EU, namely the free movement of persons. As in the case of the Roma, Member States are largely left alone to handle this crisis, resulting (as in the case of Hungary and its internationally controversial leader, Viktor Orbán) in renationalizing policies and growing fears of an instable and threatened nation. The Migration Crisis remains a turning point for the EU as it can restructure itself as a fortress or apartheid (in the terms of Étienne Balibar) or engage in new avenues of transnational democracy. I will look in particular to Balibar and Rosi Braidotti for ways that the EU can move past a fixed notion of European identity (which is opposed to migrants, from both inside and outside the EU) and form new ways of thinking about political activity in Europe. Importantly, as Arendt reminds us, it is the state itself that makes us stateless; the crises at work in the EU often become crises because of the EU and its Member States themselves.

Chapter 1 –An Interdisciplinary Analysis of Hannah Arendt: Bridging the Notions of Statelessness and Political Activity

Introduction

The political theorist, Hannah Arendt (1906-1975), argues that much of Western philosophy tended to privilege the contemplative life, while ignoring or dismissing what she refers to as *vita activa* (the active life).⁴ This has resulted in under-theorizing and bunching together different forms of human activity, including the basic conditions of political activity. In contrast, Arendt argues that human life comprises three fundamental activities – labour, work and action. Each activity corresponds to the basic conditions that make up and shape all human life and which every human being is capable of performing to some degree (1998: 5). Arendt's important distinctions among these human activities form the basis of her critique of modernity, including the predominance of economic life and the significance of political activity.

This notion of action, or the active life is crucial to understanding the ways Arendt bridges her political writings with her philosophical concepts. In particular the way she understands notions of statelessness and rightlessness, political action and state power is useful in studying issues of transnational movement, minority rights and national belonging in the European Union and its Member States.

Beginning with her seminal text *The Origins of Totalitarianism* (originally published in 1951), Arendt's work not only crosses but also blurs the disciplinary boundaries between philosophy, history and political studies. This chapter will not

⁴ Although Arendt doesn't make an explicit connection, Julia Kristeva (1999) suggests that Arendt may be making a feminist critique of Western political thought and the Cartesian Method.

provide an exegesis of Arendt's body of work but will weave together her contributions to political thought, her historical and political discussions of statelessness, the right to have rights and the relationship between the nation and the state. It is a reading of Arendt, informed by the changing dynamics of citizenship and statelessness in contemporary Europe.

This chapter asks the following questions: how does Arendt conceptualize statelessness? What are the conditions for statelessness in post-war Europe as she describes them? How does she understand human rights and the idea of a right to have rights? What role does the modern democratic state play in guaranteeing and protecting rights? And what role does it play in making people stateless? How does she use the term citizenship and how does that correspond to membership rights?

Using a discussion on Arendt as a starting point provides both a theoretical and practical grounding for a contemporary examination of citizenship and statelessness.⁵

⁵ Arendt never explicates a full-fledged theory of citizenship, instead preferring to rely on her theorization of action and the political life. However, I believe Christian Joppke (2010) and Serena Parekh (2004) help make Arendt's understanding clearer. First, Joppke argues that while there are different concepts of citizenship, there are three aspects that have become tangled up with immigration: citizenship as status (formal state membership), rights (a collection of social, civic and political rights that often divides access between citizens and non-citizens) and identity (the shared beliefs that tie the individual to the political community) (2010: 26-30). I argue that Arendt focuses on these three components, limitedly creating a notion of membership dependent on community. These aspects of membership in Arendt present a double gesture (or tension), which will be discussed in the third section of the chapter: as Arendt rethinks human rights as a right to have rights (what I argue is understood through her understanding of action), her notion of political life nevertheless remains tied to a discussion of the nation and state in Western Europe. This leads to Parekh who makes a distinction, in Arendt, between human and civic rights. While civic rights refer to any right protected and guaranteed by the state, human rights are a more basic right to a "place in the world where action and speech can be meaningful." (2004: 45) Parekh is useful in clarifying the significance of community within Arendt's work: without a political community and the framework for meaningful action and speech, we truly become rightless (we are deprived of our

Bridging her politico-historical writings on statelessness and human rights with her philosophical concepts like action and political activity helps to illustrate the changing dynamics currently at work in Europe and in the actions of the European Union.

Statelessness

In “The Decline of the Nation-State and the End of the Rights of Man,” Arendt argues that the First World War acted as an explosion that altered Europe and its demography: “The first World War exploded the European comity of nations beyond repair, something which no other war had done before.” (1973: 267) In what she refers to as a chain reaction, the First World War initiated a period of inflation, unemployment and civil war, particularly in Southern and Eastern Europe. This period of turmoil across Europe succeeded in not only altering borders and liquidating historical empires, but it also made life significantly more precarious by removing a large segment of property owners, radically increasing unemployment and setting the stage for new, bloody intra-state and partisan war.

These crises created the push for a large-scale migration by those driven from their home countries in much of Europe, or stripped of their national membership and made stateless by totalitarian politics: “Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth.” (1973: 267)

These are the three crucial elements that make up the precarious position of migrants and

humanity). Arendt’s under-theorization of membership is problematic because it focuses solely on the role of the community, which presents a certain difficulty manoeuvring past this tension. There is an important discussion of the nation and nationality that is happening in Arendt that scholars such as Näsström (2014) and Cane (2015) are not having.

those who move across political and cultural borders. It is useful to unpack these aspects of transnational movement and national minority groups in contemporary Europe, including those with Union citizenship.

Following the First World War, what Arendt refers to as totalitarian politics not only succeeded in denationalizing undesirable actors, but forced their expulsion and displacement in the international arena. Arendt writes:

Denationalization became a powerful weapon of totalitarian politics, and the constitutional inability of European nation-states to guarantee human rights to those who had lost nationally guaranteed rights, made it possible for the persecuting governments to impose their standards of values even upon their opponents. Those whom the persecutor had singled out as scum of the earth – Jews, Trotskyites, etc. – actually were received as scum of the earth everywhere; those whom persecution had called undesirable became the indésirables of Europe. (1973: 269)

Western European states also refused to provide protections and rights to those stateless migrants, continuing the “standards of values” that other governments had imposed on these groups. The rights guaranteed by Western European states were exposed as exclusive and largely dependent on the privileged status provided citizenship and nationality.

In Arendt’s analysis, migration exposed the very foundations of Western European states. Empires in the east may have collapsed, but the nation-states of the west had to staunchly affirm nationality and citizenship as privileged possessions. Arendt writes, “Before totalitarian politics consciously attacked and partially destroyed the very structure of European civilization [the Second World War], the explosion of 1914 and its severe consequences of instability had sufficiently shattered the façade of Europe’s political system to lay bare its hidden frame.” (1973: 267) This hidden frame is two-fold: the privileged status provided by citizenship and nationality and the suffering of non-

nationals, minority groups and stateless migrants. For the latter groups, the world became a precarious place, where, seemingly, even rules and laws failed to be upheld.

Arendt refers to post-war Europe⁶ as a period of disintegration. Newly formed Eastern European states, such as Czechoslovakia and Hungary, were facing difficulties and conflict between nationalist groups, while Western Europe faced an influx of stateless migrants and refugees. The established sovereignty of Western European states had to confront two considerable difficulties: their geo-political borders being crossed and the arrival of non-nationals that sought the same, or similar, rights and protections guaranteed to citizens.

The failure of Western European governments to provide the necessary protections and rights to these migrant groups called into question the relationship between human rights and nationality and the necessity of international agreements to outline and provide human rights for national minorities, refugees and stateless migrants. For Arendt, these two consequences of migration and the presence of minority groups contributed to what she calls an end of the Rights of Man and the belief in inalienable rights.

Arendt makes a powerful statement on what she believes is a turning point in the relationship between individual and the state and the significance of nationality as the criterion of rights distribution and protection. The end of the eighteenth century ushered in the Rights of Man, designating a transformation of the political order in Europe, from godly authority and legitimacy to man being the author and source of law: “the declaration indicated man’s emancipation from all tutelage and announced he had come

⁶ For Arendt, post-war Europe refers to the inter-war period between the First and Second World Wars.

of age.” (1973: 290) This revolutionary transformation of divine to popular right meant that human beings become their own author of the political. The Rights of Man were independent of privilege and historically established strata of society. Crucially, it also meant protections and safeguards for people who could no longer depend on their estate or religious standing. Rights of class or religion became human rights: “irreducible to and undeducible from other rights and laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal.” (1973: 291) However, a paradox or discrepancy begins to form as the authority shifts from law to government and sovereignty of the people.

These inalienable rights of man become guaranteed and protected by the people’s sovereignty, which finds its expression in national emancipation. The law is legitimated with individuals as its source, but “only the emancipated sovereignty of the people, of one’s own people, seemed to be able to secure them. As mankind, since the French Revolution, was conceived in the image of a family of nations, it gradually became self-evident that the people, and not the individual, was the image of man.” (1973: 291) Although the source of law, it was claimed, was man, the protection and safeguards for individual rights became the nation. Arendt argues that large-scale migration of minority national groups, who found little to no safeguards for their rights, revealed the nation was the source of the protections associated with citizenship: “The Rights of Man...had been defined as “inalienable” because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.” (1973: 291-2) The Rights

of Man failed to serve the political and social reality of new stateless and minority groups.

The problematizing of the Rights of Man does allow Arendt to make two important interrelated points concerning the precariousness of rights and the tension between human rights and political institutions. First, the turmoil of post-war Europe resulted in two groups emerging that suffered an absolute deprivation of rights – the stateless and minorities: “they had lost those rights which had been thought of and even defined as inalienable, namely the Rights of Man.” (1973: 268) Arendt (1973: 279) examines the discourse in France and Western Europe on the Rights of Man as prescribing persons with ‘inalienable’ rights. Rights, it was thought, were not something that needed protection or had to be guaranteed on the basis of international treaties. In Western Europe, the influx of stateless and minority groups problematized the very heart of European constitutions – that is, the Rights of Man and the belief in inalienable rights. The influx of migrant groups contributed to an “internal disintegration” that ran through most of Europe. After the First World War, the newly formed states in Central and Eastern Europe (Czechoslovakia and Yugoslavia, for example) struggled to balance equal partnership between ruling peoples, with governing other nationalities, distinguished as “minorities.” (1973: 270) In both Western and Eastern Europe, rights became more overtly tied to nationality and formed a more concrete politico-legal separation between citizens and non-nationals.

According to Arendt, the relationship between the nation and the state became clear: national minorities did not share the same legal standing of nationals and did not have the same protection from the state’s politico-legal institutions. The state could only

strictly be responsible for its own nationals: “the transformation of the state from an instrument of the law into an instrument of the nation had been completed; the nation conquered the state.” (Arendt, 1973: 275) The crossing of territorial borders by individuals and groups before and after the Second World War only strengthened the nation’s connection to, or perhaps, control of the state.

The advent of Minority Treaties (guaranteed by the League of Nations) seemed to formalize this separation. These treaties recognized the existence of minority and stateless groups, which existed outside the legal protection of nation-state governments. This leads to the second consequence of statelessness, the creation of international agreements for the protection of minority rights. The signing of Minority Treaties meant that the state was no longer fully responsible for its treatment of national minorities:

At the time of the Minority Treaties it could be, and was, argued in their favor, as it were as their excuse, that the older nations enjoyed constitutions which...were founded upon the Rights of Man, that even if there were other nationalities within their borders they needed no additional law from them...The arrival of the stateless people brought an end to this illusion. (Arendt, 1973: 276)

Minority Treaties formalized the link between the institution of citizenship, rights and nationality. The state demanded the international community recognize that “the law of a country could not be responsible for person insisting on a different nationality.” (1973: 275) The term “stateless” acknowledged this phenomenon: that those individuals and groups had become deprived of their rights and protections by their own national governments and required the safeguards committed to by the international community (1973: 279).

The end of the Rights of Man in Western Europe that Arendt speaks of can be understood in the failure to uphold the right of asylum and in the two ways the states

resorted to solve the situation: repatriation and naturalization. The abolishment of asylum and repatriation in particular became the two avenues for state governments to first, forego the Minority Treaties and any legal protections they were required to provide to those individuals and groups deemed stateless; and second, to remove the undesirables from the country. Arendt argues that this was often done by ignoring statelessness in favour of seeing these minority groups as 'displaced': "Nonrecognition of statelessness always means repatriation, i.e., deportation to a country of origin, which either refuses to recognize the prospective repatriate as a citizen, or, on the contrary, urgently wants him back for punishment." (1973: 279) Repatriation, then, was often done illegally or placed the stateless in the precarious position of being at the mercy of the police (1973: 283).

In expelling migrants, the state is able to exercise its authority in new and often illegal ways. There are two interconnected reasons the state expels migrants. First, expulsion strengthens the state's control over its border, protecting the integrity of its sovereignty. And second, expulsion enables the state to remove undesirable peoples, protecting the integrity of its nation. In their analysis of Arendt, Judith Butler and Gayatri Spivak (2010: 30-31) are right to point out that the nation-state relies on expulsion to strengthen the nation by demarcating those who belong from those who do not. And since the state seeks legitimacy from the nation, it is able to exercise its power as a way of allegedly protecting its integrity. The stateless are then not only cast out of the national political community, but viewed and treated as outside the national legal framework. Arendt explains that states haven been willing to engage in illegal tactics of expulsion, including secretly smuggling migrants into neighbouring countries, "in order to diminish the country's burden of undesirables." (1973: 283-284) . Because the nation-state did not

recognize a requirement to provide the same rights and services to non-members, it placed the stateless outside the law. Being outlaws accorded them the status of criminals and refused them entry into a political community.

The Right to Have Rights and Political Life

A fundamental characteristic of statelessness is being unable to actively engage in meaningful political activity within a community. Importantly, the stateless are denied access to this engagement due to being defined as stateless and not nationals of an existing national-political community. For Arendt (1973: 295), statelessness is not caused by a lack of political and social rights and protections, but it is the absence of membership in a political community that deprives individuals of protection and an officially recognized identity. Arendt (1973: 295) argues that stateless minorities are not rightless in the sense of being “deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion,” they become deprived of rights in the sense of lacking a formal political community that recognizes them as actors in that community. The loss of national rights became tied to the loss of human rights in most cases (1973: 292). Although there were attempts (Arendt points to Russian refugees in particular) to distinguish one’s own minority group from other stateless groups, most minority treaties or declarations shared more in common in “language and composition to that of societies for the prevention of cruelty to animals.” (1973: 292) The post-war period in Europe saw most minority groups refuse, or be indifferent to, the call upon the Rights of Man as the source of their claims. Instead, they called on the collective consciousness aroused by the national community as the basis on which rights were claimed. The former (call on the Rights of Man) was seen as a kind of “standard slogan

of the protectors of the underprivileged...for those who had nothing better to fall back upon.” (1973: 293) The latter (calling on the collective consciousness) took shape through a civil rights discourse that grounded itself in the fact that all “human beings were citizens of some kind of political community,” which could be expected to seek political change through either democratic legislation or revolution (1973: 293).

However, the discrepancy nevertheless remains: non-nationals could not claim rights on the basis of citizenship, nationality or the more universal, Rights of Man because they were deprived of community and political activity.

Although the language of national emancipation was more intelligible to the governing (receiving) states (compared to the more inscrutable language of the Rights of Man), there remained a lack of institutional capacity and political will to correct this situation. Arendt (1973: 294) argues that these stateless migrants faced two primary difficulties in the receiving states: they numbered too great to be handled by official practices and they didn't formally qualify for asylum because they were persecuted for who they were (race, class or draftees of a certain kind of government) rather than for the convictions they held (religious or political). Importantly, these stateless minorities were recognized differently than refugees previously or even after. In her 1943 article, “We Refugee,” Arendt notes that most refugees from war and failed states (or collapsed empires) were not fleeing persecution. Arendt (1994: 110) argues for the normality of being a refugee: “we committed no acts and most of us never dreamt of having any radical opinion.” Rather than being viewed as enemies or partisans against an enemy state or the receiving state viewing their persecuted status as an image of shame on the persecutor, these stateless groups were seen as completely innocent. This innocence led

to their persecution and deprivation of rights: “Innocence, in the sense of complete lack of responsibility, was the mark of their rightlessness as it was the seal of their loss of political status.” (1973: 295) Unlike traditional political refugees, many of whom still enjoyed the right of asylum, stateless people had committed no crime – it was precisely their innocence that made them stateless to both the persecuting and receiving states.⁷ The deprivation of rights then in the international setting differed from a national legal system. Rather than being punished for a specific crime, the “deprivation of legality, i.e. all rights,” was easy to pursue against innocent people who had committed no crime (1973: 295).

The difficulty that Arendt undertakes is defining what it meant to be stateless: what rights are the stateless deprived of and how is that different from other forms of rightlessness?⁸ It is precisely the loss of the right to action (as Arendt understands the concept) that makes people rightless. Importantly, there is no longer a community within which the stateless group can act to resolve their situation. Rather than being deprived of specific rights, the stateless are deprived of the political community altogether: “Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.” (1973: 295-6) This plight Arendt writes is more fundamental than the loss of specific rights (freedom and life). It is a “fundamental deprivation of human rights [that] is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions

⁷ Arendt (1973: 294) does note that the stateless people often were “persecuted under some political pretext.” The number of stateless people and the reasons for their persecution became the differing elements.

⁸ Such as the criminal in jail or the soldier at war, which are deprived of their right to freedom and life, respectively.

effective.” (1973: 296) Whether they are granted privileges from receiving states, or receive only injury, stateless groups are without and not allowed any action or responsibility for how they are treated.

Stateless groups are rightless because they have become deprived of, what Arendt refers to as, the right to have rights. According to Arendt (1973: 296-7), the right to have rights “means to live in a framework where one is judged by one’s actions and opinions.” This is a political framework set up to politically address common problems amongst members holding equal standing before the law. Importantly, this right becomes notable only when we are confronted with the stateless groups that have been denied this right. The stateless, as opposed to even the slave, is not denied specific rights, “but the loss of a community willing and able to guarantee any rights whatsoever.” Arendt goes on to write, “Only the loss of a polity itself expels him from humanity.” (1973: 297) Although much of Western Europe, like France, formed a constitutional framework on the belief that human beings had certain inalienable human rights, these rights were questioned the moment these states were confronted with groups of people who had “lost all other qualities and specific relationships – except that they were still human. The world found nothing sacred in the abstract nakedness of being human.” (1973: 299) Therefore, echoing Edmund Burke, Arendt argues that human rights have become intrinsically tied to national rights and national emancipation, rather than any tradition of inalienable human rights.

Although Arendt presents a penetrating critique of post-war democratic systems concerning their traditions of human rights, Sofia Näsström (2014) is useful in examining the ways Arendt’s thought is bound up with conceptions of the democratic state. In fact,

Näsström argues that Arendt should actually be understood as a “foremost democratic” theorist (2014: 545). Näsström is correct in noting that, while Arendt is critiquing the Rights of Man, she nevertheless maintains that only a political community can guarantee human rights. In critiquing the modern political tradition, Arendt exposed the exclusion of large numbers of people that were relegated to a state of ‘natural existence’, while expressing that the right to have rights is still contingent on the modern democratic state (Näsström, 2014: 561-2). According to Näsström (2014: 556), acknowledging the capacity of democratic beings means we acknowledge that they take responsibility at the moment of a democratic founding. The principle of responsibility that Näsström locates in Arendt animates Arendt’s notion of the right to have rights: “when Arendt argues that there is no guarantee for the existence of this right except the one we provide through our own deeds she is not merely reflecting on the human condition.” (Näsström, 2014: 558) This principle of responsibility is innate to modern democracy, which shares the burden of being authors and sources of the law among equal members of the polity.

Although I believe Näsström (2014: 546) is correct in saying that the right to have rights is, in part, bound up with a conception of democratic politics, it is not animated by the principle of responsibility, which she locates in the “revolutionary shift from divine to popular right” and the formation of the modern democratic state. Rather, in her critique of Näsström, Lucy Cane rightly points out that Arendt is critical of this moment: “Arendt is critical of the forms of government erected by modern “constitutional democracies,” that is, significantly centralized systems reliant on political representation through a party system.” (Cane, 2015: 246) Arendt argues that there is a gap between the founding and legitimizing political thought (the Rights of Man) and the actualization of these laws

through the institutions of citizenship and nationality - it is in this gap that statelessness resides and remains. While the modern democratic state did become intrinsically bound up with the right to have rights and belong to a political community, Arendt also argues that it is not until the state is confronted by statelessness and rightlessness that we become aware of this right.

Although Cane (2015: 241) is correct that Näsström “does not always recognize the nuance of Arendt’s insight,” I believe Arendt is making a greater connection to the modern democratic state (the nation, in particular) than Cane gives credit. Cane (2015) argues that Näsström wrongly forms a normative basis for a right to have rights on the principle of responsibility. Instead, Cane (2015: 244) argues that Arendt is sensitive to the multifaceted and often complex way states are formed. Cane, rightly, points to more egalitarian principles that animate the right to have rights, including the legal right to be judged equally by one’s actions and opinions (2015: 246). However, while Cane is correct to point to these more egalitarian principles that move Arendt’s notion of the right to have rights away from the modern democratic state, it also ignores the way Arendt, at times, maneuvers the right to have rights back towards a notion of a homogenous public sphere. Arendt’s notion of political life (1973) is problematic here because it points to a privileging of a public sphere that denies difference and differentiation, which she argues poses a danger to the political framework built around her notion of a right to have rights. Arendt’s work centres on the confrontation perceived homogeneous nation-states have had with large numbers of differentiated peoples (the stateless). It is in this confrontation that rights and protections are no longer guaranteed for the stateless, but also reaffirmed for national citizens, as the state becomes the protector of the nation.

Arendt's historical tracing of modern political thought and the democratic state from the Greek polis to post-war Europe emphasizes the perceived dangers of heterogeneity and differentiation in the public sphere (1973: 301). The right to have rights has historically been best expressed through a public sphere which limits differentiation in order to create a functioning political community of equals. As Arendt (1973: 301) writes, differentiation (ethnic, religious, etc.) becomes dangerous to political activity as it arouses "dumb hatred, mistrust, and discrimination because they indicate all too clearly those spheres where men cannot act and change at will." The political or public sphere is where human beings have created the "framework where one is judged by one's actions and opinions." (1973: 296) Arendt argues that, while the private sphere is one of differentiation and inequality, it is in the public sphere where human beings have created equality out of political organizations, guided by a principle of justice (1973: 301). Although I agree with Cane that it is true that Arendt "evades the question of whether there is a form [of government] that could be considered truly democratic," (Cane, 2015: 246) she is ultimately concerned with the dangers statelessness poses to the political activity of human beings.

Arendt's politico-historical analysis of the post-war era revealed the importance the nation had as a guarantor of rights (even the right to have rights) but at the expense of the human rights of non-members. National emancipation had become a crucial moment for protecting human rights but remaining outside the possibility for many stateless groups and national minorities to access. Although Arendt makes a powerful critique of the state's inability to protect the rights of non-members (refugees in particular), her understanding of political life remains connected to a homogeneous public sphere, a

politico-legal framework that establishes equality before the law as legal citizens, and a common language and process of socialization (1973: 299). Since Arendt does not provide a definition of the nation, a useful distinction will be made.

Anthony Smith's (1991) analysis of the nation and national identity is useful here to see the ways Arendt's own critique remains partially entrenched in the state-form and nationality. He distinguishes the civic-territorial (Western) model of the nation from what he refers as the ethno-genealogical (Eastern) model, but while the Eastern model places greater emphasis on birth and myths of common descent (1991: 22), the Western model maintains a strong connection to territory, culture and language (1991: 40). Although they remain separate in his analysis, Smith does provide what he calls a "provisional working definition" of the nation that is useful in revealing its multifaceted and often complex and abstract nature:

A nation can therefore be defined as a named human population sharing an historic territory, common myths and historical memories, a mass, public culture, a common economy and common legal rights and duties for all members. (1991: 14)

Importantly, the nation is different from the state, which Smith notes, refers to the public institutions and the "monopoly of coercion and extraction within a given territory" (1991: 14). The nation signifies a bond of solidarity and shared culture, both political and social, among members. This is different from the more civic notion of citizenship, which, Smith argues, carries a legal distinction, access to both social and political rights and, crucially, inclusion "irrespective of ethnic origins." (1991: 118) However, while it holds a prominent place in the civic-territory model of the nation (a defining aspect of membership), Arendt argues that post-war Europe saw the conquering of the state by the

nation.⁹ The appearance of refugees and stateless migrants, left out of any polity, became rightless because they could not access membership to a particular political community. National membership had become nearly synonymous with the rights of citizenship, as the state no longer saw itself as protector and guarantor of the rights of non-nationals (Arendt, 1973: 275).

This, however, did not happen as a dramatic turn in the relationship between the state and the nation. Arendt argues that the Western model has predominately developed as a relatively homogeneous political community because political activity, as she understands it, is the action of becoming equal out of universal differentiation:

Our political life rests on the assumption that we can produce equality through organization, because man can act in and change and build a common world, together with his equals and only with his equals. The dark background of mere givenness, the background formed by our unchangeable and unique nature, breaks into the political scene as the alien which in its all too obvious difference reminds us of the limitations of human activity. (1973: 301)

A framework of political institutions is meant to do two things: first, it creates equal citizens that are directed toward common political problems and have equal standing before the law, while also allowing them an effective voice and recognized opinions.

⁹ Here Arendt's statement does not directly reflect most contemporary states in Western Europe. As Soysal (1994) notes, the expansion of human rights regimes (like the European Convention on Human Rights and the International Convention on Civil and Political Rights) and greater accommodative, multicultural policies developed by some states have perhaps extended citizenship rights to immigrants, thereby challenging the exclusivity of citizenship. While I believe Soysal and others to be, to some extent, right in their analysis, I also argue that Arendt's statement provides a useful reflection of member/non-member relations and the relationship between the state, the nation and perhaps the post-national constellation, particularly in explaining the relative dominance of the state-form and its continued privileging of a particular nation.

Second, according to Arendt, it divides the public sphere (one of equality and political activity) from the social world, which is marked by difference.¹⁰

Importantly, Arendt connects political life with the nation-state's perceived homogeneity. While difference cannot be erased, the Western model does insist on having ethno-cultural homogeneity that overcomes (or eliminates to some extent) "those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination because they indicate all too clearly those spheres where men cannot act and change at will." (1973: 301) Equality then is established and maintained by stable political institutions which provide equal membership to the national community. However, while Arendt maintains a concept of an homogeneous public sphere, it would be wrong to believe that she leaves no room for contestation, or the rearticulation of what members hold as the common world.

Here I agree with Ayten Gündogdu's (2015) analysis of Arendt's notion of the political and the importance of politicization. Although Arendt (in *The Human Condition*) separates the political and the social, Gündogdu (2015: 56-57) argues that Arendt still leaves room for issues to cross between the two separate spheres. This means that social issues, such as housing or employment, can become politicized precisely when they are translated as common political problems concerning equality and freedom. Gündogdu refers to this as 'politicization' because politics, for Arendt, or our political life, rests on producing "equality through organization" (Arendt, 1973: 301). Gündogdu notes that this

¹⁰ Jacques Rancière (2004) provides a critique of this perceived division of political and social issues in Arendt, as do Butler and Spivak (2010), while Gündogdu (2015) attempts to resolve this division through a discussion of politicization.

idea of politics encompasses a framework of political institutions that equalize difference (2015: 56).

There is a tension here between how Arendt theorizes action and how she understands political community. Although human action is individual, it is strongly tied to a cultural-political community, which help to form and direct our speech. Arendt argues that action “is highly individualistic, as we would say today.” (1958: 194) Action and speech, according to Arendt, are individualistic in the sense that they stress self-disclosure and are oriented toward distinguishing the agent. However, while this serves to establish relationships amongst distinguished agents in a political community, it also features an “inherent unpredictability” (1958: 191). This unpredictability stems from an inability on behalf of the agents to take complete control of the meaning of their actions. Not only can agents not predict the exact outcome of their actions in the world, but there are unintended consequences to the processes we set in motion. As Margaret Canovan very rightly notes in her introduction to *The Human Condition*, Arendt is as concerned with the dangers of action as she is in celebrating human activity (1958: xix). Lucy Cane helps illuminate how Arendt gets past this inherent unpredictability that would seem to incapacitate any attempt to form a stable political community. Cane argues that the principles that animate action in Arendt are “historically embedded sources of inspiration, which can be preserved in institutions and cultural artifacts.” (2015: 244) Action is anchored to a cultural-historical understanding of politics.

