The Ethics and Politics of Deportation in Europe

Rutger Birnie

Thesis submitted for assessment with a view to
obtaining the degree of Doctor of Political and Social Sciences
of the European University Institute

Florence, 19 February 2019

European University Institute
Department of Political and Social Sciences

The Ethics and Politics of Deportation in Europe

Rutger Birnie

Thesis submitted for assessment with a view to
obtaining the degree of Doctor of Political and Social Sciences
of the European University Institute

Examining Board

Prof. Rainer Bauböck, European University Institute (Supervisor)
Prof. Matthew Gibney, University of Oxford
Prof. Iseult Honohan, University College Dublin
Prof. Jennifer Welsh, McGill University (formerly EUI)

Researcher declaration to accompany the submission of written work
Department of Political and Social Sciences - Doctoral Programme

I Rutger Birnie certify that I am the author of the work "The Ethics and Politics of Deportation in Europe" I have presented for examination for the Ph.D. at the European University Institute. I also certify that this is solely my own original work, other than where I have clearly indicated, in this declaration and in the thesis, that it is the work of others.

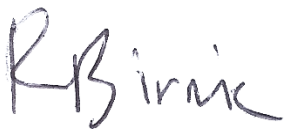
I warrant that I have obtained all the permissions required for using any material from other copyrighted publications.

I certify that this work complies with the Code of Ethics in Academic Research issued by the European University Institute (IUE 332/2/10 (CA 297).

I declare that this work consists of 95,574 words.

Statement of language correction:
This thesis has been corrected for linguistic and stylistic errors. I certify that I have checked and approved all language corrections, and that these have not affected the content of this work.

Signature and date:



25 January 2019

Abstract

This thesis explores key empirical and normative questions prompted by deportation policies and practices in the contemporary European context. The core empirical research question the thesis seeks to address is: what explains the shape of deportation regimes in European liberal democracies? The core normative research question is: how should we evaluate these deportation regimes morally? The two parts of the thesis address each of these questions in turn.

To explain contemporary European deportation regimes, the four chapters of the first part of the thesis investigate them from a historical and multilevel perspective. Chapter 1 ("Expulsion Old and New") starts by comparing contemporary deportation practices to earlier forms of forced removal such as criminal banishment, political exile, poor law expulsion, and collective expulsions on a religious or ethnic basis, highlighting how contemporary deportation echoes some of the purposes of these earlier forms of expulsion. Chapter 2 ("Divergences in Deportation") looks at some major differences between European countries in how, and how much, deportation is used as a policy instrument today, concluding that they can be roughly grouped into four regime types, namely lenient, selective, symbolically strict and coercively strict.

The next two chapters investigate how non-national levels of government are involved in shaping deportation in the European context. Chapter 3 ("Europeanising Expulsion") traces how the institutions of the European Union have come to both restrain and facilitate or incentivise member states' deportation practices in fundamental ways. Chapter 4 ("Localities of Belonging") describes how provincial and municipal governments are increasingly assertive in frustrating deportations, effectively shielding individuals or entire categories of people from the reach of national deportation efforts, while in other cases local governments pressure the national level into instigating deportation proceedings against unwanted residents. The chapters argue that such efforts on both the supranational and local levels must be explained with reference to supranational and local conceptions of membership that are part of a multilevel citizenship structure yet can, and often do, come apart from the national conception of belonging.

The second part of the thesis addresses the second research question by discussing the normative issues deportation gives rise to. Chapter 5 ("Deportability, Domicile and the Human Right to Stay") argues that a moral and legal status of non-deportability should be extended beyond citizenship to all those who have established effective domicile, or long-term and permanent residence, in the national territory. Chapter 6 ("Deportation without Domination?") argues that deportation can and should be applied in a way that does not dominate those it subjects by ensuring its non-arbitrary application through a limiting of executive discretion and by establishing proportionality testing in deportation procedures. The final chapter, Chapter 7 ("Resisting Unjust Deportation") investigates what can and should be done in the face of unjust national deportation regimes, proposing that a normative framework for morally justified anti-deportation resistance must start by differentiating between the various individual and institutional agents of resistance before specifying how their right or duty to resist a particular deportation depends on motivational, epistemic and relational conditions.

Acknowledgements

Many people have been instrumental in the writing of this thesis, but I owe the largest debt of gratitude to Rainer Bauböck. I am truly unable to imagine a more capable and supportive supervisor (or, for that matter, a more astute and inspiring academic). Rainer's swift and always perceptive feedback and encouragement have made the inevitably painful process of a PhD as pleasant an experience as possible.

I also wish to thank the other members of my examining board, Iseult Honohan, Matthew Gibney and Jennifer Welsh, whose insightful comments, criticisms and suggestions have considerably improved this thesis and continue to stimulate my thinking on the topics covered herein (as well as topics that extend beyond it).

Fellow researchers and scholars at the EUI have provided valuable feedback at different stages and on different parts of the thesis. I am indebted to all the supervisees, mentees and visitors connected to Rainer in the period 2013-2018 for their extensive discussion of my work in the context of his PhD colloquium as well as over coffee on the Badia terrace. In particular, I must thank Bouke de Vries, Takeshi Miyai, Lucrecia Rubio Grundell, Christine Hobden, Fran Meissner, Samuel Schmidt, Lorenzo Piccoli, Eleonora Milazzo, João Labareda, Jonathan Zaragoza, Milena Tripkovic, Aslı Okyay and Francisco Alonso. During his time as a visiting scholar at the EUI, Philippe van Parijs provided me with the opportunity to discuss my research in the brilliant setting of one of the "salon talks" he organised at his beautiful temporary home in San Domenico. Julija Sardelić kindly invited me to give a guest lecture at James Madison University in Florence.

Previous versions of most of the chapters have been presented at conferences at the École des Hautes Études en Sciences Sociales (EHESS) in Paris, the Central European University (CEU) and the Hungarian Academy of Sciences (MTA) in Budapest, Erasmus University Rotterdam, the University of Oslo, the Royal Irish Academy in Dublin and Bielefeld University's Institute for Advanced Study (ZiF), in addition to several conferences and workshops that took place at the EUI. I am indebted to audiences at all these events for helpful questions, criticisms and observations. While it is impossible to thank individually all those who have raised constructive points on these many occasions, I will mention by name Antoine Pécoud, Adrian Favell and Susanne Schultz, who served as discussants on three of these occasions.

For her excellent administrative support throughout my time in Florence, thanks are due to Monika Rzemieniecka. Emma Prunty has done an excellent job spotting the typos in this thesis and correcting stylistic and linguistic errors.

Fortunately, my life in Florence was not solely defined by academic pursuits. For their "friendship in the time of PhD", I am indebted to Aga, Agu, Bene, Bouke, Christine, Daniel, Dorit, Fran, James, Jess, Johannes, Julia, Kat, Koen, Liam, Manès, Mariana, Mariana, Martijn, Martina, Mathilde, Olga, Pablo, Przemek, Roel, Sam, Sofie, Takeshi, Teresa, and all those I will remember as soon as this has been printed.

Finally, my parents had the thankless task of keeping me sane during the last, difficult, period of writing and revising this thesis. Without their emotional support, this thesis would not be here.

Table of contents

List of figures and tables

Introduction

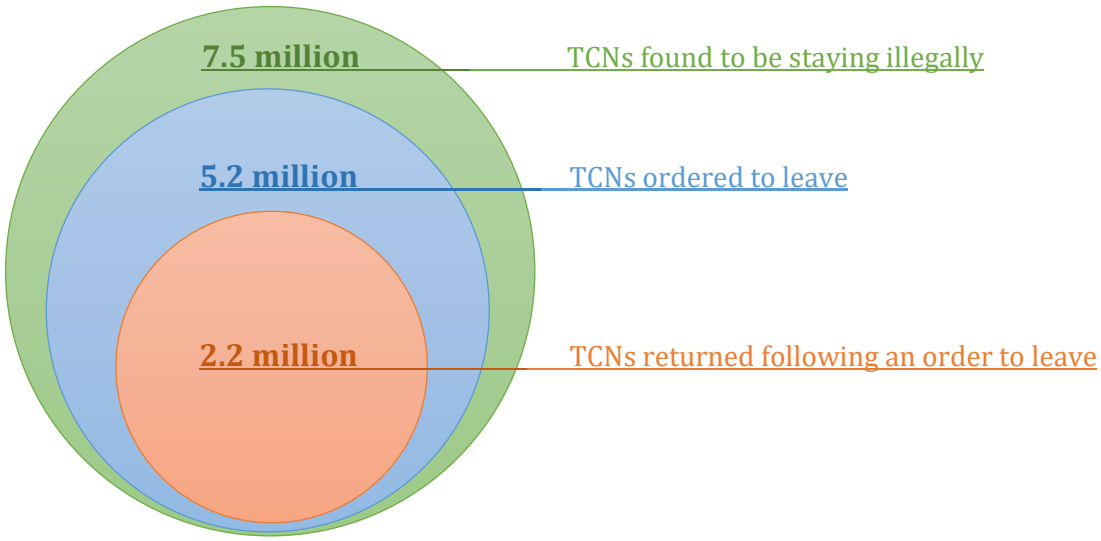
Deportation in Europe

The failed deportation of Lily and Howick was ten years in the making and had more twists and turns than a TV soap opera. These two Armenian children, aged 13 and 12 respectively, grew up in the Netherlands but lost their final appeal after a long drawn out asylum process. The children were born in Russia and although they (and their mother) are Armenian nationals, they have never been to Armenia and do not speak the language. In the summer of 2017, their classmates, friends, parents, fellow church members and others made a last-minute attempt to prevent their forced removal, first by seeking publicity and organising protests, and later by helping the teens go into hiding. A day later, their mother was deported to Armenia and the children stayed behind. In late November, a Dutch court ordered that the children could return to the town where they had been living with the foster parents they affectively called their "grandparents". In July 2018 a court in Utrecht ordered the junior immigration minister responsible to re-examine the "return conditions". That same evening, the children appeared on the national children's news programme to describe how it is to live in such uncertainty for most of their young lives. At a hearing of the Council of State, the Netherlands' highest court of appeal in administrative matters, the debate between the Council for Child Protection and the junior minister was intense. After the Council of State declared the minister's decision legitimate, several NGOs organised a demonstration for Howick and Lily under the banner "They are already home" ("Ze zijn al thuis"), and the Ombudsman for children publicly declared her opposition to the deportation, as did many television personalities and even police chiefs. A day later, on September 7th, the children's mother was committed to a psychiatric clinic for at least six months, which meant the children would have to go to a children's home upon arrival in Armenia. The pair's lawyer began an emergency procedure, but the judge decided that evening that the deportation could continue because the mother had not yet been diagnosed and there was therefore no indication that the mother's incapacity to care for her children would be long-term. Within an hour of the judge's ruling, Howick and Lily left their foster home and went underground again—just hours before they were to be picked up for their scheduled flight to Armenia. It later became clear that they had extensive help from friends, neighbours, activists and perhaps even the local mayor, but details remain unclear. The next morning, Saturday September 8th, the police asked the public to help look for the two via their social media accounts, a request which was widely answered with anger and ridicule—there were even suggestions to make false reports to put the police off the children's track. That afternoon, the junior minister decided to use his discretionary power to revoke the deportation, citing

concerns about the security of the children and arguing this was the only way to convince them to come out of hiding and ensure their safety. It later turned out the junior minister and his partner had received death threats.

Lily and Howick were among the 500,000 or so people formally told every year to leave their countries of residence in Europe. During the decade between 2008 and 2017, the member states of the European Union (EU) collectively served 5.2 million deportation orders to non-EU nationals present on their territories. Actual departure rates tend to be much lower. Some deportation orders are called off, as in the case of Lily and Howick. Many more, however, are

Figure 0.1 Illegal stay and deportation of Third Country Nationals in the EU, 2008-17



Source: Eurostat 2018

simply not effectively enforced. Nonetheless, around 2.2 million orders were actually followed up by either a forced deportation or by people leaving of their own accord under threat of such a forced departure (see figure 0.1). While official statistics on deportation are fraught with difficulties in terms of both veracity (some countries shield the details of their deportation efforts from public scrutiny while others artificially inflate their figures for electoral reasons) and comparability (different countries include and exclude different categories of removals in their statistics), the available data show that in most Western countries the number of deportations has increased significantly since the 1980s. Within Europe, the United Kingdom (UK) has seen the most spectacular rise in number of deportations, from 2,000 a year during most of the 1980s, slipping into the 10,000s around the turn of the century, while averaging around 50,000 in recent years (Bloch and Schuster 2005: 496; Eurostat 2018). Germany, meanwhile, deported around 10,000 persons a year around the time of reunification, which exploded to over 50,000 a year around 1994 at the height of the Balkan refugee crisis,

fluctuating between 25,000 and 40,000 a year in the decade following, and going up again in recent years, topping 75,000 in 2017 (Ellermann 2009; Bundesamt für Migration und Flüchtlinge 2015: 141; Eurostat 2018). Some Eastern European countries, including most notably Poland and Hungary, have in recent years joined the continent's major deporters.

However, this growth seems to have plateaued somewhat over the last decade on the aggregate level in Europe, where the total number of deportations in all 28 EU member states has fluctuated between 200,000 and 250,000 in recent years.[1] It is especially interesting to note the stability of these aggregate numbers in the European context, even after the enormous inflow of asylum seekers into Europe that peaked in the summer of 2015 (see figure 0.2). This raises the question of whether, at least in Europe, we have seen the apex of the "deportation turn" that Matthew Gibney identified a decade ago (2008: 146).

Figure 0.2 Third Country Nationals (TCNs) and EU migration control

Source: Eurostat 2018

The European "deportation turn" revisited

The increasing use of deportation by the governments of the United States, Canada, Australia and most countries in Western Europe, is tracked by the rapid rise of academic interest in the topic of deportation over the last decade and a half and the emergence of what can now be

[1] By comparison, the number of deportations from both Canada and Australia have doubled over the last two decades from around 5,000 a year in the mid-1990s to over 10,000 people in 2013 (Nicholls 2007: 145). Deportations have increased most dramatically in the US, however, which deported an average of 22,000 people per year during the 1980s, growing to almost 200,000 a year around the turn of the century, and currently exceeding 400,000 people per year (Simanski 2014).

clearly identified as an established field of deportation studies, which includes scholars from a wide variety of disciplines including law, criminology, political science, anthropology and normative theory. Daniel Kanstroom speaks of deportation as a "globally ascendant practice" (Kanstroom 2016: 7) and Nicholas de Genova and Nathalie Peutz speak of "the ascendancy of deportation as an ever more pervasive and increasingly standardized instrument of statecraft" (De Genova and Peutz 2010: 3). Scholars have described the rise not only as a "deportation turn" but also, more vividly, as "the age of deportation" (Boehm 2016) and even a "deportations delirium" (Kanstroom and Lykes 2015b) or "deportation crisis" (Drotbohm and Hasselberg 2018).

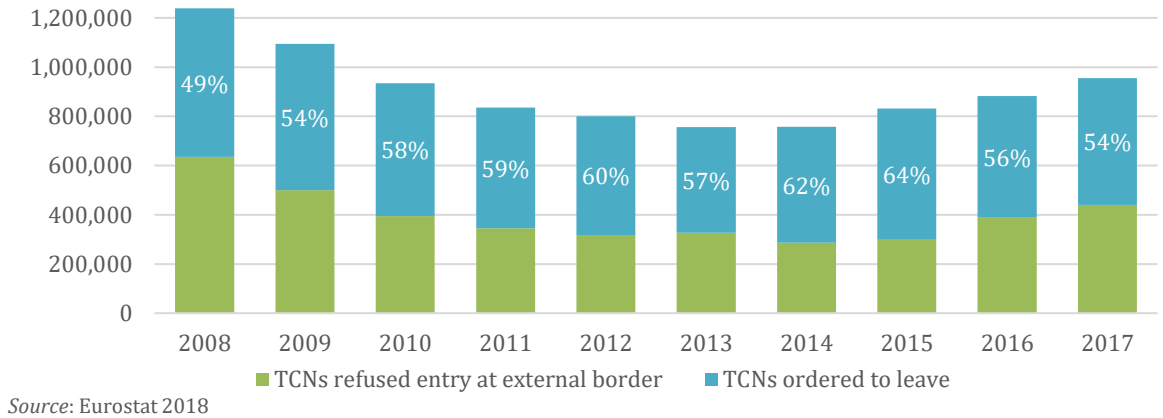
While this trend is often seen as having really begun in the wake of the terrorist attacks in New York and Washington on September 11th 2001, which reframed migration control as a security concern and prompted an escalation of this restrictivist turn in migration control regimes, the long-term rise in the number of deportations over the last few decades has deeper roots. It can essentially be explained as a response to the steady increase in the inflow of asylum seekers and irregular migrants in many Western countries that started in the 1970s, when, particularly in Europe, governments abandoned guest worker programmes and instead adopted increasingly restrictive immigration policies. Entry into these countries had been fairly easy for all types of migrants in the immediate post-war period, but when economic migration routes were shut off, the asylum path became the only option for many potential immigrants to gain entry. The destination countries concluded that the subsequent rise in asylum applications was mostly made up of economic migrants posing as refugees, which led to an ever more restrictive application of refugee protection laws. The big rise in rejected asylum applications resulted in a growing group of "failed asylum seekers", which became a major category that European governments targeted for deportation, and failed asylum seekers continue to make up the bulk of deportees in many countries.

Another result of the restrictivist turn in migration policy of the 1970s and 1980s was a surge in irregular, unauthorised influxes of people. The EU population of "illegal" or "undocumented" residents made up of those who entered without permission or with fraudulent documentation, or overstayed their visa or temporary permit, is currently estimated at between 2 and 4 million people (CLANDESTINO Project 2009). The popular fear of large inflows of undetected entrants has been a highly effective source to mobilise public opinion in favour of strict deportation policies. Yet only about 10 percent of the irregular population in Europe is thought to have entered illegally, while the other 90 percent fall into irregularity sometime after entering (Düvell 2011). Many of these simply overstay their visas or temporary residence permits, while others have their right to reside cancelled because they have breached conditions of entry, for

instance by working illegally or taking up a type of employment that their permit does not allow, or, when on a student visa, not maintaining a full course load. In most countries, the irregular population far outweighs that of failed asylum seekers, yet in relative terms a much larger number of failed asylum seekers get deported than irregular migrants. This is probably connected to the fact that governments typically have much more information on the whereabouts, identity, and country of origin of those who went through the asylum system and tried to gain protected status through submitting genuine information, than they do on more "hidden" irregular migrants (Ellermann 2010). Thus, it is usually easier both to locate such individuals, and to determine where to send them to. This increased likelihood of deportation could be an important reason why many prospective asylum applicants choose irregularity over attempting to get formal refugee status.

The justification of deporting people with an irregular status and failed asylum seekers emphasises deportation as a form of, to use Daniel Kanstroom's terminology, "extended border control" (2007: 5). The deportation of these groups is seen as an extension of the state's sovereign right to control entry to its territory, as a necessary supplement to territorial border control. Irregular migrants were never allowed to enter or settle on the territory of the state, and their removal is thus simply the *ex post facto* effectuation of their non-entry, while asylum seekers are only allowed provisional entry for the period it takes to assess their claim to international protection. For this reason, some jurisdictions define the expulsion of someone who never had authorisation to be on the territory and crossed the border illegally as "non-admission" rather than deportation (Kälin 2010).

Figure 0.3 External vs. internal border control in the EU



Source: Eurostat 2018

As an "internal" form of immigration control, deportation's relative importance has continued to increase compared to "external" entry controls at the physical border. Long the "little brother" of entry control, since 2009 the number of people in Europe who get served a deportation order consistently exceeds that of those refused entry at the border by between 50,000 and 100,000,

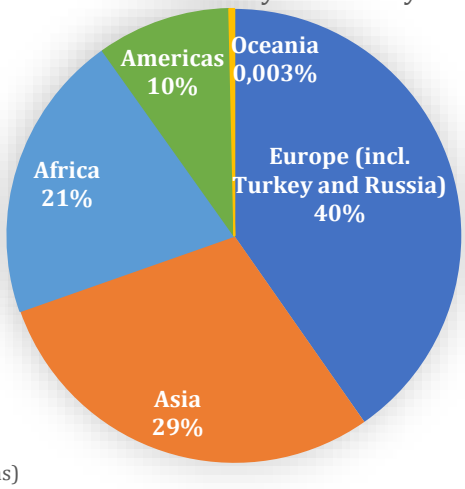
while the number of enforced deportations is also fast approaching the number of entry refusal (see figure 0.3). This sort of justification increasingly invokes the idea of stepped-up deportation efforts as a necessary response to a "crisis" of asylum, migration or illegality (Bloch and Schuster 2005; Della Torre and de Lange 2018).

While in purely numerical terms the deportation turn can be said to have plateaued, at least in Europe, a more detailed look at the way in which deportation practice has evolved in Western countries reveals the on-going expansion of this phenomenon. One major way in which the deportation turn continues concerns states' executive capacity to enforce deportations. In most countries, the infrastructure to facilitate the deportation process continues to grow both in size and sophistication, leading some to characterise it as a veritable "deportation machine" (Fekete 2005). The governments of Europe's liberal democratic states face important constraints in effectuating the actual removal of deportable populations. Some of these are legal. In many jurisdictions, the deportation process involves court hearings, at least when the individual chooses to contest her deportability. There are important legal constraints on the deportation process in the form of human rights law, notably through protections against removal to a place where they would face a demonstrable danger of torture, persecution or generalised violence (in addition to the protection against *refoulement* as established in the 1951 Refugee Convention), and through the right to family life. Other impediments are practical. Deportees may be unwilling to cooperate and sometimes actively resist their deportation, which means that a high level of coercive force and the presence of security personnel is needed to enforce their removal. Furthermore, the restraining violence these guards sometimes use and the agitated reactions among other passengers this brings about have caused an increasing number of commercial airlines to refuse to accept deportees on regular commercial flights. All this means individual deportation procedures tend to be costly and time-consuming. Another practical impediment to deportation involves the refusal by countries of destination to cooperate, for example by issuing the necessary identity and travel documents. Governments of these countries are often reluctant to accept those deemed undesirable by another state, since they themselves find the presence of these individuals on their territory undesirable. Another incentive for these countries not to cooperate is that large scale deportations of their own nationals residing abroad may deprive their economy of a valuable source of income in the form of remittances.

In order to circumvent such restraints on their executive deportation power, European governments have over the years built up a still-growing infrastructure aiming to make the deportation process more effective and efficient. State expenditure dedicated to deportation policy have generally continued to rise in countries across Europe, including Spain, Sweden,

Ireland, Germany, the UK, the Netherlands, Denmark and Switzerland (Fekete 2005: 69-71). In some countries, such as the UK, laws have been passed to curtail deportees' right of appeal, in order to reduce the time between the serving of the deportation order and the actual removal. Ostensibly in order to reduce costs, but possibly also to shift accountability, the deportation procedure has in a number of countries been (partially) outsourced, with private security companies now involved in different stages of the process, including detection of those targeted for deportation, pre-departure detention, and the removal process itself—a development which has led William Walters to refer to deportation as "human trafficking in reverse" (2002: 276) in light of the profits that are now being made in this line of business. The transportation of individual cases on regular commercial flights is increasingly replaced by specially organised deportation charter flights carrying groups of deportees accompanied by a small army of security staff. In order to increase the willingness of destination countries to accept the deportees, bilateral and multilateral agreements with such countries, in which an increased willingness to cooperate is secured through concessions in other areas, have proliferated. France has such bilateral readmission agreements with no fewer than 70 countries, Italy with 52, Germany with 38, Spain with 36, the Netherlands with 35, the UK with 26, and Sweden with 24. Since the European Commission acquired the competence to negotiate EU-wide readmission agreements with non-EU countries on behalf of its member states in 1999, such multilateral agreements have been concluded with 17 countries in Eastern Europe, Africa and Asia, while agreements with six other countries are under negotiation (Weber 2014: 169; Cassarino 2015).

Figure 0.4 Effected deportations from the EU by nationality of the deportee, 2008-17



Source: Eurostat 2018 (own calculations)

The destination countries of European deportations are also interesting to consider in this regard. Most of the largest groups of deportees, by nationality, are in the wider European neighbourhood (Albania, Serbia, Kosovo, Macedonia, Ukraine and Morocco). Others are long-term source countries of asylum seekers, notably Iraq and Afghanistan, to which deportations

have skyrocketed over the last two or three years (Eurostat 2018).[2] Overall, half of European deportees and almost all of those not deported to other European destinations are deported to Asia and Africa (see figure 0.4).

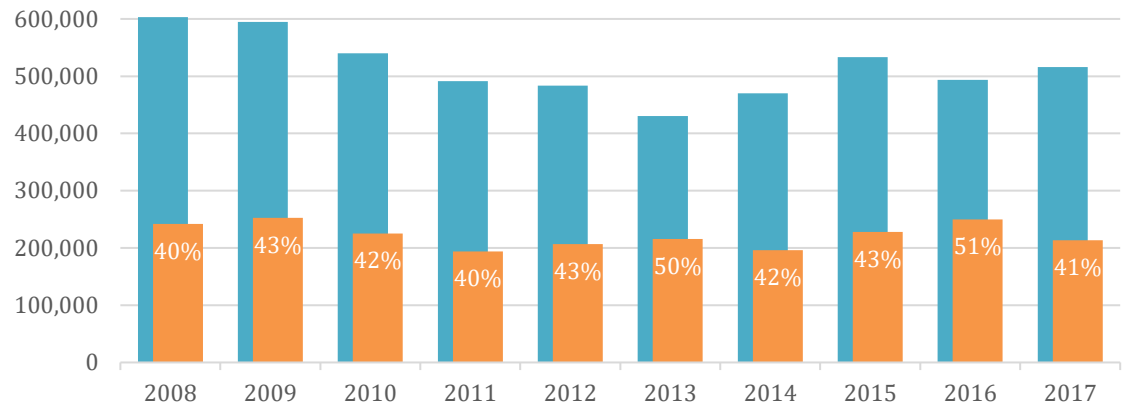
Deportation is not a discrete event limited to the actual moment of enforced departure, but rather, as Susan Bibler Coutin writes, "begins long before an individual is apprehended, through the myriad practices that make someone vulnerable to deportation in the first place, [and] continues long after an individual is returned, through the difficult process of readjustment, the ripple effects on family members and the continued prohibition on re-entry" (2015: 674). A particularly sharp and contested institutional development in the push to facilitate the deportation process is the growth of a detention regime that includes an ever-increasing number of detention centres and places. All EU countries have provisions in their legislation that allow them to deprive foreigners present in their territory of their liberty, and both numbers of immigration detainees and periods of detention have risen in recent years (Cornelisse 2010a; Wilsher 2012). The number of centres in Europe where people are held awaiting their removal or status determination has exploded to include at least 377 facilities that hold between 100,000 and 200,000 people a year (Wilsher 2012: 172; Migreurop 2013). Immigration detainees are sometimes held in regular prisons together with convicted criminals, but even when they are held in separate facilities, conditions are often not any better than in regular prisons. Indeed, research suggests that in some countries, including the Netherlands, France and Malta, those detained under immigration legislation are held in worse conditions and subject to harsher treatment than those held in prisons under criminal laws (Cornelisse 2010a: 21). The detention of pregnant women, children and unaccompanied minors has become commonplace throughout Europe. Some countries, notably the UK, do not have a legal time limit on the use of administrative detention for immigration control purposes, but even in countries that do have such a limit it is common for difficult-to-deport but nonetheless undesirable non-citizens to be released at the time limit, only to be re-apprehended and put in detention again soon after. While some of those detained administratively under immigration law powers are alleged to be individually dangerous, most are not (Wilsher 2012: xii). Detaining those marked for deportation is meant instead to reduce the risk of absconding and thus facilitate and expedite the removal process. It is worth noting, however, that the fact that in several countries the number of people detained under immigration law continues to grow even if deportation numbers have stagnated indicates that detention might serve other functions than the facilitation of deportation.

[2] http://www.postdeportation.org. Last accessed September 2018.

The purposes of deportation

Despite such efforts, the vast majority of deportation orders in Europe go unenforced (see figure 0.5). This is partly due to the fact that deportation remains an expensive and time-consuming measure which might face a host of obstacles in its execution, including legal safeguards, health problems, identification problems, lack of cooperation from the country of origin, and anti-deportation campaigns (Bloch and Schuster 2005: 495). However, it might also be the case that not all the purposes of deportation are publicly declared and that it also serves other, hidden purposes.

Figure 0.5 Effected deportations as a share of deportation orders (EU)



Source: Eurostat 2018

The idea of deportation as "simply" a form of post-entry immigration control indicates that the purposes of deportation policy thus seem two-fold: to make immigration laws effective and to deter the breaking of these laws. Regarding the supposed deterrence effect, there seems to be no evidence that deportation has such an effect. In the only comparative analysis of deportation in a large number of countries to date, Tom Wong has found no statistically significant relationship between the number of deportations and immigration inflows and only a very limited and contingent effect on asylum inflows (2015: 156, 161). Of course, as deportation is meant to deter only unwanted immigration, this does not necessarily mean that it is completely ineffective: successful deportation may leave more space for allowing more desired forms of immigration to take place.

However, there are two more fundamental reasons why thinking about deportation as solely the post-entry enforcement of border rules is problematic. The first is that the state's power to deport subjects in principle all non-citizen residents (and in some countries even some current citizens) to the threat of deportation. European countries regularly deport legally residing non-citizen residents after changes in their economic situation, criminal convictions, or for reasons

of public security. As will be discussed in Chapter 1, an increasing number of countries has also rediscovered the tool of denationalisation to turn citizens into non-citizens in order to render them deportable. The second reason is that, even for the three groups mentioned first, and even though the exact boundary between the two practices is perhaps contestable, deportation is a qualitatively different act from entry refusal. Even if entry control is an inherently coercive act,[3] there is something quite distinct about the coercive mechanisms necessary for the detection and effective removal of irregularly residing individuals who are already inside the territory of the political community. The moment someone enters a polity marks the beginning of a shift in relationship between the entrant and the territory, the community living on the territory, and its political institutions which will rule on their status. The shift is not immediate but nonetheless of major importance. While entry-removal *prevents* the coming about of a relationship between the state and the would-be immigrant, deportation severs "permanently and completely" an *already existing* "relationship of responsibility between the state and the individual under its authority in a way that only capital punishment surpasses" (Gibney and Hansen 2005: 127).

This thesis proposes to approach deportation as a self-standing policy field which has as one of its major, *but not only,* aims the control of immigrant inflows. I therefore follow Nathalie Peutz and Nicholas de Genova in underlining that "deportation (…) is seldom recognized to be a distinct policy option with its own socio-political logic, as well as far-reaching consequences" (2010: 1). At the same time, where these authors remain mostly focused on deportation as a response to (and indeed a constitutive practice of) irregular migration and residence, I broaden the perspective further. Looking at deportation as a subcategory of immigration policy only to be considered in conjunction with entry controls at the border and externalised non-entrée policies misses what makes deportation distinctly interesting. When seen as a subcategory not of immigration control policies but of wider expulsion efforts, for instance, deportation suddenly seems to have a much longer history than entry-control enforcement. Looking at the roles and reasons of non-national governmental actors which seek to influence deportation regimes shows that this involvement has a variety of purposes beyond responding to national concerns over immigration. And normatively, it becomes apparent that states happily present deportation as immigration control as it allows them to group together a wide variety of individuals with very different types of relationship to and (as I will argue) claims on the enforcing state into one "naturally deportable" category.

[3] As Joseph Carens famously observed, "borders have guards and guards have guns" (1987: 251).

Rationale

The phenomenon of deportation in the European context remains insufficiently studied in important respects. This thesis contributes to the literature in several ways. The first contribution concerns its geographic focus on Europe as a whole. While deportation studies has become a booming field in recent years, a significant part of the deportation literature has focused predominantly or exclusively on the United States (US) context (Kanstroom 2007; Brotherton and Kretsedemas 2008; Kanstroom 2012; Moloney 2012; Kanstroom and Lykes 2015b; Brotherton and Kretsedemas 2018a). Yet the US context—where deportation is, on the one hand, much larger and (arguably) harsher than in other Western democracies, and on the other hand more directly in tension with America's self-defined status as a "nation of immigrants" (Kanstroom and Lykes 2015a)—is extremely specific, and normatively much of the debate focuses on the ambiguous (extra)constitutional status of deportation (Kanstroom 2007). Other studies focus on specific European countries such as the UK (Cohen 1997; Gibney 2013a) and the Netherlands (Kalir and Wissink 2016; Leerkes et al. 2017), or are comparative case studies of single European countries with non-European ones, mostly those in the English-speaking world (Gibney and Hansen 2003; Ellermann 2009; Anderson et al. 2011). The common focus on the US, the UK, Canada and Australia may be interesting as these are among the largest deporters worldwide, but this focus also risks missing some significant variation. These countries share not only a language but significant political and legal affinity as all are rooted in the history of the British colonial project (Brotherton and Kretsedemas 2018b: 12). Recently, there has been a pair of studies comparing larger numbers of countries (Weber 2014; Wong 2015), though both studies have at the same time a wider geographical focus than the one taken here, but also a narrower one in that they are interested chiefly in rich countries with long histories of net immigration.

