

International Migration into Europe

Gabriella Lazaridis

From Subjects to Objects



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International Migration into Europe

From Subjects to Objects

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*To my friends Alison and Gill who stood by me when I cried,
to Kay who makes me laugh and live, and in loving memory
of my mum who taught me that 'sometimes you must take the
leap and build your wings on the way down'.*

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List of Abbreviations

EU	European Union
EUROSUR	European Border Surveillance System
NGO	non-governmental organisation
PERCO	Platform for European Red Cross Cooperation on Refugees, Asylum-Seekers and Migrants
PICUM	Platform for International Cooperation on Undocumented Migrants
SIS	Schengen Information System
SIS (II)	the successor to the Schengen Information System
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System

Introduction and Theoretical Context

The current level of the world's migrant population is estimated to be around 215 million, representing about 3 per cent of the world's population. Migration is not a new phenomenon. Indeed, periods of mass migration from the sixteenth century to the present day have been charted by Castles and Miller (2009).

With reference to post-1945 migratory movements, after the Second World War countries such as Germany, France and the United Kingdom made use of different forms of migration to rebuild their wrecked infrastructures and economies. The *gastarbeiter* policy in Germany focused on temporary forms of migration whereby it was anticipated that the 'guest' workers would be returned to their counties of origin once the need for a foreign workforce decreased. Migration control was considered to be necessary on grounds of protecting native workers and the welfare state, rather than in the light of state security.

All this changed after the OPEC embargo and the recession that followed in the mid-1970s. However, over and above this, although issues associated with benefit and risk on the part of both sending and receiving countries have always formed part of the debate surrounding migration, a paradigm shift has taken place since 2001, which has involved the issue of migration no longer being considered one of 'low politics'. Rather, it has become one of 'high politics', involving matters of national security (Lahav 2004).

While many see this shift as arising from the 9/11 World Trade Center attacks, others see a pattern of state response to terrorism which pre-dates 9/11. No matter the root cause, there has been a recent trend towards the securitisation of migration, which will be discussed in Chapter 6. Such a process has a real impact on migrants of all categories, on states and on the indigenous populations.

2 International Migration into Europe

It was after the terrorist attacks of 9/11 that western vulnerability was identified as emanating from porous borders, generous entry policies, violations of the term of entry and the entry of large numbers of undocumented workers. Chapter 6 in this book examines the meaning and context of securitisation, and investigates the consequences of the process on the various actors involved. It identifies the drivers of securitisation and determines whether this process affects the security of such actors, as well as ways in which it leads to their *abjectification*. Chapter 6 also looks at how migration has been securitised, because the underlying socio-political discourses conceive it as an issue that can undermine the capacity of the state to maintain sovereignty (mainly in the areas of border control and national identity, which are understood as basic responsibilities of the state in matters of security); threaten the balance of power; and generate conflict in the international system. In consequence, the securitisation of migration has generated restrictive policies, costly instruments to deal with it (with questionable success) and ethnic tensions. Especially with the political survival of the notion of a *classe dangereuse* and the rendering of the various riots that have taken place in Europe during 1980s and 1990s as manifestations of incivility, together with an emphasis on the lack of integration of minorities in Europe, the ground has been prepared for the reification of cultural danger.

The Schengen Agreement and the end of the Cold War have led to the portrayal of migration as a 'soft' security issue, rather than primarily a social, economic or ethnic matter. 'The issue was no longer, on the one hand, terrorism, drugs, crime, and on the other, rights of asylum and clandestine immigration, but they came to be treated together in the attempt to gain an overall view of the interrelation between these problems and the free movement of persons within Europe' (Huysmans 2000: 760). Framing migration as a securitisation issue has been possible through the broadening of the concept of security, and the linking of risk and threat to migrants. The instruments of this new body of knowledge, which has emerged since the end of the Cold War, are the discursive practices of politicians, the media, international organisations and academics (Ibrahim 2005: 164).

This book also deals with the complex issues surrounding the acceleration of migration into and within Europe, discussing the reasons behind processes and policies designed to manage migration flows. It considers the impact of the macro-level environment on migration at the micro level, discussing the effects circumstances at the macro level can have on the individual migrant and his or her strategies for survival in the

country of destination, and analysing the socio-political challenges to which it gives rise.

The continuum of irregular migration to regular migration is the theme running throughout the book (although more specifically tackled in Chapters 1, 4 and 5), as is the contentious issue of informal non-regulated work and undocumented migrant workers. By using certain examples of differing configurations of migration, ranging from skilled work (see Chapter 2) to prostitution, the book tries to illustrate the variation in the extent and forms of employment, and the consequences of practices of informalisation. The book also tries to demonstrate how these matters are closely connected with specific migration regimes, welfare systems and employment practices.

Chapter 5 deals with what is now one of the fastest growing forms of transnational organised crime and a highly emotive subject: that of human trafficking. It provides an example of the power struggle between national governments and international organisations. It looks at the tension between acknowledgment of the need for international cooperation to decry this human wrong and the fear of supranational interference in the state's control of its borders. Human trafficking forces governments to consider the extent to which the interests of the state should continue to prevail over the interests of the individual, specifically the victim of trafficking, and it is here that neo-liberal attitudes toward the promotion of human rights throughout the world clash with an isolationist fear of weakened national borders. Where legislation has been more successful is in the field of criminalising the activity and sentencing the perpetrators. In terms of reducing the supply and demand, action has been indecisive. So, while the crime can be described as globalised, and its criminalisation is international thanks to renewed legislation, practical efforts to curb its existence largely remain under the sovereignty of the nation state.

Impacting on all this, the feminisation of migration as well as the construction of the 'other' are central to the book, reflecting the growing demand for women in the 'care' industry within the receiving countries. Chapter 4 looks at how the early migration studies were blind to the fact that the whole experience of immigration is clearly a gendered issue, and goes on to analyse the experiences of domestic workers in Europe. The chapter also discusses the issue of the *burqa* which, in the name of *laïcité* and of security, has led to migrant women being denied the freedom to wear the garment they choose.

The way in which migrant networks and social capital are used as survival strategies by migrants themselves is another issue tackled in

this book (see Chapters 3, 4 and 7). The book aims also at providing an overview of the complexity surrounding international migration to the European Union and the challenges it poses for European citizenship (see Chapter 8). Moreover, although traditional research into migration concentrated on the plight of low-skilled workers, those working for minimal wages, this monolithic view has changed, as new debates have gained momentum since the late 1980s, continuing until the present day (Alam and Hoque 2010: 534).

Finally, the differentiation of migration is demonstrated by the inclusion of discussion on skilled migrants and the self-employed (see Chapters 2 and 3). Further, Chapter 7, on migration regimes and regularisation policies, explores the stringent efforts made in Europe to distinguish between wanted and unwanted migrants, to differentiate between forms of migration, or to make wanted those who are unwanted.

Theoretical context

The chapters are contextualised within a number of theoretical frameworks, examining the reasons why people migrate (migration theories), together with their experiences and vulnerabilities in the host country (inclusion, exclusion and racialisation processes). The overarching theoretical framework is Arendt's (1951) definition of citizenship as *the right to have rights*. The condition of the excluded is defined by Arendt as 'statelessness'. 'The migrant is by definition the unprivileged legal subject in Europe today who is constantly shaped who is constantly changed, eventually altered; rights are conferred to, rights are taken away from migrants, according to the interests of supranational or national entities' (Konsta and Lazaridis 2010: 367). Within this framework, a *plastic citizenship* emerges, consisting of a citizenship which is fluid, flexible and easily altered by public authorities. 'The subject is plastic, not elastic, it never returns to its original form, it may be shaped, but in the process of being shaped, it undergoes a transformation into something new, which can produce a new self in Foucaultian terms' (*ibid.*: 368; Foucault 2004: 214). For the purpose of this book, plasticity is interesting because it simultaneously means openness and resistance to all kinds of influences (Vahanian 2008: 6). It can shape and be shaped (Malabou 2004). The subject may be shaped but, in the process of being shaped, it undergoes a transformation into something new and hence cannot go back to its original state – it is not elastic, it is plastic. In this environment, a plastic citizenship emerges in which boundaries are blurred and processes of belonging or not belonging are fluid, changing

over time and influenced by notions of who should belong and who should not, who is entitled to what rights and who is not. As Konsta and Lazaridis (2010: 368) argue, ‘this leads to a transformation of migrants’ subjectivities into *plastic subjectivities*, which can resist and can have all kinds of possibilities to wiggle and escape from the rigidity of the societal structure’.

Permanently hostile immigration laws and administrative practices may contribute to the formation of subjectivities which contain not only the sperm of resistance but, potentially, the sperm of revolution. Even so, these laws and practices can also mould and shape subjectivities in the direction of the peaceful integration of immigrants. Such subjectivities are structured as follows:

- *Subjects*: those accorded or enjoying full citizenship rights, i.e. citizens;
- *Les Ejectés*: those of a quasi-documented status, such as those who are regularised but do not enjoy full citizenship rights, so can ‘slip in and out’; force can be used to enable both escape and eviction;
- *Injects*: those ‘injected into’ society because they are protected by human rights laws etc., such as asylum seekers when they are granted refugee status;
- *Abjects*: in-limbo, marginalised belongings; those of a degraded, devalued, vulnerable, insecure lower class status, i.e. irregular migrants.

These four categories are subject to different forms and degrees of marginalisation in the inclusion–exclusion continuum; this, in turn, leads to exposure to different forms and degrees of risk and vulnerability. Lazaridis and Koumandraki (2007) have examined processes and patterns of exclusion and inclusion with regard to Albanian migrants in Greece. Based on migrants’ formal/informal employment activities, work conditions, salary, ethnicity, social insurance coverage and legal status, Lazaridis and Koumandraki have identified three areas of exclusion: high risk, relative risk, and non-exclusion.

Albanian migrants belonging to the ‘high exclusion/high risk’ area – which is associated with manual, unskilled jobs in the informal economy, involving high risk, vulnerability, irregularity, informality and lack of legal status – are more exposed to undergoing a process of *abjectification*. Migrants in the ‘relative exclusion/relative risk’ area – which encompasses unskilled but more secure jobs in the formal and/or informal sectors, with relatively good payment and full or partial social insurance

coverage – have more possible means of escaping the process of *abjectification*. Those migrants falling within the ‘inclusion’ area which encompasses well-paid jobs with social insurance coverage, the same pay as their Greek co-workers, and payment for overtime – escape the process of *abjectification*. Favourable legal status is an important means of obtaining inclusion in this privileged area, though not in all cases; also age and gender shape exclusion patterns. These areas are not air-tight spaces of inclusion–exclusion: migrants move in or out, especially in the high risk and relative risk areas. In all three inclusion–exclusion areas, informal networks of support play a crucial role in supporting migrants on their arrival, as well as in securing access to employment. So, the role of social capital, together with the relational and organisational aspect of migrants’ inclusion in the host society, is important.

The transcultural subject finds himself or herself excluded from the host society. In this respect, migrants are transformed by law and through law; from being legal *subjects*, they become legal *abjects*. As I will show in this book, the process of *abjectification* is not linear, and differs according to one’s *differential inclusion and/or exclusion* in the host country.

‘A contemporary differentiated legal subjecthood in a Member State (MS) and the EU context opens the door to political, economic, social and legal relations of great complexity amongst individuals whose legal status may become more and more differentiated from the so called ‘neutral’ ... legal subject of positive law’ (Lazaridis and Konsta 2011: 260). Today’s mobile subjects, who respond to dynamic market conditions, enjoy a multiple belonging. But although mobility may be possible, it is also restricted by legal regulation.

Contemporary reality requires citizenship not to be restricted to groups which aim to be ethnically and culturally homogeneous; also, it must leave room for the accommodation of ethnic and cultural diversity within the nation-state, and for the usual recognition of rights and diversity of both the majority and the minorities within the state. Citizenship is a prerequisite for the enjoyment of human rights. But rights are conferred on and taken back from migrants according to the interests of supranational and national entities (see Chapter 8).

People may be the subjects of law, the bearers of rights and obligations, but they can also be transformed by law and through law into *abjects*. The concept of *abject*, which originated in the works of Kristeva (1982), exists between the concept of a subject and the concept of an object. The *abject* is something which used once to be a subject, and which can provoke a traumatic experience in one who comes into contact with it. A corpse, for example, used once to be a subject; it is something

that should be alive but is not. According to Kristeva, the *abject* is 'what disturbs identity, system, order. What does not respect borders, position, rules', and so can also include crimes such as those committed at Auschwitz. Such crimes are abject because they draw attention to the fragility of the law. Thus, legal *abject* is connected to legal *subject*, the legal *subject* being the bearer of rights and duties. Diametrically opposed, one with no rights and duties whatsoever could be characterised as a legal *object*, a *res* (a thing).

The legal *abject* refers to people and not to things. So, the legal *abject* represents the form of utmost exclusion in society, and *abjectification* describes the state of often marginalised groups, bodies excluded by law and through law, who eventually become repulsive to society at large – such as the drug addict, the homeless, the convict, the poor, the aged or the disabled and, in the case of this book, migrants. The *abjectification* process undergone by migrants leads towards exclusion and utmost insecurity. The *abject* is a metaphor for the ultimate form of exclusion. The book aims to decipher the complex web of structural, institutional and cultural contradictions which shape the inclusion–exclusion dialectic and the multifaceted grid within which the 'us' becomes the 'other' and the 'other' becomes the 'us' within the transformation of European space into transnational space within the wider globalisation process. Within this framework, the book identifies the complex, multifaceted processes through which migrants are gradually transformed from legal subjects to repulsive legal *abjects*, excluded by the host society, through the process which I describe here as *abjectification*, one which leads to a variety of forms of human (in)security.

As De Genova (2007: 440) argues, 'during an era when the abjection of non-citizens has become scandalously routine and the insecurity of citizens has been rendered a political resource of onerous gravity, the gathering revolt of the denizens may yet signal a stringent clarification of our universal political predicament – as always – already susceptible to suspicion, always – already potentially culprits'. He adds: 'Within the global regime of capital accumulation, the more flagrant abjection of the world of denizens only shows, to the more properly domesticated citizen, the image of their own future' (*ibid.*). One way or another, we are all marginalised, susceptible to a possible process of *abjectification*.

One way to *abjectify* the 'other' is by racialising it, and by using the racialisation process in an exclusionary way. Togral (2011: 221) argues that, in recent years, 'the securitization of migration and "new racism" have been converged under the "auspice" of the cultural difference-as-a-threat narrative'. What is 'new racism'? It is racism based on the

discriminatory treatment of the ‘other’ on the basis of one’s national origin or ethnicity and without reference to colour or phenotype, as opposed to the ‘old racism’ which was based on discriminatory treatment at the hands of a race (a biological group) different from one’s own. New racism is a ‘shift in racism, from notions of biological superiority, to exclusion based on cultural and national difference’ (Ibrahim 2005: 164). In addition, new racism dispenses with the notion of superiority. Instead, the focal point is difference. As Babacan *et al.* (2009: 10) argue, ‘the proponents of new racism claim that they are not being racist or prejudiced, nor are they making any value judgements about the “others”, but simply recognising that they [the others] are different’. This difference forms the basis for ‘legitimate’ and contemporary concerns about issues that are generalised as posing a threat to the values and beliefs that are cherished by the community. As Wiewiorka (1995: 43) explains, ‘racism no longer means relations of domination, but rather the setting apart, the exclusion (and in extreme cases the destruction) of races [cultures and ethnic groups] which are thought to pose a threat’. These arguments authorise the belief that people who are part of the same culture or nation are devoid of differences of any kind, and that different cultures or newcomers can disturb this ‘unity’ or ‘homogeneity’ of society. This essentialism has made it possible for right wing extremist groups to build their arguments around the defence of ‘our values’, ‘our identity’ or ‘our way of life’. As illustrated by the section on the *burqa* in this book, these essentialist projections onto migrants and ethnic minorities have strengthened the hand of right-wing, populist discourse and racist framing of certain groups of migrants; they have been used to reinforce their marginalisation and exclusion, and lead to their *abjectification*.

Of course, within the inclusion–exclusion continuum there is differentiation according to one’s gender, ethnic background, skills, age and so on. So, intersectionality is important in order to understand the different forms and degrees of *abjectification* that exist. *Abjectification* is not static; it is a process that constantly moves and mutates. Migrants, depending on where they are in the *abject–éject–inject–subject* continuum, experience differential inclusion, being characterised as a security threat, targeted by the mission to ‘democratise and civilise the others’ who have been framed as backward and primitive. The list is endless.

In addition, there is the danger of falling into the ‘denial of *abjectification*’ trap, which is similar to the denial of racism trap (see Nelson 2013). Within this, governments can argue that migrants and minorities today experience less racism than in the past (temporal deflection), or that

abjectification is worse in other countries, including those from which immigrants have come. It can also take the form of a more localised deflection, in which racism is pronounced 'not a problem around here': spatial deflection, which suggests that *abjectification* is not an overwhelming problem; deflection from the mainstream: racism is not an overwhelming problem; or outright rejection of its existence: absence discourse.

These barriers (structural or otherwise) prohibit individuals from making claims of being excluded or *abjectified*. The discursive fields allowed by such approaches are narrow, limiting the range of possibilities for anti-racism, anti-discrimination and anti-exclusion measures to be discussed at the local level; and the importance of acknowledging exclusion and *abjectification* is brought into sharp relief, particularly at the institutional and systemic level. Acknowledgement of these forms of 'othering' in Europe is necessary, and is what this book attempts to achieve.

1

Irregular Migration and Undocumented Migrants – the *abjects*

A considerable proportion of today's global migrants – around 200 million – do not have the status of a regular resident. In the 1990s, irregular migration grew rapidly and affected many countries in Europe. Amongst the general public and politicians, irregular immigration to Europe has been associated with a wide range of fears: that countries are losing control over their borders, that social systems are overstretched by unauthorised use, that indigenous workers are being pushed out of the labour market and that criminality is growing. Strategic borders have been strengthened with guards, watchtowers, fences and state-of-the-art technology – such as infrared scanning devices, motion detectors and video surveillance. However, although irregular migrants are still here and their presence is now a fact of life in all EU member states, according to Morehouse and Blomfield (2011) the annual flow of irregular migration into Europe has decreased since 2002, although this has been masked by localised surges. Nevertheless, current estimates of the size and scope of the population of irregular migrants are characterised as 'guesstimates' – numbers which assume a life of their own, and are not relevant to national policy-level decisions regarding migration. The reduction in numbers coincides with an increase in border protection politics and the onset of the economic crisis. The focus has now shifted from the southern Mediterranean (Spain and Italy) towards the land border between Greece and Turkey, especially with regard to migration from northern Africa and refugee inflows from Syria.

In June 2000, customs officers at the port of Dover in the south of England opened a refrigerated lorry to find the bodies of 58 Chinese people who had attempted to enter the UK. In April 2009, 120 people

were stranded in the Mediterranean on the Turkish ship *Pinar E*, which had retrieved them after the small inflatable boats in which they had been travelling had sunk. The governments of Italy and Malta argued for four days about which country had the responsibility for these 120 people. Desperate and vulnerable people who take enormous risks to migrate to Europe – either in rickety boats or concealed in the containers of articulated lorries – are familiar as images of irregular migrants portrayed in the media. On 11 April 2011, *The Economist Online* carried an article entitled ‘The next European crisis: boat people’. According to the United Nations High Commissioner for Refugees (UNHCR), more than 20,000 boat people landed on the Italian island of Lampedusa that year, almost all of them from Tunisia. More than 800 arrived in Malta, mostly from Libya. On 7 April 2009, *Spiegel Online International* published an article entitled ‘Death on the Mediterranean’, referring to the hundreds of people who died the previous week when a boat carrying migrants capsized off the coast of Libya. Such incidents of attempts to smuggle migrants into Europe exemplify the human dimension of debates about irregular migration. They impress on public opinion the need for a coordinated European strategy to crack down on trafficking networks, opening up the potential for greater cooperation with other European countries on the issue of illegal migration. They also lend credence to the idea that Europe is invaded by migrants, despite the fact that the actual numbers of inflows have decreased during the last few years and that irregular migration is a problem of border control. In ongoing academic and political debates, the presence of the irregular migrant population in Europe is usually spoken of in terms of whether or not states have lost control on immigration (e.g. Cornelius *et al.* 2004).

The rise of the concept of ‘illegal migration’ dates back to 1920s, 1930s and 1940s; it was subsequently applied occasionally during the 1970s, before becoming widely used from the late 1980s, and especially from the 1990s onwards (Düvell 2006). Irregular migration sometimes refers to the undocumented, the unauthorised, the *sans papiers*, *clandestinos* or illegal migrants (all of which have different connotations in policy debates); it ranges from voluntary individual movement to trafficking and bonded labour (see Hugo 2005: 25). According to Castles and Miller (2009:135), this growth ‘is linked to the unwillingness of governments to effectively manage migration and to the desire of employers for easily available and exploitable workers’. These terms have shortcomings; for example, the term ‘illegal migration’, despite its widespread usage, can be seen as having pejorative connotations, as it criminalises migrants

that may actually have entered a country legally but have fallen foul of immigration laws, sometimes through no fault of their own. The term 'undocumented' is also inaccurate, as most people described this way do have documents but these have either expired, or are not the 'right' documents (Boswell and Geddes 2011: 128).

Ideas about what is legal and what is not are often politically volatile and confusing. Illegal migration is often taken to refer to migrants who are not allowed to migrate. For most of these people, there are no alternative ways to travel other than to go to a smuggler – either because they cannot enter Europe, or because they cannot leave their own country. If migrants cannot find a legal way to enter a country, smugglers will help them to find alternative ways. Also, the EU member states have not reached a common agreement with regard to the definition of irregular migrants. Some argue that migrants who carry government-issued documents that protect them from removal for a period of time (and are registered by local authorities and may be entitled to benefits, but have no legal residence) should be treated as irregular migrants. The 2008 EU Returns Directive defines as irregular migrants those who do not fulfil, or no longer fulfil, the conditions of entry as set out in Article 5 of the Schengen Borders Code.

There are eight principal ways in which people become irregular migrants:

- illegal entry;
- entry using false documents;
- entry using legal documents but providing false information in those documents;
- overstaying a visa-free travel period or temporary residence permit;
- loss of status because of non-renewal of a permit, for failing to meet residence requirements or breaching conditions of residence;
- being born into irregularity;
- absconding during the asylum procedure, or failing to leave a host country after a negative decision;
- a state's failure to enforce a return decision for legal or practical reasons.

In addition to these eight ways, there are also the over-stayers – those whose regularisation status has expired, so that they are *in limbo*, waiting for their papers to be processed; those who hold multiple jobs but do not declare them; or those who accept to work in the informal sector in order to secure a job.

Migrants have various levels of agency (except perhaps those who are trafficked) and can decide, within limits, if, how, when and where to go. Hence, it is individual migrants who are agents in migration processes, and who migrate across borders and into labour markets while disobeying legal requirements. On the other hand, it is also undeniable that states, in the course of exercising sovereignty over their territory and labour markets, determine what is regular and what is not. Therefore, politics and laws (national and supranational) set the conditions under which people can cross borders and can stay and work in a country other than that of their nationality. 'It was only once states issued legislations that declared unwanted immigration illegal and punishable, and introduced technologies, administrations and enforcement procedures to support this legislation, that previously regular migration finally became irregular. Thus, irregular migration is not an independent social phenomenon but exists in relation to state policies and is a social, political and legal construction' (Düvell 2011: 275).

In most countries, irregular immigration – entry, residence and/or employment – is considered a violation of administrative regulations and leads to detention and removal (The Netherlands, Germany, Hungary, the Czech Republic and Slovakia). In others, however, irregular migration, or certain aspects of irregularity are criminal offences and penalised with fines (Austria), imprisonment (UK, Italy) or both (France). These are matters such as arrival without an ID, use of false papers (e.g. a borrowed driving licence), working without permission or on borrowed papers, non-cooperation in removal (the UK), or irregular residence (Italy). Also, facilitation of entry or stay and, increasingly, the employment of irregular immigrants are usually considered administrative violations or criminal offences, and thus the facilitator or employer – but not the immigrant – is penalised. On the other hand, offences that result in a large fine or significant prison sentence lead to one's immigration status being withdrawn and subsequent deportation or expulsion (e.g. the UK, Germany and Poland).

In Austria and Germany, after serious offences, this even applies to persons born in the country who are considered immigrants due to the status of their parents. Behind these varied policies lie highly unstable and contradictory public and governmental attitudes to irregular migration itself. For many Europeans, the desperate conditions that people with irregular migration status are prepared to tolerate in order to arrive or remain in Europe are proof of the pressing need of these migrants for a new country of residence. If these migrants are not always refugees *per se*, they are clearly people driven from their homes by forces

such as poverty and human rights violations that they are helpless to stem. Yet, many do not share this sympathetic view. For some, migrants without regular status pursue a quest for economic betterment at the cost of denying opportunities to refugees. By filing and pursuing frivolous asylum claims, irregular migrants overload refugee determination procedures in European countries, and thereby bring the institution of asylum into disrepute. The existence of both these perspectives on irregular migration demonstrates how the issue of irregular migration is currently entangled with that of asylum in Europe.

The attempt to disentangle these concerns is likely to have important implications for the way we view both asylum and immigration policy. Yet, for all its contemporary salience, irregular migration remains a very poorly understood phenomenon. In the midst of the cacophony of recent debates on asylum across Europe, there exists an important silence: the voices of migrants with irregular status themselves are rarely heard. This silence is rarely questioned, because migrants with irregular status are usually in no position to give voice to their treatment and experiences. European states ritually condemn irregular migration and, from time to time, enact measures to combat it. But they have been extremely reluctant to examine closely the conditions faced by statusless migrants within their territory.

Non-governmental organisations (NGOs) and other groups that assist and advocate for refugees and immigrants also have little incentive to break the silence. These organisations usually have their hands full responding to regular migrants and those, such as asylum seekers, at risk of being removed from the state. While they are often aware of the needs of irregular migrants, they rightly worry that involvement with them (or advocacy on their behalf) might tarnish the causes of their main constituency: regular migrants, asylum seekers or refugees.

The data on human smuggling is scarce, as most is collected by law enforcement agencies. Salt and Stain (1997) have conceptualised human smuggling as a global business with licit and illicit sides. They divided the process into three states: mobilisation, *en route* and insertion. In the mobilisation state, a contract is made between migrants and smugglers and the preparations are put in place. In the transit phase, the actual movement takes place, and documents, transport and shelter are arranged. In the entry phase, migrants need information on work opportunities and shelter. In some cases, the migrants have already established a network of friends and relatives in the host country.

This model has been criticised for presenting the smuggling business as a closed circuit while, in reality, in order to reach their final

destination migrants may need several smugglers who are not all connected with each other. The process does not always evolve in the linear fashion assumed by the model. Moreover, the migrant in the model is seen as a passive actor, a commodity, who simply follows the smuggler; in reality, migrants can have preferences for specific smugglers, or arrange certain parts of the journey themselves, or change destination *en route*. An important issue here is the development of trust between migrant and smuggler. The migrant pays large sums of money to come to Europe, and room for negotiation is usually limited (see Chapter 5, on trafficking).

Migrants who have irregular immigration status, whatever they do they will always be perceived as illegal: thus, 'irregularity begets irregularity' (Erdemir and Vasta 2007). This is the case in the labour market where, if you are an irregular migrant, your work is always perceived as illegal even if you are paying national insurance. If regularised (see Chapter 7, on regularisation), people could fall back into illegality. Some Eastern European women who work in southern Europe's care sector (see Chapter 4, on gender and migration in this book), may be regularised but still work in the twilight zone – accepting poor work conditions; low pay for many hours of work; and experiencing deskilling due to lack of jobs, or difficulties encountered in the processes associated with the recognition of qualifications. But how do people engage with and accommodate irregularity? The answer is with extreme *fluidity* and *flexibility*. Flexible and fluid work strategies have become even more prominent in the context of the current economic crisis in Europe. The different political and socio-economic contexts within Europe allow for different forms and degrees of regularity–irregularity. Those regularised in Greece, for example, operate within what Erdemir and Vasta (2007: 306) call *irregular formality*; that is, the attempt to regularise themselves within the constraints of the local labour market, which requires flexibility and informalisation, consequently makes it impossible to 'arrange immigration status and work life through legal means' (*ibid.*). As discussed in Chapter 4, on gender and migration, such irregular migrant workers experience a *trampoline* effect; in the case of migrant women, they can move from employment as maids or nannies to unemployment, back to employment as prostitutes, back to unemployment, and so on. People also move from regularity to irregularity in terms of the type of job they do. For instance, if regularised, they can move from a job in the formal sector to take up a job in the informal sector, or hold a job in the formal sector for part of any specific day of the week and a job in the informal sector for another part of the same day, thus ensuring the right to live a

reasonable life. Boundaries between regularity and irregularity are thus *fluid* and *permeable*. In today's economic crisis, such behaviour is not regarded amongst migrants as 'deviant' but, rather, as 'a normal survival strategy'.

Since the fall of the Iron curtain in the late 1980s, we have also the arrival, in member states of the European Union, of thousands of unaccompanied minors from 'third countries' seeking a new life. The majority has fled from wars, conflicts or other difficult living conditions, and some have even lost family members along the way. These are children aged under 18 seeking refuge in Europe without accompanying papers and without accompanying legal guardians. The arrival of unaccompanied minors from third countries is not a temporary phenomenon; rather, it a long-term feature of migratory flows to the EU. In 2011, there were 12,225 asylum applications by unaccompanied minors across the EU27, a number comparable with previous years and unlikely to change in the years to come. A much greater overall number of unaccompanied children are entering Europe by means of irregular migration channels, as estimates provided by some member states suggest. Italy provided data, which indicated that there were 5,959 unaccompanied minors on Italian territory on 31 December 2011; France provided an estimate of 6,000 unaccompanied minors on its territory; in Spain, the aggregated figure for the period 2008 to 2011 was over 5,500; Belgium estimates the number as 4,000.

The story of A.R., aged 17 years, from Afghanistan

While fleeing from Afghanistan and in search of safety and dignity, A.R. experienced detention and deportation on countless occasions. After leaving Afghanistan, he lived together with his parents and his younger siblings in Pakistan until 2007. He then travelled to Turkey via Iran. He was arrested near the Turkish border town of Van, detained in Ankara for two months, and then deported to Kabul. From Afghanistan he fled again, crossing Iran and Turkey, this time reaching as far as Greece, where he was detained yet again. After his release from detention, he continued his journey to Albania, where he was detained in Tirana for one month. Kosovo was his next stop, where he spent two days in prison. Later, while in Serbia, he was put into an orphanage for three months together with Serbian children and adolescents. A.R. was still striving to reach Europe, a place that he identified as safe, and where he thought he would receive protection.

After reaching Hungary, he was arrested at the border and kept in a police station for one night. He was later transferred to the detention centre of Bicske, where a doctor declared him to be an adult. When A.R. was threatened with deportation to Greece, he fled to Austria, where he was later detained for 10 days. While visiting a doctor for a serious injury he obtained, he was declared to be a minor and brought to the reception centre of Traiskirchen in Austria. After about four months, he was deported to Hungary and consequently detained in Békéscaba for about 15 days. He fled back to Austria where, for three months, he was detained in a removal centre once again. He was deported to Hungary for a second time, where he stayed for 15 days in the Békéscaba detention centre, followed by four months in a prison in Nyírbátor, two months in Zalaegerszeg and, finally, two days in a prison in Budapest. Once released, A.R. fled to Austria for a third time. He stayed in the reception centre of Traiskirchen for one month before he fled to Switzerland in order to avoid being deported to Hungary again. There, he was initially registered as a minor; however, after three weeks he was declared to be an adult. For six months, A.R. lived in various centres in Zurich. Before his third deportation to Hungary, he was detained for five days in Zurich and then brought to a detention centre by the German border patrol. There, he was detained for three weeks before being sent back to Hungary. He spent about two months in the refugee camp of Debrecen before being transferred to the new deportation centre in Balassagyarmat. Once again he fled, and now he is living in a youth facility in Hamburg. As a result of his experiences, he has been diagnosed with post-traumatic stress disorder (cited in Kopp 2012).

When examining the different European models, policies and practices covering the reception of unaccompanied and separated children, there is no common or predominant response regarding measures and facilities. Some countries – such as France, Germany and Italy – give priority to the integration of migrant children in general mainstream facilities for children in need. Others, such as Spain and the UK, combine reception in specialised or general facilities depending on the reception phase, or the profile of the child. Finally, a few countries have created an exclusive network of specialised facilities for the reception of unaccompanied children. Currently, Belgium is the main example of this approach.

However, there has been very little debate about the adequacy, strengths and shortcomings of each model. In general terms, the strength of mainstream models is their aim of integrating migrant children into

the host society. The main shortcoming is that these models are poorly adapted to the characteristics and specific needs of migrant children. On the other hand, specialised models can provide a targeted facility, adapting the measures and provisions of care to children's specific needs. The main defect of this model is often the *de facto* segregation of the migrant children. Finally, mixed models with mainstream and specialised facilities may adapt to the requirements of every child. In some cases, however, the criteria by which children are placed in a particular facility do not seem to take into consideration an individual assessment of every child's specific needs.

Their arrival in Europe is a challenge, as they enjoy special protection; they cannot be detained or removed in the same way as adults and are entitled to greater support. The data and literature on unaccompanied minors in Europe is scarce compared with the plethora of studies that exist on third-country migrants. However, at the EU level since 2009 we have had the Stockholm Programme (European Council 2009: 9), which *inter alia* concerns itself with the protection of unaccompanied minors who are referred to as a 'particularly vulnerable group which required special attention and dedicated responses'. It calls for 'the exchange of best practices and common action in such areas as smuggling of minors, cooperation with countries of origin, the question of age assessment, identification and family tracing, and the need to pay particular attention to unaccompanied minors in the context of the fight against human trafficking ... [and] a comprehensive response at EU level [should be developed]'

Such a response should combine prevention, protection and assisted return measures while taking into account the best interests of the child. Special provisions for minors are also included in the EU Directives on Asylum Procedures and on Reception Conditions, which lay down the minimum provisions for minors – such as access to education, access to health care, availability of suitable accommodation, representation by a legal guardian and so on. In 2010, the EU drafted an Action Plan on Unaccompanied Minors (European Commission 2010). Unaccompanied minors are especially vulnerable in terms of their ability to access rights and protection; they are also at high risk of poverty and exclusion. However, there are specific requirements for the protection of minors in international conventions and agreements, such as the Hague Convention on the Protection of Children (1961); the most important instrument of international law relating to minors is the UN Convention on the Rights of the Child (1989), which has been ratified by 140 states.

But such policies clash with policies intended to deter migration, such as border controls, child unfriendly airport procedures, and so on. Also, according to Parusel (2011: 157–158):

public opinion is also more favourable towards vulnerable persons such as minors than towards irregular adult immigrants. Whereas the public has repeatedly turned against both ‘legal’ and ‘illegal’ immigrants in many EU countries, with mass media sometimes portraying them as dangers to public security and social or cultural cohesion, the approach towards unaccompanied minors tends to be more sympathetic.

‘We need to improve our procedures to ensure that these children receive a dignified welcome at Europe’s borders. This includes better cooperation and information sharing between EU countries’, said Cecilia Malmström, Commissioner for Home Affairs’ (Europa Press Releases 2012).

On 28 September 2012, the Commission adopted a mid-term report on the implementation of the Action Plan on Unaccompanied Minors (2010–2014) – IP/10/534. The report takes stock of the progress made and identifies the areas which require more attention and targeted action during the next two years.

Over the last two years the Action Plan has had positive impact:

- The explicit recognition of the best interests of the child as the guiding principle has contributed to increased protection in the new EU legislative instruments (in the field of asylum, immigration and trafficking in human beings).
- The common EU approach has ensured that greater prominence is given to funding measures for this particularly vulnerable group of migrants.
- It has facilitated discussions among institutions, national authorities, inter-governmental and non-governmental organisations and allowed enhanced exchange of knowledge and practices, for example on guardianship and age assessment (Europa Press Releases 2012).

An important source of information and assistance is that of migrant networks or social relations, or *social capital*, which can create a security cushion and cause some, albeit often limited and temporary, relief from the high risks of migration. Social capital refers to ‘norms of reciprocity and networks/associations which can promote cooperative actions and which can be used as social resources for mutual benefit’ (Das 2004: 30;

Putman 1993; Woolcock 2000; 2001; 1998). According to Putman (1993: 172), reciprocity comes in two forms: *specific reciprocity* and *generalised reciprocity*. Specific reciprocity refers to simultaneous exchanges of items of equivalent value, such as information regarding jobs. This type of reciprocity is abundant amongst newly arriving irregular migrants, and can be either positive social capital or negative social capital. One form of negative social capital is that formed by migrants and their smugglers or traffickers. *Generalised reciprocity* refers to a continuing relationship of exchange that is, at any given time, unrequited or imbalanced (e.g. capital). As mentioned by Lazaridis and Konsta (2011: 278), 'each act within the generalised reciprocity type is characterised by a combination of shorter altruism and long-term interest. "I help you now in the expectation that you will help me out in the future"'. This requires *trust*. But trust takes time to develop through routinised *in situ* interactions characterised by what Giddens (1987) calls 'co-presence'. In the case of migrant sex workers, for example, the formation of trust is made difficult by the *transferability* factor (the peripatetic nature of the occupation; see Chapter 5) that characterises their presence in the host country.

The support provided by *solidaristic networks* is sometimes stretched to the limit. Erdemir and Vasta (2007: 308) in their research on Turkish migrants in the UK have identified three types of social networks/relations. *Primary* social relations are the smaller, affective, and face-to-face realm of family, friends and acquaintances, characterised by a high level of trust. *Secondary* social relations are the formal and non-affective level of societal organisations, associations, and so on. *Tertiary* social relations are relations without copresence, they exist in the impersonal realm of the internet, newspapers and the like.

Transnational activities can be initiated by migrants and their home kin and relations, as well as by transnational links. Transnationalism extends what were previously face-to-face communities into virtual communities. Here, we have what Portes *et al.* (1989: 221) called *transnationalism from below*; that is, grass-roots activities initiated by migrants and their home country counterparts. These are an important way to organise activities, relationships and identity for people with affiliations in two or more countries. According to Vertovec (2004: 971), transnational practices amongst migrants involve 'fundamental modes of transformation discernible in at least three basic domains': the socio-cultural, the political and the economic. So, the lives of irregular migrants can no longer be understood by looking only at what goes on within the borders of the sending and receiving countries. The true extent of transnational behaviour amongst migrants needs to be further researched.

In a study of Turkish migrants in the UK (Erdemir and Vasta 2007), it was shown that solidarity works for this group mainly through primary and secondary social relations – the former in the context of the establishment of businesses and other work-related issues, and the latter in the context of issues associated with health, the law and education. ‘Primary relations provide the trust, security and protection’ they need (Erdemir and Vasta 2007: xxx). But solidarity is not only based on trust. According to Levitt (2001: 118), who undertook work with Dominican migrants in the USA, there is also ‘mistrustful solidarity’, occurring when family and community ties are strong but are accompanied by scepticism.

Another form of solidarity is *flexible* solidarity. This exists when people offer to help or support someone when they are in trouble, but it is not necessarily altruistic. For example, the person who offers to help may do so in the expectation of receiving something in exchange.

Finally, there is *exploitative* solidarity, which arises from greed and ambition on the part of the migrant’s compatriots. This offers an alternative means of alleviating the risks associated with irregular migration, an example being when a boss offers a job with exploitative conditions. This is a case in which help and support is given to an individual by a compatriot with certain expectations in return, such as loyalty to the boss, willingness to work for long hours with no extra pay, and so on.