While Cane is right to note that these principles, according to Arendt, are both historically embedded and open to contestation and re-articulation, she does not recognize the tension located in Arendt: namely, that while the political community

forms historically embedded and stable institutions (which I connect to Smith's conceptualization of the nation), action and speech, for Arendt, are the building blocks of what she refers to as the space of appearance, which is fluid and dependent on the gathering of individuals forming a common world (1958: 198-199). Action and speech, Arendt writes, "create a space between the participants which can find its proper location almost any time and anywhere." (1958: 198) Arendt refers to this as the space of appearance because it is where individuals make their "appearance explicitly." (1958: 199) This space predates and precedes the public sphere and the formation of government as it exists between individuals whenever individuals engage in action and speech. Therefore, Arendt locates the animating principles of this basic human activity in the spaces where individuals are able to gather and speak (not generally, but to create a common world). However, although this would point to a certain level of fluidity to action (as it appears and reappears where individuals gather together), the processes action and speech set in motion (namely the formation of governments and the creation of stable political institutions and a public sphere) are contingent on an 'actualization of power.' (1958: 200) Power, for Arendt, is not as basic as action and speech, but must be actualized to keep individuals living together (1958: 201). Different from violence or strength, power is dependent on the agreement of many people in the community even "after the fleeting moment of action has passed." (1958: 201) However, it is Arendt's conceptualization of power that connects action back to her less fluid notion of political life that relies on an homogenous public sphere. Tied to action, power is both particular and conditional on individuals gathering together, but it also keeps the public sphere in existence (1958:200). Action and speech are dependent upon power to remain, as it is

what binds people together within this public sphere. However, Arendt argues that political life is the production of equality through organization, where individuals create a common world (1973: 301). This common world, where individuals do not simply live in close proximity, but as Cane rightly points out, share cultural-historical understanding of politics, is what keeps power from fading and people tied together.

The Human Condition and Action

I argue that both Arendt's idea of a right to have rights and conceptualization of statelessness are best understood through her understanding of human activity – namely, political activity, or action. In *The Human Condition* (1958) Arendt proposes to reconsider what she calls the human condition and writes, this “is nothing more than to think what we are doing.” Human activity, she argues, can be understood as three fundamental spheres – labour, work and action. They are fundamental because they are “those activities that traditionally, as well as according to current opinion, are within the range of every human being.” (1958: 5) Labour corresponds to the biological reproductive life of human beings and the human body. It connects to familiar life, which is stable and no longer precarious. Work, Arendt writes, “corresponds to the unnaturalness of human existence.” (1958: 7) It is the artificial world, in which human beings live, that is different from the natural world and meant to “outlast and transcend” even human life.

Although all human activities are conditioned by “the fact that men live together...it is only action that cannot even be imagined outside the society of men.” (1958: 22) Action corresponds to the human condition of plurality because, as she writes (1958: 7), “men, not Man, live on the earth and inhabit the world.” It is the condition of

all political life and where Arendt views man as completely separate from animal, but also, crucially, where the world is co-established through political community and organization. I believe Serena Parekh (2004) helps clarify a possible tension existing within Arendt's assessment. As Parekh (2004: 47) writes, plurality, according to Arendt, is two-fold: equality and distinction. Since action cannot happen without a society of human beings, we become equal (not inherently or before God) through communication and political activity. There is a recognition and understanding of words and actions. However, Arendt argues that, if all human beings were endless duplicates, there would be no need for either communication or action. Action requires communication within a society of human beings. Speech, which is a basic condition of human existence, follows action, without which, one would cease to be a human being (Arendt, 1958). Action and speech form the framework to allow human beings a sphere for meaningful opinions and actions.

Understanding what Arendt means by action is crucial to unpacking her idea of a right to have rights. However, I argue it is in her discussion of statelessness where she contends that one becomes truly rightless (being deprived of the right to have rights), not only from being removed from a particular polity, but at a more fundamental level, when one's action is ultimately restricted. Action has two components in this case: who we are and the community.

Parekh is useful here to help distinguish how Arendt understands the role of the individual within the community. First, she distinguishes, within Arendt, human and civil rights (2004: 44-45). Stateless groups are deprived of their civic rights (any specific right guaranteed by the state), but it is the loss of the political framework or community in

which to act that makes them rightless. Stateless are refused the ability to shape the common world in the public sphere. Arendt refers to this as being expelled from humanity, as it is the loss of one of the three fundamental activities of human beings, action. Since civic rights are those protected by the state, statelessness reveals groups of people who are deprived of more than these civic protections. Arendt argues that we can lose specific rights without becoming deprived of the right to have rights but once we are deprived of our community and are standing as equals, we are deprived of the fundamental aspect of human beings - action. We can be deprived of our right to freedom and even our life without becoming completely rightless (1973: 295). Arendt notes that the breakdown in a notion of human rights occurred when we were confronted with people “who had indeed lost all their qualities and specific relations – except that they were still human. The world found nothing sacred in the abstract nakedness of being human.” (1973: 299) After the historical strata of society or divine right as the foundation and source of our laws, the very essence of man as this source also broke down. In the context of statelessness, the loss of the polity (our political community) meant being thrust into a state without, not just civic rights, but also humanity. Stateless groups were confronted with the fact that only national political communities were able to guarantee and protect the right to have rights of their national citizens.

Importantly, Parekh helps, in part, to free the individual from the community within Arendt by pointing to *The Human Condition*. Arendt (1973: 294) argues that we are deprived of the right to have rights when we are limited to what we are, rather than what we believe or do. What we are is an essentializing recognition by others – we are black, we are woman or Jewish. Parekh (2004: 45-6) distinguishes this as ‘who’ we are

and ‘what’ we are. We lack the ability (our actions) to create a self that transcends the essential qualities we are prescribed. Put differently, we lack the ability to individualize ourselves through meaningful speech and action. Parekh (2004: 46) writes, that when one is recognized solely through one attribute (being black, Jewish, etc.), “all his actions are explained as a necessary consequence” of that attribute, “then he has lost the fundamental right of being able to act in a meaningful way.” On the other hand, human action requires the framework to form meaningful opinions and thoughts and for those opinions and thoughts to be recognized. This requires a political community.

Conclusion

In this chapter, I argued that Arendt’s understanding of action and human rights is crucial to understanding her conceptualization of statelessness. These three ideas are bound up together in her critique of modern democratic thought. In Arendt’s discussion of statelessness, the ability and power of the state becomes a central focus. Although the French and American Revolutions proclaimed men as having inalienable rights by their very essence of being human beings, Arendt argues that the presence of statelessness, those human beings thrust out of a political community, revealed these rights to be guaranteed and protected only by our national governments. However, this does not mean that Arendt is connecting her idea of a right to have rights with the modern democratic state. Although it is bound up with the democratic state, the right to have rights is derived from political community and human action. Actions are a basic building block of humanity as they build a framework to form and share meaningful opinions and thoughts as equals. The modern state has provided such a framework, but has found it difficult to

expand Arendt's idea of a right to have rights to non-nationals, minorities and the stateless.

In the next chapter, I look at the ways Arendt's themes of human rights, state power and statelessness are picked up by other democratic scholars, including Jürgen Habermas and Iris Marion Young. I ask, as notions of citizenship and national belonging are transformed, how does this change how we conceptualize statelessness? What is the relationship between human (individual) rights and state sovereignty in the age of the European Union? Has Arendt's notion of action been transformed by multi-levels of governance and community in Europe? And importantly, what roles do minorities and stateless have to play in proclaiming their human rights?

Chapter 2 – Migrant Rights and Liberalizing States in Europe: A Literature Review

In the previous chapter on Hannah Arendt's work, I made two arguments: (1) statelessness, in the form of having one's access to a political community restricted, has played a major role in shifting notions of human rights and (2) our conceptualization of political activity is caught in a tension between defining it as intrinsically related to the nation and the state on one hand and as defining it as a more basic human activity on the other hand. This chapter continues on these lines of thought by extending Arendt's theorization of a right to have rights to contemporary debates concerning migrant rights, the politics of membership, post-national constellation, differentiated citizenship and minority rights.

This chapter assesses the theoretical and concrete issues at work in Europe and provides a bridge that connects my assessment of Arendt's theories to my later chapters on the European Union (EU) and the Roma communities in Europe. I argue that Arendt has usefully opened up for us a politico-historical discussion on statelessness in Europe, which alerts us to significant issues concerning the changing dynamics of membership, migration and (human) rights. In this chapter I provide an interdisciplinary literature review that examines the theoretical and concrete ways that contemporary scholars pick up on Arendt's work on statelessness and political activity. I discuss significant contemporary issues that, while relating back to Arendt's concerns, are also indicative of the shifting pressures of what Jürgen Habermas refers to as the post-national constellation. It is important to note that this chapter does not attempt to distinguish or analyze state power in terms of international relations or interstate bargaining at the elite level, but examines what Rogers Brubaker depicts as the "policies and politics of

citizenship vis-à-vis immigrants.” (1992: 3) This analysis I argue must be extended to the issue of membership of those excluded from formal (legal) citizenship, as well as to the issue of those who face multiple levels of discrimination as members of a polity. The problem this chapter addresses is not whether the state has or has not remained the primary actor on the world stage. The questions this chapter addresses are: what has altered the state’s conceptualization of membership? Has the state liberalized its membership and integration policies? And has the post-national constellation created a space for political activity beyond the nation-state?

Membership and the Nation as Object of Social Closure

Arendt’s (1973: 275) provocative claim that the nation has triumphed over the state has become tentative in two ways: first, it shows a lack of appreciation of national differences concerning immigration and integration policy, which may be converging toward a broader liberal form of membership policy and second, it does not account for the advent of international treaties on human rights and statelessness. However, Arendt’s analysis of post-war statelessness remains useful as it notes the ineffectiveness of abstract and universal claims of human rights (where human rights are claimed on the basis of being a human being rather than as member of a polity).

Arendt’s analysis of post-war statelessness does provide an interesting addition to Rogers Brubaker’s conceptualization of citizenship. Brubaker (1992) argues that citizenship, understood as the legal and social status that distinguishes members from non-members (or aliens), is both an instrument of inclusion and closure. Citizens, then, are guaranteed certain rights and duties, such as entry and residence, while even so-called privileged non-citizens may be excluded from such rights in exceptional circumstances

(1992: 24). Brubaker rightly points out that the state is not simply a territorial organization, but a membership organization. The status of citizenship, distinguishing the rights and obligations of members, establishes a “region of legal equality.” (1992: 21). However, as Brubaker notes, “mere presence” in the state does not count as membership (1992: 25). The state is, on one hand, territorial in that it controls (to a certain extent) the flow of people across its border and on the other hand it is also a nation-state, which Brubaker argues is the much less tangible, but nevertheless concrete way of defining membership:

The nation-state is not only, or primarily, an ethnodemographic phenomenon, or a set of institutional arrangements. It is also, crucially, a way of thinking about and appraising political and social membership. (1992: 188)

The nation-state, Brubaker rightly points out, is a lens for determining membership – one that is both historically contingent and contestable. The nation-state claims to be the state for a certain people (rather than for everyone in the state). Brubaker writes, citizenship acts as an object of closure as it is a “status to which access is restricted.” (1992: 31) Brubaker echoes Arendt to some degree, when he maintains that the nation provides the most restrictive definition of membership in the context immigration policy. However, he also maintains that Arendt fails to appreciate the differences in how this social and political closure can be put into affect.

It is difficult to discern from Arendt’s analysis (in *The Origins of Totalitarianism*) whether the states that make up Western Europe have different immigration and integration policies (definitions of membership). Her critique is focused on the role statelessness has played, generally, in distinguishing members from non-members and the equivocal nature of human rights. However, Brubaker (1992) makes an important claim:

while the state has the ability to differentiate members from non-members through the legal institution of citizenship, this boundary is different for different states. France and Germany, according to Brubaker, have become synonymous with different immigration and integration policies based on different conceptualizations of the nation (or nationhood).¹¹ Brubaker's analysis provides a unique view of how a state's historical and cultural development has shaped its definition of citizenship. France, according to Brubaker, has historically defined its nation in a state-centred and assimilationist manner. France developed a strong nation-state and institution of national citizenship that galvanized through the French Revolution. Germany, on the other hand, has an ethnocultural (Volk-centred) and differentialist way of thinking of the nation-state (1992: 16). Germany's much more restrictive definition of citizenship has developed from an understanding that ethnocultural membership is distinct from state membership (1992: 51). The codification of citizenship in Germany was fragmented through different linguistic understandings of membership and different regions.¹² While France developed assimilationist policies that sought to make national citizens out of residents within the French territory (or descendents of residents), Germany on the other hand, formed a more

¹¹ What Brubaker refers as the idiom of nationhood, which is the way of thinking and speaking about membership and the nation. Brubaker's analysis is insightful, as he argues the state's politics of membership has developed through these idioms of nationhood, which "are ultimately rooted in political and cultural geography; and they are proximately rooted in, and reinforced by, experiences and practices that, while linguistically mediated, are not reducible to speech acts." (1992: 16).

¹² France and America, especially, were founded on revolutionary moments that brought conceptual clarity to their definitions of membership. Germany, on the other hand, had little unity in these terms: "The semantic differentiation in Germany reflects the independent and sometimes antagonistic course of state-building, nationalism, and democracy in Germany." (1992: 50) One of the first attempts of codifying membership in Germany occurred in 1842, but was concerned with Prussian subjects, rather than German citizens. There was no national German citizenship until 1871.

exclusionary understanding of membership “attributed only to descendents of German citizens” (1992: 72). The initial distinction between the nation and state in Germany “gave to the later nationalization of citizenship a specifically ethnocultural dimension” (1992: 52). And unlike France, the cultural idiom of the German nation lacked a strong territorial bond, as it was more independent of any institutional state character. However, the politics of membership, Brubaker rightly highlights, is not incontestable or stagnant. The state’s politics of membership has developed through what Brubaker refers to as the idiom of nationhood that is contestable and shaped by historical settings.

Both Christian Joppke (2010) and Triadafilos Triadafilopoulos (2012) argue that most Western states, and Germany specifically, have adopted more liberal and (sometimes) multicultural policies of membership and integration. This helps point to a conceptualization of membership (and importantly the politics of membership) as contestable by both member and non-member actors. Since the Second World War, much of Western Europe, including Germany, has gradually introduced more open policies of membership, such as dual citizenship,¹³ lowering of naturalisation requirements and, importantly, the introduction of *jus soli* (Joppke, 2010: 31). Brubaker (1992) is useful in understanding the difference (and often overlap) between *jus soli* and the more restrictive form of membership acquisition, *jus sanguinis*. Membership is acquired by birth under policies of *jus soli* (found in the Americas and Britain), while membership can only be acquired through differing naturalisation practices in a *jus sanguinis* system (1992: 81).

¹³ The 1999 Nationality Law and its reform in 2007 has allowed for some instances of dual citizenship. Germany maintains a principle of avoiding dual citizenship, except in cases of where the actor already holds citizenship from another EU member state or Switzerland or in other exceptional circumstances (i.e. the high cost of renouncing citizenship from other countries).

Although France does maintain the principle of *jus sanguinis*, it differs from its practice in Germany. France, with much higher rates of membership acquisition, automatically attributes membership to anyone born in France when they turn eighteen (provided they are residents of France for the last five years). France also allows certain elements of *jus soli* as anyone born in France with at least one parent also born in France automatically receives membership (1992: 81). In Germany, birth and residence play little or no factor in membership acquisition, resulting in much less cases of naturalisation and membership of immigrants and children to foreign-born parents (1992: 82-83). However, as Triadafilopolous (2012) rightly points out, Germany has slowly liberalized its membership policies for two important reasons: the large-scale program of guest workers, after the Second World War, resulted in the presence of foreign-born labourers and their families in German society, and the changing global normative context brought on by the Holocaust, decolonization and an international human rights regime.

Triadafilopolous presents a unique and useful conceptualization of a global normative context that acts to converge membership policies for liberal democratic states. Building off the notion of a “global culture” of the Stanford School sociologists, Triadafilopolous (2012: 6-7) argues that membership policies, in Canada and Germany specifically, became more open and less discriminatory due to global commitments to human rights and anti-racism. Liberal democracies found it difficult to legitimize their discriminatory membership policies due to a changing global normative context, which states desired to “fit” in (2012: 7). The post-Second World War era in Germany was marked by quick economic growth, low unemployment (for a time) and a large influx of foreign workers. However, it was also marked by its recent history of National Socialism,

the Holocaust and the rise of a new international community dedicated towards human rights (2012: 52). Importantly, Triadafilopolous argues that the global normative context was shaped by an array of documents and institutions, such as the Preamble of the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention on Human Rights (ECHR) and the developing European Community (2012: 53-55). This context shaped Germany's membership policies, in the face of growing numbers of guest workers, refugees and German citizens coming into West Germany. Although membership policies were still largely dictated by its *jus sanguinis* system (due to its desire to appear as a united nation-state), Germany's Basic Law reflected the growing importance of universal human rights (2012: 74). An important aspect of this global normative context was the respect for individual rights and dignity as opposed to group or community rights, which were largely seen in connection to the "discrediting of scientific racist discourse." (2012: 53) The large number of migrant workers (and their families) presented a difficult and politically contentious situation in Germany due to their more restrictive membership policies. Proponents of *jus soli* and other forms of liberalization noted the division between Germany's commitment to distancing itself from recent history and establishing a rule of law that respects individual rights and dignity and its restrictive membership policies that favoured descent. The 1999 Nationality Law and its subsequent reforms (such as in 2007) have introduced notions of dual citizenship and *jus soli* as to confirm Triadafilopolous' claims.

The (Post) National: Beyond National Membership?

This discussion of the liberalization of membership policies brings out an important debate: have we entered a post-national constellation that has weakened the

functions of the nation-state or not? The Universal Declaration of Human Rights might provide a useful starting point because it highlights two significant points: first, it reasserts (from the Rights of Man) the inalienable rights of each individual:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (United Nations)

The rights outlined and defined by the United Nations are attributed to all human beings, regardless of sex, race, religion, etc (“distinction of any kind”). This provided the early framework for an international human rights regime that could be seen as imposing on state sovereignty and its functions. However, these human rights are not independent of the political and legal protections of both the state and the international community. The second point that the Declaration brings up is found in Article 15:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. (United Nations)

The Declaration maintains the integrity of the individual found in the Rights of Man, but establishes that human rights ought to be protected by the rule of law, affirmed by the international community of states. Joppke (2010: 27) is correct to argue that this signals a potential loss of sovereignty for states as they have lost absolute discretion over their membership policies (nationality was never before a right). In the post-Second World War era, human rights have entered the politics of membership. However, Joppke underestimates the function and abilities of the state, in particular, the influence and role of the nation in determining the politics of membership.

While Triadafilopolous argues that the liberalization of Germany’s membership has come about because of the influence of the global normative context, its slow

development occurred around what Brubaker would refer to as the idiom of nationhood. Brubaker understands the nation as a lens through which to understand the politics of membership. The nation plays a vital role not only in distinguishing members from non-members, but it also provides a discursive framework in which actors engage in political debate and discussion. How actors define, describe and understand the nation plays a role in how membership is shaped and contested. Triadafilopoulos (2012: 121) argues that the liberalization of Germany's membership policy was "a slow and fractious affair" due to contentious debates over the nature of German nationhood. Conservative elements of the media and members of the Christian Democratic Union (CDU) and Christian Social Union (CSU) were in favour of maintaining *jus sanguinis*, while emphasizing programs to return migrant workers to their country of origin over naturalization (2012: 127). Importantly, in the 1980s (in the led up to the 1999 Nationality Law) the CDU and CSU (along with conservative elements of the media) articulated the political debate over membership and integration reform around a conception of a homogeneous German nation threatened by the instability of foreigners:

Incendiary concepts such as *Überfremdung* (foreignization) were granted a renewed legitimacy by mainstream conservatives and used to mobilize public political support for tougher policies on asylum and family reunification. Repeated references to "floods" of asylum seekers and threats to "German ways of life" in the print and broadcast media reinforced negative views of foreigners, transforming migration from a rather minor political issue in partisan terms to a matter of utmost importance. (2012: 126)

Naturalization, in these debates, became a key issue as it meant access to the German nation. The CDU and CSU argued that naturalization was meant for already successful integration, rather than as a catalyst to facilitate integration (2012: 127). The politics of

membership in Germany became contested on the grounds of nationality and successful assimilation into the Germany nation, rather than on civic-territorial grounds.

Walker Connor's analysis of the ethnonational bond helps to flush out how nationalist leaders (in the case of Germany, the CDU and CSU) rally the people by appealing to myths of common descent and blood (1994). Connor argues that while the nation is made up of certain objective criteria (e.g. language, religion), it also draws on the use of such criteria to form an ethnopsychology of shared blood, common origin and evolution (1994: 197). The CDU and CSU share a trait common among nationalist groups. They have infused the nation with a sense of kinship, which appeals to an emotional fear of losing the "German way of life" to "floods" of non-Germany refugees (2012: 126). Walker argues that this gives national identity an "emotional depth" (passion) that is lacking in other forms of identification, including patriotism to the state (1994: 206).

Critics of Germany's existing membership policy included the Greens, Turkish and other immigrant non-governmental organizations, Church activists and segments of Social Democratic Party. Even the CDU supported greater multicultural policies grounded (in part) on a civic-territorial notion of membership (2012: 136). These policies (such as *jus soli* and the recognition of cultural rights of migrants) were defended as making Germany more in tune with contemporary migration and integration issues and in line with membership and asylum policies of other European states. The large number of migrant workers and, after the fall of the Berlin Wall and the collapse of the Soviet Union, the large numbers of refugees, contributed to a fairly widespread acceptance in Germany of reform membership policy. Triadafilopoulos notes an important discursive

shift from these critics: “The Greens...sought to change the language of migration politics and were the first German political party to consistently refer to former guest workers as “immigrants.”” (2012: 136) A concerted effort was made to incorporate immigrants and the children born of foreign-born parents as members of the German polity rather than as constant outsiders. However, as the critics of *jus sanguinis* argued that Germany required more robust naturalization capabilities, the CDU and CSU placed greater attention on Germany’s asylum policy (2012: 137). They also presented a contemporary vision of German nationhood. They argued that it was time Germany put the shadow of the Second World War and National Socialism behind them and make Germany a “normal” country once again (2012: 126). Germany’s asylum law (Article 16(2) of the Basic Law) became a contentious issue for the CDU and CSU, whose conservative elements argued it contributed to large numbers of unassimilated refugees.¹⁴ While they were welcoming to *Aussiedler* (the German migrants coming into the country in the 1980s and 1990s), they sparked fear of other asylum seekers as criminals or welfare abusers (2012: 138).

There were two major points of contention for the CDU and CSU: first, they argued that the right of asylum was in direct conflict with state sovereignty, which ought to be in complete control over its membership and border policies. Notions of a strong German nationhood were rearticulated against what was perceived as open membership policies, which would weaken the stability and cultural homogeneity of the nation. Secondly, they opposed not only greater *jus soli* policies, but also any attempt to introduce dual citizenship, even for second and third-generation foreigners. German

¹⁴ The Article states: “Persons persecuted on political grounds shall have the right of asylum.” (2012: 137)

citizenship was viewed as a right of membership in the German nation. Although, by the early 2000s, reform (to one degree or another) of Germany's membership policies was nearly universally acknowledged by politicians, it was nevertheless articulated on what German nationhood ought to mean.

The (Post) National: Universality, Deterritorialization and the Post-National Constellation

If Germany illustrates the ways in which the 'idiom of nationhood' functions today, where does the term, the 'post-national constellation' come from and what does it mean? Jürgen Habermas (2001) and Yasemin Soysal (1994) provide the most compelling cases for understanding post-national membership and political activity. Post-national membership (Soysal) and the post-national constellation (Habermas) are ambiguous and often complex conceptualizations of contemporary life, resulting from the presence of large numbers of non-nationals and an international human rights discourse and institutional framework (Soysal, 1994), as well as transnational networks of communication, culture, technology and business (Habermas, 1998). Soysal provides a useful starting point because she points out an important contradiction at the heart of the post-Second World War era:

Consider two institutionalized principles of the global system in regard to immigration: national sovereignty and universal human rights. Celebrated and codified in international conventions and treaties, these principles form pivotal components of postwar international migration regimes. (1994: 7)

State sovereignty is upheld as the primary ordering principle of the global system (the state's control and regulation of its own territorial border), while the notion of human rights was designed to expand its responsibility over non-national residents (constraining

the exclusivity of national citizenship). The establishment of global human rights norms by the international community of states (through the United Nations) is a crucial foundation for Soysal's conceptualization of post-national membership.

Arendt's analysis of statelessness pointed to significant problem of unrestrained state sovereignty over membership policies, which Soysal argues has gradually become more open and inclusive due to the large presence of non-nationals and other migrants, the growing inter-connection and inter-dependence of states on the global scale and the international human rights norms established by the United Nations (1994: 144-145). However, rather than being incorporated into a system of membership rights based on nationality, Soysal argues that national citizenship has become less important. Instead, membership of non-nationals and migrants has been established on the basis of universal and deterritorialized notions of personhood (1994: 136). Since Arendt, membership on the basis of nationality has become less pertinent and become more open, especially to the presence of guestworkers and their families.

In an early critique of the UN's Declaration of Human Rights, Arendt (1949) argued that its conceptualization of human rights remained firmly entrenched in thinking of human rights as universal and alienable. It failed to consider the perplexities of human rights brought about by the problem of statelessness. She argued the Declaration corresponded to a troubling "lack of reality" (1949: 37). Christoph Menke (2007) is correct to point out why Arendt thought this: "Arendt's objection to the declarations of human rights, claiming they exhibit a conspicuous lack of reality, attests to just this: they are of the order of an "ought," to which no "can" corresponds: no capacity for action or realization." (2007: 741-742) The UN could not properly enforce the Declaration because

it was not a polity. There was no space for politicization and the political activity of members to acknowledge and contest their conditions or the Declaration itself. Arendt argued that the nation-state's failure to live up to the notion of human rights found in the Rights of Man illustrated the perplexities located in a universal conceptualization of human rights. As Menke notes, statelessness marked the breaking down of human rights as universal human rights within the nation-state system (2007: 743). However, the combined effects of global human rights discourse, a conceptualization of universal personhood and the presence of large numbers of non-nationals have contributed to a wider and deeper transformation of human rights than perhaps Arendt was able to recognize.

Soysal makes a compelling case that the presence of large numbers of guest workers in Germany (and elsewhere around Europe) and the expansion of global human rights norms has contributed to weakening national citizenship, in favour of a more universal conception of membership that is anchored in a notion of legal personhood (1994: 3). Post-national membership, as she refers to it, has allowed for greater incorporation of migrants and other non-nationals that is outside the traditional form of national citizenship. The incorporation of, primarily Turkish guest workers in Germany, provides a concrete way of seeing the transformation of membership that is envisioned in what Soysal refers to as the "postwar discourse on rights" (1994: 42) or as Louis Henkin more broadly defines the time period as "the age of rights" (1990). Human rights, founded in the Declaration and the refuting of scientific racism, have been taken up as a key feature of global political culture, constituting a wider discourse found across international agreements and conventions (1994: 43). Importantly, Soysal points to a shift

from national citizenship to legal personhood, which has allowed for greater incorporation of migrants and non-nationals into the system of membership rights, as well as other public bodies, such as unions, associations and schools (1994: 31). This notion of a universal and legal personhood is enshrined in the Declaration, as well as the International Covenant of Civil and Political Rights and the European Convention of Human Rights. States have the responsibility to protect the individuals within their territory, including ensuring their rights to employment, security, fair and proper working conditions, etc (1994: 145).

However, state governments may work to restrict entry and residence of migrants and non-nationals and legalize the distinction between members and aliens (1994: 120). Here, James Hollifield's notion of 'embedded liberalism' may be useful to expanding on Soysal's concept of post-national membership. Hollifield (1992) argues that a legal and political culture, he refers to as 'embedded liberalism' constrains state action in terms of immigration and integration. Hollifield (1992: 3) points to a tension in liberal democracies: maintaining the stability and legitimacy of the nation-state and the liberal tenet of individual rights and the rule of law. According to Hollifield, states have had and will continue to have difficulty restricting immigration and membership due to embedded individual rights (of personhood) in national constitutions and international agreements and enforced by national courts (1992: 35). In terms of immigration, Hollifield and Soysal (1994: 120-121) agree that while most European states have restricted immigration since the 1970s, it has continued through a policy of political asylum and family reunification primarily. While in terms of membership rights and integration, migrants and non-nationals are not 'rightless' (as Arendt might write) but have recourse

to legal and political protections and rights, such as equality before the law and due process (Hollifield, 1992: 27).