What is missing is a more in-depth analysis of the situation in the broader European context.[4] The political dynamic of deportation in Europe is unique because of three factors. The first is the political project of supranational integration and the changing parameters of sovereignty and membership. The second is its geographic vicinity to migration source countries and attractiveness as a migration destination, most spectacularly manifested in the "migration crisis" of 2015 which continues to simmer, at least in the public imagination. A third factor, not strictly unique to the European context but particularly acute there, is the continent's normative

[4] One edited volume specifically interested in the European context and in both empirical and moral questions has come out since I started my PhD project (Jansen et al. 2015). Empirically the contributions do not add up to any systematic analysis of the politics of deportation on different levels, and normatively they remain critical without proposing any positive principles or guidelines.

self-understanding torn between the idea of Europe as the continent of human rights and the rule of law, versus the meteoric re-emergence of a nativist and xenophobic far right which has renewed itself and shed the neofascist stigma that had kept it small and isolated for decades.

The second contribution made by this thesis is its focus on deportation as a political tool. While much of the early work in deportation studies had a more theoretical focus on exploring how deportation operates as a governing principle and what it says about the political authorities and communities pursuing it (Walters 2002; Anderson et al. 2011), there has been a significant turn towards more ethnographic research focused on the effects of deportation on those targeted by it and their coping or resistance strategies (Fischer 2013; Campesi 2015; Drotbohm and Hasselberg 2015; Kanstroom and Lykes 2015b; Hasselberg 2016; Khosravi 2018). This body of scholarship has successfully traced the effects of deportation for individuals, families and communities living under the constant threat of detection (Hasselberg 2016; Boe 2018), of being cut off from their social environment in detention (Fischer 2013; Bosworth 2014), and of suffering after-effects and stigma in their deportation destinations (Lecadet 2013; Schuster and Majidi 2015; Khosravi 2018), as well as these subjects' counterstrategies. William Walters has recently focused attention on the routes and vehicles (most notably airplanes) of the forced removals and how these have become contestatory spaces (Walters 2015a, 2015b, 2016).

The perspective of this part of the thesis is consciously limited compared to this new body of ethnographic deportation studies. It takes deportation as a distinctly political phenomenon and is less directly concerned with the social or individual effects on those subjected to it. This thesis turns back to take a more theoretical view on what deportation can tell us about the political communities "doing the expelling" (Anderson et al. 2011: 553). It wants to (re)focus on the threefold question of *why* states deport, *who* they deport and *how* they deport. In other words, what are the *purposes* of deportation, why do states *target* who they do in their deportation policies and why do they choose the *modes* of deportation that they use? It also proposes that in order to do so we must take seriously the multilevel nature of governance in the European context and that we consider deportation as not just a way to *exclude*, but also as a tool of *inclusion*—by selectively exempting large groups of people from the power to deport. This inclusive dimension of deportation policy is too often absent in analyses of deportation as a political tool on all levels—national, supranational (e.g. Ette 2017) and subnational.

The third contribution is on the level of normative theory. Much of the work which engages with the moral questions raised by deportation is either done by critical theorists who are less interested in seeking to propose positive principles or evaluative standards (or to engage much with counterarguments), or by those explicitly combining academic research with activism and advocacy. Increasingly, deportation studies is dominated by those involved in what has come to

be known as "participatory action research", which posits that academic research is done in collaboration with and is specifically attuned to the activities and views of migrants themselves and activists advocating for their rights (Kanstroom and Lykes 2015a: 17-18). While this strategy is important to bring about both broader and deeper understanding of inevitably "situated" knowledge and to raise the voices of those marginalised by immigration control, it may also risk "taking sides" and focusing exclusively on one side of what is very much a polarised public debate. I return to a more analytical normative approach in looking at the moral questions raised by deportation policies and practices. While there is by no means a clear line of division, and some have argued that the distinction is inappropriate and wholly unhelpful, analytic normative theory can be contrasted to critical approaches to moral and political philosophy that do not seek to propose positive principles or guidelines for action.

Indeed, my approach in this part of the thesis is likely to be criticised by many in this tradition, who may argue that my approach risks legitimising deportation practices which are inherently problematic. I am indeed interested in the real-world policy application of my moral arguments, and as much in identifying when deportation *is* legitimate and morally justifiable as in when it is not. That this may legitimise certain practices is precisely the point, and in my eyes does not detract from the critical force of the main argument. However, my moral arguments often have the following form: *even if* x were morally justified, y is not. It is important to point out from the outset that I do *not* take this sort of argument to imply that x is, indeed, morally justified. Even maintaining neutrality on a question which is beyond the scope of a particular normative inquiry can lead to valuable discussion—or so I believe. Part of this strategy of moral argument is practical: I do not have the time nor the space to defend my position on, for instance, entry policies, and therefore keeping the answer to this "constant" is a way to move on to the precise question of interest. However, I could of course simply state my position on the prior question without defending it, which would come down to the same thing in terms of getting to the point and which would also have the possible advantage of clarifying my starting point. That I do not do this has to do with one major advantage of leaving this ambiguous: convincing an interlocutor and finding the largest possible areas of agreement on a particular topic by people who might hold wildly differing views on related questions.[5] Relatedly, and perhaps as a way to

[5] I follow Joseph Carens (2013: 10-11) in approaching the debate in this manner. I therefore disagree with Adam Hosein, who thinks that, in order for the issue of regularisation (protection from deportation) to arise, we *must* assume that states have a general right to control their borders and that "migrants who deliberately enter or stay in a territory without authorization are (at least prima facie) committing a wrong against the state" (2016: 160-161). Hosein writes "If states have a duty to let anyone who wishes enter their territory, then, *a fortiori*, it is wrong for them to forcibly remove anyone who is currently present in the territory" (2016: 160). This is simply not true. States may lack a general right to keep out foreigners as they please which still admits of exceptions—for instance in emergency situations of a

respond to the critique from critical circles that normative theory tends to get caught up in discussions of abstract principles at the expense of contextualised judgements of how such principles are worked out in practice, my approach starts from the identification of real-world injustice rather than the formulation of an ideal "blueprint" of justice. I follow Amartya Sen (2006) and others in approaching normative questions by starting from identifying injustice and its remedies rather than seeking to formulate an account of ideal justice before proposing how to "get there". Deportation can in many ways be seen as the ultimate "non-ideal" issue in the broad debate on the ethics of migration, borders and citizenship.

While a significant literature has also emerged in analytical political normative theory that is relevant for the morality of deportation, a lot of this literature tends to investigate it as either part of the question on just admissions, thereby conceding that deportation is a logical corollary to the right of entry control, or as part of the question on democratic inclusion principles, thereby potentially overlooking that naturalisation is not a sufficient solution to the problem of unjust deportability.[6] This thesis provides a more comprehensive normative analysis than has thus far been put forth. As it starts from the contemporary European context, and the member states of the EU in particular, which are all liberal democracies (at least nominally—though some member states are arguably moving away from the liberal democratic model at the moment), it takes liberal democracies as the context in which practices are morally assessed. Liberal democracy is avowedly committed to certain basic principles and values which form the basis of much liberal normative political analysis. This allows for criticising political systems committed to these as failing at what they themselves have endorsed. All this does not mean, however, that my prescriptive analysis only applies to those countries that call themselves liberal democracies. I believe that the underlying principles of basic rights and belonging that are defended in these chapters are universal in scope. In other words; all countries, liberal and authoritarian, commit a moral wrong when they fail to uphold them by unjustly deporting someone.

A fourth contribution of this thesis lies in the combination of an empirical with a normative perspective. The empirical and normative parts of the thesis are self-standing parts and can be

---

security or economic kind—and people may have a general right to enter another country which however can be overridden by other considerations. It is by no means clear that those same considerations would govern the deportability of already-settled foreigners in the same way. Even if one defends open borders and a basic right of free international movement, then, it is worth giving specific and separate attention to the issue of deportation. And by defending principles which limit the permissibility of deportation, one is not automatically and necessarily assuming that states have a general discretionary right to control the admission of non-citizens.

[6] While few explicitly claim that it is, the common jump from diagnosing unjust deportability to proposals for democratic inclusion as enfranchisement misses the need for protection against deportation as either an intermediary or an alternative.

read independently of each other. To a large extent, this is the case even of the individual chapters in each of the two parts. Nonetheless, I believe there is value in juxtaposing the two parts and in having undertaken these two projects simultaneously, as this allows for a better contextualisation and deeper empirical grounding of the normative discussion as well as an empirical approach more pointedly guided by normative considerations. The empirical and normative projects have indeed influenced each other in important respects. Several of the empirical findings in Part I of the thesis have guided and formed a necessary background for normative theorising in Part II. Evaluating deportation means evaluating its aims and methods, but what these aims are and what methods are chosen (and why) are empirical questions. If it is, as I argue, clear that deportation has aims other than those that governments routinely profess, it is important to uncover these before any normative inquiry can take place. Uncovering the aims of deportation (as I seek to do in Chapters 1 and 2), has provided a more empirically informed basis for normative critique than many existing discussions of deportation which are provoked by a particular "type" of deportation (for instance, of failed asylum seekers) or even just a single case. Particularly, thinking about how real-world deportation serves to define the borders of membership communities in ways that are at least potentially problematic underlies my normative critique (in Chapter 5) of the social membership account of just deportability defended most prominently by Joseph Carens. A more in-depth description of the mechanisms by which deportation is implemented in the real world (as this Introduction and Chapters 2, 3 and 4 provide) allows the focus of my normative discussion to shift beyond the more frequently addressed question of who should and who should not be subjectable to deportation to the more neglected normative issues surrounding deportation's implementation (as Chapter 6 seeks to do). Explicit attention on the shifting dynamics of actual deportation regimes—which are no longer administered solely by executive national governments but also, increasingly, by supranational (Chapter 3) and subnational (Chapter 4) governmental actors—broadens the view of who normative critique should be directed at (as reflected in Chapter 7, which takes up the question of to what extent these actors can be criticised for their participation in the deportation or failure to refuse cooperation). Conversely, taking a cue from the non-national contexts in which many real-world normative conflicts over deportation play out has inspired the multilevel approach taken in the empirical part of the thesis.

In short, this thesis provides a novel systematic analysis of the forces which drive, and the implications of, deportation in the specific European context, directly combining historical with contemporary, national with multilevel and empirical with normative perspectives.

Definition of concepts and scope restrictions

Before going further, it is important to clarify several central terms and concepts which will be used throughout this thesis. Most importantly, *deportation* is understood here as the forced removal or departure of an individual following a formal order to leave the national territory on the ground that this person does not have, or no longer has, a formal right to remain there. This definition includes forms of what is known as "voluntary departure"; a term problematic to many authors and which will be more fully discussed in Chapter 2. This concerns self-organised departures by those who were served an order to leave the country which is backed up by a threat of forced removal if they do not leave on their own initiative. Understood as such, deportation must still be distinguished from "fully" voluntary departure, which is not backed up by a formal order to leave.[7] Deportation must also be distinguished from a number of related phenomena, namely extradition and extraordinary rendition. Extradition is the delivering of a person by one jurisdiction into the custody of a law enforcement agency of another jurisdiction where that individual has been accused, or convicted, of committing a crime. The main purpose of such a territorial removal is not to eject the person in question from the country she is forced away from but rather to facilitate criminal prosecution and punishment by the country requesting the physical transfer of the person involved. Extraordinary rendition, also called irregular rendition or forced rendition (or, more critically, government-sponsored abduction), is the extrajudicial transfer of a person from one country to another. This has predominantly been carried out by the US though often with the consent of the countries from which persons are taken. Again, the instigation in this case is done by the country to which the person in question is forcibly brought rather than the one from which she forcibly leaves.

Deportability is here understood in a broader way than its typical definition as the condition of being subject to a legal obligation to leave the country, either by virtue of one's unauthorised status or following an explicit deportation order. Here it is rather understood as the condition of being subject to the possibility of deportation at all—even if the chances of being deported are slim. All those lacking robust legal protections against deportation (which in practice means almost all territorially present non-citizens) are thus in a basic sense deportable. De Genova and Peutz refer to this as "the protracted possibility of being deported" (2010: 14), yet they and others have linked this condition to more ethnographic and normative notions of inherent marginalisation, insecurity and "disposable labour", while I wish to use deportability in a more neutral sense as a description of a legal status. Conversely, I understand "non-deportability" as

[7] Of course, such departures may still not be voluntary in some ideal sense, for instance when they are a result of economic pressures.

the formal status of those enjoying full or enhanced legal protections against the state's deportation power, rather than as the situation in which those who are under an obligation to leave the territory but cannot be deported for legal or practical purposes, as Emanuela Paoletti (2010), among others, does.

A *deportation regime* is defined as the whole construction of rules and regulations which govern the deportation procedure in a particular context. This includes not just deportation law but also immigration law that deals with conditional entry and presence, denationalisation law, inter- and supranational law, and local rules and regulations. It covers not just the formal shape of those rules but also their implementation. The increasingly codified legal regime has elaborated not only the precise grounds which may trigger deportations but also the grounds which protect people against deportation, either absolutely (by prohibiting expulsion) or by raising the threshold at which a deportation order can be issued. Much of the deportation literature, perhaps in its desire to accentuate the extensive reach of this policy instrument, has focused on the former at the expense of the latter. Peutz and De Genova use the term "deportation regime" to indicate that it is not a neutral policy but rather "a complex sociopolitical regime that manifests and engenders dominant notions of sovereignty, citizenship, public health, national identity, cultural homogeneity, racial purity, and class privilege [as well as] an increasingly unified, effectively global response to a world that is being actively remade by transnational human mobility" (2010: 2). There seems to be some tension in conceptualising the deportation regime on the one hand as an intricate constellation of many different laws and practices, while, on the other, as an effectively unified global system of regulating mobility and residence. Unlike Peutz and De Genova, who consistently speak of the deportation regime in the singular, I will therefore more systematically refer to the variety of deportation regimes which both differ between local environments and shift over time.[8]

Various other concepts will have a central place in this thesis. *Citizenship* is defined as the formal status of membership within a polity. On the national level citizenship is thus synonymous with nationality. The thesis will also speak about citizenship as a meaningful concept to talk about political membership on the supranational and subnational levels, however. Especially on the subnational level, citizenship is usually not fully formalised in the same sense but nonetheless a rights status which can be identified even if not fully delineated.

The thesis will use interchangeably the terms *irregular* and *unauthorised* residents as referring to those without a legal right to be present in the national territory. This choice of terminology over the more widely used identifiers "illegal" and "undocumented" is deliberate. The sweeping

[8] William Walters uses the related concept of the "deportation complex" (2016).

and normatively problematic term "illegal" is widely derided as stigmatising, especially in connection to its use as a noun rather than an adjective. To reverse the normative weight, academics increasingly use "illegalised" to emphasise state responsibility for immigration status. The incorrect and misleading term "undocumented" ignores the fact that many unauthorised residents have some form of documentation, and indeed have a legal identity that allows them to use some state services even if they have no official right to remain. "Irregular" is arguably the most used term as it is assumed to be the most normatively neutral term between illegal and undocumented. However, irregularity implies abnormality (McNevin 2011: 20) and exceptionality, and that somehow all "regular" migrants have at all points followed immigration law, which is not true (the whole concept of "regularisation" paradoxically proves that as migrants have to be "made" regular despite previous immigration lawbreaking), while "irregular migrants" have always been outside the law. This is not true either, as regular migrants can be made irregular (yet few people talk about "irregularisation") when the state is no longer happy with their presence. "Unauthorised" is clear (what is at stake is the current presence or absence of state authorisation for someone's presence) and neutral (it neither puts the responsibility automatically on the individual, as "illegal" seems to do, nor on the state, as "illegalised" does). Moreover, I tend to refer to unauthorised residents instead of unauthorised migrants, because this captures more precisely which specific act lacks state authorisation (someone can become an unauthorised resident even when their original entry was legal), and because it extends to those who are not migrants at all (e.g. children of unauthorised immigrants born in the territory of the state in which they, like their parents, lack a right to remain).

This thesis focuses on Europe: primarily, but not exclusively, the member states of the EU and the non-EU states that cooperate intensively with it in the area of migration and mobility through membership in Schengen or otherwise. I have chosen not to look at specific countries through national case studies, but have, rather, focused on specific trends and phenomena across European states. It should be noted that some countries are left out of some of the analyses (or some years in the case of longitudinal analysis) in Chapter 2 because comparative statistics were unavailable. This is clearly indicated in each case. In Chapter 3, the bulk of the instances of local-national contestations over deportation were identified through news article analyses in five languages, which necessarily restricts the focus to a minority of European states. The analysis here is complemented by other examples drawn from the existing literature on the role of local governmental actors in national deportation efforts and on anti-deportation protest movements. While deportation was defined above, some further restrictions in the scope of this study apply. Forced movements of asylum seekers within the EU, both those known as "Dublin

transfers" (whereby asylum seekers are turned back to their first EU country of arrival because they are obliged to process their asylum application), and those under the new relocation scheme are briefly mentioned in certain chapters but are not the study's main focus.

Chapter outline

The contributions of this thesis to the field of deportation studies are as various as the perspectives taken. The first part of the thesis will look at the politics of deportation in Europe, focusing on its historical development and contemporary purposes, the common trends as well as the significant differences in the use of deportation across the continent, and how political actors on different levels interact to form a multilevel deportation regime. The first chapter will place contemporary deportation practices in a historical perspective. It considers contemporary deportation as a specific instance of a much wider category of political action, by political communities seeking to drive people out of the territories they control, including expulsion, exile, ostracism and banishment. The chapter briefly summarises several millennia of expulsion practice in the Western world, before discussing the spatial, temporal and functional differences between different historical practices. It then specifically considers how contemporary deportation is historically specific, i.e. how it differs from earlier practices, but also identifies several echoes and continuities, drawing together much of the existing literature on the purposes of deportation. The second chapter discusses how, while there are certain common trends among European countries in their use of deportation over the last decades, there are also significant divergences between them. It focuses specifically on three dimensions on which European countries differ significantly in their national deportation regimes; namely, the volume of deportation orders they issue, the percentage of such orders that are actually enforced, and the harshness of the means by which deportation enforcement is attempted. Based on an analysis of these factors, it develops a typology of European deportation regimes and suggests some reasons why countries differ in these respects.

Chapter 3 investigates the role of the European Union in giving shape to the deportation policies and practices of its member states, looking at how the EU both constrains and facilitates these practices. The chapter argues that accepted neofunctionalist, venue-shopping and securitisation-centred theories about Europeanisation of the migration and mobility policy field miss an important explanation for the Europeanisation of deportation, namely the emergence of a European conception of belonging and territoriality. Having explored the role of political actors above the national state, Chapter 4 moves in the opposite direction, exploring how local authorities have gained increasing control over the shape of deportation regimes, again by both

preventing and facilitating deportations. The chapter explores how regional, provincial and, especially, municipal governments have gained and exploited significant autonomy in the implementation of deportation policy, meaning such actors have become very influential in shaping deportation regimes. The chapter makes the argument that received wisdom about cross-level party political contestation and the local visibility of policy implementation must be supplemented by local conceptions of belonging if local involvement in deportation regimes is to be properly explained.

Informed by the empirical insights derived in the first part of the thesis, the second part turns to addressing the ethical questions raised by these phenomena. Specifically, it addresses three core questions. Who should and who should not be subject to the possibility of deportation, and why? Can deportation be procedurally and substantively constrained in a way that renders it legitimate, and if so, how must it be constrained? And what may be done in the face of unjust deportations, and by whom? The first of these questions will be taken up in Chapter 5. Here I argue that all long-term and permanent residents of a national territory should be exempt from the state's power to deport, not on the basis of their social membership, societal contributions or the socio-economic harms they would suffer, but on the basis of their human right to stay in the place of their *de facto* domiciliation. Questions surrounding the procedural and substantive implementation of deportation policy are discussed in Chapter 6. This chapter argues that while deportation is currently one of the policy fields in which liberal states and their political elites and bureaucracies have the widest scope of discretion leading to domination, with the proper constraints and safeguards in place deportation can indeed be rendered non-dominating and legitimate. Finally, in Chapter 7 the question of justified resistance to deportation efforts is posed. In this last chapter, I argue that a theory of just deportation resistance must be agent-sensitive and take into account the agent's relationship to the injustice of deportation, their epistemic and motivational position and their modalities of action. The conclusion will briefly sum up the main arguments of the thesis.

A note on methodology

In line with the multidisciplinary approach of this thesis, a variety of methods have been used in the different chapters. For the normative part of this thesis, it is difficult to point at a precise methodological approach. Yet, as I have already indicated above in my discussion of the normative contribution the thesis makes to the general normative literature on deportation, this part can be considered a work of analytic political theory, and within this tradition it takes a largely non-ideal perspective. As to the empirical part of this thesis, since each of its chapters is

guided by a distinct question (and may be read as a self-standing piece), each is based on research undertaken with methods I considered most appropriate to the question at hand. The result of this may risk coming across as a rather *ad hoc* or even haphazard approach, but it derives from a belief that methodological flexibility is well-suited to the broad and exploratory perspective that this thesis takes. For the most part, the original empirical research on which two of the empirical chapters (Chapters 2 and 4) are based are exploratory rather than confirmatory (Stebbins 2001) and aimed at theory-building more than theory-testing.

The first, historical chapter, is based almost exclusively on an analysis of secondary literature, drawing together and interpreting historical studies (and some pre-historical ones) in a way that allows a larger synthetic argument to emerge about the functions of expulsion. For Chapter 2, which seeks to uncover the major dimensions on which national deportation regimes in the European context diverge, I have taken a more quantitative approach, using data derived mostly (but not exclusively) from the database of Eurostat, the EU's statistics office, to undertake an exploratory statistical analysis. Given the lack of macro-level comparative analyses of national deportation regimes, this chapter's primary aims are descriptive, yet a first look at these numbers can bring out that many factors often considered to be determinants of immigration policy generally are apparently very limited in explaining deportation policy specifically. A fuller discussion of the limits of the data used in this chapter can be found in the introduction to the chapter, while the full dataset is included in Appendix A.

Chapter 3 is based on an analysis of secondary literature and policy documentation from the EU's various institutions, including primary and secondary EU law, ECJ case law, legislative proposals, Communications by different EU institutions, and implementation reports by the European Commission and independent NGOs. A full list of documents consulted for this chapter can be found in Appendix B. For Chapter 4, a large sample of newspaper articles from publications in five major European languages was drawn from the LexisNexis database selected through a key search term in each of these languages that combined at least one word indicating expulsion or deportation with at least one word indicating involvement from a subnational level of government for a ten-year period (see Appendix C). I considered this the most viable way of identifying instances of local-national conflict over deportation (as well as the arguments used by local actors to justify their actions) in a wide variety of contexts, even after considering the obvious problems of representativeness that come with looking only at conflicts which have played out in public and have been picked up by news outlets. Translations into English from other languages throughout this thesis are my own, unless indicated otherwise.

Part I

The Politics of Deportation

Chapter 1
Expulsion Old and New
Contemporary deportation in historical perspective

Introduction

Modern deportation is often viewed, and normatively defended, as a straightforward tool of immigration control, as a response to the widespread phenomenon of illegal border crossings, visa overstaying, and non-genuine asylum migration. As such, it is thought of as essentially an enforcement measure with no independent goals of its own, as a "neutral instrument of the state" (Kanstroom 2012: 29). As a practice, it is therefore usually treated as a class in itself, a radical rupture with earlier practices of political authorities forcing people to leave the territories they control.

This idea that deportation's sole goal is the enforcement of border laws has been described as implausible by many scholars who have studied the use of deportation today, many of whom have noted a discrepancy between the articulated goals of modern deportation and its non-articulated, informal goals and functions. One way of revealing its potentially hidden, informal goals or functions, suggested by William Walters (2002), is by comparing deportation to historical practices of expulsion with which deportation shares the obvious similarity of forced removal, but compared to which modern deportation is seen as a radical break given some of the obviously problematic and invidious dimensions of many of these historical practices for contemporary observers. Following in Walters' footsteps and both drawing and expanding on his analysis, this chapter looks at whether deportation and earlier forms of expulsion share more than the obvious similarity of coercive removal, and whether some of its goals or functions might still echo these practices.

Before doing this, it is necessary to make two disclaimers. The first, directed at social scientists, is that the aim of this exercise is to come up with only tentative conclusions and observations about possible parallels between these historical practices, not to give conclusive evidence about direct continuities. The second, aimed at historians, is that this chapter, while it may refer to and describe several historical practices and events, is not a work of history. The way that specific instances of expulsion practices are picked out and directly compared to present practices might be troubling for many historians, but bear in mind that this chapter is written from the perspective of a social scientist interested in typologies and categorisations that inevitably ignore the rich historical and contextual detail that historians rightfully accentuate.

It should be noted that, while words like expulsion, banishment, exile, ostracism and deportation are often used interchangeably in academic and everyday language, here they are,

somewhat artificially, given more circumscribed definitions. The term deportation, as mentioned in the introduction, is reserved here to refer to the modern institution that allows states to lawfully remove individual non-citizens from their national territory by force or under the threat of force. Expulsion, by contrast, refers to a much broader set of removal practices.[9] As it is used here the term implies three elements: a transborder movement (i.e. the removal must be from a distinguishable territory); the use or threat of force to accomplish the removal; and the involvement of some type of public authority by way of an official decision.[10] As such, the chapter will not consider instances of forced movement or resettlement that do not involve the crossing of any relevant political border, or emigration driven by private agents or only indirectly influenced by governmental actions, decisions or policies (even if these include acts of persecution or severe human rights violations). As will become clear later, for clarity's sake the term banishment is used primarily in the context of the expulsion of criminal offenders, while exile is largely reserved for those expelled for political reasons.

The first half of this chapter will condense the long history of expulsion as it was practiced by different (types of) territorial political communities at different moments in history. The first three sections will go through the history of expulsion practices in Europe with a bird's eye view, discussing some of the ways in which expulsion practices took shape in Greek and Roman Antiquity, during the Middle Ages and in Early Modernity, culminating with how the state's deportation power as we recognise it today came fully into existence in the period after the Second World War. The rest of the chapter discusses the main dimensions of variation that emerge when these practices are set against each other, allowing us to make some preliminary observations about both the historical specificities of modern deportation, as well as the continuities that can be identified with earlier practices. The subsequent sections, drawing together much of the existing literature on the purposes of deportation, examine the different purposes of today's deportation regimes and the historical echoes they carry, framing deportation as, respectively, a tool of state-(re)formation, of criminal enforcement, of counter-

[99] I follow Walters (2002) in distinguishing the two terms in this way.

[10] The reason to start with a broad look at all types of historical territorial expulsion is to be sure that nothing is missed. As will become clear later, if the analysis would only look at regular (i.e. not one-off) expulsion of individuals (i.e. not groups), for example, it would miss much of the most explicit examples of population politics inherent in the institution of expulsion. If it would only look at expulsion of foreigners, it would miss the close parallels that can be drawn between forced exile in ancient Greece and modern deportation. As Benjamin Gray notes, ancient Greek practices of citizen expulsion were much closer to modern liberal democratic deportation practices than common historical forms of foreigner deportation: like modern deportation, these involved separate consideration by courts and officials of individuals' cases, judged in accordance with purportedly impartial legal criteria (2011: 565-566). For example, in ancient Rome, although some magistrates had powers to summarily expel individual resident non-citizens, the most prominent form of deportation of non-citizens was expulsion by special law or decree of whole groups, usually distinguished by ethnicity, religion, or profession.

terrorism, of welfare policing and of citizenship. Lastly, the chapter notes how, as in earlier eras, deportation continues to be a highly symbolic exercise of political power, the communicative purpose of which is frequently as important as its declared aim.

The social and political roots of expulsion from prehistory to antiquity

Although the definition of expulsion used here presupposes a distinct territoriality of political communities, it is worth noting that the expulsion of people from human societies has a history as old as the social life of humanity, predating the rise of territorially-organised political communities. Based on practices observed in tribal hunter-gatherer societies which have survived into the modern era, and in non-human animal societies of the species to which we are most closely related, we can reasonably infer that many pre-historic proto-societal human communities must have regularly expelled individuals from the cultural kinship group, for purposes of population control, to prevent overuse of scarce resources, or to sanction undesirable behaviour. Christopher Boehm argues that ostracism and banishment were, and are, instruments of moralistic social control widely used by egalitarian nomadic hunter-gatherer bands as a way to cut down would-be alpha-males who threatened to usurp the egalitarian order (2013: 318). Boehm explicitly states that we share this trait in common with our most closely related non-human animal cousins—chimpanzees and bonobos. In a world populated by nascent political communities based largely on cultural kinship, banishment from the community, as William Garth Snider notes, must have been a highly effective threat and significant punishment. In both Germanic and Near Eastern primordial societies, the kin group was important because the individual alone, or even with the immediate family, was in an extremely precarious position. Expulsion from a community would have often been literally a death sentence (Snider 1998: 459).

Evidence that expulsion was formalised as a practice rooted in law is available from the earliest written sources. Banishment is listed as a punishment in the oldest recorded system of law, the Code of Hammurabi, the Babylonian law code of Ancient Mesopotamia written around 1700 BC (Miller 1956: 365), which prescribes it as a punishment for "incest with one's daughter" (Snider 1998: 459). Under Mosaic law and the Talmudic legal system, unintentional homicide and manslaughter were punishable by banishment, and the Old Testament's Book of Esther describes how banishment was a type of punishment used in Persia. The Law of Manu of Ancient India and the T'ang Code of Ancient China also prescribed banishment for specific crimes (Snider 1998: 460). Early empires of the Ancient Near East also used forced resettlement policies within their territories, either as a tool of population management or as a punishment

for political enemies. The Assyrian Empire, for instance, systematically deported large groups of people as a way of carefully planning empire-building. Sources elaborately describe the forced relocation of newly conquered peoples to spread agricultural techniques or develop new lands; the deportation of Assyrian political enemies from the Empire's heartland to peripheral areas as a way of diminishing threats to the political elite; or in some cases even moving elites of newly captured peoples into the heartlands in order to concentrate knowledge and wealth there (Oded 1979; Radner 2012). The "Assyrian Captivity" of the Israelites mentioned in the Old Testament is just one example of many such forced movements.

We have more detailed knowledge about the forms expulsion took in Greek and Roman antiquity. In the city-states of Ancient Greece, banishment and outlawry were widely prescribed as punitive measures, chiefly in cases of homicide, and indeed seen as an alternative to regular punishment. Aristotle stated in *Nichomachean Ethics* that "punishment and penalties should be imposed on those who disobey and are of inferior nature, while the incurably bad should be banished" ([350BC]1908), an interesting early expression of the idea that banishment should be reserved for those beyond the possibility of rehabilitation. Exiling was also used as a political instrument in Archaic and Ancient Greece. In many Greek city-states of the 5th century BC, struggles between different aristocratic factions resulted in their expulsion on a regular basis (Forsdyke 2005). Exiled aristocratic factions did not usually accept their forced banishment, but instead called on aristocratic allies in other communities to help them return and overthrow the ruling rivals that expelled them, leading to them being expelled in turn. This back and forth movement between power and exile created huge instability, since it left the polity constantly open to attack by exiled aristocrats backed by foreign armies (Forsdyke 2000: 235-236).