Solidarity overall provides a comfortable framework for migrants to alleviate the risks of migration associated with high levels of exploitation, individualism and alienation in the host country, notably in the context of competition with other ethnic groups. ‘Solidarity has become an ambivalent social process for many immigrants who rely on compatriots to help them, in time, to “make it” in the adopted country’ (Levitt, 2001: 118). Collective social relations within the compatriot community enable them to accommodate various kinds of irregular status, yet the outcomes are positive for some and exploitative for others, thus developing spaces of control in the market conditions in which they find themselves. Within this framework, there is the emergence and existence of several informal and illegal markets in the spheres of work, housing, relations and documents; these are ‘parallel institutions’ (Broeders and Engbersen 2007).

An inevitable aspect of the development of solidaristic networks and the transnational linkages that have been mentioned is the emergence of the migration industry. The need for smugglers, agents and brokers is vital as, without them, few migrants would have the information and contacts needed for successful migration and integration into the host country. Hence, we have the emergence of an emigration industry with

strong interests in the continuation of migration; as King (2002: 95) has pointed out, this 'privatisation of migration' is consistent with dominant trends of liberalisation and deregulation in the global economy.

Social capital and the different forms of solidarity as mentioned allow irregular migrants to counterbalance the negative effects of migration and to form some 'pseudo-securities' in the host country, as well as to put up a degree of resistance to processes of exclusion and *objectification* (which often include exclusion from public services, surveillance by the police, incarceration and expulsion – all intended to complicate and frustrate living and working conditions to such a degree that migrants will turn around and try their luck elsewhere). The state raises a protective wall of legal and documentary requirements around the key institutions of the welfare state, and 'patrols' it with advanced identification and control systems. Engbersen (2001) has called this the development of a 'Panopticon Europe', which does not follow a Foucauldian logic of correction but, rather, a logic of exclusion.

Panopticon Europe is not a 'factory of correction'. Its aim is not to discipline and correct undesirable migrants. Panopticon Europe is designed as a '*factory of exclusion* and of people habituated to their status of the *excluded*' (Engbersen, 2001: 242). So, in spite of the different forms of solidarity that have been mentioned, irregular migrants are the *objects* of the new millennium. These migrants are those who have 'no right to have rights' (to paraphrase Arendt 1951); the 'stateless'; the excluded; those at the opposite side of the spectrum to those that Agamben (1998) calls *People* (political body); the unprivileged legal subject in Europe today – constantly shaped, changed and eventually altered. Rights are conferred on migrants and rights are taken away from migrants, according to the interests of national and supranational bodies. This happens, for example through regularisations, or through the EU non-discrimination directives and the Race Directive, or the EU Charter of Fundamental Rights, or the last four EU enlargements in 2004, 2007, 2013 and 2014, which enabled those residing in the EU area without authorisation to receive *de facto* legal status overnight. When rights are conferred, the *object* becomes either *éject* or *subject*, depending on the nature of these rights, for how long they are granted. For example, a temporary, transient status may be the outcome for the migrant through the regularisation process, and 'entrapment in a regularisation cycle' (see Chapter 7), or they may have been granted permanent status through naturalisation policies. But migrants also sometimes go through a *self-objectification process* whereby they choose to obliterate their legal identity, more particularly their nationality, in order to prevent and obstruct

deportation, by destroying their identification papers (such as their passports). Unidentifiable irregular migrants are the 'unmanageable' cases with which the immigration authorities have difficulty coping, and they are seldom deported. The counterstrategies of irregular migrants, such as the manipulation of their identities, are typical of what Scott (1985) calls 'weapons of the weak'; Scott introduced this notion to highlight forms of everyday resistance in situations of extreme inequality.

Irregular migration has become a major political concern both at the European level and in the wider international context. In the European Union, politicians have identified irregular migration as a problem, and have given priority to preventing this phenomenon in the development of the common asylum and immigration policy. After 9/11, the northern European Union (EU) member states have intensified internal surveillance on irregular migrants. Policy innovation has been geared to controlling, identifying and even reidentifying irregular migrants who have settled within their borders. The resulting cat-and-mouse game between the state and irregular migrants seriously undermines the ability of irregular migrants to manoeuvre, and further increases their dependence on informal – and increasingly criminal – networks and institutions (Broeders and Engbersen 2007: 1592).

The main internal immigration law enforcement measures, in order of importance, are:

- random ID controls on streets/railway stations/trains
- routine workplace inspections
- reporting obligations or denunciation practices
- routine police inspections of public places
- one-off high profile raids; and
- arrests of suspects at hospitals, schools or NGOs.

Irregular migrants, however, as has been implied, are aware of these strategies and, as far as possible, avoid such measures: thus, their impact is limited.

With the removal of internal borders within the Schengen area, European governments are collaborating on the management of their external borders with the support of EU institutions, such as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, known as FRONTEX, which was established in 2005. This coordinates member states' joint border enforcement and return operations, and has a budget of around €88 million. FRONTEX gathers data on detections of illegal

border crossing, detections of suspected facilitators, detections of illegal stay and of false documents, refusal of entry and asylum applications. It supports the EU-wide biometric database EURODAC, which assists member states in determining which country is responsible for an asylum claim and which claimants are ineligible for asylum. Their data is based on records of fingerprints from all persons aged 14 years or over who have made applications for asylum in any of the then 27 member states, plus Iceland, Norway and Switzerland. The EURODAC database is used in connection with anyone apprehended who is considered to have crossed a member state's borders illegally, and who has been found to be illegally present on the territory of a member state. In addition to this, the network of EU databases includes the Schengen Information System (SIS) and its successor (SIS II), along with the Visa Information System (VIS). Irregular migration itself obviously defies registration, but illegal aliens found in member states can be registered in the SIS, and those who enter on a legal visa will, in future, be registered in the VIS.

Measures to control irregular migration play a central role in European migration policy. The prevailing political approach focuses almost solely on the prevention of irregular migration; however, one needs to discuss the human rights dimensions of irregular migration as well as the contributions of international and non-governmental actors to charting a rights-based approach to irregular migration. One example at the European level is the Platform for International Cooperation on Undocumented Migrants (PICUM), which has produced a series of reports and publishes regular newsletters, mainly concerned with the social rights of irregular migrants in Europe. Another is the Platform for European Red Cross Cooperation (PERCO) on Refugees, asylum seekers and migrants, which has a Working Group on Irregular Migration that has recently produced a report recommending awareness-raising, advocacy, emergency aid, health care, legal and social counselling, educational facilities, tracing services, contact points, specific services for victims of smuggling and trafficking, and information dissemination in countries of origin.

Human rights apply universally and are not dependent on residence status. Claims to fundamental human rights include the right of children to a school education, access to basic medical services and legal protection. These rights also apply *de jure* in all member states of the European Union. The extent to which existing rights can actually be exercised varies sharply from country to country. If schools, doctors and courts check residence and cooperate – or are forced to cooperate – with the authorities responsible for detecting and deporting irregular

migrants, these migrants will be deterred from exercising their rights. In the Netherlands, access to state services for aliens without status was severely restricted in the 1990s, although schooling, medical treatment and legal protection were expressly excluded. Irrespective of residence status, inhabitants of Spain can register with the communal authorities and thereby receive access to basic medical treatment. In Greece, Sweden and Italy, too, access to medical treatment in acute emergencies is assured regardless of residence status. Hospitals need only pass on information to police if requested to do so in the course of an investigation.

In all Member States, there are limited opportunities for undocumented migrants to participate in political processes. Most forms of political participation are informal, and dependent on political networks and institutional arrangements. There are, however, alternative platforms (such as demonstrations and solidarity movements) and migrants' organisations, which offer migrants the option to participate. However, using the public sphere for political activism also exposes the migrant to the danger of being disclosed to the police or migration management institutions. Most public debates centre on the problems involved in delivering help and care. Others deal with human rights' issues and the right of residence based on humanitarian grounds. Here, even government institutions, at local and national levels, are involved, as well as juridical courts and political parties.

Concluding remarks

As the financial crisis in Europe continues, the number of illegal migrants arriving on European shores increases, putting significant strain on the countries that sit on the immigration front lines. Repeated calls from such countries for more EU involvement in dealing with the Mediterranean influx of illegal immigrants, in particular, have been fruitless so far, even considering the European Border Surveillance System (known as EUROSUR and due to become operational in December 2014, but believed to lack 'muscle', such as more provisions for more sea patrols in dangerous waters). The Dublin Regulation, which states that migrants must remain in the country in which they arrive until their status as refugees is decided, has been under attack from the EU Mediterranean states who feel bitter for being on the receiving end *simply because they happen* to be *en route* to a 'preferred' country within the EU, and for lack of financial and political solidarity from northern, richer EU members. Nevertheless, the EU might not be able to afford to be too choosy about who is and is not allowed inside its borders, in spite of the views of

Farage and LePen, and the strong sentiments of voters in Denmark, the Netherlands, and Belgium. Demographic and economic realities point to the need for more, not less, migration. Without migrants, the EU's population would be declining, and its economies – which increasingly demand either highly skilled workers (discussed in Chapter 2), or people willing to take on low-skilled jobs – would be suffering even more than they are already, as young Europeans seem to lack either the skills or motivation to fill these spaces. As long as such asymmetries persist, migration policymakers in the EU and its member states will continue to face an almost impossible task. The numbers of legal and illegal migrants continue to rise, as do disputes between Europe's mainstream politicians and right-wing figures who campaigned in the European Parliament elections earlier this year on anti-immigrant platforms, scoring remarkable advances (e.g. France's National Front, Hungary's Jobbik, Denmark's People's Party, the United Kingdom Independence Party (UKIP), Germany's NPD, Austria's Freedom Party and Greece's brutish Golden Dawn). The populist gains were built in part on promises to restrict immigration across the 28-nation European Union's internal frontiers, many of which, under the bloc's rules, may be crossed at will by citizens of member states. Ironically, Europe's anti-immigration stance is at odds with the self-perception of many Europeans, who see themselves as tolerant and egalitarian, as well as the European project's human rights discourse.

2

Documented Migrants: Skilled Migration – the *injects*

The ‘sucking sound’: brain drain, strain, gain, loss or exchange, circulation?

In the 1990s, the then US presidential candidate Ross Perot talked about the ‘sucking sound’ made as American jobs went south of the border. Nowadays, there is a significant ‘sucking sound’ in the globalised world, made by migrants leaving developing countries and heading to the developed world; new migrants often bring skills with them.

The scale is staggering. According to Sriskandarajah (2005), nearly one in ten tertiary-educated adults born in the developing world and between one third and one half of the developing world’s science and technology personnel now live in the developed world. ‘In Belgium, Luxembourg, Sweden and Denmark, over 40 per cent of the employed migrants who arrived from 1995 to 2005 had tertiary education. In France the figure was 35 per cent and in the Netherlands 30 per cent. In many cases, migrant workers had higher qualification profiles than local born workers’ (Castles and Miller 2009: 224–225). This is also the case in Southern Europe, where many highly skilled migrants – who in their home country worked as musicians, teachers, doctors, nurses or engineers – take on low-skilled jobs in sectors such as construction and the caring professions.

In this chapter, the term ‘highly skilled’ is used to refer to someone who has some college, university or post-secondary education. What is considered ‘highly skilled’ may differ from context to context, given the diversity of skill needs and resources available to economies at different stages of development. The definition of highly skilled is sometimes further refined to refer only to science and technology workers or managers, including intra-corporate transferees. Many developing

countries also have few craftsmen or technically trained persons, so they can ill-afford to lose those they have. But college-educated knowledge workers are at the core of concerns over emigration's potentially adverse impacts on development and on the migrants themselves in terms of deskilling (Lazaridis 2007).

Definitions

The term 'brain drain' has acquired a number of different interpretations and definitions since it was first coined in the 1950s to describe the movement of educated Indians to the UK (Castles and Miller 2009: 63–67). It is sometimes defined neutrally as a process, such as the emigration of highly trained people from a particular country. The Merriam-Webster dictionary (2012) defines it as 'the departure of educated or professional people from one country, economic sector, or field for another usually for better pay or living conditions'. This includes student migrants who often have a bachelor's degree and migrate for graduate studies; many of them remain in the host country after graduation. Such definitions are based more on the pull factors of migration and less on push factors, and assume that the movement of skilled people is entirely based on individual decisions.

The term was coined by the British Royal Society to refer to the loss of technical skills to North America and other new lands such as Australia and New Zealand after World War II (Cervantes and Guellec 2002). In fact, the expression 'brain drain' has a negative connotation that portrays the countries of origin as net losers, and the destination countries as, perhaps, net gainers. However, the term has evolved to encompass wider aspects of this process such as the motivations of individual migrants, and political inequalities (Giannoccolo 2009). For example, Beine *et al.* (2008: 631) define brain drain as 'international transfer of resources in the form of human capital and mainly applies to migration of relatively highly educated individuals from developing countries to developed countries'. In addition, while the migration of skilled workers can occur between countries of a similar developmental status (e.g. in recent years, there has been a sizeable movement of skilled persons not only from Europe to the USA and Australia, but also from one EU member state to another). Discussions relating to 'brain drain' are usually focused on migratory movements from the developing to the developed world (UNDP 2009: 1; IOM 2011: 107). The World Bank estimates that a country can talk about suffering from 'brain drain' when

10 per cent or more of its inhabitants with higher qualifications have emigrated (World Bank 2009).

These pejorative conceptions of brain drain are too simplistic to capture fully the ramifications of skilled migration in an increasingly interdependent and globalised world. This chapter will examine the social and economic implications of skilled migration for sending and receiving countries within the broader context of global migration, before considering how political factors can influence its patterns. In addition, it will contend that through international cooperation and the utilisation of diasporas, countries have an opportunity to structure the global landscape of skilled migration in a way which can retain benefits for receiving countries and limit the damage for sending countries. However, while it may be possible for some skilled migration movements to result in a net 'gain' for all parties, the potential to achieve this may be heavily circumscribed by the characteristics of sending countries, as well as the absence of an international body to regulate migration and resolve conflicting objectives.

A more positive approach emerged in the 1990s which recognised that migration of highly skilled workers is not always a permanent matter, especially in our globalised labour market. 'Brain drain' was substituted by 'brain gain' and 'brain globalisation' (due to the needs for international mobility), or 'brain exchange' and 'brain circulation'. A brain exchange occurs when the loss of native-born workers is offset by an equivalent inflow of highly skilled foreign workers. In a few cases, such as in the Philippines, developing countries choose to engage in what is called 'brain export' of their highly skilled workers, either in bilateral contract programmes or in free-agent emigration. The strategy is to improve the national balance sheet through return of earnings and the return of more-experienced workers, or through remittances, technology transfer and investment. Lowell *et al.* (2004) prefer the term 'brain strain' because it suggests the two-way flows that are often involved, and highlights the potential of both positive and negative consequences inherent in the mobility of highly skilled people.

Nowadays, many states see increasing international migration as part and parcel of economic development, and appreciate the role of GATS¹ in facilitating bilateral high-skilled migration partnerships, whereby the host state promises to aid the sending country in some way by developing creative strategies for collaborating with the diasporas and promoting knowledge networks, facilitating investment and supporting return migration. Receiving countries will thus overcome their labour

shortages, whereas sending countries will reduce pressure on their labour markets, increase capital flows from remittances received by migrants and counter the risk of permanent brain drain, as the emphasis is on temporary agreements (Ammassari and Black 2003).

In recent years, the debate has centred on how to facilitate 'brain circulation'; here, the role of the diaspora can be crucial in facilitating the temporary or permanent return of experts. For example, China encourages its students to seek education abroad and reaps the rewards of their return. Taiwan owes her rapid economic development to returning skilled migrants, as has India with its information technology (IT) boom. 'The return of professional transients bringing new experiences and values with them, which can lead to significant changes at home', as observed by Castles and Miller (2009:141). Asian countries such as India, Japan, Singapore, Taiwan, Korea and Malaysia often try to lure back overseas professionals, either on a permanent or temporary basis, by introducing privileged immigration regimes for skilled migrants. Moreover the United Nations Development Programme (UNDP) runs programmes aiming to persuade migrants established abroad to return to their home country. For return migration to be successful, governments need to offer monetary incentives, as well as services and opportunities to use their skills and experiences, in order to lure back professionals and avoid under-utilising the services of skilled returnees – a 'brain waste'.

A number of questions arise: What are the social and political implications of 'brain strain' on sending and receiving countries? Who benefits from this type of population movement? Who loses? The rest of this chapter will discuss the economic, social and political implications of skilled migration for sending and receiving countries.

Impact on sending countries

Lowell and Findlay (2003) note that a number of economic growth theories consider skilled migration to be detrimental to sending countries, as it contributes to inequality and poverty. Endogenous theory, which advocates the link between human capital and growth, views skilled migration negatively for the sending country, as it diminishes the average value of the human capital needed for development. Neoclassical theorists predict a similarly negative outcome, considering that skilled migration reduces a country's GDP potential (*ibid.*: 6). In the case of Slovakia, between 1994 and 2002 the country had an estimated total labour force of 1.2 million; however, losing 7,186 per annum to Western Europe retarded its GDP by 0.6 per cent (Balaz *et al.* 2004: 19).

This scenario could be worse in a country with a higher migration rate and a smaller stock of skilled labour, such as Grenada, Jamaica, Haiti, Sierra Leone, Cape Verde and so on.

Others, such as Mountford (1997: 289), have questioned this presumption, and have argued that the incentives offered to individuals by the possibility of migration raise aspirations and education levels, thus increasing the remaining human capital to the extent that it may offset the migration loss. This position was also taken by Gibson and McKenzie (2010: 5), who found a strong correlation between emigration potential and higher education uptake in their study of sending countries, especially if accompanied by a well-controlled restrictive emigration policy, an effect known as 'optimal brain drain'. Conversely, some (Katseli *et al.* 2006: 37) have considered that some migration opportunities could be negative for human capital accumulation, arguing that the availability of relatively highly paid, unskilled work discourages migrants from pursuing higher education. In addition, the costs of publicly educating individuals who ultimately use their skills elsewhere led to arguments that developing countries are effectively subsidising the cost of higher education in developed countries (Newland 2003). However, Gibson and McKenzie (2010: 12) see this as less of a factor, arguing that education should be considered a 'sunk' cost regardless of whether migration takes place.

Skilled migration also has a significant impact on the labour market in the sending country, creating potential difficulties in filling vacancies due to skill shortages amongst the remaining population. This is a particular problem in sectors such as health, education, science and IT. For example, developing countries such as Haiti, Fiji and Mozambique have lost over half of their qualified doctors to jobs overseas, leading to continuing under-provision of domestic health care (Castles and Miller 2009: 64).

Similarly, according to Kapur and McHale (2005: 307), in the mid-2000s the city of Manchester in the UK had more Malawian doctors than Malawi itself. Malawi, one of the poorest countries in Africa, with one of the poorest health indicators in the world, is one of the leading exporters of medical personnel to the West, thus losing direct returns on its investment in medical/health education. However, the departure of skilled migrants may not automatically lead to damaging gaps in the labour sector of a sending country. Rather than being poached from existing positions, many migrant nurses from the Philippines are specifically trained so that their skills can be exported. Similarly, there may be either a 'brain circulation' (e.g. in Jamaica, the vacuum created by the

emigration of nurses is filled with Cubans), or 'brain overflow', where there are too many qualified people for the number of skilled jobs available in a country. When someone in this position emigrates and finds employment in a country which utilises their skills, they will personally benefit by avoiding 'brain waste'. An example is Greece where, in the current economic crisis, youth unemployment (including unemployment amongst young skilled citizens) has reached unprecedented highs. If these people had been employed in a non-skilled capacity in the sending country, their departure may also have created jobs for others, and reduced unemployment. This is the case with regard to many skilled migrants from Central and Eastern Europe, who are returning to their home country during the current recession.

When migrants decide to stay in the host country, and when connections are fostered, they can yield a flow back that can boost growth, as migrant networks can lead to collaborative ventures, knowledge and technology transfers (Kaplan 1997). For example, India claims to lose around US\$2 billion each year as a result of the emigration of 'brains', yet, without this, it could have never have created such a flourishing software industry. India has heavily invested in science and technology. Thanks to the links between Indian migrants and their home country, outsourcing software design to India has created a major industry, bringing yearly revenues of around US\$6 billion, three times more than it loses through the brain drain (Hart 2006).

In 2005, according to the World Bank's Global Economic Prospects report (World Bank 2005), expatriate Filipinos sent home US\$11.6 billion and India received US\$21.7 billion. According to Almon and Mawere (2012:110), in some cases remittances have been found to correlate with higher local savings rates and reductions in poverty. Remittances of both skilled and unskilled workers are often considered to be the main benefit of migration for sending countries, and have been noted as a leading factor in helping families out of poverty (Khadria 2008: 19). Remittances can also have a positive effect on the wider community through the 'multiplier effect', whereby the sending of remitted funds stimulates a chain-reaction of positive consequences in the local economy. In countries such as Tonga, Lesotho and Jordan, remittances are essential to the economy, contributing over 20 per cent of national GDP (Martin 2004: 465). The United Nations Conference on Trade and Development (UNCTAD 2012: 9) noted that 'worldwide, the value of remittances began to accelerate markedly, nearly doubling between 1990 and 2000, and then tripling once again in the following decade, touching US\$489 billion in 2011 despite the global financial crisis'. In Bangladesh, Nepal,

Haiti, Senegal and Togo, amongst other countries, remittances overtook both Overseas Development Assistance and Foreign Direct Investment (*ibid.*: 53). So, for several countries remittances are increasingly amongst the biggest sources of revenue. This money, in most cases, is remitted to households, with which they are able to improve nutrition, access to health care, education and so on. Some families have also used this money for capital investment; for example, the construction of housing, and starting up businesses that subsequently drive the local economies.

There is mixed evidence about how much skilled migrants remit compared with unskilled migrants (Gibson and McKenzie 2010: 15) – perhaps understandably, given the difficulty in quantifying remittance levels, as a large proportion travels through unofficial channels. Sophisticated financial flows are also utilised, such as the purchase of remittance-backed bonds and the use of foreign currency accounts. However, when highly skilled migrants are accompanied by their families, and wish to stay in the receiving country permanently, they may be prone to remit less. High living costs in the receiving country may also be a limiting factor, with the potential for remittance values to be significantly lower than the amount the migrant would have earned if they had stayed in their home country. It is also arguable that, while remittances provide a useful source of funds for families and communities, they do not offset the developmental loss if money is spent on familial subsistence and consumer goods, rather than investment for growth.

The migration of skilled workers may also result in a reduction in the sending country's tax revenues. However, the impact may be mitigated by a number of factors. The extent of income tax loss will depend upon the repressiveness of the country's taxation system, while lost sales taxes may be partially recouped by migrant remittances being spent within the country. In addition, the fiscal losses arising from the departure of migrants and their families need to be balanced against the resulting savings in public spending (Katseli *et al.* 2006: 35).

As with other forms of migration, the movement of skilled individuals (and, in this instance, unskilled too) has significant social implications. Families are often separated when a member migrates, particularly when the receiving country has restrictive family reunion provisions. This separation may cause stress within the family, leading to potentially detrimental effects on the health and education of its members (UNDP 2009: 71). As D'Emilio *et al.* (2007: 9) state, 'family disintegration, challenges in parenting, adoption of risky behaviour by children and adolescents left without parental guidance, and increased vulnerability to violence, abuse and exploitation are some of the manifestations

observed as a result of migration'. The more prolonged the separation between migrating parents and their children, the more the bond between them is likely to break down. Parents are gradually replaced by other family members, or older children take upon themselves the task of parenting. This leads to feelings of resentment and abandonment (*ibid.*: 10). Moreover, where a party to a marital union has emigrated for a long period, there is bound to be strain on the marital union.

There is evidence that some stress is experienced by women who are left behind by male labour migration, as well as by women who migrate solo, such as Filipino domestic workers and nurses. However, skilled migration can also result in some positive societal patterns, such as the empowerment of local women to take a more active role in community decision making, and the possibility of better employment opportunities for them (Deshingkar and Grimm 2005: 39).

Such positive effects contrast with the problems faced by some women migrants, who may be particularly vulnerable to discrimination and exploitation, as well as with the fact that 'since women in developing countries still face unequal access to tertiary education and highly skilled jobs, the emigration of educated women is likely to generate higher relative losses of human capital than the emigration of skilled males' (Frederic *et al.* 2009: 298). Having said that, some positive ideas, attitudes, values, knowledge and skills, 'social remittances', are taken back to the country of origin. For example, two thirds of families in the Dominican village of Miraflore sent members to Boston (USA) in the 1990s, resulting in 'impacts on gender dynamics. Women's roles changed, not only in Boston, where they went out to work, but also in the Dominican Republic where they enjoyed a more equal equilibrium of household tasks and greater empowerment generally' (UNDP 2009:79).

Migrants of all skill types may be able to take advantage of their pivotal position between countries to stimulate trade by creating new demands and opening up access to fresh supply chains. This, and the migrants' potentially opportunistic location within the complex interplay of social, cultural, economic and institutional frameworks, dubbed by Kloosterman, van der Leun and Rath (1999: 257) as 'mixed embeddedness', will be discussed in Chapter 3, in the context of self-employment. The discussion will show how migrants combine their unique position within these frameworks with their skills and knowledge to become entrepreneurially active (Kloosterman and Rath 2011).

Skilled migrants returning home after spending time overseas can also transfer knowledge and technology know-how. The benefits of this 'brain

circulation' can be seen in the burgeoning IT industries of Taiwan and India, which have flourished because of the utilisation of human capital from migrants returning from innovative technological hubs such as California's Silicon Valley. Others have also observed that returning migrants can add value by encouraging better governance in their home countries through the creation of think tanks, NGOs and other initiatives, encouraging and promoting free speech, democracy and protection of human rights. However, the benefits of such technology and knowledge transfer are often overstated, and do not outweigh the initial developmental loss caused by emigration (Khadria 2008: 29). The gains of skill and technology acquisition overseas may also be negated if the migrant finds them to be irrelevant or impractical on their return home. Also, even if they return, this may be temporary, and thus of limited benefit to their home country.

Impact on receiving countries

While sending countries experience a 'brain drain', receiving countries experience a 'brain gain', by being able to exploit the value of skilled individuals entering through their borders. When arriving through the work gateway, skilled migrants increase the available human capital of the receiving country and can help make the workforce more valuable and internationally competitive. By attracting particular types of skilled migrant workers, supply and demand labour bottlenecks in particular sectors can be eased (Lowell and Findlay 2003: 16). The migrants are *injected* into the host society, because they are protected by the labour laws and they are often granted special status. However, the economic benefits of receiving skilled migrants is only realised when the migrant is employed in a capacity which uses their skills. When this does not occur, not only does the migrant run the risk of experiencing 'brain waste', but the value added by their presence in the receiving country is reduced. Ozden (2006: 243) found that skilled migrants from Latin America to Eastern Europe may be particularly prone to under-employment, as their human capital value is sometimes compromised by the quality and tuition language of their tertiary education. In such situations, they are often forced to take up jobs in the informal sector, and thus slip from regularity to irregularity.

As with other forms of migration, the immigration of skilled individuals may also have negative consequences for the employment prospects of the native population. Especially in times of economic crisis (such as the current situation in Europe), immigration may reduce wages or

increase unemployment. In addition, the availability of migrant workers may stifle the promotion of home-grown training schemes as a solution to labour gaps.

Similarly, migration through the academic portal leads to a mixture of consequences for the receiving country. The recruitment of high calibre candidates can be immediately advantageous to the economy of the receiving country by increasing tuition revenues for educational institutes. More significantly, students can also be encouraged to transfer from the education channel to the employment channel, allowing the receiving country to benefit directly from their newly acquired skills and knowledge. Somervill (2007) notes that, under the stewardship of Tony Blair, the UK exploited this opportunity in order to strengthen its workforce. However, the finite supply of higher education means that the recruitment of overseas students can reduce places available to the local population, and impact on their skill acquisition.

Although the integration of skilled migrants is generally considered less problematic than that of other types, incidents such as the recent protests in Germany about IT workers from India indicate that, even where there are economic gains to be made by a country, the receiving population may perceive priorities differently. Skilled migration can also be a particularly sensitive domain, as it often involves essential services such as health and education. However, where skilled migrants have a positive experience in the receiving country, there is the potential for some 'soft power' mileage to be cultivated, with migrants acting as advocates for their host country when returning to their country of origin.

The complexities surrounding skilled migration

While the migration of skilled workers gives rise to certain unique considerations, it is also important to place it within a wider context of international migration. The international movements of unskilled workers, asylum seekers and other categories of migrants also have consequences for the countries involved, and there are many blurred boundaries which make it unwise to consider the effects of skilled migration in isolation. For instance, receiving countries may sometimes have a pressing demand to recruit experienced labour in industries such as construction and tourism which may not fall under a more restrictive definition of 'skilled'; some organisations, such as the OECD, have even challenged the traditional language of 'sending and receiving countries', instead preferring to speak of 'corridors' through which migration flows may occur in both directions (OECD 2007: 22).

When evaluating the effects of skilled migration on the countries involved, it is also important to consider the role and position of individual migrants. Whether motivated to migrate through pull factors such as higher wages, better living conditions and career prospects, or through push factors such as poverty, poor governance and lack of professional prospects, they are the primary beneficiaries of their migration (Gibson and McKenzie 2010: 9). Due to these blurred boundaries and the complex chain of tangible and intangible consequences arising from skilled migration, the net effects for sending and receiving countries are difficult to quantify.

However, while there are differing approaches to evaluating these factors, there appears to be increasing consideration of the positive effects, especially the potential of diaspora populations to act as channels for transporting benefits back to sending countries. They can also influence politics in the country of origin through financial contributions to political parties and candidates. At the same time, diaspora politics transcend international borders, in that various communities lobby their populations in diaspora for support, such as the Armenians in France, and the Iraqis and the Kurds in the EU.

It is clear, however, that the effects of skilled migration are heterogeneous, depending on the specific characteristics of the countries and movements involved, and that the pattern of costs and benefits which arise does not fit a 'zero sum model'. For example, the loss of skills impacts on all sectors of society; for instance, emigration may rob the country of influential voices for reform, who could otherwise be pressing for changes in the status quo.

Therefore, it may be wise to consider the net effect for sending and receiving countries on separate spectra, each containing positive and negative poles. While the initial movement of a migrant is likely to slide the equilibrium towards the negative pole in respect of the sending country, the indirect and subsequent effects may reverse this. However, the shortage of medical professionals in countries such as Malawi and Senegal is perpetuated by large-scale migration of doctors and nurses with huge incentives to leave. Moreover, while the transfer of knowledge and technology can partially offset the initial loss experienced by the sending country, only upper-middle-income countries will have the infrastructure in place to be able to reap the dividends (OECD 2007: 67). Similarly, countries may have difficulty luring back former migrants. With regard to the receiving country, this depends on the extent to which it is able to convert the skills and knowledge of its skilled migrants into economic dividends while dealing with any

negative social concerns. Lowell and Findlay (2003: 7) argue that, in some circumstances, an optimal level of emigration may be reached where the positive indirect effects of skilled migration outweigh the negative. However, for small developing countries which suffer from acute skill shortages, this is difficult to achieve.

Lowell and Findlay (*ibid.*: 18) identify six potential strategies that can be used by sending countries to influence the shape and impact of skilled migration. Restrictive emigration clearance rules, such as those found in Cuba (Human Rights Watch 2012), can hinder or prevent skilled potential migrants from leaving the country in the first place. However, this approach is problematic from a human rights perspective, and may be in breach of the Universal Declaration of Human Rights (UDHR) provisions on freedom of movement. Another approach is to seek financial reparations, either by taxing expatriate migrants directly (brain drain tax), as practiced by Eritrea, or seeking it directly from the governments of receiving countries. However, such initiatives are difficult to police and are largely discredited. Alternatively, governments can try and encourage migrants to return home by offering a range of inducements, from repayment of education fees to tax breaks. However, many sending countries do not have the means to offer any package which could compete with the opportunities and benefits offered by receiving countries. Another option is for sending countries to offset the loss of professionals by recruiting replacements from neighbouring countries. As already mentioned, Jamaica has utilised this strategy effectively by attracting Cuban nurses to fill vacancies left by migrants who moved to the UK and the USA. However, while this method may be beneficial for middle-ranking countries on the development scale, it exacerbates problems for weaker countries at the bottom of the scale, as they are unable to source replacement workers from elsewhere.

More positively, some governments have tried to maximise returns from their diaspora communities by forging closer links with bodies and associations in receiving countries (Khadria 2008: 4). The Mexican state of Zacatecas tried to encourage monetary investment to assist its development through its '*tres por uno*' (three for one) scheme, which matched government funds to migrant remittances (*ibid.*: 14). Israel and India have raised US\$35 billion of development financing by issuing diaspora bonds; these are a stable and cheap source of external finance with several advantages, both for the issuer and for the emigrant who buys the bonds (Ratha *et al.* 2011: 6). Furthermore, some countries such as India have encouraged migrants to maintain links with their home country by offering dual citizenship and enhanced voting rights. However, the

success of such a strategy also depends on the willingness of the diaspora community to maintain their loyalty to their home country.

The final approach concerns increased investment in education and development, which may have the dual effect of reducing the push factors that may encourage initial migration, as well as potentially tempting back existing migrants. Such strategies as have been described focus either on limiting migration, or on accepting its inevitability and trying to maximise its benefits. Some governments, such as that of the Philippines, have actually encouraged the migration of skilled workers; emigrants are national heroes in the Philippines (IOM 2011: 23).

Receiving countries setting migration policies try to devise systems to regulate the number of skilled migrants entering the country, so that they balance their objectives for a productive economy and a stable society with any actual or perceived obligations towards sending countries. Governments must also balance these needs with demands from increasingly powerful transnational companies who desire a more flexible and borderless workforce (Global Commission on International Migration 2005: 20). The profile and quantity of skilled migrants can be regulated in a number of ways.

Australia and Canada use points systems to give preferential treatment to migrants who can fill sector-specific positions when there are skill shortages amongst the native population (OECD 2011: 12).

Other countries, such as the USA, use quotas to regulate the number of legal, skilled migrants. The rapid increase in H1B visas granted in the USA in the years prior to 2001 demonstrates how these quotas can be flexibly amended to satisfy market-driven demands.

The EU aimed at initiating a dialogue with Algeria and developing a comprehensive migration policy for the main countries of origin and transit in West and sub-Saharan Africa (Aderanti *et al.* 2010: 47).

The UK has an agreement with the South African government with respect to the numbers of health care workers it can 'poach' at any given time. The agreement was reached after it emerged that large numbers of health care workers were leaving South Africa to work in the UK health care system to the extent that the South African health care system was left in dire need of skilled and professional workers.

The Schengen visa (90-day visa per six months), which was created by the Schengen Agreement in 1985 and incorporated into the European community treaties (ECT) with the Treaty of Amsterdam in 1999, does not facilitate procedures for obtaining a work permit for accessing to EU member states' labour markets. 'A relaxed Schengen-visa rewards third countries at the EU borders for readmitting their nationals in

irregular ways in the EU/EFTA. Favourable visa treatment also acts as a *quid-pro-quo* for obtaining assurances from third countries that these will secure the EU borders through participating in FRONTEX patrols' (Panizzon 2010: 34).

An alternative approach is to reduce the demand for migrant labour by investing in home-grown training schemes (GCIM 2005). Receiving countries can also try to limit the damage caused by skilled migration to sending countries by avoiding recruitment from vulnerable countries. The UK has spearheaded this policy by avoiding health care recruitment from certain countries in Africa. However, some have contended that such schemes have been unsuccessful in changing migration rates (OECD 2007: 68). In addition, the lack of comparative data means that the countries targeted are not necessarily those which suffer the most (Clements 2011: 91–92). An in-between approach is for countries receiving migrants to encourage temporary migration; according to Lowell *et al.* (2004: 33), this is primarily because it is a form of skill transfer that has the greatest benefits for the sending countries.

In recent years, a clear level of bilateralism has emerged as a response to increasing public policy concerns regarding brain drain in sending countries. Many developing states actively pursue mobility partnerships with countries of destination, an example being the Indian government's agreements with Poland, Belgium and France, predominantly in the field of IT.

The result of such bilateral cooperation is a fairer distribution of the benefits of migration, as the receiving country will secure privileged access to the developing country's skilled labour, and the host country will agree to provide a benefit of some sort to the migrant worker, such as the provision of education to increase skills, partial payment of training costs, or facilitation of remittances to the country of origin.

The theory of interdependence has been advanced by Betts (2010) to explain the existence of bilateral cooperation. He argues that where interdependency is symmetrical (i.e. where the benefits and the costs of partnership are evenly distributed), bilateral agreements are most likely to result, as it is a win-win situation for both parties.

On the other hand, where interdependence is asymmetrical, unilateral policy making is the most natural result, as the benefit – and, especially, the cost of the interaction – is not equitably shared. An example is when the host country meets its needs through *occupational shortage* lists. France has operated two such lists since 2009, for third country nationals in 30 professions, and for nationals of EU member states and Switzerland in 150 professions (Cholewinski 2009: 296), thus taking

account of the labour market situation and eliminating the need for a case-by-case selection process. This is a fast-track entry into the country which works in parallel with regular entry proceedings. 'Such lists have a trade-promoting effect of approximating qualifications, even if they fall short of mutually recognizing qualifications' (Panizzon 2010: 34).

The EU project 'Partnership for Managing Professional Migration EU – Benin, Cameroon, Mali, Senegal' facilitates the establishment of a common nomenclature for African Professions and Occupations, including recognition of qualifications, known as 'Répertoire Opérationnel Africain des Métiers et des Emplois'. However, though no formal international institution exists solely for the purpose of highly skilled migration control, international bodies such as GATS and the World Trade Organization (WTO) have a role, however limited, in providing a forum for dialogue, encouraging cooperation by raising awareness of its benefits, and facilitating such cooperation by proposing workable labour programmes and mechanisms to encourage returns where desired.

Receiving countries can also help sending countries to capture the benefits flowing from migration. The banking costs associated with transmitting remittances can be reduced or regulated in order to increase net migrant receipts. In addition, the OECD (2007) advocates the encouragement of diaspora groups, suggesting that receiving countries can maximise benefits to sending countries by offering transparent technical and financial support, incorporating groups into the policy making process and mobilising the resources of the individuals themselves. However, whether measures giving special treatment to certain groups would be seen as politically desirable by the host population is questionable, especially in the present climate of economic crisis in Europe.

Within this crisis, where possible, most host countries are hiring their nationals, rather than economic migrants. The crisis has made it difficult for a migrant to obtain employment, particularly if there are nationals of the host country who are in a position to do the work. Some have noted that return migrants experience backward mobility, since a return to the area of origin often means a return to the occupation they formerly held, and is often accompanied by loss of social status and 'honour', as they may be perceived as 'failures' in the social expectation of migration leading to upward social mobility.

Moreover, the current crisis has led some countries, such as Spain and Greece, to a situation of so-called 'educated youth unemployment'; too many highly qualified people in a saturated job market, which creates a

bottleneck for all those who study abroad and are likely to return home with newly acquired knowledge. Individuals are forced to continue to take courses to enable them to secure employment. The constant pursuit of education for the sake of better employment has resulted in a new breed of individual who cannot be employed because they are either overqualified, or lack the necessary skills to compete equally in the job market. Employers want individuals to have both the necessary education qualifications and work experience. In times of crisis, individuals cannot find the initial work to acquire the necessary experience, and hence look to emigrate.