This conceptualization of post-national membership is important, I believe, for two reasons: first, it points to a notion of human rights that is no longer dependent on the nation-state, but still remains entrenched in a discourse of universal human rights and second, it provides agency to the migrants or non-nationals themselves for this transformation of membership. The presence of migrants and non-nationals, Joppke writes, is important as liberal democracies “require the congruence between rulers and ruled.” (2010: 31-32) Nationality has become less of a basis for membership due to the large number of residents who have been born or raised in other countries. Post-national membership also specifically points to not just top-down liberalizing of membership, but as Soysal is correct to note, the organizing and incorporation of migrants in the political and economic spheres of the state (1994: 85). As the global human rights discourse took shape, migrants (including organizations representing migrant rights – be they cultural or economic rights) had “vocabularies of action” to push for greater incorporation into the system of membership rights.

However, post-national membership, as Soysal discusses it, becomes problematic even as it opens up the potential for greater, or more open and inclusive, political activity. A universal model of membership, which Soysal (1994: 3) described as “anchored in deterritorialized notions of persons’ rights,” is problematic for two reasons: first, as Brubaker (1992) reminds us, membership in the Germany approach, is divorced from territory. To be German was defined by descent and sense of shared origin, rather than “mere presence” in the territory. Membership, to a certain degree, is already

deterritorialized. Secondly, both Martin A. Schain (2009) and Ayten Gündogdu (2015) helpfully illustrate the ways in which states remain the predominant agent in international relations and in maintaining restrictive membership policies in the presumed ‘age of rights.’ Although Hollifield and Soysal argue that the state has lost many of its functions concerning membership, there are ways the state has reterritorialized the politics of membership. Schain (2009) argues that, while European states have had difficulty controlling certain aspects of immigration, including family reunification and political asylum, the member states of the European Union have used the organization’s chief intergovernmental body (the European Council) to implement more restrictive controls at national levels. Often, these restrictive policies are justified at both the national and European levels by security concerns brought on by an ‘asylum crisis’ and are formed at the European level in order to by-pass national courts and non-governmental organizations (2009: 103).

Gündogdu (2015) is useful in noting the ineffectiveness of personhood as a category for more open and inclusive membership. Although migrants may never lose this distinction, states have slowly normalized border controls and security and police abilities, including immigration detention and deportation, or as Saskia Sassen (2014) refers to it as, ‘expulsion’.¹⁵ Gündogdu (2015: 19) makes the point that, while the

¹⁵ It appears Gündogdu and Schain have more in common, in that they privilege the state as the main actor in restricting membership policies and increasing the detention and deportation abilities of border controls. Sassen (2014), on the other, points to the abilities of, what she refers to as ‘predatory formations,’ which are the diverse and dispersed economic, financial and technological assemblages that make up the twenty-first century. These assemblages are often largely independent of state control and function across territorial boundaries without regulation, resulting economic, environmental and material expulsions. While Gündogdu argues that one’s legal personhood continues on pass detention and deportation, Sassen points to a deprivation of not just legal recourse, but

international community has set up the category of universal personhood as a protective category for asylum seekers, they have failed create a strong legal framework at the international level to protect and provide “robust guarantees of personhood” to individuals facing detention and deportation (those deemed rightless as they have not been provided any legal recourse). An insightful component of Gündogdu’s argument lies in explicating Arendt’s notion of rightlessness as a “fundamental condition denoting the precarious legal, political, and human standing of migrants.” (2015: 93) Understanding rightlessness as a condition rather than an absolute loss of rights provides necessary context to what could be deemed a paradox: individuals are deprived of their rights in an age where human rights proliferate around the international community. Gündogdu does not provide a full refutation of personhood. Rather, denoting it as a precarious condition provides the grounds for exposing the tension between, on one hand, providing migrants equality before the law and allowing migrants to make right claims and on the other, allowing these claims to go unheard. This points to a relationship between certain migrants, the nation-state and the international community that is largely undefined, unstable and unequal.

This relationship is taking shape in what Jürgen Habermas (2001) calls, the post-national constellation. There are three points of interest: how does Habermas’ conception of the post-national differ from Soysal’s? What is the post-national constellation and why is that important? And, how does Habermas conceptualize the potential for political activity within this post-national constellation? First, Soysal argues that the presence of large numbers of migrants and non-nationals and the proliferation of global human rights

possibly, death. For Sassen (this will connect to Habermas) the state plays the role of caretaker for these complex assemblages.

norms has profoundly altered the politics of membership towards a more open and inclusive manner. Habermas' analysis, on the other hand, focuses on the damaging effects globalization has had on state sovereignty. While Soysal's analysis might be reflected in David Jacobson's claim that, "[t]ransnational migration is steadily eroding the traditional basis of nation-state membership, namely citizenship" (1996: 8), Habermas is more interested in understanding the ways political activity has become hindered or diminished by transnational economic, technological and cultural communication networks. For Habermas, migration has not altered membership, but is itself a consequence of a wider and deeper political-economic transformation. Nation-states are "opening" themselves to an economically driven world (2001: 61). Habermas maintains the term, 'nation-state' as it denotes the ways the democratic process has historically been institutionalized in Europe. However, it is this form of institutionalization that is under pressure from the process of globalization (2001: 65). There are two components of his definition of globalization. First, he more broadly defines globalization as an intensifying of networks, or the inter-dependence and communication between large numbers of peoples and markets:

It characterizes the increasing scope and intensity of commercial, communicative, and exchange relations beyond national borders. Just as the railroad, steamship, and telegraph intensified and accelerated the flow of goods, persons, and information in the nineteenth century, so today satellite technology, air travel, and digitalized communication have the effect of expanding and intensifying networks. (2001: 66)

Second, he also provides a specifically economic definition of globalization, with three components: increased trade of industrial goods between nations, rise and influence of transnational corporations with "worldwide production facilities," and the increased dependence of global financial markets, accelerated through new electronic networks

(2001: 66). Habermas correctly notes that these processes do not themselves alter or weaken state sovereignty, but they do “signal a danger for the nation-state as its institutional form. In contrast to the territorial form of the nation state, “globalization” conjures up images of overflowing rivers, washing away all the frontier checkpoints and controls and ultimately the bulwark of the nation itself.” (2001: 67) It has, to some extent, changed the system of inter-state trade within the international system, to a more global economy, where business, finance and flows of capital remain largely unregulated.

I argue that what makes Habermas’ position important in a discussion of the politics of membership and national opening and closure is his understanding of globalization as a process and not an end-state. Rather than conceptualizing the effects of globalization as a weakening of state sovereignty,¹⁶ Habermas prefers to reflect on its effects on a state’s capacity in political and economic terms and the “difficult to meet the need for self-legitimation.” (2001: 80) Habermas illustrates four ways in which globalization has affected the traditional abilities and functions of the nation-state: in its administrative abilities (to collect taxes), its sovereignty (increasingly interdependent on other states and institutions), its identity (both the hardening and softening of national identities), and its legitimacy (its ability to control both its economy and national welfare system). (2001: 68-80) This has shaken the democratic self-confidence in citizens and caused what he refers to as enlightened helplessness (2001: 61). There is an increasing

¹⁶ Although Soysal (1994) notes that territorial borders and the state’s border controls have become a defining component of state sovereignty, Habermas (2001: 67) rightly argues that the border should not be made equivalent to fortifications. Rather, it is useful to think of a state’s territorial border as “floodgates,” which regulate ingoing and outgoing. Soysal is right to note that state border controls have degraded because of court rulings on political asylum and family reunification, but it is wrong to assume that states do not still have discretion over much of their border controls (even in the European Union).

understanding that the leaders of the nation-state are becoming more of efficient managers of forced adaption to the global markets (2001: 80). Habermas argues that if the challenges of globalization are going to be met, then the democratic self-steering of society (traditionally found in the form of the nation-state) must be reconstituted in the post-national constellation.

I believe the difficulty Habermas runs into is in his conceptualization of the post-national constellation and political activity. Taking what may be an Arendtian perspective, Habermas legitimizes the potential for political activity in this post-national constellation in democracy and human rights (2001: 113). It must be remembered that Arendt is concerned with political activity within a polity (or political community) that creates a framework for artificial equalization (it is artificial because human beings, for Arendt, are not inherently equal). Here, Habermas extends this thought, taking into consideration the social fragmentation caused by globalization, immigration and multicultural policies: “The strength of the democratic constitutional state lies precisely in its ability to close the holes of social integration through political participation of its citizens.” (2001: 76) While the concept of the nation has been a chief source of integration, Habermas argues that its self-legitimation is being degraded:

Globalization forces the nation-state to open itself up internally to the multiplicity of foreign, or new, forms of cultural life. At the same time, globalization shrinks the scope of action for national governments, insofar as the sovereign state must also open itself externally, in relation to international regimes. (2001: 84)

Here, Habermas provides greater clarity to his conceptualization of what he precisely means when he refers to the post-national constellation. The increasing presence of migrants and other non-nationals and the growing inter-cultural communication networks

have weakened the state's claim of being a nation-state, while state governments must increasingly rely on both regional and international agreements and regimes (such as the World Bank and International Monetary Fund) to improve their regulatory and tax functions. The post-national constellation then signals an opening of the nation-state system to a multiplicity of social and economic forces that exist in a "globally networked, highly interdependent world society." (2001: 85) According to Habermas, the dangers posed by this world society is nothing less than dissolution of democratic political institutions, the elimination of the welfare state and (as he argues in an earlier work) a postpolitical world led by multinational corporations (1998: 125).

Habermas' solution to the challenges posed by the post-national constellation (not just social, but also political fragmentation) is to valorise the nation-state's ability for political integration and social closure. These are the two ensuing projects that Habermas seeks, to some extent, to recreate at the European level. Habermas' conceptualization of political activity in the post-national constellation is important, I believe, for two reasons: first, he establishes grounds for politicization that is no longer dependent on national governments and second, he wrongly re-establishes a homogeneous public sphere that remains blind to difference in an era of diverse social life. At first, Habermas grounds this discussion of social integration in the ability of the nation-state: "The strength of the democratic constitutional state lies precisely in its ability to close the holes of social integration through political participation of its citizens." He continues,

In complex societies, it is the deliberative opinion- and will-formation of citizens, grounded in the principles of popular sovereignty, that forms the ultimate medium for a form of abstract, legally constituted solidarity that reproduces itself through political participation. (2001: 76)

Importantly, Habermas does not believe the challenges of the post-national constellation can be met defensively (2001: 85). It is precisely the political participation of citizens that recognize each other in a political framework of equality that can actively engage with these challenges. This framework of equality, or solidarity, can only be diminished by failing to recognize what Habermas considers the standards of social justice, namely, basic human rights and the right to political participation (2001: 76-77). His model of citizenship rests on these two pillars. To be both legitimate and a source of solidarity, it “has to pay to be a citizen.” (2001: 77) Citizens must both be equal before the law (and each other in the public sphere) and have a fair access to rights (he makes reference here to political, social, ecological and cultural rights). However, he remains entrenched in a discussion of citizenship, as he grapples with the difficulties of social fragmentation, which would present us with and highlight the problem of non-nationals and non-citizens.

Habermas is specifically concerned with putting the global economic markets and the challenge of social and political fragmentation under political direction and control within the post-national constellation itself (2001: 81). Habermas argues in favour of a European Union founded on a federal constitution that supports a political association of European citizens (2001: 99). Europe, he argues, needs to develop a coordinated political response in the form of a European constitution and public sphere (supported by a strong pan-European civil society).¹⁷ These two concepts reinforce each other as they are supported by, what Habermas refers to as a democratic will-formation. This will-formation comes into being through a European-wide mass media, transnational networks

¹⁷ The subsequent chapter discusses in more detail the distinction of the European Union as an intergovernmental organization directed by technocratic governance (or depoliticized management) and, as Habermas argues, a constituted union.

of communication and deliberation, and specifically European political parties that engage in a European-wide public sphere (2001: 102). Although Habermas recognizes the diverse national backgrounds that currently exist in the European Union, he believes the European project can act as a “common historical horizon” for these overlapping projects (2001: 103). Habermas believes that a European constitution would act as a catalytic moment to push forward democracy in Europe based on a rational connection among Europeans. Europeans would feel a connection to each other based on similar historical experiences and common political and social ideas (for example, the history of nationalism and strong beliefs in secular politics) (2001: 103). He refers to this as the ties that bind Europe (with Jacques Derrida, 2003). These ties would only strengthen over time as modes of communication grew and stronger connections based on European-wide political issues become more important to the day-to-day lives of Europeans.

Although Habermas takes an Arendtian position concerning the legitimating features of the polity (namely, human rights and political participation), the space for political activity Habermas denotes is blind to the social diversity of modern democratic states in Europe. By continuing Arendt’s thoughts on equality (producing equality through organization), Habermas presupposes a legal order to establish equality, while ignoring difference as a space of inequality. Habermas does rightly point out that modern democratic states have individual rights at their legal order: “By opening up the legal space for pursuing personal preference, individual rights release the entitled person from moral precepts and other prescriptions.” (2001: 114). This space, Habermas notes, is a legal community made up of legal persons or “members only insofar as they acquire the artificial status of bearers of individual rights.” (2001: 114) This legal order is legitimated

by political participation (the democratic procedure itself justifies the outcome) and human rights (which guarantees the “life and private liberty...of citizens”) (2001: 116). The legal order, Habermas argues, must be decoupled from a majority political culture, otherwise subcultures “seal themselves off from one another.” (2001: 74) Therefore, the political community, formed by the opinion- and will-formation of equal citizens (legal persons), is seen as a universal public domain where challenges can be met and issues can be politicized. However, the public sphere which supports this legal order presents an homogenous public of citizens, remaining blind to growing cultural, social and political difference that makes up contemporary European life.

Habermas argues that the increasing social diversity in the nation-state has created a legitimation crisis that can only be met by forming a wider European public sphere. He goes so far as to argue that “the democratic process has to be stabilized through its results for it to have any hopes of securing the solidarity of citizens against the internal forces that threaten to blow a society apart.” (2001: 76) Habermas is correct that democratic polities must ensure its results are grounded in the actions taken by its members and the social policies guaranteed by states must be protected politically from the regulatory powers of the market (2001:77). However, he underscores, on one hand, the political and institutional diversity that makes up Europe and, on the other, the social diversity that now makes up most Western European states. These forms of diversity, which do not threaten to “blow a society apart,” make up the post-national constellation that shape and form contemporary political activity.

Habermas has been criticized for attempting to converge the values of Europe into common ideals and experiences. Dario Castiglione argues that Habermas is so concerned

with value convergence and consensus building that he ignores the political, institutional and legal diversity that makes up Europe (2009: 46). Although Habermas does conceive of the public sphere being made up of differing political interests, he believes these interests can converge around a common political project. Castiglione, on the other hand, argues that the European Union can adopt a European political identity “to the plurality of political and legal systems that have both legitimated and fostered European integration.” (2009: 47) While Habermas privileges a constituted European legal order legitimated by political participation, Castiglione argues that European politics is characterized by multilevel governance, which provides more diffuse democratic participation and deliberation (2009: 45). Castiglione usefully calls attention to the way Habermas constructs a European political identity that is both cosmopolitan and communitarian (2009: 44). Although Habermas defends a universal legal equality as a way of building solidarity of Union citizens, he also engages in the formation of communitarian European values as a way of binding and legitimizing this solidarity. The convergence of values Habermas proposes not only ignores the political, social and legal diversity operating in Europe, but also creates potential exclusionary politics legitimated by what it means to be European.

I believe Habermas’s notion of constitutional patriotism is designed to account for the danger of difference present in Arendt’s analysis of statelessness. In Habermas’ view of political activity at the European level, he rightly argues that no one national subculture ought to dominate the polity. His conundrum thus becomes: how do you form solidarity out of many groups of peoples? His answer lies in his notion of constitutional patriotism, designed as a value-based identity legitimated by a rational and legal

solidarity between peoples who “identify on equal terms with a general political culture.” (2001: 74). For Habermas, political culture comes out of political participation of equal citizens, rather than an emotive identification with the community. The passions of national culture are detrimental to European solidarity. However, Castiglione notes that Habermas maintains a republican perspective of politics, which “does not devalue the importance of identification as part of the political integration process.” (2009: 39) While European political integration is legitimated by political participation and a dedication to human rights (civic principles), it is rooted a particular European perspective. As Arendt notes, European states have tended to form on the perceived basis of ethno-cultural homogeneity as this provides less ethnic, national and religious difference, which she argues divides the community and stymies political activity (1973: 301). This combination of universalist and particularist political integration allows Habermas to manoeuvre around Arendt’s understanding of difference as inequality, but only to recreate a notion of political activity based on a presupposed universal equality.

Arendt perceives difference as a danger to the political organization which produces equality. However, as social diversity became a hallmark of contemporary European life, difference may act in a two-fold manner: difference can call attention to social and political exclusion and help create spaces for political activity. According to Arendt, difference is indicative of “those spheres where men cannot act and change at will.” She puts differently: “those realms in which man cannot change and cannot act and in which, therefore, he has the tendency to destroy.” (1973: 301) Arendt forms a divide between the equality constructed through political organization and the inequality of being thrust into a realm of statelessness. Like Habermas, she privileges access to legal

citizenship as the guarantor of such equality. However, citizenship, as a status and a collection of rights, can create deeper and hidden stratification in a society.

Iris Young and Will Kymlicka provide both theoretical and concrete grounding for a defence of difference as a way of thinking about political activity that Arendt and Habermas ignore. Young (1989 & 1990) argues that the rights claims made by social groups must be understood as a concrete form of political activity in the political community. The public sphere, as understood by Habermas, is useful in understanding how deliberative and participatory political activity can create the conditions for political integration. However, Young is right to note that for that public sphere to be just, “it requires that all be able to express their needs.” (1990: 34) If the public sphere remains blind to difference, or more exclusive, is blind to the discrimination brought on by distinction (e.g. racial, religious, gendered, etc), then individuals have no framework for which to correct this discrimination. For Young, this brings up an issue of justice. Young argues, rather than focusing on issues of distribution of material goods (which sees individuals and social groups mainly as consumers and possessors), we must understand justice in terms of oppression and domination (1990: 15). I believe this brings up two important, and often ignored points: first, as Charles Taylor (1992) argues, exclusion often comes from ignoring recognition or misrecognition of societal difference. The decline of the hierarchical strata (where class or religion provided one’s place in society) and the rise of identity politics have problematized people’s identity (1992: 26-27). Although citizenship in liberal democracies was founded on notions of individual rights and universal equality, minority groups, such as Chinese migrant workers or Aboriginals in Canada, have faced misrecognition and stereotyping that often involves social and

political exclusion based on group identity. Young is useful at presenting a radical critique of existing political institutions as contributing to oppression and subordination of social groups.

Another issue at stake here is the depoliticized distribution of material goods. Young argues that, while the distribution issue is important, “the scope of justice extends beyond them to include the political as such, that is, all aspects of institutional organization insofar as they are potentially subject to collective decision.” (1990: 8)

There are two aspects of this point I wish to unpack: first, Young is critical of Arendt’s valorisation of political life as producing equality through organization. The exclusion and discrimination of minorities (e.g. African Americans in the United States, or the discrimination against women in labour) illustrates the ways governments fail to live up to the standards of legal equality. Where there is exploitation or exclusion based on distinction, there one “requires reorganization of institutions and practices of decision-making, alteration of the division of labour, and similar institutional, structural, and cultural change.” (1990: 53) The problem of political and social exclusion stems from oppressive institutional organization, which has failed to produce equality. Secondly, Young echoes a point made by Arendt in *Eichmann in Jerusalem*. Arendt (2006) argues that what makes Adolf Eichmann a story of the banality of evil is his adherence to following orders. He had little to no authority (in the sense of making or shaping the laws and regulations), but was “entirely taken up with the staggering job of organization and administration.” (2006: 151) He was considered the mass murderer who never murdered (2006: 215). Young makes the point that the depoliticized, and thus administrative, task of distribution restricts the political activity involved in correcting social and political

exclusion (1990: 70-71). The model of citizenship then becomes “a client-customer orientation...rendering goals of popular control or participation difficult or meaningless.” (1990: 72) The distribution issue becomes depoliticized by, often hidden discussions between the government and interest groups, characteristic of corporatist regimes (1990: 74).

While Young brings out how social and political exclusion must be politicized, Will Kymlicka (1996) argues that difference, through minority rights and multicultural citizenship, can act as an impetus for more open and inclusive membership and political activity. Kymlicka argues that minority rights are a necessary part of contemporary democracy and must be seen as compatible with a theory of liberalism (1996: 6).

Kymlicka is addressing certain liberal positions, which argue that minority rights are either unnecessary (because they are subsumed in universal and common citizenship) or detrimental to democracy (because it favours the group over the individual and could lead to violence and succession). However, he argues that minority rights are compatible with liberalism because they have already been implemented by countries such as Canada and are not concerned with separation, but integration and accommodation. As long as minority rights connect to individual freedom and freedom of conscience (the individual's ability to correct and revise their beliefs), then minority rights provide a useful institutional mechanism to combat social and political exclusion. (1996: 35)

Kymlicka specifically points out what he calls the individual's societal culture (1996: 75-76). He argues that freedom to one's societal culture is a fundamental human right because it is how one engages culturally and politically (1996: 87). According to Kymlicka, individual freedom is intrinsically tied to one's national culture, even being

dependent on the presence of a national culture. The institutional and political structures of the state are tied to the societal culture of the majority culture, which inherently favours one culture over others. Kymlicka argues against a notion of a common and universal public sphere because he believes that the political framework of the state is tied up with the societal culture of the majority. He points to the state's language laws, territorial boundaries and public holidays as examples of how they are tied together. Michael Billig (1995) uses the term 'banal nationalism' to clarify the ideological habits that entrench and continually reproduce the nation, including the language spoken in a homeland and the flags hung around public buildings that go mostly unnoticed. Liberal culture, while being grounded in notions of individual rights and universal membership, does lead to a situation where liberals "do value their cultural membership. Far from displacing national identity, liberalization has in fact gone hand in hand with an increased sense of nationhood." (Kymlicka, 1996: 88) Kymlicka points specifically to Quebec and Flemish society as subnational cultures that demand a certain level of cultural and political autonomy from the state.

Conclusion

This chapter extended the political-historical themes elucidated in Arendt to contemporary scholars on nationalism, citizenship and the post-national constellation. The goal was to analyze the ways political activity may be reconceived in the context of liberalization, renationalization and post-national membership. It began by noting that Arendt's claim that the nation had conquered the state had become tentative, but even as the politics of membership, in Germany specifically, was liberalizing, the nation still played a prevalent role as an object of closure. I do not believe the liberalizing of

membership policies has made the nation any less important. Rather, the nation and the politics of membership are entwined in political and social discussions concerning human rights. The ‘idiom of nationhood’ is caught up with liberalizing and renationalizing trends that are both national and, what I will further discuss in the subsequent chapter, European debates on membership. While political activity has become more open and inclusive of non-nationals (to some extent), it has not created a new form of post-national membership. The notion of legal personhood replacing national citizenship does present a unique opportunity for more open membership, but has thus far failed to become institutionalized at the international level. The post-national constellation may also present a unique way of creating a more inclusive form of political activity, but it cannot be recreated in the form of the nation-state. Arendt’s warning against difference as inequality fails to solve the problems of social and political exclusion. As Arendt argues, human rights can no longer be based on abstract and universal notions, but must be grounded and safeguarded by a political community that allows for deliberation and participation.

The subsequent chapters examine the politico-legal framework established by the European Union, including how discussions of nationhood and Europe have become entwined (Chapter Three), the freedom of movement as experienced by the Roma as an example of how the Union’s fundamental rights and legal order fail to live up to their own standards (Chapter Four), and in the final chapter, I examine the difficulties facing the EU, including the Migration Crisis and the growing anti-immigration policies causing conflict between the EU and its Member States (Chapter 5).

Chapter 3 – European Integration in Three Stages

“As soon as one member of a Community seeks to force all the others into decisions of capital importance for its life, the Community spirit ceases to exist.”

- Paul-Henri Spaak (1963)

“For the Common Market is not a static creation; it is a new and dynamic phase in the development of our civilization.”

- Jean Monnet (from his introduction to *The Community of Europe* by Richard Mayne 1963)

“This treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.”

- Maastricht Treaty (effective 1993)

So far, I have looked at Hannah Arendt’s notion of statelessness and stressed the central role the nation has played in permitting political activity. Arendt argued that in the inter- and post-war periods, the very presence of non-nationals (migrants) exposed the foundations of equality and the Rights of Man of the Western European nation-states. In discussing Arendt, the political frameworks of citizenship and nationality are revealed as important qualifiers to the political activity of the state. A fundamental characteristic of statelessness is being unable to engage in meaningful political activity within a community. Stateless migrants are denied access to this engagement due to being defined as stateless and by not being nationals of an existing national-political community. Since the time of Arendt’s writing, Western European states have gradually liberalized migration, residency and citizenship policies, but the particular idea of the nation remains an important part of the political discourse surrounding each country’s politics of membership and migration.

The most important development in Western Europe that has allowed greater migration of peoples and mainstreaming of policy areas across multiple states was the

process of European integration that eventually led to the formation of the European Union (EU). However, as I argued in the previous chapters, the post-national constellation may present a unique way of creating a more inclusive form of political activity (in the form of a European political space), but it cannot be recreated in the form of the nation-state. Arendt's warning against difference as inequality fails to adequately address or solve the problems of social and political exclusion, especially when discussing the possibility of extra-political spaces, such as the EU. As Arendt argues, human rights can no longer be based on abstract and universal notions, but must be grounded and safeguarded by a political community that allows for deliberation and participation. In this chapter, I will ask: if the nation has played such a key role in both political activity and statelessness, what does the process of European integration mean for the future of the nation-state? Does European integration contain the possibility of establishing the conditions for peaceful relations between states and the political framework to guard against statelessness? Or, has it just created a new political environment (a European political space) that drives competition between states and fosters the exclusion of non-nationals and other ethno-cultural and religious minority groups?

First, it is important to answer some fundamental questions: what is the European Union and how does it work? The EU is an international organization consisting of 28 member states across Europe.¹⁸ It could be understood as a multifaceted "economic and

¹⁸ Commonly referred to as Brexit, on June 23, 2016, the United Kingdom held a referendum on whether to remain in the EU. 51.89% of voters chose to leave the EU. The UK invoked Article 50 of the Treaty on European Union on the withdrawal of Member States, which gives the UK two years to negotiate their exit. On March 29, 2019, the UK

political partnership” that together forms a single market for the free movement of goods, services, money and people (Europa.eu). As Desmond Dinan (2005: 1) succinctly writes, in Europe the individual national political systems (and their characteristics) still exist, but now function alongside a complementary European political system. For example, symbolically, the EU has its own flag and anthem (Beethoven’s “Ode to Joy”) that coexists with the individual national variants. The EU is fundamentally an economic community: at once a single market and a monetary union. As Strobe Talbott (2014) describes, the monetary union “puts them in the vanguard of the greatest experiment in regional cooperation the world has ever known.” However, the EU functions beyond mere cooperation and intergovernmental bargaining. The EU maintains a supranational executive body, the European Commission, which includes a president,¹⁹ a democratically elected parliament and an intergovernmental institution made up of the 28 heads of state known as the European Council. Its institutional structure is not only complex, but also differentiated, as multiple bodies debate the policy agenda and vote on its institutionalization at the European and national levels.

The Commission alone can initiate legislation, where it then enters political debate in the two legislative bodies, the Council of the European Union (also called the Council of Ministers) and the European Parliament. According to the principle of *acquis communautaire*, European law (the legislation, treaties and court decisions) must be integrated into national law. The European Court of Justice acts as the highest court in the

was scheduled to exit the EU, leaving 27 Member States remaining. This deadline was extended to October 31, 2019.

¹⁹ As of 2018, the President of the European Commission is the former Prime Minister of Luxembourg, Jean-Claude Juncker. He became the second democratically elected president in 2014 after the electoral victory of the European People’s Party in the European Parliamentary elections.

EU, ensuring the uniform application of Union law and its treaties. Its mission is threefold: “reviews the legality of the acts of the institutions of the European Union, ensures that the Member States comply with obligations under the Treaties, and interprets European Union law at the request of the national courts and tribunals.”

(Curia.europa.eu) The law, however, is not uniform across the Union (this forms a differentiated union that is discussed in the third stage). The most striking example is the monetary union called the eurozone, which consists of 19 of the 28 member states using the euro as their currency and is managed by the European Central Bank (ECB). Called the convergence criteria, all new members must adopt the euro after an informal period, meeting certain economic criteria (reducing exchange rate volatility). However, the United Kingdom and Denmark have negotiated opt outs in the 1993 Maastricht Treaty, while Sweden has rejected the euro through referendum.²⁰

This chapter touches upon the origins of the EU as understood by two key founders, Jean Monnet and Robert Schuman. Although the European community finds its first political expression in the 1958 Rome Treaties, I pay greater attention to the European Coal and Steel Community as its theoretical and institutional underpinning. The technocratic and bureaucratic beginnings of the EU are important as they play a significant part of both the EU’s contemporary institutional make up and the political debate over its future as an economic and political union. This chapter follows Jeffrey

²⁰ There are two ways the EU has developed. These are known as widening and deepening. Widening is its geographical enlargement by adding new member states. Originally designed to include Western Europe, the Union has expanded south (i.e. Greece, Malta and Cyprus), north (i.e. Sweden, Finland, Estonia, etc.) and east (i.e. Romania, Bulgaria, Croatia, etc.). Deepening can be understood as the increased integration between member states. This can be seen in the European Monetary Union (EMU), which requires members to use the euro as their legal tender.