But exile was not just a tool of competing political elites. It continued to play an important role after the democratisation of Athens, through the institution of ostracism. Unlike banishment and outlawry,[11] ostracism was empathetically not a punitive measure, and potential victims were not permitted to defend themselves as they were in criminal cases. It operated in the form of an annual vote in which any member of the demos could nominate someone, and when a quorum of 6,000 citizens voted, the person with the most votes was ostracised and exiled (Forsdyke 2005: 146-149). By giving control over exile directly to the demos, ostracism was seen as a way to protect democracy against potential tyrants and agitators. In fact, Sara Forsdyke (2000) argues that the democratisation of Athens was itself partly a response to the instability created

[11] Whereas someone sentenced to exile could lawfully be killed by anyone if found within the territory, outlaws could also be killed outside it.

by the aristocratic politics of exile, and that the democratisation of exile was a central move in consolidating the new regime.[12]

For the Greeks, expulsion was a measure usually reserved for citizens, as it was considered too lenient a penalty for foreign residents who committed serious crimes. In Athens, metics (foreign residents without citizen rights) would be sold into slavery rather than deported when they did not comply with the strict regulations governing their status as metic. Benjamin Gray explains that, while expulsion was seen as a grave punishment for Athenian citizens, "rootless" metics were considered not to be truly punished by it (2011: 568). An exception to this was the Spartan convention of *xenelasia*, which translates into "driving out foreigners". This practice is thought to have been used sparingly, mostly for reasons of diplomatic or military security, and there is little evidence for similar practices in other Greek city-states (Rebenich 1998). This can probably be explained by the fact that, while they were forced to contribute to the polity both financially and militarily, resident foreigners were in no way a burden on the host community, as they were lacking all citizenship rights and privileges, did not usually have access to citizenship status, and there was generally little concern for their welfare (Gray 2011: 567).

Tellingly, the expulsion of non-citizens was a more significant political concern in Rome, since law and convention made it much easier than in the Greek world for immigrants to gain citizenship. In both Sparta and Rome, foreigner expulsion almost always had a collective character: whole groups distinguished by ethnicity, religion or profession would sometimes be collectively deported by special law or decree. But the Romans also sophisticated the practice of individual citizen expulsions. In the Roman Republic, the practice of *exsilium* arose as an informal penalty that was used to circumvent the death penalty, by giving Roman citizens the opportunity of escape through self-imposed exile before a death sentence was pronounced. In the mid-first century BC, banishment became a formal penalty for a certain class of criminal offences. In later periods, degrees of banishment were introduced, including temporary or permanent banishment, with or without loss of citizenship, and with or without confiscation of property. During the reign of the Roman Empire, for example, a distinction was made between

[12] The democratisation of control over exile in Athens is interesting when compared to the solution the other Greek polities found to the destabilising aristocratic politics of exile. The solution in Mytilene, for instance, seems to have been the establishment of a tyrant backed by a group of citizens that went beyond a particular aristocratic faction (Forsdyke 2000: 237). In Athens, by contrast, attempts to bring the excesses of the aristocratic politics of exile under control initially focused on promulgating laws that restrained the aristocrats' ability to banish one another arbitrarily. As in Mytilene, the solution the Athenian polis found after a long century of stasis was the intervention of non-aristocrats in the political struggle between aristocrats. Unlike in Mytilene, however, this intervention brought about a revolutionary restructuring of the polis from aristocracy to democracy—and the new power of non-aristocrats over exile was central to this new power structure.

relegatio, under which the person in question was ordered to stay out of Rome, Italy or a certain province of the Empire for a definite or indefinite period but retained his citizenship and property, and *deportatio*, which implied loss of citizenship and property, and for an indefinite period of time. Moreover, whereas the *relegatus* was allowed to travel into banishment by himself, the *deportatus* was conducted to his place of banishment, often in chains (Rich 1875). The Romans generally reserved banishment for the upper classes, sentencing the lower classes to forced labour instead. Similarly to how the Greeks used exile as a tool of political stability, Roman emperors exiled many who were seen as (potential) political adversaries, including members of the imperial family, senators with republican leanings, government officials, imperial freedmen fallen from favour, literary men and philosophers (Braginton 1944: 391).

The evolution of expulsion as a tool of government throughout the Middle Ages and early modernity

The use of expulsion as a formal punishment remained widespread throughout the Middle Ages and took on novel forms. For the Franks, Danes and other Germanic peoples, banishment could easily mean death given that wilderness filled the spaces between cities. The Anglo-Saxons developed the institutions of sanctuary and abjuration, under which a person who had committed a crime could flee to a refuge or consecrated soil for sanctuary, usually a sacred place that under Christian tradition would protect a person from punishment, where he had 40 days to confess to the crime and take an oath to leave the kingdom and not return without the permission of the Crown. The institution of abjuration would remain in place until 1623, when King James I abolished it (Bleichmar 1999: 120). In the oath that would grant free passage to an assigned port of departure, the criminal swore to:

> leave the realm of England and never return without the express permission of my Lord the King or his heirs. I will hasten by the direct road to the port allotted to me and not leave the King's highway under pain of arrest or execution. I will not stay at one place more than one night and will seek diligently for a passage across the sea as soon as I arrive, delaying only one tide if possible. If I cannot secure such passage, I will walk into the sea up to my knees every day as a token of my desire to cross. And if I fail in all this, then peril shall be my lot (Knight 2007).

The prominence of banishment in penal systems across the continent really started to rise as Europe emerged from the Middle Ages. With effective penitentiaries and workhouses still in the distant future, the magistrates of late medieval and early modern Europe cast thousands of offenders on the highways for all manner of offences. Jason Coy (2008) has uncovered how over 1,000 convicts were banished from the free imperial city of Ulm in southern Germany over the course of the 16th century, which he has argued was typical of a wider ubiquity of banishment sentences in early modern German and other European cities. Some jurisdictions used it as their

main form of punishment. For example, the proportion of banishments of the Amsterdam court's public non-capital sentences between 1650 and 1750 is recorded to have been as high as 97 percent (Snider 1998: 461).

But the pinnacle of punitive banishment came in the age of colonialism, with the practice of convict "transportation". Portugal exported offenders to Brazil in the 16th and 17th centuries; and France, first to Louisiana in the early 18th century, and later to penal settlements in the West Indies in the 19th and early 20th centuries. Moreover, some European states without overseas colonies made transportation possible through deals with other states. Russia, for example, accepted Prussian convicts to be transported to Siberia (Walters 2002: 272). But it was the British that made transportation the most central part of their penal policy. As Gwenda Morgan and Peter Rushton write, "few pursued it so assiduously as a means of avoiding the consequences of so many capital statuses" (2004: 3). The majority of British transportees were convicted of non-capital property offenses (petty thievery, shoplifting, pickpocketing), but many serious criminals convicted of manslaughter, grand larceny and bigamy were transported as well, as were some capital offenders that escaped death because they still showed some prospect of rehabilitation. When convicts were transported as a result of a death sentence (often for treason of murder) that was commuted into a conditional pardon of transportation, they became "dead in the law". This meant that they forfeited their goods to the Crown along with the profits to their freehold land, they had no right to acquire further property, or to sue or give evidence in the courts (Kercher 2003: 536-537). Banishment from Britain picked up especially after Parliament passed the Transportation Act in 1718, which streamlined and tightened the procedure. The effects of the Transportation Act were immediate and remarkable. From 1722 to 1724 (the first years for which historians have found evidence), more than half of prisoners convicted of noncapital felonies against property were ordered to be transported (Bleichmar 1999: 123). Between 1718 and 1776, 50,000 people were banished from the British Isles to America. After American independence, transportation quickly resumed to Australia (particularly New South Wales, Van Diemen's Land and Western Australia), which was forced to welcome a further 160,000 British and Irish criminals between 1788 and 1868. This last date was the year transportation was abolished in Britain, though it continued elsewhere in Europe. France practiced transportation well into the early 20th century.

During the three centuries in which transportation was used by Europe's colonial powers, its precise shape changed gradually but dramatically. Initially, the main goal of transportation was merely to remove the convict from the community, and the authorities usually cared little about what happened to the convict after removal. However, because the actual ferrying off of convicts to new lands was typically not the responsibility of authorities but rather outsourced to private

contractors, the sale of convict labour by such merchants quickly became a regular feature of the transportation process (Kercher 2003: 533). In the late colonial period, transportation morphed into a punishment closely monitored by authorities themselves, with compulsory service attached. During the 19th century, the colonial state became much more involved in ensuring the penal regime, and forced labour and confinement to a penal colony were seen as a major part of the punishment of the convict. In this sense, late transportation was perhaps more analogous to imprisonment than it was to early banishment, or at least the two functions coincided. This was partly the result of changing ideas about proper punishment and fears that early transportation did not serve enough of a deterrent function. The change in the status of transportees was also a result, however, of the changing political shape of the colonial empire, from one where power was scattered and the periphery largely anarchic in the early years to a more centralised and authoritarian form of government in the later period.

In contrast to punitive banishment, exile for reasons of political or public security was usually done without any type of judicial process in medieval Europe. In England, bills of attainder (which came into being in the 14th century and were issued up until the exile of Irish aristocrat and revolutionary Lord Edward FitzGerald in 1798) were acts of Parliament that could punish a person by exile or death without trial, typically for treason. More often, however, the power to send someone into political exile was placed directly in the hands of the reigning monarch. In France, for instance in, this took the form of the *lettres de cachet* that the king could issue to exile someone without any type of process (Kingston 2005: 32). After political revolutions in Europe abolished or severely limited the power of the monarchy, the practice of political expulsion continued unabated. In France, while the Revolutionary Penal Code of 1791 all but abolished the punitive banishment that had been the dominant form of punishment under the *Ancien Régime*, political exile became a prime concern of the new regime. In 1793, the Revolutionary Tribunal of Paris called for the deportation of all political enemies of France and the Revolution, and, beginning in 1795, many were indeed shipped to French Guyana. A century later, after the short-lived 1871 Paris Commune, the French government deported about 4,500 *Communards* to New Caledonia, in the South Pacific. A quarter of those that Britain transported to Australia came directly from Ireland (about 30,000 men and 9,000 women), many among whom were nationalists and rebels fighting British rule (Snider 1998: 464).

Medieval and early modern expulsion also served purposes other than punitive or political ones. It also became a tool to regulate the mobility of the destitute as part of the emerging poor policy across early modern Europe. Since poor relief policy was usually organised locally, by the 17th century it was widely seen as a problem that the poor and unemployed moved to parishes that were more generous than their own. In England, for example, where poor relief was organised

at the level of each parish, this inspired the passing of the Act of Settlement and Removal of 1662 (which was not fully repealed until 1948), under which anyone without sufficient means became liable to forcible removal from everywhere but their home parish. In the Habsburg Empire, the system of *Heimatrecht*, a status of legal local residence which determined one's right to poor relief, had similar provisions. Persons not possessing the "right of residence" in the municipality in which they were residing would become liable to be removed when falling into poverty,[13] and an elaborate set of deportation and expulsion mechanisms was erected to enforce *Heimatrecht* (Kraler 2011: 27). It is noteworthy that poor law expulsion relied heavily on stereotypes of undesirability, particularly that of the "vagabond" and the "beggar". The idea behind these laws was that mobility could only take place in a framework in which parishes or municipalities had guarantees that it would not create unwanted burdens for them. Considering this exclusionary dimension of poor relief also shows how practices of expulsion were seen to be necessitated by the creation of welfare institutions that could only be upheld when access to them could be restricted to a bounded in-group. The poor laws were thus a way of disciplining the poor, of instituting a distinction between the deserving and the undeserving poor based on the idea of belonging, which was constructed on the basis of such factors as birth in the territory, holding office, renting property or paying tax, long-term employment or apprenticeships, and marriage.[14]

While the previous forms of expulsion were individual, there were also more collective forms, most notably the religious expulsions which were frequent in medieval and early modern Europe. These most consistently targeted Jews but also sometimes Muslims, Catholics and Protestants. Jews were expelled from England through the edict of expulsion issued by King Edward I in 1290, which allowed the Crown to confiscate their property, and required that all outstanding debts to Jews would be paid to the Crown. The edict remained in force until the end of the Middle Ages—it was only 350 years later in 1657 that Oliver Cromwell permitted Jews to return to England. Confiscation of property and debts was often the reason for the sovereign to issue expulsion edicts, and most of these were ultimately followed by an official decision allowing the return of Jews, since the authorities realised they had lost a convenient source of income for the treasury. France, for example, repeatedly expelled its Jewish population, in 1182, 1306 and 1394, in each case confiscating property and cancelling or appropriating debts owed to Jews, only to allow their return shortly after. The Jews in Spain, up until then one of the largest living under Christian or Muslim rule and fully integrated into the Spanish customs and

[13] *Heimatrecht* also included expulsion provisions for delinquency or political activism, mirroring the first two forms of expulsion policy outlined earlier.
[14] All these were factors included in the English 1662 Settlement Act.

language, were expelled (or killed or forcibly converted to Christianity) when Aragon and Castile became a united country under the rule of the Catholic monarchs Ferdinand II and Isabella I in 1492. The 1492 Edict of Expulsion (which would only be officially revoked in 1968 with the Second Vatican Council) ordered all Jews present in Spain to leave by the end of July of that year by punishment of death without trial, being allowed to take their possessions that did not have the form of gold, silver or money. Between 180,000 and 800,000 Jews are estimated to have left Spain as a result of the Edict, with tens of thousands dying while trying to reach safety. Jews were expelled from Portugal by King Manuel I in 1496. While Muslims had already been given the choice to convert or go into exile in the preceding century, in 1609, King Phillip III of Spain decreed the expulsion of the Moriscos, descendants of the Spanish Muslim population that converted to Christianity under threat of exile during the rule of Ferdinand and Isabella. The expulsion of Irish Catholics from Ulster in 1688 following the Glorious Revolution was meant to make land available for Protestant English and Scottish settlers, but another motive was to deny catholic France and Spain a base of operations against England, revealing a connection between the role of religious expulsion and that of political exile, in that questions of religion and political loyalty were seen as inherently intertwined (Walters 2002: 271).

"Westphalian" expulsion in the modern era

With the consolidation of the nation-state system, the characterisation of expulsion and its purpose shifted rather dramatically. Two developments came to a head around the same time in the years just after the Second World War, and these shed light on the rather contradictory turn that expulsion as a tool wielded by those in political power took in the 20th century. On the one hand, the scale of the expulsions in Europe after the defeat of the Axis powers was unlike anything the continent had witnessed before. In the years following the war, millions of people were forcibly displaced as a direct result of state intervention.[15] Many Italians were expelled from Yugoslav territory and Poles living in areas east of the Bug River that were no longer part of Poland were relocated to the new western territorial additions to their country. But the most spectacular result of these euphemistically named "population transfers", which in reality were for the most part forced and state-orchestrated,[16] was the almost total elimination of German minorities in Central and Eastern Europe. Sanctioned by Article XIII of the Potsdam Agreement,

[15] While such forced mass movements also took place after the First World War, they had a much larger scale after the Second World War—as I discuss below.

[16] Aiming to illustrate how political language had become largely about "the defence of the indefensible", George Orwell highlighted the use of this terminology as a prime example. "Millions of peasants are robbed of their farms and sent trudging along the roads with no more than they can carry: this is called transfer of population or rectification of frontiers", he wrote (1946).

up to 14 million ethnic Germans were expelled from Central and Eastern Europe between the end of the war and 1950. The forced migration of German populations started in 1945 with the so-called "wild" expulsions of Germans from Polish and Czech territories in particular. These were termed "wild" because they were not yet sanctioned by international agreements, but rather aimed at "creating facts on the ground". The compulsory transfers of the remaining German populations from Poland, Czechoslovakia, Hungary and other eastern and south-eastern European countries after Potsdam typically had the following chronology: people were called to assembly points and either interned in camps to await transport or loaded immediately onto trains (often cattle trucks). While the Potsdam agreement explicitly stated that transfers were to be "effected in an orderly and humane manner", Schulze notes that the process was neither orderly nor humane, and that "the selection of those expelled first was often made on the basis of who was seen as being of least benefit to the new rulers. Those who were potentially useful for the rebuilding of the country had to stay the longest" (Schulze 2011: 55). The phrase that Winston Churchill used for these forced removals (which he strongly supported) was "the disentanglement of populations", and it reveals much about the logic that drove and justified these actions. The idea was that people were simply "returned" to the homeland they belonged too. But this notion of return was much less straightforward in practice than on paper. Many Germans, Italians, Ukrainians and Poles ended up in "so-called homelands they had never set foot in before", and while being formally of the same nationality and speaking the same language as the natives, in reality this disguised significant religious, ethnic, economic and cultural divisions (Reinisch 2011: xvii).

A simultaneous development saw the rapid widespread acceptance of universalist human rights norms and their institutionalisation in an international (and European) legal framework. Most notably, Article 13 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, declared that "everyone has a right to leave (…) and to return to his country", a right which protects citizens from being deported from their own country and which would be further codified under Article 12 of the International Covenant on Civil and Political Rights. The right was made even more explicit in Article 2 of the 1963 4th Protocol to the European Convention on Human Rights, which declares that "no one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national". Similarly, even though expulsion of a large group of foreigners is not as such prohibited under international law, it is prohibited when tainted with discrimination or arbitrariness, i.e. when it does not involve an individual review of each expelled person's case and grants them a right to individually present arguments against their expulsion. This is indirectly the case under universal human rights law, and specifically under three regional

human rights instruments, including the European Convention on Human Rights. The ban on mass expulsions applies even in times of emergency as these widely accepted international conventions have, as some argue (e.g. Henckaerts 1995: 45) acquired the status of customary law.[17]

These contradictory phenomena can be explained with reference to two developments which came to a head in the late 1940s. The "population exchanges" revealed the culminating appeal of the ideal of the nation-state as a perfect unity of territory, language, institutions, high-cultural traditions and customary heritage which nationalists wished to presume as the basis for state-political organisation (Eley 2011: 300). The massive displacements following the Second World War mirrored and were sometimes justified with reference to the earlier "population exchanges" which took place following the First World War. In particular, the Greek-Turkish exchanges agreed in the Treaty of Lausanne in 1923 were considered a precedent and template by Churchill and others. However, the scale of interbellum expulsion pales in comparison to the massive ones in the late 1940s. This is probably due to the fact that, while the First World War did harden nationalist discourse, the establishment of the League of Nations system served to limit the justification of the logic of forced exchanges by introducing the protection of minorities within multi-ethnic states as a core principle. Indeed, neither Germany nor Italy saw a large-scale transfer of population as part of the adjustments of 1918-19, nor were there expulsions or mass refugee movements from the newly established states of Poland or Czechoslovakia. The horrors of the Second World War, in contrast, may have convinced Europe's political leaders that minority protection within states was doomed to fail and a recipe for political instability and violence. The priority thus became to "solve" the problem of state borders failing to conform to the distribution of ethnic, linguistic and religious groups through forced migration, which became a central effort in the construction and reinvention of the nation-state in Europe (Reinisch 2011: xvii).[18] The perceived failure of the interbellum multi-ethnic states thus undergirded the logic of the massive expulsions which started the post-war period.

[17] The reasoning behind this is that, while expulsions themselves are not prohibited because they are not seen as inherently arbitrary or discriminatory, the concept of mass expulsion implies that whenever people are expelled on a massive scale, there is a presumption that those expulsions are tainted with discrimination, arbitrariness or harshness, since they cannot take individual circumstances into account and are therefore prima facie unlawful (Henckaerts 1995: 47). It is practically impossible for any country to expel large numbers of people over a short period of time while treating each expulsion correctly. To what extent can we say the same about the mass "deportation machines" that liberal governments have built up over the last few decades?

[18] Such "population exchanges" did not only take place between fully independent countries, but also within more politically unified territories. The Polish-Ukrainian population exchanges are an example: between Autumn 1944 and Summer 1946, 500,000 Ukrainians and 800,000 Poles were forcibly displaced

The simultaneous development of human rights norms regarding citizen and collective expulsions were equally informed by the horrific experiences of the Second World War. While none of these practices immediately or completely disappeared from the European continent, punitive banishment and political exiling of citizens and mass expulsion on the basis of group rather than individual characteristics came to be seen as illiberal and barbaric practices that were incompatible with newly dominant liberal and human rights norms and were soon considered something of a bygone era. The type of expulsion which is considered legal and legitimate today is a highly institutionalised practice which can only be applied to an individual non-citizen. Citizen expulsion, conversely, is often seen to have become moribund with the rise of a liberal ideology of inalienable human rights which has at its core the idea of an unconditional and unbreakable bond of protection and responsibility between the liberal state and its citizens. However, as Matthew Gibney has noted, many early liberal thinkers were strong defenders of the right to expel citizens, including Hobbes, Beccaria, Kant, Grotius and Pufendorf (Gibney 2013c: 648). One liberal thinker who did argue against the practice was Voltaire. However, his main reasoning was that it was analogous to "throwing into a neighbour's field the stones that incommode us in our own" (Voltaire [1764]2006). This is indicative of the fact that the decline of citizen expulsion might have more to do with the willingness of other states to accept deportees they did not consider their members than with any normative idea. This is also exemplified by a memo the French justice minister sent to prosecutors in 1816 saying that other powers on the continent had started to refuse those banished from France within their territory. Indeed, only five such sentences were declared in the period 1831-1850, and this trend of sparse banishments continued for the rest of the century (Kingston 2005: 34).

So can we say that Europe's liberal democracies have effectively succeeded in "liberalising" deportation, i.e. in making deportation policies and practices compatible with liberal and democratic human rights norms (Gibney 2013b)? This is partly a normative question which I will only address in the second part of this thesis, but in the rest of this chapter I want to lay the groundwork for this argument by destabilising the notion that contemporary deportation is a radical departure from the earlier expulsion practices now widely seen to be morally problematic. Exploring several dimensions of variation, the following section will identify how the configuration of contemporary deportation reveals several continuities with specific historical practices discussed above.

---

by the Soviet Union, with Poles being "evacuated" from the newly Soviet eastern territories to the annexed formerly German areas of Silesia and Pomerania in the west (Gousseff 2011: 93).

Historical specificities of and continuities in contemporary deportation

We can see some immediate continuities of contemporary deportation with specific historical practices which destabilise the idea that contemporary deportation is a historically novel practice which traces its roots no further back than the 20th century. In spatial terms, modern deportation contrasts to banishment from the cities and city-states of Antiquity and Renaissance Europe, where it was usually enough to expel people to the surrounding rural areas, and to that practiced by the Roman Empire and the colonial empires which could banish people to peripheral territories under their control. There is, however, a continuity in deportation with the post-war collective expulsions of national minorities. Both are shaped by the consolidation and universal spread of the Westphalian system and the resulting implication that expulsion *from* one territorial polity now necessarily implies expulsion *to* another territorial polity. While the colonisation of overseas territories enabled the continuation of banishment (in the form of transportation) for some time, this consolidation eventually meant that, in the postcolonial age, the expulsion power of states has been inevitably limited by the willingness of other states to accept responsibility for certain populations within the Westphalian framework.

In temporal terms, there is an ostensible contrast between forms of banishment that are (more) temporary, in which case the rejection of the individual subject to deportation is typically either seen as a sanction that serves the function of temporarily alleviating the burden on the community that the individual's presence is seen to pose, and those that are (more) permanent when the rejection of the person involved is more absolute; they are seen as radically unfit for continued presence and membership in the community and this rejection is enforced in the most forceful way. As noted earlier, this distinction was already present in ancient Roman law, and an example of it can also be seen in the pre-revolutionary legal regime in France (1670 Ordinance), where an important distinction was made between *banissement à temps*, which was considered the least severe of all criminal punishments, and banishment for life, considered the fourth harshest sentence in the legal code after death, torture and the galleys for life (Kingston 2005: 26). The results of the two sentences were starkly different. Temporary banishment meant a loss of honour and political rights (i.e. no future possibility of holding office or appearing as a witness) but did not affect property rights. Perpetual banishment, in contrast, resulted in true "civic death": the complete suspension of civil and political rights, including ownership of property, so that all the individual's goods remaining within the jurisdiction would be seized by the state and distributed as if they no longer lived (Kingston 2005: 26). In a sense, such categorical distinctions have largely disappeared in modern practice. However, the recent re-introduction and formalisation of re-entry bans of variable lengths across Europe serves

similar purposes. While some deportees are simply removed to signal the impermissibility of illegal border crossing or minor offences committed by legal migrants, without any need to prevent their return to the community through legal means, re-entry bans of variable length are instituted against others.

We also recognise modern deportation as distinctly institutionalised and subject to a sophisticated web of rules and regulations. As an institution serving a long-term goal, it is set apart from "one-off" expulsions which serve a more immediate goal, including population exchanges, religious expulsions and collective foreigner expulsions, but resembling most historical incarnations of punitive banishment. If expulsion is regular and institutionalised, it is more likely to be a tool to control and discipline non-deported populations as well as deported ones. On the other hand, deportation is one of the policy areas in which the executive branch of government retains significant discretion, in a way that mirrors how political exiling was often a discretionary power of the sovereign in pre-democratic regimes. While there is usually judicial review, a deportation order does not have to initially be ordered by a court but is typically under the discretion of the interior or immigration ministry. Nor is the power to expel directly democratised in the contemporary context, as it was in ancient Athens, even if electorates do have an influence on deportation policy through their representatives. Moreover, the streamlined deportation machine seems to have roots in colonial transportation (Walters 2002). In early years, expulsion orders were not directly enforced in the sense that the expellee was given notice of his expulsion, but that his actual departure was his own responsibility. It was not until the rise of the streamlined transportation machines that were developed by Europe's colonial powers that the state took full responsibility of not just expelling the banished from the immediate territory, but "transporting" them to some location far outside the boundaries of the community. This had become necessary due to revolutionary developments in travel technologies. Until the colonial period, with travel being difficult and cumbersome, expulsion from the village or country was sufficient, but as travel became easier and more efficient, it became necessary to banish "beyond the seas". The extensive deportation infrastructures built up by modern states, which include extensive cooperation with foreign governments to ensure the effective removal and non-return of deportees, in this sense echo these earlier "transportation machines".

As to the target group of modern deportation, as noted above there is no longer explicit targeting of those understood to be citizens nor straightforward collective targeting of foreigners. The specific and individual expulsion of non-citizens, characteristic of modern deportation practice does not form a major part of the history of expulsion—a major reason why it has been so easy to dismiss any parallels between modern deportation and historical

practices. Where the specific expulsion of foreigners has been a concern of political authorities, historically it has almost always taken on a collective form. This is partly due to the fact that the modern liberal democratic ideal of equal and inclusive citizenship has necessitated the deportation of foreigners. Whereas Athenian metics, for instance, were no burden on the host state (they were forced to contribute financially and militarily but there was no substantial concern for their welfare of wishes), liberal democracy has a problem with permanent non-citizen residents. As an individualised measure, modern deportation does resemble historical citizen expulsions aimed at political enemies and criminal convicts which was standardly individualised in nature as well. Gray has already noted that ancient Greek practices of citizen expulsion were in this sense much closer to modern liberal democratic deportation practices than common historical forms of foreigner deportation. Like modern deportation, these involved "separate consideration by courts and officials of individuals' cases, judged in accordance with purportedly impartial legal criteria" (Gray 2011: 565-566). Nonetheless, the line between collective and individual targeting is less clear-cut than it might at first appear. Some types of expulsion that are ostensibly applied to individuals have results that are wholly or dominantly limited to a specific group of individuals and have the removal or marginalisation of this group as an underlying intention.

A last dimension on which we can recognise clear echoes of historical expulsion practices concerns the functions of contemporary deportation. The remaining sections of the chapter explore the punitive, economic, security, bordering and membership-affirming purposes of deportation and draw parallels with their historical counterparts, moving down from the most immediate purposes (criminal enforcement, welfare policing, counter-terrorism) to the larger, more abstract or more hidden goals of deportation (defining the borders and norms of membership). Note that these functions may, and of course often do, overlap in any instance of expulsion.

Deportation as criminal enforcement

As we have seen, punitive banishment, or any type of expulsion that is a direct result of being convicted for or suspected of acts deemed criminal, has been a constant thread throughout the history of expulsion. In penal theory, the use of expulsion and confinement are usually seen as alternatives, or indeed as two sides of the same coin, in that on some level one necessarily implies the other and both serve to separate the criminal from society (e.g. Beckett and Herbert 2010). In this sense, it is perhaps unsurprising that the demise of convict transportation in the second half of the 19th century coincided with the widespread acceptance of the penitentiary

(Willis 2005: 173). But what distinguishes the two is that only banishment absolves the authorities of ongoing responsibility, and that delinquents are not eventually returned to the social mainstream. As a cheap, easy and effective way to deal with delinquents, from the state's perspective it is more comparable to the death penalty than to incarceration. Historically, its primary aim was not rehabilitation or even deterrence, but to permanently rid the political community of dangerous or obnoxious offenders.

Throughout the historical period we can see a continuing tension between, on the one hand, contemporaneous commentators who saw punitive banishment on the one hand as a relatively mild alternative to the death penalty (appropriate where there were mitigating circumstances or considerable doubt about guilt) and, on the other, those who saw it as equally serious as the death penalty in its consequences—as a punishment with much graver consequences than imprisonment or forced labour within the territory, in that, unlike those types of punishment, it effectuates a form of "civic death". The historical shift that can be identified in who is seen as an appropriate target of banishment is, as noted earlier, striking. In Antiquity, it was considered far too lenient a penalty for foreign residents. In Athens, criminal metics would be sold into slavery rather than banished—the idea was that while "civic death" was a grave punishment for Athenian citizens, it would not truly punish the "rootless" metic (Gray 2011: 568). In the Middle Ages and early modernity, however, citizens and resident foreigners seem to have been subject to punitive banishment under roughly the same conditions. The British Transportation Act, for example, did not distinguish between citizens and aliens (Bleichmar 1999: 130).

Today, not only is deportation reserved for non-citizens, it is also normally framed as a purely administrative practice. This is in tension with the fact that deportation is often triggered by a criminal conviction. Many countries also deport legally resident non-citizens upon completion of sentences for imprisonable offences. Some countries, such as Norway and Sweden, do this so consistently that the majority of their deportees are criminal offenders (Barker 2013: 247). Countries like the UK have passed legislation that proscribes the automatic and mandatory deportation of non-citizens who have been convicted of a crime carrying a certain degree of punishment (12 months imprisonment in the UK), thereby eliminating the discretionary authority of the executive and courts to weigh other factors in such decisions, including the harm the deportation causes to the individual in question and their surrounding community.

Given the increasingly systematic deportation of non-citizen criminal offenders, some countries have begun to separate their citizen and non-citizen prison populations in order to facilitate the post-sentence removal of the latter. While this sometimes happens informally, such as in France, other countries have formally created separate wings for foreign offenders in their prisons. In Norway, these non-citizen prisoner wings offer far fewer welfare-oriented services (including

education) than to the general prison population, since rehabilitation and the need to be "resocialised" to prepare for release back into society is not seen to be necessary for non-citizen offenders because of their expected deportation. Unlike prisoners with Norwegian citizenship, those without it are not normally eligible for parole or to be considered for transfer to more open penal regimes as part of the so-called "ladder of progression" intended to achieve the rehabilitation of citizen prisoners (Ugelvik 2013: 193-194). The UK has gone as far as reserving a number of prisons exclusively for foreign prisoners, separating them completely from the general prison population seemingly in order to better accomplish the severance of their ties with British society and facilitate their post-sentence deportation. Immigration control staff are permanently embedded in these foreign-national-only prisons in order to ensure that foreign nationals can be deported immediately upon completion of their sentence, or if that turns out not to be possible, can continue to be detained in the same prison under immigration act powers (Ugelvik 2014: 112).

There is a, perhaps obvious, parallel to draw between deportation triggered by criminal offending now and the class of historical expulsion practices that I have termed punitive banishment discussed earlier. The almost universal priority given to suspected or convicted criminal offenders is partly a result of the fact that those in an irregular situation come to the attention of the authorities through committing criminal offences (but also non-criminal violations of, for example, traffic regulations) and that their deportation is considered more urgent than that of the deportable non-criminal. Yet while political authorities in liberal states have ceased to use expulsion as direct punishment for crime and strongly uphold the notion that the deportation of non-citizens is a purely administrative affair and part of their discretionary power of immigration control, this is difficult to square especially with the automatic or mandatory expulsion of non-citizen criminals at the end of their sentence. The fact that it may fulfil other regulatory goals does not mean that the sanction of deportation is not punitive through its retributive or deterrent effects (Bleichmar 1999: 154). Rather, much like historical incarnations of punitive banishment, "criminal deportation laws aim permanently to cleanse our society of certain people" (Kanstroom 2007: 19).

The idea that deportation of non-citizen criminals is punitive is further strengthened by the observation that many foreign criminals who are impossible to deport for practical reasons (for example, because their country of origin refuses to issue the necessary travel papers) are sometimes kept in immigration detention for years after their sentence ends, which is also explicitly defended as an administrative and non-punitive procedure. Given that in the history of penal systems expulsion and incarceration have long functioned as alternatives that both remove the criminal from society, the fact that they are seemingly used as alternatives in

dealing with criminal non-citizens strongly suggests they have criminal enforcement goals. The ostensible justification of deporting criminal non-citizens is to protect the community from serious offenders, those who have shown themselves to be threats to the community by committing violent crimes, murders, rapes, robberies and the like. However, many are deported following convictions for relatively minor offences, like drug possession or traffic violations. It is implausible to describe such offenders as truly threatening public security or posing an increased risk of re-offending (Gibney 2013a: 218).