Receiving countries can also question the duration of migratory movements. Countries such as Canada and Australia offer a cheaper path to citizenship in an attempt to attract best quality migrants and retain them on a permanent basis (Shachar 2006: 164–165). Other countries have offered work permits of limited duration to encourage temporary migration and promote greater circulation. Such schemes turn highly skilled migrants into *éjectés* rather than *subjects*, despite often being accompanied by provisions relating to future re-entry permissions and social security contributions intended to provide incentives to comply. These provisions may be helpful to sending countries as they encourage return, although, as with other types of migration, there is a risk that migrants may decide to overstay illegally instead. Provisions forbidding family reunions and restrictions on entrepreneurship, such as those used by many Gulf States, can also act as devices to encourage non-permanent settlement. However, such provisions may be detrimental to a country in her attempts to attract the best quality workers, as discovered by Germany in 2000, when the IT workers it was trying to recruit were drawn more towards countries with more family friendly immigration policies such as the UK and the USA (Castles 2006: 14). A more proactive approach to reducing migrant numbers would be to assist with return migration, a scheme now opted by some EU member states, such as Spain and the Czech Republic.

Generally, the political management of skilled migration sits within the wider debate on how governments are willing and able to respond to the economic, social and cultural challenges and opportunities presented by all types of migration in a globalised and interconnected world. The growth of the global population, alongside advances in communication and transport, has increased the pool of individuals with the desire to migrate (OECD 2011: 15). However, its proliferation has been accompanied by a series of related problems such as human trafficking, money laundering and marginalisation which, in turn, can lead to wider security

risks and social unrest. Therefore, policies relating to skilled migration are set according to how costs and benefits are evaluated within a larger migration framework containing competing priorities and objectives.

It is also important to consider skilled migration within the broader spheres of global power and wealth. The perpetuation of global inequality preserves the latent push and pull factors that encourage skilled migration from the developing to the developed world. It also ensures that receiving countries tend to have more influence on setting the parameters of global migration (Castles and Miller 2009: 66). Receiving countries tend to have the potential to cultivate a range of policies and conditions which could maximise the back-flow of benefits to sending countries without any detriment to themselves. For example, encouraging migration on a temporary basis may have the dual function of filling a short-term domestic labour demand while ensuring that the migrant eventually returns to their home country, where they can utilise the skills and knowledge acquired while working abroad (GCIM 2005: 31).

Concluding remarks

In general, policies towards migration should also be considered alongside international development programmes. The OECD advocates circulatory migration as a development promotion strategy, together with recommendations for a more coordinated approach whereby developed countries are obliged to assist with the infrastructural modernisation of developing countries in return for receiving skilled migrants (OECD 2011: 15, 68). However, the pursuit of a more internationally cooperative approach is hindered by a number of obstacles. These include diverging perspectives on the costs and benefits of skilled migration, further complicated by competing objectives. Increasing globalisation has not only facilitated more opportunity for individuals, but also increased competition for the best and the brightest (*ibid.*: 12). The pursuit of this goal may not necessarily be compatible with altruistic gestures towards developing countries.

In addition, increased coordination between countries to limit the damage to sending countries may not necessarily be good for migrants themselves, who may be denied the opportunity to settle in a country which offers them greater prospects and opportunity.

Furthermore, the ability to create a measured and coordinated international policy is hampered by problems with the depth, standardisation and interpretation of quantitative data relating to skilled migration (Deshinghar and Grimm 2005: 29–31). It is worth noting that the

first serious attempt to put together a harmonised international data set on migration by education levels was the one by Carrington and Detragiache (1998) of the International Monetary Fund (IMF).

A further issue is, as mentioned, the absence of an international institution which is able to regulate migration and set common standards and goals. A number of people have advocated the benefits of a body equivalent to the World Trade Organization to regulate the movement of people (Martin 2004: 464). However, despite the absence of such a body, there is some evidence that the needs of sending countries are being taken into account when migration policies are being formulated.

The Green Paper on an EU Approach to Managing Economic Migration advocates a coordinated, rights-based approach to immigration for non-EU citizens (European Commission 2004: 10). However, such initiatives are likely to be subordinate to national interests. An example is the 'blue card', an approved EU-wide work permit (Council Directive 2009/50/EC) that allows high-skilled non-EU citizens to work and live in any country within the European Union, excluding Denmark, Ireland and the United Kingdom, which are not subject to the proposal. The term 'blue card' was coined by the think tank Bruegel, inspired by the United States' green card, and making reference to the EU flag which is blue with twelve golden stars. Those who are granted a blue card will be given a series of rights, such as favourable family reunification rules.

The directive also encourages geographic mobility within the EU, between different member states, for those who have been granted a blue card. The legal basis for this proposal is Articles 63(3)(a) and 63(4) of the Treaty of Rome, which states that the Council shall adapt measures on immigration policy concerning 'conditions of entry and residence and standards on procedures for the issue by Member States' and measures 'defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States'.

When the blue card proposal was presented at a press conference in Strasbourg on 23 October 2007 by the President of the European Commission, José Manuel Barroso, and the Commissioner for Justice, Freedom and Security, Franco Frattini, Barroso explained the motives behind the proposal as being: the EU's future lack of labour and skills; the difficulty for third country workers to move between different member states for work purposes; the conflicting admission procedures for the different member states, and the 'rights gap' between EU citizens and legal immigrants.

Shortly after the proposal was presented, it ran into heavy criticism. The South African Minister of Health, Manto Tshabalala-Msimang, pointed out the fact that several African countries already suffer from the migration of skilled health workers, and said that this proposal might worsen the situation. Moroccan international economic law professor Tajeddine El Husseini went further, saying that this 'is a new form of colonisation, of discrimination, and it will be very hard to find support for it among southern countries'.

On 20 November 2008, the European Parliament backed the introduction of the blue card, while recommending some safeguards against brain drain, and advocated greater flexibility for EU member states. However, many of these suggestions were ignored in the subsequent legislation, which was passed on 25 May 2009. Some compromises were made, which allow member states to set quotas on blue card holders, or to ban them altogether if they see fit. Despite having been warned in July 2011, Austria, Cyprus and Greece had not yet transposed the rules of the Blue Card Directive, which should have been implemented before 19 June 2011. Even years after the transposition deadline passed, some member states (such as Spain and Belgium) have yet fully to enact the law, or apply the rights promised in the Directive. Germany enacted the blue card legislation fully in April 2012, focusing on language skills and areas of need such as engineering, mathematics and IT. There are currently no statistics on the number of blue cards issued, although member states are beginning to collect these numbers.

3

From Undocumented to Documented: Migration and Self-employment

Ethnic entrepreneurship and self-employment¹

Ethnic entrepreneurship has attracted considerable interest in North America and Western European countries (e.g. Wilson 1983; Boissevain and Grotenbreg 1986; Waldinger *et al.* 1990a; Srinivasan 1992; Barrett *et al.* 1996; Uneke 1996; Rath and Kloosterman 2000; Schrover 2001; Kupferberg 2003; 2004; Apatzsch and Kontos 2008a).

Whether a migrant will engage in a formal or informal business activity largely depends on their legal status, and is also dependent on their economic resources and access to ethnic networks. Opportunities to participate in informal activities² occur because, in a Europe in economic crisis, there is high demand for informal economic provision of services and goods at competitive prices. As will be shown, 'strategies of survival and success involve contesting and transgressing boundaries of various kinds...[such as] contesting the boundaries of the law by evading taxes, licensing requirements and other commercial regulations' (MacGaffey and Bazenguissa-Ganga 2000: 7). Human agency should be emphasised, to take account of the efforts made by individuals who strive not only against the structural conditions that present them with formidable obstacles to inclusion in the formal economy, but also with exclusion from the opportunity to better their lives in the host country. The multiple forms of exclusion that they experience as they move to an EU member state have frequently been a reason for them to strive to create their own business.

Using the case of one EU member state, Greece, as an example, this chapter aims to provide answers to the following questions: Why do

migrants become entrepreneurs? What kind of business (formal/informal) do they set up and why? What is the effect of racialised labour market structures³ and of the informal economy in shaping ethnic entrepreneurship careers? What are the positive and negative aspects of entrepreneurship for the migrants themselves?

Theoretical framework: impact of structure and agency on ethnic entrepreneurship

A variety of approaches have been used to explain ethnic entrepreneurship. Some put emphasis on the effect of ethno-cultural factors (such as cultural predisposition to self-employment, work ethic, propensity to save). Following this approach, certain ethnic groups possess unique cultural characteristics, which predispose them towards entrepreneurship (Uneke 1996: 530; Valenzuela 2001: 338). To put it another way, business is in their blood (Barrett *et al.* 1996). Other cultural approaches stress the importance of ethnic solidarity and participation in ethnic social networks for business ownership and success. Ethnic and cultural resources include access to co-ethnic labour at low prices, start-up capital (loans from family members or other co-ethnics), ethnic credit associations, trading experiences and cultural attributes (Rafiq 1992: 44). The importance of social relations and their impact on economic actions is referred to in the literature also in terms of possession of 'social capital' or 'social embeddedness' (Granovetter 1985; Portes and Sensenbrenner 1993). Many critics note that the ethno-cultural approach does not take into consideration the fact that different ethnic groups, and even migrants within the same group, have differential access to economic resources, education and experience, and that this affects their involvement in business⁴; for example, with regard to the type of business venture they may choose to pursue (Rafiq 1992: 44).

Increasingly, some scholars stress the interaction between cultural and structural elements and its impact on careers in self-employment. For example, Uneke (1996: 530) argues that ethnic business is the result of interaction between 'individual⁵ and group attributes and dimensions of opportunity structures provided by the social environment', such as economic structures of opportunity, government policies, time and place. As shown below, 'market opportunity structures' have a great impact not only on the development (or otherwise) of ethnic business, but also on the type of ethnic businesses, because they 'may favour products or services oriented towards co-ethnics', or they may offer opportunities to cater for a 'wider, non-ethnic market' (Waldinger *et al.* 1990b:

21). But these opportunity structures do not lead to variation in types of entrepreneurship within a specific ethnic group; rather, they interact with individual and ethnic group characteristics.

Bogenhold and Staber (1990) mention two types of business starters: those who start their own business on the basis of 'the economy of realisation', motivated by the wish for autonomy and self-fulfilment, and those who enter self-employment on the basis of 'the economy of need', in order to avoid unemployment⁶ or employment in harsh conditions. According to Apitzsch and Kontos (2008b: 10), this type of categorisation is interesting, since women are thought to tend to fit into the first category and men (especially migrant men) into the second.

Following the argument of the 'disadvantage theory' (Aurand 1983), structural approaches state that migrants become entrepreneurs because they are disadvantaged in the labour market. Disadvantage emanates from unemployment, underemployment, illegal status, lack of proficiency in the host country's language, unrecognised or low educational qualifications (Valenzuela 2001: 349), racism and discrimination.

Valenzuela (2001: 339) identifies two types of *survivalist entrepreneurs*: the *value entrepreneurs* and the *disadvantaged entrepreneurs*. *Value entrepreneurs* choose self-employment, rather than low-wage jobs, because amongst other things they value flexibility, independence or autonomy – being one's own boss. *Disadvantaged entrepreneurs* opt for self-employment either because they are likely to earn more, or because they do not have any other employment options (Valenzuela 2001: 339). However, a clear-cut distinction between the two types of *survivalist entrepreneurs* cannot always be made because, as we will show later in the chapter, in many cases entrepreneurs may acknowledge both financial and other gains relating to autonomy, independence and flexibility of work schedule. Thus, a variety of prospective benefits associated with entrepreneurship may have a cumulative effect on the migrant's decision to become self-employed. In Southern Europe, as we will see, the majority of ethnic entrepreneurs are *survival entrepreneurs*; nevertheless, a clear-cut distinction between value and disadvantage entrepreneurs cannot be drawn.

Other structural factors affect ethnic business, such as access to capital. Certain business ventures may not be considered appropriate options by prospective entrepreneurs should a large amount of capital be required (e.g. manufacturing activities), or it may be difficult for a migrant to obtain a self-employment permit because specific qualifications and documents are requested by national institutions⁷ (Kloosterman and Rath 2001: 195). In this case, migrants may be discouraged from setting

up a business. As we will see in the case of Greece, one has to have residence and work permits in order to obtain authorisation to set up a business. As a result, undocumented migrants have no choice but to engage in informal business activities. Depending on their economic and ethnic resources, migrants cluster in particular business niches which usually require limited capital, little skill and low levels of education. In addition, sometimes they undertake 'unconventional' entrepreneurial activities which do not necessitate the renting of business premises, and may be casual and temporary. Shop-less and temporary self-employed such as street-vendors, domestic workers, home-based workers, and day-labourers are usually neglected in the mainstream elitist entrepreneurial discourse, which puts emphasis on innovation, small business, capital development, risk-taking and other such characteristics that together define standard accounts of entrepreneurship.

The countries with the highest share of self-employed foreign-born workers in non-agricultural employment are mostly located in Central and Eastern Europe, with Poland, Slovakia and the Czech Republic leading the way and Italy close behind. There is also a group of countries comprising the UK, Belgium, Hungary and Portugal that contain a moderate number of foreign-born self-employed. The countries with a low number of foreign-born self-employed are Austria, Germany, Ireland and Luxembourg (Muijnck *et al.* 2003).

During the 1980s, many EU member states introduced policies to encourage and subsidise unemployed persons to become self-employed by offering them a regular allowance in place of their unemployment benefits during the start-up period of their self-employed activities. Such policies have been criticised for their male majority bias (Meager 1996: 499). More recent policies have been designed specifically to address less advantaged people such as women and migrants. Such policies include training, mentoring and consulting. At the EU level, the Community Initiative 'Employment' included the programme INTEGRA, which targeted the integration of migrants into the labour market, and included amongst its aims the promotion of self-employment through business creation. But the main programme to address migrants and self-employment was the EQUAL programme, which ran between 2002 and 2006.

Case study: survival entrepreneurs – from *abjects* to subjects

The narration of migrants' work histories reveals the complexity of entrepreneurial motivation in the case of ethnic business owners in

Greece: how structural factors interact with ethno-cultural features and individual aspirations, and lead to the emergence of careers in self-employment. The analysis of the work histories will demonstrate that motivation for setting up a business lies in structural factors (relating to restricted employment opportunities, racism and discrimination in the labour market, and/or demand for certain services and products at cheap rates in the informal sector).

The characteristics and features of the Greek labour market – in particular, the existence of a large informal economy (the Greek informal economy is estimated to contribute around 40 per cent of GDP (Petmesidou 1996)), small family-based businesses and the terti- arisation of the economy – all contributed to an increasing demand for flexible, cheap labour. Due to increasing competition in the world market, labour-intensive enterprises can only survive and meet the challenges posed by European economic integration by reducing labour costs. Therefore, these enterprises opt for unpaid family members or, if this option is not available, for cheap migrant workers, and thus save in wage and social security costs, and the costs of maintaining health and safety standards (Lazaridis and Romaniszyn 1998). In addition, the seasonal nature of some sectors (e.g. intensive agriculture, tourism, fish farms and the construction industry) and the expansion of demand for labour in domestic and care work (both part-time and full-time) led to a demand for flexible labour. As a result, a structural demand arose in the early 1990s for the recruitment of a flexible, mobile labour force willing to undertake casual, seasonal, insecure jobs at low rates of pay and with no insurance coverage (Fakiolas and King 1996: 183; Lazaridis 1999). Migrant labour has, therefore, since assumed a growing importance in the Greek socio-economic setting.

Albanians have migrated illegally to Greece since the beginning of the 1990s, whereas Africans started arriving clandestinely or with student visas in the late 1970s, when some of the latter overstayed after the completion of their studies. Prior to the first regularisation programme, which took place in 1997, the majority of migrants in Greece were undocumented with the exception of those coming with student visas, or those married to Greeks or other EU citizens. During this time, both East European and African migrants worked mainly as waged workers in the informal economy (see Fakiolas 2000), or provided services such as hairdressing or decorating, or were engaged in petty trade. In particular, Albanian men worked clandestinely as manual workers in the construction and tourist industries, or performed other unskilled jobs (e.g. cleaners, employees in coffee shops) (Lazaridis 1999; Lazaridis

and Wickens 1999; Lazaridis and Psimmenos 2000). They chose to capitalise on skills acquired in Greece while working as decorators, builders, plumbers and cleaners, and become self-employed.

For example, Anestis, a 37-year-old Albanian man became frustrated with undertaking low-paid, unskilled, manual jobs in the Greek informal economy and decided to become self-employed, so as to move away from being trapped in conditions of inferiority. He gained valuable work experience as a decorator and, when he was denied social insurance coverage, decided to work on his own. He narrates:

I was working as a decorator with emulsion. I learnt alongside a skilled worker in a big company where I was working. Very hard work. I was not responsible for skilful tasks because these were carried out by the skilled workers. And then I left because I asked for IKA [National Insurance Fund], he did not provide me IKA. And I decided to work alone. I asked for more money because we were paid not at all well. I worked very many hours and he was paying me just 17.68 euro a day including Saturdays and Sundays and holidays and he asked me to work all day long. Not to stop for half an hour you know to [go to the toilet]. There was a lot of dust [by this he means that the job was unhygienic] I had to do very hard jobs. Without a break, without nothing, without bonus. I brought here the family, I was a dad with kids, and things did not turn out the way I expected, I had to work alone. I took the brush and I looked for work amongst friends, and acquaintances in the beginning.

When they arrived in Greece, Africans faced discrimination in the job market. Some of them were qualified professionals but were unable to get a job on a par with their qualifications. Others, holding a degree from a Greek university, decided to overstay in Greece and obtain a job, but encountered racial discrimination in the Greek labour market. They decided to set up businesses to improve their socio-economic position and take control over their work situation. Only a few, who had obtained Greek citizenship or had access to informal networks of support, were able to set up formal business activities. These businesses were mainly restaurants, sweet shops, bars or clubs, electronics outlets, clothes shops, and hairdressing and beauty salons. For example, Francis, a Ghanaian man, registered his business in a co-ethnic's name. He explains:

I didn't have a working permit. And they never give you permission to open a shop when you don't have a working permit. So I had a

front person. This person was working in an embassy, so he had a working permit. So I used his papers to set up the business.

The establishment of formal ethnic businesses or the engagement in 'unconventional' informal self-employment activities (e.g. street hawking) is mainly a 'survival strategy'⁸ which promises higher economic gains compared with the low-paid, casual work available to migrants in the Greek informal economy.

Restricted employment opportunities resulted in the development of certain niches amongst African migrants in Greece – in particular, hair-dressing, petty trading, and ethnic restaurants and food stores. African women capitalised on an ethnic resource (hair dressing) in order to make a living. They introduced Afro-Caribbean hairdressing to the local population. The women that were interviewed, prior to becoming self-employed, were mainly *abjects* employed as domestic workers responding to the growing demand for child care and support for the elderly, with the exception of one woman who held a permanent post as a midwife in a public hospital. Self-employment allowed them to escape from exploitative working conditions as domestics and from racial and/or sexual harassment. Adamse, a 39-year-old Sierra Leonean woman who runs a beauty and hairdressing salon in Athens, gave a detailed narrative of her work experiences with various Greek employers, and how she came to decide that she would provide Afro-Caribbean hairdressing services at home, as follows:

Wherever I was working...the men, the women [she refers to her employers] didn't treat me nice. And I worked for one employer who didn't pay me. I worked for the whole month. He employed me to look after his father-in-law. I was staying with the old man. I was cleaning. There was a lot of work to be done. I worked for them and at the end of the month. I asked him: 'Where is my payment?' He answered 'I don't have any money to give you.' And he wanted to fuck me. I said, 'No, I don't want.' I said, 'I'm not doing this kind of job. I am doing house cleaning. I am not a whore.' I told him that I am going to report him to the police, but I was afraid to do such thing because I didn't have any legal documents at the time...Then I got another job. I was looking after the grandfather and grandmother. One day, they told her husband: 'Giannis your house looks like a salad. A black woman is coming to your house and your house looks like a salad. There are various colours. You should get a white woman to work for you.' She said to me, 'I don't want you to work for me

anymore'. And my sister suggested, 'Why don't you stay at home with me to provide Afro-Caribbean hairdressing services?' From then on I started to provide hairdressing services with my sister at home and slowly I saved some little money and I set up this business.

This experience shows how the relationship between gender, ethnicity and the family is complex and operates in a paradoxical way. While ethnicity and the family could be called on as resources by men and women irrespective of ethnic difference, setting up a business symbolises for these women independence and personal achievement, and can be regarded as a source of power. The symbolic importance attached to owning one's own business gives them a sense of empowerment, a breaking out of their *abjectification*, and gives them a feeling of self-worth, of *subjecthood*, of taking control of their lives.

Nigerians are involved mainly in street hawking. The emergence of street hawking illustrates the point made regarding the dynamic interaction between labour market opportunity structures⁹ and the aspirations of social actors for a better life. For example, Tounde, a 33-year-old man from Nigeria 'decided' to become a street hawker when he realised that he could not get a job in Greece with his experiences and qualifications as a civil engineer. His case illustrates the impact of racialised labour market structures on involvement in a certain type of business activity. He explained:

When I came into the country, I knew just a girl who was a cousin of mine ...I stayed with them for three months. I was wondering, 'What are these people doing here? And I asked her, 'What are they doing?' And she said, 'They are selling. That's what everybody does.' And I said, 'OK, I am not going to do that' (laugh). I stayed for a month, they bought food, I ate, I drank and whatever, but I couldn't continue to do that. I told the husband 'OK, you have to take me now and show me where to buy these things and I think I have to sell.' So, he showed me where to buy these things, he took me to the bus stop and he said, 'OK, you take this bus, you stop where the bus stops and you just start working.' I didn't understand shit about the language. He taught me one, two, three, all this shit and that was it. I started selling watches, radios and all that. Eh – this is what I've been doing up till now, I've been selling watches.

Street hawking is a survival strategy imposed on *abjects* by the lack of alternative opportunities. Vendors and street hawkers are petty-traders,

selling a variety of cheap electronic products such as CDs, watches, radios, cheap jewellery, car radios, cassette players, hair dryers and the like in open markets, squares and streets. This kind of business activity entails mobility. Migrants walk on foot or drive to various locations to sell their goods. It also involves risk. As Kennedy said, 'I am not satisfied. It's slow now. Maybe in winter it will be OK. It's slow now. I don't have many customers. If they were around I wouldn't have had time for this interview.'

It seems that these activities are largely tolerated by the police. As Patrick, a 34-year-old Nigerian man said:

the police, they know we are buying from Omonoia [central square in Athens] and they know we are selling. So [it is OK] except when you meet the bad ones, who can arrest you because they don't like you.

But even after the first regularisation process was complete and migrants were granted a white or green card¹⁰, moving from *abjects* to *éjectés*, it was not easy for them to obtain a self-employment licence. The procedure a migrant needs to follow in order to become self-employed is somewhat complicated. A number of prerequisites – such as the requirement to produce certain certificates necessary for the recognition of qualifications, to have a 'white or green card', to be a member of an insurance scheme or to have proof of ethnic Greek origin – make it difficult, if not impossible, for an undocumented migrant to set up a registered business. After registering the business with the tax office, officials from the Health Office and the Fire Brigade have to certify that the property has been built according to the legally required hygiene and safety conditions. As soon as all these documents are submitted, a self-employment licence is issued, and one can finally start running the business.

The main problems encountered by those interviewed are related to the delays involved in getting the licence as a result of the Kafkaesque nature of the Greek bureaucratic system. Also, institutional racism leads to further difficulties in obtaining the necessary documents, while a lack of Greek language skills made the necessary communication and contact with Greek officials difficult, and rendered bargaining almost impossible. Therefore, some interviewees relied on a Greek spouse to deal with or bypass the Greek bureaucracy. Adamse, the Sierra Leonean woman who runs a beauty and hairdressing salon, spoke of the difficulties she

encountered in obtaining the licence, and how her Greek husband helped her to overcome these difficulties:

When we wanted to set up the business it was very difficult. People coming from third world countries encounter problems. A lot of trouble. Wherever we go we had to go twice, three times, till the job is done. And we went to the Ministry. We were explaining to them that I have residence permit and work permit and that I wanted to work...wherever we go they said 'No, no, no', you know it is very difficult. It took us two, three, four months to get the licence.

After the 1997 regularisation, some of the interviewees who had been operating businesses in the informal sector decided to set up legal businesses. This is particularly true in the case of African men working as street hawkers and African women working as hairdressers. Some Nigerian migrants who were operating as illegal petty-traders established electronics shops, acting as intermediaries between the Greek wholesalers and the Nigerian street hawkers. But, despite running a registered business, they acknowledge the difficulties and admit that running a shop is not easy, as taxes, rent and other bills need to be met. These people relied on informal networks of support to obtain access to capital, rent premises and develop a clientele.

A vast majority of undocumented migrants who cannot easily rely on such informal networks for support continue to embark on informal activities. These range from petty trading (or 'street hawking') to decorating and other construction-related activities, and hairdressing services. These activities require neither the renting of business premises or any special, other than tacit, skills.

There are many opportunities for the participation of migrants in informal economic activities; there is a high demand for the informal provision of services and goods at competitive prices – in particular, in decorating and in the activities relating to the construction industry (e.g. plumbing). The entrance barriers are lower than in the formal sector, since one usually does not have to meet costs associated with the running of a business; for example, taxes and social insurance contributions for employees (this was also the case for African traders in France (MacGaffey and Bazenguissa-Ganga 2000: 42–44). The emergence of such activities can be explained by the interaction of the following factors: first, structural economic factors relating to the existence of a large informal economy (which favours informal business activities);

second, structural factors relating to restricted labour market opportunities (migrants are excluded from 'privileged positions' in the formal labour market); third embeddedness in networks; and, finally, tolerance from state agencies.

Cultural approaches stress the importance of ethnic solidarity and participation in ethnic social networks for business ownership and success. Ethnic and cultural resources, including access to co-ethnic labour at low prices, start-up capital (loans from family members, or other co-ethnics) and trading experience were important for all interviewees. The importance of social relations and their impact on economic actions is referred to in the literature also in terms of possession of 'social capital' or 'social embeddedness' (Granovetter 1985; Portes and Sensenbrenner 1993). In these cases social embeddedness is important for the success or failure of the business.

Capital is not derived from a bank loan but from either personal savings or from those of family, friends and community networks. Similar to the Brent survey of Afro-Caribbean and Asian entrepreneurship in Britain (Wilson 1983: 66–67), personal savings are shown to be the major source of business finance, followed by family funds¹¹, inheritance money and partner's funds. None of the migrants interviewed could obtain a bank loan, mainly because they lacked the required collateral.

Some entrepreneurs encountered problems in renting premises, as many Greek property owners were unwilling to rent their property to foreigners. The role of networks in making the initial arrangements with the landlord proved crucial in these cases. For example, Adamse, the Sierra Leonean woman married to a Greek, described her experience when she first tried to set up a hairdressing salon:

[The owner of the shop said to us]: 'You are black, you are foreigners. I want to rent the place to a Greek man.' He said: 'A Greek person should sign the contract.' I said: 'Why should I put a Greek's person name to rent the place since I put the capital?' He said, 'That's the way it is', otherwise he wouldn't let me the shop... And my Greek husband signed up the rental contract.

Ethnic businesses in Greece are concentrated in 'saturated markets' in which competition is high and prospects for business growth are limited. This is similar to Asian businessmen in Britain, who concentrate on 'easy-to-enter activities like food retailing and confectionery, for example, tobacconist, newsagent, which make comparatively low

demands on entrepreneurial resources but which are also highly labour-intensive' (Barrett *et al.* 1996: 787). Therefore, selling products or services at low or competitive prices is important for the survival of the business. Only a few entrepreneurs employ a small number of employees on a permanent, part-time or temporary basis, depending on business needs and finances (e.g. restaurants, hairdressing salons and publishing).

Carving out spaces of control

For all interviewees, entrepreneurial activity – albeit in the form of peripheral business activities operating in marginal sectors – has been the result of dissatisfaction with their previous work experiences and their inability to find a good job in the formal economy. It is an opportunity to avoid oppressive constraints. Despite the risks and uncertainty involved in running a business, and other attendant shortcomings – which include working long hours, self-exploitation and lack of free time to spend with family and friends – business ownership provided the migrants we interviewed with autonomy, independence and freedom. According to them, the advantages of being one's own boss are twofold: economic and psychological (associated with self-worth, autonomy and freedom).

Tounde, a Nigerian petty trader said:

I can decide not to go to work for weeks, which I have done. Nobody asked me, 'Why you didn't come to the office?' So there is this freedom, it is going to be very hard for me now to go back to work for anyone, because I love the freedom, the fact that I can work when I want to work – choose anytime I want.

Furthermore, for some it is the joy of embarking on a new venture that is important, providing them with a sense of creativity and self-fulfilment (Kupferberg 1999). Entrepreneurship is considered to be a creative, innovative, challenging and stimulating experience. Francis, for example, a 50-year-old man from Ghana who trades exotic fruits said:

I want challenge...I want to be creative. When you are working on your own you expand your ideas...and then I am free to make my own decisions.

Adamse, the Sierra Leonean woman who runs a beauty and hairdressing salon, explained that she feels satisfaction, and a sense of purpose and

self-worth, when the customers praise her for her services. In her own words:

the nice people are my customers because they know I am fixing their hair, making them beautiful, so they try to be nice to me, they treat me nice. I am very satisfied.

For Adamse, pleasure comes from 'doing' not 'having' (Gartner 1995: 85, cited in Kupferberg, unpublished paper, 1999: 3). 'The pleasure of entrepreneurship is the pleasure of learning new things, while being engaged in the social effort of organising, bringing a new enterprise into life' (Kupferberg 1999: 6).

Pleasure and satisfaction derived mainly from the activity of entrepreneurship itself and not from economic rewards. However, some interviewees stressed the economic rewards involved. Tounde, a Nigerian street hawker explained:

the employees are not really getting paid that much. I have got friends that work and what they make in a month I can make in three days.

In running a business, both men and women seemed to struggle against exclusion and *objectification*. However, women, unlike men, experience this not only as a 'survival' strategy or an action driven by economic necessity embedded within existing economic and socio-political structures, but also as 'a wish for independence' or an 'escape' from potential abuse and harassment which, in turn, harbours important subjective meaning for self-employed migrant women. Although it is difficult to draw a clear distinction between 'value' and 'disadvantaged' entrepreneurs, the women may be distinguished in Valenzuela's (2001: 339) terminology as *value entrepreneurs*, as opposed to the men, who more often than not fall into the category of *disadvantaged entrepreneurs* – meaning that they opt for self-employment because they have no other options (see also Apitzsch and Kontos 2008a; Lazaridis 2008;). Self-employment for them is a product of social exclusion and of their *objectification*. It is an integration strategy of those affected, a way of becoming *subjects*. New policies of supporting migrant men and women in starting their own business are needed. The decisive question is whether there can be such support for those taking the steps towards self-employment during times of economic crisis, given the risky character of entrepreneurial activity and the vulnerability of the non-privileged self-employed.¹²

Concluding remarks

This chapter has highlighted the factors contributing to opportunities, or the lack thereof, for individual migrants to exercise agency and to participate in formal or informal business activities. Market opportunity structures, together with social embeddedness, have a considerable impact on the development or otherwise of ethnic business. The chapter also showed how self-employment can be a product of struggle against *abjection*.

Nowadays, European, national and municipal governments, together with business associations and a wide range of third-sector institutions, are attaching value – in various ways and with varying levels of intensity – to ethnic entrepreneurship. These interventions fit the European Charter for Small Enterprises, which was adopted by EU leaders in 2003, and the Small Business Act (SBA) of 2008. The SBA comprises a package of policies designed to strengthen the potential of small businesses to create jobs in the EU, and to promote their competitiveness both within EU internal and global markets. Policies at all levels should encourage entrepreneurial risk-taking and provide for the best possible framework of conditions for migrants to enter into self-employment.

The first year of SBA implementation focused, among other things, on:

Reducing administrative burdens for SMEs

- i. All new European legislation and some member state legislation now passes through an ‘SME test’ to ensure that it is business friendly.
- ii. Unnecessary administrative burdens have been scrapped; the average time and cost of starting a private limited company has been reduced.

Providing access to finance

- i. Loans and overall funding through the European Investment Bank and Fund had increased to €11.5 billion by 2009.
- ii. Legislative proposals were tabled to better tackle the problem of late payments of invoices.
- iii. New rules are being discussed under which member states would be free to exempt micro-businesses from accounting rules.

Supporting access to markets

- i. SMEs are benefiting from a 40 per cent reduction in fees for EU trademark rights, and from simplified registration procedures.

- ii. As a result of the European Code of Best Practices, SME's access to public procurement has become easier and more open in some countries.
- iii. The implementation of the Services Directive in all member states will facilitate the establishment of businesses and cross-border provision of services.
- iv. The proposed European Private Company Statute will introduce common rules for starting up and operating a business in any EU country.

Furthermore, a European Commission report in March 2009 provided advice to policy makers on how to implement this. 'Think Small First' requires that policy makers give full consideration to SMEs at the early policy development stage. SMEs should be considered by policy makers as their 'prime customers', and rules should be created from the perspective of an SME, because rules and procedures designed for large companies create disproportionate burdens for SMEs.

However, promoting entrepreneurship is not an easy course. The sheer complexity of entrepreneurial processes should prevent us from envisaging entrepreneurship as a simple, one-dimensional phenomenon, and lead us to recognise that it is contingent on a plethora of social, political and economic conditions specific to each member state of the European Union.

4

Migrant Women: Maids, Nannies and Nurses, and the Ban on the Headscarf

Feminisation of migration is at the heart of new migration movements in Europe (Lutz 2007). In the early literature on migration, women are absent. A considerable number of studies on migration have been androcentric, using exclusively male samples; hence, migration appears as a male affair only, even in contexts in which the gender ratio in migratory flows was primarily female. This was justified in terms of the lack of research funds, and also women's supposedly minor economic role. In addition, whenever women were not neglected they were mentioned within the framework of the family, in relation to children. This literature relies on stereotypes of migrant women as migrants' wives or mothers – isolated, maybe illiterate, secluded and separate from the outside world, and bearers of many children.

In the mid-1970s, for the first time, researchers acknowledged this 'sexist myopia', and this led to a radical shift of focus from the family to other issues, such as the migrant women's role as wage workers, constituting a reserve army of labour to be brought in and thrown out according to the needs of capital. In addressing these issues, there was a homogenisation of the 'migrant labour' category, and consequently a failure to provide a satisfactory explanation for migrant women's position in the labour market, taking proper account of intersectionality. There was also a failure to recognise the agency of migrant women in making independent choices. So, early attempts to analysing gender and migration tended to put emphasis on the role of structures and constraints – at times, giving the impression that women are purely victims of their circumstances.

In 1983, Phizacklea argued that, in terms of occupational distribution, migrant women originating from less-developed countries occupied a

subordinate position within British, French, West German and other Western European labour markets, as they were concentrated within gender-specific, low-paid, manual sectors and the lowest ranks of non-manual work.

Independent wage labour opens up choices for women although, in practice, socially learnt constraints may limit the exercise of these choices. That is, their social and economic position in the host country is determined by gender relations within both the host society and the specific cultures of the women themselves (e.g. there may be pressure to marry men from the homeland). Also, their cultures interact with racialisation processes that relate differently to different ethnic groups, often resulting in these women clustering in particular niches within the host country's labour market. The economic disadvantage experienced by migrant women is the effect of a range of exclusionary practices in the host society, which affect different categories of the racialised population in different ways.

Race, ideologies and practices intersect in producing certain exclusionary outcomes. Racist and racialised exclusions intersect with sexist relations within the host society and the ethnic communities to which these women belong; this interplay of these processes operates differently within different ethnic minority groups of women to produce different outcomes. Introducing agency into migration theory and research, while recognising that such agency is conducted within given structural and institutional contexts, enables a more multifaceted approach to be adopted that can then pay attention to the lived experiences of migrant women (Anthias and Lazaridis 2000: 6). Such a multilayered approach is able to attend to the intersections of gender, class and ethnicity, as well as age.

There is no doubt that national and local contexts provide particular conditions for the enablement of migrant women's agency, as these contexts determine migrant women's ability to find a fertile environment for the pursuit of their aspirations in the new migration setting (*ibid.*:9). For example, increasingly restrictive immigration controls and entrenched notions regarding migrant women's place in industrial and post-industrial labour markets militate against the fulfilment of such aspirations. For women who enter the host country under family reunion regulations (which render their right of residence dependent on that of their husbands), legislation related to immigration and integration acts to reproduce a very traditional notion of women's dependency within a male-regulated private sphere – the family. If a woman in this situation divorces, she becomes liable to deportation. The legal entry of spouses

and dependants is allowed only if the sponsor can provide evidence that they can support and accommodate them without recourse to 'public funds'. Women who have no means of legal entry or who lack work permits are confined largely to privatised spheres of work (e.g. domestic and other forms of care work, the sex industry and so on) which are often not regarded as 'work' at all, and which are bonded by a highly racialised sexual division of labour. Irrespective of whether they migrate alone for work purposes (e.g. Filipinas), or accompany their men (e.g. Moroccans and Tunisians), many are working on short-term contracts or are undocumented, subjected to the vagaries of their employers.

The application of immigration rules is usually both sexist and racist. For example, in the UK, despite formal sex equality in immigration law, if a British Asian woman asks for permission for her non-British Asian husband to join her, she is likely to be refused, on the grounds that the primary purpose for their marriage is taken to be to enable him to enter Britain. If a British Asian male or white British female seeks permission for her spouse to join her, her motives are far less likely to be questioned.

The distinction between public and private has serious implications for women, especially refugees. Under the Geneva Convention, 'persecution' refers to the political sphere. But much of the persecution faced by women occurs at home – for example, because of a refusal to abide by customary rules of marriage – and her safety may be threatened.

There is much evidence that women are transmitters of ethnic culture; they reproduce the culture and traditions of their ethnic group, including its religious and familial structures and ideologies. Women are also biological reproducers of the ethnic group. In many Western societies, the fertility of ethnic minority women may be seen as a threat to the nation, involving demographic and nationalistic ideologies and practices, and the use of fertilisation techniques against some. Indigenous mothers who give birth to many children are often rewarded, whereas migrant women in this situation are subjected to policies and discourses of inferiorisation. That is, those women who are considered to be outside the national collectivity, unable to reproduce or symbolise it, may face particular forms of racism and exclusion. As Anthias (2000) argues, racism against women intersects with sexism to produce diverse forms of exclusion, specifically against particular ethnic and class groups. For example, Filipina domestic workers may experience such exclusion and *abjectification* differently from women involved in the sex trade, and differently from female 'brain drain' migrants from elsewhere in the EU. In other words, there are class and ethnic differences amongst women

migrants, and the various countries of origin and destination provide heterogeneous contexts that need to be taken into account. Having said that, according to Anthias and Lazaridis (2000: 11–12) there are certain broad areas that allow us to posit some general features of the new feminisation of migration:

- Women migrants are, more often than not, a main source of family support, and see their role in terms of a family strategy.
- Women are active agents in the migratory process.
- Women as social actors are located at the intersection of their country of origin and country of destination, as they are economic and ethnic subjects within both locales.
- The importance of transnational connections requires us to look beyond the intersection between countries of origin and destination towards wider migratory networks.
- The migration of women may lead to changes in the distribution of power within the family, growth of independence, more autonomy and control over economic resources; so the complex nature of women's position does not permit us to see migration in simple terms as either always leading to a loss or to a gain in social status.
- Religion is import in relation to processes of 'othering'.
- There is a particular concentration of migrant women in the service sector, including a growing concentration in domestic service and the sex industry; in these roles, women are in extremely vulnerable positions.