Checkel and Peter Katzenstein's understanding of Europeanization (2009). According to this framework, the EU is not dominant over its Member States, but rather the Member States have been the driving force for integration, along with the more bureaucratic figures like Jean Monnet and Robert Schuman. Europeanization then is "a complex dynamic through which Europe and the nation-state interact." (2009: 9) Rather than seeing the traditional national identities in conflict with a more cosmopolitan and open and inclusive European identity, there are European identities that make up competing visions of the 'ever closer union' (2008: 24). Importantly, Europeanization is caught between depoliticisation and contested politics, which gives the EU much institutional opacity.

I analyze the political character of the EU, including the introduction of Union citizenship and right of free movement of persons and anti-discrimination directives. The discussion is situated in the philosophical conversation presented by Arendt and Jürgen Habermas and designed to be a bridge to later discussions of the discrimination against the Roma, the Migration Crisis and the future of the EU. Both Arendt and Habermas believe that political activity of citizens functions to level difference. Specifically, Habermas believes the democratic state does not need to be culturally or politically rooted in an idea of the nation (Habermas, 2001). Rather, echoing Arendt, meaningful political (democratic) activity serves to fill the holes of social integration. Habermas argues this is the starting point for a European political sphere and transnational democracy. However, the EU is not the political space inspired by Arendt's conceptualization of human activity or the legally constituted European public sphere Habermas envisions. There is contestation at an institutional level that may or may not be

resolved, including unpoliticised technocratic decision-making and voices for illiberal governance like Hungarian Prime Minister, Viktor Orbán. Far-right parties function in the European political space (like the Council and the European Parliament), which seek to limit free movement of persons and stop the mainstreaming of policy areas like anti-discrimination laws and environmental regulation. The EU itself also has had difficulty incorporating migrants and other ethno-cultural and religious minority groups, even with the advent of its own form of Union citizenship. It maintains an elite level focus on governance (intergovernmental conferences run by heads of government and key political ministers), which can be blind to transnational political movements and local level politics that are operating in a European political space (i.e. working with structural funds provided by the EU or acting on issues in relation to EU's policies, like individuals or groups working on refugee or migrant acceptance into local society). However, a goal of this chapter is to understand the political character of the EU and the importance of Union citizenship in establishing extra-political European space.

This chapter is an investigation of European integration, providing a summation of the important treaties and events that led to the EU in its contemporary form. This is done in order to flush out the important and often misunderstood relationship between national interests and European unity that is at play in the EU and to understand Union citizenship as the political expression of free movement. I divide the development towards European integration into three stages (what I later refer to as leaps): from post-war European recovery to the 1993 Maastricht Treaty, the creation of the European Union and the common monetary policy (the eurozone), and the 2009 Lisbon Treaty and

the economic and monetary crises.²¹ Each stage provides a useful frame in which to examine the changing political environment in Europe and to locate the different ways the EU has sought legitimacy as a transnational political organization. Importantly, meaningful political activity of Union citizens plays less of a role in the day-to-day institutional framework of the EU, in favour of top-down, intergovernmental and technocratic decision-making, which can foster deeper divisions between EU Member States and European peoples. However, the EU has developed a unique political space. Union citizenship has helped give political expression to the EU as multileveled organization with dual supranational and intergovernmental decision-making bodies. I argue that the EU has been given political character by introducing Union citizenship, which establishes the free movement of persons and anti-discrimination legislation. This has created an extra-political space in Europe that is necessary, albeit limited, for alleviating discriminatory practices and allowing for greater inclusion of minority groups across Europe, such as the Roma.

1: The Conditions of Peace

The first stage towards European integration begins after the Second World War, during both the onset of hostilities between the West and the Soviet Union and the economic and political rebuilding of Europe. There are two central positions on this important era of development: first, the congruence of France and Germany's most important industries (France's coal industry and Germany's steel production in particular)

²¹ Étienne Balibar (2015: 68) also wrote that the European Union has gone through several distinct phases. However, he is locating these phases in the context of international affairs, rather than the changing institutional framework of the Union itself. The stages I propose are for conceptual clarity as well as understanding the shifting debates concerning the future of both the EU and Europe generally.

created not only perhaps the first supranational organization that would have authority over aspects of national economies, but also initiated a period of swift recovery and cooperation between European states. The second position, argued by Judt (2005, 2011) and George Soros (2014) in particular, maintains that European recovery, and therefore the success of early integration, was chiefly about American supervision and will to see Europe rebuilt as an ally in the Cold War. While these positions may feature overlapping arguments, it does help to call attention to an important theoretical distinction between supranationalism (which I will call the Monnet position, but which may also include the more radical voices for European federalism such as Altiero Spinelli) and intergovernmentalism.

The economic and political rebuilding of post-war Europe found its most concrete expression in the European Coal and Steel Community (ECSC). Established in 1952 by the Treaty of Paris, it was championed by French bureaucrat Jean Monnet and proposed by the French foreign minister Robert Schuman as a way of uniting French and German coal and steel industries under a common High Authority.²² The Schuman Plan was designed to streamline coal and steel productions and modernize the post-war industrial sector no longer designated solely for war munitions. On May 9, 1950 Schuman laid out his and Monnet's plan, arguing that not only did uniting Franco-German coal and steel productions serve the economic recovery of both nations, but that it also had a much grander goal: bringing peace to a united Europe. The goals of the Schuman Plan included creating the material conditions that would make war an impossibility as both states would be economically united. In his speech, Schuman (1950) said,

²² The Treaty of Paris also included Italy and the Benelux countries (Belgium, Netherlands and Luxembourg).

By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace. (The Schuman Declaration, 1950)

Importantly, the ECSC would mark just the first step to a federated Europe. Put differently, Schuman and Monnet designed an economic community that would eventually lead to a stronger, unified political community. In his memoirs, Monnet (1978) elaborates on the political purpose of the ECSC: it served to create a method that would ensure peace in Europe and diminish the devastating effects of nationalism. For Monnet (1978: 222), the Second World War was a brutal consequence of unaccountable national sovereignty and the opportunity presented in post-war Europe was to create technical, economic and political institutions to diminish state authority. The type of multi-national federalism Monnet and Schuman proposed was a slow, gradual approach to forming a broader European political community.

However, Monnet's position often de-emphasizes the crucial role intergovernmental bargaining and negotiations played in forming the first European community. In fact, the more radical aspect of Monnet's position is challenged by Judt and Soros' account of the ECSC and post-war European rebuilding. Judt (2011), specifically, understands the success of post-war rebuilding in Europe in relation to the special context in which it was occurring. George Soros (2014) joins Judt in arguing that the swift level of economic recovery experienced in France and Germany must be seen in light of American supervision and fear of Soviet encroachment and influence. Therefore, according to intergovernmental theories of European integration, the European community came about as a result of American influence and national state preference.

Crucially, they use the language of intergovernmental, or interstate, bargaining as understood by Stanley Hoffmann (1987) and Andrew Moravcsik (1993).

The two prominent early theories of European integration are intergovernmentalism and neofunctionalism. These theories provide necessary explanations of state interaction and the construction of supranational institutions respectively. Intergovernmentalism maintains not only the primacy of the nation-state as an actor in international relations, but that these states behave rationally and in their own interest (Moravcsik, 1993). According to Moravcsik, (1993: 474) the European community is an “intergovernmental regime designed to manage economic interdependence through negotiated policy co-ordination.” Intergovernmentalism has a strong basis as the European community began as a common market for coordinated industrial manufacturing. Also, intergovernmental conferences remain the platform most influential in European decision-making and agenda setting, especially in constructing and legitimizing major treaty changes to the community. However, intergovernmentalism fails to strongly consider the unintended or undesired consequences of these interstate agreements, as well as the drive for deeper integration.

Neofunctionalism as pursued by Monnet and understood by Ernst Haas (1958) expands upon how European agreements and the construction of supranational and transnational institutions form a European political culture, divorced (even partially) from the politics of interstate bargaining. The theories of neofunctionalism are important in understanding the gradual evolution of the European community from an economic agreement to a deeper political union. Haas (1958) believed that Europe’s gradual economic integration would lead to greater political and social integration. Haas

theorized that integration in one economic sector would have slow and gradual spillover effects leading to deeper integration. Importantly, Haas' theory of functional integration is centred on elite-level politics (technocratic decision-making). But these leaders, it was assumed, would be functionally constrained by new ideas and pressures formed by European integration.

Jean Monnet never held elected office, but he was the type of technocratic leader that pushed Europe in the direction of deeper integration. In practice, prior to the end of the Second World War, Monnet argued in favour of Franco-British unification that went beyond "mere coordination" (1978: 35). He sought to diminish national sovereignty and establish supranational control in order to ensure peace and stability. Importantly, the system of international affairs between states could not guarantee that states would not act aggressively in their own interest. The League of Nations proved ineffectual to stop war. However, Britain's wartime experience and national identity differed from that of France's post-war situation. While British Prime Minister Winston Churchill acknowledged the necessity of European unification, Britain was to remain separate from continental Europe. After the war, Monnet's attention shifted from Britain to Germany and the opportunity of proposing Franco-German unification to a world leader more receptive to such a suggestion, Konrad Adenauer. Germany's interest was mostly state-centric: Adenauer sought to assuage French fears of rearmament, rebuild Germany's economy and ensure its political importance in the international arena. To achieve these goals, Adenauer suggested integration not only of France and Germany's economies, but also of their parliaments and citizenship requirements as a necessary step in Germany's rebuilding (1978: 285). For Monnet, France should not seek to economically punish

Germany for the war, but instead, learn from the mistakes of the inter-war period and establish peace between France and Germany through equal political partnership (1978: 284). The Second World War provided a special context from which integration could proceed. The shadows of war and nationalism had different theoretical implications.

There is an important difference in how intergovernmentalists such as Judt and neofunctionalists like Monnet view the purpose behind creating a European community. Judt argues that the “new Europe was not a preconceived common project: no-one set out to bring it about.” (2006: 8) The integration of Europe into an economic and political community “was the insecure child of anxiety. Shadowed by history, its leaders implemented social reforms and built new institutions as prophylactic, to keep the past at bay.” (2006: 6) The Second World War left Europe in trauma, humiliated and both economically and demographically devastated. The European community became a necessity, economically as well as in the imagination of Europeans. Judt argues that the community became especially important, even if it was driven by self-interest states, because it was “typically presented in terms of a shared, pan-European interest, rather than as self-interested projections of separate national agendas.” (2006: 154) Judt refers to this as “the foundation myth of modern Europe” and a part of what he considers the grand illusions of post-war Europe (2011: 41). The language of the European community, according to Judt, is being “projected backwards” by contemporary European leaders as a way of justifying deeper and wider integration (2006: 23).

Monnet argues that the creation of the ESCS did not require just coordinated intergovernmental agreements, but new political methods “to hit on the right moment for changing the way people thought.” (1978: 282) The post-war context presented a time of

crisis that could lead to Franco-German integration. Monnet is critical of the negotiations of 'mere coordination' and traditional international affairs and instead preferred action "where misunderstandings were most tangible." (1978: 292) What Monnet recommends is creating the political institutions that guarantee equality between French and German industries as a method of overcoming this distrust and fear of national domination and forming the "germ of European unity." (1978: 293) Monnet recounts an encounter Schuman once had with a journalist where Schuman described the ECSC as a "leap in the dark." (1978: 305) Noting the accuracy of the metaphor, Monnet writes that they were less interested in the technical development of the community than forming this germ of integration that would lead to a deeper political unity.

The key problem with the ESCS was it required reform and mainstreaming of policy areas. The first deepening of the community's competences happened with the Rome Treaties, in particular, the establishment of the European Economic Community (EEC), signed in 1957, which formed the common market. Although an economic agreement, the EEC promulgated the more overtly supranationalist language, by stressing the need "to establish the foundations of an ever-closer union among the European peoples" (TEEC, 1957). Dinan notes that the EEC was particularly important for initiating a broader political debate over the community's effectiveness, including a criticism of its paralyzed decision-making process and ineffectual leadership in the Commission (2005: 70).

The EEC first introduced the free movement of goods, services, capital and workers as a fundamental principle of the community. This was an expansion of the ECSC, which allowed free movement only of workers in particular industries. Rather

than opening the economic community for complete free movement, it was limited in its political scope. Title III of the Treaty of Rome, or the Treaty establishing the European Economic Community (TEEC), indicates “Free Movement of Persons, Services and Capital” to be an activity of the EEC, but as Article 48-51 outline, it is only free movement of workers and the “abolition of any discrimination based on nationality between workers of the Member States.” (TEEC) However, this was seen as part of the ineffectiveness of the community and the common market: it promised free trade, the elimination of borders and common customs, but was flawed because of the lack of policy harmonisation between member states. The community needed to be reformed to establish clearer definitions and separation of powers.

The lead up to the Maastricht Treaty was a period of unusual consensus concerning the difficulties facing the decision-making process and leadership within the community.²³ Jacques Delors, who became Commission President in 1985, became a leading voice for both the single market (in order to fix the problems in how the common market was functioning) and for providing clearer guidelines on where the community could and could not act (Dinan, 2005: 98). These issues became heightened with, what is called, the community’s Mediterranean enlargement (2005: 100).²⁴ Delors stressed two issues: providing the Commission with a renewed sense of purpose and eliminating unanimous votes in the Council (in favour of qualified majority voting). Paralyzed decision-making, brought on by the need for unanimous voting in the Council and ineffective powers in the Commission, were contributing to, not only a growing distrust

²³ While there may have been consensus that the EC required reform, the results of these reforms, which will be discussed later in the chapter, were contested.

²⁴ Greece in 1981 and Spain and Portugal in 1986. Turkey applied for membership in 1987.

with European institutions, but, also a distance between the peoples of the community and its institutions (a form of public alienation called the ‘democratic deficit’) (2005:98; 111). With an expanding community (including German reunification) and talks concerning a monetary union, the European Community required major reforms to the ECSC and the TEEC.

2: Union Citizenship as Political Expression

The EEC, in many ways, has been seen as a disappointment (mostly for its half measures and compromises), but it did have profound political importance that would lead to the 1993 Maastricht Treaty, or Treaty on European Union (TEU). This is the second stage in the development of the European Union.²⁵ With a renewed push for both the deepening and widening of the community, Delors, in a speech to the Collège d’Europe in 1989, urged the community to take a “new leap forward” (quoted in Dinan, 2005: 115).²⁶ This new leap would be the European Union and, perhaps, more importantly, a major leap towards a political union. The TEU gave a concrete political expression to the community by establishing Union citizenship and extending free movement within a single market (expanding upon what was already set up in the 1986 Single Market Act). However, it ultimately failed at creating an extra-political space and providing Union citizens with meaningful political activity.

The Maastricht Treaty was established by intergovernmental conferences in 1991 and sought to reform the deficient and struggling common market and European

²⁵ The Treaty on European Union was signed in Maastricht, Netherlands on February 7, 1992, but came into effect November 1, 1993.

²⁶ Interestingly, in the same speech, Delors (1989) referred to himself as a “European militant,” advocating for a form of European federalism in the form of the subsidiarity principle. The need for a clearer division of powers is required to empower Europe and in turn strength the European states.

community. While the 1986 Single European Act reformed the common market, it failed at providing the right of free movement for all Europeans (the right remained for workers only). The Maastricht Treaty granted, in Article 8a, the “right to move and reside freely” as a right of Union citizenship (TEU) and as a step closer to completing the Union’s internal market. While Union citizenship is established as complementary to (or accompanying) national citizenship, it provides a transnational right of free movement that is at play beyond nationality (member states must recognize Union citizenship of non-nationals). Importantly, the rights attached to Union citizenship, while not far-reaching, were meant to act as guarantees for those engaged in transnational movement. Along with the right of free movement, Union citizenship grants the right of settlement and employment (with a prohibition on discrimination based on nationality). Other political rights include the right to vote and stand as a candidate in municipal elections (for those “residing in a Member State of which he is not a national”) and elections to the European Parliament (TEU, Article 8b). Union citizens are also provided diplomatic protection by any member state in a third country (TEU, Article 8c).

I contend that it is important to look at the developments leading to free movement and Union citizenship as twin-achievements of the European project because the justifications for both are both interconnected and highly political. The justification for free movement shifted from purely economic reasons (in the ECSC) to more political intentions with the Maastricht Treaty and the establishment of Union citizenship. Free movement, from its inception with the ECSC and the Rome Treaties until the 1993 TEU, was justified in economic terms. Movement across borders was important for reasons of labour and capital. However, as Willem Maas (2007: 5) importantly notes, “the

introduction of economic rights was coupled with a political project.” Free movement was generally accepted as an economic right of the European Community, but the European Commission has, in particular, tried to tie free movement to a larger political task: completing the internal market and legitimizing the Community/Union to its peoples. The 1975 Commission report, *Towards European Citizenship*, argues that nationals of member states ought to be granted ‘special rights’. This has important political consequences as it would allow ‘foreigners’ or non-nationals certain political rights that are accessed after moving across national borders and are protected both by member states (intergovernmental agreements) and the Commission (supranational guarantees). Importantly, the report notes that while employment itself guarantees economic and social rights for these non-nationals, ‘special rights’ (eventually established in Union citizenship) are necessary for guaranteeing political rights (European Commission, 1975). The Commission’s desire to create an ever-closer union among the peoples of Europe made free movement a central task of a grander political project.

This link between free movement and Union citizenship grew stronger nearer to the completion of the internal market. As can be seen in the 1985 White Paper, the European Commission was dedicated to completing the internal market, which meant the “abolition of barriers of all kinds.” (European Commission, 1985) Although first discussed in the language of economic rights (after all the internal market is primarily an economic union), the European Commission was also concerned with the barriers between the peoples of Europe, highlighting the political significance of free movement (24-25, Part One, European Commission, 1985). According to the White Paper, physical

barriers are primarily barriers against (or as a way of organizing through customs posts and immigration controls) the movement of people (European Commission, 1985).

The foundation of Union citizenship provides perhaps the clearest example of free movement's political expression and the formation of a European political identity. While remaining complementary to nationality, the scope and powers of Union citizenship have been questioned since its proposal in the 1975 European Commission report and then through its establishment in the 1993 TEU and the 2004 Citizenship Directive. I maintain that the importance of Union citizenship lies not in its scope (nor the political rights it guarantees), but in its symbolic meaning as being at once post-national and multi-levelled. That is, Union citizenship fulfils its role as offering both a set of rights as well as an identity across the multi-levelled system of governance in the European Union. Following Ulrich Pruess' early examination of Union citizenship, it is important to note the symbolic meaning of Union citizenship, "which the authors of the [TEU] obviously considered significant for understanding the Union's political character." (1996: 534) The expansion of powers and abilities the new European Union acquired was a complex and unclear process, particularly for the peoples of Europe who remained at a considerable distance from its inception.²⁷ Establishing a Union citizenship that complemented nationality (but did not supersede it) put attention on the European Union's respect for representative democracy, the rule of law and the package of economic and political rights associated with citizenship. However, Union citizenship was most importantly the

²⁷ Richard Mayne (1963: 14-15) notes the top-down, or elite-driven, process involved in creating the Community, which involved politicians, bureaucrats and journalists with a great euphoria of European enthusiasm. While the referendums were held in Denmark and France for the 1993 TEU, it was nearly equally as elite-driven as the ECSC and the Rome Treaties.

expression of a new political community across Europe.

I maintain that it is important to note that while the Maastricht Treaty formed what we understand as the EU, it ultimately failed at establishing a democratic political union. It is the same failure that we will see in the later discussions of the unsuccessful Constitutional Treaty and the ratification of the 2009 Lisbon Treaty. Thus far, the democratic processes surrounding the EU remain at a distant for Union citizens. Rather, the EU relies much more on depoliticized decision-making processes that include democratically elected heads of state and government than on the traditional democratic legislative process of national governments.

The EU's legitimacy rests primarily, I argue, on establishing and securing the right of free movement and residency across its Member States and its political expression of Union citizenship rather than on direct European elections and transnational democratic decision-making. The function of the EU and, importantly, the notion of *acquis communautaire* represent the unique, top-down approach to its operation. The EU fundamentally operates both as a transnational organization and supranational authority. *Acquis communautaire* is the body of EU treaties, ECJ rulings and acts (referred to as EU law) that all new Member States must adopt into their national systems. EU scholars Richard Bellamy and Alex Warleigh (2001) provide a useful conception of its functions. They argue that the EU has a unique way of interacting with and complementing the activities of its Member States, providing another layer of governance in Europe. In particular, Union citizenship now "represents one layer of multiple citizenships and *demos* to which people increasingly belong." (2001: 8) But, as they note, European integration has never been directed by or towards democracy at the European

level. It has been an elite-driven project, but has made legitimacy a concern. In fact, Union citizenship was designed with the EU's legitimacy in mind.

The peoples of Europe, while central to EU discourse in its treaties, remain at a distance from the EU's basic functions. This presents an interesting paradox. The Maastricht Treaty established Union citizenship, Bellamy and Warleigh argue, because it was a step towards a stronger political union. Union citizenship was meant to present to the peoples of Europe a concrete status and bundle of rights and obligations associated with the new Union. However, the establishment of Union citizenship in particular points to the way the EU uniquely operates: Union citizens are not responsible for its formation, but they are its target. The 1985 Commission paper on completing the internal market is clear: the function of governance at the European level is to "satisfy the aspirations of the people of Europe." (Commission, 1985: section 220) The European Commission describes the Common Market and the economic integration of Europe as just a step towards greater European unity that operates without the barriers that divide Europe. To not propose a stronger union, the Commission concludes, "would be to fall short of the ambitions of the founders of the Community...it would be to betray the trust invested in us; and it would be to offer the peoples of Europe a narrower, less rewarding, less secure, less prosperous future than they could otherwise enjoy." (Commission, 1985: section 222) A deeper political union could provide greater legitimacy as it would allow Union citizens to speak and act more directly as Europeans.

3: People's Europe: Legitimacy, Democracy and Contested Politics

In the third stage of European integration, the EU sought to deepen the political union by reforming its institutional structure, after numerous additions. I argue that this

period is also marked by its greatest challenge: twin-crises in the legitimation crisis ignited by the constitutional debates in 2004 and the 2008 economic and monetary crisis. Although Jürgen Habermas' (2012; 2015) analysis that makes a connection between the EU's legitimation crisis and its technocratic nature (its decision-making process and policy management) is useful in understanding the challenges facing European technocracy and the need for greater European democratic support, I maintain that these moments of crisis that the EU has and continues to experience have come about due to the tension between acting for the benefit of all EU citizens and its intergovernmental management, which can lead to competition between Member States.

Beginning in 2001, the idea put forth by the Laeken European Council, headed by former French President Valéry Discard d'Estaing, was to create a European constitution that would profoundly adapt the functions and decision-making processes of the Union (making its institutional structure clearer and its reach deeper). The constitution would repeal the multiple treaties establishing EU governance and replace them with one document. This was significant because it would concretely establish a European law without deference to multiple international treaties (Eur-Lex, 2015). Although signed by the heads of state and government in October 2004, it was ultimately rejected after failed referendums in France and the Netherlands in 2005. This initiated what then-Commission President José Manuel Barroso referred to as a time of crisis for the EU (Barroso, 2005). The rejection of the Constitutional Treaty is important and initiated crisis at the European level because, although it was signed by the heads of state and government (typical of the EU as an elite-driven organisation), it was rejected in referendums by the French and Dutch people. The French No-vote was particularly defeating to the Constitution as

former President d'Estaing had acted as its chief proponent. However, Barroso (2005) noted that this constitutional crisis began a "period of reflection," which sought to build trust between the peoples of Europe and the EU.

Since establishing Union citizenship with the 1993 TEU, the EU has, in part, shifted attention from a largely economic directive to an interest in deepening the 'ever closer union among the peoples of Europe.' In particular, the EU has focused its attention on the principle of subsidiarity, in which Article 5 of the TEU states the EU should "act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States." This means that there must be a clear division of powers between the Member States and the EU so that both ensure the decisions are made "as closely as possible to the citizen." (TEU, 1993) The 'period of reflection' Barroso discussed was concerned with ensuring that the EU decision-making process and major treaty changes were in line with the principle of subsidiarity.

The constitution was replaced with the Lisbon Treaty, which became active in 2009 and made many of the same changes the constitutional treaty would have made but removed all references to a constitution of Europe. It was, like the treaties before it, an amendment on the TEU and the European Community (now renamed, the Treaty on the Functioning of the EU). Institutionally, it extended the use of qualified majority voting (as opposed to unanimity) in the Council of Ministers and amended the composition of EU institutions in order to account for the new Member States, while also creating two new posts: the President of the European Council and the High Representative for Foreign Affairs and Security Policy. It also attempted to do two things, perhaps paradoxically: on the one hand, it reformed its rules on subsidiarity, making the

distribution of competences between the EU and its Member States clearer. While it attempted to improve its intergovernmental approach, it also on the other hand sought to improve its democratic component by increasing the competences of the European Parliament and establishing a citizens' initiative to promote citizen participation in the EU. Although intergovernmental decision-making is crucial to the EU's approach to governance, it has attempted to make Union citizenship a growing facet of its legitimacy.

This so-far final stage of integration is particularly crucial in understanding the notion of fragmentation in the EU and the tension between contested politics and depoliticisation. It is important to stress that with this stage of integration we most strongly see the tension between elite-driven technocracy that has historically managed European integration and both popular disinterest and rejection of EU policy management and decision-making. The EU has focused much of its legitimacy on the results it broadly provides its citizens (typically in a depoliticised manner). However, when the EU is unable to translate these results into the public discourse, or in times of economic crisis, the EU struggles to legitimize its method of organization. Leon Lindberg and Stuart Scheingold (1970) argued that popular disinterest and general acceptance of European institutions resulted in a 'permissive consensus' and acted as a kind of banal legitimacy for European politics. The Eurobarometer, which tracks public opinion on a variety of European issues, seems to provide contemporary backing for this notion, as 42% of EU citizens trust the EU (the highest since 2010, even through multiple crises), while trust of national governments and parliaments is at 35% (Standard Eurobarometer 90, 2018).

There has been a pronounced shift in attention in these discussions over

legitimacy at the EU level, from largely economic and monetary concerns (the results-orientation of the EU) to issues surrounding the EU's democratic accountability (fulfilling the will of the people). In her discursive account of EU's legitimacy, Claudia Sternberg (2013) argues that this shift occurred in the lead up to the 1993 TEU, mainly because the integration process appeared stagnant due to an incomplete common market and unclear subsidiarity. Her account focuses on the discursive legitimation of the EU in its treaties, but perhaps over-emphasizes the EU's concerns with the peoples of Europe. To rejuvenate the European project, completing the common market became the major impetus for the TEU, while its language of the peoples of Europe and Union citizenship introduced a perhaps partial connection between the EU's institutions and the will of the people. However, the process was still slow and the eventual European Monetary Union required a piecemeal approach. While the 1993 TEU set the convergence criteria with the aim of establishing the monetary union, the 1997 Amsterdam Treaty again deepened the supranational powers ensuring budgetary discipline and created a new exchange rate mechanism in order to provide stability for the upcoming euro. Perhaps the biggest step towards the EMU was the creation of the European Central Bank (ECB) in 1998. Modelled after the German Bundesbank, the ECB acts as administrator of the common monetary policy. The piecemeal approach to creating the EMU however stopped short of a fiscal or full political union at that time. However, the EU's main treaties show a transition from economic prosperity and the common market as their chief orientation to refocusing attention on the peoples of Europe. The Lisbon Treaty, beginning with the constitutional debates in 2004 and ending with its ratification in 2009, looked to reform the institutional structure in the face of successive enlargements, while affirming a

commitment to the principle of subsidiarity and representative democracy. I contend that this shift can at least in part be understood in the broader context of EU's legitimation function and its fundamental characteristics as a technocracy.

Jürgen Habermas refers to the EU as “technocracy without democratic roots.” (2015: 11) This draws attention to the EU's democratic potential and the ongoing problem of its democratic deficit. Habermas is concerned in his most recent writings (2012; 2015) with the connection between technocracy and legitimacy. He notes that the EU, in the eyes of its citizens, has been largely legitimized through the results it has produced (2015). Historically, Habermas is correct to note the absence of political activity in forming the EU: “In its current form, the European Union owes its existence to the efforts of political elites who were able to count on the passive consent of their more or less indifferent populations as the peoples could regard the Union as being also in their economic interests.” (2015: 3) European integrationists, like Monnet, saw their project as working for the peoples of Europe rather than on their express will through political parties and national parliaments. However, the notion of a democratic deficit is fundamentally tied to the notion of technocracy as an organizing principle of the EU.