The insistence of liberal states on the legal fiction that deportation is not punishment can possibly be explained by the useful function it serves. When deportation is seen as an administrative action that results from bureaucratic decisions that do not require the legal safeguards normally required at criminal trials, those subjected to it do not need to be given the constitutional protections available to those prosecuted under criminal law. Standard rights and principles in criminal law, such as the right to legal representation, particular standards of evidence, or the testing against proportionality or double jeopardy principles, are thus normally not applied in deportation procedures, even if courts do become involved. One major difference between contemporary criminal deportation and historical punitive banishment is that deportation triggered by criminal offending typically follows a prison sentence rather than being an alternative to it and can thus be seen as an *additional* punishment only applied to those without citizenship. The underlying message seems to be that unlike the criminal citizen, the non-citizen who commits a crime cannot be rehabilitated through the serving of his sentence alone. Their crime is not limited to the actual crime committed, but rather extends to having "abused" the welcome extended to them, which merits a reprimand not applicable to citizens.

We can thus see that criminal deportation highlights a second function of deportation additional to its immigration control function, which Kanstroom has termed "post-entry social control", a dimension which in his words turns the non-citizen into an "eternal guest" of the state, subject to a regime of "eternal probation" (2007: 6), given that their continued residence is contingent upon certain standards of behaviour. However, this characterisation of criminal deportation as "post-entry" social control is misleading in two respects. The first, which targets the "entry" part of the term, is that it maintains a necessary link between deportation and the act of immigration. This ignores the fact that *all* those without citizenship, and thus not only those who have themselves crossed an international border, but also those who have been born in the territory (or even birthright citizens who have lost or relinquished their citizenship) are subject to the criminal deportation regime. The second, targeting the "post" part of the term, is that in many jurisdictions the criminal act for which someone is expelled does not necessarily have to take

place after the moment of entry to or settlement in and outside of the territory.[19] Another problem with Kanstroom's definition of post-entry social control is that he claims it is not concerned with the *quantity* of persons (as immigration control is) but with the non-citizen's post-entry *qualities* (Kanstroom 2012: 38). However, both migration control and the other functions of deportation can be concerned with both quantity and quality.

The line between this criminal dimension of deportation and its function of extended border control is blurred by the fact that a growing number of jurisdictions are now classifying violations of immigration law, including irregular entry or presence, as criminal offences that lead to deportation. In all but three member states of the EU (Malta, Portugal and Spain), irregular entry is now punishable with sanctions in addition to the administrative coercive measure (including pre-removal detention) which can be taken to enforce removal. While legislation in eight of these countries, including Italy and the Netherlands, only prescribes a fine in normal circumstances, the other 17, including France, Germany, the UK and Sweden, can punish irregular entry with imprisonment. Moreover, even in the "fine-only" countries, in aggravated circumstances, or when the person in question is unable to pay the fine, a custodial sentence may often still be imposed. Irregular stay, furthermore, is punishable by imprisonment in the UK, Germany, the Netherlands and seven other EU states, while it is punishable with a fine in 15, including Italy, Spain and Sweden (European Union Agency for Fundamental Rights 2014).

Deportation as welfare policing

Another common thread to be found in historical expulsion practices has been their use to exclude certain people from access to scarce resources, whether natural resources, economic participation or welfare benefits. It has been suggested that the oldest, prehistorical, forms of social expulsion were primarily aimed at population control and resource preservation (Boehm 2013). More directly, as we have seen, the first major form of state-mandated poor relief in

[19] Most notably, the discovery of human rights violations or war crimes committed before entry can in many countries lead to deportation, even of those who would normally be eligible for a status protecting them against *refoulement*. The US famously denaturalised and deported Ukrainian-born John Demjanjuk, who had arrived in the US in 1952, when an immigration judge ruled in 1986 that he had been a gas chamber operator at the Treblinka extermination centre known to prisoners as "Ivan the Terrible'" – first to Israel, where the Supreme Court failed to convict him for lack of evidence and sent him back, and then in 2009 to Germany. The Obama administration continues to denaturalise and deport what it calls "human rights violators", such as former Guatemalan special forces soldier Gilberto Jordan (who was involved in a 1982 massacre) in 2010 (Kanstroom 2012: 38-39). But the discovery of having committed "regular" serious crimes before entry can also void a non-citizen's right to residence in the country and lead to their deportation.

Europe—in England and the Habsburg Empire—were both accompanied by strict rules of eligibility based on origin. Several authors have traced the origins of modern deportation to medieval and early modern European poor laws (Walters 2002: 231; Moloney 2012). As Walters writes, "the practice of deportation mirrors the rise of welfarist policies and programmes" (Walters 2002: 279), and "employs a similar tactic to the poor law" (Walters 2002: 282), by managing the "disciplinary division and distribution of social responsibilities across states" (Walters 2002: 283). Indeed, there are apparent continuities in how singularly focussed the deportation efforts of Western liberal democracies have been on the territorial removal of those deemed to be or likely to become burdens on their welfare systems or labour markets. This is of course linked to the idea that most asylum seekers are disguised economic migrants rather than genuine refugees.

In recent years too, states have increasingly been using deportation as a way of governing the welfare of their populations. First, there is the observation that the removal of foreign labour has played a market-regulating mechanism during periods of economic recession (De Genova 2002; Golash-Boza 2015) as a way of "exporting" unemployment during economic downturns (after formally or informally allowing immigration of cheap labour during economic booms). A second way in which this is apparent is that many deportations are focussed on ridding the community of those considered "paupers" (Weber and Bowling 2008; Gibney 2013a). Leanne Weber and Benjamin Bowling draw a direct link between the demonisation and repression of mobility of "masterless men" and "valiant beggars" following the collapse of feudal society, through concerns about vagrancy, begging and idleness on the path to a modern industrial society, to the national ejection of modern-day "global vagabonds" in the globalising capitalist order (Weber and Bowling 2008): that is, asylum seekers who are thought to be moving to make use of the benefits offered by Western welfare states rather than because they have a genuine need of protection from war or persecution. Leo Lucassen similarly points out the long history of expulsions of "travellers" who were the prototypical group to be "working under the cloak of begging and stealing or refusing to work" (Lucassen 1998), as a way to shed light on contemporary deportation practices focusing on those groups who are seen as drifters and nomads: in the European context primarily Roma and Sinti. Thirdly, the practice of "medical deportations" or "medical repatriations", or the practice of forcibly removing low-income, uninsured immigrant patients to other countries in order to avoid the burden of costly long-term treatment by hospitals (Park 2018) is similarly reminiscent of earlier forms of expulsions aimed at resource protection. In general, then, we can see a continuation of the exclusionary logic of the welfare system ever since the first forms of social support were introduced, even if this logic has been uploaded from the local to the national level.

Deportation as counter-terrorism

The forced exile of those seen as a threat either to those currently in power or the political stability of the polity in general has been, as we saw, another common thread throughout the historical record of expulsion. In contrast to punitive banishment, the overarching aim of political exiling is not so much to punish those expelled, but to eliminate the threat they are seen to pose to political stability and the existential security of the community.[20] This type of expulsion is often characterised by the fact that the expellee is not seen to need or deserve any form of due process, even if criminal procedures are sometimes used to legitimise the actual expulsion. A second observation is that political exile is generally practiced against those understood to be members or citizens of the political community (Walters 2002: 268-269), and emphasises the conditionality of that membership on being conducive to the power of the sovereign and the stability of the system. Moreover, who is subject to political exile varies with who is in power, but also with the normative basis from which public authority is seen to derive its legitimacy, and with the perceived gravity of the threat that someone is seen to pose to that public authority. While the dynamic of exiling for political purposes was often driven by elite rivalries, it was also common to use expulsion to protect the egalitarian or democratic order against potential usurpers of tyrants, as we can see most notably in the Athenian institution of ostracism.

This links in with a recent development in the use of deportation today, namely its newfound role as a tool of counterterrorism. Under pressure from growing public anxiety over especially "Islamist" terrorism, the identification and removal of confirmed and potential terrorist threats have become a major concern for Western governments. Perhaps the most glaring difference between terrorist deportation and the other forms of deportation discussed above is that only the former is not restricted to those without formal citizenship status. Unlike deportation following failed asylum applications, lack of legal status, or "normal" criminal offences, the application of deportation in counterterrorism strategies has begun to destabilise the idea that citizenship is a secure protection against the state's power to deport. This is because various countries have started granting powers to the executive that make it possible to withdraw

[20] It is of course difficult to delineate political banishment from criminal banishment in a very clear-cut way: many historical penal codes had crimes on the books that we would nowadays consider political crimes, and it could be argued that a lot of political exile was still punitive in character. However, I do believe it is helpful to make a basic distinction between expulsion driven by the need to protect "societal security" and that driven by the need to protect "political security", which is of a more existential character because it directly implicates the continued survival of the political system and power structure in place.

citizenship from those convicted or suspected of terrorist activities, often with the specific goal of making the person involved deportable.

The liberal state's power to transform citizens into non-citizens is not wholly new. While the state's expulsion efforts became, as was discussed previously, increasingly directed at non-citizen residents and the expulsion of citizens died a slow death sometime between the late 19th century and the early 20th, there remained, as Gibney points out, a "problem of liminal cases, such as those who had acquired their citizenship fraudulently or who held two nationalities" (2013c: 649), and early denationalisation legislation mostly focused on such cases. During, and in the wake of, the First World War, which caused a growing fear of "foreign enemies within", several European countries also introduced legislation that allowed them to strip the citizenship from those deemed loyal to an enemy state, for reasons as wide ranging as fighting in a (hostile) foreign army, for which most European countries still have citizenship withdrawal laws on the books (or they have reintroduced them in recent years, such as the Netherlands), to "effective transfer of loyalty" deduced from residence in a foreign country for five years or more, as a UK law passed in 1918 did. Such legislation has for the most part remained in place since, even if it has typically been used increasingly sparingly in the second half of the 20th century. The UK, for example, while retaining fairly broad denationalisation powers throughout the 20th century, only denationalised 10 citizens between 1949 and 1973, and none between 1973 and 2001 (Gibney 2013c: 653).

This trend was reversed in the wake of the September 11th attacks in the US and the terrorist attacks in Madrid and London in 2004 and 2005 respectively. In 2002, the UK Parliament passed the 2002 Nationality, Immigration and Asylum Act, extending the power to strip the citizenship of naturalised citizens to those who acquired citizenship by birth. In 2006, it passed another law which lowered the standard of denationalisation to the same "not conducive to the public good" requirement used to justify deportation of non-citizens, thereby making it as easy to denationalise a naturalised or birthright citizen (and thereby make her immediately vulnerable to deportation) as it already was to deport a non-citizen. Moreover, the British government recently argued in an appeal case that it could also denationalise those without a second nationality as long as they had access to one, essentially claiming a power to make citizens stateless against an international legal norm forbidding this. In total, 53 individuals have been deprived of their British citizenship since 2002 (Parsons 2014).

Other countries have also introduced new, or rediscovered old, legislation allowing them to denationalise and deport (some of) those seen as posing a threat to public security and political stability. Specific legislation allowing for denationalisation after convictions for terrorist offences was introduced in France in 1998, in Denmark in 2004, in the Netherlands in 2010, and

in Belgium in 2012 and in Canada in 2014 (GLOBALCIT 2017). In the French and Belgian cases, the application of this power is limited to naturalised citizens in the first 10 years after their naturalisation, and the Dutch law limits it to those whose convictions carry a prison sentence of at least eight years. The Dutch Parliament voted in March 2015 to adapt the law so that it would extend the possibility of citizenship stripping to those who committed the terrorist activity before the 2010 law came into force. In most cases, terrorist denationalisation provisions were added to legislation that already allowed denationalisation for crimes committed against the security, independence, safety or basic interests of the state, or against the exercise of certain rights and duties affecting the democratic organisation of the state. In Dutch, Belgian and Danish law, there are also specific provisions allowing for denationalisation in cases of crimes against the monarchy, which in the Netherlands includes "the heads of befriended states".

The denationalisation and expulsion of terrorist suspects and, more broadly, those whose continued presence in the territory is "not conducive to the public good", echoes the historical practices of political exile identified in the previous chapter. The idea behind denationalising and deporting terrorist citizens is that their crimes belong to a class of crimes that poses such an existential risk to the political stability of the state, and reveals such antipathy towards it, that it cancels their right to both membership and presence. As such, the justification of the "civic death" of terrorists stripped of their citizenship can be read as being in many ways similar to that of the civic death of earlier political exiles.

Deportation as state (re)formation and membership-definition

Modern deportation power became a fundamental component of national sovereignty only with the late 19th/early 20th century development by which sovereign nation-states monopolised the legitimate means of movement (Torpey 2000). As noted earlier, the logic of the political use of group expulsions based on ethnicity has increased in significance with the slow rise of the nation-state and its ideal of sovereignty as a perfect fit between authority, territory and population. The fusing of states, territories and nationally defined populations inherent in the Westphalian logic of a world divided into nation-states has slowly strengthened the idea that both the presence of ethnically, religiously or linguistically deviant minorities and cross-border mobility and settlement are disrupting the "natural" order of a perfect fit between state authorities, territories and national communities, and deportation is seen as an important instrument in restoring the natural order of national communities. In this sense, the basic logic behind deportation as a way of enforcing the division of populations to territorial nation-states distinctly echoes that of historical group expulsions, particularly the forced population

exchanges of the early 20th century. The previous chapter outlined how these were very much bound up with, and driven by, the recently developed notion that responsibility for the world population is neatly divided between sovereign states, problematising that this division can, and frequently does, diverge from where people actually reside. As in the years of population transfers, the language of "return" is similarly used to describe and justify deportation practices, and it often similarly disguises (deliberately or not) complicated realities of belonging and identity: it is not uncommon for non-citizens to be sent "back" to countries in which they have never set foot. As much ethnographic research has shown (e.g. Coutin 2007), deportation is often experienced by the individuals involved not as a return, but as a profound displacement and a departure from the country they consider home. If expulsion played a large role in the formation of modern European states, deportation in many ways continues to play this role by continually re-affirming the designation of particular national populations to their respective sovereigns.

Part of the story here is about international relations and the rights and duties that sovereign states have vis-à-vis each other with respect to governing the mobility of their populations. But it is also, notably, about the relationship between state and individual. In both these contexts, the practice of deportation is intrinsically connected with the institution of citizenship as the formal status of membership in a national political community. It is, as Bridget Anderson, Matthew Gibney and Emanuela Paoletti have put it, a "membership-defining act" (2013: 2). The external dimension of citizenship concerns its regulatory function in relations between sovereign states, in dividing responsibility for the world population between these states. In its most basic and obvious form, the membership-defining function of deportation can be seen in its operationalisation of the founding principle of this international political order. This is what William Walters writes about when he characterises deportation as a "technology of citizenship" (2002: 267), as a "marker of identification advising state and non-state agencies of the particular state to which an individual belongs" (2002: 283), but also as a "constitutive" practice of citizenship "actively involved in *making* this world" (2002: 288). The internal dimension of citizenship concerns the relationship between the state and the individual it rules over. The fact that, at least in principle, *only* non-citizens and *all* non-citizens are vulnerable to the state's power to deport affirms the key role that the formal right of non-deportability plays in the definition of citizenship on this internal dimension. Citizenship, in liberal modernity, has become a status that is fundamentally about the rights it guarantees to those holding that status. Viewing citizenship as fundamentally a rights-based status does not preclude thicker conceptions that stress participatory and affective dimensions and that view citizenship as more than a merely passive status. It does assert, however, that the rights dimension of citizenship is

fundamental and gets priority over a possible dimension of obligations. The reason for this is, as Rainer Bauböck explains, that political orders are coercive and that "individuals can only rationally consent to being subjected to an authority that may legitimately coerce them if this order not only respects their freedom and rights but is necessary to maintain them in the first place" (2007: 43).

A number of scholars (Brubaker 1989b; Soysal 1994) have noted that many of the core civil, social and even some political rights associated with liberal democratic citizenship have become progressively disconnected from the formal status of citizenship and granted to individuals on the basis of residence, employment status, or simply personhood instead—a development which Seyla Benhabib has referred to as the "disaggregation of citizenship" (2004). In this context, some have argued that the right to vote in national elections is the most noteworthy right that continues almost universally to remain the privilege of those with citizenship status, making it the quintessential citizenship right in liberal regimes. This reading overlooks the fact that the right to fully secure residence—in other words, the absolute right not to be deported—is arguably at least equally fundamental in defining citizenship. Not only are the immediate consequences of deportability potentially much graver for the individual involved, the right to secure residence is also the right on which all other rights of membership or residence depend. When states are able to unburden themselves of their obligations to those subject to their authority by removing them territorially, it can thereby deny them of any other right they claim.

Looking at the historically specific way in which deportation in our current age is exclusively applied to those not understood to be formal members of the community thus reveals non-deportability as the cornerstone right of modern liberal-democratic citizenship. In the age of disaggregated citizenship rights, deportability has endured as the fundamental line dividing citizen from non-citizen populations resident within the national territory. As such, deportation has much wider implications than just for those directly targeted by it. The commonplace removal of non-citizen residents upon committing criminal or other offences does not only also have an impact on family members and those in their direct surroundings (who, it is worth noting, have not committed the criminal act and are frequently citizens), it also stresses to non-criminal non-citizens that their continued presence is conditional and dependent upon good behaviour. Non-citizen residents' behaviour is thus policed in a way that citizens' behaviour is not, and as such it tends to marginalise non-citizen residents vis-à-vis those with citizenship status. As Vanessa Barker has argued, unlike the criminal behaviour of citizens, crime committed by non-citizens is not seen simply as a social or moral deprivation, but as "a confirmation of difference" (Barker 2013: 249).

The specific behaviours that trigger deportation might also be said to be constitutive of citizenship in a more abstract way. As Anderson, Gibney and Paoletti have noted, the citizenries of liberal democratic states usually do not see themselves as an "arbitrary collection of people hung together by a common legal status, but as communities of shared value" (2011: 554). Given this definition of citizenship as having normative content, deportation can be seen as a way to negatively construct citizenship as a normative category, by throwing out those who are seen as embodying characteristics and values which are constructed as antithetical to the fundamental values of the citizenry, giving shape and meaning to a national identity. Robin Cohen has summarised this logic as: "we know who we are by who we eject" (1997: 354). This observation connects with the notion that "Otherness" and "Othering"—the mental construct by which we perceive, represent and treat someone, some group, or something as not belonging to the category of the Self, or even as antithetical to and radically incompatible with that Self—play an essential role in the construction of national and other collective identities (Said 1978). As Mary Dewhurst Lewis has argued, historically "there is no more direct way [than expulsion] in which officials drew a line between who belonged and who did not" (2002: 66). Expulsion policy and practice, in her words, has historically been and continues to be deployed to give shape and value to political communities, by distinguishing the "settled from the unsettling" (Dewhurst Lewis 2002: 83).

The construction of citizenship through the deportability of non-citizens is thus a negative way of defining the citizenry: citizens are defined through their exclusion from the state's deportation power. However, we could also consider the way in which this deportation power over non-citizen residents has been restrained and limited. This is a point that in the literature on deportation and citizenship has so far remained rather underemphasised, since the usual focus is on the way in which deportation policy works as an exclusionary tool of citizenship. However, deportation is also (and importantly) used in an inclusionary manner by extending certain legal protections against the state's deportation power to certain categories of non-citizen residents. To see the link between deportation/deportability and citizenship here, however, we need to move beyond the strict legal definition of citizenship that has so far been used in this chapter to conceptualise citizenship also as a normative ideal. All those without citizenship are in principle deportable, but all are not equally subject to the state's deportation power. Deportation as a citizenship tool is especially powerful in the way that it creates distinctions within the deportable non-citizen population. The first major distinction that modern deportation policy of course makes is between non-authorised residents, who are automatically eligible for deportation by virtue of their status, and authorised non-citizen residents, who only become deportable following certain actions. But differences in formal

deportability also exist within the legally resident non-citizen population. The granting of legal rights against expulsion may be based on considerations of historical belonging. For example, the UK granted advanced rights against expulsion (roughly similar to those of British citizens) to Commonwealth citizens present on British territory up until the passing of the 1971 British Nationality Act.[21] This example importantly shows that such protections are not irreversible once given: in response to the arrival of large groups of Asians from East Africa, particularly Kenya and Uganda, a number of legislative changes between 1962 and 1971 increasingly restricted the non-deportability of Commonwealth citizens, until the 1971 Act effectively rendered Commonwealth citizens into foreigners for deportation purposes (Bloch and Schuster 2005: 495). Other countries historically granted such rights on the basis of ethnic kinship. Today, enhanced legal protections against the state's deportation power are given in most European countries on the basis of long-term residence and family ties to recognised members.

Given these significant categorical differences in the operation of deportation power, it thus makes sense to nuance the strong binary opposition between non-deportable citizens and deportable non-citizens. Those fully subject to the state's deportation power, lacking any legal protections against it, can be seen as embodying the true non-citizenship. Going one step further, those who are served formal deportation orders could be defined as anti-citizens. As Anderson et al. point out, actual deportation is far more vivid a reminder of a person's perceived ineligibility for inclusion in the citizenry than the rejection of a naturalisation application which normally allows for continued residence, and after which the applicant normally remains in the same legal status as they were before and can reapply for full citizenship. Unlike refusal of a naturalisation application, deportation "takes away a status" and "entails a complete severing of the relationship between state and individual" (Anderson et al. 2011: 556). Protections against deportation, conversely, signal to non-citizens that they might be thought of as citizens-in-the-making, as quasi-members or proto-citizens whose right to presence stands in need of recognition. By creating a host of different statuses of formal deportability between actual deportation and the full status of citizenship, states thus construct a spectrum of deportability and a spectrum of conditionality of membership. By doing this, they reveal conceptions of normative membership underlying their citizenship regimes which distinguish the deserving from the undeserving, the desirable from the undesirable, those seen as citizens-in-the-making from those deemed unfit for or underserving of inclusion in the citizenry. Some authors have

[21] It is interesting that, while their protections against expulsion power have been taken away, Commonwealth citizens resident in the UK continue to enjoy the right to vote in national elections – often taken to be the core right of citizenship.

noted how close the regime of probationary citizenship or deportability has come to earlier forms of colonial governance familiar from empire (Jansen 2015: 21).

A second point to be made about differential deportability is that even within formal categories of deportability, an informal differential application of formal rules further complicates the picture. Deportation of non-citizens today is enforced predominantly against a group of individuals characterised by a rather specific set of demographic characteristics. Deportees tend to be disproportionally male, young, poor, and "visibly" ethnic compared to the populations ostensibly targeted by deportation efforts. Parallels with historical practices of group expulsion suggest themselves here. As I noted earlier, the dichotomy between individual and group expulsion is less clear-cut than it might at first appear. Some types of expulsion that are ostensibly applied to individuals could have the removal or marginalisation of a particular group as an underlying intention. While the poor laws were ostensibly enforced against individual vagrants, their goal was to eliminate or drastically reduce the burden that the "foreign" poor were thought to place on the political community. Liz Fekete has argued that the targeted enforcement of deportation policies today reveals an unsettling fusing of racial characteristics with socio-economic status and foreignness (2005). In the American context, Kanstroom notes the fact that the vast majority of people facing deportation proceedings in the US are young men of colour, which he thinks suggests "a critical linkage among deportation, race and ethnicity" (2007: 2-3). There are indications that those with Muslim and Arab backgrounds have been disproportionally targeted by deportation efforts in both the US (Cainkar and Maira 2005: 8) and in European countries in recent years. One of the more distressing examples of this is given by Deirdre Moloney, who describes how in the weeks following the September 11th attacks the US authorities requested that all Arab and Middle Eastern immigrant men voluntarily register with the Immigration and Naturalisation Service, only to deport 13,000 of those who complied, even though the vast majority had no ties to terrorist organisations (Moloney 2013: 9). Similar stories can be found in Europe. In her 2005 analysis of deportations of persons alleged to have made "anti-western", "unpatriotic" or "anti-democratic" statements (but not convicted) in France, Germany, Italy, Poland, Italy and the Netherlands, Liz Fekete found all of them had been Muslims (2006: 87). Moreover, the overwhelming focus of at least criminal deportations on men (often but not exclusively Muslim men) suggests that notions of "anti-citizenship" have not only a racial but also a gender dimension. Shahram Khosravi has found that the Swedish Migration Board targets Afghan men seeking asylum unaccompanied by any family on the grounds that "their values make them better suited to Afghan rather than Swedish society" (2009: 49-50).

As described above, recent developments in deportation practice and legislative changes regarding deportation power in the context of counterterrorism are problematising the idea that all citizens are non-deportable in any absolute sense. They have introduced (or perhaps reaffirmed) a spectrum of conditionality into the formal space of citizenship, and thereby extended the spectrum of deportability into that space as well. If all non-citizens are not equally deportable, the same can be said for citizens. Most states limit their denationalisation power to specific categories of citizens, leaving others with the full protection of non-deportability.[22] Gray argues on these grounds that the boundary between deportation and exile remains porous.[23]

There are four main ways in which legislation on denationalisation marks formal differences in deportability within the citizenry. The first distinction is between those who acquired citizenship at birth and those who obtained it through naturalisation. In the majority of jurisdictions which allow denationalisation on public security grounds (including Belgium, Bulgaria, Cyprus, Estonia, France, Ireland, Lithuania and Malta) denationalisation power is expressly limited to naturalised citizens, becoming in effect the power to denaturalise (GLOBALCIT 2017). This partly reflects the fact that one common ground for citizenship stripping—having committed fraud on the citizenship application—is a violation that can by definition only be committed by naturalised citizens. However, as we saw earlier, the power to denationalise for public security reasons is also often juridically limited to naturalised citizens. The justification of subjecting only naturalised citizens to the denationalisation and deportation regimes seems to rely on the assumption that the naturalised citizen chooses the citizenship voluntarily in a way that the birthright citizen does not, and that she (but not the birthright citizen) can thus breach the contractual relationship with the state that this status implies, thereby relinquishing her claim to the status. Secondly, in some jurisdictions in which denationalisation can only be applied to naturalised citizens, there is a further distinction based on the passing of a specified period of time since citizenship acquisition. In France, for instance, denaturalisation on public security grounds can only happen up to ten years after naturalisation, and in Cyprus citizens can be denaturalised during the first five years after naturalisation upon committing a serious crime (GLOBALCIT 2017). While newly naturalised citizens are thus subject to denaturalisation in this period when committing a grave enough crime, after the period has passed their status is equalised to that of birthright citizens. The idea

[22] The UK may have recently become an exception to this general rule, although even there those who can prove not to have access to any other nationality should remain non-deportable.
[23] In the US, the accidental deportation of citizens is a regular occurrence, part of a deportation strategy of rapid removals before someone's identity or claim to US citizenship can be fully assessed (Kanstroom 2012: 14-15). Moreover, the US *de facto* deports US citizen children of deportable parents, since the US routinely deports parents of US citizens even if they have citizen children (Kanstroom and Lykes 2015a: 16). These cases are rare in Europe.

behind such provisions is that the path to full and equal citizenship includes a period of "probationary" citizenship in which the naturalised citizens must prove their worthiness as citizens. A third prevalent distinction made by jurisdictions is that between those who are only citizens of the country in question and those who hold two or multiple citizenships. Denationalisation laws in Denmark, France, Latvia, Slovenia and Switzerland explicitly forbid it when it leaves the person involved stateless (GLOBALCIT 2017). This distinction is commonly seen to derive from a strong international legal and moral norm against making people stateless.[24] The idea is perhaps that while the government should have some powers to withdraw citizenship and protections against expulsion from those undeserving of it, leaving individuals with a complete lack of status and the protection of any state is such a grave sanction that it should not be imposed under any circumstances. But it is also likely to reflect an assumption that the loyalties of dual citizens remain divided and that full membership is a zero-sum game, where membership in more than one polity implies only partial membership in each. A last distinction is that in countries such as Greece, Bulgaria, Romania and Slovenia only citizens residing abroad can be stripped of their citizenship (GLOBALCIT 2017).

All such provisions distinguishing between different categories of citizens in their subjection to denationalisation and deportation power could be argued to create a "second class" citizenship, which might not only be problematic for the assumption of status equality at the heart of the idea of citizenship, but also risks institutionalising a distrust of the naturalised and those with multiple nationalities. More generally, the dimension of conditionality in the non-deportability of (some) citizens that these developments have injected seems to echo the historical practices of citizen expulsion. It is important to note, however, that these developments do not invalidate the basic claim that subjection to deportation remains a fundamental dividing line between citizens and non-citizens. The legal status of citizenship continues to be built on the unconditional right of residence (and return) on the national territory, in that the citizen qua citizen remains non-deportable (Anderson et al. 2011: 553). If a political community wants to rid itself of the presence of unwanted citizens, it is obliged to first transform the citizen into a non-citizen through denationalisation.

[24] Article 15 of the Universal Declaration of Human Rights explicitly provides that everyone has the right to a nationality and that no one should be arbitrarily deprived of his or her nationality. See also Articles 5-8 of the 1961 Convention on the Reduction of Statelessness. However, international law does not forbid statelessness that occurs as a result of stripping citizenship when it is fraudulently acquired.

The symbolic functions of deportation

The institution of deportation has one clear, practical goal: to get rid of unwanted people territorially, be it those who do not abide by immigration rules, criminals, or (potential) terrorists. The previous sections argued that an important and often forgotten practical function of the institution of deportation is that it ensures continued control over the composition of the political community. However, while the total number of people actually deported from European countries is by no means insignificant, set against the total number of people over whom the state has the power of expulsion, total estimated irregular populations, or even against all deportation orders served, the numbers remain low in relative terms (see figure 0.5 on page 9). This is perhaps no surprise, given the costs of individual deportation procedures, and the many practical difficulties deportation efforts can face, including missing identification documents, independent courts applying international legal human rights principles, third countries unwilling to accept deportees, and active resistance by the deportee or civil society organisations. However, the relatively low rate of actual deportations also reflect that the goals of deportation are not confined to the actual removal of unwanted residents, but rather that it has wider, more symbolic goals.

Given its relatively limited use and seeming inability to put much more than a dent in the deportable populations, these symbolic functions of deportation are probably important in explaining the phenomenon and its rise (Gibney and Hansen 2003; Bloch and Schuster 2005). The actual act of deportation is a drastic operation, one that depends on coercion and sometimes physical force—occasionally resulting in serious injury and sometimes death. For the deportee, and those family members, friends, colleagues and acquaintances she leaves behind in the deporting country, the consequences of this act are very real indeed. On the part of the deporting government and the political community it represents, however, the effects of deportation may thus be rather more symbolic.[25]

The more obvious and previously mentioned goals are that deportation is expected to act as a deterrent against prospective irregular migrants and asylum seekers and as a way to put pressure on people who have an irregular status to depart on their own initiative.[26] But expulsion is also in many ways a very public ritual, meant to signal to native populations that the government is tough on crime and immigration, and has not lost control over borders as increasingly sceptical electorates fear (Gibney and Hansen 2003). The aim is to demonstrate the

[25] Coutin has referred in this context to the "irrationality" of deportation and the "fantasies that are made possible through it" (2015: 677).
[26] In Chapter 2, I say more about the effectiveness of this supposed deterrence function.

power of the authorities, their role in protecting the community from dangerous elements or public nuisances, or the reaffirmation of particular norms and values. In this sense, deportation displays what Peter Andreas (2000) has called the "performative" nature of border technologies and De Genova (2013) as the "border spectacle". In this way too, modern deportation is reminiscent of earlier expulsion practices, as exemplified by Jason Coy's detailed description of the carefully choreographed public expulsion rituals of 16th century Ulm, which included a profusion of public, formulaic, ritualised elements" (2008: 8) and which he argues served the important purpose to "display before the citizenry the dangers posed by notorious and incorrigible strangers and misfits. At the same time, they also presented the role of the [authorities] in protecting the community and its social and spatial boundaries by excluding and expelling these dangerous outsiders through banishment" (2008: 114). While the expulsion ritual itself in some cases still retains this public character, for example when deportees are apprehended by immigration police at schools or in workplace raids, overall the moment of deportation is increasingly hidden from view precisely to escape public scrutiny. However, some governments ensure that the institution of deportation remains firmly visible to the wider public, proudly publishing monthly or quarterly statistics on numbers of "illegals" or criminals detained and deported.