To sum up, early migration studies were blind to the fact that the whole experience of immigration is clearly a gendered one, lived differently by men and women. Since the late 1980's, there has been an increase in studies focused on women, recognising that they are major contributors to the workforce, immigration numbers and society overall. In addition, Muslim women themselves have found a voice, manifested in an increased quantity of literature produced by female *Beur* authors such as Soraya Nini, whose protagonists often face the dilemma of living with two seemingly incompatible cultures.¹ This chapter will explore attitudes in the West towards migrant and Muslim women, with direct reference to their treatment, examining issues of integration and exclusion in the social, political and economic spheres, as well as their *abjectification*. As shown in the section discussing domestic work, the continued media portrayal of migrant women as 'exotic' yet 'submissive' acts as a form of marginalisation and exclusion in relation to the women working in the 'care' sector. The headscarf debate and its subsequent ban in France will

be another focus of the discussion, followed by a detailed examination of 'secular Muslim women', and whether or not Muslim women living in France can ever be assimilated.

Domestic work: maids, nannies and quasi-nurses

Domestic work is not a new phenomenon; it has a long-standing feudal and colonialist tradition and is found in post-colonial Asia, Africa, Latin America and the countries of the Middle East. In most of Europe, however, domestic servants have been disappearing little by little since the 1920s and in particular after World War II. Today, we see a massive comeback. (Lutz 2007: 227)

The role of migrant women as domestic workers, nannies and nurses constitutes one of the main forms of the feminisation of migration flows into Europe. The maid industry (doing household work; cooking meals; cleaning; washing and ironing; caring for the elderly, the disabled and the children; gardening; or performing quasi-nursing tasks when caring for an elderly or disabled person), has grown in all types of care regimes in Europe and, in particular, in Southern Europe. The tremendous expansion in recent years had been filling the gaps created by the increasing number of women in the host countries in paid employment, and the lack of state provision for the very young, the very old and people with special needs. According to Lutz (2007) 'negative emotions such as disgust, shame and pain, as well as positive ones like pride, sensuality...delight and satisfaction are all linked to household work'. These emotions can also be linked to the personal care roles performed by the women who work as carers, since they carry out tasks such as washing up and feeding the elderly or disabled client, as well as nursing tasks such as administering prescribed drugs, injections and changing a drip. A large number of quasi-nurses are skilled migrants. Most have a college education and/or a professional background. Some are ex-teachers, others ex-nurses, others hold university degrees or have had a skilled office job. When they come to the host country, as the procedure for securing recognition of migrants' skills is long and cumbersome and, as they need money to survive and often to send home, they take any job that is available. So, migration to Europe for these women is part of a brain drain, as discussed in Chapter 2. Maria, for instance, came to Italy from Albania. She was a qualified dentist in her home country but, in Italy, she worked as a nanny and carer, looking after the two young children of a middle-class couple and their elderly parents.

Migrant women find work through a range of channels: either through migrant networks, a recruitment agency, or word-of-mouth. After they establish themselves in the host country, they feel sufficiently confident to rely on individual effort. They often start working as domestics before moving on to staff the echelons of the health service. In many cases, employers keep the women's passports and other documents for 'security'. There is often no contract stipulating hours of work or type of work and, even if there is, in most cases the worker is expected to work longer hours, or is coerced into doing so. In most cases, however – and this has been exacerbated by the current economic crisis – the worker is declined social security and other benefits. The nature of the growth in demand for caring services varies according to the three Rs (care regimes, migration regimes and employment regimes) and the way these intersect in different host countries in Europe.

Women's experiences vary in what has been dubbed the 'international division of reproductive labour' (Parrenas 2001), or coined as 'the global care chain' (Ehrenreich and Hochschild 2003). First, the chain can be global; for example, when a mother from the south leaves her children behind to care for the children of a working woman in the developed north. The chain can be regional; for example, when women from Central and Eastern Europe migrate to the west and the south, especially following the last four EU enlargements in 2004, 2007, 2013 and 2014. The dichotomy between sending and receiving countries is blurred in member states which are positioned to both send and receive migrant workers, such as Poland (Lutz and Palenga-Mollenbeck 2010;). Although many of these women migrate solo, such as Filipino women, others, such as women migrating from Latin America to Spain, may bring their children with them. As well as suffering poor conditions of work, exploitation and abuse, a large number of these women suffer from social isolation, although informal networks serve to provide important social and other forms of support in the host country. In most countries, sexism intersects with racism, but the interplay between them produces different outcomes, however subtle these differences may be. We can speak about differential exclusion and differential *objectification* of the 'other'; therefore, it is important to pay attention to the rich complexities and multifaceted positions, as it is impossible to state in simple terms that migration always leads to a loss or to a gain in social status. Migration may give women more autonomy and control over economic resources than in their country of origin, but they may face more constraints than men in their everyday life.

Being undocumented can lead migrant women into less protected and lower paid areas of care work. Differences in migration status and employment can be compounded with ethnicity and the way these are perceived in the host country. For example, in Greece, Filipino women are better remunerated than Bulgarians or Albanians. As mentioned elsewhere (see Lazaridis 2007), the existence of racialised hierarchies means that skills and attributes become bundled into national and ethnic stereotypes. For example, in the case mentioned here, the Albanians are considered untrustworthy whereas the Filipinas are held to be trustworthy. Stereotypes shift over time so that, for example, Albanians are more to be trusted than Romanians or Bulgarians. Individual employers have preferences for certain nationalities; Filipinas are perceived as polite, loving and hard-working, whereas Albanians are considered hard-working but roguish and abrupt.

Anderson (2000) found that Parisians had a preference for Haitians, and Narula (1999) stated that African women came low in French employers' preferences. In Madrid, Moroccans were at the bottom of the hierarchy, whereas in Stockholm employers preferred Eastern Europeans (Williams 2012). 'These national differences could imply not only different conceptions of nationhood ...but also divergence in the institutional effectiveness of multicultural and anti discrimination policies' (*ibid.*: 368).

In addition, domestic work, while offering some security, also means stigmatisation and low social status combined with social isolation. Many domestic workers have experienced downward social mobility with migration, as many are highly educated and have university diplomas, leading to brain waste (see Chapter 2). Wage differences between sending and receiving countries act as push-pull factors arising from the desire for a higher standard of living and the need to send remittances back home to support the family, educate the children and pay for medical care of close relatives. In the Philippines, the remittances sent home by domestic workers and nurses constitute a major contribution to the national budget, to such an extent that the government openly encourages emigration.

Many destination countries have signed bilateral agreements with sending countries such as the Philippines, and have launched work permits for live-in domestic workers, quasi-nurses and carers, thus safeguarding some of these women from working irregularly. These can be described as *les éjectés* since, once the work permit expires, they fall back into irregularity; that is, become *abjects*, with unstable working and living conditions, low pay and undervalued work with no rights,

and are at risk of being subjected to processes of '*éjectification*' from the country at any time. Many experience what I have called 'a trampoline effect' (see Lazaridis 2007: 250), moving from unemployment to maid, from maid to quasi-nurse, back to unemployment, up to maid or quasi-nurse and sometimes back to prostitution or unemployment again (see Chapter 5). There is often a *mixing and matching*; that is, working as a maid or quasi-nurse during the week and working as a prostitute at weekends, or working as a carer in the mornings and maid or nanny in the afternoons or evenings.

The *abjectification* of these women is further intensified when employers insist on keeping the women's passports and/or other original documents for 'security' reasons, or when they are enduring abusive working conditions from fear of deportation, in a world where, since 9/11, security concerns have gained unprecedented dominance on Western governments' political agendas, (see chapter 6) and security of borders, state security and ensuring the safety of citizens have been used to justify, amongst other things, stringent passport controls, indefinite detention and deportation.

Leaving a job often involves unpleasant interactions, especially in cases where bonds (emotional or otherwise) have been formed with the employer. This situation has massive implications for the visibility of these migrants, their rights in the host country and their ability to carve out spaces of control. The degree and form of *abjectification* vary, and cannot be removed from the context of a woman's existence as she is constituted within the specific socio-economic circumstances that condition her trajectory from her country of origin to the country of destination, from her work and social status in the former to an often lower status in the latter, from the need or the desire that uprooted her in the first place to the reality with which she is confronted, plus all that has happened in between. Within these shifting contexts, ruptures and discontinuities, one could add the different residence statuses enjoyed by different women – for example, by and large, those from Central and Eastern European countries who are EU citizens have more rights, as EU citizens, than those who are third country nationals – and the different ways some sending countries adopt to manage emigration through mobilising, exporting and regulating their outflows. An example is the highly celebrated 'Filipino labour brokerage state' (Rodriguez 2010) where culturally tailored workers for specific destinations are relocated and prepared 'for export' (Guevarra 2010; Lorente 2011).

One could say that the carers of the new millennium live on the margins of a society, fenced into social, economic, racialised spaces

from which they cannot escape (Lazaridis 2001: 75). They are situated metaphorically in what Bauman (2003: 145) has called a 'hyperghetto'. According to Bauman, 'hyperghettoes are anything but self sustaining communities. They are truncated, artificial and blatantly incomplete groupings of people, aggregates but not communities; topographical condensations unable to survive on their own...A "hyperghetto" is suspended on strings that originate beyond its boundaries and most certainly beyond its control' (*ibid.*). Resistance is therefore difficult. Nevertheless, many of these women manage to develop and sustain transnational relations through e-engagement via Facebook or Twitter, which is a form of empowerment, breaking the isolation. Such networks, together with various migrant associations, play an important role in lessening, ameliorating and compensating for vulnerabilities and for the lack of state-facilitated institutions capable of cushioning the migrant when she is facing psychological and/or somatic abuse, violation of her human rights.

Is the demand for migrant women going to increase during the economic crisis due to the increasing commodification and marketisation of care provision, as criteria for eligibility for benefits become stricter due to cuts in public services all-over Europe? Is the shift away from state provision of care to the provision of cash payments or tax breaks or credits for individuals to buy care – as, for example, is the case in the UK, Finland, Spain, Sweden and France – going to increase the demand for carers from abroad? Or is the lack of jobs going to force women to return home to take care of their dependants? Increasing reliance on the voluntary and private for-profit sectors (often contracted out by local authorities) to deliver care services has encouraged the development of home-based, commodified care (Cangiano *et al.* 2009; Simonazzi 2009). Who, in other words, will take care of the young and the elderly in an ageing Europe, with increasing numbers of female breadwinners, changes in work-life balance in a geo-political context in which national welfare states are shrinking (irrespective of whether they are liberal, Southern European, social democratic or Anglo-Saxon) and boundaries are blurred? One thing is certain, that even in the current European crisis, governments in Southern Europe (e.g. Italy, in 2013) still allow the regularisation of migrant workers; the populism of anti-immigration policies is often juxtaposed with the pragmatism of 'cheaply available surrogate family care' (Williams 2012: 369). The paradox here is that, often, even regularised migrants work in the informal economy without proper work contracts and associated fringe benefits, as to do otherwise would make this form of work unaffordable to the employer and render

the domestic worker unemployed. Cultural preferences, racialised and gendered discourses, political pressure, and national welfare regimes and lifestyles all play a significant part in the emerging forms of migrant care labour in today's Europe, where social and health care systems would collapse without migrant care workers.

The burqa question

The Dutch parliament was the first in Europe to demand a burqa ban in 2005 after voting on a proposal tabled by Geert Wilders, at the start of his career as an anti-Islam politician; however, the legislation was delayed. In April 2011, France enforced a ban on the use of burqas and niqabs in public places, as these garments were deemed oppressive to women. The measure imposes a fine of €150 and instruction in citizenship for those who contravene it. Moreover, anyone found forcing a woman to cover her face may be fined. In July 2011, Belgium enacted a ban on full-face veils in public places, saying their use is not compatible with a liberal society. Under the law, any woman wearing a burqa in public may be fined €137.50 and may face up to seven days in jail. In August, an Italian parliamentary committee approved a draft law which would ban women from wearing veils that conceal their faces in public. In September, the Dutch government announced it was considering a ban on burqas and niqabs in public places, stating that they are contrary to the equality of men and women. This section concentrates on the French debate over the burqa.

France's move to ban the burqa has been particularly controversial as it is home to Europe's largest Muslim community (around five to six million)² and Islam is the second largest religion after Catholicism. Although the struggle between France and its Muslim community has been going on for some time, especially since 9/11, the Muslim population has generated a lot of media attention in relation to violence in suburban housing projects (*banlieues*) due to poverty and exclusion, as well as the pronouncement by ex-president Sarkozy proposing the banning of the burqa, which brought the debate back to the fore. The perpetual arguments range from women's rights and enforcement of official secularism to security concerns. A number of questions can be asked regarding the timing of the ban. Was it a genuine assertion that has, at heart, the liberation of these women, or does it infringe their freedom to choose their mode of dress? Or was it a political gimmick to divert the attention of the French people away from pressing domestic issues? Are there underlying security issues involved? And are these women wearing

the burqa out of a personal conviction about its relevance to their faith, or are they victims of patriarchal influences? In order to examine the challenges that this debate has generated, it is helpful to contextualise it historically, by looking at the relations between the state and religion, and the various justifications that have been advanced for or against the ban, as well as considering the challenges associated with the enforcement of the current law banning the burqa.

The background

The battle to extricate religion from its primacy began with the fight against the Catholic Church, which exerted much influence on schools, courthouses and hospitals. The government was able to curtail this dominance by introducing legislation that anchored the principle of official secularism, or *laïcité*, in the constitution in 1905. According to this law, the republic did not recognise, subsidise or remunerate any religious body, but allowed freedom of religious affiliation. This freedom was granted only insofar as affiliation remained a private affair. This was a significant step at the time, as no other European country had achieved official secularisation.

With subsequent waves of immigration into France, Islam became the second largest religion in the country. At the same time, the end of the Cold War left a vacuum which was filled by the substitution of Islam as the new enemy of the West (Scott 2005). The growing Muslim community in France has consistently maintained its distinct identity over time. In this environment, the outbreak of 'war' against the veil in the late 1980s was an attempt to re-assert the principles of *laïcité*. In 1989, *les affaires de foulard* (affairs of the scarf), became the first battle in the war over the burqa. Three Muslim girls were expelled from school for contravening the secular code by failing to remove their head scarves. In 2004, the French government enacted a law prohibiting the wearing of any conspicuous religious symbols in schools. The Conseil d'Etat (Council of State), which is the highest administrative advisory body in France, ruled that students could wear symbols of religious affiliation in school as long as they were not ostentatious or polemical and did not constitute acts of pressure, provocation, proselytism or propaganda that interfered with the liberties of other children. These symbols included the scarves, skullcaps for Jewish boys, Sikh turbans and crucifixes. The law re-emphasised the supremacy of secularism and was particularly critical, since schools were the agents of *laïcité* and assimilation. It was in schools that the instilling of a common republican political identity in children from diverse backgrounds was done (Scott 2005). While the ban was

imposed on all religious symbols, there was a widespread impression that the focus was directed more at Islam than at other religions. So, despite the fact that it was worded in a religion-neutral way, the law was widely understood as being aimed at keeping Muslim girls from wearing the burqa in schools.

Internationally, the attitude towards Islam was also going through a metamorphosis. At around this time, Ayatollah Khomeini pronounced a *fatwa* on Salman Rushdie following his publication of *The Satanic Verses*, which was interpreted as insulting Islam. Given the perceived intolerance of Iran, this incident created a totally new global climate regarding Islam. The idea of Islam as a single monolith became progressively more strong (Vaarakallio 2010). The pronouncement of the then president Sarkozy in 2009, during his state of the nation address in parliament, sought to take the 2004 law a step further. He declared that: 'The burqa is not a religious problem; it is a question of liberty and women's dignity. It is not a religious symbol, but a sign of subservience and debasement. I want to say solemnly, the burqa is not welcome in France. In our country, we cannot accept women prisoners behind a screen, cut off from all social life, deprived of all identity. That is not our idea or freedom' (*The Times* 2009). Consequently, a law to this effect was passed in 2010, following the passing of a related resolution by parliament in 2009. Despite the Council of State expressing misgivings regarding the legality of the ban and its perceived infringement of personal freedom, the French Parliament and Senate approved it with an overwhelming majority vote. The law banned the covering of the face in public places, broadly defined to include government offices, parking lots, markets and parks, amongst others. According to the law, any women caught veiled in public would be liable to a fine of €150, or be obliged to take 'citizenship lessons', while anyone found forcing them to wear a veil would have to pay up to €15,000 in fines or serve one year in prison. A grace period of six months was envisaged during which Muslim women would be educated about the new law and its implications.

The near unanimity of the vote and the upholding of the ban by the Constitutional Court were noteworthy, particularly given the fact that, of an estimated five to six million Muslims living in France, only about two thousand wear the burqa. Nevertheless, the diverse reactions of both Muslims and non-Muslims on this issue give a clear indication that the battle for supremacy between secularism and religion is far from over. Any efforts to seek the intervention of the European Court of Human Rights would be fruitless following its precedent-setting ruling

in the case of Turkey that governments are within their rights when they prohibit headscarves in schools (Scott 2007: 2).

The debate

Mass media in Europe present veiled women as subordinate and lacking individuality, whereas Muslim women without a veil are characterised as Westernised and modern, and their individuality is emphasised (Navarro 2010: 101) (see also Open Society Foundations 2011; and Abu-Lughod 2006). This image contributes to the marginalisation of veiled Muslim women. France makes an interesting choice for the examination of attitudes towards Muslim women, because, as mentioned, it is historically a politically secular state, open to freedom and equality of all races, and has a colonial history closely linked with the Islamic states of the Maghreb (Morocco, Tunisia and Algeria). Following an assertion that 'for the first generation North African immigrants in France, religious identity and national identity have become one and the same' (Cesari 2002), one has to view the religious and cultural roots of these women as embedded in their history, which for many, especially those from Algeria, is a painful relationship with the dominant coloniser. Many of the stereotypes formed about Muslim women in France stem from their colonial past and are deep-rooted. Following the legislation of 1905 anchoring the principle of *laïcité* in the constitution in 1905, France has prided itself on its egalitarian principles and its stance as a secular state, having pioneered the separation of the state from religion.

The existence of a secular state guarantees cultural and religious diversity but, at the same time, France promotes assimilation, arguing that integration takes place through the dominance of the host country's main culture and values, and the *Mission Civilisatrice* that was espoused throughout its colonial rule. The *Mission Civilisatrice* promoted French culture as being superior and more civilised than the native cultures of the colonised countries. During this time, Muslim women were portrayed as victims of a patriarchal society, their religion and culture, in need of rescue by the West in the shape of France. Women were encouraged to dress like the French, and Arab men who did not try to assimilate were portrayed as barbarians.

The central argument is that Muslim women in the West (and in France, in particular) are marginalised, sometimes to the extent of exclusion, because of separate prejudices about their race and gender, as well as inter-related prejudice. Unlike Muslim men and Western women, Muslim women suffer from the objectification of the 'male gaze', in general, as well as the specifically 'Arab male gaze', which brings with it

an element of moral judgement on whether or not the woman is a 'good Muslim'. Muslim women face a gendered form of Islamophobia. There is perhaps an underlying element of resentment towards them on the part of the French for their visible expression of Islamic beliefs, due to their perceived role as guardians of tradition; this may be caused by the fact that Islamic beliefs are perceived as 'threatening' to Western societies. Muslim women choose to define themselves, and are often defined by others, as 'Muslim-French' or 'Franco-Maghrebin', rather than simply French, despite the fact that in many cases they, and often their partners also, were born in France and may not be fully practising Muslims. At the same time, since 9/11 the media, which have stereotyped Muslims and thereby exacerbated racial prejudices (see Chapter 6), have advocated the disassociation of Muslim women who embrace Islam. This has led, among other things, to the emergence of feminist Muslim groups and secular Muslims. Such groups are not always accepted by other feminist groups who do not wish to be associated with the image of the submissive Muslim woman, or by groups that do not want their emphasis on integration and the need for social equality to be overshadowed by a focus on the veil (Bouteldja 2011).

The Burqa is not welcome in the territory of the Republic as it produces insecurity for all parties: the veiled, the French society and various political and non governmental actors. It is not an idea that the Republic believes brings dignity to women. (Roberts 2011: 1)

Although Islam is the second-most commonly practised religion after Catholicism, outnumbering Protestantism and Judaism, with around five to six million followers, two thirds of whom are French nationals (either second- or third-generation, or people who have converted to Islam), (*The Economist* 2010), in 2004 France banned students, teachers and parents from wearing the headscarf (hijab) in public schools. In June 2009, then President Sarkozy made the comment cited in Roberts (2011) in Parliament, stating that 'behind the gauze is not the French republic's idea of women's dignity'. French society feels challenged by this radical public expression of a religious identity; there is a tendency to mistrust those women who choose to wear the headscarf because differences of dress, religious practice and culture leads to alienation. This can be related to the struggle of the Catholics and liberals in the nineteenth century, when a German *Kulturkampf* (culture struggle) took place with the aim of separating the German Catholics from the papacy by imposing anti-Catholic laws. People in violation of such laws (i.e.

restrictions on religious speeches, catholic schools, clerical attire) were faced with imprisonment or expulsion. Just as the Catholics of the nineteenth century were branded as the dangerous 'other', so are the Muslims of today, and the hijab, burqa or niqab are seen as symbols of totalitarianism.

The law has been surrounded by a great deal of debate in France and elsewhere in Europe over a number of issues regarding whether it frees women from masculine oppression, or is a violation of *laïcité* (i.e. secularism). The fact is that it has brought about insecurities for the women who wear the burqa (further marginalising already marginalised women), and has encouraged other European countries (including Belgium, Italy and the Netherlands) either to ban the veil completely, or to take steps to control and reduce its use, leading to concerns about freedom of expression, multiculturalism and gender equality. Others, such as the British, have argued for integration through diversity, thus providing ethnic minorities all the rights to practise their culture and religion under the principle of freedom of expression. For instance, the Immigration Minister at the time described the ban as aggressive and far from the British way of dealing with multiculturalism; he stated that 'telling people what they can or can't wear is a rather un-British thing to do. We're a tolerant and mutually respectful society' and observed that 'French political culture is very different. They are an aggressive secular state'.

The 1905 French legislation on secularisation of the state declares that there should be freedom of conscience, separation of state and Church, and equal respect for all faiths and beliefs. The State should be a neutral body which respects pluralism and is able to accommodate the expression of this collection of beliefs (Mullally 2011: 38). By passing this law, the state is breaking the principle of *laïcité* by controlling religious expression and practice; it is a direct attack on French migrant women, who have, as a consequence, been over-publicised, stigmatised and marginalised. The French government states that the ban is not in violation of *laïcité* and, rather, is needed in order for *laïcité*, liberty and equality between women and men to be upheld (*ibid.*: 33).

Different political actors reacted differently; the Socialist Party found the measures too opportunistic, difficult to implement and contravening constitutional principles. The leader of the French Communist Party argued that such law will stigmatise a whole community. The far-right *Front National* accused the government of laxity, whereas the Democratic Party accused Sarkozy of using the burqa debate for electoral purposes. According to Krasteva (2011: 207) 'public opinion on the burqa and

Islam is marked by new proximities between far-right and centre-left on one side, and is divided by classic cleavages between left and right opinions on the other'. With regard to the reactions of other religions in France, as stated by Krasteva (*ibid.*), the Jews took no position at all; and the Catholic Church refrained from formulating a public stand but, according to the media, is critical of the wearing of the burqa for security reasons because it veils women, but believes the law will weaken the position of moderate Islam and play into the hands of the radicals.

Despite the fact that there is disagreement within the Muslim population (emanating from varying interpretations of the relevant verses of the Koran) about the extent to which women should cover their body, many French Muslims are outraged by this law and believe that no one has the right to command any individual to cover up or not. Supporters of the hijab refer to the Koran (verses 24.31 and 33.59), whereas others reject the claim that it is obligatory, as the Koran asks women to be modest. The rector of the Paris Mosque states that 'neither the burqa, not the niqab, nor any all-over veil, are religious prescriptions of Islam' and argues that the origin of this practice comes from Salafism and Wahhabism, far-right Muslim ideologies which apply extreme interpretations to the Koran verses, thus denying women their social existence in the public space. Others have argued that one can be Muslim by religion but achieve a positive coexistence with Western cultures. Some pro-choice Muslim women have even asserted their intention to wear the hijab in spite of the law. They argue that analysing Muslim clothing on the basis of gender equality comes from a misunderstanding of Islamic culture. Yet others argue that the burqa is a sign of compliance with Islam, a symbol representing its distinctiveness in European multicultural societies, which may be more significant to migrant Muslim women than gender equality. Postmodernists argue that the world of women should not be analysed or understood through the forms and ways of the wearing of a cloth, as each society has its own garments and values which are in accordance with its own culture.

On the reverse side of the equation there are Muslim women who believe that the veil itself is a violation of *laïcité* and of human rights, a prison created by male power to control the female body, and that banning it is therefore the right thing to do. They agree with the French government that the veil hinders Muslim women from interacting with the rest of French society and, hence, increases discrimination, stigmatisation and exclusion. Feminists have argued that this law depicts Muslim women as helpless and needing to be saved when, in reality, most of the women who wear it made the decision to wear it willingly.

Others say that it empowers women by desexualising their bodies; yet others argue that women choose to wear it because it stands as a symbol of their Muslim identity, a cultural expression. This view requires us to look beyond women as victims of the social structure that shapes and augments their vulnerability. In France, the veiled woman stands out as a non-citizen, as not being French, and hence must earn citizenship by demonstrating integration and acceptance of the non-negotiable norms of the dominant culture. These norms include prescriptions as to acceptable forms of dress and visibility of the flesh, all of which are viewed in French culture as essential preconditions to 'living together'. The government argues that this ban aims at bringing about equality and a unified understanding of what it means to be a French citizen. However, stopping women wearing the veil does not foster solidarity and, hence, the likelihood of it leading to their being further integrated into French society is questionable.

As mentioned, only a small percentage of France's Muslim women wear the burqa (say, some two thousand). However, they are in the spotlight, singled out and targeted, and thus marginalised. Human security is defined by the UNDP (1994), amongst other things, as protection from sudden and hurtful disruptions of the pattern of daily life. Removing the freedom of choice from Muslim women is seen as a threat to the security of their day-to-day lives to them, as violating the customs of their ethnic community and as a sexual provocation to men.

Muslim women in France face isolation from two aspects of the human security with which the state is meant to provide them: personal security (such as physical safety from harassment, criminal attacks, and the like) and political security (such as the right to enjoy civil and political rights within the state). Those who choose to continue to wear the veil are scared to leave their homes (to pick up their children from school and so on) as their physical security is threatened (e.g. some had their veils physically ripped off by people who also saw fit to call the police) and their political security is abused. Hence, there is a clear disruption of their day-to-day lives. Others argue that Islamophobia is an issue of race, and not security.

Human rights activists concentrated on the issues of individual choice and discrimination against women. On the one hand, they argue that the burqa serves as an expression of cultural diversity and that the ban therefore violates women's freedom of expression by dictating what they may or may not wear, so the French government could be seen to be in tandem with the Taliban in Afghanistan which imposes a dress code on women. At the same time, they seem to also recognise that the burqa

serves as a symbol of oppression and subjugation of women. These two views put them in a quandary, and it is evident that, even amongst them, there is a great deal of divergence in opinion. Significantly, in his speech in Cairo, Barack Obama appeared to join the bandwagon. His concern was not with the Muslim women's head covering so much as a woman's right to wear it if she so chose. Western countries, Obama said, cannot dictate the dress of Muslim women. 'We cannot disguise hostility towards any religion behind the pretence of liberalism', he added. But Obama ignored the many challenges Muslim women face, such as polygamy, early marriage, honour killings or the sexist family laws across the Muslim world (*Time Magazine* 2009).

The banning of the veil in France has had a spillover effect in other European countries. In Belgium, the MP Daniele Bacquelaine said: 'we cannot allow someone to claim the right to look to others without being seen'. In 2010, Belgium had an estimated 500,000 Muslims living within its borders. Yet, anyone found in violation of the burqa ban is subject to a fine or seven days' imprisonment. In a poll taken in Italy in 2010, around 63 per cent backed the ban (*The Economist* 2010). The Northern League believes that Italy's identity is inevitably attached to the Catholic tradition, to be Italian is to be Catholic, despite the constitutional adherence to freedom of religion, as well as personal choice. The Madonna, an integral part of the Catholic tradition, is veiled. The Netherlands also started debating and exploring the possibilities of a burqa ban in 2006. Immigration minister Rita Verdonk said 'from the standpoint of integration we think people should be able to communicate with one another'. The ban was scheduled to become effective in 2013, with a fine of €390 for any woman found wearing it. The government argues that this is for the protection of citizens. These member states of the EU (Belgium, Italy and the Netherlands) claim that wearing the burqa in public is contrary to the principles of a liberal society, and that it is a threat to security. This argument has brought further stigmatisation and alienation of Muslims across Europe.

Overall, as Hamdan (2007) writes, the debate on the veil and the headscarf has attracted media attention but deflects from the real issues of marginalisation and exclusion of Muslim women in the *banlieues* (the outskirts of the major urban areas such as Paris, Lyon, Marseille and Lille), where the poorer and underprivileged communities are located, with large numbers of minority groups living in poor quality housing. In this sense, Muslim women are physically marginalised in a highly visible manner, as they live on the edges of society, with little chance of social movement. Freedman and Tarr (2000: 14) argue that this has

a particular effect on women who 'in many communities of immigrant origin, are almost entirely responsible for the management of the domestic space', in areas where resources are limited, leisure facilities, employment opportunities are scarce and the streets are unsafe. The lack of support and investment from the French state has contributed to a sense of disillusionment amongst the inhabitants which has, in turn, contributed to the further marginalisation of Arab women who, when the French government failed them, turned to the Imams, who can often take the opportunity to lure them into more radical forms of Islam. Some French Muslims have reasserted their Muslim values in defiance of the perceived disregard by the French state for their religious symbols and customs, signified by the banning of the burqa, leading to their further exclusion from French mainstream society, which historically favours assimilation over integration.

Concluding remarks

This chapter has highlighted the complex nature of female migration with specific reference to domestic workers and to Muslim women in France, and the banning of the burqa. All these groups of women are excluded and included in mainstream Western society to various degrees and in various ways that are dependent on numerous factors. Some have escaped patriarchal structures and found economic improvement, while others are victims of exclusion within their own society of birth and/or their own communities. The sites of exclusion range from local to national and even the transnational, as modern migrant women are not even considered to be 'European' or 'Western', yet find themselves excluded from the culture of their home country or country of cultural origin. The form that this exclusion or *abjectification* takes is varied. They may suffer abuse from their male counterparts if they try to assimilate, yet be excluded from Western society if they do not. The degree of *abjectification*, exclusion and marginalisation is also multilayered, and dependant primarily onto which generation of migrants the individual belongs, the attitudes of her family, her personal relationship with her own culture, and her educational and socio-economic status. Their position in the host society may change due to global events, such as the 9/11 terrorist attacks, legislation imposed by a nationalistic government, the economic climate, and so on.

Migrant women act mostly in the private sphere – the 'intimate others', as Helma Lutz (2007) has dubbed them, including not only domestic workers, but also nannies, quasi-nurses and the *infirmières*

exclusives (Lazaridis 2007), a phenomenon widespread in Greece. As this chapter has illustrated, migrant women from different countries with diverse backgrounds have varying strategies to deal with irregularity. It highlights the double complexity involved in the ways migrant women encounter problems of insecurity connected to irregularity and informality, even when regularised.

5

Human Trafficking and Smuggling: The Production of *Ultimate Subjects*

Each year, hundreds of thousands of migrants are moved illegally across international borders by highly organised international smuggling and trafficking groups, often in dangerous or inhumane conditions. They can be found in the sex trade industry, domestic servitude, agricultural work, massage parlours, bars, and often include child labour.

Trafficking and smuggling are not new phenomena, but have increased since the mid-1990s all over Europe, and have become areas of great concern for both policy makers and public opinion. Often linked with transnational crime networks and illegal migration, the development of these phenomena has multiple causes rooted in both sending and receiving countries; these include restrictive migratory policies, the growing importance of the informal economy, demand for cheap labour in the services sector (including the provision of care), growing inequalities in wealth between and within countries, lack of alternative ways to travel, and legal documents – the absence of which increases the likelihood that would-be migrants will be smuggled and/or trafficked.

The trafficking routes in the world of today are from Latin America via the Middle East to Europe; from South East Asia to Northern Europe and the Middle East; from Eastern Europe and West Africa to Western Europe; from Burma to Thailand, China, Malaysia, Singapore, Japan, the Philippines and other countries in the region to Australia, New Zealand and Taiwan. The main countries of origin are situated in Central and Eastern Europe, Africa and Asia. The same country can function as a sending, receiving and transit country, since international trafficking has no simple one-way pattern. The sections that follow will examine the difficulties arising from the lack of a generally agreed definition of trafficking and smuggling – which, in turn, reflect differing interests and policy objectives – and responses to trafficking. Observations will be

made of the consequences of these two specific forms of human mobility, looking at the trafficking of women for prostitution, smuggling, and the trafficking of children and of human organs. Attention will be paid to the 'insecurities' and 'vulnerabilities' (of a social, economic or political nature) of the victims of these practices, and their inability or reduced ability to protect or defend themselves against the associated risks and uncertainties, and to cope with their negative consequences.

Definitions and legislation

The UN Trafficking Protocol (UN 2000: 2) defines human trafficking as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of *exploitation*. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The act of movement can be classed as either smuggling or trafficking, because it is only once the individual is exploited that they become a trafficking victim. An individual who *voluntarily* leaves their country of origin, places themselves under the services of a professional smuggler and is forced into illegal labour in the destination country is someone who began the process by engaging in criminal activity but is later classed as victim of trafficking because *coercion* and *exploitation* were involved in the process.

The US Victims of Trafficking and Violence Protection Act (TVPA) of 2000 (US Department of State 2000), on the other hand, defines severe forms of trafficking in persons as: '(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery'. This definition of trafficking shares much in common with the Trafficking Protocol, although it excludes any mention of the trade in human organs (Mattar 2003: 163). Indeed, the

recommendations and requirements set out in the Trafficking Protocol are largely mirrored in the TVPA in terms of criminalisation (sections 110, 112), victim protection (section 107) and international cooperation (sections 105, 106, 109).

One key difference to be highlighted is that Article 4 of the Trafficking Protocol makes it clear that the definition of human trafficking refers only to transnational movements, excluding transfer within national borders. Only the Council of Europe declared it, in its Convention of Action against Trafficking in Human Beings to be applicable to 'all forms of trafficking in human beings, whether national or international' (Council of Europe 2005: 3). This lack of consensus has caused some confusion over data collection, with NGOs, international organisations and government reports split over the issues. For example, Laczko and Gozdziaik (2005: 239) voice concern about the narrowness of definitions when applied to data capture, commenting that 'while the overall framing of the [US State Department Trafficking Protocol] report is trafficking in persons, most of the content and data are confined to sexual exploitation'. Prior to 2000, international conventions on human trafficking focused narrowly on sex trafficking and forced prostitution, known as 'white slave traffic'. The broadened definition received a warm reception from NGOs and other agencies which had been campaigning for this (Beate and Belser 2009: 129). Another criticism levied against the Trafficking Protocol came from Anne Gallagher, a former adviser on trafficking at the office of the UN High Commissioner for Human Rights, who wrote that 'the principal emphasis of the protocol remains firmly on the interception of traffickers rather than the identification and protection of victims' (Gallagher 2001: 994). The UN, in trying to strike a balance between making requirements stringent but not so stringent that the number of signatories is lowered and poorer states are overburdened financially with the related bureaucratic procedures, seems to have chosen to put emphasis on enforcement in the criminalisation of the trafficker, rather than on the care of the victim. Furthermore, ironically, the potential for the protocol's border control measures to limit further the rights and opportunities of individuals for legal entry, and stronger measures to criminalise carriers which do not take care to check travel documentation, is responsible for a large, though unaccountable, share of human trafficking.

Article 5 of the Trafficking Protocol determines the requirements for criminalisation, although it does not provide specific sanctions against offenders; the latter were left to the participant states (Ebbe and Das 2008: 11). Criminalisation has become an integral part of national

anti-trafficking legislation, seen mainly in the adoption of the Protocol's definition, facilitating the enforcement thereof in matters ranging from police investigations to judicial rulings, and in an increase in the severity of sentences for those found guilty of committing any of the acts mentioned in the definition, bringing offenders to justice and deterring potential criminals. Countries which have ratified the Trafficking Protocol have witnessed an increase in prosecutions; for example, since the Sexual Offences Act of 2003 and the Asylum and Immigration Act of 2004, there had been thirty convictions of trafficking in the UK by June 2006 (Gupta 2007: 251). Furthermore, in recognition of the international nature of trafficking, in attempting to bring about the legal enforcement of the criminalisation of human trafficking outside the boundaries of national borders, the European Court of Human Rights has taken a serious stance on trafficking, framed within Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms. January 2010 marked its first successful judgement for human trafficking in the case of *Ranstev v. Cyprus and Russia*. Despite the fact that 'human trafficking' is not mentioned in the 1950 European Convention, the European Court of Human Rights found that it nevertheless fell within the scope of Article 4 of the Convention (prohibiting slavery, servitude, and forced or compulsory labour).¹ Only two cases have resulted in a judgement under this Article, the first of which was the *Siliadin v. France* case in July 2005, a case of forced labour in conditions of servitude. The fact that trafficking is not mentioned in this somewhat dated Convention has led some critics to argue that the Court has ruled beyond the scope of the Article in the *Ranstev v. Cyprus and Russia* case, pointing out that a definition of trafficking has already been accepted in the Council of Europe's Convention on Action against Trafficking in Human Beings, but insisting that the Convention at present is stepping beyond its boundaries (Allain 2010). By contrast, the Rome Statute founding the International Criminal Court (ICC) includes the crime of trafficking within the definition of slavery:

'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.²

Prosecution as a means of combating human trafficking, however, is limited in its effectiveness. Doubt remains over the real impact of prosecution in terms of deterring potential traffickers. A study undertaken

by the IOM concludes that 'in the Netherlands...it has been observed that arrests of a relatively high number of traffickers have not had any visible effect on the number of Nigerian prostitutes in the country' (IOM 2006: 44). With prostitution as one of the main fields in which trafficked women end up, in addition to the complex supply and demand web of networks, Nigerian prostitutes in various European countries comprise a well-recognised at risk group. The concrete limitations of prosecution can be more clearly seen in the difference between the number of victims and the number of convictions, and between the number of arrests and the number of prosecutions (Tiefenbrun 2006/2007: 263). The 2010 Trafficking in Persons Report records 4,166 convictions on a global level in 2009 compared with 2,983 in the previous year (US Department of State 2010: 45). However, the number of convictions does not follow year-on-year growth, but varies widely by year and region. By contrast, figures for the number of victims are recorded for the same regions for the years 2008 and 2009, showing a rise on the global level from 30,961 to 49,105. Figures can be expected to vary in terms of prosecution rates because of the high degree of organisation in this particular kind of crime. Thus, a nationwide police investigation, such as Operation Pentameter 2 in the UK in 2007, may be able to break down a network of trafficking criminals leading to a disproportionately high number of convictions in comparison with time spent on regular police work in this area. However, in general, the number of convictions represents only a comparatively small proportion of police arrests. The UK Human Trafficking Centre (UKHTC) records that, at the time of publication, of 406 suspects arrested and charged with trafficking in Operation Pentameter 267, only 15 were convicted under the same charge. This highlights the bottlenecks in the trickle-down effect from the international UN Trafficking Protocol to national-level criminal investigations on the one hand, and, on the other, the problem of relying on convictions to measure the effectiveness of and priority given to national anti-trafficking legislation.