The process of European integration was part of a broader trend of economization and technocracy (Habermas, 2015: 63). The connection that Habermas makes in his latest works is located in his desire to see a deeper democratic Europe, given his argument that the technocratic and elitist European project has contributed to a growing legitimation crisis: without political activity based on common European issues, the EU is fragmented and possibly even doomed to collapse. Habermas is correct to note a particular shift in the organizational structure of the EU from Member States to EU citizens (2012). However,

the crises he finds stems less from technocracy as an organizing principle of the EU, and more from the mix of technocratic decision-making and greater calls for fulfilling the will of the European peoples that characterises the process of European integration.

While the EU has become organized through multiple levels of governance, each containing, as Moravcsik (2008) reminds us, institutional and national checks on its policy output, a danger still remains in the palpable absence of EU citizens. Moreover, when EU citizens are present, in nation-wide referendums, they have used that opportunity on multiple occasions to vote against deeper integration. In fact, the peoples of Europe have voted against EC/EU referendums thirteen times since 1972, including Norway rejecting EC/EU membership twice (in 1972 and 1994), Greenland voting to leave the EC (in 1982), Denmark and Sweden's rejection of the euro (in 2000 and 2003 respectively), Greece's rejection of the bailout conditions set by the EU and IMF (in 2015) and on numerous occasions, states rejecting EU treaties until they received necessary opt-outs. Most recently, the United Kingdom voted to leave the EU in 2016, being the first to do so since the Union was formed. Although Moravcsik may dismiss these referendums as a possible symptom of the democratic deficit, it is nevertheless indicative of the inability of the EU to foster popular support, emotional attachment and social integration of nationally divided peoples.

There does seem to be a division between Habermas' call for the EU to mobilize greater popular support (2002) and the EU's history of technocracy. I believe Habermas' criticisms of technocracy to be sound but missing the historical background that Monnet in particular has set up as the reasons for technocratic and bureaucratic decision-making. Monnet believed that common institutions were needed in order to solve common

problems in Europe (Fontaine, 2000). I argue that Fontaine echoes Monnet's autobiography (1978) fairly accurately. Monnet's proposal for the ESCS was thought to be the origins of a new political system with profound consequences: "The Schuman proposals [Declaration] are revolutionary or they are nothing." (Monnet quoted in Fontaine, 2000: 17) The idea was that Europe could be built through political achievements that would create solidarity among the peoples of Europe. Monnet (1978) argues in his autobiography that it was their goal to change the minds of the peoples – to get them to see that working together was mutually beneficial. Peace would not be achieved through intergovernmental negotiations but by establishing the conditions for solidarity. Technocracy then was building Europe as a political project that would allow people to acknowledge their attachment to one another: "If the citizens of our countries are able to pursue, understand and support this common interest, we must create the conditions which will progressively change their attitudes and their conducts towards others; national problems must be shared." (1962, cited in Sternberg, 2013: 27) Habermas (2002) argues that the only remedy for the democratic deficit is "the simultaneous emergence in Europe of a public firmly rooted in the democratic process." The difficulty with Habermas' argument however is his understanding of a 'core Europe,' which perhaps creates fragmentation out of a differentiated Europe.

Habermas (2002; 2016) argues that a 'core Europe' is required to continually push Europe into a deeper political union, even with the contested politics that appears because of differences of national interest. The problem here is found in his other position that Europe lacks a comprehensive vision for its future (2015). Habermas (2016) believes the UK's vote to leave the EU is pushing the EU into a differentiated organization that would

institutionalize a 'core Europe' (France and Germany in particular), which would allow Europe to deepen integration while other states remained on the periphery. The problem at first is that it has already been established: the countries that argued against the EMU have been given opt-outs to the eurozone (notably, the UK, Denmark and Sweden). Germany has also already acquiesced to the fiscal union in order to lead the EU out of monetary and economic crises. The eurozone countries see the necessity of deepening their interdependence, while the UK becomes further removed from European politics. The second problem is the lack of clear vision for Europe's future through this differentiated organization. Monnet and Schuman claimed that the only way forward was through a piecemeal approach, in which the peoples of Europe would gradually see the political achievements of Europe working in a community: "Europe will not be made all at once, or according to a single plan." (The Schuman Declaration, 1950) Contestation of contrasting visions of Europe could work to deepen integration, but only if they were interested in common problems and working through common institutions.

The 'lure' of technocracy that Habermas fears, I believe, can be attributed to the willingness Member States have to use the Union's institutions to achieve their own national goals at the expense of the community spirit (not to dominate over other Member States). Differentiation, the idea that the EU can function with ongoing contestation over its policies and future agenda, can lead to fragmentation of the Union or to a deeper political union. Simon Hix (2008) accurately points out that the EU today already sees much contestation in its institutions over its policy and agenda setting. It needs to deepen this contestation as a way to strengthen its democratic accountability and its citizens' political activity. With noticeable winners and losers in European elections (not just for

the EP but also the Commission), citizens can more strongly attach to European political parties and leaders, making them more engaged in European politics. This form of contested politics at the European level seems very much aligned with Monnet and Schuman's piecemeal plan for integration: no one vision dominates as the peoples of Europe understand and appreciate their greater cooperation and integration (contributing to social integration across Member States). 'Core Europe' cannot be allowed to create a notion of 'peripheral Europe' that must deal with the consequences of more powerful states. If the EU continues to seek legitimacy through its results (its political achievements), its attention to free movement and Union citizenship must be made a European issue rather than one dominated by national interest and sovereignty. Transnational movement between a differentiated Europe works only to fragment rather than integrate the peoples of Europe.

Conclusion

This chapter ends with a perspective on the way that European integration has fostered both inclusion and exclusion. It responds to the particular ways Habermas describes the EU and its place in the post-national constellation. Of importance, I argue, is the salience of Union citizenship and the free movement of peoples to how European politics has become contested. While Union citizenship falls short in providing institutional structure for meaningful political activity at the European level, it does lay out the necessary political framework of the EU at this stage in its development. Here I echo Iris Marion Young (1990) from the discussion in Chapter 2 and the need to recognize the rights claims of disenfranchised minority groups. The EU has fostered inclusion by gradually expanding the protections provided by Union citizenship, but has

ultimately failed in establishing meaningful political activity for non-state actors, in favour of a more administrative approach to minority rights. As later chapters argue, when the EU responds to difficulties or crises with separate national strategies, Member States struggle to maintain the community spirit which contributes to deeper social and political exclusion, particularly of non-nationals.

According to Habermas (2001), the nation-state has functioned as the globally dominant model of political organization, but has increasingly faced disempowering pressures from the global economy. Globalization is the process that “characterizes the increasing scope and intensity of commercial, communicative, and exchange relations beyond national borders (2001: 66). In the context of this discussion on the EU, Habermas stresses that, since the end of the 1970s, the nation-state has opened itself up, both in terms of cultural and communicative interactions with other peoples and economically. Habermas is effective at noting that globalization is the opening of the nation-state to a markedly “economically driven world society.” (2001: 61) Habermas argues that this has resulted in disempowering the state’s capabilities to control its macroeconomic policy, including taxing its citizens and companies operating within its territory. Heads of state and government have resorted to becoming “efficient managers” of an economic and political system increasingly out of their control (2001: 80). This has profound political implications as political activity is diminished through a feeling of ‘enlightened helplessness’ (2001:61) in citizens and a results-oriented and economic driven leadership.

Habermas’ understanding of a post-national constellation is focused on how democracy can be extended past the nation-state. The EU, Habermas believes, suffers

from a democratic deficit. However, since he views globalization as a process, the growing importance of supranationalism in Europe, which accentuates technocratic and bureaucratic decision-making is not necessarily an end-point. Pan-European democracy can be nurtured by European political parties, media taking up European issues and transnational groups and communities forming positions and take up causes. Firmly rooted in his theory of communicative action, Habermas is concerned with the legitimacy of authority beyond the nation-state. Legitimacy, Habermas (1998) writes, can only be secured through participatory democracy and political deliberation. However, citizens are alarmed by the diminishing powers of the national state and the growing ability of a post-national constellation made up of private business and international organizations (Habermas, 2001: 61). Habermas (2001: 76) does not believe that democracy needs to be “rooted in the “nation” as a pre-political community of shared destiny.” Instead, Habermas argues that the democratic constitutional state has a strong ability to provide social integration for a differentiated society which stems from the deliberative opinion- and will-formation of its citizens (2001: 76). It is solidarity based on social justice and human rights that brings together a differentiated civil society in a common public sphere.

It is here that I argue Union citizenship plays an important role in creating an extra-political European space by introducing European rights that have been gradually extended over time. Echoing Iris Marion Young (1990), I argue that the danger the EU has faced is depoliticizing minority rights, in favour of top-down decision-making and, as discussed in Chapter 4 on the Roma, separate national integration strategies. However, the EU has recognized the need for expanding on the rights of free movement and anti-

discrimination, which have been legislated through Union citizenship.

Union citizenship has two important elements: it grants citizens across Member States equal status and creates, as much as possible, a European identity and sense of belonging to the EU. Deeper democratic practices and rights of Union citizenship were designed to both integrate Union citizens and establish a European identity, which initiates a new political community that functions within and across the EU Member States. The European Council and Parliament have extended upon and clarified the rights of movement with Directive 2004/38/EC on the right of Union citizens and their family members to move and reside freely within the European Union. Referred to as the Free Movement Directive, it specifically dictates that Union citizenship “should be the fundamental status of nationals of Member States when they exercise their right of free movement and residence.” (Directive 2004/38/EC, 3) Importantly, movement and residence is designed to “strengthen the feeling of Union citizenship and is a key element in promoting social cohesion.” (Directive 2004/38/EC, 17) Article 24 of the directive specifically targets equal treatment of all Union citizens, prohibiting discrimination based on nationality. The directive also recommends that the piecemeal approach to the right of free movement that began with the ECSC and saw a slow, step-by-step approach to an internal market, be replaced by a single act, guaranteeing and protecting free movement (Directive 2004/38/EC, 4).

It is important to note that Union citizenship is indicative of what Besson and Utzinger (2008: 196) refer to as the EU’s political character being not a single, but a multi-polity entity. In fact, Union citizenship has an important role in establishing the political framework of the EU because it confronts Member States’ governments with

rights-bearing individuals who are also non-nationals. While writing before the establishment of Union citizenship, Preuss is correct in understanding its *raison d'être*:

Union citizenship is not so much a relation of the individual vis-à-vis Community institutions but rather a particular socio-political status vis-à-vis national Member States which have to learn to cope with the fact that persons, who are physically and socially their citizens, are acquiring a kind of legal citizenship by means of European citizenship without being their nationals. (Preuss, 1996: 551)

This means that the link between the institution of citizenship and nationality, while not fully severed, is weakened. Member States must acknowledge the rights of citizenship for non-nationals (the exception being third country nationals).

However, the existence of non-national Union citizens and other third country nationals (like refugees and migrants) living across EU Member States does foster problems of social and political inclusion, which the EU has so far been unable to properly address. As is discussed in the next chapter on the situation of the Roma communities in Europe, when some Union citizens are enacting their right of free movement, they are confronted with reintroduced borders or political discourse directed at their existence as undesirables. There are two elements at play here: first, the community spirit (that no country should be dominant over the others) is being ignored or suppressed in favour of Member States' national interests and second, the EU has struggled to initiate the principle of subsidiarity (the EU should act on issues when its Member States are unable to do so or if the EU is more properly suited to do so). The EU is often unwilling or unable to act on the issue of inclusion of minority groups, particularly when Member States' governments have made it a political issue.

In the case of Hungary, Prime Minister Viktor Orbán has argued that the EU ought to function simply as an extension of its Member States' clear wishes, in contrast

with the notion of the community spirit articulated by others. (Diekmann & Vehlewald, 2015). For Orbán, the state is the political structure in which the nation is strengthened through laws that enrich traditional Hungarian culture and religion and diminishes what is viewed as non-national influence. Specifically, Orbán and his ruling Fidesz party fought a legal battle with the EU to give non-Christian religions a secondary legal status. Orbán has also made the relocation of refugees a part of his political agenda and used the Migration Crisis to force a confrontation between the state of Hungary and the EU. Of importance for Orbán is the perception that migrants (both migrants external to the EU and certain EU citizens) are risks to public security and national stability (Kroet, 2016).

The gradual extension of Union citizenship has given Union citizens who migrate more strongly expressed anti-discrimination legislation, but discrimination against migrants often links race and ethnicity with other issues, like criminality or national security. Étienne Balibar and Immanuel Wallerstein (1991) argue that racism and discrimination in Europe does not necessarily function to highlight the superiority of one nationality or race (although it can do that), but racism serves as a warning that life-styles are incompatible and traditions must be preserved by the state. In Chapter 5, I discuss the Migration Crisis and the issue of reintroducing borders in the EU, but an important justification EU Member States (like France and Hungary) have used to re-establish borders is the claim that they have become necessary because of issues surrounding national security and health and safety.

The EU itself has also become bound up with issues of exclusion and discrimination because it has failed to make clear policies in the European political space against what Balibar (2004) refers to as Fortress Europe and European Apartheid.

Although state borders were dismantled in the Schengen Area of the EU, a cultural discourse exists which seeks to uncover and limit 'Europe', which Balibar refers to as Fortress Europe because it makes the peripheral Member States into securitized borders. This discourse can seek to define European culture and the geographic and cultural limits to Europe (such as in the case of Turkey's possible accession to the EU which has been stalled since 2016), but it also has an economic character. European Apartheid is the recognition that there are those who are allowed to enjoy the rights and freedoms (including economic prosperity) of European integration, like multinational businesses and even the European politicians themselves, and those, like the Roma communities in Europe (discussed in the next chapter), who become the focus of police pressure and of interest to national security.

The Roma are confronted with both a resurgence of a cultural discourse centred on the idea of the 'gypsy' and its connection to an alleged status as criminals and delinquents. As they exercise their right of free movement, they are also confronted with forceful evictions and a rise in anti-Roma discourse from political parties and government figures. The removal and evictions of Roma in France began in 2010 and they have since become central figures in the renationalizing of citizenship practices and reintroduction of border controls. Claire Duffin (2013), in her article in the Daily Telegraph, refers to the arrival of unemployed Roma to France as an "invasion" that stemmed from "good transport links and the lack of passport controls because France is part of the Schengen area of European countries that has no border controls." However, Duffin (2013) also notes that the Roma are being evicted from their settlements, indicating the more ubiquitous border controls still exist for the Roma. The mayor of Roubaix, France, Duffin

(2013) worked with the police to evict the Roma from his town for reasons of “security, hygiene and major inconvenience to local residents.” In 2013, Amnesty International reported that 10,000 Roma were forcefully evicted from their homes that year (France24, 2013).

Saskia Sassen (2006: 35-36) argues that cross-border regimes distinguish based on class rather than territory. Certain classes of people are granted protections (such as professionals), while others are withdrawn from this protection (such as undocumented workers). In the case of the Roma, class is tied to their shared cultural and ethnic identity. They are identified as ‘gypsy’ to indicate simultaneously a nomadic, unemployed lifestyle and supposed criminal activity as beggars and stealers. This discourse is often centred on the lack of national state borders within the Schengen Area. Nationality, and the citizenship it provides, become bundled in a discourse concerning the ramifications of EU citizenship and free movement. Slavoj Žižek and Screko Horvat (2013: 109) refer to the common racist claims of an invasion of foreigners, who are noticed because of the colour of their skin, their language, or their clothes and food. Historically, the nation-state had recourse to repatriation or naturalisation (Arendt, 1973: 281; Derrida, 2001: 7), which the French police have attempted to do by transporting and offering to pay the Roma to leave either the city or country (Duffin, 2013). However, as EU citizens, repatriation is only possible if they choose to leave willingly (perhaps also being confronted with police violence) and do not return, while naturalisation depends heavily on a willingness to integrate into French society and the labour force.

In the next chapter I explain how the situation of the Roma in Europe helps to illuminate the ways in which the EU and its Member States have been unable to create a

unified integration strategy which tackles the migration of peoples. Since the free movement of persons has become a fundamental characteristic of the EU, discrimination based on race, religion and national origin have taken on a European dimension.

Chapter 4 – The Roma: A European Peoples

“RESOLVED to continue the process of creating an ever-closer union among the peoples of Europe.”

- Treaty on European Union

“The Roman[i] people are the losers of the European Union.”

– Petra Rosenberg, the chairwoman of Germany’s national association of Roma and Sinti (Berlin-Brandenburg chapter)²⁸

“[T]he European Union continues to be in crisis. A financial and economic crisis. A social crisis. But also a political crisis, a crisis of confidence.”

- José Manuel Barroso (2012)

In the previous chapter, I provided an analysis (in three stages) of European integration since the Second World War as a way of understanding the dynamics of the European Union (EU). I stressed that, although paradoxical, the EU has developed through a relationship of national self-interest and common European issues. At the heart of the European project was the idea that economic integration could eventually lead to political union without national borders or discrimination. Although envisioned by Jean Monnet, a founding father of the EU, as a piecemeal project consisting of gradual leaps, it was a revolutionary attempt at establishing the political conditions of what Habermas would later refer to as a post-national constellation.

Monnet’s vision of Europe challenged nationalism and national self-interest as components of people’s mindset and way of thinking. Mere coordination of sovereign states would be dropped in favour of economic integration and an ‘ever closer union among the peoples of Europe.’ Technocratic decision-making was established as an organizing principle of the EU, which would assume authority over common issues.

²⁸ Quoted in Robert Schwartz’s DW.com article, “Anti-Ziganism in focus on International Romani Day.”

However, the 1993 Maastricht Treaty brought about a partial but noticeable shift in the EU's mode of legitimation. Previously, technocratic leadership sought legitimacy solely through its political and economic achievements. The Maastricht Treaty however recognized the rights of the peoples of Europe. Central to this was establishing free movement as a fundamental right of all persons (not just workers). This right was also given political expression as part of Union citizenship that acted as complementary to national citizenship. EU citizenship granted transnational political rights such as the right to vote in local and European elections.

Hannah Arendt, in her description of statelessness in early and mid-twentieth century Europe, argues that it is precisely the lack of political activity (being removed from one's polity) that makes migrants rightless. The nation plays a primary role in establishing statelessness as migrants confront both the national sovereignty and identity of (potentially) receiving nations. Territory plays a key element as migrants traverse national borders, but just as important is the national community, its language, culture and connection to state institutions.

Understanding the connection between citizenship, mobility (migration) and statelessness is crucial in discussing the situation of the Roma in Europe. Largely absent from academic literature and official EU and Member State discourses is how the issue of social and political inclusion (enfranchisement) of the Romani community is tied to how the nation limits political activity of (certain undesirable) migrants. The motivation of this chapter is to locate the Roma community in Europe (their relations with the national populations and government and social and political exclusion across Europe) in the larger discussion of citizenship, migration and statelessness. The situation of the Roma

has largely been absent in scholarly, political and philosophical works by Saskia Sassen, Wendy Brown, Rosi Braidotti and Étienne Balibar – all of whom discuss these important issues of social and political exclusion, including frontiers, borders and movement, but also fail at including an analysis on the Roma. In his most recent monograph Matthew Carr (2016) briefly discusses the situation of Roma migrants within Europe. However, he provides no information on their background, including their cultural and historical experiences as a pan-European, national minority.²⁹ Instead, the Roma community is an under-developed example of social exclusion and poverty and often a part of either a state's (such as Slovakia) ethnic complexity or a range of other discriminated national minorities, including other stateless Jewish and Muslim populations (for example, see Carr 2016: 37; 228).

This chapter serves to address what I believe are scholarly and political deficits to the Roma. While research has largely focused on the social problems historically facing and associated with the Roma (including, education, employment, housing and healthcare), I wish to locate a discussion on the situation of the Roma in the socio-political contexts that Barroso's quote alludes to: the social, economic and political crises plaguing the EU and its Member States. I am arguing that Europe has become the location for a confrontation between notions of national sovereignty and identity with the fundamental characteristics of the EU (particularly, the European Single Market (the four freedoms of which are the freedom of goods, capital, services and people) and Directive 2004/38/EC, which guarantees the right of free movement of persons). The EU sought, in

²⁹ The Romani peoples are a global diaspora, with populations in North and South America, Asia and Oceania. However, this chapter is discussing the Roma community across Europe, specifically within the EU, including the sizeable populations in Romania and Czech Republic and the migrant Roma community in France.

its way, to curtail the effects of state sovereignty on the rights of migrants by creating a Union of the peoples of Europe and granting and recognizing a transnational Union citizenship. However, I will show that the EU and its Member States have largely focused on the discrimination and exclusion facing the Roma in terms of national integration strategies. This fails to take into account how this discrimination is bound up with the issues surrounding European politics, particularly European integration, the politics of migration and the conditions of statelessness.

I do not believe the EU is a passive organization. Rather, as Monnet envisioned, it has functioned, in part, to reshape state sovereignty by protecting those most vulnerable to its effects: migrants (in particular, undesirable peoples such as ethno-cultural minorities and refugees). However, the fundamental characteristics and rights of Union citizenship are in contestation with notions of state sovereignty and identity. Although the preamble of the Treaty on European Union refers to the foundation of a “union among the peoples of Europe,” the question remains: does Union citizenship make the Roma one of these “peoples” although they are a transnational minority? This chapter argues that the EU must engage with the Roma as a people of Europe, both as a transnational minority group with EU citizenship and as non-state actors in Europe.

This chapter is not an anthropological analysis of the Roma community in Europe (see Cohn, 1973; Fonseca, 1995; Stewart, 1997; Hancock, 2002; Williams, 2003). Rather, in the context of the larger dissertation, it provides a discussion of the Roma’s experiences in Europe, designed to draw a connection between citizenship, migration and statelessness. The topic of the Roma community in Europe is not only largely absent in the broader scholarly discussion, but presents an opportunity to touch upon how the EU

and its Member States are often in crisis concerning maintaining a perceived national social cohesion and respecting the EU's core values, including the directives of free movement and racial equality.

The chapter is divided into three sections. First, I provide key historical information on the Roma, including a discussion on historical and ongoing issues of discrimination and exclusion (both social and political) in Europe. I believe there has been an aversion to discussing the historical details of the Roma communities, but acknowledging the historical prejudice and discrimination of the Roma is crucial in understanding today's crisis. In this section I predominantly discuss the Roma communities in Eastern Europe in order to flush out the historical practices and treatment governments have enacted on or at the Roma (Bulgaria and Hungary have had notably Roma communities since the 12th century). I argue that states and their populace have engaged in discriminatory practices against the Roma on the basis of three elements: the Roma as wanderers, foreigners and as an unproductive community. While it is impossible to discuss the entirety of Roma history in Europe, it is nevertheless important to discuss some of its chief characteristics. The second part looks at the EU's response to these problems. The EU has engaged in helpful practices that have attempted to alleviate the often poor social conditions of the Roma. However, they have made their focus largely on strengthening and empowering National Integration Strategies, creating a system of mere-coordination. The Roma communities across the EU largely have citizenship in an EU Member State and therefore EU citizenship, but the Roma are noticeably absent as politically active EU citizens. Finally, I argue that the EU and its Member States, while attempting to alleviate the difficult social and political conditions of the Roma, have

failed to address the problem as a European one. National divisions regarding migration and citizenship continue to play an important role in this area. The nation is ill-equipped to tackle the situation of the Roma, often oscillating between exclusion and assimilation campaigns. The ongoing conflict between the French government and its Roma community will be highlighted as a noteworthy case of discrimination, social isolation and political disenfranchisement. However, the EU's right of the free movement of persons forces its Member States to confront their policies towards the Roma, not as foreign migrants, but as EU citizens.

The Roma Across Europe: a community of communities

The difficulty of establishing a concrete understanding of the Roma in Europe begins in defining what kind of group the Roma community is. First, the Roma are not 'gypsies'. Ian Hancock (2002) perhaps provides the strongest case against the use of the term. Hancock argues that it has historically operated as a Janus-faced term, serving to both dehumanize and idealize, or fetishize the Roma (2002: 61). To gyp is used to steal or falsely acquire someone else's money or property. Gypsies are then presented as thieves, beggars, charmers, fortune-tellers, etc. This image is of something untrustworthy, foreign (even supernatural) and importantly, lazy and unproductive in labour. The combination of being deemed as foreigners and being deemed as unproductive are key elements in European discussions of the Roma today and are discursive tools for extreme right-wing parties.

The other side to this image is the gypsy as wanderer, traveller or nomad. Hancock writes that the industrial revolution in Europe brought about an idea of the

gypsy as pre-industrial or pastoral. This has important connections to other two elements of this image - gypsies are foreigners that are also an ideal anachronism. They are not bound to the Western work ethic. Importantly, for both of these sides, Hancock writes: "Use of the word gypsy to convey an image rather than identify an actual individual is very common." (2002: 65) The term gypsy is meant to convey an image rather than be in reference to an actual people. Furthermore, Hancock notes that use of the verb 'to gyp' is often not seen as an ethnic or racial slur because the Roma are not an ethnic identity or group (2002: 67). 'Gypsy' as an image is meant to convey a nomadic lifestyle, or choice of living. There is a purpose to the image: to dehumanize the Roma as a wanderer, without a race or nation. Movement (often across national borders) has been an important and historic aspect to Romani life because national legislation, Hancock argues (2002: 101) has forced this upon them. National governments have historically targeted the Roma, focusing on the ways they can earn a living and where they can live. This legislation was designed to keep them nomadic or at least remove them from the area (I expand on this idea below).

I would also like to address the appropriateness of the designation 'Roma' as opposed to Romani or Rom. 'Roma' is the designation that the EU has adopted and is often used in Europe, particularly for political and cultural organizations and associations. However, Ian Hancock (2002) notes that not all members of the Romani community identify as Roma or accept its usage. Hancock notes its patriarchal connotations, as Rom designated a 'married Romani male'. Within Europe, Rom has two divergent usages: to denote 'husband' (or man) or the larger population. In his anthropological study, Werner Cohn, notes the difficulty of using Rom as a general

designation because, especially in Europe, there are a variety of Romani communities (1973: 19). Cohn's analysis is a useful starting point for understanding the heterogeneous element of discussing the Romani community and their languages. More is said about this heterogeneity below, however Hancock argues that Romani is often uncontroversially used for self-description. This chapter will use the designation 'Roma' for simplicity and clarity, as it is the term used in EU official documentation and by organizations like the European Roma Rights Centre as well as the Roma Education Fund. Also, my use of the designation Roma is necessary because I am largely discussing the community of Roma that have migrated from Eastern Europe. Roma is the term most often associated with the Romani community in Eastern Europe, particularly Romania and Bulgaria. Although they are a community of communities, they often speak the Romanes or Vlax Romani language (or a variation thereof).

As a global diaspora, the Roma tends to act as a catchall term for a variety of communities. There are prominent Roma communities in most European states. In Eastern Europe, the largest community is most often designated as Roma. Romania has the largest minority community, both in its northeast and south. Bulgaria, Hungary, Slovakia, and Czech Republic (all EU Member States) have prominent Roma communities. Importantly, the communities tend to be located near national borders, in either rural areas such as the Dobruja area between Romania and Bulgaria. In Western Europe there are the Traveller-Gypsies of Ireland and southeast England, Slovensko Roma along with Roma Hervati and Istrian Roma in Northern Italy, the Rom, Mănus or Sinti, and Gitans or Spanish Gypsies in France. The Sinti are also the largest Roma community in Germany. A colloquial and common term for the Roma is tsigani or

cingaro (and their variations). These terms, while can be used by government officials are often avoided in official documentation because they are viewed as pejoratives. In 2010, the Romanian Parliament voted against replacing Roma in official government documents with the term Tzigane. The idea, also put forth by the former president of Romania, Traian Basescu is that the Roma are not and should not be associated with Romania and Romanians (the nation). Rather, Tzigane, which comes from the Greek for ‘untouchable’ provides a stronger link to India (making the Roma migrants and foreign). President Basescu said that the term Roma was introduced as a mistake (Wolfe-Murray, 2010).

Noted Roma scholar, Patrick Williams (2003), has argued that observations made of one group should not be applied to all across Europe and the world. While I think this is crucial in understanding the Roma communities in their specific cultural traditions, especially in order to combat discriminatory and racist defamations of them as a recognized community, Williams is making this argument in terms of anthropological studies and observations. The EU has also recognized the need for both specificity and broader, collaborative studies of the lives of Roma in Europe. In particular, the European Commission (2010) put out ten common principles to act as a guideline for its Member States. Importantly, they recognize four key policy areas that Member States should focus attention on: education, employment, housing and healthcare.