As the previous sections have tried to demonstrate, in its role as a tool to define citizenship, deportation's functions also to a large extent play out on a symbolic level. Deportation is a way to affirm the nation as a "community of value" (Anderson et al. 2011; Anderson 2013). As Anderson et al write, "deportation works for governing elites to reinforce the value and significance of national citizenship (….), primarily by highlighting one of the few rights that distinguishes citizens from non-citizens—the (unconditional) right to residence in the state—and reminding citizens of the existence of shared societal values. By publicly defining some people as unfit for citizenship and even for residence in the state, the shared norms of the political community are publicly affirmed." (Anderson et al. 2013: 2) As Gray notes, the modern liberal democratic deportation of non-citizens can be viewed as an alternative outlet for the use of citizen expulsion and exclusionary rhetoric to construct and reinforce norms of citizenship as it happened in earlier times. Gray suggests that modern liberal democratic deportation and associated rhetoric was significantly foreshadowed in the ancient Greek politics of expulsion, particularly Athenian ostracism. He sees echoes of how the Greeks used and justified lawful expulsion of citizens "as a means of constructing and reinforcing both state power and abstract, rationalistic norms of citizenship" (Gray 2011: 565) on the modern figure of the deportee, who, as the "polar antithesis of the legally protected citizen, [fills] a pivotal role vacated by the now obsolete figure of the exile" (2011: 577).

Deportation regimes thus have important symbolic functions in sending disparate signals to different persons present on the territory of the state, that they are privileged as citizens not to be deportable, radically unfit for full membership by being subject to deportation proceedings, or thought of as citizens-in-the-making through enhanced protections against deportation. The deportation regime issues threats to both those in an irregular situation and regular non-citizens who see evidence of what they risk by breaking the laws or norms of the community that hosts them, and simultaneously provides reassurances to citizens that the authorities are enforcing immigration and criminal laws that their citizenship status has value, and to quasi-citizens that their integration merits protections against deportation. By issuing threats to some while offering reassurance to others, deportation creates a stratified conditionality of presence which signals the government's normative conception of membership. When deportation is actually enforced on resident non-citizens (or ex-citizens) today, their expulsion is a "vivid practical demonstration that responsibility for and the fate of the person concerned lies outside the state's abstract political community" (Gray 2011: 577)—a demonstration that is far more compelling than imprisonment or the mere acts of denationalisation or refusal to naturalise. In this sense too, today's deportee serves a similar symbolic function to the banished criminal citizen, the political exile, and the expelled linguistic, ethnic or religious deviant that was so pivotal to the construction of political communities in earlier eras.

Conclusion

As long as there have been human communities, these have practiced expulsion as a way of getting rid of particular individuals. Historically, this practice has taken many different forms and has served a multitude of purposes, and it is worth exploring precisely how the power to order people to leave a territory and enforce such decisions has evolved over time and to what extent contemporary deportation practices contain echoes of past expulsions. Rather than seeing deportation today as a straightforward tool of immigration control, recognising the historical echoes in contemporary deportation practices reveals the multi-faceted nature of this class of practices and the multiple, mostly non-articulated, functions they perform for the political authorities doing the expelling. Deportation plays a pivotal role in the self-understanding of modern states and their functions, as a way of state (re)formation: as the state continually re-constituting itself and the political community it represents in the face of international migration by integrating newcomers in the national community or removing them when they fail to do so or are considered unlikely to successfully do so; as the enforcement state which imposes and upholds criminal and other behavioural norms; as the welfare state which must protect itself by preventing drains on social assistance systems; as the security state which

must protect the safety of the community as well as its own survival and stability; and as the signalling state which must communicate the norms and values of the community to citizens, authorised and unauthorised residents alike.

While Walters is right to suggest conceptualising deportation as an instance of a wider category of expulsion practices, it is equally enlightening to consider expulsion itself as part of a wider category of state-enforced (im)mobility. This view highlights the role that control over movement and its opposite plays at the heart of political power. Classic expulsion (as a strategy of "forcing out"), then, can be viewed alongside immigration control ("keeping out"), emigration restrictions ("keeping in"), and forced immigration ("forcing in") as one of four ways in which the membership of territorial political communities can be, and has historically been, constructed. It is interesting to note that, throughout most of history, political communities were far more concerned with limiting emigration or with bringing people in with different degrees of force (both of which are today considered severe violations of fundamental individual rights) than they were with preventing immigration. But it seems that all four strategies have been used rather extensively in the historical development of each polity, and often at the same time. At any given moment in history, most territorial political communities have simultaneously allowed at least some immigration, kept other outsiders out, forced some insiders out, and prevented others from leaving.

The interesting question in the context of this thesis, however, is where modern deportation features in this typology. If viewed through the lens of immigration control, it is easy to ignore or deny the similarities with historical expulsion practices. If, however, the modern practice of deportation is at the very least straddling an unclear border between "keeping out" (immigration control) and "forcing out" (expulsion), we need a different conceptualisation as well as a different normative justification of the practice. Conceptually, we need to rethink the functions and the (foreseen and unforeseen) consequences of deportation policy beyond its immediate use as a tool of immigration control. This was the main task of the present chapter. Normatively, we need to engage with questions that remain hidden when looking at deportation through an immigration control lens, and this is what the second part of the thesis will do.

In this chapter, I have argued that three interrelated developments explain the distinct form that deportation has taken, namely the consolidation of the nation-state system, the rise of the human rights framework, and the continuing desire by political authorities to assert their power over the shape of the community they control, the enforcement of its norms and values, and their own power position. I have sought to bring out the aims and purposes and tried to explain the contemporary configuration of contemporary deportation practices by comparing them to

historical expulsion practices. In the next chapter, I expand this analysis by taking a different comparative perspective, by comparing deportation practices between national settings.

Chapter 2
Divergences in deportation?
The variety of national deportation regimes

Introduction

While the Introduction and Chapter 1 both focused on commonalities in national deportation policy and general trends across Europe (and, indeed, beyond), this chapter will focus instead on differences and divergences between national regimes in the European context. The convergences that have been identified so far can be at least partially explained with reference to two (overlapping) phenomena. One is the *horizontal* policy convergence that has taken place through national governments adopting similar policies in response to the increasingly similar and common challenges they face. The second are *vertical* processes of Europeanisation, i.e. the top-down influence by the supranational institutions of the EU seeking to harmonise deportation policy across the EU and the associated non-member states of the European Free Trade Association (EFTA)—which will be described and analysed in the next chapter. Despite these processes of convergence, however, important variations remain between different European countries in how and how much deportation is used as a policy instrument to achieve the goals outlined in the previous chapter. These may, moreover, reflect distinct logics informing the various national deportation regimes of different European countries. In some ways, furthermore, these differences have become more rather than less pronounced over the last decade.

The aim of this chapter is to describe some of the ways in which national deportation regimes in the European context differ and diverge, both between countries and over time, and to discuss some possible explanations for these differences. The chapter takes a largely quantitative perspective with the aim of offering an exploratory analysis. Providing clear statistical evidence or in-depth case comparisons is beyond the scope of this chapter and indeed this thesis, so the aim is limited to a first attempt to tease out some of the possible reasons for differentiation (and rule out others). Still, I believe such an exploratory analysis to be an important contribution to the existing literature. There is a curious lack of macro-level analyses of national-level deportation regimes, with the vast majority of studies focusing either on individual countries or on two- or three-country comparisons. One reason for this gap may be that there is relatively little reliably comparative information publicly available on deportation, compared to, for instance, data on asylum claims or visas granted.

The major exceptions to this lacuna in the literature are two recent studies by Leanne Weber (2014) and Tom K. Wong (2015). Weber's more descriptive analysis traces how deportation numbers have developed across twelve countries for the period 2000-2011, while Wong takes a more explanatory approach by looking at correlations between deportation volumes and a number of political, economic and immigration-related factors in 25 countries for the period 2000-2009. Geographically, both studies have a wider scope then the one in this chapter, as they include non-European countries (both include the US and Australia, and Wong includes Canada). However, their scope is more limited in other important respects. Wong explicitly considers only high-income countries and countries which have high net immigration, excluding those countries which have net emigration or even low net immigration. Weber is less explicit about her choices, but the only country she includes which arguably does not fit this definition is Hungary. Both, then, ignore a large number of European states on the basis that they are not countries traditionally associated with large immigration. This restriction is regrettable for two reasons. First, low net immigration or net emigration does not of course mean *no* immigration, so it is unclear why such countries would by definition be less interested in immigration enforcement just because their emigration levels match or surpass immigration levels. Moreover, with this choice of scope restriction, these authors effectively accept that deportation is simply a post-entry border control mechanism, a common assumption I criticised earlier following others who have done so before (De Genova 2002; Walters 2002; Kanstroom 2007). In fact, as we shall see, many low-immigration countries in Europe still issue large numbers of deportation orders (e.g. Poland), and this is precisely why they must be taken into an analysis which aims to explore explanations of deportation use that go beyond the simple idea that deportation is solely a response to (irregular) immigration.

The analysis in this chapter, then, looks at a larger number of countries then both these earlier studies, by including all 32 countries bound to at least some extent by EU deportation regulation; namely, the 28 member states plus EFTA countries Norway, Iceland, Switzerland and Liechtenstein (who are all members of the Schengen free movement area). Another way in which this chapter's analysis makes a further contribution to both studies mentioned, is that these only include numbers from 2000 until 2009 and 2011 respectively. As the time-frame under consideration here is roughly a decade later (2008-2017), it can take into account how the "migration crisis" that peaked in the summer of 2015 has played out in national deportation responses. Where illuminating I will refer back to numbers reported by Weber and Wong to highlight continuing or changing country trends.

Moreover, while Weber and Wong's analyses respectively seek to describe and explain deportation levels, neither of them takes into consideration other factors that make up the

deportation regime of a country. While the totality of rules that make up such a regime is far too broad to take into account in any large-n analysis, this chapter makes a first attempt (to the best of my knowledge) to compare deportation regimes across Europe on a number of crucial dimensions that go beyond pure departure levels. While important differences remain in the rules that govern deportability (i.e. what grounds can trigger deportation and what grounds protect individuals against it), these are increasingly "Europeanising" through both horizontally and vertically driven policy convergence—as the next chapter will explore. This chapter will instead focus broadly on three differences in how deportation policy is implemented by national bureaucracies. The first variation is found in the volume of deportation orders issued and actual departures following such orders, both in absolute terms and relative to the size of both overall and deportable populations. The second refers to what we may call "enforcement gaps", i.e. the difference between deportation orders issued and those actually followed through. The third and last dimension of variation concerns the punitiveness of deportation regimes, in other words, how "soft" or "hard" the measures are that countries have adopted to enforce their deportation rules.[27] By looking at these three broad dimensions of variation, the chapter proposes a provisional typology of deportation regimes, which may be used to also look at deportation in other parts of the world. Given the novelty of this endeavour, the comparative analysis will be chiefly descriptive and exploratory. However, even a first look at these differences can bring out that many factors that are often considered to be determinants of immigration policy generally are apparently very limited in explaining deportation policy specifically.

The analysis in this chapter largely relies on data made available by Eurostat, the EU's statistics agency, which collects data about the "Enforcement of Immigration Legislation" from all 28 EU Member States plus the four EFTA states on an annual basis.[28] A few major limits of this data should be made explicit and kept in mind when interpreting them. Some limitations concern the comprehensiveness of the data. The numbers reported are limited to deportation of non-EU nationals (referred to as Third Country Nationals or TCNs in the EU's bureaucratic jargon), and thus exclude deportations of EU nationals. It also explicitly excludes so-called "Dublin transfers", i.e. asylum seekers who are forcibly returned to their first country of arrival in the EU. Other limitations relate to the trustworthiness of the data. Eurostat relies on countries' own reporting and has no way of systematically verifying the numbers it is provided with. Moreover, while the Regulation provides fairly standardised definitions of what needs to be measured (see Eurostat

[27] The terminology of hard and soft deportation is taken from Leerkes et al. (2017), though I use it to refer to a wider set of measures than their focus on "voluntary" versus enforced departures.
[28] These countries are bound to supply these statistics based on Article 5 and 7 of the Council Regulation (EC) no 862/2007.

2014), some geographic and temporal comparability problems remain due to administrative and methodological differences between countries and within countries over time (Eurostat 2015a). Moreover, some of the numbers reported are known to involve inaccuracies. A general compliance report from 2015 found "full compliance" with the statistical definitions in 23 of the 32 reporting countries, in the other countries the main problems were that only the number of returns following an order to leave were counted rather than persons (leading to the double counting of persons who were deported more than once in the same reference year).[29] Nonetheless, these Eurostat numbers arguably suffer from fewer comparability problems than most datasets compiled by different country experts, as these have often found it more difficult in practice to obtain precise numbers on clearly defined categories in each respective country in the absence of a legal obligation on the part of government agencies to provide these (Weber 2014: 156-157). Apart from Eurostat data, the analysis below also includes data on criminalisation of irregular entry and stay taken from a 2014 report by the Vienna-based Fundamental Rights Agency of the EU (European Union Agency for Fundamental Rights 2014), and data on pre-deportation detention taken from the website of the Global Detention Project,[30] an independent non-profit research centre based in Geneva that developed out of a 2005 research project undertaken by students at the Graduate Institute of International and Development Studies. The full data taken, calculated and, where necessary, coded from each of these three sources can be found in Appendix A.

Information on some of the dimensions I will consider later in the chapter is not available for all 32 countries included in the main analysis. Since each of the three dimensions can be considered separately, I have decided against excluding from the analysis all countries where data points on any of the variables under consideration are missing, as there are still plenty of interesting comparative observations to be made without a full comparison on all dimensions. It does mean, however, that in the final typology developed, the groupings of countries is done for only those countries which have information available on at least the first two dimensions (deportation rates and enforcement gaps), therefore excluding Switzerland.

Deportation rates

A country's deportation rate is less straightforward to determine than it might seem. The first question is whether we should start by looking at the number of deportation orders that the

[29] While this was a rather marginal problem in most countries where this occurred, in Poland before 2010 more than 20% of persons may have been recorded more than once (Eurostat 2015b).
[30] https://www.globaldetentionproject.org/. Last accessed July 2018.

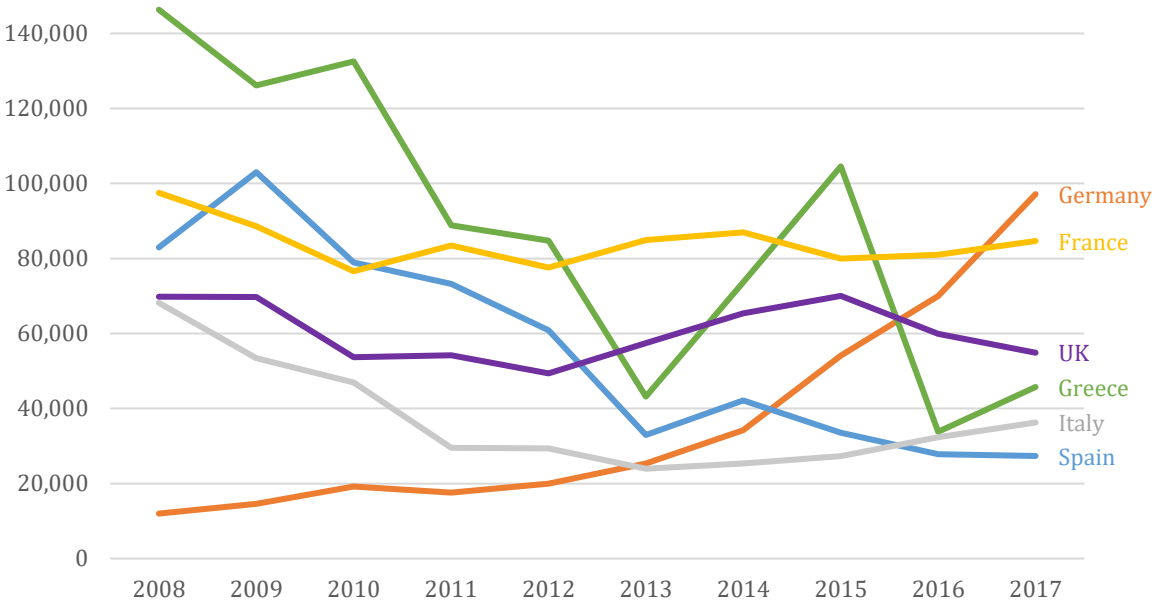
country issues in a given period of time, or only at the effective number of departures that were registered following such an order to leave. The second question is whether we should look at absolute numbers of ordered and effected deportation, or whether it would be better to consider these numbers relative to some standard that allows for more accurate comparison. This section will look at each of these statistical measures in turn.

The most obvious place to start is by looking at absolute numbers. A decade ago, in 2008, the European countries which issued the largest number of deportation *orders* were Greece, France and Spain, while measured by the largest number of deportations *enforced* the top three were Greece, the UK and Spain. By 2017, this picture had changed significantly. The number of deportations ordered and effected from Greece and Spain has fallen dramatically. In the case of Greece the fall is particularly noteworthy—while in 2008 it registered 146,335 deportation orders and 68,565 deportations, by 2017 these numbers had fallen to 45,765 and 18,765 respectively. At the same time, Germany, which did not feature in the top four of European deporting countries in terms of either orders or effective departures in 2008 (it effected only about a fifth as many deportations as Greece in that year), by 2017 had become Europe's top deporter in terms of both orders (97,165) and deportations (47,240). Another country which has grown to join Europe's top deporting countries is Poland (from 8,595 deportations in 2008 to 22,210 in 2017). Meanwhile, other major deporting countries have remained more stable over this period (on both counts)—including (most notably) the UK, France, Italy, Sweden, the Netherlands and Belgium. The UK has had a consistently high level of effected deportations over the last decade, meaning it is cumulatively the biggest deporter in Europe—it deported a total of 516,430 non-EU nationals over this ten-year period, significantly more than were deported from Greece (315,165) and Germany (287,490) over this same period.

Comparing this to Weber's analysis focused on a decade earlier it is worth noting that she found a steady increase in deportations from France, which deported three times as many people in 2011 than it did in 2000 and a sharp fall in Germany, from 183,000 at the turn of the century to only 11,000 in 2011 (Weber 2014: 159-160). Taking these data together, we can thus see that France's deportation numbers have stabilised after a sustained period of growth, while Germany's sharply increased after a decade of decline. However, as there is some overlap between Weber's timeframe and the Eurostat data available (2008-2011), it is important to be aware of some particularly noticeable discrepancies between the data reported by governments to Eurostat and numbers found by the researchers collecting data for Weber. Weber found consistently higher numbers than Eurostat in France, probably because France deports a significant number of Roma of Romanian and Bulgarian origin who are EU nationals and therefore not counted in the Eurostat data. She also found higher numbers in Norway, which

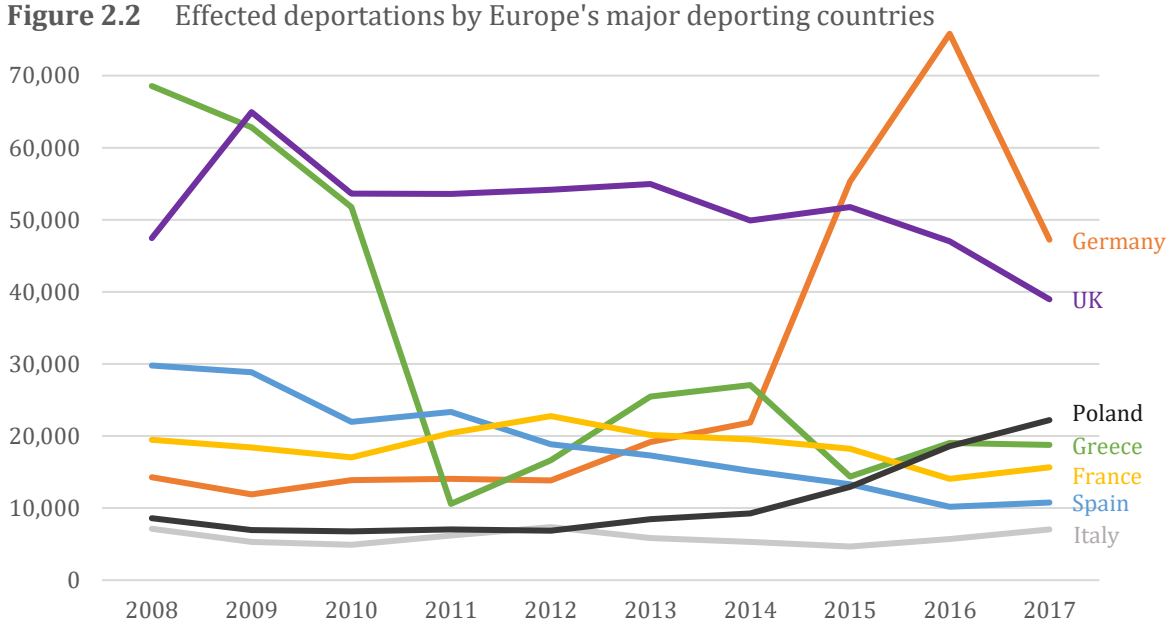
may be explained by the fact that these included Dublin transfers, which form a high proportion of that country's deportations but are recorded separately by Eurostat (Weber 2014: 158).

Figure 2.1 Deportation orders by Europe's major deporting countries



Source: Eurostat 2018

Figure 2.2 Effected deportations by Europe's major deporting countries



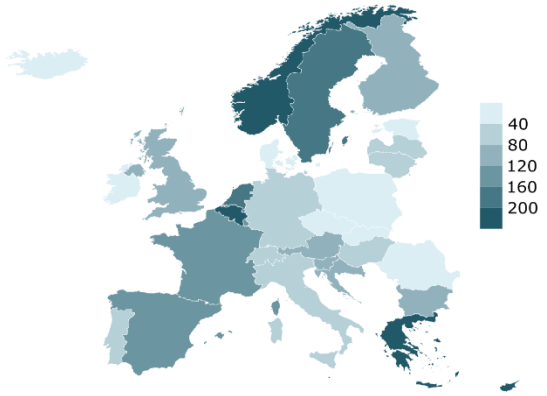
Source: Eurostat 2018

While the above comparison is of absolute numbers of issued orders and effected departures, a more accurate comparison should take into account that these countries differ significantly in size. When considering deportation orders and deportations as a share of the total population of each country, this relativises the deportation numbers of large countries like Germany, France and Spain. These three countries have effected a yearly average of 35, 41 and 28 deportations

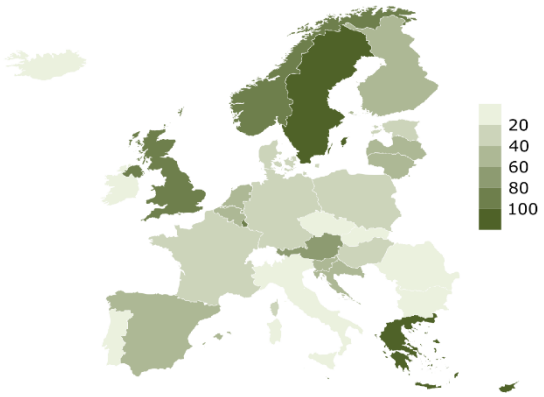
per 100,000 total population over the last decade. At the same time, it accentuates the low levels of countries like Italy, Portugal and the Czech Republic (10, 9 and 7 deportations per 100,000 population respectively) and brings out how much the island states of the Mediterranean, Cyprus (381 deportations per 100,000 population), Greece (286) and, to a lesser extent, Malta (97) are deporting relative to their population size. Sweden also stands out as a major "per capita" deporter (124 deportations per 100,000 population on average).

Figure 2.3 Deportation orders and deportations as a share of the population

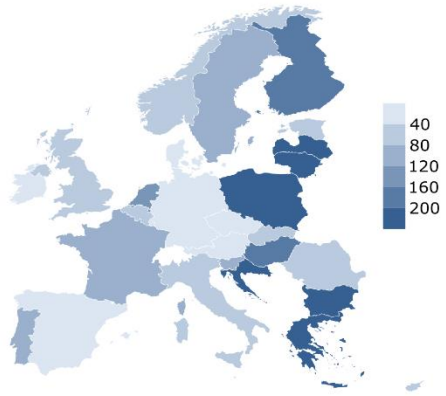
Deportation orders per 100,000 total population, average 2008-17



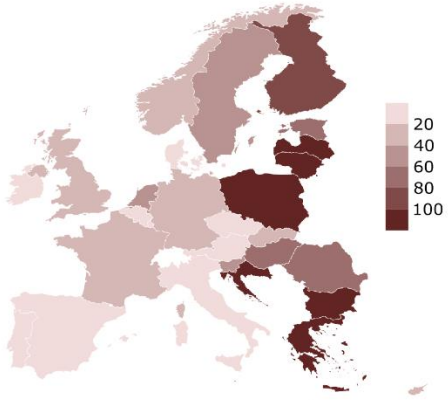
Deportations per 100,000 total population, average 2008-17



Deportation orders per 1,000 TCN population, average 2014-17



Deportations per 1,000 TCN population, average 2014-17



Source: Eurostat 2018 (own calculations)

Given that the numbers used here are limited to deportations concerning non-EU nationals, perhaps the better comparative statistic, would be the number of deportations and orders as a share of the population of resident non-EU nationals (TCNs) in a given year. On this calculation, the newer member states such as Poland, Bulgaria, Croatia, Hungary and the Baltic states top the lists as the highest per capita deporters. However, there are significant drawbacks to using

the TCN population to calculate per capita deportation, as two important target groups of deportation are not counted in these numbers, namely recent immigrants who have not yet settled and thus are not registered as residents, and irregular residents who are by definition not officially registered. The correlation between the regular and irregular TCN populations cannot be assumed to be strong, and in some cases may be negative (in countries that prefer to turn a blind eye to irregular populations rather than making efforts to either regularise or deport them). Therefore, countries which focus their deportation efforts on these two groups but lack large long-standing legally resident immigrant communities (as is the case for many of the newer member states) show up as more enthusiastic deporters than they may actually be. Indeed, the problem is best illustrated by the fact that some states report *more* deportations than they have TCN residents. For instance, during 2017 Poland deported 22,210 TCNs while it had only 20,123 registered TCN residents on January 1st of that year.

Ideally, we would calculate exactly for each category of "deportables" (legally resident TCNs, asylum seekers, unauthorised residents), but a breakdown of deportations by category is unavailable for most countries. Furthermore, estimations of a country's irregular population are extremely difficult to make,[31] and therefore mostly non-existent. Those that do exist are necessarily tentative and uncertain, and the lack of common definitions and data collection procedures further increases this factor's unsuitability for comparative purposes (Wong 2015: 84-85). For these reasons, the rest of this chapter will use deportation as a share of total population, because even if this does not take the size of non-citizen (i.e. deportable) communities into account, it is arguably the most relevant comparative metric.

In sum, there are many ways of looking at and comparing the volume of deportation orders issued and effected across Europe. In order to take the relative size of countries into account but at the same time not to skew the comparison between those countries which have relatively long histories of immigration and relatively large populations of immigrant origin (generally, older EU or Schengen states), and those that do not (generally, the newer, post-communist member states), the analysis in the rest of this chapter will focus on deportations as a share of the total population as the preferred variable to measure and compare the volume of deportation in each country.[32]

[31] For the most comprehensive (though somewhat dated) attempt see the report by the CLANDESTINO project (2009).

[32] At this point, it is perhaps interesting to note how these numbers compare to the United States. Despite the incredible growth of the US deportation system and the fact that in absolute numbers the US eclipses any other country (or even the entire EU28 combined—in 2017 the EU28 collectively deported 213,525 TCNs while the US deported 226,119 people by itself), when looking at deportations per capita it is actually outpaced by a number of European countries. In 2017, for instance, Greece (174 deportations per

Explaining fluctuating deportation levels

What could explain the fluctuations identified in the previous section? While some explanations have been suggested in the literature, only Wong (2015) has made an attempt to systematically test the statistical force of these. While this chapter does not seek to test for statistical significance, a quick look at the general (lack of) changes in numbers does illuminate the limits of the explanatory power of most of these suggestions. In the following, I will discuss several migration-related, economic and political factors by looking at both overall European deportation rates and country-level fluctuations.

Starting with the European aggregate level, the most straightforward reason why deportation rates fluctuate may be in response to influxes of irregular migrants or asylum seekers, many of whom will be denied refugee status or another type of protection status and will therefore be eligible for deportation. The big event facing Europe over the last decade in this regard, however—the migration/refugee crisis which came to a head in the summer of 2015—has not as yet had a major impact on overall deportation numbers in Europe. As I noted in the Introduction, while there was a temporary jump in detections of illegally present non-EU nationals in 2015, this has not only subsided to pre-2015 levels within two years, but did not seem to have had any effect on either the number of orders issued or effected, which remained stable throughout this "crisis" (see figure 0.2 on page 3).

Perhaps, however, it is more revealing to focus not at the aggregate European level, but at the individual country level. Upon closer inspection, the 2015 jump in detections of illegally staying TCNs seems to have been mostly comprised of significant increases in detections in four countries: Greece (from 73,670 in 2014 to 911,470 in 2015), Germany (from 128,290 to 376,435), Austria (from 33,055 to 86,220) and Hungary (from 56,170 to 424,055).[33] Of these countries, only Germany has responded by increasing its deportation efforts successfully. While Greece did briefly return to the high volumes of orders it issued pre-2012 (having seen these drop in the years between), this spike was not reflected in actually enforced deportations. The same is true for Hungary, and in Austria no change is visible in the data at all. So, except for Germany, deportation levels seem not to have gone up in response to higher unauthorised migration even at the individual country level.

100,000 population), Malta (103), Sweden (100), Cyprus (90), Finland (73) and Austria (70) all had higher per capita deportation rates than the US (69 deportations per 100,000 population). See https://www.ice.gov/removal-statistics/2017 and https://www.census.gov/data/tables/2017/demo/popest/nation-total.html, last accessed August 2018.

[33] There were also significant increases in Bulgaria, the Czech Republic, Denmark, Poland and Finland. Interestingly, Sweden saw a significant jump in illegal detections in 2014 to 72,635 (from 24,400 in 2013), but this fell to 1,445 in 2015 and has stayed this low since.

It is of course possible that countries cannot instantly respond to rising unauthorised and asylum immigration as it takes time to build up deportation capacity, but that nonetheless those countries which systematically face higher immigration pressure over time reach much higher deportation levels than those countries that are more insulated from immigration flows. In this regard, we could expect geography to be an important factor influencing deportation levels, and that the 'frontier' states with sea borders on the Mediterranean would be Europe's principal deporters. This seems certainly true for the EU states bordering the eastern Mediterranean (Greece, Cyprus, Malta). On the other hand, Italy and (to a lesser extent) Spain and France have also traditionally been countries of first destination for irregular migrant flows, yet these countries have among the lowest deportation levels in Europe, at least recently. Furthermore, some of Europe's biggest deporters are countries geographically far removed from Europe's "entry points" for overland migration flows. An alternative explanation would be that those countries which are merely entry ports into Europe (such as Italy) or are known to be travel-through countries (such as France) have fewer incentives to deport as many irregular migrants are expected to travel onwards. Once they arrive in Germany, the UK, Sweden or the Netherlands, however, these countries probably expect them to want to stay and settle, making effective deportations a more necessary part of a strategy to prevent long-term presence. This explanation is more in line with the numbers found.

It might also be expected that economic developments influence deportation levels. Specifically, anxieties about competition for jobs and welfare payments fuelled by economic crisis and a rise in unemployment could drive deportation efforts up. Again, however, this does not seem to be reflected in the numbers. The aggregate European number of deportations initially dropped after the 2008 start of the Great Recession, only to climb up again well after recovery had set in. Moreover, in those countries most severely affected by the crisis, such as Greece, Spain and Italy, deportations dropped more sharply than the average. It seems thus more likely that the crisis diverted attention and resources away from deportation efforts, instead of fuelling them. Again, perhaps yearly fluctuations are unlikely given the time needed to build up deportation capacity, and we should instead take a longer-term view of how economic differences between countries and their deportation rates are related. Intuitively, countries with relatively generous welfare systems may have a stronger interest in effective deportation. Comparing countries' per capita public social spending, however, shows that while some high spenders are indeed also high deporters, such as the Nordic countries, other countries contradict this expectation. For instance, some high-spending countries such as the Benelux countries and France are low

deporters, while certain countries with high deportation rates (such as the UK and Greece) spend less on social protection per person than the European average.[34]

Political factors may also be theorised to have explanatory power. We might expect right-leaning governments and especially those which include or rely on the support of far-right anti-immigration parties to drive up deportation rates. Indeed, in Poland and Hungary deportation efforts seem to have been stepped up under right-wing parties which campaigned explicitly on anti-immigration platforms. However, Spain had much higher deportation rates under the socialist government of Zapatero than under the conservative administration of Rajoy, and Greece's deportation numbers have kept falling steadily even with the participation of the xenophobic Independent Greeks party in the governing coalition. Similarly, the years in which the Geert Wilders' Freedom Party (PVV) supported a minority right-wing government saw the lowest deportation numbers in the Netherlands during the last decade.