The methods employed and encouraged by the UN Trafficking Protocol for the purpose of preventing the rise in trafficking, in conjunction with stringent border controls in destination countries, consist of sanctions placed on countries ranked in tier 3 of the Trafficking in Persons Report, and awareness-raising in origin countries (Art. 9(2)).³ In September 2003, the then US President Bush imposed sanctions on Burma, Cuba and North Korea, because these countries neither complied with minimum standards under the TVPA, nor made any efforts to do so (Bishop 2003: 226). The Trafficking in Persons Report has been praised for its

name-and-shame tactics in encouraging countries to conform in this way, witnessed most clearly in the case of South Korea, ranked as a tier 3 country in 2001 and tier 1 in 2002, following a significant improvement in efforts made (Tiefenbrun 2006/2007: 275). Interestingly, though, countries ranked in tier 3 are often those lacking any kind of diplomatic relations with the US and, as such, are unlikely to budge at the publication of its opinions. The 2010 report, for example, includes Burma, Cuba, Iran, North Korea, Sudan and Zimbabwe in the lowest category, none of which are on friendly terms with the US – which gives rise to the suspicion that matters which are unrelated to trafficking, but that are affecting other key international concerns, may influence the final ranking.

Awareness-raising in sending countries includes publicity at ports and embassies, documentaries and films, provision of hotlines where individuals can obtain advice on the reliability of employment prospects before travelling abroad (Nieuwenhuys and Pécoud 2007: 1677–1681). These measures are based on the understanding that one of the main push factors behind migration lies in the distorted or absent information available in source countries regarding the job market potential and welfare status in popular destination countries. Nieuwenhuys and Pécoud argue that such campaigns serve to reinforce the perception of migrants, particularly women, as victims, in that the latter are described as ‘naive and defenceless victims of cruel... traffickers; being ignorant, they are unaware of what awaits them and therefore vulnerable’ (*ibid.*: 1684). Thus, the reasoning behind trafficking awareness-raising largely consists of a specific strategy to deal with the particular need to ensure potential migrants are able to make decisions with access to objective, reliable information. Unfortunately, hijacked as an anti-immigration measure in an attempt to prevent unwanted economic migrants, the information made available cannot be said to meet this requirement; neither, in conjunction with the border control measures set out in Article 11, does it assist in the prevention of human trafficking. Nevertheless, information campaigns are an effective way of controlling both the supply and demand sides when used correctly, and therefore constitute a positive step forward, albeit with greater checks and balances needed.

Progress could continue along this line, with governments taking a closer look at the trends which increase migration and migrant vulnerability. Significantly, measures should include greater control over employment, particularly in sectors with known high rates of migrant workers. In fact, organisations such as Kalayaan are lobbying MPs to allow greater freedom to domestic workers who suffer abuse at the

hands of employers, such as retention of documents (e.g. passports) (see Lazaridis 2000; 2007); but, in the face of deportation, they continue working under conditions of servitude and abuse, or potentially become victims of trafficking (see Chapter 4).

Other recommendations refer mainly to the increase in legal methods of entry and the regularisation of the illegal/undocumented workforce (Berggren 2007; Gupta 2007) (see Chapter 7). However, while this may provide a degree of safety for those who have already reached the destination country, it does nothing for those either in transit, or still in their country of origin. Measures that combine both prevention and protection measures can reduce the vulnerability of potential migrants and protect those in risky employment situations. However, the success of such measures is often shaped by public opinion, and rising xenophobia and racism (Togral 2011) which is, in turn, fuelled by mass media anti-migrant reports (see Lazaridis and Wickens 1999).

Human rights

Universally claimed as a breach of human rights and an attack on human dignity, trafficking in human beings is seen to remove a person's freedom, violating the protection set out in Articles 1 and 4 of the Universal Declaration on Human Rights. Human rights are those granted on no basis other than that a person merits these rights, simply because that person is a human being, irrespective of their nationality, ethnicity, age, colour, sex, sexual orientation (UN 1948); they transcend territorial boundaries and national legislation. Human trafficking is recognised by the Trafficking Protocol as being a violation of human rights, which forces governments to translate this moral wrong into legislation which condemns offenders and protects potential victims. This consists of criminalising the act of trafficking by introducing sentences to penalise perpetrators and deter potential traffickers; protection is granted to trafficking victims on the basis of their human right to seek refuge in a safe country without fear of immediate deportation. However, the Protocol is restricted to *recommending* measures to protect this human right, and does not oblige signatories to implement legislation in this regard. Hence, there is a compromise here between human and state interests as regards victim protection. In fact, the enforcement of human rights is a notoriously thorny issue surrounded by ferocious debate, most particularly when violations thereof are deemed to warrant intervention to the disregard of national sovereignty. Moreover, human rights are limited in terms

of their own credibility, and are coming increasingly under fire for imposing a Western, essentially Christian moral law on a world full of diversity. For example, the Universal Declaration of Human Rights has been seen to disregard cultural differences regarding the value of women and children. One way in which this affects the debate on trafficking relates to the definition of a child (Gupta 2007: 271). Whereas the Trafficking Protocol stipulates that a child constitutes an individual under the age of 18, non-Western cultures may argue that the age be dropped significantly, potentially affecting both sentencing and data collection. However, champions of human rights have insisted on the fact that these rights are inalienable and that they define the absolute minimum requirements to ensure respect for humanity. This, then, is the view taken by theorists who approach the trafficking phenomenon from a human rights perspective, convinced that cultural variations have no place when it comes to criminalising such an atrocity.

Aside from criminalisation, the human rights approach demands victim protection on the grounds that the victims are human, irrespective of their legal status. The Trafficking Protocol outlines various ways in which countries should consider providing protection to recovered victims of trafficking. These include the provision of suitable housing, emergency medical care, and assistance in legal proceedings, including an interpreter where language barriers require it. In providing these, immediate deportation must be avoided and, instead, it recommends the implementation of measures to allow victims to remain in the country in which they are discovered, at least temporarily. Article 13 of the Council of Europe's Convention on Action against Trafficking in Human Beings stipulates a thirty-day reflection period for suspected victims that is not conditional on their willingness to cooperate with police investigations, and for the duration of which states are obliged to provide accommodation, emergency medical care and legal aid among other forms of assistance (Council of Europe 2005: 8). Although classed as a protection measure, no state has hidden the fact that their generosity towards victims is conditional on their willingness to help in the furtherance of prosecutions. However, countries which have been more generous in terms of the reflection period have benefited from greater cooperation of victims in the long term. For example, Italy 'has found that many women who initially would not testify against a trafficker would do so after being given a few months in a safe location' (Bishop 2003: 227). The same has been the case in Norway, the Netherlands and Belgium (Skrivankova 2006: 231). Italy eventually introduced Article 18 to protect victims of trafficking by granting those in danger and under

the protection of NGOs with a stay permit. The US grants T-visas to genuine victims for a period of three years. However, of the 5,000 T-visas available each year, only 1,178 were issued between 2002 and 2007 inclusive, falling significantly below the estimated 50,000 trafficking victims who enter the country every year (Morehouse 2009: 117). The gap between what could be done by states to protect victims and what actually happens is a clear reflection of national struggles between protection of their territorial sovereignty and the inalienable human rights of trafficking victims. Thus, in order to be truly generous to the deserving victim while continuing to send a clear message to those who would attempt to penetrate the borders through irregular means, anti-trafficking legislation is met with anti-immigration legislation, setting distinct boundaries between the two. Often national interests prevail over human ones.

Victimisation and criminalisation alone do not provide an effective solution. Unregulated forced labour, as well as unenforced employment legislation in destination and source countries alike, plays a significant role in maintaining human trafficking. Many of the products purchased in the industrialised world have, at some point along the production process, benefited from forced labour: 'it is impossible to get dressed, drive to work, talk on the phone, or eat a meal without touching products tainted by forced labor' (US Department of State 2010: 31); it provides a simple means of lowering prices, with minimal consequences if caught (Konrad 2002; Berggren 2007; Beate and Belser 2009). Forced labour, classified also as 'slavery', sometimes defined as an aspect of human trafficking (UKHTC) and sometimes vice versa (the International Labour Organisation – ILO), is also included as a violation of human rights. In the UK, this situation came to light in 2004 when 21 Chinese cockle pickers working for a gangmaster were drowned in Morecambe Bay, resulting in the passing of the Gangmasters Licensing Act in order to avert further tragedies. The ILO estimates that there are 12.3 million forced labourers in the world, 77 per cent of whom come from the Asia and Pacific region, 11 per cent from Latin America and the Caribbean, 5 per cent from sub-Saharan Africa, 3 per cent from industrialised countries and only 2 per cent from the Middle East and North Africa (Belser *et al.* 2005: 2). Many forced labourers may have been trafficked, in that they have been subject to exploitation in the same way as other trafficked victims, but within the bounds of national territory. The ILO calculates that 20 per cent of all forced labourers are victims of trafficking, with wide variations between the regions of the world' (see also ILO 2008). However, there are problems with definitions, as some

researchers will categorise sexual exploitation as part of forced labour and others will differentiate between the two.

Trafficking of women for sexual exploitation

Globalisation has provided the conditions for the establishment of a global market in sex, of which migrant women form an integral part (Freedman 2003). In addition, the complex, sometimes chaotic and uncontrolled transition of Central and Eastern Europe from a strongly controlled society to an open market economy meant that, for increasing numbers of women, paid sex became the only source of income. Some women migrate to find employment, and enter the sex industry once they are abroad. Others combine sex with other activities to boost their income, while others enter Europe with the help of commercial networks, end up indebted to them, and enter the sex industry 'voluntarily' to pay their debt bondage. Campani (2007: 81–82), referring to the situation in Italy, identified three main levels of activity with regard to the organisational structure of trafficking groups:

1. high-level activity, which relates to transnational and ethnic organisations that plan and deal with the transfer of people from the country of origin to the country of destination;
2. medium-level activity, which involves criminal organisations responsible for the operational phase of the journey;
3. low-level activity, which is represented by minor criminal organisations responsible mainly for enabling border crossings.

All these levels are, according to Campani (*ibid.*), simultaneously present in the countries concerned. Such groups may be small in size and flexible, and are usually controlled by transnational networks often involved in other illicit activities, such as drug trafficking, money laundering, forgery of documents, and so on.

The debates over the trafficking of women have framed the issue in terms of women from poorer countries falling victim to unscrupulous male traffickers; however, as Freedman (2003: 127) argues, 'trafficked women make up only a minority of those migrant women working in the European sex industry'. Women do make decisions to work in the sex industry as an alternative path for survival (Sassen 2000) and for the 'freedom to behave independently from their previous cultural norms' (Lindqvist 2007: 267), thus challenging patriarchal control within the family and society. However, most of the migrant sex workers are

undocumented and increasingly vulnerable to exploitation, *ultimate abjectification* and violence (physical, sexual and psychological), which they rarely dare to report.

Regarding Greece, as I stated elsewhere (see Lazaridis 2001: 23–24), the type of violence experienced is either coercive (this takes the form of blackmailing), or a form of punishment (beating, destruction of personal belongings, withholding of money or documents) either for something the woman has done, or as a warning. These types are often combined depending on the relation of the woman with the trafficker. Violence is characterised by a hierarchy in which, at the top, we find murder and, at the bottom, continuous threats and humiliation. In an interview carried out with a Greek scientist, Lazos, who has undertaken fieldwork with trafficked women in Greece, he said:

Many of these women vanish, and since they have no documents no one looks for them, or are scarred for life. In this way, the pimps get rid of them – a woman with a big scar can never work as a prostitute again – and make threats to other women credible.

The woman knows that if she does not obey, she will be punished.

The complexity of forms involved in women's migration, which range across a continuum from deception and abuse to informed decision making, must not be understated. In contrast to the dichotomy between the perpetually victimised passive 'repressed subject' and the image offered by Kapur (2001: 885) of migrant women as 'resistant subjects', what we have here is a much more complex schema, where the migrant women's agency is neither 'free and unfettered' (*ibid.*), nor 'enslaved' and devoid of the ability to exercise choice. A multi-tier system develops in the country of destination, based on the heterogeneity of trafficked women for prostitution, as well as racialised and ethnicised perceptions and stereotypes (Lazaridis 2001).

As an example, once in Greece trafficked women are ranked by body size and country of origin; at the top of the scale are the Russians; then the Ukrainians, because they are tall, slim and blonde; and, at the very end, the Latin Americans, Africans and Albanians. The prices charged to the client not only depend on the country of origin, but also on various crude racist stereotypes which enjoy wide circulation in Greece. For example, the Russians and Ukrainians are described as pleasant, interesting, polite, educated, refined, 'women who have class'; the Albanians are described as dirty, untrustworthy, rogue peasants with no manners. These negative stereotypes, which reflect socially constructed hierarchies

of nation, ethnicity, religion and 'whiteness', have contributed to the placement of Albanian prostitutes at the bottom of the hierarchy, occupying a space on their own, away from the 'others' (Lazaridis 2001). In this context, 'whiteness' is constructed as a racialised position. 'Invisible others', once upon a time not excluded on the basis of membership of race groups (after all, they are white, too), are now becoming subject to different forms and degrees of prejudice, discrimination, disadvantage and violence. In the case of the Albanians, in particular, an *a priori* cultural difference is bestowed on them through a process of racialisation; that is, the difference is naturalised and embodied in an idea of cultural difference as being static, given and undesirable. A further polarisation which is created between those working in the streets and practising prostitution for very low prices and those who retreat to safer environments has created tensions between different ethnic groups who struggle to control certain districts. Therefore, one must avoid homogenising the experiences of white migrant women trafficked for prostitution and working as prostitutes; rather, one must pay attention to difference and try to comprehend the multiple forms of discrimination and degrees of *abjectification* that exist, and the way these are produced and maintained.

As has been shown, a woman is highly vulnerable if she is trafficked in a foreign country; most do not know the local language, have no income or other monetary means, and, as a result, are helpless and desperate, being isolated from society and totally dependent on a perpetrator. This isolation and resulting vulnerability is accentuated by being transported from one place to another, spending one week in one destination, the next week in another, preventing them from forging any meaningful long-term relations with each other and with members of the host society – hence depriving them of the opportunity to form political representation of their 'voice'. The described commodification, *abjectification* and resulting vulnerability has influenced trafficking sentencing policy, particularly in cases of trafficking of children and minors.

There has also been a rapid expansion in the number of marriages arranged by commercial intermediaries, involving men from well-off countries in the West and women from other parts of the world. The arrival of the Internet means that Western men can view women from Russia or Southeast Asian countries 'online'. Even so, the circumstances in which marriage brokers should be categorised as traffickers remain unclear, even in the cases of young women and men aged under 18 years. According to a report on child trafficking by the *Terre des Hommes* Foundation (2004: 25), the most clear-cut cases of trafficking

into marriage remain those reported in China, where a combination of the one-child family policy and the migration of young women to work in cities has resulted in a shortage of brides in many areas. Reports about trafficking in the Mekong River region, particularly in China's southern Yunnan province, note that trafficking of women linked to marriage seemed to reach a high point in the 1990s and may now be on the decline. These differ from *mail-order brides*, a label applied to women who publish their intent to marry someone from another (usually more financially developed) country.

Child trafficking

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN 2000),

child trafficking is the recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation. It is a violation of their rights, their well-being and denies them the opportunity to reach their full potential.

Article 1, paragraphs (3) and (4) of the 2002 Council of Europe Framework Decision on Combating Trafficking in Human Beings explicitly states that, in the case of trafficking in persons below 18 years of age, the offence:

shall be a punishable trafficking offence even if none of the means set forth in Paragraph (1) (coercion, force, threat, abduction, deceit, fraud, abuse of authority or position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved) have been used (Council of Europe 2002).

The following case studies are taken from research that has been done into the experiences of children who have been trafficked in the United Kingdom (undertaken by ECPAT (2009), cited by Glasgow Child Protection Committee 2013).

Forced labour

In one case, a 16-year-old Bangladeshi child was found in a restaurant as a result of a police and UK Border Agency raid on illegal workers. The boy was unable to speak English. The family who owned the restaurant allegedly 'bumped into' the boy at either Heathrow or Gatwick airport

and took him home to central Wales. They denied that he worked in the restaurant but it is believed that he does. The boy is the subject of an ongoing joint investigation by police and social services. However, he has been allowed to remain with this family during the investigation.

Forced marriage

A girl from Pakistan was brought over to Wales to live with her aunt, who did not have parental responsibility. She did not attend school for at least two years, and they frequently changed address. Aged approximately 12 years, the girl was sent back to Pakistan for an 'arranged marriage', and became pregnant. Despite giving birth to a baby at the age of 13, no referral was made regarding the young person until her baby suffered a suspected non-accidental injury.

The following cases of child trafficking were reported in May 2011 by Townsend in *The Guardian* newspaper (Townsend 2011):

(a) The case of Hien

Hien, from Vietnam, arrived at Heathrow in 2009 as an unaccompanied child. Charity workers now believe that his family had been forced to agree to him being trafficked to Britain, but at the airport the British authorities got to him first. He was initially placed with foster carers and 10 weeks later the 14-year-old moved into supported lodgings. But two days after that, Hien disappeared. The traffickers who had arranged his flight to the UK had caught up with him. He resurfaced six months later, when police raided a cannabis factory in the capital. According to campaigners, along with sexual and domestic servitude, forced labour in cannabis factories is one of the most common forms of exploitation of trafficked children. Hien was arrested on drug charges and appeared before a youth court. Only later, when sent to a young offenders institute and assessed, did it emerge that the teenager was a victim, not a criminal. As a result, he was placed into local authority care in 2010. A fortnight later he went missing again.

(b) The case of Ling

Ling came to the attention of police and immigration officials during a raid on a Chinese restaurant in Birmingham. According to her testimony, she had been trafficked from Fujian province two years earlier and forced to work in a brothel. Raped repeatedly and beaten daily, Ling was warned she would be killed if she tried to escape. The orphaned teenager told officials her life was in danger. Although she

should have been placed in local authority care, she was released. One year later, she was re-arrested for holding a fake passport. This time officials passed her details to the national referral mechanism, the government's system for identifying and protecting suspected trafficking victims. The 16-year-old warned social services that her captors would come for her. During this period, witnesses report a Chinese man loitering outside the building where she lived. In June 2009, the Home Office wrote to Ling explaining they did not believe she had been trafficked. Four days later she disappeared. There has been no recorded sighting of her since.

Of the statistics that do exist, most corroborate claims that at least half of all trafficked youngsters in state care disappear. Of 80 children identified as trafficked over an 18-month period in northern England, 56 per cent went missing, according to one study (Townsend 2011). The UK's principal human exploitation unit, Scotland Yard's specialist crime directorate-9, does not deal with child trafficking. Instead, the issue falls under SCD-5, the Metropolitan Police's child abuse command, and more specifically Operation Paladin, which safeguards children at London's ports by investigating and advising on child trafficking matters. The Child Exploitation and Online Protection Centre (CEOP), the sole government agency to produce reports on child trafficking, has disbanded its child trafficking unit. Only one quarter of police forces have adequate child protection units. One of the most successful initiatives tackling child trafficking, Operation Golf, which disrupted extensive rings operating from Romania, was wound down at the end of last year and publicly there are no plans to resume operations (Townsend 2011).

Despite a proliferation of international human rights treaties, labour laws and humanitarian laws that should provide children with special protection from trafficking, the trafficking of children is a widespread phenomenon. In a leaflet issued on 12 June 2003 to mark World Day against Child Labour, ILO-IPEC suggested that 1.2 million children were being trafficked globally every year (ILO 2002: 18). The Organization for Security and Cooperation in Europe estimates that 200,000 individuals are trafficked annually from Eastern Europe, a significant proportion being children. In the UK alone, between 1999 and 2003, some 250 children were rescued from trafficking (*BBC News* 2006).

The vulnerability of children that traffickers and others exploit concerns their reduced capacity to assess risk, to articulate and voice their worries (about being exposed to danger) and to look after themselves (both in the sense of being able to meet their own needs to find

food and shelter, and to take action in self-defence). The capacity of children to recognise risk and look after themselves increases as they get older and is deemed to have reached an 'adult level' by the time they turn 18, although young adults of 18 or 19 remain more vulnerable in this respect than older adults.

There are also important distinctions to make between categories of children who are trafficked. The key variables here are gender (girls versus boys) and age (distinguishing between adolescents who are almost adult and younger children). Although international standards are unequivocal in defining *all* young people below the age of 18 as children, the UN body that guards the standards for children's rights, the Committee on the Rights of the Child, has recognised that adolescents have different needs than younger children and that different measures are required to ensure their rights are respected. This is certainly true for adolescents who are exploited by traffickers. Young people aged 15 and older are already breadwinners in many societies, and may be used to making decisions about their own lives. They have the same right to seek a better life as adults. This does not mean, however, that governments can abdicate responsibility for giving them the protection to which their age entitles them. At both national and international levels, the trafficking of girls and boys has been treated as if it were the same as the trafficking of adult women, as if they all experienced the same abuse and required the same sorts of protection. This approach demeans adult women, implying that they are just as dependent and vulnerable as children. It also means that specific needs that children have are not being addressed.

Trafficking in children is directly associated with their subsequent exploitation by other people in a way that violates their human rights – usually by being forced to make money for them by working, but also – in the case of babies who are trafficked for adoption; and of young women trafficked for marriage, prostitution or pornography; or to work as domestic servants or beggars; or to perform work that is hazardous and endangers their health or life – to satisfy the demands of those who take control of them in other ways. All are characterised by constraints imposed on the movement of the children involved, who are virtually held captive. However, the degree of force or intimidation which is needed to control a young child is very different to the coercion used on older children (or adults) and, hence, has a profound effect on the children concerned, which require forms of treatment that are correspondingly different to those needed by children who have been programmed like robots to work long hours as domestic drudges, or as workers in sweatshops, or in the fields.

In a horrifying number of cases, the individuals who traffic children and make money out of them during their exploitation are either close relatives or close friends of the family of the child involved. Teenage Albanian girls, for example, are reported to have been trafficked by both relatives and fiancés known to their families. The issue here is not so much the 'criminal' mentality of the traffickers but, rather, the fact that social and family cohesion and values have been weakened to such an extent that they no longer deter such forms of deception and exploitation.

A Channel Four television documentary, 'Cutting Edge: The Child Sex Trade', first screened in Britain in 2003, showed how the authorities largely ignore the trafficking of children from Eastern Europe (Tyler 2003). The documentary exposed how Western paedophiles were visiting Romania posing as tourists, and were then procuring boys for under-age sex. The price of a girl trafficked to Italy can be between US\$2,500 and US\$4,000, with up to US\$10,000 being paid if she is a virgin. According to a French human rights organisation, Albania is the country most involved in the sex trade, with women and children being lured to go to the West with false promises of marriage, jobs or education. When they get there, there is no husband, no job and no education. Alone, in a foreign land, without any means of support, experiencing violence and coercion, thousands of Eastern European children and teenagers are being reduced to commodities in a trade in human misery. They are bought and sold like chattels to satisfy perverted sexual appetites, to provide slave labour, or, worst of all, to be 'harvested' for their organs and body parts so that the rich and their children can live at their expense.

Child trafficking, which is often referred to as a form of slavery, has attracted the attention of the media, NGOs, governments and the public. To curb the movement of children across borders, governments have put in place legislation to prosecute traffickers and NGOs, and international child protection organisations have made serious and sustained efforts to eliminate such trafficking by prosecuting traffickers, organising coordinated action plans and rescuing trafficked children with the establishment of shelters and centres for victims (UN Department of Labor 2009). However, it has been argued (see De Lange 2007) that such efforts are unlikely to be effective and benefit the children and their families, if one takes into account the socio-economic situation and needs of the families of these children. UNICEF also works with communities to change norms and practices that exacerbate children's vulnerabilities to trafficking. Protecting trafficked children requires timely victim identification, placing them in a safe environment, providing them with

social services, health care and psychosocial support, and reintegration with family and community, if it is proven to be in their best interest. UNICEF assists by supporting the training of professionals working with children – including social workers, health workers, police and border officials – to deal effectively with trafficking.

Trafficking in human organs

As with trafficking in persons for other exploitative purposes, victims of trafficking for the purpose of organ removal are selected from vulnerable groups (for instance, those suffering from extreme poverty) and traffickers are often part of transnational organised crime groups. The commission of this crime can be distinguished from others in terms of the sectors from which traffickers and organ ‘brokers’ derive: organ trafficking often involves doctors and other health care practitioners, ambulance drivers and mortuary workers, in addition to the actors involved in other criminal trafficking networks.

Trafficking in the organ trade is an organised crime, involving a host of offenders. The recruiter who identifies the vulnerable person, the transporter, the staff of the hospital/ clinic and other medical centres, the medical professionals, the middlemen and contractors, the buyers, the banks where organs are stored are all involved in the racket. The entire racket is rarely exposed, so the dimensions are as yet unclear. Furthermore, issues of consent and exploitation related to organ removal are complicated by the fact that often (but not always) victims will consent to the removal of their organs and will receive the agreed payment for them. However, as is common in situations of trafficking in persons for any exploitative purpose, the provision of the ‘service’ is driven by extreme poverty and abuse of vulnerability. Poor people can reportedly earn between US\$3,000 and US\$15,000 by commodifying their bodies and selling their organs, specifically kidneys, to middlemen who re-sell them to wealthy buyers for as much as US\$200,000. An auction of a human kidney on eBay in February 2000 drew a bid of US\$100,000 before the company put a stop to it. Another auction, in September 1999, drew US\$5.7 million – though, probably, merely as a prank. In a 2009 report on organ trafficking, the Council of Europe and the United Nations concluded that there was possibly a high number of unreported cases, attributing this to the huge profits and rather low risks for the perpetrators. International organ trafficking is a big business, with an estimated value of US\$50m in 2008 (Kates 2002).

Trafficking in organs is a crime that occurs in three broad categories. Firstly, there are cases of traffickers forcing or deceiving the victims into giving up an organ. Secondly, there are cases of victims formally or informally agreeing to sell an organ and being cheated because they are not paid for the organ, or are paid less than the promised price. Thirdly, vulnerable persons are treated for an ailment, which may or may not exist, and in this context organs are removed without their knowledge.

The stories are grim and often impossible to confirm: illicit clinics, corrupt doctors and global networks dealing in human flesh. The following stories were published in the *Sunday Times* by Mark Franchetti (2001):

The last time Makhbuba Aripova, a young woman from the central Asian republic of Uzbekistan, saw her husband Farkhod he was about to set off for a new life in Canada. Makhbuba, five months pregnant, was due to join him when their first child was born. Days later his remains were found in plastic bags dumped in their home town of Bukhara, 2,500 miles southeast of Moscow. Nearby lay the mutilated bodies of his sister and brother-in-law and their three children, who were to emigrate with him. Investigators believe they are among dozens of victims of a ruthless gang of traders in human organs who lure people to their deaths with promises of jobs abroad.

Last week in Bukhara Alima Korayev, her husband Ferudtin and their son Dzheykhum went on trial for murder with two alleged accomplices, one of them a doctor. When police raided the Korayevs' house last December they reportedly found bags containing human body parts from which organs had been removed. There were also 60 passports belonging to people who had vanished, together with £6,000 – a huge sum in a country where the average monthly salary is £10. Police say this may have been the proceeds of organ sales. 'I will never recover,' said Aripova, 21, who miscarried after her husband's body was found. 'Farkhod wanted me to leave with him, but I was afraid because of my pregnancy so I postponed my departure. I kissed him goodbye and thought I would see him again in Canada. He was cut into pieces. He was 23. How could anyone do this?'

The victims had arranged their trip through Kora, a company set up last year by the Korayevs. For a small fee they promised jobs in Canada and Australia, plus visas and work permits. Dozens came forward in a country plagued by poverty and unemployment. Investigators believe that, with the doctor's help, the Korayevs killed their clients before removing kidneys and other organs which were smuggled to Russia.

Their final destination is not known, but some suspect it was Turkey. After the gang was held last December, a senior customs officer at Bukhara's international airport committed suicide. Police think he may have helped to smuggle body parts. The Korayevs admit the killings, saying the victims owed them money, but deny trading in organs. The authorities in Uzbekistan, a Soviet-style police state, have imposed a news blackout on the case for fear it will damage the country's image. The trial is closed, except to victims' relatives. Many have fainted at the evidence; others have had to be restrained by police. 'The Korayevs' house looked like a butcher's shop,' said one investigator. 'The victims were usually held for a few days in a flat. They were told they had to pass medical tests and receive jabs. Farkhod and his relatives were held captive and fed on little more than lemon juice to cleanse their systems before they were killed.'

Desperate or naive migrants such as those in these two stories become easy prey to professional traffickers in what is now one of the most profitable forms of organised crime, and are subjected to some of the most horrific forms of coercion and exploitation, vulnerable at the disposal of their captors (Konrad 2002: 7).

Organ harvesting operations flourish in Asia (in the Philippines, where it was briefly legal in 2007–2008), in Turkey and Iran, in Central Europe (mainly in the Czech Republic), and in the Caucasus (mainly in Georgia). Penumbral middlemen and surgeons operate on Turkish, Moldovan, Russian, Ukrainian, Belarusian, Romanian, Bosnian, Kosovar, Macedonian, Albanian and assorted East European donors. More and more patients are travelling to China, where at least 68 offences carry the death penalty and executed prisoners provide a rich source of supply. The Chinese government vehemently denies the practice, but only one month before the time of writing a patient died after receiving an executed prisoner's kidney in Guangzhou, according to a report in the Hong Kong newspaper *Cheng Bao*.

An international transplant mafia based in the former Soviet Union is allegedly capitalising on America's organ-shortage crisis. In 2012/2013, about 86,000 Americans are waiting for a transplant; 6,124 (about 17 each day) died in 2011 for want of an organ. Live donors are smuggled into the country to sell their lungs and kidneys, the *Daily News* has learned. Although the sale of human organs is illegal in the United States, and transplants are strictly regulated by a complex congressionally mandated priority system that results in years-long waits, illicit organ donors from Moldova, the poorest country in the former Soviet

Union, enter the United States – mostly at Kennedy Airport – on false student or tourist visas. They are whisked to hospitals where their organs are removed and sold. The Moldovan connection, the first organised organ-selling crime ring uncovered in the United States, takes advantage of the vast difference between the need for lifesaving organs and the scarcity of supply. *The Washington Post* reported in November 2002 that, in a single village in Moldova, 14 out of 40 men were reduced by penury to selling body parts. In the Philippines, in ‘one-kidney island’, there are well over 3,000 donors. Moreover, at the Second Global Consultation on Human Transplantation of the World Health Organization (WHO) in March 2007, it was estimated that organ trafficking accounts for five to ten per cent of the kidney transplants performed annually throughout the world. Patients with sufficient resources in need of organs may travel from one country to another to purchase a kidney (or liver), mainly from a poor person.

In 2006, 11000 transplants were performed in China from executed prisoners. There were 8000 kidney transplants, 3000 liver transplants and approximately 200 heart transplants. The 8000 kidney transplants alone in China in 2006 would account for at least 10 per cent of the total number of annual organ transplants done in programs of organ trafficking. It should be noted that since China’s recently adopted Human Transplantation Act that bans commercialism was adopted in May 2007, China has reduced the number of transplants to foreign patients by 50 per cent in 2007. Nevertheless, the reduction in Chinese activity has been supplanted by an increase in Philippine organ trafficking... Transplants conducted in countries with loose or no legal frameworks such as that of Pakistan, the Philippines and Egypt accommodate the organ market and the transplant tourists that drive the demand. (Budiani-Saberi and Delmonico 2008: 927–928)

Lately, in the shadow of the Syrian civil war, a growing number of refugees are surviving by illegally selling their organs. The link between human trafficking and organ trafficking has not been clearly established. Yet, when one compares organ trafficking in terms of coerced sale of organs to trafficking in women for sex work, one can see there are some similarities. Both sets of ‘survivors’ frequently face stigmatisation and discrimination in home communities because of what they ‘have done’. Moral arguments condemn outright the use of the body in that way (i.e. the sale of sex or a body part). Root causes of both types of trafficking are

poverty and discrimination, though gender discrimination may be less significant in relation to organ trafficking in some countries. Despite these similarities, the degrees of *abjectification* between the two differs, and arguments for and against legalisation of the sex or organ trade to combat trafficking cannot be equated. From available research in countries where organ trafficking is a problem, it seems that selling an organ does not improve one's economic position and, for those living in poverty without access to medical care, does pose health concerns. These health concerns must be comprehensively addressed in any regulated system of organ 'sale'.

According to the *Daily News* 15 December 2010, the prime minister of Kosovo since 2008, Hashim Thaci, a former leader of the Kosovo Liberation Army (an ethnic Albanian guerrilla force that fought against Serbian forces and troops loyal to Slobodan Milosevic in 1998 and 1999) is the *capo* (short for *caporegime*, a captain in the Mafia) of a shady organisation responsible for smuggling weapons, drugs and human organs across Eastern Europe. The Council of Europe's report, which, according to *The Guardian*, cited FBI and other intelligence sources, alleged that henchmen from Prime Minister Hashim Thaci's inner circle smuggled Serbian prisoners into Albania after the Kosovo war in the late 1990s, and murdered them for their organs, which were then sold on the black market (*Daily News* 2010).

The Council of Europe in 2005 (Council of Europe 2005) and the United Nations in 2008 decided to prepare a joint study on trafficking in organs, tissues and cells (OTC) and trafficking in human beings for the purpose of the removal of organs. Due to a lack of ratification from states, many loopholes are left allowing perpetrators to continue their business in countries where legislation is less strict. Unfortunately, this involves a much higher risk that nationals of that state will become victims of trafficking in humans. However, even states which have ratified these instruments and implemented their provisions have so far generally not paid attention to the organ removal issue, and so the problem continues. However, several international standards are in place on trafficking for the organ trade; for example, trafficking in persons for the purpose of the removal of organs is addressed by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The inclusion of this form of exploitation in the protocol was intended to cover those situations where a person is exploited by a trafficker who seeks to obtain a profit in the 'organ market' as well as situations in which 'the removal of organs and/

or body parts is for witchcraft and traditional medicine' (SVD publications 2009: 26).

In addition, the Optional Protocol on the sale of children, child prostitution and child pornography (2000) to the UN Convention on the Rights of the Child (1989) states that the sale of children for the purpose of transferring their organs for profit should be a criminal offence. Moreover, the Guiding Principles on Human Organ Transplantation (1991) of the WHO state that the commercialisation of human organs is 'a violation of human rights and human dignity'. An Additional Protocol to the European Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin (2002) prohibits organ and tissue trafficking, deriving a financial gain or comparative advantage from the human body and its parts, and calls on states to provide appropriate sanctions for such trafficking.

Nevertheless, the response to trafficking in organ trade has been pretty lacklustre. Considering the serious health implications and the severe human rights violations of the vulnerable victims, it is essential that this issue receives the desired attention. This requires several steps, including the following:

- appropriate laws in sync with the UN Protocols and principles;
- stringent law enforcement in member states against all those involved;
- training and orientation of the law enforcement agencies, as well as the medical staff who are likely to be drawn into the commission of the offence;
- generation of awareness of the vulnerable sections and public awareness posters and display boards, and so on to be made mandatory at the health centres where health care is ordinarily provided.

At the European Union level, Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (OJ L 102, 7.4.2004) stressed the need to promote information and awareness campaigns at national and European level on the donation of tissues, cells and organs based on the theme 'we are all potential donors', in order to help European citizens to decide to become donors during their lifetime and let their families or legal representatives know their wishes. Provision in Article 12 (2) stressed that member states must take all necessary measures to ensure that any promotion and publicity

activities in support of the donation of human tissues and cells comply with guidelines or legislative provisions, and include appropriate restrictions or prohibitions on advertising the need for, or availability of, human tissues and cells with a view to offering or seeking financial gain or comparable advantage. In addition, Article 3 of the European Union's Charter of Fundamental Rights declares the right to the integrity of the person and provides that everyone has the right to respect for their physical and mental integrity; this includes the free and informed consent of the person concerned, according to the procedures laid down by law, and the prohibition on making the human body and its parts, as such, a source of financial gain.

Because of the steady increase in the need for organ transplantation in Europe, coupled with the fact that safety issues are often ignored in illegal commercial organ transplantation and organ trafficking and also the rapid growth in transplant tourism, the European Parliament in 2007 launched a new initiative. Following the Commission Communication, on 22 April 2008 the European Parliament stressed that it looked forward to the Commission proposal for a directive laying down quality and safety requirements for organ donation, procurement, testing, preservation, transport and allocation across the EU and the resources needed to meet these requirements, but did not wish it to create an additional administrative burden. With regard to organ transplantation, reducing the organ (and donor) shortage were described as the main challenge that EU member states face; the European Parliament therefore looked forward to the Commission's Action Plan for strengthened cooperation between member states in order to 'increase organ availability, enhance the efficiency and accessibility of transplantation systems, increase public awareness, and guarantee quality and safety', but pointed out that member states are responsible for their own legal model ('opt-in', 'opt-out'). Furthermore, it underlined the need to ensure that organ donations stay strictly non-commercial, and endorsed measures which aim at protecting living donors and ensuring that organ donation is made altruistically and voluntarily, thus ruling out payments between donors and recipients, any payment being confined solely to compensation which is strictly limited to making good the expense and inconvenience related to the donation. Additionally, the European Parliament called for a European donor card, complementary to existing national systems, and to promote World Donor Day, the establishment of a transplant hotline with a single telephone number managed by a national transplantation organisation that can be reached 24 hours a day and is

staffed with appropriately trained and experienced professionals who can rapidly provide relevant and accurate information.

The European Parliament highlighted the link between organ shortage and organ trafficking, stating that organ trafficking undermines the credibility of the system for potential voluntary and unpaid donors. It emphasised that any commercial exploitation of organs is unethical and inconsistent with the most basic human values and, amongst other things, asked the Commission and member states to take measures to prevent 'transplant tourism' by drawing up guidelines to protect the poorest and most vulnerable donors from being victims of organ trafficking.

Additionally, member states were urged, where necessary, to amend their criminal codes to ensure that those responsible for organ trafficking are adequately prosecuted, including sanctions for medical staff involved in transplantation of organs obtained from trafficking, while making every effort to discourage potential recipients from seeking trafficked organs and tissues, (which should include consideration of criminal liability of European citizens who have purchased organs inside or outside the EU). Lastly, member states were called on to take the necessary steps to prevent health care professionals from facilitating organ and tissue trafficking, as well as health insurance providers from facilitating activities that directly or indirectly promote trafficking in organs; and to sign, ratify and implement the Council of Europe/United Nations study *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*.