It is important to note that there are different Roma communities across Europe, but it is also necessary to address the common story of discrimination and assimilation campaigns based on the three elements I have brought up: foreigner, wanderer and unproductive. The EU’s strategy (which is discussed more in the next section) addresses

both discrimination and exclusion, but as they pertain to national integration strategies. Questions remain regarding how this discrimination is bound up with European politics. The Roma are seemingly disparate peoples across different countries, but are a source of social difference and targets of both discriminatory policies and assimilation campaigns. Nations have tended to oscillate between exclusion and assimilation when handling their relations with the Roma and their social conditions.³⁰

Historically, the Roma have a complex and often ambiguous story. However, there are clear reasons why a discussion of the Roma (as a community) makes sense. Although their history is perhaps muddled with vague references to Indian travellers, it is understood that the group (or groups) we understand now as the Roma travelled through Egypt, Iran and Armenia. In Angus Fraser's (1992) account of the Roma, their linguistic history is an important aspect in understanding their way of living. Fraser argues that while the history of their language cannot tell us a complete history of the Roma, it shows an ever-evolving culture. The Romani language, Fraser (1992: 14) argues, does have Indian origins due to its connection to Indian languages, but has continually evolved in close connection to the cultures they've be a part of (or, in proximity to). For example, Fraser (1992: 39-40) writes that the number of words with Iranian roots perhaps points to

³⁰ The notable exception is the targeting of the Roma during the Holocaust, where an estimated number of up to 1.5 million Roma were murdered. Called the *Baro Porrajmos* or just the *Porajmos* ('the devouring'), Hancock (2002: 34) notes this term has connotations of rape and meant to instill horror. The Roma were the only group, along with the Jewish people, to be targeted for racial extermination by Nazi Germany. Laws against the Roma existed before the rise of the Nazi party however and many of the laws prohibiting 'race-mixing' and miscegenation that would be clarified by the 1935 Nuremberg Laws had historical precedent. Today, remembering the *Porajmos* has been a source of contention for many states. As Michelle Kelso and Daina Eglitis (2014) note, states like Romania which have problematic relations with their Roma communities have made some attempts to commemorate Roma victims of the genocide (including a memorial unveiled in 2009).

a prolonged stay in Persia and the region, but there is no strong proof. I believe Fraser's most significant point here is that the Roma's migratory history presents a story of an evolving community rather than a stagnant or homogeneous one:

Their ethnicity was to be fashioned and remoulded by a multitude of influences, internal and external. They would assimilate innumerable elements which had nothing to do with India, and they would eventually cease to be, in any meaningful way, Indians; their identity, their culture would however – regardless of all the transformations – remain sharply distinct from that of the gadžé. (Fraser, 1992: 44)

So while the Romani communities have evolved considerably since leaving India (culturally and linguistically) and have dispersed through much of both Eastern and Western Europe, there remains a strong sense of separation from the general populations of the countries in which they have migrated to and their populations.

The notion of the gadžé is extremely important to understanding why we should have discussions of the Roma broadly (or transnationally) understood. The gadžé (also written, gadže) is the Romani term for the community that is not Roma, or non-Romani people (its singular is gadžo). It indicates both being separated by these countries (and their population) and a self-imposed separation. First, the separation that the Romani communities enforce on themselves, Ian Hancock writes, is due to a belief in ritual cleanliness and pollution (2002: 75-76). This is important in terms of the key policy areas (particularly, healthcare and housing) the EU has established: not going to gadžé hospitals and living in gadžé made homes runs greater healthcare risks as well as a greater chance for unsanitary living. Romani communities continue to struggle with higher rates of diabetes and cholesterol, along with lower life expectancy (2002: 76). That should not mean the Roma communities are themselves solely to blame for these

conditions as the wish to be separate from the larger community and governmental control is also the wish to avoid discrimination and conflict.

Michael Stewart (1997) notes that Romani culture seems to be largely defined by their notion of gadžé, but not in an actively hostile manner. In fact, Stewart points out that although there are feelings of being dominated by outsiders, referred as being in a state of siege (1997: 40), Romani intellectuals often point out that their culture is constantly being remade through the cultures and peoples they are in engagement. The gadžé serve a double purpose then: they are the dominate culture that Roma are to work with, but also are the ones who seek to disperse or eroticise the Roma. Stewart argues that the gadžé are largely the ones who refer to the Roma as gypsies and discuss their Indian heritage in order to convey the image of the Roma as foreigners. Stewart writes,

For them [the Roma], identity is constructed and constantly remade in the present in relations with significant others, not something inherited in the past. For the Rom I knew in Harangos, the basis of their social cohesion lay neither in the dream of a future reunion of their people nor in a mythology of shared ancestry.” (1997: 28)

A culture that recognizes both separation and intermingling is complex. However, the relations between gadžé and Roma have largely been established by regulations and legislation enforcing dispersal and isolation.

The shared history of Romani communities in Europe is one that has oscillated between assimilation and exclusion, but in both scenarios are guided by anti-gypsyism. In the case of the former, assimilation campaigns have often taken the guise of labour recruitment (limited to mostly physical labour) and prohibiting ethnic community settlement. For the latter, there are examples ranging from forced dispersal to laws limiting settlement. David M. Crowe (1994) provides a comparative historical analysis of

official government treatment in Eastern Europe, which is useful here. Crowe argues that while official treatment and level of integration differ across Eastern Europe (and over time), there are similarities. Beginning in the 11th century, first under the Byzantine and then Ottoman rule in Eastern Europe (notably Hungary and Bulgaria), the Roma communities were the target of legislation and popular discrimination that forced them to the lowest socioeconomic status. By the end of 14th century in Wallachia and Moldavia, the Roma were turned into slaves. The eventual decline of principalities in the region put a greater importance in the labour Roma communities had specialized (i.e. blacksmithing, locksmithing, etc.). Rather than rewarding this labour, they were enslaved. The status would last in the region until they were granted their liberty in 1856 (Fraser, 1992: 59). This is not only an historical fact, but a contemporary reality: Peter Vermeersch and Melanie H. Ram (2009), in their analysis of the Roma in EU Member States in Eastern Europe, argue that the Roma's greatest problems are discrimination and economic hardships (e.g. access to jobs, job security and scale of pay).

The blending of racial discrimination and economic disparity is uniquely tied in the case of the Roma. Anti-gypsyism (also called anti-Ziganism) is not only official or public prejudice against the Roma, but as Valeriu Nicolae (2006) wrote for the European Roma Grassroots Organisation Network (funded by the European Commission), it is a process of dehumanisation. Nicolae (2006: 2) writes: "I understand dehumanisation as the process through which Roma are often seen as a subhuman group closer to the animal realm than the human realm." This racist ideology is spread through, on one hand, hate speech and violence and on the other hand, segregation and socio-economic exclusion.

Anti-gypsyism is troubling in that it will often demand the Roma to admit and forsake their community and traditions, but never truly allow for inclusion (Nicolae, 2006: 7).

Much of the resentment and prejudice that these communities have historically experienced were twofold and connect to the three elements of discrimination that I mentioned above: first, the belief that all Roma were Muslim and second, the idea that the Roma led a nomadic, and therefore foreign, lifestyle. However, both these perceptions are incorrect or perhaps paradoxical. Crowe argues that the Roma's connection to the Muslim communities, particularly in Bulgaria, came about because the Muslim community were often more tolerant than Christian Bulgarians (1994: 6). The adoption of Christianity and Islam by separate Roma communities will continue to divide and hamper political unions until the present (1994: 29).

The second point of resentment that is often held against the Roma community (by both governments and their general populace) is that the Roma are a nomadic people. Like the first point, this belief could be considered inconsistent with the historical record, as the Roma have often migrated because it has been forced upon them. As Hancock notes, anti-gypsyism is uniquely focused on the Roma as wanderer or nomad (2002: 101). Although migration was a necessary part of the Roma's history (leaving India to Europe and elsewhere around the world), Hancock aptly notes that Romani ancestors were subject to laws forbidding settlement, regulating trade or business, or even forced dispersal.

As Roma first travelled out through Eastern Europe in the 14th century, they would often be granted safe passage or "imperial safe-conducts" as migrants (Fraser, 1992: 64). In fact, as the Roma communities made their way through Switzerland,

France, Germany and even into Spain and Portugal, they would often cite Christian charity as pilgrims in order to receive goods and lodging (1992: 63). However, the letters of protection they would receive would be limited (the Holy Roman Empire would allow five to seven-year stays) (1992: 71). These letters were also the more peaceful means to keep the Roma community moving. Fraser (1992) notes that most Western European countries have forced Roma migration, typically by issuing edicts that forbid entry. When entry was permitted, there was often an economic structure that the Roma could not penetrate: “the guilds regulated crafts and trades, commerce was also tightly controlled and peasants were not in the habit of employing casual labour, so what was left for Gypsies as a livelihood was limited to small services and minor trading and entertainment.” (Fraser, 1992: 81) This form of economic pressure was designed to exclude Roma from the general populace and its economic structure.

The other form of treatment that the Roma experienced were designed assimilation campaigns, which again were often designed to economically control the Roma community. In Eastern Europe, this was the preferred avenue of the communist regimes. The belief was that the livelihood the Roma engaged in, often traditional entertainment or work outside the national economic structure (such as fortune-telling), was seen as “social parasitism” (Stewart, 1997: 97). The Hungarian Communist Party sought to make proletarians out of both Roma and non-Roma. However, unlike the general Hungarian population, which had to engage in a level of re-education into the new communist structure, the Roma population were specifically targeted as outside the traditional Hungarian civilization. Therefore, the idea of making proletarians was designed to discipline Roma culture and install the ideology of Hungarian communism.

Most important to Michael Stewart's thought here is that communism presented itself as a break from the past (1997: 112). To the communists this was meant to solve the so-called "Gypsy problem" and rid society of ethnic divisions. However, it was a direct continuation of assimilation and exclusion policies of the past, which dehumanised the Roma as subhuman and tribal wanderers that was foreign to the civilized communist society.

Roma: A European Peoples

The notion that Europe has a "Roma problem" continues today and it often still revolves around these three elements of discrimination I've mentioned: the Roma as wanderers, foreigners and an unproductive community. However, unique to contemporary Europe is that the "Roma problem" is being tackled on two fronts: the EU and its Member States. The Roma communities in the EU are largely citizens of EU Member States and EU citizens and therefore have access to the rights of free movement of persons and non-discrimination.³¹ This section will look at how the EU has sought to alleviate the poor social conditions of the Roma primarily by a coordinated National Integration Strategy, but also the EU Charter of Fundamental Rights empowered by the 2009 Lisbon Treaty.³²

It is often repeated in official EU documents and communiqués that an estimated 10-12 million Roma live in Europe, of which they estimate 6 million live in the EU.

³¹ However, the United Nations High Commissioner for Refugees (UNHCR) estimates that across Eastern and Central Europe (so within and outside the EU) 17,000 people remain stateless, "many of whom belong to the Roma minority." (UNHCR, 2015)

³² The Charter of Fundamental Rights was originally written and adopted in 2000, but did not come into effect until the 2009 Lisbon Treaty. The Charter adopted was rewritten in 2007. It is understood that the Charter typically applies to the conduct of the EU and its institutions. It is also helpful to understand as Walter van Gerven notes, "it applies to the conduct of Member States only when they are implementing Union law." (2005: 124)

Spread across the EU's Member States, this makes the Roma Europe's largest ethnic minority (both these claims seem to first appear in a communiqué on the economic and social integration of the Roma by the European Commission, 2010b).³³ However, this is an unclear or imprecise statement as the EU is an organization making up a partnership of states. I argue that it is nevertheless an important statement as the EU is making the indirect claim that the Roma make up the largest non-state group within the EU's borders. Although the Roma largely have citizenship in an EU Member State and therefore EU citizenship, they are an ethnic minority group in every state they reside. Without a state, the Roma are therefore vulnerable to discrimination in multiple policy areas (by private and public agents) and by the activities of the state, which privilege national citizenship over EU citizenship.

The dialogue in popular media and journalism is that the EU currently faces a Roma problem. This means a lack of integration of the Roma into national society (employment and housing especially). However, it also serves another purpose: namely, to place the blame of this failure of integration on the Roma themselves (extreme right-wing parties will also blame the EU and the governing national political parties for the EU's open borders). There is a degree of culpability on the Roma. As I've mentioned above, the Roma have acted in ways to separate themselves. However, the areas of lower social conditions the EU is concerned with demonstrates a profound culpability on both the EU and its Member States and in the cases of migrant Roma communities across the EU (i.e. Roma persons with national citizenship in one EU Member State but residence in

³³ The European Commission's Department of Justice and Consumers operates a website that includes the EU's ongoing relationship with the Roma under the guideline of "Tackling Discrimination" (see, http://ec.europa.eu/justice/discrimination/roma/index_en.htm)

another), for the lack of economic and political frameworks that go along with the free movement of persons. For these migrant Roma communities, there remains the issue of privileging national citizenship. The EU has been unable to break the nation's history of exclusion and/or assimilation because it fails to see the Roma problem as a political one and therefore, the EU and its Member States offer no political remedies. I maintain that it is crucial in this discussion to understand the Roma, in part, as EU citizens. It is only then that the EU and its Member States can construct a coherent Roma platform.

The EU refers to its relationship and engagement with the Roma in Europe as its Roma platform. It came about in the context of EU enlargement in the mid- to late-2000s as the EU looked to expand into Eastern Europe.³⁴ Proposed at the first European Roma Summit in 2008, the Roma Platform (officially titled the European Platform for Roma Inclusion) acknowledges the role of the EU, its Member States and Roma organizations and activities at promoting and stimulating co-operation in the area of Roma inclusion. The auspices of such an undertaking come between 2004-2008. In 2004 the EU Network of Experts, which analyses anti-discrimination laws, equality and diversity across the Member States (on the basis of 2000/43/EC Racial Equality Directive and the 2000/78/EC Employment Equality Directive), established the need for a Roma Integration Directive (CDR-CDF, 2004). This would operate as a legally binding mechanism that would target the Roma specifically, rather than lumping all ethnic minority groups together under the 2000/43/EC. While no directive was established, in

³⁴ Countries with notable Roma populations that became Member States around that time include: Hungary (joined the EU in 2005) and Romania and Bulgaria (both joined in 2007). In both enlargements, the EU established limits to the right of free movement of persons and workers, but in the case of Romania and Bulgaria, the EU's Member States expressed explicit concern of Roma migration. These limitations established in the 2005 Accession Treaty came to an end January 1, 2014.

2007 the European Council issued a statement concerning the joint responsibility for Roma integration and ending or alleviating their isolation and poverty (European Commission, 2007). Establishing joint responsibility is crucial here because, although it is not legally binding, it doesn't absolve either party of their responsibility and role in increasing the poor conditions for the Roma. In fact, the EU and Roma NGOs have established that the Roma lack most of the basic services afforded to national citizens across Europe and face severe legal, economic and political injustices. The European Roma Rights Centre (ERRC) has criticized national governments for accepting discrimination and exclusion in employment (ERRC, 2006) and in schools (ERRC, 2007) in particular. The EU has largely echoed these statements in the EUMC 2006 (Roma and Travellers in Public Education), CDR-CDF 2004, European Commission, 2007 and perhaps most importantly, the European Roma Summit in 2008.

The first of its kind for the European Union, the European Commission helped form the European Roma Summit in 2008, which would establish the Roma platform and provide the arena for annual reports regarding Roma integration. The European Commission has played a crucial part in promoting Roma integration because it not only helps coordinate and oversee implementation of anti-discrimination policies, but it also directs the use of Structural Funds. Setup to ease regional inequality and promote growth across the EU, the Structural Funds have also been used to ease structural inequality and discrimination of the Roma. For example, between 2007-2013, Hungary received €25.3 billion for its regional development, with a reported €377 million that would benefit the Roma through housing and school development and infrastructure (European Commission, 2016). Although the EU does not earmark funds to specific groups (more

on this below), it targets areas largely affecting the Roma and through the Member States' annual reports, analyzes their impact. This would not occur if the EU did not establish that the Roma are a specific community facing certain disadvantages across Europe.

For its part, the EU has recognized the structural disadvantages of the Roma as an ethnic minority community. Specifically, they suffer from discrimination, poverty and exclusion in such areas as education and housing (Council of the European Union, 2008). Importantly, the European Commission has also recognized its "special responsibility" to answering these problems and alleviating the poorer social conditions of the Roma (European Commission, 2010b). This determines two important preconditions for the EU's responsibility and legitimacy in tackling these issues. The EU's main task however has been to ascertain the proper guidelines for national integration strategies. Integration in these terms means the elimination of discrimination based on "racial or ethnic origin in education, employment, health and housing." (European Commission, 2012) The Roma are a marginalized community across the EU (European Commission, 2010b) The EU recognizes that the Roma are victims of racism in these fields particularly, which has resulted in higher levels of poverty, lower access to education, proper healthcare and suitable housing (European Commission, 2010b, 2011 & 2012). The European Commission has attempted to implement a standard of social cohesion throughout the EU that impacts the economic and cultural lives of EU citizens. This means locating the key policy areas that affect the Roma (i.e. education, employment, housing and healthcare), providing funds to improve these social conditions, and providing an arena for coordination and cooperation between Member States and, if possible, disciplining or

rebuking Member States for failing to live up to these guidelines. Even for the EU, however, the state remains the locus for integration policy.

Between 2009-2011, the EU and the European Commission in particular established a more focused look at Roma exclusion and discrimination through the annual reports of the Member States, the creation of the Roma Task Force and, finally, the National Roma Integration Strategies. In 2011, the European Commission established the need for a Framework for National Integration Strategies (referred to as the Framework), which I believe would fulfill the mandate of the European Council's early statement on the joint responsibility of the EU and its Member States concerning the Roma. Each Member State is responsible to deliver an annual report on their Roma Strategy and is also held accountable by two institutions: the Roma Task Force and the EU Agency for Fundamental Rights (FRA). The Commission has reiterated the role of the Framework is "to make a tangible difference to Roma people's lives." (European Commission, 2011 & 2012) Importantly, the Framework makes two claims: to recognize the disadvantages specific to the Roma community³⁵ and to reiterate that the Roma be "treated like any other EU citizen with equal access to all fundamental rights as enshrined in the EU Charter of Fundamental Rights." (European Commission, 2011) The Charter is important here because it helps establish not only the core tenets of the EU's Roma policy but also, I believe, why it ultimately has been ineffective in curtailing the disadvantages facing the Roma.

³⁵ The European Commission expresses the desire create policies at the European, national and local levels that "**focus on Roma** in a **clear and specific** way, and address the needs of the Roma with **explicit measures** to prevent and compensate for disadvantages they face." (Bold found in original communication) (European Commission, 2011: 4)

First, I maintain that the Charter of Fundamental Rights (the Charter) and the EU Agency for Fundamental Rights have helped to create a discourse for human rights within the EU. In one document, the Charter establishes the “values on which the EU is based” (European Commission, 2010b). These values include dignity, freedom, equality, citizen’s rights and justice (European Union, 2007). In the context of the Framework, the European Commission recognizes that “[b]etter integration of the Roma is therefore both a moral and an economic imperative, which will require a change of mindsets of the majority of the people as well as members of the Roma community.” (European Commission, 2012b: 5) This makes the issue of Roma integration not simply about the distribution of funds and goods, but also about ethno-cultural discrimination as a moral issue for the EU and the general population coming to grips with longstanding discrimination against the Roma (the Roma must also accept stronger ties to the national communities).

In 2010, the Roma Task Force conducted the Commission’s first major assessment of these National Integration Strategies. It was designed to assess the Member States’ effective use of the EU’s Structural Funds (European Commission, 2010c). Their first assessment was that the Member States do not effectively use the funds to promote integration (European Commission, 2010d). Although this first assessment was limited to a questionnaire sent to the Member States, the Task Force established the importance of including the European Roma Rights Centre (ERRC) and the Roma Education Fund (REF), both Roma civil society organizations. The Task Force also recognized that while the EU sees the state as the primary actor in this affair, the EU has a major role to play. However, there is a need for greater coordination between the EU’s funding system: the

European Social Funds, the European Regional Development Fund and the Agricultural Fund for Rural Development. The main idea here is to commit funding to lessen the marginalization of rural communities, of which the Roma are a part.

The second point I would like to make regarding the Framework and the Charter is on its difficulty in implementing an effective strategy (or more to the point, strategies) and including Roma voices in its implementation and assessment. In the Commission's document putting together the annual reports and the Task Force assessment, they repeatedly note the lack of comprehensive strategy, concrete goals and targets and even data (European Commission, 2012b). They also note the need for the Roma civil society to be "more meaningfully involved in the process of Roma inclusion." (2012b: 35) This is an ongoing problem in the EU's assessment of the National Strategies: "Member States need to make more efforts to meaningfully involve both the regional and local authorities and civil society at all stages of the national strategies." (2012b: 13) It is not only the Roma communities that states must engage with, but the majority populations must also be involved at the lowest levels possible (in line with the principle of subsidiarity). The difficulty in the Commission's assessment is that the Framework largely focuses on a dialogue between the Commission itself and the Member States, with little or no space for Roma civil society.

The FRA has made this a particularly important issue, creating the Local Engagement for Roma Inclusion (LERI). Projects like LERI are designed to promote inclusion on how these integration strategies are implemented and share information with other localities around the EU (FRA, 2013). This appears to be an effective way at gauging the implementation of structural funds, but one that the Framework mostly

ignores. The Framework was itself criticized in a joint statement by the ERRC and the European Roma Policy Coalition (ERPC). They wrote:

The ERPC is also concerned that despite the general failure of existing Roma inclusion policies to produce tangible results and many Member States' lack of experience with such policies, the Framework offers no clear guidance for developing or implementing more effective national strategies. The Framework is too unambitious in some areas and fails to establish explicit targets for Member States, nor does it oblige them to collect relevant disaggregated data to allow proper monitoring and evaluation. (ERRC/ERPC, 2011)

The primacy of the state in implementing these policy changes and disposing of the structural funds comes up against certain roadblocks, including assessing its effective use with the Roma community (the tangible results) and providing information back to the Task Force, FRA and European Commission on its effectiveness. The Commission and the Member States, both of which largely exclude Roma voices, also dominate the Framework.

Lastly, continuing the ERRC/ERPC's line of reasoning, the Framework is unambitious in defining the responsibilities the EU and its Member States have to the Roma as EU citizens. The Charter (which gives the Framework its drive) is founded on the principles of "democracy and the rule of law." (European Union, 2007). This touches on the two conditions of the Roma Platform I discussed above (the Roma as a specific community and as EU citizens) and speaks to the difficulty the EU is having fulfilling its "special responsibility." The Charter affirms the individual is "at the heart of its activities, by establishing the citizenship of the Union and by creating an area [the EU] of freedom, security and justice." (European Union, 2007). The EU must do this while also respecting national tradition and sovereignty (and the diversity of traditions and

sovereignties). Doing both is a difficult task however. The Framework, the EU's chief programme on this issue, mostly functions as a cooperative system for a stronger coordinated network on Roma inclusion. This largely avoids earmarking funds for groups (as mentioned above), but rather chooses to push funds in areas those groups are likely to benefit from (rural funds for example). Therefore, the Roma are recognized as requiring assistance as EU citizens, but this recognition fails to account for the ethno-cultural dimension, including discrimination based on this dimension. The EU has maintained the primary position of the state on this issue since it began, but noted its own importance in forming equal treatment legislation (European Commission, 2008). However, in the areas of biggest concern (housing, healthcare, employment and education), "the EU can only coordinate Member States' policies and support their implementation inter alia through the Structural Funds." (2008) This creates what was mentioned in the previous chapter, a system of mere-coordination. It also largely avoids recognizing ethno-cultural discrimination that can occur by the state.

France: The Health and Safety of the Nation

This system of cooperation, without the necessary oversight from the Commission, the Charter or the Task Force and FRA, resulted in a security measure adopted in 2010 in France bringing about the demolition of Roma housing (often referred to as camps) and their repatriation or deportation (mostly to Romania and Bulgaria). While this issue has become an important topic for academic scholars (see McGarry, 2017 & 2011, Ahmed, 2015, & Cruickshank, 2013), I argue that its European dimension has largely been ignored (I would also argue they focus on these evictions as one event rather than an ongoing political crisis). The political crisis of the EU that Barroso (2012)

referred to is evident here: on the topics of immigration and integration the EU and its Member States are presenting widely different versions of European values. The conflict is between Member States, in this case France, attempting to protect its national identity, sovereignty and ultimately its social cohesion and the EU and its institutions attempting to forge stronger social cohesion amongst social difference across and within states. This crisis can be seen in the dialogue of then French Interior Minister Manuel Valls and then EU Justice Commissioner Vivian Reding on the legality of the evictions and deportations. Importantly, although the EU maintains the primacy of the state in these matters, the politics of immigration and integration are quickly becoming an issue of European politics and EU citizenship.

The evictions and deportations predominantly occurred between 2010-2013 across France and across both the administrations of the centre-right Nicolas Sarkozy and the Socialist François Hollande. Previously in 2009 roughly 10,000 Roma were deported from their settlements in France (ERRC, 2010). In August 2010, the French government made it a matter of policy as they made plans to evict Roma from what they considered “illegal settlements” and repatriate those living there (ERRC, 2010). The auspices of this security measure, as reported by the BBC (2010), saw “dozens of French Roma armed with hatchets and iron bars attacked a police station, hacked down trees and burned cars in the small Loire Valley town of Saint Aignan.” However, this event was triggered by the killing of a 22-year old Roma man that had driven past a police checkpoint (BBC, 2010).

I contend that the events here are often lumped into one discriminatory practice: the demolition of Roma housing (or evictions from illegal settlements) and the deportations (or repatriation) of Roma residing in France, mostly to Romania, Hungary

and Bulgaria. The ERRC (2012b) estimate that roughly 400,000 members of differentiated Roma communities live in France, with roughly 15,000-20,000 of those being migrant Roma. The estimates of those living in camps or illegal settlements is difficult to know because the French government bars collecting data based on ethnic or racial background, but Anne Penketh of the Independent (2014) reported that most of those 20,000 Roma live in these “shantytowns.” Ullrich Fichtner of Der Spiegel also reported that 539 illegal Roma camps existed in France (2010). These camps often reside outside the major cities, including the oldest, La Samaritan, which housed 300 Roma in the Courneuve suburb of Paris from 2007 until its recent demolition by French police in 2015. The ERRC (2015) has reported, in association with the Ligue des droits de l’homme (LDH) that in 2014 the number of Roma evicted was just shy of 14,000. This number is lower than the 19,000 reported in 2013 (nytimes.com, 2015). Interestingly, the nearly 14,000 evictions in 2014 occurred across 138 locations across France (ERRC, 2015). The result is homelessness, unemployment and acquiescence to deportation.

The reasoning behind these demolitions has been and continues to be both “health and safety” of the residents and as a police measure against trafficking, begging and prostitution. In a July 30, 2010 speech, then President Sarkozy called for a national war against crime, but also specifically pointed to violence against police officers and civil servants and a focus on ending squatting and camping in cities (Fichtner, 2010). This points to a focus on the Roma, particularly after the events in Saint Aignan. These talking points are often repeated, such as justifying demolitions in 2013 by then Interior Minister Valls (bmftv.com, 2013) and in 2015 Parisian townhall spokesman Jean-Luc Vienne (france24.com, 2015).

The second issue is the deportation of the Roma from France. The number of Roma deported from France is unclear, but there are reports of roughly 10,000 in 2009 (ERRC, 2010) and in the first nine months of 2010, Immigration Minister Eric Besson said that just over 13,000 Roma were deported from France, mostly to Bulgaria and Romania (ERRC, 2015). The French government maintained that deportations were either voluntary or due to illegal residence in France. For the latter, in the cases of Bulgarian and Romanian citizens, travel and residency restrictions remain in effect until January 1, 2014. For the former, France ran a return programme that gave each adult €300 and €100 for each child (Davies, 2010).

The legality of these evictions and deportations is more difficult to discern than scholars like Neil Cruickshank (2013) perceive. Cruickshank pointedly acknowledges that France violated the EU directive 2004/38/EC that allows for the free movement of peoples (2013: 211). The ERRC (2015) also argue that France has violated numerous articles of the International Covenant on Civil and Political Rights (ICCPR). It was also suggested that France held Roma in detention centres longer than the legally allowed 30 days (ERRC, 2012a). As noted, France has justified their actions as security measures and maintaining the health and safety of its residence, which the EU directive 2004/38/EC allows exemptions for. These are both serious and contentious legal issues facing both France and the EU, but I believe they have come about due a political crisis between the EU and its Member States concerning immigration and integration.