All these (non-)findings seem consistent with Wong's analysis which found no statistically significant relationship between deportation rates and, respectively, GDP growth, unemployment, right-leaning governments, election cycles, new immigration, or the size of the foreign-born population (Wong 2015: 92). Wong did find a statistically significant relationship between the number of people claiming asylum and the number of deportations (Wong 2015: 106), which may be explained by the fact that in the period he studied (the immediate wake of the September 11th terrorist attacks in the US) increases in asylum inflows in Europe were increasingly framed as posing a security challenge and as being largely made up for "bogus" asylum seekers. Wong also finds limited support for a positive influence of the legislative representation of far-right anti-immigration parties, but only under systems of proportional representation, and even there the relationship becomes more pronounced as the electoral threshold for representation lowers (Wong 2015: 102, 105). Specifically in Austria, he found that deportations have "largely mirrored the success and the failures of the FPÖ" (Wong 2015: 103). Wong contrasts this to the situation in the French majoritarian system, where the legislative success of the Front National has had no impact on the number of deportations, which has remained very stable over time.

Still, taking the more recent numbers into account, it seems that the explanatory power of far-right success seems very limited if we consider that some of the major deporters, most notably Germany and the UK, are countries where the far right has not yet had any legislative success or

[34] See http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tps00099&language=en. Last accessed August 2018.

only too recently to show up in the analysis. In the UK, UKIP (for a long time more an anti-EU than an anti-immigration party anyway) only gained seats in the House of Commons through two defections by Conservative MPs, and both have since been lost. In Germany, while the CDU/CSU-led coalition may currently be under electoral pressure from the AfD in the country's relatively proportional system, deportation levels had long been on the rise by 2017 when the AfD entered the Bundestag.

Enforcement gaps

A second variable relevant to the intercountry comparison is the number of actually effected departures as a rate of the total number of deportation orders issued. We could consider this the "enforcement rate" of a deportation regime. It is important to note that, as defined above, this is not strictly calculated by looking at whether each order is actually registered as having been followed or enforced, as the same deportation may be ordered in one year and only given effect the next. However, as we are looking at a relatively long time period and as this counting problem is likely to affect countries roughly equally, this is still a good measure for comparing the "effectiveness" of national deportation regimes. Most of all, the existence of significant and persistent disparities between orders issued and departures effected, which we can term "enforcement gaps", indicates that countries are either unwilling or unable to follow up on many of the orders they issue.

As it turns out, there is enormous variation in the "success" rate of these regimes. Cyprus, Romania and Latvia roughly manage to effect all the orders that they issue, with consistent enforcement rates of around 100%. Generally, the UK, Germany, Poland and Sweden manage to enforce at least two thirds of their deportation orders, while the countries which fail to enforce even half of their orders include the Netherlands, Spain, Greece and Norway. At the bottom end, Italy, Belgium, Portugal and France on average effect less than a quarter of the deportation orders they issue. If we trace how such gaps have developed over time, we can see that most countries have relatively stable enforcement rates which do not fluctuate radically from year to year. This suggests that most countries have entrenched enforcement practices, either as consistently effective deporters (the UK, Poland, Romania, the Baltic states), consistently ineffective deporters (Italy, Portugal, Belgium, France), or consistently in the middle (Spain, Austria, the Netherlands, Norway). There are, however, expectations where we do see either constant fluctuations (Hungary, Malta, Slovenia), occasional dips in an otherwise high enforcement regime (Germany, Sweden) or a recent sharp increase (Bulgaria) or decrease (Cyprus) in effectiveness.

Figure 2.4 Actual departures as a share of deportation orders, yearly average 2008-17

Source: Eurostat 2018 (own calculations)

What may account for this wide variation in effectiveness? One explanation may lie in the bureaucratic and financial capacity of the state in question. For instance, Belgium's low effectiveness echoes its ineffectiveness in other policy areas for which responsibility lies mainly with the federal governmental level which has been starved of necessary resources and suffers from structural staff shortages after decades of devolving powers to the Flemish and Walloon regions in response to regional nationalism and animosity—such as the prison system, the traffic police, infrastructural agencies and the intelligence services. Indeed, an effective deportation regime relies on the smooth functioning of many of these government agencies. The Greek case is probably even more illustrative of this effect—its rate of both deportation orders issued and deportations effected has fallen dramatically in the years since 2008, tracing a general breakdown of the functioning (and funding) of many government agencies in the wake of the economic recession and sovereign debt crisis.[35]

[35] Another factor mostly beyond the control of the deporting country is the fact that the composition of deportable populations differs between countries. As some destination states tend to be far less cooperative in taking back their nationals subject to deportation proceeding than other countries, the

However, bureaucratic capacity cannot be the whole story, as other countries that generally score well on effective governance benchmarks, such as the Netherlands, Norway, Denmark and France, also more or less consistently fail to effect most of their deportation orders. Some countries may simply either be unwilling (rather than unable) to devote many resources to deportation enforcement. In some cases, such as in Italy, Spain and France, non-enforcement may be as much a choice as a necessity because (as mentioned earlier) for the irregular populations in these countries (especially in the case of Italy) these tend to be transit rather than destination countries, and the "problem" of the presence of a deportable population will therefore perhaps sometimes solve itself through onward travel. Indeed, Italy has often been criticised by its European partners for failing to apprehend and register (and fingerprint) those irregularly present on Italian territory, with the implicit accusation being precisely that this is done on purpose. This explanation would similarly account for why the main destination countries for recent migrants to Europe, namely Germany, Sweden and the UK, each have generally high enforcement rates.

Another explanatory factor which has to do with choice rather than capacity may lie in the symbolic function of deportation orders described in the previous chapter (see also Anderson et al. 2011, 2013; De Genova 2013). The marginalising effects of being formally told to leave already serve many of the purposes of a deportation regime: to signal to citizens that "something is being done" about unwanted immigration and immigrants, to both irregular and criminal "deportables" that their illicit behaviour is subject to a sanction, and to all that the government is firmly in control over questions of belonging and desert fundamental to the self-identity of the political community. For all these signalling purposes to have effect, it is generally unnecessary for each deportation order to actually result in a departure. This suggests that those countries which are in principle capable of enforcing their deportations but which structurally choose not to, or respond to particular events by drastically increasing the number of orders they issue without actually following up on them, are consciously using the tool of deportation orders separately from its purpose to enforce the removal of certain individuals. However, persistently low enforcement rates may in the long term provide ammunition for right-wing parties to capitalise on law-and-order arguments that the governing elite has lost

---

deportation of their nationals is far more difficult than the deportation of others. Some nationalities cannot be deported to their country of citizenship at all as the latter systematically refuses to provide the travel documentation needed for the procedure. Given that some countries may have a far larger share of difficult or impossible-to-deport nationals within its deportable population, they may be far less effective than other countries even if they spend similar resources on their efforts. Moreover, and as the next chapter will discuss, EU Directives (especially the 2003 Long Term Residence Directive) also exempt or create obstacles for deportations of long-term TCNs. This might reduce the number of eligible populations more in "old" EU immigration countries compared to recent ones.

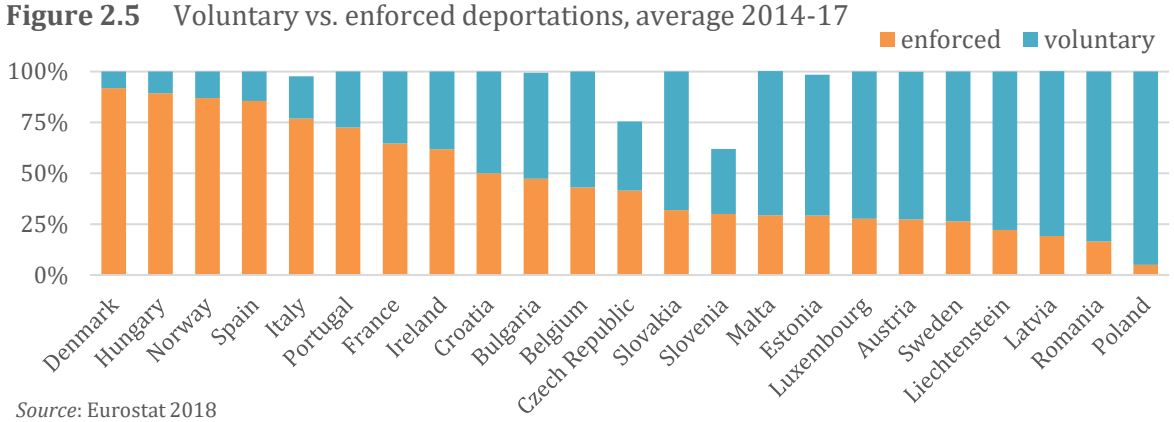
control over irregular immigration and residence, as seems to be happening at the moment in Italy. It will also lead to deportation becoming less effective as a signalling device for both the native population and the immigrants concerned.

"Hard" and "soft" deportation regimes

Another way in which to compare deportation regimes is through their preferred methods of enforcement. As described in the Introduction, over the last decades European countries have turned to ever more restrictive measures to try and enforce deportations, including most notably the use of pre-removal detention and the classification of irregular entry and/or stay as a criminal rather than an administrative offence, allowing for harsher punishment and sometimes facilitating incarceration beyond the relatively strict time limits imposed on administrative detention under immigration law (Parkin 2013; Mitsilegas 2014; Provera 2015). At the same time, some countries have begun to rely less on hard enforcement mechanisms to enforce compliance with deportation orders (in short, police escorts and handcuffs) and more on the somewhat deceptively labelled "voluntary" departure schemes which seek to encourage willing departure through organisational support and often monetary incentives.[36] In particular, "assisted voluntary return" (AVR) or "assisted voluntary return and reintegration" (AVRR) schemes—the majority of which are administered by the International Organization for Migration (IOM) and typically provide return flights, offer cash allowances and in some cases also provide reintegration assistance upon return—have spread across Europe and the Western industrialised world: from five in 1995 to 35 in 2011 (Koch 2013). Indeed, when looking at the numbers, the popularity of AVR programmes is a distinctly European phenomenon: in 2015 more than 80 percent of all AVR programmes administered by IOM were from EU states, Norway and Switzerland (Kuschminder 2017: 3). Sometimes, these developments go together, with countries trying to nudge those served a deportation order to depart "voluntarily" while at the same time stepping up punitive enforcement for those who fail to depart on their own initiative. Nonetheless, the overall choice for "harder" or "softer" enforcement mechanisms in each of these three dimensions is thus a third way in which we can distinguish between national deportation regimes.

[36] For a critical discussion of the use of the term "voluntary" in the context of such programmes, see Webber (2011).

Figure 2.5 Voluntary vs. enforced deportations, average 2014-17



Source: Eurostat 2018

Even if Europe is the centre of AVR programmes, there are wide variations between European countries in the extent to which they are used. Statistics for the share of "voluntary" departures and coercively enforced ones have been provided to Eurostat by 21 of the EU member states plus three EFTA countries (Iceland, Liechtenstein and Norway) and only since 2014. Looking at the 2014-2017 period, we can see that countries like Italy, Spain, Norway, Hungary and Denmark continue to rely primarily on hard coercive methods, while Sweden, Austria and most of the newer Eastern European member states have embraced voluntary departure schemes.[37]

It is interesting to note that all countries which rely mostly on "voluntary" departure have "good" effective departure rates (i.e. small enforcement gaps). These include Poland, Romania, Sweden, Austria, Estonia, Latvia, Slovenia and Slovakia. While Malta has a medium enforcement rate of 54%, all 10 other countries that only effect less than a third of their recorded departures through coercive enforcement have successful departure rates of around two thirds or higher. Moreover, the countries which rely most heavily on voluntary departure are also among those with the highest departure rates (Poland, Romania, Latvia, Liechtenstein). Furthermore, none of the remaining three countries with high departure rates (Germany, Lithuania, the UK) have provided statistics on voluntary/enforced departure, meaning that no country in this sample has demonstrably high voluntary but low overall departure rates. This suggests voluntary deportation schemes may be quite effective in raising departure rates.

This reflects the findings of evaluative reports which show AVR programmes to be seemingly successful and cost-effective. For instance, in 2017 following recent legislative changes seeking to further encourage voluntary return in those countries, the share of voluntary returns in

[37] It should be kept in mind, of course, that these percentages do not entirely reflect the efforts of countries to incentivise voluntary departures. In some countries a larger share of those ordered to leave may opt for voluntary departure than in others for reasons that have nothing to do with the government's efforts, and which may be linked with the national composition of a given country's deportable population.

Sweden was higher than both the share of rejected asylum applicants who absconded and of forced returns. At the same time, the Czech government doubled the number of people who left through AVR compared to the previous year (European Migration Network 2018: 52). A recent study of a major Dutch AVR programme similarly found that it has increased departures of failed asylum seekers (Leerkes et al. 2017). Nonetheless, several countries have also experienced the risk of creating a pull-factor through the monetary incentives offered and in response have limited the nationalities which are eligible for such programmes and the sum of money involved. For instance, the Netherlands decided in January 2017 to exclude nationals from countries with visa-free travel arrangements and those sharing a border with the EU from eligibility for its Return and Emigration Assistance programme following concerns about widespread abuse, though it reversed this decision in July 2018.[38]

Given this qualified success of AVR programmes, why have some countries embraced such schemes while others have stuck resolutely to old-fashioned enforcement for their deportations? Part of the reason seems to lie in the fact that countries with large enforcement gaps are seemingly uninterested in investing resources even into more efficiently driving up enforcement rates through setting up voluntary departure schemes. Countries such as Italy, France, Spain, Portugal, Denmark and Norway continue to rely on punitive enforcement for the few deportations they do wish to enforce to make sure that the deportation threat remains minimally yet sufficiently strong to serve its signalling function and deterrent effect. Also, countries with large enforcement gaps are likely to focus their relatively low enforcement efforts on specifically undesirable figures, such as criminal offenders and public security threats, whom it probably does not want to be seen as "rewarding" with monetary incentives to leave autonomously and in comfort.

Other indicators for the punitiveness of deportation enforcement regimes include the criminalisation of illegal entry and stay, and the use of detention. For the former, we can look at whether one or both of irregular entry and irregular stay are listed as a criminal offence, and if so whether the sanction is limited to fines only or can also include imprisonment. For the latter, we can look at the number of detainees as a share of those actually deported, as well as the maximum legal length of detention and the average length people are detained under immigration law. For definitional consistency, data for the former is taken from a 2014 report on criminalisation by the EU's Fundamental Rights Agency and for the latter from the Global Detention Project. In the following, the EFTA countries are left out of the analysis because of a

[38] http://www.iom-nederland.nl/en/component/content/category/79-voluntary-return. Last accessed August 2018.

lack of information on criminalisation, and Cyprus is left out because of a lack of information on detention.

There are again Europe-wide variations in the criminalisation of irregularity. Only Portugal and Malta have criminalised neither irregular entry nor irregular stay. The Czech Republic, Spain, Italy, Hungary, Austria, Poland, Slovenia and Slovakia only impose fines in response to irregularity. All other EU28 countries allow imprisonment as a sanction for at least one of the two, with nine countries (Belgium, Denmark, Germany, Estonia, Ireland, Croatia, Cyprus, Luxembourg and the UK) using imprisonment as a punishment for both (European Union Agency for Fundamental Rights 2014).

The increasing use of criminal incarceration as a way of dealing with irregular populations seems closely related to the rise of pre-deportation administrative detention across most European countries. To see to what extent detention is used as part of the deportation machine, we could look at several different indicators. For instance, following EU legislation, which will be discussed in the next chapter, all member states now have legal time limits on the use of detention for migration control purposes except for the UK (which has an opt-out from the Directive that instituted this limit). Eleven countries have the maximum time limit allowed (18 months), while four countries have a legal limit of 60 days or less (Ireland, France, Spain and Portugal), with the other countries somewhere in between. A somewhat different picture emerges when we consider the average time a person spends in such detention, which ranges from less than two weeks in Sweden (5 days), Austria (11 days), Finland (12 days) and France (12.7 days) to over two months in Poland (65.8 days), the Czech Republic (80 days), Estonia (85 days) and Malta (90 days). Lastly, if we calculate the number of people detained in the most recent year for which data was available as a share of total deportations that year, there is again enormous variation. Eleven countries detain more people than they deport. France has three times as many detainees as deportees, Malta four times, Portugal six times, the Czech Republic 10 times and Bulgaria tops the list with 13 times as many. Conversely, Latvia, Croatia, Finland and Poland each detained fewer than 150 people for every 1,000 deportations effected.

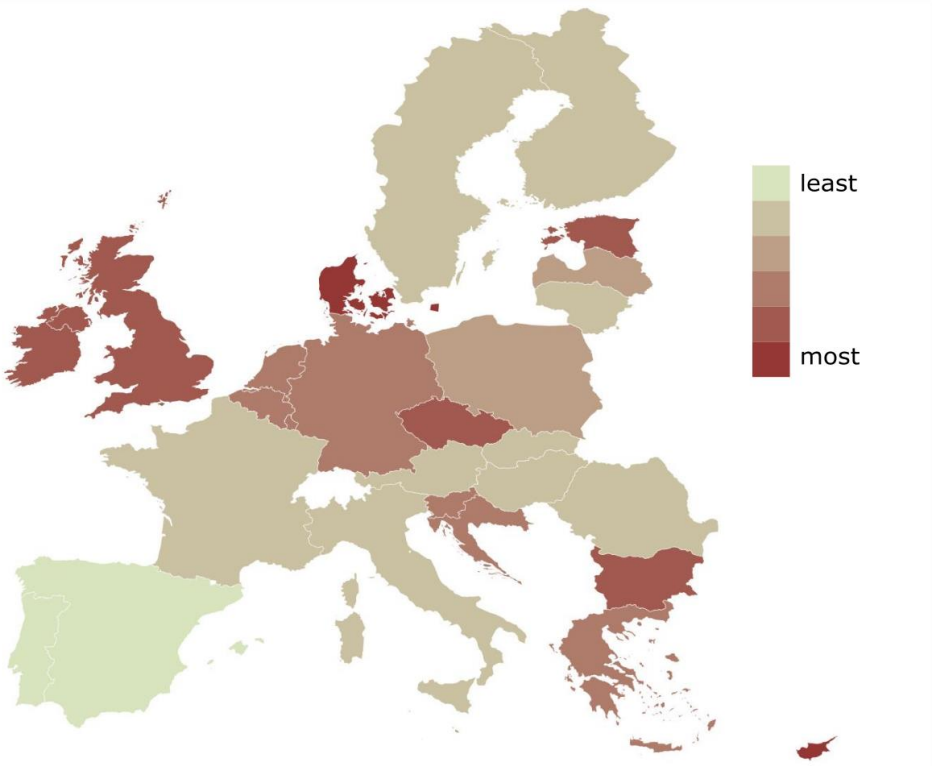
States often defend the use of detention in deportation proceedings as a purely administrative practice aimed at facilitating effective departure by limiting the risk of absconding and by incentivising would-be deportees to cooperate with their deportation. It is clear from this enormous range of variation described above, however, that this is unlikely to be its sole purpose. Indeed, it has already been suggested that its perceived deterrence effect is at least as important. This effect relies on the assumption that the threat of detention acts as a way to deter future immigrants from illegal entry (Broeders and Engbersen 2007: 1602; Leerkes and Kox 2017). The existence of such a deterrence effect is, nonetheless, questionable, and there is no

proof that detention helps make deportation regimes more effective overall (Bloch and Schuster 2005: 509; Schuster 2005; Broeders and Engbersen 2007: 1605). Specifically, detention does not seem very effective in changing attitudes of detainees. Based on interviews with immigration detainees in the Netherlands, Leerkes and Kox have found that detention has only a very limited effect in terms of pressuring detainees into a "preference to leave", especially in the case of asylum and family migrants—though they found the effect to be more significant for labour migrants, and for those who were detained repeatedly (Leerkes and Kox 2017: 911-912). They also found that in some instances a preference to stay was actually reinforced through the experience of detention, allowing detainees to exchange techniques to resist deportation or, in the case of those afraid of the stigma of returning "empty handed", disrupting efforts to build up enough savings to be able to go back to the country of origin to (re)build a life there (Leerkes and Kox 2017: 915, 921).

If detention is not (or at least not always) successful in raising deportation effectiveness, it might have other goals besides its formal function as an instrument of expulsion, just as the issuing of deportation orders has. Leerkes and Broeders argue that it is has three additional informal functions: namely, deterring illegal residence, relieving the societal effects of pauperism and managing popular anxiety by symbolically asserting state control (Leerkes and Broeders 2013). Indeed, if one of the functions of deportation is to remove from society people that are considered a nuisance (either through their behaviour or through the effects of their economic destitution), administrative detention is an attractive way of enforcing that removal from society even when deportation itself is difficult or not immediately possible.

If we take together the indicators for criminalisation of irregular entry and stay, and the use of purportedly facilitative detention, we can see two things. First, there is some, but no absolute, correlation between criminalisation and the use of detention, and between different indicators within each of these. France, for instance, criminalises irregular entry with imprisonment as a sanction, but irregular entry not at all. Similarly, it has Europe's lowest maximum detention length but the highest ratio of immigration detainees to effected deportations. Countries which differ significantly on the two variables include Malta and Portugal, which both rely heavily on detention while at the same time not criminalising irregular entry or stay at all. Conversely, Germany, the Netherlands, Sweden, Finland and the Baltic states combine high levels of criminalisation with low levels of detention. On the other hand, many countries do seem to score similarly across these indicators. The UK, Denmark and Cyprus, for instance, have highly punitive deportation systems across the board, while the opposite is true for Spain, Italy, Poland and Slovakia.

Figure 2.6 The criminalisation of the deportation regime, most recent year available



Sources: Fundamental Rights Agency 2014; Global Detention Project 2018 (own calculations and coding scheme, see Appendix A)

Adding up criminalisation of irregularity and detention use to provide a single indicator for the overall punitiveness of the deportation regime, we see that those countries which have gone furthest when it comes to criminalising their deportation regimes are not necessarily the biggest deporters. Indeed, most of them, including Estonia, the Czech Republic, Bulgaria, Ireland, Denmark and (to a lesser extent) Germany have low overall effected deportation volumes. Only the UK, Cyprus and (to a lesser extent) Greece combine high criminalisation with high effective volumes. This suggests that criminalisation is not primarily meant to facilitate ever larger deportation numbers but serves more symbolic purposes.

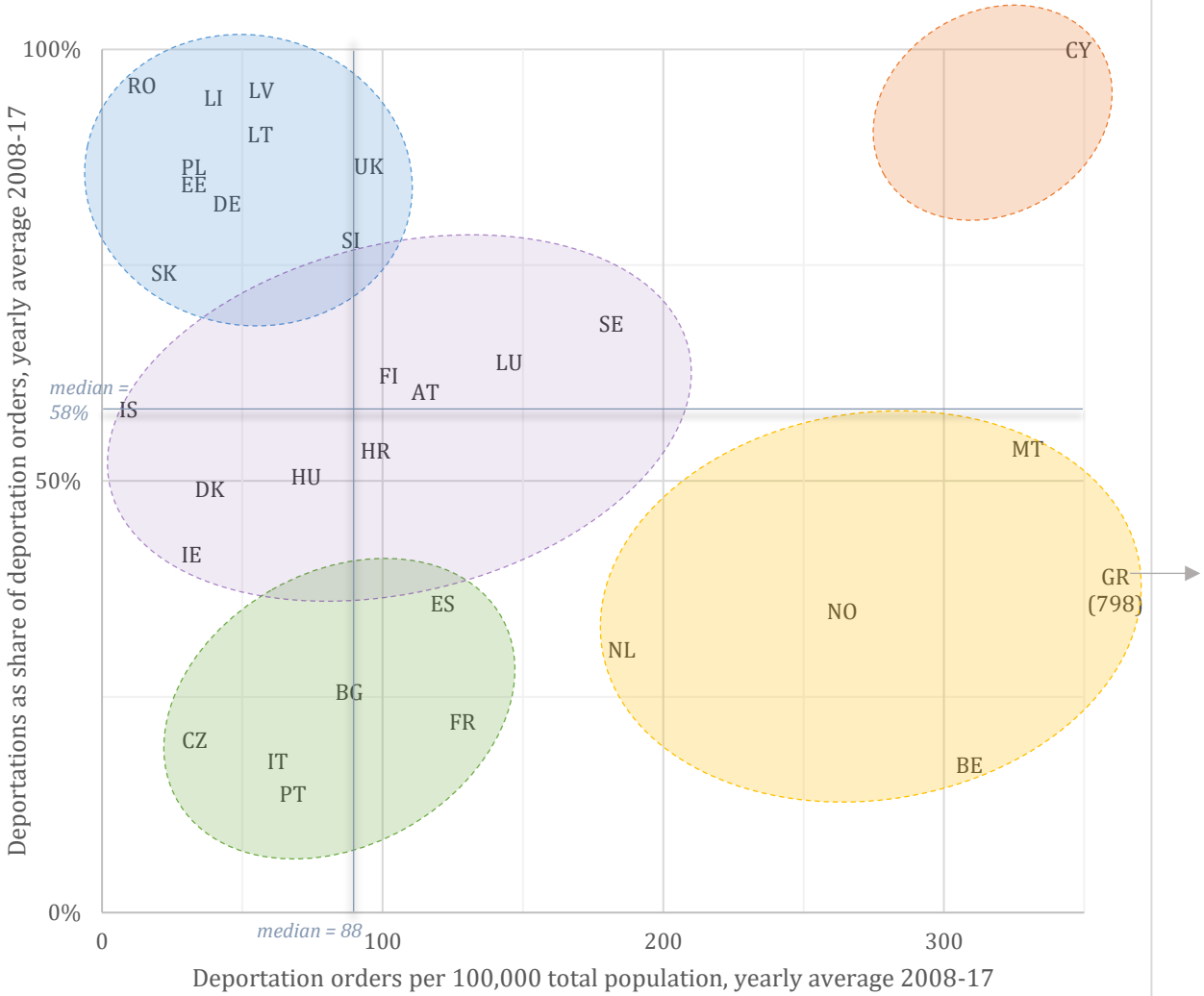
Part of the explanation for the increasingly divergent punitiveness of national deportation regimes may lie in their close association with criminal justice systems, which themselves show quite a bit of variation nationally between those focused primarily on retribution and deterrence-through-punishment while others have traditionally been more concerned with rehabilitation and preparing offenders for reintegration in society. As immigration control and the criminal justice system have grown increasingly intertwined—a phenomenon which many, following Juliet Stumpf (2006), call "crimmigration")—states with traditionally more punitive criminal justice systems might be less likely to adopt "softer" forms of immigration enforcement than those who already use much softer mechanisms of criminal enforcement as well as softer

penal regimes. Yet the European countries most known for their progressive criminal justice regimes, the Scandinavian countries and (to a lesser extent) the Netherlands, are by no means consistently going in a direction of softer deportation enforcement—Norway and Denmark specifically run counter to this trend. Perhaps the focus on rehabilitation traditionally associated with these countries is premised on cultural homogeneity and does not extend to (those perceived to be) foreigners. Norway, for instance, physically separates foreign offenders, who are expected to be deported at the end of their sentence, from its citizen prisoners, and excludes the former from many programmes (including educational ones) aimed at rehabilitation and facilitating the offenders' re-entry in society (Ugelvik 2013, 2014). Vanessa Barker has suggested that the perhaps surprisingly harsh Nordic approach to deportation is a result of these countries' "Janus-faced" penal regimes that are often typified as, on the one hand, examples of humaneness and social solidarity, focused on rehabilitation over retribution or deterrence, while having, on the other hand, a hard "outer edge" that excludes those perceived as "others" from this supposedly egalitarian humane regime (Barker 2013).

A typology of deportation regimes?

Having looked at a number of major dimensions on which the deportation practices of European countries vary, we can now see if there is any clustering of countries around particular positions on these dimensions. Comparing these countries on the four major dimensions discussed (per capita rate of deportation orders, effective departure rates, criminalisation and share of "voluntary" departures where available) we can see that a handful of countries score similarly across the board (see Appendix A). Italy and Portugal both combine low volume and low enforcement rates with low criminalisation but also low voluntary departure rates. France could also be grouped with these countries except that it issues more deportation orders than the other two. The UK and Cyprus, conversely, score high on all these counts: high volumes, high enforcement, high criminalisation (neither country provides numbers on "voluntary" departures). There are, several other comparable pairings. Romania and Slovakia combine low volumes, high enforcement, low criminalisation and high voluntary departure (Lithuania is similar but there is no information on voluntary departures). Poland and Latvia share low volumes with high departures, medium criminalisation and high voluntary departures (Germany seems similar but there is no information on voluntary departures). Belgium and the Netherlands both have high order volumes, medium criminalisation and low departure rates. Greece and Malta share high volumes, with medium departure rates and criminalisation. Croatia is the ultimate middle-of-the-road country when it comes to European deportation regimes as it scores near the median on all variables.

Figure 2.7 An inductive typology of deportation regimes



Source: Eurostat 2018

If we take total volumes of deportation orders issued and the share of these that actually are followed up by effective departure as the two core dimensions on which national deportation regimes vary, and distribute all 31 countries[39] under consideration along these two dimensions, we get the graph displayed above.[40] While there is a significant spread across almost the entire two-dimensional space, there is some noticeable clustering. In order to group countries with roughly similar combinations, I have circled five groups which may be considered to constitute a crude first typology of deportation regimes in Europe.

[39] EU28 + Norway, Iceland and Liechtenstein—Switzerland is left out of this analysis as it has not provided Eurostat with information on effected deportations. Figures for most countries are calculated as a yearly average for the period 2008-2017. For some countries, however, figures were available for only a shorter period: for Denmark and Norway, only since 2011. For Croatia, only since its accession in 2013. For Iceland, only for 2008-2009. For Liechtenstein, figures were missing for 2017.

[40] Note that Greece is an outlier in terms of its average yearly number of deportation orders, having more than double the number of the next most issuing country (Cyprus). It is therefore displayed outside of the plot area and not according to scale.

The first group, encircled in green, comprises the countries which can be said to have a comparatively "lax" or "lenient" regime. This includes Italy, Portugal, Spain, France, the Czech Republic and Bulgaria. Each of these countries combines a low to medium volume of deportation orders with low effective departure rates. All these countries, moreover, are by and large at the lower end of the criminalisation scale, with the Czech Republic as the only exception. This may indicate that they are apparently not particularly interested in scaling up deportations, nor in criminalising the regime for symbolic reasons. It is interesting to note, again, that these countries all mostly seem to rely on coercive enforcement for the small number of departures they do effect. This is especially the case for the four southwestern older member states.

A second group, represented in the graph by a blue circle, consists of what could be called "selective" regimes: Germany, Poland, Romania, the Baltic countries, Slovakia, Slovenia, Liechtenstein and the UK. These countries issue a relatively low number of deportation orders (though the UK is at the higher end of the scale here and is notable for its high absolute numbers of deportation orders and effective deportations, as the third most populous country under consideration), but have high effective departure rates. It seems that these countries achieve such high departure rates not through a strong criminalisation of their deportation regimes (except for Estonia and the UK) since many of them (Slovakia, Estonia, Poland, Liechtenstein, Latvia, Romania) instead tend to rely mostly on voluntary departures.

The red circle in the graph represents a third group, which can be thought of as a "coercively strict" regime, combining a high volume of deportation orders with high effective departures through criminalisation and enforced departures. Cyprus is the typical regime and relies heavily on criminalisation and coercive enforcement. Cyprus is currently alone in this category, although some countries have approached it in certain years. Malta, for instance, has fluctuated quite dramatically over the last decade in terms of both its volume of orders and departure rates, with there being a generally negative correlation between the two (in other words, when it issued more orders it would effectuate a much lower percentage of them). It is worth noting that Cyprus itself has in recent years seen its volume of orders and departure rates fall quite a bit. Compared to the countries which come closest to it, Sweden, and to a lesser extent Austria, rely primarily on voluntary departures, and Sweden and Austria, along with Finland, also have low criminalisation.

The fourth group, encircled in yellow, could be thought of as "symbolically strict" regimes, and comprises Belgium, the Netherlands, Norway, Greece and Malta (though Malta is arguably a mixed case on the way to coercively strict). These countries issue many deportation orders but manage to enforce less than a third of them and have medium to high criminalisation. In the

case of Norway, the overwhelming reliance on coercive enforcement over voluntary departure is also interesting. Greece may be a bit of an outlier here as its low enforcement rates might be more due to an overwhelmed bureaucracy, and in recent years Greece stopped issuing as many orders as it used to, even if it has not managed to thereby really improve its departure rate.