Concluding remarks

Trafficking is a complex, underground, illegal activity that changes rapidly. Part of the reason is the hidden nature of the phenomenon and the inconsistent definition of trafficking, as well as the problem of unreliable, often contradictory, statistics on trafficked victims, frequently contaminated with ideological and moral bias (Loff and Sanghera 2004; Kangaspunta 2010). The EU continuously adapts its response in relation to the growing complexity of the situation: for example, Directive 2011/36/EU, the appointment in the late 2010 of an EU Anti-Trafficking Coordinator, the launch of a new anti-trafficking policy website, the EU strategy towards the eradication of Trafficking in Human Beings adopted in 2012, the Council of Europe's decision to approve in November 2013 a draft Convention against trafficking in human organs. This is also reflected in the development of specialised EU agencies, such as Europol,

Eurojust and CEPOL, which provide information and advice, prepare and take decisions, oversee operations and support policy making. However, prevention, protection and assistance to victims of trafficking are said to be inadequate in many countries. Anti-trafficking law enforcement is riddled with implementation problems. The multifaceted conditions of trafficking described in this chapter often function as a justification for intensifying border control in the name of protecting the victims of trafficking; immigration policies become progressively more restrictive, while assistance to trafficked women has been relegated to a proximate or even subordinate status. However, more restrictive immigration policies (rather than the creation of better economic opportunities for women at home and the regularisation of sex work by implementing standard workplace regulations against abusive practices) may contribute to the growth of illegal migration, including trafficking. These policies are likely to restrict the movement and activities of women, rather than end their exploitation in the sex industry. Trafficking is an international criminal problem, an immigration issue, a human rights issue, a labour issue, a gender issue and an unequal international economic relations issue, closely linked to 'the changing social, political and economic conditions associated with globalisation' (Lindqvist 2007: 257).

6

The Securitisation of Migration

International migration has not always been considered to be a security issue. Traditionally, security studies, a sub-field of international relations, have been concerned with the 'use by actors of force and violence' (Kolodziej 2005: 27), and analysis of security issues has mainly focused on the military dimensions of state behaviour and inter-state relations within the context of foreign policy (Evans and Newnham 1998: 490). Under conditions of scarce resources, states or individuals face a trade-off between the degree of security which the actor wants to achieve and the opportunity costs a certain degree of security entails (Kolodziej 2005: 30–31). With the end of the Cold War and the hectic search for new potential security risks that followed, new ideas in the security debate emerged, and topics surrounding economic security, health, environmental and migratory issues were incorporated in a hitherto militarily-centred debate. With the loss of bipolarity and the associated disappearance of an external threat to Western security, the security agenda widened. The Copenhagen School broadened the concept of security, identifying five interrelated sectors: economic, political, societal, environmental and military. The state is not the only referent object anymore (Emmers 2010: 137). 'Security is not considered as given, instead the conception of security policy depends on human agency and moral choice' (Karyotis 2007: 2).

Migration, in particular, was increasingly considered a security threat; security analysts redefined the term and integrated the issue of migration into the study of security. Nowadays, migrants are associated with organised crime; harming national identity; and threatening the economic, social and political stability of the host state (Ceyhan and Tsoukala 2002: 22). Thereafter, a new understanding of the relation between population movements and security was developed (Gibney

2002: 40), which Hollifield (2000: 154–155) describes as ‘securitisation of migration’, whereby migration is declared to be a security problem requiring immediate political action. By matching a term with the word ‘security’, political elites and the media construct a security issue that calls for special measures (Weaver 1995: 55). The question is how and why this shift has occurred in framing migration as a threat to security – in particular, national security – and to what extent migration undergoes a process of securitisation. The answer to this question is complex, as the connection between migration and security is challenging and problematic, because ‘it depends on who is defining the terms and who benefits by defining the terms in a given way’ (Choucri 2002: 97).

According to Huysmans (1995: 60–61), Western security approaches evaluate the migrant as an existential threat to a state’s society and, therefore, to the survival of the state itself. Processes of inclusion and exclusion are applied by the host society whereby migrants and asylum-seekers are labelled as ‘the stranger’ or ‘the alien’ or ‘the danger within’, ignoring their legal status and differences in ethnic origin, language, religion, and so on. This generalisation, homogenisation and simplification of immigration leads to multiple forms and degrees of exclusion, and to the *abjectification* of migrants, who, constructed as a threat, are the subjects of securitisation.

European societies are capable of coping with and absorbing large numbers of migrants who impact positively on the host country’s wealth and human capital. However, while some level of immigration is considered to be acceptable and beneficial, a large and, in particular, uncontrolled inflow of migrants into a state’s territory bears risks (Coleman 1992; Weiner 1995). Such an inflow may even contribute to the dissolution of society, in the sense that large concentrations of foreigners in a specific area can impact significantly on class, ethnic and other social structures within a society and thereby exacerbate existing tensions (Hollifield 2000; Schmitter Heisler 2000).

At the same time, scholars of migration and refugee studies began to pay more attention to the security of individuals. ‘Security’ increasingly became a term used in relation to people (as opposed to states) as a way of linking humanitarian, social and economic issues in the context of human suffering (Human Security Initiative 2011). So, when defining the concept of security in the context of migration it is essential to determine whose security is being discussed – the security of states or the security of migrants, or both. Former Secretary General of the UN Kofi Annan provided a comprehensive description of the term ‘security’ and how the concept had changed since the end of the Cold

War. He said: 'During the cold war, security tended to be defined almost entirely in terms of military might and the balance of terror. Today, we know that "security" means far more than the absence of conflict. We also have a greater appreciation for non-military sources of conflict. We know that lasting peace requires a broader vision encompassing areas such as education and health, democracy and human rights, protection against environmental degradation, and the proliferation of deadly weapons. We know that we cannot be secure amidst starvation, that we cannot build peace without alleviating poverty, and that we cannot build freedom on a foundation of injustice. These pillars of what we now understand as the people-centred concept of "human security" are inter-related and mutually reinforcing' (Human Security Initiative 2011).

An analysis of the broadened understanding of security, in addition to the notion of securitisation, leads to two conclusions. Firstly, the notion of security differs according to the way the term is being defined. Secondly, Western states differ in their reasons for securitising the issue of migration. According to Faist (2004: 9), the migration phenomenon is often used as a 'meta-issue' in the 'migration-security nexus', because of its expansibility and its utilisation for connecting social problems (such as crime, unemployment or shortages in the civil sector) to security. Within the recent political and academic debates surrounding the migration-security nexus, Sommer and Warnecke (2008) argue that there are four central threat scenarios. The first is the fear of massive flows of irregular migration that put enormous pressure upon a receiving nation's border controls and economic standing. The second is the fear of a growing imbalance between immigrant and existing resident groups in the recipient country, which are often exaggerated to create an impression that migrants are taking unfair advantage of jobs and housing. The third threat is that of poor integration levels, the creation of parallel societies in which the two groups mix little. Fourth is the fear of possible terrorist attacks.

In terms of *economic security*, migrants are often accused of creating 'a substantial economic burden by straining housing, education, and transportation facilities' (Weiner 1992/3: 114). Economic security of receiving countries is further endangered by the influx of migrants who are considered to create further unemployment and drive down wages while living and social costs rise. Especially in times of crisis, migrants are depicted as a burden on the state, and become scapegoats, experiencing discrimination (Koser 2011: 78). However, this argument is one dimensional in that it does not take into account the importance of migrants as a driving force of EU economic development in today's

greying Europe as it tends to have 'a positive effect on product demand and therefore on labour demand' (Commission of the European Communities 2003: 10). The UK-based bank Barclays announced in 2005 that ethnic minority business was contributing £15 billion to the UK economy and accounting for 11 per cent of new business start-ups (Barclays Bank 2005). Moreover, according to Karyotis (2011: 21), 'in 2001 ...immigrants contributed £2.5 billion more taxes than they consumed in tax-supported services in the UK'. The German government, recognising the need of migrants as well, initiated the 'green card', a programme which allows highly skilled migrants, particularly in the IT sector, to work and live in Germany (Adamson 2006: 186). However, as shown in Chapter 2, the brain drain of highly skilled workers from non-European countries to EU member states such as Germany, the UK and France has serious implications, as it weakens the economic and state security of developing countries and widens the gap between 'the wealthiest and poorest members of the international state system' (Adamson 2006: 187). Hence, in economic terms, Western states somewhat benefit from migration, while there tend to be negative impacts on sending countries. This compromises international security because it increases the gap between the developing and developed worlds in the international state system.

Another question is to what extent international migration can provide an answer to the demographic problem of an ageing Europe and its consequences for the funding of the welfare system (especially in the current economic crisis), in which the cost of undocumented migrant carers in the southern member states of the EU, whose welfare regime is rudimentary (see Katrougalos and Lazaridis 2003), is unaffordable. On the other hand, the welfare argument can function as a reason for rejecting unwanted migrants on the basis that migrants and asylum-seekers would exhaust resources. Illegal forms of employment can have serious negative consequences – especially for the migrants themselves, as they face bad working conditions, long working hours and poor pay (see Chapter 1).

The migrant can be viewed as a threat to *societal security*, the shared common identity of the majority, by establishing an unbridgeable duality between 'us' and 'them', or more precisely between Western society and the cultural other. This is based on cultural homogeneity being perceived as essential for the survival of the state (Guild 2005: 102). The difference between cultures would be too huge for groups to live peacefully side-by-side, and would lead to a 'clash of civilisations', and an end to state security. Multiculturalism (see Chapter 7) is not seen as a solution but,

rather, as the 'cause of societal disintegration'. These arguments may all seem very reasonable. However, they are unbalanced.

The other side of the coin is that clashes between natives and migrants regularly happen (Ceyhan and Tsoukala 2002: 29). Religion is often used as a dividing line between cultures; for example, in France, where the wearing of the burqa has been prohibited in public spaces (see Chapter 4). The perception of other cultures as threatening and damaging to that of the host society is often found in the securitisation discourse. This form of new racism is often accompanied by xenophobia, and reaches its climax in times of economic recession, which allows right-wing populist parties or groups (such as the Golden Dawn in Greece, the English Defence League) to gain popularity, with serious implications for societal and political security.

Political security is the third axis of the migration–security nexus. This consists of the organisational stability of the nation state and its sovereignty (Stivachtis 2008: 16). The media and various political elites often complain that migration undermines state sovereignty. Sovereignty itself is a fluctuating concept, with three key elements: territory, people and an authority. The state has the 'monopoly over the legitimate use of violence within the territory' (Guild 2009: 177). The function of state sovereignty is to control the population and the state's resources (Ceyhan and Tsoukala 2002: 33). Critics argue that a state without control of its borders loses control of its population, and as a consequence loses its sovereignty. If borders are porous, terrorists and criminal networks can use migration flows to enter, and thus endanger the internal security of the state and its population (Adamson 2006: 176–177). Degrees of perception as to how threatening this may be vary from one member state to another; but what countries share is a sense of awareness of the necessity for stronger interstate cooperation in order to achieve more effective border controls.

Although this argument is reasonable in the case of weak and failing states, it seems to be overstated with regard to European states, where there is a high density of border controls (Baubock 2004: 53). Moreover, the ongoing globalisation process, incorporating a conscious shift of state sovereignty to the supranational level, is much more of a challenge to the autonomy of the member states than migration.

In contrast, the argument for the securitisation of migration for political reasons seems more plausible in explaining the migration–political security nexus. Political parties and leaders often have an interest in how the migration issue is presented (Teitelbaum 2002: 158). As mentioned, migration flows into a country are often interpreted negatively by the

media as being indicative of the inability of the government to control its population and to safeguard the state's resources, and are seen as challenges to state power, sovereignty and national identity. For example, the Swiss People's Party made an explicit link between migration and national security on a poster which portrayed migrants as 'black sheep', while the Swiss citizens were the 'white sheep' (Sommer and Warnecke 2008: 23). Fuelling xenophobia and racist attitudes, such perceptions during an election period may or may not secure votes. However, securitising the migration phenomenon and applying a restrictive migration policy certainly increase the likelihood of political survival. In this regard, Bigo (2002: 63) goes a step further, arguing that not only do politicians benefit from a securitisation of migration, but also many security professionals – such as the police, border controls, secret services and private security companies, as it can be used as an argument to increase their resources and budgets.

Another argument is that the government of a host state can use migrants from a specific sending country to put pressure on that country to influence its policies. This can result in changes to bilateral relations between host and sending countries, with implications for both national and international security.

In terms of the threat posed to *national identity*, the international human rights framework, together with new notions such as transnationalisms and diasporic identities, has challenged identity perceptions based on a myth of primordial origins that prove enduring over time. However, discourses in favour of securitising migration often argue that protecting the integrity of the people against influences brought about by the presence of foreigners on the territory of the state is paramount for the protection of national identity. A consequence of describing migration as a threat to national identity has been the creation of a sense of existential threat; migrants have been framed as people who are generating danger to our way of life and who threaten our ontological security. The perceived need to find a means of escaping from this existential threat functions as a vehicle for legitimising the state's actions. In other words, securitising migration 'constructs political trust, loyalty and identity through the distribution of fear and an intensification of alienation' (Huysmans 2006: 47). It is manifested in the political space when the state establishes principles and rules which come to define the relationship of the political community with those who are defined as a threat. When such principles are established, they are responding to an interaction between the demands of the host society and those of the migrants, who are calling for political responses and generating

governmental anxieties in the elites. Clearly, the political response will be biased towards the perceived interests of the host society. In other words, the way politics is addressing migration can be understood as an administration of (use as a tool to manipulate) *trust* and *fear*. Trust is not obtained by generating fear about the 'other', but a *distance* is established between the political unit and those who must be feared. Determining who is to be feared is crucial, as uncertainty regarding who may be dangerous generates that existential threat. So, migration policy is often the result of the establishment of an interpretation of threat that will legitimate the actions to be taken by the government. This leads to a logic of inclusion and exclusion, who is the 'us' and who is the 'them', who is the *subject* and who is the *object*, who is to be injected into the host society and economy, and who is to be rejected.

The traditional way of doing this is citizenship, formal (legal status) or substantive (which involves rights and duties as an instrument of the political community, enabling internal security, stability and identity). The latter is what provides a sense of loyalty and belonging. When states try to include all those they classify as citizens, at the same time they exclude those who are not considered part of that particular society (see Chapter 7). The fear of including those who are excluded is linked with concern about the boundaries of citizenship. As Huysmans (2006) argues, the securitisation of migration involves the establishment of instruments to manage exclusion; that is, ways of dealing with migrants by taking distance from the threat they represent, generating unity of the host community against the 'other'. This process of securitisation through the creation of fear, leading to migrants being conceived of as a threat, is often used by politicians – not only those located on the right, but also those on the left – when they put forward arguments in favour of controlling inflows, more monitoring, citizen involvement – Britain for the British – as a way to maintain or gain electoral support and power.

Migration is also seen as influential in diplomatic and military affairs. Diasporas can sponsor lobbying and public relations activities affecting the domestic politics of the host country. States with international influence can mobilise those diasporas in their favour for foreign policy aims, or take advantage of their nationals abroad to assist in accomplishing certain goals. Militarily, migrants have played a role as soldiers in wars and as developers of weapons, while, in the world of sports, member states have offered naturalisation to those foreigners who are believed to have the potential to win medals in Olympic Games, because this is of evident benefit to its national interest.

And herein lies the *security conundrum* of international migration. In order for a state to meet its moral obligations to provide economic, social, political, religious and physical refuge for those who seek it, it must open its doors to a vast number of people. However, many of the circumstances which have driven these migrants to leave their homes are also those which give rise to desperate and radicalised individuals, who seek to address their grievances through violent force, rather than through changing their personal situation. Perhaps the great domestic security challenge of the post-9/11 age is to find an arrangement which allows the state to honour Rousseau's *social contract* between itself and its citizens, affording them protection from any and all threats, while simultaneously providing migrant communities with the level of respect and dignity to which they are entitled, and avoiding any association between government policy and the anti-immigration ideals of far-right populist groups. It would seem fair to state that international terrorism is an extreme test of the degree to which national immigration policies continue to be relevant in an increasingly borderless world (*The Guardian* 2009).

The last sector of the migration– security nexus is the *criminology* axis. Progressively, immigration is becoming associated with criminality, organised criminal networks and terrorism, particularly following the 9/11 terror attacks. The question is the extent to which the linkages between migration and crime are real, and in which regard they are overstated. The emergence of organised criminal networks poses a challenge to the state, as they often work underground to smuggle and traffic migrants through borders (see Chapter 5). There are approximately 800,000 people trafficked across borders every year (Polaris Project 2010), which poses a challenge not only to the security of the borders, but also to internal security, as most trafficked people end up working illegally in the destination country.

In addition, as Leiken (2004: 6) argues, migration and terrorism are taken to be clearly linked 'not because all immigrants are terrorists but because all, or nearly all, terrorists in the west have been immigrants'. He points out that most terror attacks – for example, on 11 March 2004 in Madrid (train bombings), 7 July 2005 in London (tube and bus) and the Toulouse shootings of 2012 – have been carried out by immigrants or citizens of ethnic minority descent (Angenendt 2008: 8; EU Observer 2008). Leiken notes that, in the aftermath of the events, it soon became clear that the perpetrators had significantly distanced themselves from the native population of the host nation, often condemning the society through defiant video statements. The parameters of the threat are

diffused by the variety of tactics employed to carry out such attacks, which extend beyond the near caricature of terrorists as 'bombers', and include forced occupation of or attack on iconic buildings, and hit-and-run shootings aimed at certain ethno-religious groups in order to spread fear among a group smaller than the country's general population, as in Toulouse in 2012.

Others oppose this argument by stating that, although the growth and spread of organised criminal networks has become crucial in facilitating flows of irregular migration, as smugglers provide a wide range of services from physical transportation to procurement of false documents, the link between migration and terrorist attacks is overstated (Faist 2004), and that Europe has witnessed a series of terror attacks by Europeans, including the Basque ETA, the IRA and others. Also, it has been argued that the link between terrorism and migration is exaggerated, as terrorist groups are now able to operate without physical migration, as social networks use modern technology and the e-environment to recruit and train without crossing borders.

However, a relationship between migration and the new type of transnational terrorism is irrefutable. The main argument is that illegal migration is used by transnational terror organisations to infiltrate Western countries (Leiken 2004: 6). Likewise, politicians in Europe see a connection between migration and terrorism. Michael Howard (a leading party member of the UK Conservative Party during the Thatcher and Major years) stated that 'we have lost control of our asylum and immigration system. At a time when Britain faces an unprecedented terrorist threat, we have little idea who is coming into or leaving our country'. But when an aspiring terrorist needs only a mobile phone or internet connection, or commercially available chemicals and ordinary electrical components, the efforts of state security forces seeking to locate and apprehend such individuals must be incredibly broad in scope, while seeking a target that is exceedingly narrow, potentially as small as a single individual, or a cell comprised of a handful of individuals. The absence of any outward insignia, symbol or uniform causes public outrage and abhorrence of terrorism to become diffused, and directed not at the culprits themselves, but at anyone who happens to fit a preconceived (and often ill-informed) profile of a terrorist. Take the Pakistani community as an example, owing to their status as one of the groups most frequently targeted by government counter-terrorist initiatives in Britain. There were around 442,000 Pakistani-born people recorded as living in the UK (Office for National Statistics 2012) in June 2011, nearly all of whom identify themselves as Muslim, another highly

targeted group. When we consider that only one racialised individual is required to carry out an attack capable of killing and injuring hundreds of people, we see that the odds are greatly stacked against the state, and the margin for error on the part of the security services is rather large. As of midnight on 10 November 2011, the British Home Office banned the group 'Muslims Against Crusades' (MAC) making 'membership or support for MAC a criminal offence, punishable by "up to 10 years in jail"' (*BBC News* 2011). Similarly, an Islamic charity based in Birmingham named 'Islamic Dawah Centre International' was placed under investigation by the Charity Commission after it had invited the controversial Indian Preacher Dr Zakir Naik to speak at one of its conferences, as well as reportedly selling books written by Sayiid Qutb, a fundamentalist imam from Egypt said to have inspired Osama Bin Laden to establish al Qaeda (*The Guardian* 2001). These groups were identified as potential security threats because of their central position within a migrant Muslim community, providing a platform for views which lie outside the political, social and religious mainstream of the host country.

In many ways, it seems that it is this group-based method of radicalisation that does the most harm for relations between migrants and their host country. By allowing such organisations to put down roots within their communities, first- and second-generation migrants are often, by proxy, seen as guilty by association. The result is that the entire community risks being tarred with the same brush and viewed with suspicion by the native population. Another example is that, in March 2009, the Home Office launched Contest 2, a revised counter-terrorism strategy for the UK which laid down a number of initiatives for tackling terrorism including several criteria by which the Home Office would define 'extremists'; one such criterion identifies an 'extremist' as one who argues that Islam bans homosexuality and that it is a sin against Allah. In this instance, although the parameter set forth is much more likely to identify those of more conservative religious beliefs, by explicitly referencing Islam, the Home Office has effectively 'securitised' an entire community – specifically, one which should be at the heart of government's efforts to bring radicalised individuals and groups back into the fold of peaceful society. At the same time, the migrant community is likely to feel itself the target of government policy, increasingly alienated from mainstream society. The government thus undoes much of the progress previously achieved towards the greater engagement of migrant communities, potentially resulting in a long-term breakdown of trust between the two parties and the development of the view that migrants are an 'untrustworthy group'. This, in itself, is a dangerous form

of prejudice, one which poses a sense of threat not just for economic and social security, but also for one's own survival.

In 2010, a scheme named 'Preventing Violent Extremism', which seeks to abate extremism through funding community projects and charities, was placed under review by the Home Office after a report by think tank Demos that it had raised tensions and focused too much on law abiding citizens (*London Evening Standard* 2010), and warranted a strategy of damage limitation by the government. Extraordinary pressures are placed on state governments to be seen to act decisively on highly sensitive security issues, and this appears to be a more desirable option than failing to act at all. Initiatives such as those described here attempt to appease those with a vested interest in anti-terrorism or anti-migrant policies, in the tabloid media and populist far-right groups, rather than to provide practical and effective countermeasures to the 'imagined' threat of Islamic violence¹ posed by incoming migrants from developing nations.

The relationship between migration and organised crime is even less clear than its connection to terrorism. Migration is often associated in the media with trafficking of drugs, arms and persons, as well as smuggling. However, finding quantitative data about the connection of these phenomena is difficult because transnational crime networks operate in secrecy. Often, the overrepresentation of migrants in European prisons is used as evidence for the connection between migration and organised crime. However, many authors stress that these data distort reality because many migrants sitting in prison have not been accused of organised crime but, rather, of illegal entry, and that the Western legal system often affects migrants adversely (Ceyhan and Tsoukala 2002: 25–26). Besides, migrants are often victims of organised crime themselves. Therefore, the issue is not only one of state security, but also one of human security. Hence, the connection between migration and organised crime, whether negated or underlined, needs to be evaluated in the context of a triple understanding of security: human security, state security and international security. Nowadays, the link between migration and security is not only associated with control of migration itself, but is also strongly associated with anti-terrorism measures (Bauman 2009: 2).

Furthermore, according to Article 3(b) of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, a state cannot expel or extradite a person to a state where there are substantial grounds for believing that they would be in danger of being subjected to torture. This can create a conflict of interests when a

migrant is a security risk to the host country but is protected by international law. This is demonstrated by the dilemma of the UK over Abu Qatada, a migrant from Jordan living in the UK since 1993, granted refugee status, and fighting against being deported for a bomb attack on the basis that he will be subject to an unfair trial if deported. He has been described as a 'dangerous individual' (*BBC News* 2012). The presence of a suspected terrorist is clearly a state security concern, but all states have an obligation to respect an individual's human rights.

'Everyday crime' poses a very different type of threat to that of terrorism or organised crime, as it is not the physical or political apparatus of the state that is targeted but, rather, the individual citizen. For this reason, the government is required not only to ensure the safety of the general public, but also to prove the viability of its immigration policies by ensuring that the benefits brought to the social and economic standing of the country by migration are not outweighed by the negative effects of increased criminal activity at the hands of the marginalised individuals who inevitably find themselves at the bottom of the economic hierarchy. To continue with the UK as an example, we see once again that immigration has been characterised as a threat by populist media, but the exaggeration is not quite as severe in this instance, as those involved in crime greatly outnumber those involved in terrorist activities by a factor of thousands, and the economic factors linking migrants with crime are clearer to see. With this in mind, however, there is an imperative for governments not to link crime with immigration any more than is necessary – again, in order to protect the credibility of their immigration policies. From September 2010 to August 2011, one quarter of all arrests made by the Metropolitan Police in London were of foreigners, ranging from violent crime to low-level offences such as pick-pocketing (*BBC News* 2012). It is likely that, in dealing with immigrant crime, conventional policing tactics which rely on the presence of police officers and CCTV are of reduced usefulness, given that, for many migrants, crime provides them with a means to sustain themselves and their families financially, rather than simply being a recreational activity born out of boredom, or tendencies towards anti-social behaviour.

To address the issue, there are several alternative options, the first of which is 'regularisation' (see Chapter 7) which provides them with the opportunity to break out from a criminal lifestyle, become legitimate residents of the host country, and legally seek work without resorting to casual day labour, prostitution or illegal forms of employment. The steady, taxable income which this provides thus benefits both the government and the individual.

To sum up, migration does not challenge state security *per se*. But the process of its securitisation has unintended consequences for national security. Securitisation of migration furthers a rejection of immigrants, leading to a rise of racism and xenophobia, and the construction of *les éjectés* and the *abjects*. This, in turn, is likely to trigger migrant anger, aggression and criminal behaviour, and destabilise public order, thus hampering the societal integration of migrants, who experience processes of exclusion which strain the relationship between immigrants and natives (Bauman 2009: 3). Some authors go so far as to argue that the EU's common migration policy, in combination with the military upgrade of the EU borders, encourages transnational organised crime in the form of trafficking of people into the EU, since many migrants will see an illegal smuggler as their only chance to enter (Baubock 2004: 52–53). Therefore, one could argue that it is not migration that is harmful to state security but, rather, its securitisation. Viewing migration as a security issue 'renders the inclusion of immigrants, asylum-seekers and refugees in the EU more difficult. It has an impact on the kind of solidarity, social integration, cultural identity, civility and public order that is promoted in the community' (Huysmans 2000: 771).

It can be argued that there are three distinct dimensions to the relationship between international migration and security (Sussmuth 2008). The first dimension is the lack of security in the migrant's country of origin, responsible for them feeling the need to migrate. The second is the lack of security provided to migrants individually, or as groups, as they make their physical journey from their country of origin to their destination country. The third is the question of state security in the country where the migrant arrives, and also the security of the members of society in this state. Considerable attention is paid to the third dimension, but there is much less focus on the first two. Approaches to the migration–security nexus currently concentrate on introducing higher levels of surveillance, increasing detention and deportation, and on more restrictive policies. The answer is to shift away from conceptualising migration as a security issue and, instead, introduce a new conceptual paradigm which views migration in a positive manner, thereby reducing the scope for ideologically led action.

Consequences

Since the late 1980s, measures to restrict migration have been justified by defining migrants as a source of social trouble (Choucri 2002). This restrictionism has led to the grouping of all types of migrants into a

single policing repression scheme, in which most migrants are seen as 'unwanted others'. In addition, states have tended to adopt the principle of *jus sanguinis* (right of blood) instead of *jus soli* (right of the soil) as a rule for granting citizenship, while naturalisation is subject to a wide variety of requirements, including length of residence, language ability, financial capacity and integration tests. By making the rules strict, member states are sending a powerful message about migration–security linkages. Finally, the fact that states are allowed to expel undocumented migrants not only shows how migration has been linked with security, but also how states can take strict measures to maintain their authority.

States, as they have come to perceive the necessity to increase mechanisms to monitor their borders, invest more on the protection of their borders. More strenuous document checks were established and supported by the Schengen Information System (SIS). Subsequently, other instruments were adopted, such as the Risk Analysis Center (RAC) to predict the challenges posed by the EU enlargements of 2004, 2007, 2013 and 2014. The Centre for Border Guard Training (ACT), and, most importantly, the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), which was created to coordinate joint operations on borders with regard *inter alia* to external borders management and the implementation of joint migrant return operations. The setting up of this agency was prompted by the need to securitise the borders created by the last three EU enlargements (Leonard 2009). Its creation was in line with the Europeanisation of migration monitoring, a process which some have seen as being the first step towards the externalisation of control tools to countries outside the EU (Boswell 2007: 623). Even detention camps were built on the Eastern borders.

Moreover, in 2008 the European Parliament approved a Returns Directive the purpose of which was to establish a structured process for the return of irregular migrants to their country of origin; while it mostly focuses on penalties for migrants who have entered member states illegally, it also provides them with legal protection and other safeguards. The Returns Directive has been criticised for breaching the fundamental rights of individuals, and especially vulnerable migrants such as unaccompanied children and victims of human trafficking. Data obtained from the European Commission Directorate General Home Affairs show that more than 2,500 children were detained in the EU between 2009 and 2010, and were denied access to education. This is a method of criminalising such vulnerable groups, and, according to the Charter of Fundamental Rights of the EU, affects human dignity. The

debate on the application of the Directive guidelines has so far been exacerbated by the increasingly tense policy discourse on immigration, but there is an emerging consensus that, despite the freedom granted to member states in dealing with returns, the legislation is strongly skewed in favour of expulsion of irregular migrants. As it is typically difficult to track voluntary returns to the migrants' home countries (Koser 2010: 184–185), the impact of the Directive on the actual net flow of migratory movements is debatable. One could argue, though, that the legislation represents another building block of a pan-European framework that is pushing migrants out. The legislation has become part of the set of policies aimed at 'externalisation of migration control', which also incorporates readmission agreements with third (transit) countries; such treaties have become the centrepiece of a strategy aimed at 'exporting' tools for migration control to countries outside the EU (Boswell 2003: 622).

All the measures described here have been costly. In 2005, the Commission introduced a budget of €2,152 billion for the period 2007 to 2013, including €14,929 million for the European Neighbourhood Policy. In 2007, in addition to the budgets every state maintained for border controls, the European body had a budget for FRONTEX's 21 aeroplanes, 27 helicopters and 116 boats, all ready to be deployed in an emergency (O'Neill 2006). This introduction of costly measures to prevent illegal migration and secure the EU borders has worked to the advantage of the police organisations which control the borders, but also to that of the private corporations that manage entry to welfare services, and intelligence agencies seeking new activities after the end of the containment and deterrence era to affirm their role as providers of protection and security. All these organisations are what Bigo (2002: 64–65) described as 'professionals in the management of unease'. They, too, invest in monitoring technologies such as surveillance devices, biometric data mechanisms and even border structures erected to impede illegal access by foreigners (Guild 2009). Armaments manufacturers and private corporations associated with security benefit from the trade created by this process. For example, in Ireland, one of the world's biometric research hubs, such systems have been introduced in retail outlets, schools and public premises belonging to organisations such as county councils (see Maguire 2011); other EU member states have similar instruments in place, posing a challenge to the fundamental right of privacy, as well as liberty.

The undesirable effects of the establishment of stricter policies to tackle migration and the investment of large sums of money in various

instruments to deal with the issue include the fact that they can discourage the return of migrants to their country of origin for fear of not being able to re-enter Europe. Moreover, investment in the protection of borders has not reduced the number of migrants intending to cross the borders. 'Even the most heavily patrolled borders do not result in a complete control of individuals' entry onto the territory' (Guild 2009: 52). In addition, the logic of restrictionism has led to smuggling and trafficking activities becoming more professionalised, and fees for such activities have increased. This generates more difficulties for the border control agencies, and further fuels the legitimisation of migration as a security issue. This has also led many migrants to use more dangerous entry routes into Europe, resulting in an increasing number of deaths during the crossing of borders (Koser 2010: 190–191). For example, in 2013 a boat carrying African migrants sank close to the Sicilian island of Lampedusa; 350 migrants died.

Finally, securitisation has brought the development of ethnic animosities, fuelled by the anti-'other' discourse employed by neo-fascist and extreme-right parties and groups in the EU – not just to Europe but to the rest of the world. Securitisation has also been utilised to frame migration as a security concern and to justify the enactment of anti-immigrant legislation. For example, in 2008 in Germany the number of hate crimes hit a record high: more than 20,000.

The failure of such policies to stop migration inflows to Europe, compounded with the negative effects mentioned here, indicates the need to re-think the conceptual and policy approach to migration in the EU. The focus on restricting access to 'Fortress Europe' has had a profound negative impact on the ability of undocumented workers and their families to have access to basic human rights and live without fear of deportation. It has increased the exploitation of undocumented workers by employers, and the inability of migrants to use public services, such as those aimed at ensuring legal protection. In some EU member states, undocumented migrants' children are refused access to schools on the basis of their status; in others, immigration police use the education system as a means of detecting and deporting undocumented families (European Social Watch 2009).

Concluding remarks

This chapter looked at the complex connection between migration and security, and how migration came to be framed as a threat to national security, and the extent to which migration has undergone a process of

securitisation. It then looked at the evidence pointing to the failure of securitisation; as the evidence increases, the EU and some of its member states are now looking at alternative policies based on a combination of the externalisation of migration processes with a more comprehensive focus on the causes of migration flows. For these approaches to succeed, a gradual desecuritisation should take place. In the context of the realist approach to the migration issue adopted by most policy makers, a successful plan to desecuritize the issue is one that would focus on the negative practical consequences of putting security at the centre of the debate. Some authors also suggest stripping out the emotional component from the current debate by re-thinking the concepts of boundaries and hegemonic identity, so that policies can be formulated to tackle the needs of a globalised world, as opposed to focusing on the specific need of a particular country (Buonfino 2004: 49).

The securitisation of migration policy is not a phenomenon limited to Europe of course – US administrations have long adopted a similar approach. What is striking about the European example, though, is the creation of a clear demarcation between ‘us’ and the ‘others’, despite the fact that successive expansions of the EU to include new member states have demonstrated the relativism of the inclusion/exclusion concept, which is likely to undergo further changes in the future, given the rapid ageing of the European population and the ongoing need for skilled and unskilled migrants to fill niches in the European labour market. The crucial question here is where Europe wants to find itself in the next few decades, especially in the light of the current economic crisis which threatens the very foundations of the EU’s political and fiscal institutions, and the turbulence of a changing world. Certainly, securitising migration appears to be a narrow-minded, static and flawed policy response to dynamic issues that require a truly comprehensive global approach.

7

Migration Regime/s, the Multiculturalism Question and Regularisation Policies in Europe

The migration regime emerging in the European Union attempts to use the recruitment of third-country nationals from outside the Union to give flexibility and mobility to labour markets. Vacancies are often filled by non-EU workers, as undocumented non-EU labour from the poorest, most politically unstable parts of the world is drawn into certain niches within the informal labour market. But, at the same time, it makes stringent efforts to distinguish between wanted and unwanted migrants, and forms of migration. The Schengen Agreement was signed in June 1984, creating the Schengen Area, which operates very much like a single state for international travel, with external border controls for travelers moving in and out of the area, but with no internal border controls (and incorporated into mainstream EU law under the Amsterdam Treaty in 1997 – see Chapter 8, for details). Through the Agreement, European countries have increased their willingness and capacity to control unwanted inflows, thus remaining exclusionary. They often use nationalistic values to justify the exclusion of migrants ‘on the grounds that the moral relevance of community membership supersedes the openness of liberal universalism’ (Geddes 2003: 22).

A number of state and non-state actors are involved in this process, ranging from border controls to airlines, truck drivers and so on – truck drivers facing hefty sanctions, if they are caught carrying undocumented migrants. ‘European states have also established complex webs of re-admission agreements with neighbouring states to return unwanted immigrants with migration thus acquiring a foreign policy dimension’ (*ibid.*: 20). At the same time, European integration and cooperation has signified the arrival of restrictive immigration policies, though

the procedures governing legal residence and the rights associated with this – naturalisation and nationality laws, legal rights, political rights, anti-discrimination laws, policies on access to the labour market and welfare, and so on – are left to the jurisdiction of the member states. Denizens (legally resident non-nationals with legal and social rights, but not political rights) are included in welfare states because membership is based on contribution, rather than nationality. However, as discussed elsewhere in this book, migrants are often portrayed as a drain on welfare state resources, thus marginalising those deemed undeserving of benefits. This raises a danger that those groups deemed ‘unworthy’ of being treated as rights-bearing individuals – in particular, non-white, non-Christian immigrants – will be targeted and rendered vulnerable. In addition, arguments about the wearing of the burqa in France (discussed in Chapter 4) are part of a wider debate taking place in Europe about the erosion of national identity through the steady drip of special demands predicated on tolerance for cultural diversity.

European societies have struggled with how to include migrants in their social structures: in this context, a search for ‘models’ has taken place. The French republican culturally unifying model, classed as essentially assimilationist, does not give migrants a place in public space, and is often compared with the Anglo-Saxon model. The Anglo-Saxon model is classed as multicultural, adopting anti-discrimination policies (geared mainly towards the Black and Asian populations). A further model is Dutch multiculturalism, which involves homogenisation versus retention of cultural differences and identities, or the welfare state integration without citizenship of the German *Gastarbeider* system.

Changes are taking place. In France, for example, ‘the rise of claims for difference means that the republican model of integration has no other choice but to integrate with multiculturalism’ (Wihtol de Wenden 2003: 86). In today’s Europe, ‘the existence of very well established ethnic minorities, some of which are tipped to become majorities in the not too distant future, and an increasing reliance on immigration as a source of labour within an ageing domestic population make the imposition of a purely assimilation solution highly impractical’ (Borooah and Mangan 2009: 37). In this environment, a seismic shift from multiculturalism to civic integration in countries such as the Netherlands raised eyebrows in many European societies. Aggravated by the rise in populism in Europe and a range of events in Europe (the Cartoon Affair in Denmark; the murder of the Dutch filmmaker Theo van Gogh in Amsterdam, whose film *Submission* featured one actress playing 4 semi-naked young women, with Arabic Koran texts written on their bare

bodies seen through transparent veils); the riots in the *banlieues* of Paris (areas of low-income apartments and social housing, similar to council estates in the UK) and elsewhere – these being the latest in a series of conflicts focused on minority–majority relations), questions about integration, equality, racism and Islam have become central to a Europe in the midst of economic crisis.

The fear of the ‘other’ often expresses itself in the rise of populist right-wing political movements, such as the Danish People’s Party, defending old ideas of ‘Denmark for the Danish’. A further example is the Golden Dawn in Greece, campaigning under the motto ‘Greece for the Greeks’ and receiving 7 per cent of the popular vote in the 2012 parliamentary elections. This proportion of the votes was sufficient for the party to enter the Hellenic Parliament for the first time, with 21 seats, although following a second election in June, this was reduced slightly to 18 seats (while in the last elections of end January 2015 they gained around 6% of the vote). There is also a belief among the centre-left that multiculturalism has failed to help the intended beneficiaries – namely, minorities themselves – because it has failed to address the underlying sources of their social, economic and political exclusion, and may have unintentionally contributed to their vulnerability and social isolation. Others have voiced stronger criticisms, arguing that multiculturalism fuels competition and conflict between communities because it has exacerbated ethnic differences.

One of the problems is that the word ‘multiculturalism’ often embraces a view of closed, self-perpetuating cultures; ‘in this sense, culture is treated as a “thing”, an object to be possessed and shared by a strictly defined group of people and which sets the group apart from other groups’ (Prato 2009: 3) when cultural boundaries are permeable and culture is a constantly changing entity and exists only in the act of being performed (Baumann 1999). Particularistic multiculturalism, represented by the idea of the ‘melting pot’ – an example being that of the US, which aims at recognising the contribution of each culture to the whole culture of a society – can lead to the radicalisation of cultural differences and the creation of cultural ghettos (Parris 2004).

Others have posed criticisms on the basis that multiculturalism challenges liberal democracies and the fundamental aim to protect the freedom and equality of ‘individuals’ because of its emphasis on the group over the individual (see Barry 1999); these rights are bestowed on individuals and not on groups. ‘In emphasising group rights multiculturalism presents itself as a form of cultural determinism that curtails citizens’ freedom of choice. In practice, in bestowing rights to collectivities,

the state also empowers them with the authority of restricting the individual freedom of their members...confining them to cultural, and sometimes geographical, ghettos, instead of providing them with equality of opportunity' (Prato 2009: 15–16). Others, such as Castles and Miller (2009: 44), argue that, in immigrant societies, multiculturalism only works if the migrants' primary loyalty lies with the place where they live.