French Interior Minister Manuel Valls became the principle spokesperson representing the French government's security measures. Importantly, he did not represent merely France's concern with healthy and safety of individuals, but of the

health and safety of the French nation. In a 2013 interview with *Le Figaro*, Minister Valls spoke of the Roma culture as being “in the hands of begging or prostitution networks” (quoted in *euractiv.com*, 2013). Valls would state more directly his opposition to inclusive policies, saying in another interview: “The Roma are destined to return to Bulgaria or Romania,” adding, “We [France] are not there to welcome these populations.” (*bfmtv.com*, 2013) These comments were less provocative than French MP Gilles Bourdouleix: “maybe Hitler hadn’t killed enough gypsies.” (*france24.com*, 2014) Bourdouleix was later fined €3000 for this inflammatory comment. While Bourdouleix and Valls comments point to a markedly cultural conflict, it was a leaked 2010 police memo to French newspaper, *Le Parisien*, that indicated that the security measures had in fact targeted specifically Roma communities, rather than acting in the general security interest of the wider community (*leparisien*, 2014). This memo is particularly interesting because it marks a sharp difference between the interest of the state and the EU.

The then EU Commissioner for Justice, Fundamental Rights and Citizenship Viviane Reding had the most pronounced condemnation of France’s security measures. Commissioner Reding argued that France and Minister Valls had lied that Roma camps were being specifically targeted (Goldston, 2010). In a press conference, Reding added: “No member state can expect special treatment when fundamental values and European laws are at stake” (quoted in Benhold & Castle, 2010). Although Reding suggested that formal infringement procedures could be initiated against France, the Commission ultimately favoured against them. I think the fact that the EU decided not to formally charge France with breaking EU law is important. Although Cruickshank (2013) argues that the EU’s much more effective with non-coercive measures in these areas, I believe

the issue at stake is the state's maintaining a policy of either assimilation or complete exclusion, thus placing it at odds with the core EU values. Commissioner Reding's official statement reveals a burgeoning crisis on this issue:

I fully acknowledge that it is the sole responsibility of Member States to ensure public order and the safety of their citizens on their national territory. On the other hand, I expect that all Member States respect the commonly agreed EU rules on free movement, non-discrimination and the common values of the European Union, notably the respect for fundamental rights, including the rights of people belonging to minorities. (Reding, 2010)

In regards to EU citizens, the EU has a responsibility to protect transnational mobility and ensure states respect the Charter of Fundamental Rights. With regards to the Roma in France, Commissioner Reding acknowledged that the state is having difficult engaging with an ethno-cultural minority without escaping the oscillation of assimilation and exclusion.

Conclusion

The difficulty remains: how does the EU ensure that its Member States are compliant with the Framework, the Charter, both the free movement of persons and racial equality directives, and the plethora of communiqués on Roma inclusion issued by the European Commission? I maintain that the crux of the issue is that the Roma problem can no longer be understood simply in terms of how to encourage Roma inclusion into national societies, but in terms of how the EU and its Member States engage with the Romani as an ethno-cultural minority and non-state actor. The peoples of Europe have historically been understood as the Member States, but in an increasingly differentiated Europe, in part due to the free movement of persons, not all peoples belong to a homogenous nation-state. In the context of the Roma, their history and connection to

Europe and its states tells a story of discrimination. While it is impossible to discuss the entire history of the Roma in Europe in one chapter, it is important to intersect some of their history. Importantly, it cannot be ignored or otherwise separated from the current political crises. It also cannot be fetishized or stereotyped as wanderer, foreigner or unproductive.

The Roma are particularly vulnerable as a transnational minority community, without strong political representation in the form of a state. It is as EU citizens they have engaged in transnational mobility, then it is as EU citizens they have faced discriminatory actions by the state. The Roma, who are often (but not exclusively) EU citizens are in part responsibilities of the EU. If the system of cooperation that the EU has fostered is failing them, then there is a responsibility to stymie this conflict before it turns into deeper chaos. With the situation in France, the state has perhaps not only violated the directives of free movement and racial equality, but the core values of the EU itself: the Framework, the charter and the European Commission's documents on Roma inclusion. In perhaps a telling comment, French Immigration Minister Eric Besson said: "The concept of ethnic minorities is a concept that does not exist among the government" (quoted in Willsher, 2010). While Minister Besson is perhaps speaking in favour of equal treatment, it also speaks to the divide ongoing in the EU between maintaining the social cohesion of the nation and respecting the diversity of peoples across (and that now can cross) Europe. Discrimination of minorities is increasing an issue bound up with European politics, as EU citizenship provides a new dimension to rights and a set of values that must be acknowledged.

Chapter 5 – The EU and the Politics of Migration: The Migration Crisis and the Future of Europe

The dissertation has progressed, like European integration, in stages. It began with a discussion of Arendt's notion of statelessness as a way of conceptualizing migration and the state. I have attempted to show that a convergence of liberalizing forces in Europe is ongoing, but nowhere near complete. Arendt's dictum holds true: the state is still the dominant force in creating statelessness and contributing to discrimination of ethno-cultural and religious minorities. For its part, the European Union (EU) has changed migration in Europe, creating the political institution of EU citizenship that is designed to ensure certain social and political rights across the EU's Member States. However, certain EU citizens, like the Roma communities who have engaged in their rights of free movement still face cultural, economic and political discrimination, which has not drastically changed under the EU's tenure.

This chapter engages with the theoretical and political avenues opened by this line of reasoning. It asks: what political options are available to migrants in the EU (those with EU citizenship and those without) and what theoretical foundation exists to create new political options for the greater integration of European peoples? There are two aspects to European integration that I will engage with: discrimination and citizenship. Discrimination of minority groups (particularly migrants) has become increasingly bound up with European politics, so the solutions require a European dimension. This is due to the growing salience in what should be considered European politics since the Treaty on European Union (TEU), including the issues of free movement of persons, EU citizenship and the euro. I maintain that EU citizenship presents an opportunity for greater political

activity that breaks from the state-centric politics. Importantly, the EU is currently working through a potentially destabilizing situation: the Migration Crisis. This situation is difficult to theorize solely under the auspices of individual states because the issues of migration and free movement are forefront. Importantly, it has also created a somewhat antagonistic relationship between the EU and its Member States (particularly the states making up its external border, such as Hungary). The temporary re-establishment of some border controls among seven countries (Austria, Denmark, France, Germany, Norway, Poland and Sweden) due to the Migration Crisis and terrorist threats (European Commission, 2019) signals an important step in limiting or stopping movement for undesired non-nationals. It also allows Member States the discretion to restrict movement of EU citizens, like the Roma, due to issues of national security. However, I argue the severity of the conditions of the Migration Crisis is causing a blurring in the distinction between migrants and refugees, which possibly gives deeper legal rights in European and international law to individuals risking their lives crossing the Mediterranean Sea.

In the EU, I argue that the Migration Crisis has made it necessary to engage with philosophers and scholars interested in democracy beyond the scope of the nation-state and the representative politics of ideas.³⁶ The starting point is examining the intersection of discussions of migration and citizenship. The Migration Crisis questions the stability not only of the EU's external border, but has also demonstrated that there is a deeper connection between the discrimination of ethno-cultural minorities, including EU and

³⁶ Anne Phillips (1995) notes that groups largely ignored or suppressed from entering the political arena ought to be represented as a politics of presence because the politics of ideas (political parties divided by opinions and ideology of society, politics and the economy) have failed to integrate large sections of society, including women and ethno-cultural and religious groups.

non-EU citizens, and the broader structural/institutional problems the EU is facing. I will start this discussion using Joseph Carens (2013) and Jürgen Habermas (2012) to show the necessity for the EU and its Member States to both uphold their commitment to transnational democratic practices and, further, in order to combat systemic discrimination, deepen democratic practices to include non-national actors, like the Roma. This calls for a discussion that looks at (what I'll call) alternative forms of democracy, including those formulated by Étienne Balibar, Rosie Braidotti, Joseph Carens and Jürgen Habermas. Crucially, I argue that there is a centre of gravity that exists among these scholars. They theorize alternative forms of democracy, with strong citizen engagement at multiple levels of government. I contend the EU could be such a space with greater transnational political action by Union citizens. The EU, in part, is breaking away from state-centric politics. It is already an arena for supranational decision-making, with transnational actors representing both national and EU interests. Democracy has already been extended beyond national parliaments and their representatives to the European Parliament, which under the 2009 Lisbon Treaty has been empowered by holding the responsibility of electing the Commission's president. As I noted in the previous chapter, it has encouraged its Member States to seek greater social and political integration of its minority communities, including the Roma, but ultimately it lacks effective measures to ensure these recommendations are carried out.

In this chapter I examine how one of the key issues facing the EU and the politics of migration in Europe today is the Migration Crisis which is related to the problem of free movement. The influx of migrants in the EU has created a crisis between the EU and its Member States (particularly those Member States making up its border), which has

resulted in a situation reminiscent of the one that Hannah Arendt assessed using the notion of statelessness. To clarify, I am arguing that the crisis is created from within the EU and not as a result of actions from beyond its external borders. From this practical position, I engage in a theoretical discussion that seeks to show the ways two scholars, Étienne Balibar and Rosi Braidotti address this situation by recommending enhanced political activity of ethno-cultural minority groups that functions in parallel with initiatives to enhance European citizenship. Importantly, EU citizenship as it is currently constructed must alter into a form of European citizenship that creates new bonds of political and social activity which have hitherto been ignored or suppressed.

The Migration Crisis: The Politics of Migration Today

Present discussions of the European Union focus on it being in a state of crisis. Former Commission President Jose Manuel Barroso, in his 2012 State of the Union Address, proposes that the EU not only suffered from economic and financial crises, it also suffered from social and political crises, manifested as a “crisis of confidence.” The EU must be able to show its citizens that it can act in their interest and on their behalf. However, the EU acts on two levels: the Commission, which must act supranationally, and its Member States, which act intergovernmentally. This can and has often been a tenuous relationship when acting on an issue of importance, such as the Migration Crisis. There are two elements to this crisis: first, the Migration Crisis has made the politics of migration in the EU a vital aspect to its functioning and second, it has created a confrontation between both EU Member States and between the EU and its Member States. Because the free movement of persons is a fundamental right in the common market, the Migration Crisis threatens the broader solidarity of the Union. The

reintroduction of some border controls within the Schengen Area is justified on two grounds: “terrorist threats and the situation at the external borders.” (European Commission, 2019) Even France, which has experienced terror attacks (most notably the coordinated attacks around Paris in 2015), has also used the Migration Crisis at the EU’s external borders to justify new border control mechanisms.

The Migration Crisis is an ambiguous term and the situation at present has also been categorized more as a refugee crisis because of the rise in refugee, or asylum claims in 2015 (see figure 1). In their study of categorizations by the British media, Goodman, Sirriyeh and McMahon (2017) note the alterations in the terms used, to describe this situation from “Mediterranean migrant crisis” to “Calais migrant crisis” and finally to “European migrant crisis.” Each of the three terms point to a threat to the stability of both Britain and Europe, while also denoting the illegality of the act of migration as opposed to the humanitarian issue of refugee status (2017: 106). The designation ‘refugee status’ projects at least an ideal of rights and privileges guaranteed by the international community that the state ought to adhere to. Reece Jones (2016: 22) notes that in 2015, Al Jazeera would only use the term ‘refugee’ to discuss the current crisis. Writing for Al Jazeera, Barry Malone (2015) argues that the bodily threat those attempting to cross the Mediterranean Sea undergo is so grave that referring to them simply as “migrants” is inhumane. Malone writes:

There is no “migrant” crisis in the Mediterranean. There is a very large number of refugees fleeing unimaginable misery and danger and a smaller number of people trying to escape the sort of poverty that drives some to desperation. (Malone, 2015)

Although Jones (2016) make the case that the world is experiencing not just a regional migratory flow, but a Global Migration Crisis, I have opted to use the term Migration

Crisis as a middle ground between refugee and migrant and between designating it a European crisis and global crisis. As I argue below, the Migration Crisis should not be examined as an isolated event (although that is not to say it is not an important one, which requires specific study), but as part of a whole that characterizes the politics of migration in Europe. In the EU, even EU citizens (the Roma and Polish workers notably) are caught up in this wider discussion of a re-emerging border checks and population controls. The Mediterranean is not the only location in which this issue plays itself out - it extends to Central Europe, Hungary for example, but also to Western Europe, Calais, France for example.

Significantly, the United Nations High Commissioner for Refugees (UNHCR) distinguishes refugees from migrants (Edwards, 2015). This attempt to both define and protect refugees specifically has its origins in the Universal Declaration of Human Rights (1948) as well as the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967), along with Resolution 2198 (XXI) adopted by the UN General Assembly (1966). Stemming specifically from the 1951 Convention, the Office of the UNHCR defines a refugee as

someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. (UNHCR, 2010)

The difference between a refugee and a migrant then is the notion of direct threat (Edwards, 2015). ‘Migrants’ are not supposed to be persecuted upon their return to the country of origin according to the definition. However, how and who is distinguished as a refugee as opposed to a migrant is often vague, politically charged, or in the case of the current crisis, difficult to discern.

The Migration Crisis is called such because of the troubling degree of extreme actions both migrants and refugees engage in in order to cross into the EU. More will be said of these conditions below, but first a note on why the terms migrant and refugee seem interchangeable. The EU has sought to handle the extreme number of claimants for asylum in its 2015 European Agenda on Migration, which describes those coming to EU shores as one group rather than distinguishing migrant from refugee (European Commission, 13.5.2015). The factor that requires a blurring of the terms ‘refugee’ and ‘migrant’ is the notion of “irregular migration.” Importantly, 2015 saw a rise in asylum claimants in Greece and Italy who risked their lives sailing the Mediterranean Sea. ‘Irregular migration’ is marked by its ‘severity’ and, according to the EU’s Migration and Home Affairs, its troubling connection to criminal networks and smugglers. The European Council first established the need for a comprehensive approach in its June 25-26 meetings (European Council, EUCO 22/15) and in 2016 enacted legislation regarding the “unprecedented migratory flows” into Europe and the strengthening of a comprehensive approach to its external border (Regulation 2016/1624).

The EU’s framework for dealing with these ‘irregular migrants’ begins with the Schengen Borders Codes. According to EU Regulation No 604/2013 (Dublin Regulation), the country in which the asylum seeker or migrant first steps foot in is responsible for processing their claims. Although each border country must individually handle these check points, the EU does depict their EU external border much like a state would and the EU Commission maintains a department of Migration and Home Affairs (see https://ec.europa.eu/home-affairs/index_en). The EU’s agency responsible for coordinating visa information of travellers entering from the external border is

maintained by the EU Agency for large-scale IT systems (eu-LISA). One of the key components in this area is EU Regulation No 604/2013, which establishes the European Dactyloscopy (EURODAC), the fingerprint database for all asylum claimants. The database's importance grew in 2015 when border countries became overwhelmed with the number of applicants and sought to send large numbers of these claimants to other Member States. This biometric database has come under criticism from the German Institute of Human Rights for not just processing asylum seekers, but for the length the biometric information is stored (10 years) and its empowered relationship with national police and Europol (Körner, 2015).

As mentioned above, categorizing this migration crisis is difficult, but so is its timetable. That is because I argue that it is bound up in a broader discussion surrounding the EU's politics of migration. The EU has been struggling to maintain its external borders for the purposes of population control for considerable years before 2015. In his journalistic monogram, Matthew Carr (2016) notes that in 2005, the borders of Europe had noticeably extended past the Strait of Gibraltar and the Mediterranean Sea and into the continent of Africa. There were a series of attempts by large numbers of asylum seekers to gain access to European soil, but doing so required passing through fences and other militarized border control mechanisms. The EU and its Member States currently operate transit centres across the African continent as a method of turning back potential migrants. Carr argues that Fortress Europe, a concept designating the strict external border maintained by the EU and its Member States, is powerfully contradictory to the fundamental right of free movement within the EU. However, third-country nationals

(those without citizenship in an EU Member State) are not exclusively the targets of internal borders.

Eurobarometer shows that between 2015-2018 support for the free movement of EU citizens (including the right to live, work and study across the EU) has remained high, even rising slightly from 79% to 83% (Standard Eurobarometer 84 & 90). Public opinion polling also has immigration from outside the EU as the top concern for EU respondents, while immigration within the EU is viewed positively. Eurobarometer polls may illuminate general trends among EU citizens, and may also account for how national governments and the media addresses concerns of free movement of EU citizens, including the Roma and Eastern Europeans labourers. Jaroslaw Kundera (2009) notes that during Poland's accession negotiation, the movement of cheap Polish labour into the EU was the main concern for EU's Member States as well as their publics. This resulted in strict regulations on Polish workers' access to EU labour markets. Romania and Bulgaria had to undergo a transitional period before being able to access the EU's single market. Before the 2007 enlargement, British media warned of a "flood" of Roma into the UK (Tanner, 2005). This fear led select EU Member States to negotiate bilateral agreements with Romania and Bulgaria to require Romanians and Bulgarians to acquire special work permits. This internal limitation on the free movement of persons lasted until January 2014.

Although the Mediterranean Sea has become a focal point for the Migration Crisis, Eastern Europe, particularly Hungary, is an important frontier of this crisis. In 2015, Hungary began building a new securitized fence along its southern borders with Croatia and Serbia. The fence, which is still being maintained and extended as of 2017, is

designed to curb the number of migrants entering into Hungary and initiating the Dublin Regulation. According to Reuters (2017), ten migrants a day are allowed to legally cross into Hungary. Although Croatia and Hungary are both EU Member States, a confrontation grew as Croatia closed its seven of its eight border routes with Serbia after more than 13,000 migrants crossed into Croatia, the BBC reported (Delauney, 2015). Slovenia also stopped all trains coming and going to Croatia as a way to halt the flow of migrants. This has been a major obstacle to Croatia entering the Schengen Area, of which both Hungary and Slovenia are members. Frontex, the EU's newly empowered Border Agency, estimates that illegal border crossings in the Western Balkans rose from 19,950 in 2013, to 43,360 in 2014, reaching its height in 2015, 764,038 (see figure 2).

Hungary has become the focal point in this confrontation not just between EU Member States, but also between the Member States and the EU. Hungarian Prime Minister Viktor Orbán has made the Migration Crisis a major issue for his ruling Fidesz party and in doing so, I argue, has illustrated a key part of the crisis facing the EU: the free movement of persons is being confronted with stronger external borders. In the lead up to the Migration Crisis, Orbán emphasized the notion of turning Hungary into an 'illiberal state':

[The] Hungarian nation is not a simple sum of individuals, but a community that needs to be organized, strengthened and developed, and in this sense, the new state that we are building is an illiberal state, a non-liberal state. It does not deny foundational values of liberalism, as freedom, etc... But it does not make this ideology a central element of state organization, but applies specific, national, particular approach in its stead. (Orbán, 2014)

Since his first electoral victory in 2010 and subsequent re-election in 2014, Orbán's Fidesz party has depowered Hungary's Constitutional Court and even rewrote the

Constitution, putting more of a focus on the nation of Hungary and emphasizing its Christian roots (Fekete, 2016: 44-45). This included removing legal recognition of non-Christian religions, until a legal battle with the EU, in which Hungary created a secondary status. In May 2015, EU Commission President Jean-Claude Juncker greeted Orbán, calling him “dictator.” (Taylor, 2015) The Migration Crisis has only served to exacerbate his confrontation between Hungary and the EU.

The Migration Crisis in 2015 began a conflict between the EU Commission and Hungary and the Eastern European Member States. In the summer of 2017, the EU launched a lawsuit in the European Court of Justice (ECJ) against Hungary, Poland and the Czech Republic for failing to accept an EU mandated number of asylum claimants. In 2015 the EU Commission sought to alleviate the pressure put on Greece and Italy due to the Dublin Regulation and initiated a plan to resettle migrants that had and were still arriving in Italy and Greece. The emergency plan called for the relocation of 160,000 migrants (first, 40,000 from Italy and Greece and then a second package was introducing proposing the relocation of another 140,000 from Greece, Italy and Hungary), mainly due to poor living conditions and inadequate housing and processing. Figure 3 shows the breakdown of each Member States’ responsibility, from the lowest number, Malta’s obligation to take in 71 migrants to the highest, Germany’s obligation to house 17,036 (European Commission, 2015).³⁷ The EU budgeted €780 million for the relocation, including €6000 per person (to be given to the Member State). The EU initiated the plan (and gave its legal standing) by triggering Article 78 (3) of the Treaty of the Functioning

³⁷ The United Kingdom was granted an opt-out, while the Republic of Ireland chose to opt-in. As of December 2017, Ireland accepted 755 migrants from Greece (see Figure 4, European Commission, 2017b).

of the European Union (now commonly called, the Lisbon Treaty). The Article calls for the development of a common policy on asylum claimants and visa policy. It also allows for emergency plans to take affect:

In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament. (The Lisbon Treaty, Article 78 (3))

For the EU, this affirms the individual responsibility of each Member States to uphold its international obligation. The Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos argued that each Member State has the legal obligation to provide protection and “prevent a further deterioration of the situation for refugees in Greece.” (Quoted in, European Commission, 2016) However, I contend that the opposition put forward by Hungary, Poland and Czech Republic ignores any notion of the humanitarian crisis, and staunchly remains an issue of security and an empowered Union. The EU’s response to Hungary and the other Eastern European Member States is, at best, muddled, oscillating between protecting the free movement of persons internally and developing a strong external border. The Dublin Regulation has fostered division between the EU and its Member States because it places an apparent responsibility for these migrants on the external border countries.

The recent lawsuit is indicative of a growing tension between the EU and its Member States, as the Central and Southern European countries have argued for greater autonomy over its national borders. I argue that this is due to the Dublin Regulation. The EU’s border countries seek to stop the flow of migration completely, rather than process the asylum claims and handle the severe humanitarian situation. For Hungarian Prime

Minister Orbán, the issue is mixed: it is an ethno-national crisis and an institutional one (these elements often blur in his discourse). While the EU Commission proclaimed its relocation plan a success, Hungary declared it an assault on the European peoples sought to stop migrants from entering the country, even criminalising entry. As of December 2017, the EU Commission reports that around 32,000 migrants have been relocated (see Figure 4, European Commission, 2017b). It also announced that Member States have made pledges for another nearly 40,000 migrants to be relocated in 2018 (this includes zero pledges by Hungary, Poland and Czech Republic) (European Commission, 2017a). This is far less than the 160,000 originally promised by the Commission. For Orbán, the EU ought to allow Member States to choose to opt-into a Relocation Plan. Orbán believes the EU ought to function as an extension of each nation comprising the EU. In a 2015 interview with a German newspaper, *Bild*, Orbán argues:

I think that Europe is made of the totality of national interests. European politics must not turn on the interests of individual states. Something that is bad for Germans, Austrians, or Hungarians cannot be a good EU policy. (Diekmann & Vehlewald, 2015)

His goal was to clearly show the divide between EU Commission policy and the wills of the European peoples. To do this, Orbán had two avenues: first, the militarized fences formed across the Serbian and Croatia borders made crossing into Hungary illegal (Haraszi, 2015). Secondly, a referendum was held in Hungary on October 2, 2016 on accepting or rejecting the relocation plan. Although the quota referendum became non-binding due to low turnout, it was widely supported by voters with 98% approval. Orbán reportedly referred to migrants as a “poison,” even claiming, “Every single migrant poses a public security and terror risk.” (Quoted in, Kroet, 2016) For Orbán, the issue of security is both public security and national homogeneity.

The nationalist discourse from Orbán is interesting because, according to the EU Commission (see Figure 3), Hungary would only receive 1,294 migrants of the proposed 160,000 (European Commission, 2015). The issue at stake for Orbán is greater than the potential 1,294 asylum claimants. In the interview with Bild, Orbán mixes a discourse ethno-national homogeneity with institutional stability:

The Germans and we Central Europeans maintain the basic values of Europe: the Christian-Jewish world-view, the guarantee that treaties will be respected. We should be united instead of arguing with each other, especially since there are very different signals coming from Brussels: multi-culturalism, disorder. (Diekmann & Vehlewald, 2015)

The politics of migration operating in the EU today is caught between a national and European division. The EU Commission has sought legal avenues to assure asylum seekers are divided amongst its Member States, while countries like Hungary argue that this violates the Dublin Regulation and presents new, overarching powers over a state's immigration policies.

While Hungary has taken the position that the Migration Crisis presents an attack on its stability as a nation, the EU's position decidedly balanced between maintaining the free movement of peoples within the EU and affirming a strong external border. Like Hungary's actions, the EU is criminalising migration into the EU, but doing so in a process of turning them into 'irregular migrants'. Liza Schuster's (2011) study on the EU's asylum policy describes a process by which asylum seekers are lost between acceptance and rejection. The EU's responsibility often ends at the EURODAC fingerprints, but fails to account for migrants not in the system, those who will not be returned to often volatile situations (in Schuster's case study, a group of Afghans have their asylum cases rejected, but are also not deported), or the asylum seekers that are in

the EURODAC system, but refuse to be sent to that Member State for fear of being deported to a neighbouring country. I believe what Schuster is describing is a process of creating the political environment of statelessness.

The EU's chief strategy for combating the Migration Crisis is to focus on its illegality and potential for human smuggling. I contend that this has the effect of stripping the migrants' agency and placing them outside the political framework of asylum status. The international organization, the Council of Europe (not to be confused with the EU's European Council or Council of the EU) has attempted to outline the human rights of 'irregular migrants', which is defining the need for humanitarian assistance for this growing number of people living in Europe. In Article 6, the organization claims that using the term irregular migrant "is more neutral and does not carry, for example, the stigmatisation of the term illegal." (Council of Europe, 2006) Sylvie Da Lomba (2015) is right that the term irregular migration "covers a range of situations," but describes it broadly as a breach of immigration laws. However, Da Lomba rightly points out that irregular migrants still maintain certain human rights due to international human rights law, including the European Convention of Human Rights (ECHR).

However, the EU uses the term, irregular migrant, to distinguish those with accorded refugee or asylum status. In fact, the EU Commission has formed specific connections between what they term irregular migration with illegal acts, such as smuggling and criminal activities. The EU Commission Department of Migration and Home Affairs has focused on creating a common European framework for punishing smugglers and disincentives for their role in migration. The 2002 Framework Decision

outlines the responsibilities Member States have in combating smugglers, including confiscation of transport and deportation (European Council, 2002). Importantly, the Action Plan Against Migrant Smuggling, adopted by the Commission in 2015 was designed to “transform smuggling from a ‘high profit, low risk’ activity into a ‘high risk, low profit’ business.” (Migration and Home Affairs, 2017) However, there are two serious issues moving forward: first, turning migration into an illegal act and second, the ongoing militarisation of the EU’s external border, which could contribute to, rather than alleviate its humanitarian crisis.

The ‘high risk’ the EU Commission speaks of has seemingly been directed at the migrants themselves, who I contend are caught up in re-emerging border controls seeking to not just limit migration, but also criminalize those moving. Reece Jones (2016) argues that violence is an inherent aspect of manmade borders and the increasingly militarization of the EU’s external borders has contributed to, not alleviated, the Migration Crisis. Interestingly, I believe Jones argument extends from the EU’s periphery (the Member States making up its border) and deep into the heart of Europe. It’s Department of Migration and Home Affairs warns of the criminality of migrants, even after they have crossed the border:

[M]igrants continue to depend on criminals after they have arrived in the EU. Criminal networks can facilitate irregular residence, including through the production and supply of counterfeit documents and by enabling migrants to use other people's genuine documents to pose as an impostor. This is illegal across the EU under the 2002 Directive. (Migration and Home Affairs, 2017)

Migrants are positioned not only outside the political status of refugees, but are positioned as being more strongly aligned with criminal networks. These connotations

surrounding illegality have perhaps been most vociferously associated with the so-called ‘migrant jungle’ in Calais, France.

Originally opened as a refugee camp by the French government in 1999, migrants themselves began to grow and transform camps. Originating from many different countries, these migrants wish to enter the United Kingdom without claiming asylum status. The camps have often been a source of conflict between the United Kingdom and France, as well as highlighting issues surrounding humanitarian concerns. In 2016, the former French president Nicolas Sarkozy said that the “Calais situation demonstrates a complete surrender of the French state.” (Boitiaux, 2016) Largely demolished in 2016, the camps were seen as squalid, housing at its peak roughly 10,000 people.³⁸ However, I argue that the humanitarian issue was largely viewed in light of border controls. Sarkozy pointed to two issues in particular (1) the 2003 Le Touquet Treaty that shifted the United Kingdom’s border control from Dover to Calais (Boitiaux, 2016) and (2) weak border control system (The Times, 2016). Although the French government bussed nearly 7,000 migrants out of the camps, nearly 1,000 either remain or have returned to their place of origin. This plan sought to relocate migrants across France and control their attempted migration into the United Kingdom.