The fifth group in the purple circle, lastly, is perhaps best thought of as a "mixed" regime group and comprises the remaining eight countries (though Sweden and Spain may be thought of as borderline cases between this group and the coercively strict/red and lenient/green regimes, respectively). These countries tend to fall into the middle in terms of enforcement rates (between ca. 40% and 65%). Denmark and Ireland have not been able to attain high departure rates despite being two of the most criminalising countries. Both countries rely primarily on enforced departures, which may be an explanatory factor in their non-success. Sweden and Austria combine relatively high volumes and departure rates with low criminalisation and high voluntary departure rates. To a lesser extent the same goes for Finland (though there is no information on voluntary departure rates).

Conclusion

While there are important ways in which the deportation policies and practices of European liberal democracies have converged over the last few decades, major differences remain on the dimensions of volume of deportation orders, departure rates, and modes of enforcement. Moreover, these policies and practices are very much in flux and in some respects national regimes are growing further apart as countries respond differently to new challenges relating to migration, irregular populations and political pressures.

The quantitative analysis in this chapter has been explicitly and solely exploratory. It has attempted to draw out some of the major variables which distinguish national deportation regimes across Europe and, with some help from the existing literature on deportation, suggested hypothetical explanations for these differences between countries (and) over time. Looking at the grand picture over the last decade, this chapter has argued that we can roughly distinguish five types of deportation regime in the European context: namely, lenient, selective, coercively strict, symbolically strict and mixed regimes. It has also argued that the data from the last decade shows that the assumption that deportation rates respond rapidly to major migration-related changes (such as new immigration, asylum applications and size of the foreign-born population), economic changes (GDP, unemployment levels) and political changes (right-wing governments, far-right legislative success) is difficult to justify. While current theories about the general determinants of immigration policy often emphasise these factors,

the relative stability of deportation numbers in most EU countries and the wild volatility seen in a few underlines the limits of these explanations for the use of deportation in the recent European context. Rather, deportation in Europe (unlike in the US, where there has been a spectacular and sustained growth in deportation over the last couple of decades, which nonetheless seems sometimes to be equally immune to economic, political and immigration-related fluctuations) seems to have mostly plateaued in Europe over the last decade. This may be explained by the fact that individual countries have little interest in further stepping up costly deportation enforcement efforts, and frequently limit themselves to more symbolic actions to appear tough and respond to electoral concerns about irregular immigration specifically. The data do suggest that assisted voluntary departures tend to enhance effectiveness compared to more coercive enforcement.

Much more in-depth statistical analysis would be needed to put these hypotheses to a proper test, and more in-depth case studies into each of the countries that have been considered here would be needed to confirm even the suggested explanations from such statistical findings. However, through this exploratory comparative analysis focused on the European context, with its large number of countries that are both comparable and different in significant ways (the first of its kind, to the best of my knowledge), I hope to have contributed to the beginning of a field which is bound to take off in the coming years.

At the time of writing, changes have been announced by new governments in France (under the Macron presidency) and Italy (the Lega-Five Star Coalition). Both have promised a huge increase in deportations. Matteo Salvini, frontman of the anti-immigration Lega party, has mentioned 500,000 deportations as a goal of the new Italian government in which he, as Interior Minister, will oversee immigration policy. To what extent these announcements actually change deportation practice in these countries remains to be seen. But in case they do, there may start to be a convergence across Europe towards stricter and more active deportation regimes, as these two countries are currently on the lenient side of the deportation spectrum. In fact, this convergence may be driven as much by vertical as by horizontal processes. The current rhetoric and action around deportation may not only drive individual national governments to change their policies, but also be an impetus for the European Union to further its regulation and facilitation of deportation by its member states. The EU has been involved in this since its foundation through constraining the expulsion of EU nationals and certain categories of non-EU national residents between member countries but has also in the last few decades become a key facilitator and, in some sense, a driver of deportation from the European space. This development, and its possible directions in response to the current moment of perceived crisis, is explored in the next chapter.

Chapter 3
Europeanising Expulsion
Citizenship, denizenship and deportability in the European Union

Introduction

Whereas the previous chapter examined deportation and deportability in the national context in which it is usually analysed, this chapter will move to the supranational European Union level to destabilise the common assumption that in the contemporary world the construction of deportability is exclusively in the purview of national governments. As this chapter will show, while actual deportation procedures are for the most part conducted by national authorities, the institutions of the EU are heavily involved in the regulation of member states' deportation policies and practices, both by preventing member states from deporting some categories of residents and by facilitating and encouraging the deportation of others. This involvement has reached such levels that commentators frequently refer to an "EU deportation programme" (Fekete 2005: 65), "European deportation policy" (Fekete 2011; Ette 2017: 130) or a "European deportation machine" (Fekete 2005; Barker 2013: 250). The previous chapter highlighted differences and divergences in national deportation policies between European countries. This chapter instead focuses on the dimensions on which these national policies and practices have *converged*, specifically through mostly top-down "Europeanisation" of deportation and deportability. It asks to what extent we can indeed now speak of a common and coherent European deportation regime, and what explains EU involvement in this policy area.

Questions of the movement of people have been at the core of the European project since its inception. It may therefore seem logical to see the EU's concern with regulating the deportation practices of its member states as an outgrowth of the free movement regime for EU nationals. From this perspective, the more recent push to harmonise deportation procedures for non-EU nationals is simply the "other side of the coin" of protecting the free movement rights of EU nationals, a spill-over or flanking measure of the internal market for goods, capital, services and people presumed to be at the core of the European project. Alternatively, it is sometimes presented as the result of a bottom-up push by national governments who exploit the EU as a policy venue to more effectively enforce restrictive policies. These explanations miss two important dimensions of this development. First, the EU is not only facilitating national deportation practices, but also puts important restraints on it, both for EU nationals and non-nationals, with supranational institutions like the Commission, the Parliament or the Court clashing with national governments on important questions. Second, the EU's protection and expansion of internal free movement should be disaggregated into its constituent parts, as there

is a much stronger initial right to free movement than there is a right to permanent residence, and the conditionality of this latter right points at more complex notions of membership and mobility.

In light of the links identified in Chapter 1 between deportation on the one hand and citizenship and conceptions of political community on the other, EU involvement raises the question of whether the EU is hereby bringing into being a European political community of belonging and giving substance to a meaningful supranational citizenship status. This chapter answers that question in the affirmative and aims to outline how these notions have developed at the European level over time and what kind of image of this community has emerged. To this end, an analysis has been undertaken of relevant EU policy documents, including not only the adopted Directives, Regulations and Decisions which govern the deportation regimes of the member states, but also relevant documents which have preceded and followed the adoption of these legislative acts, including the legislative proposals of the European Commission, case law of the European Court of Justice, and a variety of Communications and Reports by the Commission, the European Council, the Justice and Home Affairs Council, and the Committee of Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament. Furthermore, implementation reports by the Commission and independent NGOs are used to measure the impact of EU rules on the situation "on the ground" in the member states (for a full list of documents consulted see Appendix B). The main advantage of the approach taken here is that the protections of free movement for EU nationals and the more recent streamlining of expulsion measures towards non-EU nationals have mostly been discussed separately, and to the extent that they have been connected they have been framed as two sides of the same coin—the latter being a necessary "spillover" in order to safeguard the former. As this chapter will argue, the dynamics and linkages made at the European level between membership, belonging, mobility and integration are rather more complex.

The chapter starts by outlining the history of the Europeanisation[41] of deportation in three roughly consecutive developments: namely, the start of economic integration and working out the conditions for the free movement of workers from the 1950s to the late 1980s, the formalisation of expulsion restrictions as a core right of European citizens *and* denizens or quasi-citizens in the 1990s and the early 2000s, and the evolution of a common expulsion

[41] The "Europeanisation" of deportation policy discussed here, as will become clear, does not affect all member states of the EU equally, nor is it strictly limited to them. Specifically, the four Schengen Associated Countries have largely taken over EU legislation in the field of mobility and migration as part of their participation in the Schengen borderless zone. These are Norway, Switzerland, Iceland and Liechtenstein.

strategy for undesirable non-EU citizens from the 2000s onwards.[42] The rest of the chapter discusses what drives this Europeanisation of deportation policy and practice, highlighting the limits of dominant explanations which focus on functionalist spill-overs, venue-shopping and securitisation, and arguing that these should be supplemented with a focus on control over deportability as a core tool in the construction of communities of belonging. It then traces the content of the emerging notion of a European political community of persons through its regulation of expulsion. The final section draws attention to the limits of this formal notion of EU membership, specifically by questioning the idea that the EU's formalisation of measures of local integration has been successfully "deracialised" and that denizen non-deportability is a robust right in practice. The conclusion explores the current challenges and future development of Europeanised deportation.

Economic integration and free movement of workers

The current Union of 28 member states traces its origins back to the European Coal and Steel Community (ECSC), formed in 1951 by six countries (Belgium, France, Italy, Luxembourg, the Netherlands and West Germany) who responded to the Schuman Declaration's call for the pooling of coal and steel resources under a common High Authority and supranational Court of Justice. Article 69 of the 1951 Treaty of Paris already introduced freedom of movement for workers in the coal and steel industries who were nationals of one of the member states. Despite a failed attempt to establish a European Defence Community the following year, six years later, in 1957, these same six countries formed the European Economic Community (EEC) and a European Atomic Energy Community (Euratom) by signing the Treaties of Rome, which proposed the establishment of a customs union and the creation of a common market of goods, services, capital and workers within the EEC. With the establishment of the EEC, this right of free movement for the purpose of work was extended to any type of work, including wage labour, non-wage-earning activities and the setting up and managing of enterprises (Article 48 Treaty of Rome). The only justified limitations to this general rule of free movement within the Community, namely "reasons of public order, public safety or public health", were also listed.

The most notable limitation of this right was that it was reserved to those who were economically active. It was also limited, however, by the triad of public interest grounds already

[42] While many of the European instruments regulating deportation and deportability have been analysed individually, the last major comprehensive analysis of rights against expulsion derived from European law dates back almost two decades (Guild and Minderhoud 2001). Much of the legislation discussed in this third period has been adopted since then.

listed in the Treaty of Rome. This triad, which to this day in one form or another remains the core of legitimate derogation from the general rule of non-deportability bestowed on some by European law, was given further specification when the Council in 1964 adopted Directive 64/221/EEC on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. The aim of this Directive was to specify the precise meaning of these exceptional grounds on which nationals of other member states could be expelled by the member state on whose territory they resided. Article 2(2) explicitly forbids member states to invoke these grounds for economic ends. Regarding the public health derogation, Article 4 clarifies that only a limited number of infectious or contagious parasitic diseases with an epidemic potential can constitute public health grounds, and only if they occur before the first residence permit has been issued, strongly limiting this ground for derogation. The Annex to the Directive does, however, list drug addiction and "profound mental disturbance" as diseases which "might threaten public policy or public security" (Annex B).[43]

Four years later, the Council adopted a Directive (1968/360/EEC) which mandated that the public policy and public security derogations needed to be based exclusively on the personal conduct of the individual concerned, that previous criminal convictions cannot in themselves constitute such grounds, and that the expiry of identity cards or passports cannot justify expulsion from the territory. On the basis of this, the European Court of Justice (ECJ) ruled in *Bonsignore* (Case C-67/74) that general deterrence is not a sufficient ground to order the deportation of a person convicted of a criminal offence. It also ruled in *Bouchereau* (Case C-30/77) that in order to deport a Community immigrant the existence of a previous criminal conviction can only be taken into account insofar as "the circumstances which give rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy" (France 2013: 147). *Bouchereau* also clarified the meaning of the public policy exception: "the existence, in addition to the perturbation to the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one of the fundamental interests of society". The Court's case law has further specified that public policy and public security grounds may involve threats to the functioning of institutions, essential public services, the population's survival, the risk of serious disturbances to foreign relations, the nations' peaceful coexistence or to military interests, and can include actions such as large-scale organised drug dealing, terrorism, spying and other subversive acts, and that these two

[43] Public security is generally interpreted to cover both internal and external security along the lines of preserving the integrity of the territory of a member state and its institutions, while public policy is generally interpreted as preventing the disturbance of social order.

differ in that the public security exception presuppose threats to the country's existence more direct than those covered by the public policy exception (Adjei Sowah 2014). The ECJ ruling in the *Mr. I.* case (Case C-348/09) in which Germany sought to expel a long-term resident Italian citizen convicted of rape of a minor argued that "the sexual exploitation of children is one of the areas of particularly serious crime with a cross border dimension in which the European Union legislature may intervene" and that the risk of reoffending here might indeed pose a direct threat to the calm and physical security of the population and thus be covered by the concept of "imperative grounds of public security" justifying an expulsion measure.

While Article 3 of the Treaty of Rome had already hinted at a post-economic conception of free movement in referring to the "abolition (…) of obstacles of free movement of persons" rather than workers, the free movement regime was formally detached from economic considerations only with the adoption by the Council of Directive 90/364/EEC on the right of residence. The link between economic activity and non-deportability had already been progressively loosened in the intervening years with several Directives extending the enhanced protections against expulsion to those who stop working in the host member state due to retirement or permanent incapacity to work (Directives 72/194/EEC and 90/365/EEC), (formerly) self-employed persons and providers and recipients of services (Directives 73/148/EEC, 75/34/EEC and 75/35/EEC) as well as students (Directive 93/96/EEC). But it was Directive 90/364/EEC which for the first time granted the right of residence throughout the Community "to nationals of Member States who do not enjoy this right under other provisions of Community law" (Article 1). However, this right was made conditional upon having "sickness insurance in respect of all risks in the host Member State and (…) sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence" (Article 1). Thus, while on the one hand extending the free movement regime to those who did not fit the original framework of economic activity that the regime had originally been elaborated for, it also kept a link by making this group (unlike workers) expellable when becoming a financial burden (distinctly echoing the poor law expulsions discussed in Chapter 1).

The push to establish a free movement regime was also accompanied by the abolishment of border checks between the majority of Community member states as part of the Schengen Agreement, signed in 1985 by five of the six founding EEC member states (Italy signed the agreement in 1990 and implemented it only in 1997). The Schengen Agreement proposed the abolition of border controls between the participating states, and in 1990 it was supplemented by the Schengen Convention which called for the abolition of internal border controls and a common visa policy. Schengen was not implemented until 1995, by which time Spain and Portugal had been added to the original five, and over the following year all member states were

gradually added to the Schengen area except Ireland and the United Kingdom, who maintain opt-outs. The four non-EU member states that are part of the European Free Trade Association (EFTA), Iceland, Liechtenstein, Norway and Switzerland, have also signed the Schengen Agreement.

A Europe of Citizens…

An important shift in thinking about the nature of the free movement regime came with the emerging notion of a supranational citizenship status in the early 1990s. Following on the heels of the qualified extension of non-deportability rights to all nationals of member states, the 1992 Maastricht Treaty, the founding treaty of the EU, formally introduced the status of citizenship of the EU which was conferred upon any person holding the nationality of a member state (Part II Article 8). The right to freely move and reside throughout the newly established Union was the first core citizenship right to be listed by the Treaty (8a), followed by the right to vote in and stand for municipal and European Parliament elections in the country of residence (8b), diplomatic protection and consular assistance by any member state (8c), and the right to petition the European Parliament (8d). By using the language of citizenship to ground the non-deportability rights now extended to all EU nationals, the treaty thus elevated these rights to citizenship rights, as was reaffirmed in Articles 20 and 21 of the 2007 Lisbon Treaty.

The freedom of movement and residence dimension of EU citizenship was further elaborated with the adoption by the European Parliament and the European Council of Directive 2004/58/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the member states (henceforth "Free Movement of Citizens Directive"). This Directive reaffirmed the prominence of Union citizenship, repeating in its preamble the ECJ's earlier assertion, made in its ruling in the *Grzelzcyk* case (Case C-184/99), that it "is destined to become the fundamental status of nationals of the Member States". Replacing most previous secondary law on the subject, the Directive took over the derogation grounds of public policy, public security and public health as well as the specifications that these grounds cannot be invoked for economic ends, that measures taken on these grounds must be based exclusively on personal conduct, and that previous criminal convictions do not in themselves constitute such grounds (Article 27). It also repeated that the right of residence for those who are not workers or self-employed persons is valid only as long as they do not become an unreasonable burden on the host state's social assistance system (Article 14). New requirements were added that expulsion measures on public interest grounds comply with the principle of proportionality and are based exclusively on conduct that represents a genuine,

present and sufficiently serious threat (Article 27), that expulsions may not normally be issued as a penalty or legal consequences of a custodial penalty (Article 33), and the specification that expulsions cannot be the automatic consequence of an EU citizen's recourse to the host state's social assistance system (Article 14). Article 14(4) sternly repeats that an expulsion measure may "in no case be adopted against workers or self-employed persons or EU citizens who "are continuing to seek employment and have a genuine chance of being engaged". Article 15(3) forbids the imposition of re-entry bans on expelled EU citizens on any other grounds than public policy, public security and public health.[44]

One of the most innovative elements of the Directive, however, is the way in which it has stratified the precise level of non-deportability based on length of residence, links to and level of integration in the state of residence, and the absence of links to the state of origin, amongst other considerations. While the quasi-absolute right of free movement initially applies only to the first three months of residence in another member state, the continued right of residence depends on the unreasonable burden criterion along with the public interest derogations. Thus, the right to free movement, which is sometimes seen as the most valuable right of EU citizenship, is not *automatically* a right of secure residence and non-deportability, since after the first three months a qualified right of ordinary residence kicks in. However, after five years of continuous residence (meaning no absences exceeding six months a year or 12 consecutive months) EU citizens acquire a right to permanent residence which can only be lost through absence from the host state for a period exceeding two consecutive years (Article 1). Permanent residence is granted after a period of residence shorter than five years if the worker or self-employed Union citizen reaches retirement age after three years of residence, or if they stop working as a result of permanent incapacity to work after two years of residence. For permanently resident EU citizens the unreasonable burden exception is cancelled and public interest exceptions are tightened. They may only be expelled on "serious grounds of public policy and public security" (Article 28(2)). Furthermore, after ten years of residence, or if the Union citizen is a minor, expulsions are only justified on "imperative grounds of public security" (Article 28(3)). Of course, the lack of precise guidelines regarding the differences between

[44] Another way in which the free movement rights of EU citizens have been restricted since the adoption of the Free Movement of Citizens Directive is through the imposition of transitional provisions that have been part of the accession treaties of some of the new member states temporarily limiting free movement of (some of) the new EU citizens that were created by these accessions. Such provisions had been part of the accession of Greece (1981) and Portugal and Spain (1986) (Maas 2007), and were implemented for eight of the ten member states that joined in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) as well as Bulgaria and Romania in 2007. At the time of writing all these provisions have expired, while transitional provisions for Croatia may remain until 2020. It is of note that these arrangements only apply to workers, not to service providers or those establishing businesses (Costello and Hancox 2014).

"ordinary", "serious" and "imperative" grounds and the inherently subjective concept of social and cultural integration may pose a problem for the uniform application of these rules, and arguably leave significant discretion for implementation by the member states.[45] But the aim to stratify non-deportability by length of residence is nonetheless telling.

The enhanced protections acquired over time should be read in conjunction with the preamble of the Directive, which argues that the expulsion protections that come with permanent residence status are a key element to promoting integration and social cohesion (Recitals 17 and 18). Recital (23) recognises that expulsion of EU citizens and their family members on public security or public policy grounds can "seriously harm persons who (…) have become genuinely integrated into the host member state", and Recital (24) that "the greater the degree of integration of the Union citizen (…) in the host member state, the greater the degree of protection against expulsion should be", singling out those who have resided in the territory of the host state for many years or were born there as needing especially exceptional grounds for warranting their expulsion. This link that is established between deportability and integration is also evident in Article 28(1) which states that when taking an expulsion decision on public policy or public security grounds, the member state must take into account "considerations such as length of residence, age, state of health, family and economic situation, social and cultural integration into the host state and extent of links with the country of origin".

Under EU law, then, the non-deportability rights of EU citizens residing long term in another member state almost approach those of EU citizens living in their country of nationality, and even if these rights are not absolute, deporting EU citizens is an exceptional measure in need of strong justifications. The importance that EU institutions attach to safeguarding these rights and limiting their derogations reveals that not only is the principle of free movement and residence throughout the Union considered to be the cornerstone of this status but so is the corresponding right of non-deportability throughout the Union's territory. Nonetheless, the integration-sensitive scale of non-deportability that the Directive has established leaves behind the "equal treatment" framework that was usually applied in the context of the free movement of workers. Unlike this framework, it departs from the structural link between the individual and the host society and determines the level of protection against expulsion on the basis of social and cultural integration rather than market access, revealing the EU's intention to establish EU citizen separately from economic matters. The fact that this move was not

[45] In Tsakouridis (Case C-145/09), the ECJ clarified that trafficking in narcotics as part of an organised group "could reach a level of intensity that might directly threaten the calm and physical security of the population as a whole or a part of it", and therefore can amount to the "imperative grounds of public security" to justify the expulsion of a Union citizen who has resided at least ten years in the expelling member state.

complete is clear from the fact that the level of protection remains linked to certain economic considerations, even if more absolute deportation protections given to workers, self-employed persons and those seeking employment in Article 14(4) arguably show not only the roots of EU free movement in the free movement of workers, but also the idea that (readiness to) work is a sign of integration (or integrability) that should be rewarded with enhanced protections against expulsion. Interestingly, "regular" criminal behaviour by EU citizens is seemingly not considered a sign of non-integration.

...and Denizens?

EU citizens residing in another member state are not the only ones enjoying enhanced protections against deportation under EU law. Another group of residents who enjoy strong non-deportability protections under EU law are those non-EU nationals (or, as EU institutions refer to them, Third Country Nationals) who have acquired Long-Term Resident status. This status was established by the EU after the European Council insisted at its special meeting in Tampere in 1999 that the legal status of Third Country Nationals (TCNs) should be approximated to that of EU citizens and that those TCNs who have legally resided for a significant amount of time in a member state should be granted a uniform set of rights which are as near as possible to those enjoyed by EU citizens. Four years later, the Council adopted Directive 2003/109/EC concerning the status of third country nationals who are long-term residents (henceforth "Long-Term Residents Directive").

While legally resident TCNs can under EU law be far more easily expelled than EU citizens in their first five years of residence, the Directive obliges member states to grant Long-Term Resident (LTR) status to TCNs who have legally and continuously resided in a member state's territory for five years or more upon request. The granting of LTR status is conditional upon the persons in question having stable and regular resources to maintain themselves and their family members without recourse to the social assistance system of the host state concerned as well as sickness insurance, and member states are obliged to require evidence for this before granting the status (Article 5(1)). LTR status may also be refused on public security or public policy grounds (Article 6).[46] Echoing the permanence of citizenship, the status of Long-Term Resident

[46] Some groups are categorically excluded from the Directive's scope because their situation is considered precarious or because they are resident on a short-term basis, including seasonal workers or workers posted for the purpose of providing cross-border services, persons residing in order to pursue studies or vocational training, asylum seekers awaiting a decision on their status (Article 3). However, Directive 2011/51/EU adopted in 2011 by the European Parliament and the Council extended the scope of the Long-Term Residents Directive to include refugees and beneficiaries of subsidiary protection, as the

is considered permanent (Article 8) and therefore is not lost upon expiry of a residence permit (Article 9(6)). It must be withdrawn, however, after detection of fraudulent acquisition of the status, after an absence of a period of 12 consecutive months from the territory of the Community (Article 9(1)(c), with some exceptions falling within the discretion of the member state in question), or on public policy or public security grounds.

Recital 13 of the Preamble states that LTRs "should enjoy reinforced protection against expulsion" and qualifies their expulsion as an exceptional measure. Once having acquired the status, LTRs may only be expelled when they constitute an "actual and sufficiently serious threat to public policy or public security", and expulsions founded on economic considerations are explicitly forbidden (Article 12), which mirrors similar provisions for EU citizens. Unlike the Free Movement of Citizens Directive, however, the Preamble of the Directive does make clear that the notion of public policy may cover a conviction for committing a serious crime (Recital 8). The Directive has a similar preoccupation with measuring integration to the Free Movement of Citizens Directive, and it sees security of residence as one of the central preconditions for the integration of TCNs. Article 12(3) makes clear that expulsion decisions of LTRs must also take into account length of residence, age, the consequences of deportation for the person concerned and their family members, the links with the country of residence and the absence of links with the country of origin.[47] The notion of integration also works the other way around, however, as Article 5(2) of the Directive states that TCNs may also be required by the member state to comply with integration conditions (Article 5(2)) in order to be eligible for LTR status. LTR status must be withdrawn upon expulsion (Article 9).

Additionally, acquiring LTR status in one EU member state grants a right to freedom of movement and non-deportability throughout the Union, once again only limitable on public interest grounds, and once again conditional upon having stable and regular resources and sickness insurance and compliance with integration measures—if this was not already a

---

Commission had originally proposed in 2001. However, in July 2016, the Commission proposed an amendment of the LTR Directive in the context of the Proposal for a Regulation on standards for third-country nationals' or stateless persons' qualification as beneficiaries of international protection, suggesting that the five year period after which international protection beneficiaries are eligible for the LTR status should restart each time the person is found in a member state, other than the one that granted international protection, without a right to stay or to reside there in accordance with relevant Union or national law. (This provision is seen as an incentive for beneficiaries of international protection to comply with the rules governing intra-EU mobility.)

[47] It is worth noting that these considerations are partly derived from the case law of the European Court of Human Rights (ECtHR), particularly on the basis of Article 8 ECHR (respect for private and family life, considered one of the Convention's most open-ended provisions). In the mid-1990s, several rulings relating to the expulsion of second generation children of former guest workers included arguments that weighed their links with the country of residence and absence of links with country of origin (Thym 2014: 133).

requirement to gain LTR status in the member state of first residence (Article 15). Therefore, while the status must be granted by one particular member state and cannot be held in multiple member states, (Article 9(4) posits that when a TCN acquires LTR status in a second state they automatically lose this status in the first state), the non-deportability effects of this status are truly European in this sense. In the five years before they can switch to LTR status in the second state, the LTR enjoys all the benefits that they enjoyed in the first country. While member states are free to grant national long-term or permanent residence status to TCNs on more favourable conditions than provided for in the Directive, such a status will importantly not include this right to free movement within the Union (Article 13).

While the stated aim of the Directive (in Recital 2 of the Preamble, referencing the Tampere Conclusions) was to approximate as much as possible the status of the LTR to that of the EU citizen, there are some important differences when it comes to non-deportability rights, which were not all present in the original Commission proposal for the Directive (COM/2001/0127final). For instance, the original proposal included provisions that an expulsion decision could only be based on the LTR's personal conduct, that this personal conduct was not sufficiently serious a threat when the member state did not "take severe enforcement measures against its own nationals who commit the same type of offence", and that criminal convictions could not automatically lead to expulsion. All these do apply to EU citizens but were eliminated from the final version of the Long-Term Residents Directive by the Council. Moreover, the further protections given to EU citizens after ten years of residence (or who are minors) are absent from the Long-Term Residents Directive. Provisions that ensured that challenges to expulsion decisions had a suspensory effect and that emergency expulsion proceedings were forbidden were also eliminated from the original proposal.

A third group of persons enjoying protections against deportation are TCNs who are family members of EU citizens and Long-Term Residents. The idea that letting the family members of those granted the right to move and settle across the Community enjoy similar residence rights was integral to their successful integration into the new countries of residence seems to have been deeply ingrained in European authorities' minds from the earliest stages of European integration. The non-deportability rights of family members covered by EU law are broadly like those of their "sponsor", falling under the Free Movement of Citizens Directive when the sponsor is an EU national and under the Long-Term Residents Directive when the sponsor is a TCN with Long-Term Resident status. As a general rule, this means that family members' right to residence can be revoked on grounds of public policy, public security and public health, and that they may be required to comply with integration measures as a condition of their right of residence. Some differences remain, however. In the case of Long-Term Resident TCNs, family

members are only granted the right to move to a second member state and reside with their sponsor there if they had been residing as a family in the first state (Article 16). In case the family had not been already constituted there, Council Directive 2003/86/EC on the right of family reunification (henceforth "Family Reunification Directive") applies, as it does for all family members of legally resident TCNs not covered by the Long-Term Residents Directive. As is the case with EU citizens and Long-Term Resident TCNs, the extension of non-deportability rights to their family members by the EU is explicitly seen as a precondition for the successful integration of all involved. Recital (4) of the Preamble of the Family Reunification Directive states that family reunification "helps to create sociocultural stability facilitating the integration of third country nationals in the member state, which also serves to promote economic and social cohesion". The fact that their status as legal residents (and therefore their official protection against expulsion) is made independent of that of the sponsor is also explicitly defended as a way to promote the integration of family members (Recital 15). The importance attached to this idea of keeping the family together is so established in the EU legal framework that in some instances today there is now a reverse discrimination problem, in that EU citizens who have not exercised their free movement rights or exercised some economic activity in another member state face more obstacles for family reunification than those who have taken up residence in another member state (Peers et al. 2012: 29).

It is interesting to consider how EU law defines the family for the purposes of free movement and residence. Here, differences between the regimes for EU citizens and TCNs emerge. While both the Free Movement of Citizens Directive and the Family Reunification Directive here include spouses and minor or dependent children, only the former extends to first-degree ascendants in the direct line (parents of the sponsor or spouse), unmarried children above the age of majority, and unmarried partners (when such partnerships are registered and recognised by the state of residence). Moreover, the EU citizen sponsor who grounds the derivative right of residence of a TCN family member can also be a minor. The ECJ's ruled in *Ruiz Zambrano* (Case C-34/09) and in *Dereci* (Case C-256/11) that any TCN primary caregivers upon whom an EU citizen child is dependent cannot be deported since this would force the child to leave the EU territory as well.

The conditional non-deportability status of family members, though initially derivative of that of the sponsor and conditional upon their legal residence in the territory, is nevertheless held on a personal basis and can often be retained beyond that of the sponsor. Article 12 of the Free Movement of Citizens Directive asserts that upon the death of the Union citizen, their TCN family members who have lived in the member state in question for over a year retain their right of residence on a personal basis. When the Union citizen leaves the member state, their

children, along with the parent who has custody of them retain their non-deportability rights as long as these children are enrolled in education. Furthermore, Article 13 states that in the event of divorce, annulment of the marriage or termination of the registered partnership, the ex-spouse or ex-partner retains the right of residence on a personal basis where the marriage or registered partnership lasted at least three years, one of which was in the host state, or when they have custody over or right of access to the sponsor's children, or in particularly difficult circumstances of the separation (e.g. because of domestic violence).

Several other categories of legally resident TCNs have some degree of protection against deportation bestowed upon them by EU law. The first group are those officially recognised as refugees and beneficiaries of subsidiary protection, who have a special type of claim to non-deportability through the international human rights law principle of non-refoulement, which has been incorporated in EU law. The so-called "Qualification Directive" (2004/83/EC), the cornerstone of the Common European Asylum System, states that those holding refugee status may only be returned on national security grounds, after having been convicted of a particularly serious crime, or if they constitute a danger to the community of the member state in question. Since 2011, refugees become eligible for Long-Term Resident status and thereby indefinite non-deportability after five years of residence, having previously been explicitly excluded from this protection because they were considered "indefinitely temporary residents".

Enhanced protections against deportation also apply to TCNs of specific nationalities. Under the EEA Agreement, the free movement rights developed for EU citizens are also conferred on EEA nationals. This means nationals of Norway, Iceland, Liechtenstein and Switzerland enjoy free movement rights within the Union alongside EU nationals. The 1963 EC-Turkey Association Agreement has provided some rights for Turkish workers who are already resident in the EU and a legal basis for the ECJ to specify a so-called "implicit right of residence" (Costello & Hancox 2014). In *Nazli* (Case C-340/97), the ECJ held that the expulsion of Turkish employees in the EU on general preventive grounds is forbidden, especially when automatically following a criminal conviction, and that the principles of the treaties concerning the free movement of EU citizens has to be applied extensively to Turkish nationals covered by the Agreement. In *Cetinkaya* (Case C-467/02), the Court alleged the principles of protection against expulsion for EU citizens settled in the rulings of *Orfanopoulos* (Case C-482/01) and *Olivieri* (Case C-493/01) for Turkish nationals covered by the Agreement.

A Common "Return" Regime: undesirable Third Country Nationals as the European "other"?