On the other hand, critical supporters have criticised such policies for exoticising 'otherness' (Grillo 1998), or identified such policies as mere 'tokenism'. Kymlicka, a multiculturalist, argues that multiculturalism is confusing, as it draws on the ambiguity between polyethnicity and multinationalism. He suggests that the minority rights claims of indigenous people are different from those of migrants and that, therefore, different policies are needed to ensure justice (Kymlicka 2001). Modood (2007), also a supporter of multiculturalism, argues that it provides the basis for democratic citizenship and civic equality. A 'middle view' sees a reined-back multiculturalism as perhaps the only feasible means for the Western world to cope with the issues raised by globalisation, mass immigration and the growth of large and increasing vocal ethnic minorities within Europe's borders (Borooah and Mangan 2009: 36–37).

A number of prominent EU leaders have been rather vocal on the topic. For example, the ex-President of France, Nicolas Sarkozy, declared that multiculturalism was dead in France, and went on to pursue a crack-down on immigrants. According to Sarkozy, those who come to France need to accept that they have to melt together into a single community, which is the national community, and if they do not want to accept that, they will not be welcome. The British Prime Minister David Cameron slated the UK's doctrines of state multiculturalism, stating: 'We have encouraged different cultures to live separate lives, apart from each other and apart from the mainstream. ... We even tolerated these segregated communities behaving in ways that run completely counter to our values'. The German Chancellor Angela Merkel, announced that multiculturalism in Europe had failed, amid a national debate sparked by a racially loaded bestseller written by a German bank official Thilo Sarrazin, arguing that Islam did not fit comfortably with Western values. The message coming out of Germany is that the country does not want to integrate Islamic values into its culture but, rather, to retain its own cultural identity, which those newly arriving should make greater efforts to adopt. Other leaders, such as Belgian Prime Minister Yves Leterme, have joined the critics, cautioning that multiculturalism divides and weakens society, hinting that it should be done away with. Similarly,

in April 2005, Trevor Phillips, the chairperson of the Commission for Racial Equality in the UK argued that the term should not be used, as tolerance for diversity has led to further isolation of some communities and lack of integration.

So should one avoid the 'm' word, (i.e. the term 'multiculturalism'), or move away from the principles of multiculturalism altogether? Vertovec and Wessendorf (2010: 18, 21) argue that, while the word 'multiculturalism' 'has mostly disappeared from political rhetoric', replaced with a 'pervasive emphasis on so-called integration', this 'has not emerged with the eradication, nor even much to the detriment, of actual measures, institutions, and frameworks of minority cultural recognition... Policies and programmes once deemed "multicultural" continue everywhere' (*ibid.*). Certain politicians in Britain for example, have decided not to use the 'm' word, instead favouring terms such as 'diversity', 'pluralism', 'intercultural dialogue' or 'community cohesion'.

Kymlicka (2012) disputes the caricature of multiculturalism as the uncritical celebration of diversity at the expense of addressing grave societal problems such as unemployment and social isolation. He contests the idea that multiculturalism has been a wholesale retreat and that it has failed; he offers an account of multiculturalism as the pursuit of new relations of democratic citizenship, inspired and constrained by human-rights ideals. He also disputes the idea that the spread of civic integration policies has displaced multiculturalism, or rendered it obsolete; he offers evidence that multiculturalism policies have persisted, have even grown stronger, over the past ten years. He considers that these multiculturalism policies have had positive effects, that these are fully consistent with certain forms of civic integration policies, and that, indeed, the combination of multiculturalism with an 'enabling' form of civic integration is both normatively desirable and empirically effective, in at least some cases.

Drawing on the Multiculturalism Policy Index, which identifies eight concrete policy areas where liberal-democratic states – faced with a choice – decided to develop more multicultural forms of citizenship in relation to immigrant groups, in order to measure the extent to which countries have espoused some or all of these policies over time, Kymlicka argues that, while there have been some high-profile cases of retreat from multiculturalism policies, such as in the Netherlands (Entzinger 2006), the general pattern from 1980 to 2010 has been one of modest strengthening. Ironically, some countries that have been vociferous about multiculturalism's 'failure' (e.g. Germany) have not actually practised an active multicultural strategy.

The social-democratic discourse of civic integration differs from the radical-right discourse in emphasising the need to develop a more inclusive national identity, and to fight racism and discrimination. Nonetheless, it distances itself from the rhetoric and policies of multiculturalism. The term 'post-multiculturalism' has often been invoked to signal this new approach, which seeks to overcome the limits of a naive or misguided multiculturalism while avoiding the oppressive reassertion of homogenising national ideologies – a line which would have been inappropriate in multi-ethnic environments marked by cultural heterogeneity, such as contemporary European cityscapes. 'While assimilation and multiculturalism appear to be opposite ideologies, cultural pluralism falls somewhere in the middle; it recognises the positive values of diversity but it does so in conjunction with overarching common values that connect different groups' (Prato 2009: 14).

Multiculturalism is, first and foremost, about developing new models of democratic citizenship, grounded in human rights ideals, to replace earlier uncivil and undemocratic relations of hierarchy and exclusion. Needless to say, this account of multiculturalism-as-citizenisation differs dramatically from the account of multiculturalism as the celebration of static cultural differences (e.g. in cuisine, clothing and music), while neglecting issues of political and economic inequality. According to the citizenisation account, multiculturalism is about constructing new civic and political relations to overcome the deeply entrenched inequalities that have persisted following the abolition of formal discrimination. It is important to determine which of these accounts more accurately describes the Western experience of multiculturalism.

According to Kymlicka (2012: 1), a form of multicultural integration remains a live option for Western democracies, as the main policy change has not been the abandonment of multicultural policies but, rather, the proliferation of 'civic integration' policies. Typically, civic integration can be seen in the form of obligatory language and country-knowledge requirements, imposed at various stages of the immigration process (initial entry, renewed residency and naturalisation) and have been implemented through a range of tests, courses and contracts. Sara Goodman has developed a statistical index of such civic integration policies across Europe (CIVIX), and it shows a dramatic change from 1997, when such policies were largely absent, to 2009, by which time such policies were much more prevalent.

That said, civic integration policies are themselves very diverse in content and form. Civic integration emphasises the importance of immigrants integrating more fully into mainstream society, and

advances a number of core principles, including: employment; respect for basic liberal-democratic values – such as liberty, democracy, human rights, equalities (such as gender equality), and the rule of law; basic knowledge of the host society's language, history and institutions; and the necessity for anti-discrimination laws and policies. Some European countries have developed voluntary approaches that emphasise immigrants' right to integrate, and provide supportive programmes to assist them in doing so. But other countries have made integration a duty, establishing mandatory programmes, and denying immigrants access to social rights or residency renewals should they fail to pass certain thresholds of integration. Countries that are adopting the most coercive forms of civic integration have never embraced the multicultural strategy, such as Denmark, or have dismantled previous multiculturalism programmes as part of the restructuring process, such as the Netherlands. By contrast, those countries that have shifted most significantly in a pro-multicultural direction in recent years, such as Sweden, Finland, Spain and Portugal, have resisted more coercive forms of civic integration.

Another issue concerns the degree of openness of the society and culture of the host country to the visible maintenance and expression of difference. An implicit assumption that prior identities should be relinquished, or at least subordinated and hidden for public purposes, is reflected in a number of ways, including stringent naturalisation tests, or the content of civic integration classes, which differ from one country to another and across many dimensions. Some countries (such as Denmark, Germany and Austria) have adopted an anti-multicultural form of civic integration – one that is coercive and assimilationist. By contrast, countries such as Sweden have adopted forms of civic integration policies that are more voluntary and pluralistic. 'From a normative point of view, the combination of enabling civic integration and multicultural accommodation is the option most in line with fundamental liberal values of freedom and fairness' (Kymlicka 2012: 20).

In light of these arguments, the ideal of multiculturalism-as-citizenisation should remain an option worthy of serious consideration by policy makers but, at the same time, it must be acknowledged that not all attempts to adopt new models of multicultural citizenship have succeeded in achieving their intended effects of promoting citizenisation. Where minorities are perceived as security threats (see Chapter 6), even if minority demands can be voiced, they will, more likely than not, be rejected by the host society and state, and this diminishes any potential for multicultural citizenship. Indeed, much of the backlash

against multiculturalism in Europe is fundamentally driven by anxieties about Muslims in particular, and their perceived unwillingness to integrate into liberal-democratic norms. Moreover, where countries are faced with large numbers (or unexpected inflows) of ‘unwanted’ immigrants – either undocumented migrants or asylum seekers – it often generates a backlash against multiculturalism.

Although in most Western countries there is a strong moralistic objection to rewarding migrants who enter the country illegally or under false pretences (i.e. economic migrants making false claims about escaping persecution) and there is an objection to providing multicultural policies which apply to unauthorised immigrants (since this may encourage more illegal migration), the situation is more complex. The same factors that push for multiculturalism in relation to historic minorities have also generated a willingness to contemplate multiculturalism for immigrant groups and, indeed, such policies seem to have worked well under ‘low-risk’ conditions. However, multiculturalism policies for immigrants have run into difficulties where the situation is perceived as high-risk. Where immigrants are seen as predominantly unauthorised, as potential carriers of illiberal practices or movements, and/or as net burdens on the welfare state, multiculturalism is perceived as posing risks to the interests of the host society’s population, and this perception can override the forces that support it.

On the other hand, one could also argue that these very same factors make the rejection of immigrant multiculturalism a high-risk move, as it can potentially create a racialised underclass (see Lazaridis and Romaniszyn 1998). Indeed, the only viable response to the presence of large numbers of immigrants is some form of liberal multiculturalism, regardless of how these migrants arrived, or where they came from. An alternative has been the adoption of regularisation policies as an attempt to manage some of the risks involved and reduce some of the vulnerabilities to which unregularised migrants are subjected.

Regularisation policies – *les Ejectés*

This section provides a map of practices relating to the regularisation of third-country nationals in the EU member states, and looks at the relationship of regularisation policies to the overall migration policy framework (i.e. how they fit into the framework), gives examples of problems associated with implementing such policies, and examines the potential policy options with regard to regularisation in the light of the present economic crisis.

Regularisation is defined as a state procedure by which third-country nationals who are in breach of national immigration rules in their country of residence are granted a legal status, but are not accorded full citizenship rights. In other words, from in limbo marginalised belongings they have as *abjects*, they move to a quasi-documented status (i.e. they become *éjectés*). The term 'regularisation' is not without its problems either. Some use it to denote *post hoc* legalisations for humanitarian reasons (most of Western Europe), others for *post hoc* legalisation of non-recruited but necessary illegal labour migration flows (southern Europe and France). Yet others use the term 'regularisation' for legalisation of rejected asylum seekers by virtue of the length of procedure (Belgium and the Netherlands), or earned regularisation by virtue of duration of residence, employment record, and so on (e.g. UK, France).

A process called *normalisation* is a process by which a short-term residence status is awarded to people that already hold legal, but transitional, status – such as students or asylum seekers who change their status. The most significant regularisation programmes usually address both residence and work status, although there are programmes which address only the latter. For example, an amnesty in Austria was geared towards care work in particular, and non-compliance with employment and social security provisions. Regularisation programmes are designed to reduce the number of illegally resident third-country nationals but specify employment as a condition for regularisation.

A wider range of policies for granting a regularised status exist across member states. Two distinct procedures can be identified: regularisation programmes (indicating a time limited procedure that does not form part of the regular migration policy framework, frequently involving a large number of applicants) and regularisation mechanisms (indicating a more open-ended long-term policy that involves individual applications and, by and large, a smaller number of applicants on the grounds of humanitarian considerations, or by virtue of long-term residence).

Why do states engage in such programmes? There are a number of reasons for opting to do so, ranging from desire to strengthen the rule of law to reinforcing employment regulations and combating exploitation, and/or to prevent trickling down of wages due to illegitimate competition in the dual labour market.

The first regularisations were implemented in the 1970s – by Belgium, France, the Netherlands and the UK – mainly as a corrective instrument accompanying immigration restrictions and restrictions to access to work. They were implemented together with the introduction of the principle of applying for residence/work permits abroad in Belgium,

France and the Netherlands, and restrictions applying to post-colonial migration in the case of the UK. Since the late 1980s, there has been an increase in the use of regularisations, due to the increasing salience of illegal migration – a direct consequence of more rigid systems of migration control, facilitated by the emergence of global smuggling and trafficking networks (see Chapter 5).

Who are those to be regularised?; mainly those who are not residing legally in a member state of the EU. According to Article 3(b) of the Returns Directive, ‘illegal stay’ means the presence on the territory of a member state of a third-country national who either does not fulfil, or no longer fulfils, the conditions of entry as set out in Article 5 (Regulation EC no. 562/2006) of the Schengen Borders Code (which established a Community Code on the rules governing the movement of persons across borders), or other conditions for entry, stay or residence in that member state. Article 5 of the Schengen Borders Code lists the following entry conditions: possession of a valid travel document or documents giving authorisation to cross the border, possession of a valid visa if required, justification of the purpose and conditions of the intended stay, sufficient means of subsistence both for the duration of the intended stay and for the return to their country of origin or onward travel, no SIS (Schengen Information System) alert issued for the purposes of refusing entry, and the person entering not being considered to be a threat to public policy, health, internal security or international relations of any of the member states. This definition excludes those not staying legally in the territory. Member states have the power to define purposes and conditions of stay, as well as to withdraw a right to stay if conditions are not met. Hence, definitions of illegality vary from one member state to another: there is, in reality, no common admissions policy. It is worth noting that the Commission’s view of illegal stay includes expiry of a visa and residence permit, revocation or withdrawal of a residence permit, negative final decision on an asylum application, withdrawal of refugee status, illegal entrance, expired residence permit.

Types of illegal or irregular status include: clandestine, irregular, illegal, unauthorised, undocumented, *sans papiers*. Three main aspects of legality/formality can be distinguished: entry (i.e. legality of entering the country), resident status (which may change over time), and employment (whether legally entitled to work and/or whether they comply with employment regulations (legal or illegal work). So, taking illegality of entry as a condition, we exclude the other two categories. Taking legality of residence as a condition, we exclude again. A person may

have entered with a tourist visa – thus having legal entry and residence – but be in breach of visa conditions.

Despite this, not all breaches of immigration regulations are sanctioned by termination of stay. To add to the complications, we have third-country nationals in the EU who, according to Directive 2003/109/EC, are holding an EU long-term residence status, and also those who, according to Directive 2004/38/EC, are family members of EU nationals. These two categories enjoy substantial residence rights and far-reaching protection from expulsion under EU legislation, unless it is on the grounds of public security, policy and health. Here, again, we have the dilemma of a gay or lesbian couple, married in a member state of the EU where civil partnership is legally recognised, wanting to reside in a member state which does not recognise civil partnership. How would they transfer their rights as a family member of an EU national? Third-country nationals who are not long-term residents enjoy limited protection from expulsion under EU legislation (e.g. the family reunification directive, Council Directive 2003/86/EC) and also under the European Convention on Human Rights (ECHR). The family reunification Directive is more concerned with regulating the conditions of admission of third-country nationals for the purpose of family reunification than defining the rights enjoyed by family members already resident in a member state. In addition to procedural requirements, family reunification is conditional on meeting housing, income and integration conditions.

Two logics driving regularisations have been identified:

- (a) regularisations driven by humanitarian/rights based logic: here, status adjustment is a goal in itself. It is designed to address policy and implementation failures (e.g. non-enforceability of return, long asylum procedures, backlogs in asylum applications, and so on), and to avoid in limbo situations, as well as to address specific humanitarian criteria (e.g. family ties or other substantial ties to country, ill health) as a complementary form of protection; this type of regularisation is used for temporary protection purposes.
- (b) regularisations driven by non-humanitarian, regulatory and labour market-oriented logic. Again, this is a status adjustment instrument intended to achieve wider objectives. It aims at the re-regulation of the economy (combat undeclared work, enforce social rights and labour standards, promote the integration of irregular migrants through legal integration). This type of regularisation often involves a large number of migrants, and has become an important pathway to legality. Around 75 per cent of all regularisations carried out

between 1973 and 2008 were carried out in Spain, Italy and Greece, and the main target group was undocumented economic migrants.

There are a number of studies on regularisation policies in EU member states. These began to appear in the early 1980s, when regularisations became more common in the context of growing restrictions on immigration and the communitarisation of migration policy through the Amsterdam Treaty. They differ in the way they conceptualise regularisation and the way they classify different measures. A number of studies have been carried out looking *inter alia* at regularisation as an effective policy tool, and at its socio-economic impact. Studies funded by the OECD and published in their 'Trends in International Migration Annual Reports' since the early 1990s have provided important insights on the social and economic aspects of regularisation policies (therein referred to as 'amnesties'), such as the impact of regularisation exercises on labour markets, including the informal economy, and on migration patterns. These are seen as a potential policy tool in a number of member states (OECD 2007: 106).

In the last two decades, there has been a gradual shift from general amnesties towards targeted regularisations. The advantages of the latter are provision of information to authorities: on the number of migrants meeting the required conditions, on the networks which have enabled undocumented migrants to remain illegally, and on the economic sectors most concerned. Also, they provide an opportunity to accord a status and rights to foreign workers and residents who have been in the country for several years in an illegal situation. Moreover, regularisation meets public security objectives (with regard to pursuit of unlawful activities) in instances where the numbers of migrants reach critical proportions (OECD 2000: 81; and 2003: 89). However, disadvantages have also been highlighted in relation to these programmes: they encourage further illegal immigration; they can reward law-breaking and queue jumping, thus disadvantaging lawful migrants; they may have negative policy impacts, in that frequent recourse to large-scale regularisation programmes may inhibit the improvement of formal admission systems; and massive fraud (with migrants continuing to be employed in the informal sector). Other problems are associated with lack of improved knowledge on post-regularisation trajectories on employment patterns (such as mobility on the job ladder, and whether jobs previously undertaken by undocumented migrants are taken by the same now regularised migrants, or by new undocumented migrants) and on the way they impact on family-related migration.

A study by Konsta and Lazaridis (2010) has shown that, in Greece, employers had difficulty in meeting higher labour costs resulting from formalisation of work contracts and social security contributions. As a result of this, they tend to resort to hiring undocumented migrants or newly regularised migrants, but employing them illegally, offering no contracts, and thus maintaining old vulnerabilities. In situations of economic crisis, regularised and legal migrants may be at greater risk of becoming unemployed and losing their legal status, particularly in countries where there is a big informal economy. Thus, for regularisation programmes to be successful, they need to be part of broader policies tackling the informal sector in general (OECD Secretariat 2000: 53–69). Also, there are important structural factors contributing to illegal employment that lie at the heart of some sectors, such as agriculture and tourism (with their cyclical fluctuations in labour demand) and the care services (most of which remain privatised and hidden), or various sweat shops resulting from the decline in manufacturing (*ibid.*: 61).

One of the most important studies has been that undertaken by the Odysseus network, financed by the European Commission and published in 2000 (Apap *et al.* 2000), despite regularisation policy being outside the scope of EU migration policy-making. The study provides a detailed analysis of legal and administrative procedures and associated costs for applicants. They provide five major axes along which regularisations can be analysed:

- permanent versus one-off regularisations (which is equivalent to the distinction between regularisation mechanisms and programmes – the latter adopted by the REGINE (2009) study);
- individual versus collective regularisations (the latter are based on clearly defined eligibility criteria, as opposed to the individual ones, in which authorities have discretion, and judge on the individual merits of the case);
- *fait accompli* versus protection grounds (i.e. medical grounds and family related reasons); *fait accompli* are regularisations on the basis of integration in the host society;
- expedience (under constitutional and national human rights laws) versus obligation (under international law, e.g. Art. 3 of the ECHR on prohibition of inhumane, cruel or degrading treatment, and Art. 8 of the ECHR on respect for private and family life) (Thym 2008);
- organised versus informal (i.e. cases where individuals staying irregularly would petition immigration authorities to become regularised irrespective of whether or not there are specific provisions for regularisation).

The study also identifies a number of criteria used by member states to establish the regularisation of illegal third-country nationals; namely, the physical presence of the applicant in the country, employment status, whether or not the person can return to their country of origin, undue length of asylum procedures, health reasons, family-related reasons, nationality of the applicant, integration in the host society, qualifications, number of regularisations granted, and so on.

The study has been criticised for not saying much about the rationale for regularisation policies, target groups for regularisation, or issues relating to the implementation of regularisations. It is also criticised for not analysing such policies or drawing links between regularisation and broader policies on asylum and legal migration.

Three other comparative studies on regularisation practices carried out by Blaschke (2008), Levinson (2005) and Sunderhaus (2006) take a similar approach, adopting the typology of the *Odysseus* study, Levinson and Sunderhaus focusing on regularisation programmes and not on mechanisms. None, however, discusses regularisation in connection with other policies on irregular migration and asylum, and only Levinson links her analysis comprehensively to broader analysis of immigration policies. For her, regularisation is an indication of wider policy failures, but has been criticised by the REGINE (2009) report for not paying attention to deficiencies in the design and/or administration of legal migration and asylum regulations, which can be one of the sources of the need for regularisation programmes.

Levinson (2005) identifies four major reasons why states engage in regularisations; namely, to regain control over migration and to reduce the size of the irregular migrant population, to improve the social situation of migrants, to increase the transparency of the labour market and combat illegal employment, and reasons related to foreign policy goals. She does not include humanitarian considerations or legal obligations regarding the protection of certain categories of migrants. The limitations she highlights are lack of publicity, overly strict requirements, application fraud, corruption of public officials, lack of administrative capacity to process applications, massive backlogs and delays, and ineffectiveness of employer sanctions (Levinson 2005: 5–6). In terms of impact, Levinson distinguishes the following dimensions:

- a. political impact – most programmes have been preceded and accompanied by extensive public debate. NGOs, trade unions and other non-profit organisations have influenced the policy debate as well as the design and implementation of relevant programmes. Laubenthal

(2007) mentions the emergence of pro-regularisation movements in Europe (France, Spain, Switzerland) due to the imminent revocation of limited rights of undocumented migrants – in addition, the increasing attention to social exclusion and marginalisation were important factors enabling regularisation to be successfully framed as an instrument against discrimination and social exclusion;

- b. economic impact – in some instances, regularisation reduced the employability of the regularised migrants;
- c. socio-economic impact on patterns and stocks of undocumented migration – those who fail to meet the conditions for renewing their permits and thus fall into illegality.

Levinson (2005: 11–12) makes some recommendations with regard to ingredients for a successful regularisation programme. These include consensus building among all stakeholders (such as trade unions, political parties, migrant associations, employers) on the scope, terms and target groups; clear definition of the application process and procedure; active campaigning involving all stakeholders; training of officials implementing the regularisation; involvement of NGOs and migrant associations in the implementation process; analysis of data on the outcomes of such programmes; flexible work visas that would allow for more extended periods for unemployment and job seeking; stronger or better implementation of labour protection laws; and expansion of the scope of long-term residence.

Finally, Greenway (2007), building on Levinson's work, identifies five types of regularisation programmes; namely, family reunification, permanent programmes regularising migrants on a case-by-case basis, employment-based programmes aimed at regularising a large number of irregular migrants, exceptional humanitarian programmes and, finally, earned regularisation programmes. The last are geared towards providing migrants with a provisional, temporary living and working permit, and enable them to earn the right to have the permit extended or become permanent through the fulfilment of various criteria, such as language, participation in community activities, stable employment or paying taxes. This definition differs from public debates, in which the term is used in the sense of integrated, long-term resident, illegal migrants being considered to have earned a right to residence.

Greenway (2007: 2) argues that 'regularisation programmes should be examined as one policy tool that, in conjunction with other measures (protecting the rights of migrants, increased internal and external migration controls, individual return programmes and development

partnerships with countries of origin), could be a valuable tool for managing migration'. He observes that regularisation programmes have often paid little attention to the realities of the labour market needs of employers. As a stand-alone policy to control migration, these are doomed to failure, since they do not deal with control mechanisms that prevent migrants from entering into the host country. He also recommends cooperation with countries of origin on facilitating the orderly return of failed migrants, and developing schemes that would make return a more viable option for migrants themselves. This is of particular importance nowadays as, within the current economic crisis, many return home. It also recognises that strict immigration policies may be a cause of illegality, and recommends the expansion of the scope for legal immigration, including labour immigration for lower skilled categories of migrants.

Another report written by Papadopoulou (2005) stresses the need to undertake regularisations in agreement with existing human rights norms under international law, including the Universal Declaration of Human Rights, the UN 1990 Convention on the Rights of Migrant Workers and Members of their Families, the European Convention on Human Rights, the European Social Charter, the ILO Migration for Employment Convention 1949 (C97), and the Convention on the Rights of the Child, and the need for a common position on regularisation of both the Council of Europe and the EU.

All the studies mentioned here, with the exception of the OECD studies, are useful in providing indications of the circumstances under which regularisations may be an appropriate policy tool, the form they should take and with which objectives. They thus focus on the design, rather than on questions of implementation and impact. The OECD studies, on the other hand, focus not on regularisation as a policy tool to address the presence of illegal migrants *per se* but, rather, on the wider fiscal and economic impacts of regularisation measures (i.e. their appropriateness as measures to address illegal migrant employment and the informal economy); so regularisation is considered as an attempt to re-regulate the informal economy. The alternative would be to see regularisation as a goal in itself, used to address policy and implementation failures – for example in the asylum system, and to respond to specific situations and needs – such as humanitarian concerns, and to be implemented as an alternative to removal.

According to the REGINE (2009: 30) study, covering the period 1996 to 2007, 'the total number of persons involved in transitions from irregularity to a legal status may exceed 6 million'. During this same period,

they gathered data from 42 regularisation programmes in 17 countries, showing that of about 4.2 million applicants (Italy coming first with 1.5 million applicants and Spain coming second with 1.3 million) over 2.9 million were granted legal status (REGINE 2009: 31). With regard to regularisations through mechanisms, Germany made up 41 per cent of regularisations, followed by France and Belgium. But is there a correlation between high stocks of illegal migrants and the number of regularisations? According to REGINE (*ibid.*: 39), the answer is 'no'. For example, Cyprus with high stocks had no regularisation.

Amongst the EU member states, the countries distinguished by their reliance on regularisation for granting legal status to third-country nationals are Greece, Spain, Portugal and Italy. Belgium, Denmark, Finland, Luxembourg, the Netherlands and Sweden granted regularisations primarily on humanitarian grounds (*ibid.*: 40), providing protection to asylum seekers. Then we have Estonia, Hungary, Ireland, Lithuania, Poland and the Slovak Republic, which regularise, but these only regularise on a small scale. With the exception of Ireland, most are trying to adjust to the new post-Soviet order and the creation of illegal residents that resulted from political and territorial changes. France and the UK are the reluctant regularisers with colonial histories, and use it as a policy instrument, while Germany and Austria utilise regularisation mechanisms (against a background of political opposition to them) as a policy instrument, as there is a belief that it constitutes a pull factor for future migration flow, a view shared by France and Belgium. Some countries do not have any legal mechanism by which they can regularise on an individual basis. These are Bulgaria, the Czech Republic, Italy, the Netherlands and Slovenia. Other countries have a restricted ability to regularise. Unfortunately, a systematic evaluation of policies and appropriate corrective responses is missing to date, as is information and data on the total number of applicants, the total number of regularised migrants and subsequent renewals.

Since the end of the 1990s, there has been a shift in terms of the framing of public debates on regularisation processes. The earlier focus on economic, labour market and welfare policy-related aspects of regularisation has given way to more human rights-based debates, reflecting changes in the very nature of migration policy. Even where emphasis is still on employment issues, this is closely tied up with social and economic inclusion, and combating marginalisation and discrimination. Trade Unions – such as the União Geral dos Trabalhadores in Portugal, UNISON in the UK, the Norwegian confederation of trade unions and the Slovenian Association of Free Trade Unions, for instance – have

taken up a human rights perspective, engaging in advocacy on behalf of groups excluded from the labour market. For them, regularisation offers an opportunity to re-regulate the informal economy, thus protecting not only the interests of irregular migrants working under conditions of informality and illegality, but also the interests of legal migrants and native workers who otherwise are threatened by lowering of wages and social dumping. Trade unions argue for sanctions on employers and increased work-site inspections. It is interesting to note that the European Trade Union Confederation does not have an explicit position on regularisation policy, reflecting the lack of common European policies on regularisations and the plethora of diverse views of its constituent organisations on the subject.

Employers' organisations are indifferent on the subject. NGOs, on the other hand, are the most active actors regarding campaigns for regularisation (Laubenthal 2007). NGOs have had a long pivotal role in promoting migrants' rights, and in many EU member states are also active in campaigns for regularisation, such as in Belgium, Greece, Portugal, Spain, France, Ireland and Germany. The pro-regularisation campaign 'Strangers into Citizens' in the UK is led by an alliance of NGOs and other societal actors. Also, NGOs have taken an active role in providing migrants who want to regularise with support and advice, and by disseminating information about ongoing campaigns for regularisation. At European level, various Church organisations – including Caritas Europe, the Churches Commission for Migrants in Europe, the Commission for the Bishops' Conferences of the European Community's Working Group on Migration, the Quaker Council for European Affairs, the European Network against Racism, the European Coordination for Foreigners' Rights to Family Life, the Platform on International Cooperation on Undocumented Migrants (PICUM), the European Council on Refugees and Exiles and others – are focusing on migrant issues, and have adopted positions on EU approaches to undocumented migration, including regularisation.

In general, NGOs are in support of regularisations. REGINE (2009: 82) concludes that regularisations are an appropriate measure to reduce the number of persons illegally residing in a member state; are beneficial to the economy; reduce exploitation and social exclusion of irregular migrants, and promote their integration; improve access to basic social rights; and can be a corrective to administrative or legislative deficiencies. Reservations include the fact that regularisations can be read as indicators of policy failure, and they stress that reforms of the overall framework governing migration and asylum have to be undertaken to

address some of the root causes of the presence of irregular migrants. They criticise the absence of legal migration channels and the restrictive nature of existing immigration legislation, which create the need for regularisation. According to REGINE (2009), NGOs do not consider it necessary for there to be a common approach with regard to regularisation programmes and mechanisms Europe-wide. NGOs seem to welcome a Europe-wide debate on regularisation practices at the supranational level, but most seem to believe that these issues should fall under the competency of individual member states.

With regard to the EU itself, regularisation is an issue of concern for EU migration policy. Large-scale regularisations are not a preferred option for the European Parliament either, as these indicate policy failure (EP 2007). Regularisation has been taken up by the Commission in several communications. COM (2000) 757 final mentions regularisation as a policy tool, but COM (2001) 657 final states that it should not lead to the desired stable form of residence, and in its Communication of 2008 on a Common Immigration Policy for Europe (COM (2008)294/4, p.11), the Commission states that large-scale regularisations do not constitute 'a lasting and effective tool for migration management and should be prevented'. The European Council agreed to use only case-by-case regularisation rather than generalised large-scale regularisations, under national law and for humanitarian and economic reasons.

Concluding remarks

Nowadays, we live in a Europe where a growing transnationalism among migrant communities makes the search for new and different models of incorporation somewhat urgent (Engbersen *et al.* 2003). In a Europe where, historically, most nation-states define themselves in ethnic rather than civic terms, there is little room for ethnic and cultural diversity. In order to achieve the successful incorporation of migrants in a new, more inclusive Europe based on principles of equal rights and non-discrimination, we need a definition of a nation that gives more room for ethnic and cultural diversity, recognising at the same time the limits to the degree of diversity with which a country can cope. Of course, as the economic crisis in Europe perpetuates, migrants – whether *éjectés*, *injects*, or *abjects* – become progressively more inassimilable. This is because the Europeans see them as such, and this helps perpetuate their marginal situation in European societies, due to low employment, and their status as a perceived threat to welfare and jobs.

A stress on commonalities is emerging in the European political and social discourses. Are we moving to a type of process towards assimilation which sees populations of immigrant origin as mouldable and meltable? It is this to which Brubaker (1992; 2001) refers as transitive (to make similar, to force *them* to become *like us*), or as intransitive (encouraging *them* to become *similar* and participate on an equal footing in the host society's mainstream institutions)?

8

Retracted Chapter: The Challenges of Migration for EU Citizenship: From *Abjects* and *Ejectés* to Subjects?

The concept of citizenship developed by Marshall views citizenship as 'full membership of a community' (the state), giving the individual a 'bundle of rights'. Because it is state-centred, it ignores the growing significance of the international dimension of citizenship (Heywood 1994: 157). Individuals are no longer attached to one nation alone but also have an attachment to a supranational entity. Thus, the development of EU citizenship marked a considerable departure from the established state framework, and represented a unique historical moment: 'for the first time in the history of Westphalian political order a concrete citizenship design beyond the nation state had emerged, thereby undermining the exclusivity of national citizenship' (Heywood 2003: 102). Concerns have arisen with respect to this change. As will be shown, such concerns include the issue of *sovereignty* and the issue of *inclusivity*.

The main argument in this chapter is that migration presents EU citizenship with the challenge of creating a new more *inclusive* citizenship as a response to changes engendered by the European multicultural reality. Population movements, in general, and migrants, in particular, carry political significance, as they constitute a challenge to modern identity politics and the politics of 'belonging'. They therefore emerge as a complicating factor which further deepens the competition between, and challenges the symbiosis of, economic and political goals, as well as the friction between the national and the supranational.

To substantiate this argument, the chapter is structured around two main sections. The first seeks to contextualise the concept of European citizenship in a moment of great geo-cultural transformation and economic crisis in the region, discussing how it emerged and developed in a supranational framework. The argument put forward is that the

central parameters in European citizenship have been resistant to radical change due to the inbuilt market component of the EU and the strong element of subordination of the EU's supranational interests to the interests of its member states. The second part concentrates on the status of third-country nationals (TCNs); it focuses on the exclusion of migrants from social and political processes, their *abjectification*, and how this represents a challenge to achieve a more integrative notion of European citizenship at this crucial time of economic crisis. It builds on Chapter 7 (on European migration regimes and regularisation policies) as tools to investigate the significance of European citizenship in contemporary multicultural Europe. The main argument is that European citizenship is neither an inclusive nor autonomous concept and is conditioned by, and can be understood within, the context of the framework in which it has evolved.

The emergence and development of EU citizenship

The notion of European citizenship has evolved over time. From a legal point of view, an incipient form of European citizenship was visible in the first treaties of the then European Economic Community (EEC) and developed further through subsequent political and legal practices. The provisions concerning the freedom of workers in the Treaty of Rome in 1957 could be seen as the first step towards the subsequent birth of European citizenship in the Treaty of the European Union (TEU) in 1992.

The Tindemans Report (1975: 11) was also important because it demonstrated awareness that Europe required a political dimension, and it promoted a more active role for the citizens of member states, stating that: 'we must listen to our people. What do Europeans want? What do they expect from a united Europe?'

At the 1974 Paris summit, the member states established a working group to examine the conditions under which their citizens could be given special rights as members of the European Economic Community. They also established a working group to study the possibility of establishing a passport union, which would necessitate a stage-by-stage harmonisation of legislation affecting third-country nationals, as well as the abolition of passport control within the Community.

In addition, in the mid-1970s, the Commission presented a report, entitled 'Towards European Citizenship', which examined the idea of a passport union and the conditions under which member states could grant the right to vote and eligibility for public office to citizens of other

member states (*Bulletin EC* 7/8–1975 .1303). The Commission presented these rights as ‘the logical goal of the principle of national treatment and integration into the host country’ (*ibid.*). The report emphasised that European citizenship implies that citizens of any member state should automatically be treated in another member state as if they were citizens of that state. Although member states could consider facilitating naturalisation, the emphasis remained on residence, rather than nationality.

In November 1977, the European Parliament issued a resolution supporting European citizenship (*Bulletin EC*, supplement 5/75, 21; *Bulletin EC*, supplement 9/75, 26; European Parliament). In July 1979, the Commission finally published a draft Directive on a right of residence for nationals of member states in the territory of another member state (OJ 1979 C207, 14). It proposed abolishing all remaining restrictions on movement and residence for nationals of member states, but specified that member states might require citizens not covered by other legislation (anyone other than workers, the self-employed, and those who wished to stay after retirement) to provide proof of sufficient resources to provide for their own needs and those of the dependent members of their family (Article 4(2) of the draft Directive). The European Parliament welcomed the proposed Directive, but argued that it should go even further, for example, with respect to the movement of students.

A 1983 European Parliament report advocated extending the right to vote and stand as a candidate in local elections to citizens of member states residing in a member state other than their own. Parliament made several proposals on citizenship in the Draft Treaty establishing the European Union (DTEU). DTEU Article 3 announced that ‘citizens of the Member States shall *ipso facto* be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a Member State; it may not be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by the Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws’.

The European Council of Fontainebleau (1984) was another critical event in the development of citizenship in Europe, as it engendered the desire to forge a single identity for Europe (Beata 2007: 4–7). Therefore, elements of citizenship present in the early years of European integration created a framework which allowed for later conceptions of citizenship to develop (Olsen 2008: 40). The European Council summits at The Hague in June 1986, London in December 1986, and Hanover in June

1988 all concluded that a general right of residence should be extended to all European citizens in order to create a citizens' Europe.

Despite this rhetoric, the member states failed to approve the Commission's proposal on the general right of residence, now many times amended from the original 1979 version. Some member states were reluctant to agree to the proposal because they were concerned that extending residence rights to all citizens would prove costly to states with more generous welfare rights. Thus, Denmark argued that the treaty provided only for the free movement of workers and the self-employed, meaning that a change to the treaty rather than national legislation would be needed to extend the right of residence beyond workers and the self-employed. The UK also remained wary of extending the right of residence beyond workers and the self-employed, arguing that students, pensioners and the self-supporting should not become a burden on the host state's social security or health services.

The fall of the Berlin Wall provoked intense efforts to advance European integration, culminating in the Maastricht Treaty. In the changed geopolitical context, a key concern of the Dublin summit of April 1990 was to shape future political union by introducing European citizenship rights. The political leaders of the member states asked how the new treaty would 'include and extend the notion of Community citizenship carrying with it specific rights (human, political, social, the right of complete free movement and residence, etc.)'. This concern grew out of earlier work, such as a 1988 report which argued that, even though the Single European Act had encouraged the development of the Community, it did not yet allow adequate action in a range of fields, including citizenship. On the basis of the report, a parliamentary committee chaired by David Martin (a British Labour MEP and Parliament Vice-President) met from November 1989 to February 1990 to draft a resolution asking the member states to hold an intergovernmental conference (IGC) not simply on economic and monetary union (EMU), but also on incorporating fundamental rights into the treaties, increasing social and environmental provisions, and reforming Community institutions.

Belgium raised the issue of democratic deficit. To remedy the democratic deficit, the Belgians suggested empowering the European Parliament and expanding citizens' rights by removing border controls, writing human rights into the Treaty, applying the European Convention on Human Rights (ECHR), and allowing Europeans residing outside their state of citizenship to vote in local and European Parliament elections.