The solutions to both these camps and the Migration Crisis more broadly have seen the EU and its Member States attempting to limit, but not completely stop, the free movement of peoples. This has occurred not just at its external borders, but at a re-emerging of internal borders. Since 2015, six Schengen countries have reinstated border controls, including France (full border controls) and Germany (limited). These actions

³⁸ For greater descriptions of these camps, see Slingenberg, 2017 & Hayes, 2016. And for accounts by the migrants living in the camps themselves see Calais Writers, 2017.

touch on the heart of the fundamental rights of EU citizenship and the characteristics of the common market. If the crises at play within the EU, as the former Commission President Barroso notes, are crises because they speak to the level of confidence EU citizens have in the Union, then changing its fundamental characteristics and limiting the rights of those citizens is a move that leads more to its disintegration than to an increasingly closer union.

The EU of the Future

There are multiple forms the EU could take as it navigates these crises, including a chain reaction begun by Brexit. However, a second form is commonly referred to as Fortress Europe. In this conception, the EU strengthens its external borders, limiting migration into the Union and potentially weakens the rights of free movement of persons within the EU. The combined reactions by the EU and many of its Member States to the Migration Crisis indicate a disconcerting direction towards Fortress Europe. Although the Council of Europe has attempted to codify the rights of irregular migrants, it is an unbinding agreement. The Member States maintain control of their border (with the ability to re-establish border controls and checkpoints) and immigration and citizenship policies. The political future of the EU is at stake because the situation does not solely focus on non-EU citizens, but touches on the movement of persons broadly. In chapter three, I made the point that the EU made the free movement of persons a cornerstone of its legitimacy as a right of Union citizenship, so its removal or restraint seems to speak to the heart of the European project. I argue that the strongest theoretical foundation moving forward (creating a democratic EU) is examining the intersection of migration (in this case, the free movement of persons) and citizenship (in particular, free movement and

non-discrimination as rights of Union citizenship). It's here where I contend that examining Joseph Carens, Jürgen Habermas and other democratic theorists comes together. Importantly, highly theoretical notions such as Étienne Balibar's "worksites of democracy" and Rosi Braidotti's concept of 'flexible citizenship' may begin to take a more concrete shape in light of the Migration Crisis.

Joseph Carens (2013) argues that states must uphold their commitment to the democratic principles enshrined in their Constitution and legislative documents.³⁹ However, the problem, he notes, is that immigration poses certain difficulties and states are failing to maintain these commitments to democratic principles. Carens' analysis is doubly useful - he clarifies states' existing commitments to principles of freedom and democracy, as well as pointing out their failures at upholding these commitments when it comes to the practices of immigration. He appeals to the "norms and principles that they [the citizens] themselves accept." (Carens, 2013: 6) In the context of the EU, the Member States making up the Schengen Area have agreed to the free movement of persons as a fundamental right of Union citizenship and to properly maintain the common market. The EU is not simply an economic partnership however. It was initiated as a Coal and Steel Community, but at its heart, as Jürgen Habermas (2012) rightly reminds us, it enshrines the rights of the individual citizen and makes commitments to democratic principles.

³⁹ Carens (2013) writes that he is using the term "democratic principles" in "a very general sense," but means, "things like the ideas that all human beings are of equal moral worth, that disagreements should normally be resolved through the principle of majority rule, that we have a duty to respect the rights and freedoms of individuals, that legitimate government depends upon the consent of the governed, that all citizens should be equal under the law, that coercion should only be exercised in accordance with the rule of law, that people should not be subject to discrimination on the basis of characteristics like race, religion, or gender, that we should respect norms like fairness and reciprocity in our policies, and so on." (2013: 2)

While the EU does not have its own constitution, its legislative history has placed the EU citizen at the heart of its own commitment to democracy and inclusion.

The EU is an organization within which Member States have made commitments to safeguarding the free movement of persons (Directive 2004/38/EC) and non-discrimination of non-nationals (Articles 48-51 of the Treaty Establishing the European Economic Community). The EU has also made commitments to ensuring democratic principles are enshrined in the documents that make up its fundamental character. Articles 9-11 of the Treaty on European Union (TEU) make up its Democratic Provisions. Importantly, these enshrine the equality of Union citizenship and the function of a representative democratic institution at the EU level - the European Parliament. These three commitments are crucial to making sure the EU deepens its democratic character in the face of the Migration Crisis.

If the EU is neither a nation-state nor an international organization like the United Nations, what then can we make of its democratic commitments and what can it do to ensure social and political exclusion is limited within its borders? Carens' argument remains an important one - states must be held to their democratic principles. However, the EU as a multi-level political organization makes this task much more difficult. As we see in Hungary, states may view their issues to be at odds with the rights enshrined by the EU. I believe scholars like Étienne Balibar and Rosi Braidotti help to illustrate the ways the EU may help alleviate these social and political problems and move beyond state-centric citizenship.

I contend that the EU presents a unique political framework for solving these problems arising from the intersection of citizenship and migration. First, the EU is

unique because it operates as a multi-layered political framework. Étienne Balibar (2004) provides an essential theoretical and practical tool for moving forward in his concept of “worksites” of democracy. It is crucial to understand that the twin processes of globalization and Europeanization have acted in ways that divorce citizenship from statehood, remove territorial borders, and allow us to consider the reality of post-national citizenship, thereby, severing the power of the nation-state’s hold over us and limiting the nation-state’s ability to affect immigration and citizenship policies. However, we must also examine the ways in which notions of nationality, race and ethnicity have re-emerged, acting to limit and control movement. Balibar (2004), echoed by Habermas (2012), argues that democracy is not something that simply exists in Europe.

Transnational democracy is an ongoing political project that must consistently be reaffirmed by its citizens. Balibar (2004) conceives of four worksites of democracy: first, the question of justice, particularly juridical practice, “which social inequality is massive,” second, labour union struggles, third, the democratization of borders (not the opening of borders, but the rethinking of the “historical relation between territory and population,” and fourth, culture, or the ability to discuss and share culture across Europe, not through one common language but through translation (2004: 172-179). It is in the third worksite that Balibar focuses on border regions and the exchanges of people, culture and information. Borders, Balibar notes, are not impermeable walls; border regions are unique spaces with transnational democratic potential (2004: 176-177).

In the face of these undemocratic renationalizing measures, Balibar calls for new democratic, participatory controls over the border and a need to reinvent citizenship (Balibar, 2002 & 2004). This call in Europe does not necessarily come from the fact that

EU citizenship presents the opportunity to do so, in fact we are perhaps faced with more obstacles than ever, but this call comes from the necessity to reshape how we understand the link between subjectivity, territory, community and political order. Thinking, as Balibar does, of Europe consisting of ‘worksites’ of democracy allows us to re-imagine citizenship in terms of altering these links from a democratic, participatory and affirmative standpoint. European citizens must engage in a form of popular sovereignty that constantly raises questions concerning issues of justice, labour, the border, and culture – politicizing and democratising these issues from a European perspective - but one that engages in a new way of thinking and is constructed by the “interactions between multiple interventions stemming from both civil society and the public sphere.” (Balibar, 2004: 172) It is precisely in democratisation, as a “collective political practice, collective access to citizenship, always in the making.” (2004: 173) that we find essential ways of thinking and acting. Democracy, however, is not the panacea for social and political exclusion, especially of minorities.

The Migration Crisis was precisely a crisis because it spoke to the fundamental rights of EU citizens and the function of the EU as a political framework. It was not simply about who to let into the EU, but in the case of Hungary, about reaffirming national identity and border security (initiated by a democratically elected government, headed by Viktor Orbán). Specifically, Orbán understood the transnational migration of peoples to be opposed to national democratic institutions. I argue that solving the problems of this and other crises cannot be addressed by opposing the sovereign will of a nation against the *diktats* from Brussels, Strasbourg or even Berlin. As was discussed in Chapter 3, the EU is a multi-layered organization, consisting of a form of citizenship that

functions alongside with and does not dominate national citizenship. Therefore, EU citizenship can (and does) offer avenues for political activity in areas where national citizenship fails to provide these avenues.

I argue that a 'worksite' as Balibar uses the term is found in Rosi Braidotti's understanding of the nomadic subject and flexible citizenship (2011). Contained within this conceptualization is a compelling case for a deeper form of post-national citizenship, of which EU citizenship is an important step towards. First, Braidotti (2011: 216) uses figurations as a counter image of the subject. Crucial to this notion is the idea of disidentification from the dominant models of subject formation (2011: 220), including critiques of both universalism and liberal individualism that allows us to understand subject formation as decentred and multilayered and as dynamic and changing (2011: 217). This position of a nomadic figuration allows her to critique notions of European identity as a cultural identity that is in danger of creating Fortress Europe based on a myth of cultural homogeneity and whiteness (2011: 250). Rather, Braidotti argues in favour of a flexible European citizenship that unbundles or unlinks ethnic origin, nationality and the legal structure concerning citizenship (2011: 253-254), but provides a bundle of rights and benefits for both citizens and migrants (2011: 258). It is in the notion of 'becoming-European' as the act of claiming social rights and on the basis of a perspective of multiple border crossings that Braidotti (2011: 259) forms a new way of understanding what is European, an understanding that assumes an internally differentiated and nonunitary subjectivity.

Braidotti's conceptualization of 'becoming-European' would be an extremely difficult and painful process to implement and would require that nationality and

citizenship be fully unlinked. However, implementing the concept of a free movement of peoples based on EU citizenship provides the possibility for citizens to bring forth an imagining of a new political community (Kostakopolou, 2009: 285). Echoing Ulrich Preuss (1996), Kostakopolou (2009: 285-286) argues that the EU needs to always keep in mind the constructed nature of its polity. Built on the project of the ‘grand conversation’ concerning the restructuring of Europe, EU citizenship should be committed to social transformation and democracy (Kostakopolou, 2009: 286). However, this construction can only be continued by those citizens and migrants who affirm and act on those rights, even when they are not fully realized across the EU. In the context of chapter 4, the Roma would be affirming their right of free movement at the same moment it is denied or restricted. Their confrontation with the new borders of Europe is not only disciplinary but also potentially productive of this European subjectivity. It is their rights, not as national citizens, but as EU citizens that are being circumvented. If Braidotti’s (2011: 217) figuration of the nomadic subject is meant to reveal those subjects the “dominant system has declared off-limits,” the subjectivity and actions of the Roma as well as those without Union citizenship (the migrants at the borders of Fortress Europe) may be crucial to gaining a greater understanding of contemporary Europe.

While I strongly believe that both Balibar and Braidotti help theorize new forms of political activity that disconnect from the powers of the state, the studies of the Roma in Chapter 4 and the Migration Crisis in this chapter are designed to illuminate the exact nature of these crises. Specifically, these two broadly defined groups are systematically oppressed or suppressed from properly engaging in certain social and political rights due to the discriminatory actions of the state. The Roma largely have the legal status of EU

citizenship in order to engage in free movement and have judicial opportunities to challenge discrimination. The people attempting to enter the EU have less legal options, but as refugees, the EU and its Member States have humanitarian and legal obligations to provide humane treatment and processing of their claims. While the EU has had opportunity to ease these actions (and to some extent has succeeded in doing so), it has been severely limited because of inter-state competition and poor relations between the EU and its Member States. The goal of this chapter has been to understand that the Migration Crisis has proved to be a potential turning point for the EU. Although discrimination against ethno-cultural and religious minority groups has become bound up with European politics, the study of Union citizenship as a form of post-national political institution is useful in understanding the avenues forward to easing discriminatory actions by the state. In the conclusion, I will continue to discuss the ways we can understand discrimination operating in Europe today and the intersections of class and race in far-right discourse.

Conclusion

This dissertation has been put together in order to create a deeper exchange of ideas, from Arendt's notion of statelessness, to concepts of citizenship and the integration of ethno-cultural minority groups, to political theory on European integration. The idea is that this intersection forms the politics of migration at the heart of the European Union (EU) today, including both its fundamental characteristics, such as the freedom of movement of persons, and its most severe problems, such as the Migration Crisis and the exclusion of longstanding ethno-cultural minority groups, like the Roma. Since 2015, the EU and its Member States have struggled to handle an influx of refugees, primarily from Northern Africa and the Middle East. Migration is not a new controversy in Europe, however, as the free movement of persons has been a central characteristic since the 1993 Treaty on European Union (TEU). National and European elections have often become focused on free movement and residency rights permitted to both EU citizens and other non-nationals. The dissertation has conceptualized what is understood as European politics around the issues of migration, citizenship and statelessness.

I contend that the political situation of migrants presents both a grave danger to the stability and future of the EU, but also an important opportunity to engage with longstanding social and political forms of exclusion and discrimination based on national origin. Arendt's dictum that the state itself is precisely what creates statelessness can be extended to the contemporary problems facing the EU today. The EU handling of Roma inclusion and the Migration Crisis is forming deeper divisions within the organization – between the 'core' of Europe (Germany and France) and the peripheral border countries

(like Greece and Hungary) and between those who argue for renationalizing membership policies and border controls and those who exercise their rights of free movement.

Since the fall of the Berlin Wall and the signing of the TEU (two notable signs of the elimination of national borders), there has also been a large public cultural discourse concerning immigration (from within and outside Europe). Two notable examples are the relationship between European civil society and its Muslim population, and the guest worker program and other legal and illegal migrant workers (particularly concerning Turkish guest workers in Germany, Polish workers in the United Kingdom and the Roma community across the EU). The public discourses and policies followed by Hungarian Prime Minister Viktor Orbán contribute to what I believe is a false dichotomy between the nation and free movement of persons. Orbán and the Fidesz party (as well as other political parties across Europe, like the Golden Dawn in Greece and the Freedom Party in Austria) have criticized the EU for maintaining weak border controls, which have gone so far as to threaten European civilization. The dissertation will conclude with a brief discussion of the ways discursive attacks on migrants and non-nationals have become an important issue of European politics, which intersects with broader economic and political policies of the EU. Similar to how the Migration Crisis speaks to the heart of the European project brought out about Robert Schumann and Jean Monnet, far-right and populists parties in Europe threaten the peace and stability of the Europe they discursively uphold to defend.

In Hannah Arendt's (1973) analysis of statelessness, she argues that the nation-states of Western Europe reacted to large-scale migration of non-nationals by closing their borders and establishing that the rights and protections of their country belong

solely to their citizens. The EU however limits (to some degree) how states can handle unwanted individuals or groups, particularly when they are unwanted because they are non-national migrants (Directive 2004/38/EC, 6 & 20). Far-right and nationalist parties have argued that non-nationals threaten the stability of the nation by taking advantage of its economic prosperity. In their Marxists reading of events, Slavoj Žižek and Srećko Horvat (2013) argue that this resurgence of far-right conservatism is tied up with, and serves the interests of, neoliberal economic policies. Their analysis is useful for understanding the intersections of race and economics, and also underscores the far-rights' interest in maintaining national homogeneity as a means to achieve political power. The growing cultural discourse concerning national identity and European culture can both be viewed as a reaction to EU growth and the feeling that national parliaments are gradually losing authority (Habermas, 1998) and what Balibar and Wallerstein (1991) refer to as, 'neo-racism.'

This notion of neo-racism links discrimination and prejudices based on race and ethnicity with a discourse on labour, criminality and national identity. Neo-racism "is a racism whose dominant theme is not biological heredity but the insurmountability of cultural differences, a racism which, at first sight, does not postulate the superiority of groups or peoples in relation to others but 'only' the harmfulness of abolishing frontiers, the incompatibility of life-styles and traditions." (Balibar and Wallerstein, 1991: 21) This form of racism does not target the 'Arab' or the 'Black' but links these signifiers with labels of the criminal or delinquent (Balibar and Wallerstein, 1991: 49). Borders and frontiers become necessary because of issues such as security, protection and health and safety. The frontier can have multiple forms, including a national frontier (nationalism)

but also a more internal and universal frontier (racism) and a supra- or trans-national frontier, which defines European culture against other communities (Balibar and Wallerstein, 1991: 62). This last iteration leads Balibar to form the notion of European Apartheid (Balibar, 2004).

European Apartheid and the notion of ‘Fortress Europe’ are conceptualizations that depict the borders, frontiers or walls that exist in the construction of the EU and the post-national constellation. These concepts help us to understand the intersection of race, nationality and class in the discussions on immigration in Europe. Although state borders were dismantled in the Schengen Area of the EU, a cultural discourse exists which seeks to uncover and limit ‘Europe’. Žižek and Horvat (2013: 58) echo Balibar and Wallerstein by referring to a ‘new racism,’ which is “much more brutal than the racism of the past: its legitimisation is neither naturalist...nor any longer culturalist...but unabashed economic egotism – the fundamental divide is between those included in the sphere of (relative) economic prosperity and those excluded from it.” This predominantly Marxist reading still maintains race as an essential aspect of this discrimination and exclusion. Seyla Benhabib (2006: 174) writes that issues surrounding the debate on European multiculturalism involve class because with the shrinking of the European welfare state, poor immigrant communities are being considered more and more a problem for social cohesion. In the cases of Turkish guest workers in Germany and the *l'affaire du foulard* (the scarf affair) and other issues of Muslim integration in France, even second and third generation immigrants have become targets for a larger public discussion on social integration and national and European identities (Benhabib, 2006). Although Benhabib (2006) argues that these cultural and economic debates and discriminatory practices are

increasingly subjected to a higher level of juridical challenges and rulings based on cosmopolitan norms (on the European or international levels), the growing challenge to the free movement of peoples by the European nation-states indicates not the complete unbundling of nationality from citizenship rights, but as Saskia Sassen (2006: 35-36) argues, the unbundling of the universality in liberal democratic constitutions. This form of 'unbundling' may also be viewed as an exposing of a false universality.

Although EU citizenship is meant to ratify the rights national citizens already possess (Bellamy and Warleigh, 2001), the situation of the Roma in France today helps reveal these partially false claims to universality and the public sphere found in the cosmopolitan norms as put forth by Benhabib and Habermas. Derrida's analysis of Kantian cosmopolitanism is helpful to situate this brief empirical examination. Derrida (2001; 2005) distinguishes between conditional and unconditional hospitality that is contradictory, but is at the heart of cosmopolitanism. It is the confrontation with conditional hospitality, or the hospitality to reside outside the country of origin provided by the state and the police force either for a given time or on certain conditions, that concerns the Roma in France and other parts of the EU.

The Roma are currently caught within the paradox of free movement and the repoliticalisation or reterritorialisation of borders in the EU. Two important dates should be brought up in this connection: first, the official end of work permits for Romanian and Bulgarian migrants on 1 January 2014, and second, the Decade of Roma Inclusion, an initiative launched in 2005 by twelve European states, including multiple international partners such as the World Bank and the Council of Europe (not to be confused with the European Council). Although the limitation on work permits has ended, the Roma are

still demanding their right to free movement and right to work outside their country of origin while actually enacting these rights. Žižek and Horvat (2013: 115) points out a similar Catch-22 in the case of Italian immigrants who are required to have a work contract to receive a visa, but must have a visa to have their work contract approved. At the same time, calls are being made for greater social integration for the Roma. As they exercise their right of free movement, they are also confronted with forceful evictions and a rise in anti-Roma discourse from political parties and government figures.

The Roma are confronted with both a resurgence of a cultural discourse centred on the idea of the ‘gypsy’ and, in neo-racist terms, its connection to their status as criminals and delinquents. Claire Duffin (2013), in her article in *the Daily Telegraph*, refers to the arrival of unemployed Roma to France as an “invasion” that stemmed from “good transport links and the lack of passport controls because France is part of the Schengen area of European countries that has no border controls.” However, Duffin (2013) also notes that the Roma are being evicted from their settlements, indicating the more ubiquitous border controls still exist for the Roma. The mayor of Roubaix, France, Duffin (2013) wrote, worked with the police to evict the Roma from his town for reasons of “security, hygiene and major inconvenience to local residents.” In 2013, Amnesty International reported that 10,000 Roma were forceful evicted from their homes that year (France24, 2013). These actions taken by police, in connection to governmental actors, are an historical process of repatriation, which Arendt (1973) describes. These evictions are also legitimised through a neo-racist discourse that links the Roma to criminal activity and delinquent behaviour, as well as to a concern over the security of the French people.

The removal and evictions of Roma in France began in 2010 and they have since become central figures in the reterritorialization of citizenship practices and border controls. Although Balibar and Wallerstein (1991) distinguish nationalism and racism (race is a more universally constructed category than nationality), these categories may be closely connected, along with class, in contemporary Europe. Sassen (2006: 35-36) argues that cross-border regimes distinguish based on class rather than territory. Certain classes of people are granted protections (such as professionals), while others are withdrawn from this protection (such as undocumented workers). In the case of the Roma, class is tied to their shared cultural and ethnic identity. They are identified as 'gypsy' to at once indicate a nomadic, unemployed lifestyle and their supposed criminal activity as beggars and stealers. Finally, this neo-racist discourse is centred on the lack of national state borders within the Schengen Area. Nationality and the citizenship it provides become bundled in a discourse concerning the ramifications of EU citizenship and free movement. Žižek and Horvat (2013: 109) refer to the common racist claims of an invasion of foreigners, who are noticed because of the colour of their skin, their language, or their clothes and food. Historically, the nation-state had recourse to repatriation or naturalisation (Arendt, 1973: 281; Derrida, 2001: 7), which the French police has attempted to do by transporting and offering to pay the Roma to leave either the city or country (Duffin, 2013). However, as EU citizens, repatriation is only possible if they choose to leave willingly (perhaps also being confronted with police violence) and do not return, while naturalisation depends heavily on a willingness to integrate into French society and the labour force.

Unlike the experiences of migrants of which Arendt (1973) wrote, the EU problematizes state authority in cases of repatriation. EU citizenship grants protections and safeguards against discrimination on the basis of national origin. Arendt's conceptualization of statelessness in Europe showed the confrontation between the nation and non-nationals as a way of exposing the often false claims of universal human rights. Today, the Member States of the EU are engaging a new politics of migration that intersects local, national and European politics. The EU, therefore, requires new and alternative avenues for integration. However, it is the Roma themselves that help illustrate the paradoxes currently at work in Europe: the free movement of people against the forceful eviction of EU citizens, and the act of claiming rights alongside those already participating in those rights.

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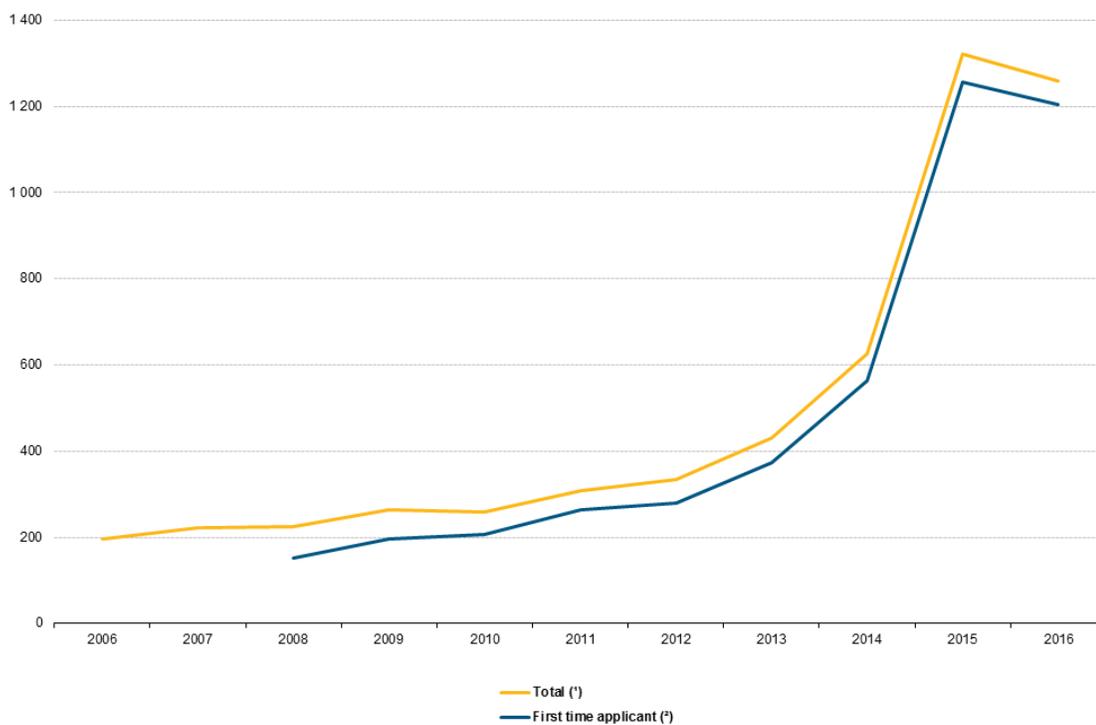
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Figures

Figure 1 – Asylum Applications in the EU's 28 Member States, 2006-2016



(*) 2006 and 2007: EU-27 and extra-EU-27.

(*) 2006 and 2007: not available.

Source: Eurostat (online data codes: migr_asyctz and migr_asyappctza)

Figure 2 – Illegal Border Crossing on the Western Balkans - Frontex

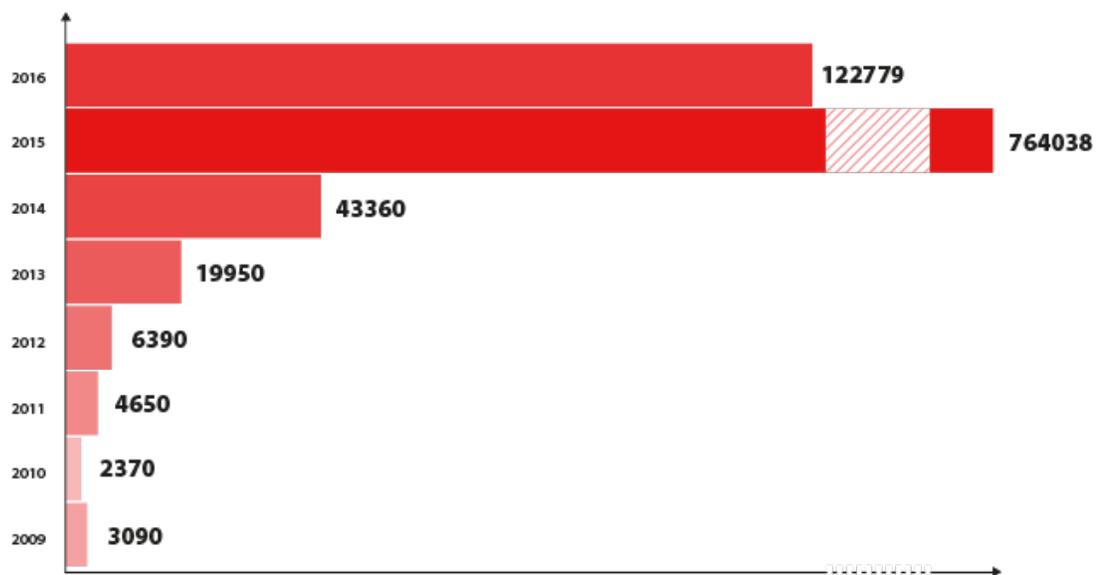


Figure 3 – European Commission – Fact Sheet, Brussels, 22 September 2015

	<i>Italy</i>	<i>Greece</i>	TOTAL
Austria	462	1491	1953
Belgium	579	1869	2448
Bulgaria	201	651	852
Croatia	134	434	568
Cyprus	35	112	147
Czech Republic	376	1215	1591
Estonia	47	152	199
Finland	304	982	1286
France	3064	9898	12962
Germany	4027	13009	17036
Hungary	306	988	1294
Latvia	66	215	281
Lithuania	98	318	416
Luxembourg	56	181	237
Malta	17	54	71
Netherlands	922	2978	3900
Poland	1201	3881	5082
Portugal	388	1254	1642
Romania	585	1890	2475
Slovakia	190	612	802
Slovenia	80	257	337
Spain	1896	6127	8113
Sweden	567	1830	2397
TOTAL	15600	50400	66000

Figure 4 – EU Member States' Support to Emergency Relocation Mechanism (As of 19 December 2017)

Member States	Relocated from Italy	Relocated from Greece
Austria	17	X
Belgium	414	700
Bulgaria	10	50
Croatia	22	60
Cyprus	47	96
Czech Republic	X	12
Denmark	X	X
Estonia	4	141
Finland	779	1,202
France	434	4,393
Germany	4,647	5,371
Greece	X	X
Hungary	X	X
Ireland	X	755

Italy	X	X
Latvia	27	294
Lithuania	29	255
Luxembourg	241	300
Malta	67	101
Netherlands	891	1,744
Poland	X	X
Portugal	326	1,192
Romania	45	683
Slovakia	X	16
Slovenia	60	172
Spain	205	1,123
Sweden	1,204	1,656
UK	X	X
Norway	816	693
Switzerland	891	580
Liechtenstein	X	10
Iceland	X	X
TOTAL	11,176	21,699