Greece favoured the proposals. The German and French governments agreed. In April 1990, in a joint letter to the other government leaders,

Chancellor Helmut Kohl and President François Mitterrand called for a second IGC on political union to be held parallel to the conference on economic and monetary union. Kohl and Mitterrand urged the Union to integrate and extend the notion of Community citizenship and its specific rights (human rights, social and political rights, complete freedom of movement) in favour of citizens of the Union. With France and Germany urging the introduction of European citizenship, the other member states could not ignore the issue, although the British delegation immediately voiced reservations. Despite the British government's opposition, other governments convened a second IGC on Political Union and European Citizenship. In a letter of 4 May 1990, Spanish Prime Minister Felipe Gonzalez urged the other governments to address European citizenship, arguing that it should be based on the legal framework of Schengen and the free movement of persons.

Following the Commission's report on European Citizenship, the Luxembourg presidency prepared a 'non-paper' or comprehensive draft, on political union and submitted it to the foreign ministers on 15 April. This non-paper narrowed the content of European citizenship from the earlier proposals put forward by Parliament and some of the national delegations. By May, three issues on which government leaders' personal representatives were unable to agree – those of citizenship, social policy and economic policy – were discussed by their ministers. The citizenship discussions focused on whether it should have direct effect: Denmark and, to a lesser extent, the UK opposed creating a European citizenship that would entitle individuals to force member states to respect their rights as EU citizens. Meanwhile, Parliament passed a resolution in June stipulating that EU citizenship should be additional to national citizenship, that it should be placed within the framework of human rights contained in the ECHR, and that third-country nationals should also enjoy rights. Parliament submitted another report on European citizenship on 6 November, proposing a system of European social rights within the framework of European citizenship.

The Maastricht summit was held on 9 and 10 December 1991, and final text agreed only in the early hours of 11 December. Consistent with their traditional role as the 'motors of integration', support from the French and German delegations was the key to passing the citizenship provisions. The proposed right of EU citizens to vote in municipal and European elections in their state of residence, rather than state of origin, posed constitutional problems and would become a major focus of the French ratification debate, but President Mitterrand had a strong political stake in supporting it. Although Mitterrand realised that the

citizenship provisions would require amendment to the French constitution, he also wanted to divide the opposition parties, which would be caught between a desire to preserve national sovereignty and a desire not to appear anti-European. But doing so also furthered what Mitterrand called his *grand projet*, to turn the whole of Europe into one space.

Maastricht did not simply represent a process of supranational institution building and integration. It also reflected the national politics of the member states, and the intergovernmental conflicts and bargaining among those states. Amending the Treaty of Rome, the Maastricht Treaty granted all EU citizens four sets of rights: rights of free movement, political rights, the right to common diplomatic and consular protection, and the right to petition Parliament and appeal to the ombudsman (Articles 18, 19, 20 and 21 of the TEU). In order to ease fears that citizenship would be used to transform the EU into a sovereign state, the member states agreed to add a new clause to the Maastricht citizenship provisions: 'Citizenship of the Union shall complement and not replace national citizenship'.

In the end, British and Danish intransigence blocked the wider conception of citizenship rights supported by the other member states. As Article 17(1) of the amended Treaty of Rome states, 'Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.' The rights accorded by the Maastricht Treaty exclude migrants from some important socio-economic rights achieved for EU nationals, such as the right of workers and self-employed people to equal treatment and social security, to certain types of training, to equal housing with other workers. Nonetheless, it did enshrine the right to movement as a fundamental right to move and reside freely in the EU, and decoupled this right from economic activity.

This was a top-down project, devised by Brussels and national officials in the absence of any real grass-roots movement to develop the concept of political membership (Boswell and Geddes 2011: 189). While the Commission is keen to mobilise support among EU nationals for the notion of a shared citizenship with certain fundamental rights, this is closely tied up with the EU's programme of creating an 'area of freedom, security and justice' (European Commission 2008), a phrase adopted in the 1997 Treaty of Amsterdam. The goal of free movement has been linked to cooperation on justice and home affairs.

The next major negotiations, at the Nice summit in December 2000, likewise made only incremental changes to EU citizenship. Most of the negotiations concerned the way in which decisions would be made after

enlargement, and the resulting changes were technical and limited. In terms of citizenship rights, however, the Nice summit extended qualified majority voting to free movement: henceforth, decisions about the right to move and reside freely within EU territory would no longer require the unanimous support of all member states. However, the member states did exempt provisions on passports, identity cards, residence permits, social security and social protection from qualified majority voting (Article 2.1.3.3). Provisions in those areas would continue to require unanimity.

The Laeken summit of December 2001 focused on the need for more democracy, more transparency and more efficiency in order for the EU institutions to be brought *closer to the citizen*. At Laeken, European political leaders determined that European citizens wanted better democratic scrutiny at all levels of government. The government leaders further questioned whether the Charter of Fundamental Rights should be included in the treaty itself, and whether the European Community should accede to the European Convention on Human Rights. They established a constitutional convention, whose work ultimately resulted in a draft constitutional treaty. The Spanish Foreign Minister (and Convention member) Ana Palacio has argued that 'until now, Europe was mainly associated with a common market. Now Europe will be more and more a place of citizenship.' Having said that, given the deeply divisive nature of the debates surrounding the extension of free movement to citizens from the enlargement states during the year preceding the last two enlargements, resulting in the 'special treatment' of Romanian and Bulgarian citizens until 2013, it is clear that the issue of free movement and social security rights for those whose countries which join the European Union in the years to come will continue to dominate the political agenda.

Citizens are familiar with the term 'citizen of the EU', but are often not aware of the precise content of the rights that EU citizenship brings them, or of how to exercise them; they are thus prevented from making full use of these rights. Even though there is already a wealth of EU-level information and problem-solving networks on citizens' rights, many citizens either are not aware of these networks or are frustrated, because information is distributed among multiple sources and therefore hard to find. To strengthen citizens' awareness of their rights as EU citizens, and of the meaning of these rights in their daily lives, the Commission has taken a series of measures with a view to:

- further developing the Your Europe web portal into an easy to use one-stop-shop information point on the rights of citizens, accessible via the web and a free phone number;

- streamlining its information networks in EU countries so that citizens easily find the right contact point at national, regional and local levels;
- designating 2013 as the European Year of Citizens and launching a number of calls for research proposals and other initiatives on citizenship in the EU as well as fundamental rights, such as 'Europe for Citizens (2007–13)' and 'Fundamental rights and citizenship (2007–13)';
- strengthening independent, professional and high-quality reporting on European affairs.

However, due to the cumbersome administrative procedures that some member states sometimes impose, citizens are faced with particular difficulties with regard to entry, residence and, in particular, access to various kinds of benefits. This is because of the diversity of social security systems in the various EU countries, complexity involved in cooperation between national social security institutions, and differences in recognition of qualifications and skills.

Third-country nationals in the EU

In the EU context, different kinds of citizenship rights apply: regular EU nationals' citizenship rights, rights to non-EU nationals, rights to non-EU nationals married to an EU citizen. Regarding migrants, the two EU non-discrimination directives – the Race Directive (2000/43/EC) and the Framework Employment Directive (2000/78/EC) – together with the EU Charter of Fundamental Rights (Arts 20–23) grant non-discrimination rights to non-EU nationals. On the other hand, recent migration legislation deprives migrants of already existing rights. As argued elsewhere (see Konstantis and Lazaridis 2010: 369) a *quasi-social citizenship* has emerged for migrants, which is constantly undermined by restrictive migration legislation, and the narrow stance taken by the Court of the European Communities (CEJ). With the adoption of the 'Returns Directive' (2008/115/EEC), return is understood to involve the sending back of illegal migrants not only to their own country, but also to transit countries through which they have passed, or to any other country to which the migrant agrees to return, and which accepts that migrant. It is possible for illegal migrants to be detained for up to 18 months, and for unaccompanied minors and families with minors to be detained (*ibid.*: 370).

The treatment of migrants as non-citizens is best exemplified in regimes that require the renunciation of one's primary citizenship. Although

most EU member states accept dual citizenship based on the principle of reciprocity (e.g. Germany, France, Greece and Spain) and, thus, do not require one's original citizenship to be renounced when acquiring a new (additional) citizenship, this is not the case in several new EU member states (Sawyer *et al.* 2011). To become a Slovenian citizen, a migrant with Bosnian citizenship has to renounce their 'not-good-enough-citizenship' to be able to qualify as a non-citizen with the opportunity of becoming the 'right' citizen (Slovenian) (Leach *et al.* 2010: 75–10; Pajnik and Bajt 2011).

The position in the Balkans is symptomatic here. Those who were once co-citizens are now demarcated as being EU citizens or third-country nationals. We see how the Balkan and CEE region is engaged in imitating the citizenship regimes of Western countries, reproducing some of the known fallacies of established migration regimes, and very often mimicking developments in France and even nearby Italy. It is precisely these newcomer member states (together with some Southern European countries) that are particularly engaging in policies which promulgate the exclusivity of the 'core' nation, thereby creating exclusionary divides between citizens and non-citizens (see Brubaker 1996). Alongside the 'erased' in Slovenia (Ba, 2010; Zorn 2011), one may consider the *sans papiers* in France, the stateless Russians in Estonia (Vetik 2011a; 2011b), or 'effective statelessness' in the UK (Sawyer *et al.* 2011). Moreover, under Berlusconi, in Italy, the classification of Roma as nomads served the purpose of denying citizenship to vast numbers of third-country nationals' families (Sigona 2003; Sigona and Trehan 2009). Also, the unacknowledged citizenship status of Roma in Hungary and Slovakia contributes to the ethnic and class conflicts in these countries (Kóczy 2009).

Being treated primarily as a non-citizen in contemporary Europe is not only applicable to third-country nationals. Our societies also treat *de jure* citizens as non-citizens, who also risk becoming 'not-right-citizens' (Solters 2008), including, for example, minorities such as the Roma (Sigona 2010), the poor, the unemployed (Bauman 1998) or, in general, all those who are believed not to be 'plastic' enough (Lazaridis and Konsta 2011) to adapt to current trends towards 'marketization of citizenship' (Freedland 2001; Handler 2004), which favour the 'most able' and 'flexible'. These have accelerated with the current economic and social crisis, multiplying the disintegrative effects on the social order. The prerequisite of 'plastic citizenship', or of citizenship that is expected to be easily adjustable to any circumstances dictated by neoliberal globalisation,

may accelerate the exclusion of people from the public sphere (Lazaridis and Konsta 2011).

Furthermore, analysis of data gathered in the project funded by the European Fund for the Integration of Third-Country Nationals on Prospects for Integration of Migrants and Labour Market Participation (VS/2010/0524) show that the current management of migration produces a 'circular conditioning' of migrants' lives, in which obtaining one permit is a prerequisite for obtaining another, thereby hindering migrants' integration and participation. For example, in many EU member states a permit for work is needed in order to gain a residence permit, a permanent residence permit is a prerequisite for gaining citizenship, and acquisition of nationality is a pre-condition for access to full voting rights.

Also Konsta and Lazaridis (2010: 371–372) have shown that in the case of regularisations in Greece, migrants often find themselves in limbo, entrapped in a constant 'regularisation cycle', in which permits have to be renewed. The procedures to be followed are demanding and cumbersome, and full of adverse infrastructural problems – added to which, the discriminatory attitude and behaviour of civil servants (cultivating confusion, 'vulnerability' and suspicion amongst migrants) contributes to the creation of a strata of migrants with 'quasi-documented status'. They are deprived of social rights and benefits, and of freedom of movement, and thus find themselves in limbo and marginalised, some migrants experiencing *transiency*, temporarily belonging (*les éjectés*) while others are totally excluded (*abjects*). In other words, the legal framework and policies on migration construct the 'unprivileged legal subject' in Europe (*ibid.*), or what I would call *les éjectés* and the *abjects*. They are both bearers of rights provided by the *plastic citizenship* notion, whereby citizenship is fluid and flexible, changing according to the interests and the needs of the EU and or the stakes involved in each specific law-making process (*ibid.*).

Differentiated treatment of different groups of migrants leads to the emergence of *plastic subjectivities*, involving differentiated stratified statuses. EU nationals are 'one of us' and granted favourable legal status to facilitate their movement within the Union. Others are given temporary, transient status by means of either the regularisation process (see Chapter 7) or various bilateral agreements between countries, but ready to be *ejected* if no longer needed. The third group are the *abjects*, permanently caught in the revolving door of irregularity and illegality. The two latter are the more 'vulnerable' groups, facing permanently hostile

immigration law and administrative practices. Such laws and practices need to be reconsidered by the national and supranational levels of administration, as policy making is crucial in shaping and moulding subjectivities in the direction of the peaceful integration of migrants. For the time being, however, the policy of preferential treatment towards some groups has raised ethical and legal problems, and has discouraged the active inclusion of irregular migrants, thus leading to arguments that EU citizenship is exclusive, albeit plastic, where boundaries are blurred and processes of becoming or not are fluid, changing over time and influenced by notions of who should belong and who should not, who is entitled to which rights and who is not. Nevertheless, people can formulate their own subjectivities, can negotiate their rights in a shifting and changing world in order to strive for inclusion into the host society. Migrants are transformed into new subjects of law when they are granted limited citizenship rights, through the regularisation process. From *abjects* they become *éjectés*, still discriminated and marginalised, but with opportunities to wiggle and escape from the rigidity of the societal structure.

A substantial proportion of the 27.3 million third-country nationals is excluded from the rights conferred by European citizenship. Ignoring this 5.6 per cent of the total resident population inevitably jeopardises the EU's attempts to create a common European identity through the concept of citizenship (Castles and Miller 2009: 199).

EU citizenship and the issue of nationality: challenges and prospects

EU citizenship is bound up with the issue of nationality, in that every person holding the nationality of one member state is an EU citizen. The Amsterdam Treaty (1997) states that: 'Citizenship of the Union shall complement, and not replace national citizenship' (Jacobs 2007: 592). It also integrated the Schengen Convention into the EC Treaty, thereby making a significant step towards freedom of movement and residence (Europa 2010). Furthermore, the Lisbon Treaty (2009) provided that, rather than European citizenship 'complementing' national citizenship, it would be 'additional' to national citizenship. Arguably, for the first time this gave the 500 million inhabitants of the then 27 (now 28) EU member states a real citizenship separate from that of their national states. Nonetheless, the EU continues to apply traditional methods of understanding citizenship which do not move beyond the nation state. Although the concept of citizenship within the EU has developed,

neither the Treaty of the EU in 1992 nor the Lisbon Treaty in 2009 have been able to separate European citizenship from member state nationality. As long as the EU consists of independent sovereign member states, member state nationality limits the concept of European citizenship. The question of who is holding the nationality of a member state lies with the member state, its competence to identify its citizens and to set out parameters for the acquisition and loss of nationality.

The European Court of Justice also ruled on this question in the case of *Micheletti*. The ruling in this case reinforced the fact that the creation and abolition of nationality is the exclusive competence of member states. But it imposed a limitation on member states, stating that it 'must be an exercise in compliance with Community Law' (Beata 2007: 12–17). So, the concept of EU citizenship is neither inclusive nor self-governing. There is no Community competence to set up criteria for defining nationality, and, as a consequence, there is no remit to establish citizenship – the citizenship of the Union is a derived condition of nationality (Reich 2001: 6). The limited nature of the changes over the years to the legal and constitutional nature and scope of EU citizenship, means that it is possible to address the same criticism towards post-Lisbon citizenship as may be applied to post-Maastricht and post-Amsterdam citizenship (Shaw 2008).

The question facing the EU during this time of significant migration movements is the exclusion of *les éjectés*, who do not have a member state nationality but who, nevertheless, are long-term residents, and contribute to the economic growth and wealth of the EU. Building on this line of reasoning, Beata (2007: 17) suggests that within the EU framework 'citizenship is not necessarily an integrative force, but may in fact be exclusionary and divisive, in particular because as it stands at present it draws directly and solely upon the notions of member states nationality and citizenship in order to define the scope of membership and excludes all third country nationals'. At the same time, following Kostas Topoulou's (2005: 242) thesis that 'European citizenship is both a process and a project to be realised as the "grand conversation" about the political restructuring of Europe, its significance goes beyond the rights enumerated in Articles of Treaties'. These arguments appear to disregard what European citizenship could possibly achieve; that is, it could develop from what Hoffman and Graham (2009: 133) describe as a 'rather passive state-centred notion' to 'a much more active, democratic citizenship'. European citizenship should denote a change from a 'politics of identity – which simply implied homogeneity – to a politics of affinity', with the latter form of politics identifying and upholding

diversity. Although the EU contains a 'market-oriented' element, citizenship remains a matter of politics and, as such, surpasses an identity which focuses solely on the market. As a result, economic rights only have significance when situated within a political and social framework.

It is therefore important to remember that EU citizenship is 'a passport citizenship', an embryonic concept which is still affected by the traditional constraints and prejudices of national sovereignty. Nevertheless, the EU represents a quasi-sophisticated example of citizenship, the meaning and significance of which have changed and evolved, and are likely to continue doing so.

Challenges of migration for EU citizenship

The large scale migration which the EU has been witnessing since the fall of the iron curtain has become a question of policy, insofar as it affects the economic, social and political objectives of the Union. Migrants carry political significance as they challenge modern identity politics, politics 'defining who belongs to the community and in what way' (Huysmans 2008: 106–107).

In a framework of increasing European integration which acknowledges respect for universal principles embodied in human rights, democracy and the free market as a 'kernel of identity' (Huysmans 2008: 115), the perceived limitations of EU migration policies casts doubt on the ability of the Union to reconcile its democratic political identity, and calls for greater inclusiveness of non-citizens resident in EU member states. Following on with this rationale, it could be argued that the absence of recognition of those who do not enjoy the nationality of a member state, and therefore EU citizenship, raises questions about the democratic articulation of its values. This serves to make the long-term objective of European political integration vulnerable.

Central to this are debates about the viability and desirability of a re-negotiation of the relationship between citizenship and nationality in the EU (Huysmans 2008: 115). Of particular significance in these debates are the inbuilt market component, the strong element of dependence of the EU on the member states, and the reluctance of the latter to cede sovereignty to the EU. Arguably, the long-established dependence on member states is a significant hindrance to the emergence of European citizenship as a status of its own. 'A fully fledged reconstruction of social citizenship at the EU level appears today so unrealistic as to render the question of its actual desirability a non issue' (Ferrera cited in Glencross 2007: 91).

On the other hand, EU citizenship has been criticised for epitomising the opposition between 'insider' and 'outsider', 'majority' and 'minority', 'us' and the 'others'. After all, if European citizenship should aim to help in the construction of a European 'demos', to trigger a sense of belonging to and identification with the EU, and generate a genuine sense of European identity, the outcomes seem to fall short. Indeed, collective identities lie within the nationalist environments (Kostakopoulou 2007: 12–13). Furthermore, current EU approaches to migration appear to privilege the vast transnational market for commodities, capital and labour, while political and social dimensions seem to be deemed secondary. The failure of the EU to equip itself with 'a substantial social dimension' has led to fundamental limitations on its ability to develop socially inclusive policies on migration.

In the 1990s, the EU attempted, through programmes on poverty and social exclusion, to achieve a broad conception of citizenship in which the civil, political and social rights of citizenship were to be a precondition for social inclusion, and citizenship was envisaged as a universal entitlement in which all individuals and social groups in the Community were to be 'full and equal members of society'. However, this was soon replaced by an alternative notion of social exclusion, citizenship being confined merely to labour market integration as a precondition for social cohesion. Once again, the absence of a common social dimension and adequate democratic structure allowed the market to be the prevailing form of regulation for both the economy and society. The aim of this regulation was to reconcile social cohesion with economic efficiency (Schierup *et al.* 2009: 12–53).

The intention of the EU, in the long term, to establish an 'inclusive and multifaceted post-national political democracy in an age when dual forces of globalism and localism have made new frameworks for political articulation and integration imperatives' may be less likely to find fulfilment (Schierup *et al.* 2009: 14).

Mass migration is changing the EU into a multicultural society in which the social dimension and migration issues are becoming increasingly palpable and interrelated. Markets benefit from immigration of menial and skilled labour, and from an ethnically segmented market. Migrants have a positive impact on the economy of member states, as they provide flexible production and labour systems. Yet, migrants remain disadvantaged compared with nationals of member states in terms of their entitlement to civic, political and social rights. This is merely because they are caught in a *nationality problematique*; they are a conundrum because they are both inside and outside the political

communities in which they live. Third-country nationals participate in the economy, fulfil obligations and claim some rights, while at the same time their presence remains guarded. This situation strengthens criticisms that the EU lacks a straightforward membership structure (Huysmans 2008: 107–108). The fact that some categories of people are excluded poses a challenge to EU institutions and values, and calls for a heightened European consciousness concerning the articulation of rights protection, values of non-discrimination and equality.

Post-national citizenship is a significant notion, espousing the idea of a political community which comprises many cultures. According to this notion, residence, rather than nationality, forms the criterion for the provision of economic, social and political rights. Habermas emphasises the necessity of dividing political culture from cultural identity by creating a democratic political culture with which citizens identify at European level. As such, there is a demarcation between cultural and political identification, in which people may culturally identify with their own nation but politically identify with the EU. In these circumstances, national identities would determine that the EU would be a divided and, therefore, multicultural entity whilst simultaneously retaining a unified political culture (Huysmans 2003: 115–116). Potentially, then, the basis of European citizenship could be *residence* and mutual democratic disposition. In Huysmans' view (ibid.), post-national citizenship brings together the quest for a multicultural identity with a reshaping of political practice. However, Kostakopoulou (2005) points out that to put this theoretical concept into practice would require steps including the disentanglement of *polis* from *ethnos*. She stresses that, despite the merit of such reforms, they do not acknowledge 'that constitutional principles are not ethnically neutral' but, rather, that they are based on an understanding of the history and culture of one's country. It is within this framework that it is anticipated that migrants will take part in the political culture of the nation to which they have moved (*ibid.*: 241–242).

Although mass migration and growing diversity are realities of the EU, the parameters of European citizenship remain resistant to change. Through its history, nationality, not residence, remains the central criterion for membership and citizenship within the EU. The Union has sought to standardise member states' national laws, and has called for a more unified approach, with greater stress on inclusiveness and participation within the concept of citizenship. Yet, it has been unable to solve the problem of its subordination to member states. 'Subordination' is used here to describe the fact that EU citizenship is not a condition of its

own, being instead derivative of and dependent on national citizenship. Indeed, as long as matters of migration and the incorporation of migrants continue to belong almost entirely to the competence of national laws and intergovernmental cooperation, European citizenship will continue to be criticised for being no more than a symbolic concept.

This is not to say that the EU has not attempted to impact upon migration and citizenship rights. However, its restricted competence within these areas has limited its capacity to develop social and politically inclusive policy on migration. Arguably, it was only through the Amsterdam Treaty in 1999 that the Commission was provided with instruments through which to develop binding policies on diversity and integration (Article 13 EC), and the EU was finally able to approach a common policy on immigration and asylum. The Treaty required the abolition of border controls to third-country nationals and the Tampere Council in the same year represented a step forward for the integration of third-country nationals (TCNs). Significantly, the Council declared that 'the EU must ensure fair treatment of TCNs by a more vigorous integration policy aimed at granting them rights and obligations comparable to those of EU citizens: right of residence, education rights, economic rights, and not discrimination *vis-à-vis* the nationals of the host country' (Reich 2001: 16; Schierup *et al.* 2009: 12).

Nevertheless, the conditions of third-country nationals were not discussed until the Thessaloniki EU summit in 2003. At the summit, the Commission stressed that 'the EU must not only do better to ensure migrants full participation into the labour market, but also in social, cultural and civic life' (Europa 2010). Moreover, the Hague Programme emphasised the need 'for greater coordination of national integration policies and EU initiatives in this field'. The Programme advocated that 'a framework, based on common basic principles, should form the foundation for future initiatives of the EU' (*ibid.*). The Communication on a Common Immigration Policy for Europe: Principles, Actions and Tools, presented by the Commission in 2008, acknowledged that the positive potential of immigration could only be achieved if integration in host countries were successful. Building on this rationale, the Commission recognised that 'policies and measures adopted by member states in this area do no longer affect only their national situation, but can have repercussions on other member states and on the EU as a whole' (Europa 2010). However, while the above actions significantly addressed the issue of legally resident TCNs, their incorporation into European citizenship was not openly expressed and, to date, there is still a clear discrepancy between the privileged position of EU citizens and that of TCNs.

The Lisbon Treaty (2009) does, indeed, increase EU decision making power in terms of migration policy, meaning that measures concerning the entry, residence and rights of legal migrants will be agreed by qualified majority. However, as did its predecessors, the Treaty continues to reserve the privilege of European citizenship to the nationals of member states only (Collett 2010).

Undoubtedly, there is a significant conflict in values. The current status of EU citizens and TCNs calls for a redefinition of citizenship, and this is an important task not only for the EU itself, but also for its member states (Reich 2001: 16). Additionally, the existing approaches to migration by the EU and member states are no longer suitable for the new economic and demographic environment, as a genuine evolution of the concept of citizenship and migration policy remains derivative of the nationality rules and legislation of member states.

Migratory pressure is growing and with it the challenge to address the integration of migrants into the social fabric of the EU in a coherent and comprehensive manner. To this end, the EU should provide legal migrants with a clear and uniform status across its borders. Yet, migration generates insecurities (see Chapter 6). In an attempt to ensure their security and confirm their sovereignty, member states underestimate the rights of migrants. In addition, the growing influence of populist parties and movements has increased, and added to the construction of states' perception of migration as a threat. Their political discourses operate by constructing a certain understanding of who and where 'we' are, and who and where 'they' are. According to Schierup *et al.* (2009: 40) 'migrants are welcomed as workers, but not as settlers; as individuals, but not as families or communities'. For instance, the nationalist party Lega Nord in Italy has made its anti-migration stance the core of its political discourse. It presents immigrant culture as alien and threatening to the local population and state sovereignty.

The EU does recognise the diversity of national attitudes towards the admission and integration of TCNs, and the irrationality of member states' restrictionist policies, the latter being instrumental in reinforcing exclusion. However, it fails to challenge this approach; rather, it legitimises and accepts it in an attempt to reach consensus over common objectives. Hence, the overall market-oriented thinking influencing the integration process of the EU since its foundation in 1957 has led to increasing measures of economic integration at EU level, but the establishment of the parameters under which the market operates remains within the competence of national governments in the Council of Ministers.

Within this framework, third-country nationals defy the democratic element of European citizenship which is based on a *divisive* notion of citizenship. The dynamism of the modern world, and the incapacity or reluctance of member states to implement reforms that would lead to a more cohesive social and political inclusion, present European citizenship with the challenge of being responsive to changes in the European geo-cultural reality. The prerequisite of 'flexible citizenships' (Ong 1999), or of citizenship that is expected to be easily adjustable to any circumstances dictated by neoliberal globalisation, may function to accelerate the exclusion of people from the public sphere (Lazaridis and Konsta 2011). One cannot truly imagine cohesive and just societies when flexibility is key to the expectations placed on citizens and non-citizens (as with marketisation or the contextualisation of citizenship), whereby they need constantly to adapt to predetermined requirements in order to comply with the dominant political and economic expectations of societies.

Undeniably, there is a crucial need for inclusiveness in the practice of European citizenship in order to make this concept meaningful for non-nationals of member states. In the current climate of transformation, European citizenship should be decoupled from member states nationality, and TCNs should be provided with the rights to participate fully in the shaping of the environment which is shared by nationals and non-nationals of member states. The contradictory elements in the EU between economic imperatives and the task of creating a European identity based on social cohesion, which involves an *inclusive* notion of citizenship, are of course highlighted by the current economic crisis, the danger of disintegration of the Eurozone and the dismantling of the Euro, rising populism and anti-immigrant sentiments, together with processes of marketisation of citizenship and the decline of the welfare state. Still, difficult debates over the EU constitution, the contested debates over the European identity, low participation of citizens (not only at EU-level elections, but also at national-level elections), together with some persistent policies of exclusion of non-nationals from citizenship, remind us about the difficulty of trans- or post-oriented imaginings of citizenship, regardless of their appeal.

2013 was the *European Year of Citizens*, celebrating the legal, political and symbolic power of the concept of EU citizenship. This was part of a wider endeavour by the Barroso II Commission to make citizenship a political priority, and to focus on the obstacles to the exercise of EU citizenship rights. Alongside these initiatives, the 2012 launch of the process allowing for European Citizens' Initiatives bringing together

one million citizens' signatures promised much, but seems likely to deliver little in view of the limitations of this type of measure as an instrument to strengthen democracy and participation. Overall, the harsh reality of the pressures on the European integration project at present means that keeping the existing legal framework for citizenship rights in place is likely to be the limit of reasonable ambition for the foreseeable future. The symbolic capital associated with the term 'citizenship' is supposed to work in favour of the EU. This was one of the motivations of including the term in the Treaty of Maastricht and, indeed, since 1993 it could be argued that these provisions of the Treaty, largely thanks to the activism of the Court of Justice, have over-delivered in rhetorical terms. In practice, in the current crisis conditions, which in ever-more immediate ways threaten the very core of the integration project, the presence of a concept of citizenship at the supranational level is more likely to be seen as a provocation and a threat to the continued existence and relevance of some member states, under whose protective umbrella citizens still wish to take refuge – especially in times of crisis.

In order to devise an informed model of European citizenship, it is necessary to appreciate the ways in which citizens participate, to view citizenship as something that goes beyond formal participation in elections or membership of decision-making bodies. It is relevant to rethink EU citizenship in a way which grasps the multiple belongings of various subjects (and *abjects*) across European societies and globally. The question is how to conceptualise citizenship, and how to design policies within an inclusive, egalitarian, post-, or better still, beyond-national perspective, to address the new modalities of interconnectedness and mobility across space and embrace the 'translocal positionings' (Anthias 2002) of citizens. Though cross-country comparative research has recently been employed to study the political participation of third country nationals in the European Union (Niessen and Huddleston 2009; Baubock *et al.* 2011) there is a void in the study of citizenship as a broader concept that can encompass the multifarious forms of civic engagement of various groups of citizens and non-citizens alike. In addition, although since the mid-1990s (cf. Kymlicka 1996; Brubaker 1996, 2003) we have seen the theorising of the relationship between national identity and citizenship, and we have witnessed the ethnic and civic conceptions of nationhood being rethought, together with that of legal citizenship (cf. Isin and Wood 1999; Aktoprak 2011), ethnicity-centric approaches at the policy level are still a reality, while literature on informal practices and conceptions of citizenship remains scarce.

The suggestion made here is that any form of activism or involvement in political and/or community work, be it formal or informal, should be considered relevant to the analysis of practices of citizenship. This broader conceptualisation, which aspires to achieve 'a stronger voice of citizens' (cf. Lisbon Treaty), incorporates two layers of analysis: on the one hand, the formal modes of participation, usually termed 'political participation', which relate to political rights and political activity; on the other hand, the issue of informal networks, understanding the various citizenship tactics and strategies that various groups of citizens (subjects) and non-citizens (*les éjectés* and *abjects*) employ in their everyday life (Pajnik and Bajt 2012). While legal citizenship continues to be mostly territorially and nationally bounded, at the local and transnational level new forms of unbounded citizenship based on transnational cultural, symbolic and economic practices are emerging in Europe today. Examples of this are youth activism, new social movement activism (e.g. Occupy Wall Street), political engagement by third country nationals and minority groups, and citizens' various community engagements, many of which are increasingly facilitated by new media or have even been moved into the virtual space; for example, the online petitions that have proliferated in the last few years. These 'acts of citizenship' (Isin and Nielsen 2008: 18) create *de jure* dialogical social relations and subject positions of 'self' and 'Other'. Acts of citizenship that take place outside the field of legal rights but establish citizenship rights, obligations and entitlements that may be fluid and temporary nonetheless constitute a field of social subjectivities (McNevin 2011). Although these acts may be directly addressing the state, claiming the establishment of formal rights, they constitute moments when political subjectivities and citizenship entitlements become possible.

Concluding remarks

The question is how to re-think citizenship in a way that enables various groups of citizens and non-citizens to be treated equally by recognising richness in their diversity. 'Multilayered citizenship' (Yuval-Davis 1999) helps us understand the many layers that construct citizenship; that is, 'the local, ethnic, national, state, cross- or trans-state and supra-state'. This involves citizenship being constructed by the various relationships and positions within these layers and their specific contexts, where also the intersectionality of the various social, political, economic and legal positions of various individuals is acknowledged. Rather than being attached to the nation-state, people's lives are shaped

by their local, ethnic, national, regional and transnational political communities. But transnational does not necessarily mean trans-ethnic: thus, the Roma are 'actively building a transnational identity without abandoning national identities' (Herakova 2009: 279). On the other hand, multilayered citizenship stresses the importance of difference and embraces the idea of 'transversal politics' (Yuval-Davis 2007) that connotes a process of shifting standpoints in a dialogue with others in which difference is recognised by grasping the complex intersection of individual's positions. A transversal perspective in understanding of citizenship that allows for the accommodation of various transnational realities experienced by citizens and non-citizens alike may be the way forward in building an inclusive EU citizenship in a Europe marked by economic crisis.

RETRACTED CHAPTER

**Retraction Note to: The Challenges of Migration for EU Citizenship: From
Abjects and Ejectés to Subjects?**

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This chapter has been retracted by the Publisher for legal reasons. The author of the publication does not agree to this retraction.

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Notes

2 Documented Migrants: Skilled Migration – the *Injects*

1. The General Agreement on Trade in Services (GATS) was part of the Final Act of the Uruguay Round (1986–1994) of Multilateral Trade Negotiations, and was incorporated into the founding principles of the World Trade Organization in 1995. It encompasses different modes of service delivery: GATS Mode 4 refers to the movement of the highly skilled, but covers temporary migration. In effect, the length of stay allowed by GATS Mode 4 is identified by the offers and agreements made in countries' negotiating positions, and varies from a few months to a few years (renewable) depending on the type of work (and usually level of skill). Business visitors can usually stay for up to three months, while intra-corporate transfers are usually for two to five years.

3 From Undocumented to Documented: Migration and Self-employment

This chapter is partly based on Lazaridis and Koumandraki (2003).

1. Ethnic entrepreneurial activities encompass both small (usually family based) registered enterprises (restaurants, food stores, electronics), as well as 'unconventional' solo projects in the *twilight zone* such as, petty-trading, street-vending and decorating.
2. The existence of informal employment activities in Britain has been pointed out by MacDonald (1994, 1996) in to the context of the native population, and in particular in reference to 'benefit scroungers' and 'dole fiddlers' who undertake waged work in the second economy to supplement welfare benefits. Although many scholars have noted the existence of an informal economy in Southern European countries involving members of the native population (see Mingione 1995) and waged-worker migrants (see Mingione and Quassoli 2000; Fakiolas 2000), the emergence of businesses operating at the margins of the law which serve as survival, inclusionary practices have not gained any attention.
3. Waldinger et al (1990b: 13–14) argue that market structures are 'historically contingent': in a given period and setting there may arise the demand for certain products or services. This in turn circumscribes certain business ventures. According to the authors, 'immigrant economic activity is an interactive consequence of the pursuit of opportunities through the mobilisation of resources through ethnic networks within unique historical conditions'.
4. For example, Rafiq's (1992: 58) study of Asian entrepreneurship in Bradford, UK, shows that despite the cultural disposition to business ownership shared by both Muslim and non-Muslim Asians, Muslims demonstrated lower self-employment rates because of their lower educational level.

5. Individual characteristics refer to the economic, social and psychological determinants of migrant entrepreneurship and in particular, to the motivation for making money (economic), the wish to escape racial discrimination in the labour market (social), and the need for autonomy and independence (psychological).
6. This is, for example, the case of Afro-Caribbeans in Lambeth, London (Brooks 1983: 43). Also, according to Kloosterman et al (1998), some Turks and Moroccans in Amsterdam became entrepreneurs because of high unemployment rates.
7. However, Kloosterman et al (1998: 253) stress that in the Netherlands the state agencies tolerate informal economic activities 'as part of the typical Dutch policy of *gedogen*, a nigh untranslatable term that means looking the other way when you must'. A similar approach towards informal business activities is being adopted by Greek institutions such as the police.
8. Our fieldwork in Athens revealed that the percentage of Albanian migrants who are self-employed is not great. Albanians are by far the largest group of migrants in Greece (500,000). The pre-migration experience of this group in the context of Albania's communist regime and closed economy (Hall, 1995) may well be amongst the factors accounting for the differential degree of ethnic entrepreneurship between Albanian and African migrants, and the low representation of Albanian migrants involved in running ethnic businesses. Research on migrant workers in Greece has shown that the Albanians are primarily engaged in the construction industry, as decorators and builders, and in agriculture (Lazaridis and Romaniszyn 1998). Only a few run small businesses, such as a kiosk or an off-license shop. So far, we have not encountered any self-employed Albanian women; they are mainly employed in the tertiary sector as domestic workers, cleaners, and in the entertainment and sex industries (Psimmenos 2000; Lazaridis 2001).
9. For example, in the Netherlands a license is required in certain trades, and one is required to demonstrate to national institutions that there is a need for one's business. In Germany, one can set up a business provided that one has a residence permit (Waldinger et al 1990b: 31).
10. The white and green card constitute residence permits, and were launched in the two presidential decrees of 28 November (358/97 and 359/97). The white card is a temporary stay permit and its possession it is a prerequisite for applying for the green card. The holder of the green card could reside for one to five years in Greece (for details see Lazaridis and Poyago-Theotoky 1999).
11. The literature on ethnic business demonstrates that migrants usually run small scale, family-based businesses (Wilson 1983, Sawyerr 1983). For example, the Lambeth Study showed that in Britain the majority of Afro-Caribbean and Asian enterprises are small, ranging from retailing to services, and employ an average of just four persons (Wilson 1983:65). Sawyerr (1983) arrived at the same conclusion based on his research in Manchester.
12. Criminal activities (such as drug smuggling) could be viewed as constituting a form of informal business activity, because they escape the formal regulations. However, these kinds of activity have not been discussed in this chapter.

4 Migrant Women: Maids, Nannies and Nurses, and the Ban on the Headscarf

1. In Nini's novel published in 2000 by Fixot in France and entitled, *Ils disent que je suis une beurette* (*They say that I am a Beurette*) (meaning a female *Beur*), the central character, Samia, deals with the process of becoming a woman in France and how this process is complicated by the additional factor of race. Even the title of the novel indicates how the patriarchal society classes her as *Beurette* when Samia herself, as a fictional representation of the author and of French Muslim women, is uncertain of her own cultural identity. McIlvanney (1998: 508) asserts that the precise definition of 'ils' (they) in the title is uncertain so it may not be French society which classes her as *Beurette* but the male members of her Algerian family. A *Beurette* is neither French nor Arab and, hence, may be taken as indicative of the experience of Muslim women living in France, who may feel a sense of 'otherness' from their cultural origins and family, as well as from France, their country of birth.
2. This figure is an estimate because the French government does not categorise French citizens by their ethnicity or religion.

5 Human Trafficking and Smuggling: The Production of *Ultimate Subjects*

1. Intersights, *Ransted v Cyprus and Russia*, available at: <http://www.intersights.org/ranstev/index.htm> (accessed 14 January 2011).
2. Rome Statute of the International Criminal Court, available at [http://untreaty.un.org/cod/icc/statute/english/rome_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf), p. 5.
3. Tier 1: Countries whose governments fully comply with the TVPA's minimum standards for the elimination of trafficking;
 Tier 2: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards;
 Tier 3: Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

6 The Securitisation of Migration

1. Not just September 9/11 but other actions and events have influenced the way Muslims are viewed in the Western world, such as the Iranian revolution of 1979, the Rushdie Affair in 1989, the Gulf Wars and the Bosnian war in the 1990s, the murder of Theo Van Gogh, the Cartoon Crisis in Denmark in the new millennium, to name a few.

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