Since the turn of the century, the EU has progressively enhanced its role in the facilitation and encouragement of the deportation practices regarding non-EU nationals of its member states. The earliest efforts to enhance the effectiveness of national deportation regimes followed quickly upon the establishment of an explicit legal basis for the EU to adopt legislation in respect of immigration in 1999. In the early stages, two Directives were adopted. Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (resulting from a French initiative) established a framework for member states to recognise and give effect to each other's expulsion decisions, making it possible for a member state to enforce the expulsion decision issued by another member state against a Third Country National present within its territory (Article 1), although it did not establish a binding framework. The expulsion measures concerned explicitly include expulsions based on a "failure to comply with national rules on the entry and residence of aliens" as well as those based on public or national security considerations, those resulting from convictions for a criminal offence punishable by deprivation of liberty for at least one year, and those taken when "the existence of serious ground for believing that a third country national has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences within the territory of a Member State" (Article 3). The stated purpose in the Preamble was to "ensure greater effectiveness in enforcing expulsion decisions and better cooperation between Member States" in this field (Recital 3), referring specifically to the principle of subsidiarity, arguing that the purposes of expulsion policy could not be sufficiently achieved by member states alone and therefore required Community action (Recital 5). This Directive was followed in 2003 by Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air. This Directive was adopted (on a German initiative) in order to facilitate mutual assistance between member states for removals by air via transit airports in member states other than the one doing the expelling. A 2014 Commission Communication (COM/2014/199final) found the impact of these non-mandatory Directives to be limited.

When Frontex, the EU agency tasked with coordinating the operational cooperation between member states in the field of border security, was founded in 2004, supporting the member states in deportation proceedings was put forth as one of its core tasks.[48] The principal way in which it does so is by organising and funding joint charter flights in order to group together deportees from different member states and fly them to a particular country or region. This

[48] Liz Fekete has referred to Frontex as the "EU Expulsions Agency" (2005: 68).

practice was given a legal basis through the adoption of Council Decision 2004/573/EC on the organisation of joint flights for removal from the territory of two or more member states of third country nationals who are subject to removal orders, an initiative of the Italian government. The Decision stressed that while cooperation in the execution of the removals created shared responsibility on the participating member states to ensure the procedure was undertaken with due regard to the safety and health of the individuals involved, it remained the responsibility of the member state doing the expelling that the legal situation of the person allowed for deportation (Annex). Joint deportation flights organised under the Decision, which Frontex terms Joint Return Operations (JROs), are normally initiated by one member state, with Frontex overseeing and funding the cooperation with the other participating member states. Returnees are transported from several member states to the member state organising the flight, where they embark an aircraft and travel together to the destination airport in a third country. A Frontex project manager always travels on the charter flight and is tasked with ensuring that "the joint return operation is carried out in accordance with the Code of Conduct for return flights" created by Frontex in 2013 (Frontex website 2015). In October 2016, Frontex received a broadened mandate through EU Regulation 2016/1624, notably through providing pre-removal and coordination support to member states and deploying liaison officers in third countries. Between 2012 and 2017, Frontex coordinated 726 JROs which deported a total of 34,991 people.

Table 3.1 Joint Return Operations (JROs) from the EU

Year	Number of JROs	Number of deportees	Operations physically monitored
2012	39	2,110	58%
2013	39	2,152	51%
2014	45	2,279	60%
2015	66	3,563	76%
2016	232	10,698	36%
2017	341	14,189	55%

Source: EMN 2016 Annual Report (p. 83) + 2017 Annual Report (p. 56)

JROs have been radically stepped up in the wake of the 2015 crisis: almost half of the deportation flights organised over the last six years took place in 2017, the most recent year for which numbers are available (see table 3.1). The decrease in the share of operations with physical presence of monitors on board is due to the fact that a lot of the increase was due to operations initiated and effected by Italy and Germany, neither of which foresaw compulsory presence of monitors in all phases of return. 2017 also saw the first EU JRO to Afghanistan, led

by Hungary and which deported 22 Afghan nationals.[49] While still a minority, the number of deportations effected with Frontex support generally has been rising in recent years. Moreover, the importance of Frontex support is more qualitative than quantitative, as its support is particularly used by member states for difficult cases of deportation and to deport to "problematic states" (Ette 2017: 158).

Another way in which the EU facilitates the deportation practices of its member states is by increasing cooperation with third countries through the signing of Readmission Agreements, multilateral agreements which ensure that third countries will accept those individuals that are returned to origin or transit countries. Since the coming into force of the Treaty of Amsterdam in 1999, the European Commission has a mandate to negotiate such agreements, which impose obligations on the contracting parties to readmit their own nationals as well as certain categories of TCNs and stateless persons. The Council has given negotiation directives to the Commission for over 20 countries, and so far signed 18 of them, most recently with Bangladesh in 2017.[50] Readmission agreements increasingly take the form of broader Mobility Partnerships, which tie readmission to visa facilitation—a strategy the Commission has said it wants to make more use of in the near future. Other forms of EU-negotiated agreements which include facilitating readmission include the 2016 *Joint Way Forward* with Afghanistan, where facilitated readmission was obtained at the same time as the EU pledged €5 billion in aid to the country. Negotiations on Readmission with Belarus are reported to be almost finalised while new ones were launched with Nigeria, Tunisia and Jordan in parallel with negotiations on visa facilitation. On the other hand, negotiations with Morocco, which started in 2003 have stalled and they have not been opened with Algeria despite the negotiating mandate dating back to 2002 (COM/2017/200final). Moreover, competency over readmission agreements continues to be shared between the EU and individual member states, and the latter continue to conclude bilateral readmission agreements with countries as well.

Apart from these selective and (for national governments) uncontroversial measures, calls for a more comprehensive instrument to harmonise deportation policy across the Union also started in the early years after Amsterdam. In 2001, the Commission produced its first Communication on a Common Policy on Illegal Immigration (COM/2001/672final) in which return and readmission policy was identified as a key policy area for action, followed in 2002 by a Green

[49] In this regard it is also worth noting that the Visa Information System (VIS) set up by Regulation (EC) No 767/2008 has become a tool for member states to share identification and documentation data of would-be deportees with non-EU countries to prove the identity of TCNs for the purpose of expulsion.
[50] Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Cape Verde, Georgia, Hong Kong, Macau, Macedonia, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey, Ukraine.

Paper on a Community Return Policy on Illegal Residents (COM/2002/175final) in which the Commission recognises that forced return is a very significant encroachment on the freedom and wishes of the individual concerned, and a 2002 Communication on a Community Return Policy on Illegal Residents (COM/2002/564final) in which the need for common return action was again stressed—it also called for the mandatory removal of persons posing public security threats. The Council echoed these calls in the Hague Programme, the second multiannual programme for the Area of Freedom, Security and Justice (AFSJ) which was adopted in 2004 to succeed the Tampere Programme. This called for a stepping up of the fight against "illegal" immigration in a variety of policy areas including return and cooperation with third countries and called on the Commission to submit a proposal to that end in 2005. The Commission proposed a Directive in September 2005, and in December 2008 Directive 2008/115/EC on common standards and procedures in member states for returning illegally-staying third country nationals (henceforth "Return Directive") was adopted in the co-decision procedure with the Parliament, one of the first Directives to have been adopted under this procedure in this field since it became subject to the co-decision procedure in 2005.

The Return Directive was in many ways a restrictionist document which sought to make deportation more rigid. According to the Commission's impact assessment which accompanied the proposal for the Directive, it was needed to maintain mutual trust between the member states, avoid "legal remedy shopping" allowing those declared illegal to fight their expulsion from a member state after having already exhausted all available remedies in another, and remedy the lack of an obligation on TCNs to leave the whole of the EU territory when expelled from one member state (Peers et al. 2012: 487). Article 8 of the Directive explicitly calls on and authorises the member states having taken an expulsion decision to "take all necessary measures to enforce the return decision", including "as a last resort, coercive measures to carry out the removal of a third country national who resists removal", as long as these comply with the principle of proportionality and do not exceed "reasonable force" (Article 8(1) and (4)). Moreover, in later communications the Commission urged member states to "take into account previous criminal convictions" when taking return decisions (COM/2017/200final). In *Zaizoune* (Case C-38/14), the ECJ ruled that the Return Directive should be interpreted as precluding a Member State legislating for TCNs illegally staying in its territory to be able to receive a fine instead of a deportation order, rejecting the Spanish Supreme Court doctrine that the mere

illegal stay of TCNs in Spain should be sanctioned with a fine rather than removal from Spanish territory.[51]

But the Return Directive also codified constraints on the deportation practices of member states. The Directive obliges member states to issue an expulsion order in writing (and translated if requested) to anyone before their deportation and give reasons in fact and in law (with a public security exception) as well as information about available legal remedies (Articles 6 and 12). States are also obliged to normally allow for a grace period for so-called "voluntary" departure of between 7 and 30 days, a period that shall be extended taking into account certain individual circumstances such as length of stay, the existence of children attending school, and the existence of other family or social links. This period can only be refused when there is a demonstrable risk of absconding, if an application for legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or public health (Article 7). Article 8(6) imposes an obligation to provide for an effective "forced-return monitoring system", and Article 9 an obligation to postpone removal when it would violate the principle of non-refoulement or when a suspensory effect is granted, referring to Article 13(1) which grants the person concerned an effective remedy to appeal against or seek review of the return decision before a competent judicial or administrative authority. Safeguards pending removal are outlined in Article 14, including the need to maintain family unity, the provision of emergency health care and essential treatment of illnesses, access of minors to the basic education system, and the special needs of vulnerable persons. Articles 15-18 deal with detention for the purposes of removal. The Directive controversially allows such detention, but only and exclusively for the purposes of removal, when other less coercive measures cannot be effectively applied, when there is a reasonable prospect of removal, and when there is a risk of absconding or the person concerned hampers the preparation of return, and detention must be subject to the principle of proportionality. Detention periods are limited to a maximum of six months, extendable to 18 months when there is a lack of cooperation from the person concerned or when there are delays in obtaining the necessary documentation from third countries.[52]

[51] http://euredial.eu/blog/a-fine-or-removal-the-impact-of-the-ecjs-zaizoune-judgment-on-the-spanish-doctrine/. Last accessed September 2018.

[52] Other EU law puts additional procedural restraints on deportation. In general, in their actions member states are obliged to uphold the EU Charter of Fundamental Rights which entrenches the basic rights of every individual within the EU and became legally binding with the entry into force of the Lisbon Treaty in 2009. Article 19 of the Charter forbids collective expulsions and deportations to states where the deportee runs a serious risk of being subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment.

Despite these minimum standards, the Return Directive was one of the most criticised pieces of EU legislation adopted in the field of AFSJ policy, both by NGOs sympathetic to migrants' rights, and governments of other non-European countries, particularly in Latin America and Africa. It was accused of doing little to harmonise standards as it leaves significant space for divergence, and to the extent that it does have a levelling effect it will be towards the minimum standards permitted by the Directive (Baldaccini 2009). The scope restriction on those who do enjoy procedural protections under the Directive was also criticised, as the Directive allows member states to not apply the directive to TCNs who are apprehended near the border or in a transit zone (although what constitutes such a zone is left open) and not to apply it to those "subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures" (Article 2(2)(b)). The Directive thus makes an explicit distinction between deportations at the border and deportations from the interior on the one hand, and criminal and "regular" deportations on the other, making only the latter (i.e. non-criminal deportations from the interior) subject to the principles and rights in the Directive. It is rather unclear where this optional exclusion of criminal deportees leaves those deported from member states that have criminalised irregular stay or entry. What is clear is that it would be nonsensical to allow for the exclusion of those deported for immigration offences, since it would give member states a way to prevent the Directive from applying to any of its deportations (Peers et al. 2012: 491). Of the two optionally excluded groups of deportees, only criminal deportees can be excluded from all guarantees of the Directive, while some basic provisions do apply to those apprehended in transit zones.

The European Parliament, which had acted as co-legislator for legislation in this field for the first time, was subject to particular criticism for adopting the Directive without pressing for amendments in the first reading (Acosta Arcarazo 2009; Ripoll Servent 2013). Ariadna Ripoll Servent notes that, despite two years of negotiation between the Council and the Parliament, "of the main six issues which created tensions between the Parliament and the Council, one can argue that four were eventually decided in favour of the Council, while only in two was the Parliament partially successful in raising standards".[53] Nonetheless, the directive was adopted at the first reading stage by the Parliament plenary with a large majority (Ripoll Servent 2013:

[53] The first four issues are: the non-application of the minimum standards laid down in the directive to those entering illegally and later apprehended, and those refused entry at the border; downgrading the option of voluntary return (this may be withdrawn or shortened) and allowing deportees to be sent back to transit countries; compulsory entry bans for those subject to forced removal (up to 5 years, or more if public security grounds), but such bans may also be given to those returning voluntarily; no strong restrictions on use of detention (though the Council wanted mandatory pre-removal detention originally). The two latter issues are: access to education and suitable institutions for unaccompanied minors (Article 17); procedural safeguards (most notably provisions on free legal assistance) (Ripoll Servent 2013: 50).

51-50). Ripoll Servent explains the eagerness of the Parliament to adopt a directive which reflected few of its original positions (and after years of more confrontational posturing and leaning more towards civil liberties than security when it was merely consulted rather than co-legislator) by the fact that this was the first irregular immigration policy instrument adopted under the co-decision procedure (and was thus widely considered a test case for further negotiations in the JHA area, and one that the Parliament was more interested in passing than most member states, who might have been fine with the status quo. EU parliamentarians thus may have felt pressured to demonstrate a willingness to compromise and to take co-decision seriously, including by those political groupings (liberal ALDE and socialist PES) which had previously been more insistent on protection of civil liberties (Ripoll Servent 2013: 52-53).

The Return Directive also formalised the regulation of re-entry bans, administrative or judicial decisions or acts prohibiting entry into and stay on the territory of the member states for a specified period, accompanying a return decision (Article 3(6)). Article 11 obliges member states to issue EU-wide re-entry bans of up to five years (or more if the TCN represents a serious threat to public policy, public security or public health) when no voluntary departure period has been granted or when the obligation to return has not been complied with in the granted voluntary departure period, i.e. whenever someone is forcibly deported. It leaves the possibility of re-entry bans open in other cases, except for victims of human trafficking and those with a right to international protection and allows member states on the other hand to refrain from issuing, withdrawing or suspending bans in individual cases for humanitarian reasons. Entry bans have two more or less stated goals: they serve as a deterrent for irregular TCNs, as a way of preventing essentially "repeat offenders", and they function as an incentive to encourage "voluntary" return, through their withdrawal/suspension when voluntary return has taken place in compliance with a return decision. On the other hand, the Schengen Information System (SIS) is the primary communication channel used by member states for the enforcement of entry bans.[54] A study from 2014 found indications that entry bans may not be an effective tool to encourage voluntary departure at least in the Netherlands (European Migration Network 2014: 7). The EU entry ban imposed by the Return Directive has led at least six member states to drastically increase the number of bans imposed, most notably Sweden (European Migration Network 2014: 6). On the other hand, in eight member states the maximum length for an entry ban was reduced as a result of the Directive (COM/2014/199final).

[54] The Second Generation Schengen Information System (SIS II), established through the adoption of Regulation (EC) No 1987/2006 of the European Parliament and of the Council, has become a helpful tool to give full effect to the European aspect of entry bans. During the 2008-2013 period, an average of 700,000 Schengen-wide entry bans were stored in the system (COM/2014/199final: 4).

Explaining Europeanisation

Why has Europe started to actively engage with the question of deportability? In the Europeanisation literature, the first question has been predominantly discussed as a specific part of a wider Europeanisation of migration policy, a field of study in which three explanations dominate. The first comes from neo-functionalist theory and describes the impetus for extensive cooperation and harmonisation on matters related to migration as a result of the establishment of a single European market. On this account, the abolition of internal borders entailed in the single market project generated the need for "flanking" measures to tighten external borders and regulate mobility between the member states (Geddes 2000). Faced with a relative failure to "secure" the external borders of the common market, so the argument goes, the EU has turned to more internal control and removal to achieve its migration control goals. The second explanation stresses the continuing dominance of national governments in European policy-making (in other words, it stresses the EU as an essentially intergovernmental project) and views the phenomenon as driven by a dynamic of "venue-shopping".[55] It sees Europeanisation as the result of national governments turning to the European level to escape constitutional constraints and scrutiny in their pursuit of ever more restrictive migration regimes (Guiraudon 2000). The European level with its secretive institutions, opaque procedures and general lack of democratic control is on this account supposed to be a far more favourable context to pass control-oriented measures exempting national governments from greater transparency and stricter parliamentary, legal and public oversight (Ette 2017: 19). The third explanation comes from the field of securitisation studies, where migration has long been seen as "securitised", i.e. seen or framed by bureaucracies and electorates as a threat to domestic security and public order (Cholewinski 2000; Guiraudon and Joppke 2001; Guild 2009). Many think this security logic accounts for the Europeanisation of migration as well, either as a neo-functionalist "spillover effect of the economic logic of the internal market into a security one" (Huysmans 2000: 753), or as a conscious strategy by EU bureaucrats to gain more supranational authority (Koslowski 2001).[56]

The Europeanisation of deportation is thus seen from the neo-functionalist view as a response to the failure of enhanced external border controls necessitated by abolition of internal borders;

[55] Venue-shopping is the mechanism traditionally applied to account for the Europeanisation of refugee and migration policies (Ette 2017: 129).

[56] It is worth noting that the securitisation explanation differs from the neofunctionalist and venue-shopping explanations in that it is not unique to the supranational European level. In other words, securitisation is equally put forward as an explanatory theory for *national* migration and asylum policies. Nonetheless, numerous studies demonstrate that migration has been securitised specifically at and by the EU level and securitisation is considered a leading explanatory theory for EU involvement with migration in the literature (e.g. Baele and Sterck 2015).

from an intergovernmentalist venue-shopping perspective as a way for national governments to escape constraints by domestic courts in executing the removal of unwanted migrants; and from a securitisation perspective as driven by a logic that posits those subject to deportation as security threats (e.g. De Genova and Peutz 2010; Ripoll Servent 2013). These explanations go some way in accounting for the drivers of Europeanisation in the field of deportation. The Commission and the Council continually refer to their aim in facilitating deportations of TCNs as a "fight against illegal immigration" and make explicit connections with public security concerns. The partial Europeanisation of concluding Readmission Agreements and the earlier (non-binding) efforts to increase operational cooperation between member states was largely a bottom-up effort by several member states, particularly Germany (Ette 2017: 139-147), to circumvent existing practical and administrative enforcement constraints, and the venue-shopping explanation for this development may be convincing as member states in the Council introduced few scrutiny reservations and proposals to the legislative proposals from the Commission (Ette 2017: 144).

This does not, however, explain the restraining role that EU institutions play in this policy field and their clashes with national governments. Even the negotiations for the Return Directive, which lasted three years, were far more conflictual than the earlier non-binding measures, with several member states (most notably the UK, the Netherlands, Greece, Sweden and Germany) fiercely opposing the minimum standards they saw as too high, and many national governments preferring to see this initiative "quietly dropped" (Ette 2017: 148). To an extent, these critical member states succeeded in watering down several key provisions under the German presidency. Moreover, there were significant issues in the national implementation of this Directive which may amount to "opposition through the backdoor" (Falkner et al. 2004). Nonetheless, the initiative for the Return Directive was clearly with the Commission and, together with the Parliament, it managed to overcome significant member state opposition. The procedural constraints put on the member states' deportation practices may be explained with reference to the need for EU institutions to uphold the credibility of their self-professed role as guardians of internationally recognised human rights norms. By some accounts, the European level is indeed framed as a venue where institutions operating from a security logic (the Council, member state governments) clash and negotiate with those who focus at least partially on human rights (the Parliament, the Court, sometimes the Commission) (Boswell 2007; Kaunert 2009). Indeed, in the early to mid-2000s there was a tension between the Commission and the Council, evidenced by the response of the Council to the Commission's original 2002 proposal with a Council Action Programme which, while taking note of the Commissions communication,

proposed guidelines but explicitly opposed a binding legislative framework (Peers et al. 2012: 485).

Yet without denying the insights provided by this account or by neo-functionalist, intergovernmentalist and securitisation theories, this chapter argues that to explain the phenomenon of Europeanised deportation we need to go beyond seeing it as a simple process of self-interested coordination between member states or as a struggle over the weight of human rights constraints. Rather we need to see Europeanised deportation in connection to an incipient notion of individual normative membership of a political community at the European level. Part of the reason that this is usually overlooked is that discussion on the Europeanisation of deportation tends to focus only on the EU's role in actual deportation proceedings, which is largely facilitative. The premise of this argument, by contrast, is that the EU's role in regulating deportation is best understood by also looking at its more indirect construction of the deportability of different residents, which is mostly constraining. As Chapter 1 has argued, deportation is not just about migration control, but also plays a fundamental role in determining the shape of the political community—by defining and reinforcing the boundaries of membership and by establishing a normative conception of the citizenry distinguishing between different groups of non-citizens on a scale of desirability and desert through a scalar framework of protections against expulsion. The EU's supranational institutions have claimed a role for themselves and have become co-producers of the EU's deportation regime. The stated aim of the EU's involvement in "return" procedures is to eliminate the situation in many member states where TCNs are neither effectively expelled nor granted residence documents (or full citizenship), indicating that this would have implications for the EU as a whole and as a political union (Article 6 of the Return Directive effectively gives member states a choice between granting irregular residents a residence permit or issuing them with an expulsion order).

A European community of belonging

The far-reaching regulation of deportation practice in which the EU has been engaged is both reflective of and contributes to the emergence of a notion of Europe as a community of belonging and a space of supranational citizenship, or what Luuk van Middelaar (2013) has termed a "Europe of Citizens". Discussing the different logics or discourses of European integration, van Middelaar distinguishes the notion of a Europe of Citizens, which he sees as connected to the project of federalism and truly supranational political integration, from that of a "Europe of States" and a "Europe of Offices", connected to the logic of intergovernmentalism and functionalism respectively. Van Middelaar traces the notion of a Europe of Citizens back to

the French Revolution, a rupture which according to him made thinkers across the continent acutely aware of the striking commonalities among, and common history of, Europeans (2013: 3).[57] The strength and practical influence of this emerging conception of supranational belonging should not be overstated. Most EU secondary law dealing with deportation and deportability has taken the form of Directives, which are binding but leave a fair amount of discretionary space for the member states' transposition and implementation of this law. The use of directly binding Regulations was in all these cases considered neither proportionate nor in accordance with the subsidiarity principle, even if there is no legal requirement to adopt Directives rather than Regulations (Peers et al. 2012: 11). But on the other hand, in crucial aspects where the EU could also have opted for non-binding legal instruments the deportation *acquis* is binding nonetheless. All this seems to provide evidence of the development of the EU into a truly supranational political union of not only states but also persons, which includes involvement of the supranational level in constructing an account of belonging on an EU-wide level—and as such lends credence to the "citizenship paradigm of European integration" (Kochenov and Pirker 2013: 370).

This is evident most discernibly in the development of an EU citizenship which has rearticulated the centrality of non-deportability for citizenship at the supranational level. Critics of the citizenship paradigm have argued that EU citizenship as a status remains much less substantive than national citizenship, given that it is devoid of many of the social rights which make such a status valuable for its holders. Somewhat less plausibly, authors have come to a similar conclusion on the basis of the fact that the political rights usually taken as forming the core of citizenship with which EU citizenship has been invested (most notably the right to vote for and petition the European Parliament), are far less meaningful than similar political rights connected to national legislatures, given the Parliament's relatively restricted legislative influence. Moreover, free movement rights are argued to be insufficient to make up a meaningful citizenship status, since less than three percent of the EU's population makes use of

[57] Indeed, Edmund Burke wrote in 1796 that "no citizen of Europe could be altogether an exile in any part of it" (1999), and although he was speaking primarily of the convergence of the tastes, feelings and customs of Europeans from different parts of the continent, the use of the "exile" terminology is interesting here because it implies a sense of belonging throughout the continent as well. It hints at the idea that Europe constitutes a community of persons in a strong enough sense that intra-European exile does not really place a European outside of her community of belonging. It reveals that 'fellow' Europeans are no longer seen as Others in any strong sense. In tension with his enthusiastic support for "disentangling" the populations of Europe, Winston Churchill simultaneously lauded the work of the Paneuropean Movement proposing European unification, and would echo its core idea in a speech preceding the 1948 Hague Congress, when he stated: "We hope to see a Europe where men of every country will think as much of being a European as of belonging to their native land, and wherever they go in this wide domain they will truly feel 'Here I am at home'" (Maas 2014: 410). The EU has undeniably picked up and at least to some extent institutionalised this conception of Europe as a community of persons.

this right. But such arguments overlook the right which this thesis argues forms the core of the status of citizenship in the contemporary liberal democratic world, namely non-deportability. Focussing the discussion only on the European parliamentary system and direct involvement in democratic decision-making mechanisms risks missing just how vital the right to secure residence is in the definition of modern liberal democratic citizenship, and thus how far the idea of a Europe of Citizens has already been achieved.

Moreover, by constructing a scale of deportability of resident TCNs, the EU is actively involved in the construction of notions of normative membership as well. The EU, by having created a kind of "citizenship light" (Thym 2016)[58] or a "subsidiary" form of citizenship (Acosta Arcarazo 2011) through the Long-Term Resident status and by providing family members a status of non-deportability derivative of EU citizenship status, thus protects some resident migrants from deportation because it sees them as (potential) members of the political community, and encourages the deportation of others because it sees them as unfit for and undeserving of membership in a supranational political sphere. In constructing this scale of deportability, the EU's overriding concern seems to be to measure both the integration and "integrability" of the individual involved, considering length of residence, family ties, economic activity, criminal behaviour, and social and cultural links with the country of residence as well as the country of origin.

Of additional particular note is the growing incidence of invocations of the "territory of the Union" by EU institutions, a concept which was previously mostly used in the context of customs and overseas EU law (Kochenov and Pirker 2013). Recently, however, the concept has been developed and reinterpreted with reference to EU citizenship and non-deportability rights. The Long-Term Residents Directive refers to both the "territory of the Community" (when discussing what absences count for the loss of the status in Article 9) and the "territory of the Union" (when specifying where the LTR must be expelled from on public interest grounds in Article 22). The ECJ has invoked this concept in its rulings in the *Ruiz Zambrano*, *McCarthy* and *Dereçi* cases, in which it highlighted the special importance of not requiring EU citizens to leave the Union's territory (Kochenov and Pirker 2013: 376). In *Ruiz Zambrano*, the Court argued that being obliged or forced to "leave the territory of the Union" implied the deprivation of "the genuine enjoyment of the substance of EU citizenship rights" (Paragraph 44). As Loïc Azoulai has argued in a commentary on the case, the fact that the mobility criterion of an EU citizen's non-deportability rights is seemingly relaxed in this ruling "shows the willingness of the Union

[58] As applied to LTR status, this notion of "citizenship light" adapts Christian Joppke's conceptualisation of EU citizenship as simultaneously itself a "light" version of national citizenship and as contributing to the "lightening" of national citizenship (2010).

to develop its own boundaries between individuals, its own notion of membership" (Azoulai 2011). It means that EU law gives even stronger protections to EU citizens against expulsion from the entire EU territory than to deportation within the Union, while in the exceptional cases that a Long-Term Resident TCN is expelled, their expulsion *must* be from the entire Union. Moreover, the framework for mutual recognition of expulsions decisions and the system of mandatory EU-wide re-entry bans on those forcibly removed gives further effect to the concept of an EU territory. While Walters wrote this years before the entry ban policy was adopted, his claim that "in effect, member states operate as proxy European authorities, deciding upon and in many cases deporting asylum-seekers from the European space" now rings truer than ever (Walters 2002: 284).

This persistent use of the language of "return" by EU institutions when referring to the sort of deportations to outside its territory that it does support and facilitate is also telling, since it implies the inevitability of the need for the deportee to "return" to where he or she *truly* belongs, which therefore cannot be the EU. Article 3(3) of the Return Directive explicitly defines return as the process of a TCN going back to "his or her country of origin, or a country of transit (…), *or another third country* to which the third country national concerned voluntarily decides to return and in which he or she will be accepted" (my emphasis). It is arguable that including departure to a country of transit severely weakens the definition here of "return", and in conjunction with the problematic EU interpretation of "voluntary" return the last option obviously cannot plausibly be considered return by definition.[59]

The limits of Europeanisation

There are nonetheless important limits to the shape and extent of Europeanised deportation. The most obvious one is the difficulty of ensuring national implementation of EU law, especially when this has taken the form of Directives which leave a relatively large margin of interpretative discretion to national governments. Regarding the non-deportability rights of EU citizens and their families, a Commission Communication from 2013 (COM/2013/837final) found that 90% of transposition issues of the 2004 Free Movement of Citizens Directive had by then been resolved, and that overall it has led to a decline in the number of expulsion orders of EU nationals across the EU. But some member states continue to systematically deport some groups of EU citizens. In apparent violation of the 2004 Directive, Italy and Finland still have

[59] The use of this terminology has trickled down to the national level. Bulgaria, for instance, amended the terminology of its "Law on foreigners in the republic of Bulgaria" to increase its compatibility with the EU acquis—the law now refers to "return" rather than "removal" (European Migration Network 2017: 77).

regulations in place permitting automatic expulsions of EU citizens after convictions for serious offences or in cases of serious criminal records with reference to the public security and public policy derogation. While precise statistics are hard to come by, those that have become public indicate that at least in some countries EU citizen deportation remains significant. For instance, Belgium deported 2,712 EU citizens (including long-term residents) in 2013, (compared to 7,170 non-EU nationals deported that year), mostly on unreasonable burden grounds.[60] The continuation of expulsion within the EU is in one respect rather striking, since, in the absence of border checks between the member states and the possibility of re-entry bans, the EU expellee can usually simply return immediately. This fact reveals the highly, perhaps even exclusively, symbolic meaning of continuing intra-EU expulsion.

A more insidious problem is the apparent targeting by many countries of EU citizens of Roma ethnicity. The most high profile example of this practice came in 2010 when, following riots by French Roma in central France provoked by a community member's killing by police officers, then-President Nicholas Sarkozy took tough measures including the destruction of 300 camps which he described as "sources of illegal trafficking, of profoundly shocking living standards, of exploitation of children for begging, of prostitution and crime" followed by large-scale expulsions of Roma to Romania and Bulgaria typically on the grounds that their "aggressive begging" and "abusive occupation of land" were deemed a threat to public order, or that their poor living conditions indicated that they were prone to becoming an unreasonable burden on the French social assistance system (Adjei Sowah 2014). A leaked circular issued by the ministry of the interior prioritising the targeting of Roma camps and evidence that expulsion orders were produced en masse and administered in a rush came out later.

This affair did cause a significant clash between European institutions and the French government. The European Parliament adopted a resolution wherein it "deeply deplored" the "late and limited response by the Commission, as guardian of the Treaties, to the need to verify the consistency of Member States' actions with (…) EU legislation (…) on non-discrimination, freedom of movement and the right to protection of personal data" (2011/C308E/12). The European Parliament and eventually also the Commission entered into a political standoff with the French government for weeks and criticised its "inflammatory and openly discriminatory rhetoric" and the Commission threatened to start infringement proceedings for improper

[60] In Denmark, 278 EU nationals were expelled on grounds of lack of sufficient resources between January 1st 2009 and June 30th 2011, according to Danish NGO *Udenfor*. In the Netherlands, in 2013 170 EU citizens were ordered to leave because they had made an application for social assistance (REF). The policy in the Netherlands on whether requesting social assistance triggers expulsion is explicitly time-sensitive: in the first two years of residence, the trigger is automatic, while after that an increasing length and level of social assistance is "allowed" before the residence permit is revoked.

transposition of the Free Movement of Citizens Directive. However, despite commitments to change its legislation in response to these treats, France and other countries continue to deport Roma EU citizens on public order grounds or questionable "unreasonable burden" grounds, often invoking poor living conditions and begging, but without these individuals having ever claimed social assistance. This case shows not only the precarity of non-deportability rights of those who do not fit the "legitimately" employed "market citizen" paradigm with whom in mind the free movement regime was originally developed, but arguably also a racially biased application of the expulsion exceptions to the free movement regime. The unwillingness of European institutions to properly defend EU rules on deportability highlights the limits of Europeanised expulsion protections and EU compliance procedures. On the other hand, the fact that the 2010 affair, even though it concerned Europe's most marginalised community with the lowest access to political voice, prompted a fierce and high-profile political debate between France and the European institutions does show that the latter have become core players in the debate about belonging and citizenship.

Yet the notion that Europeanising deportation may reveal a "racial Europeanization" (Jansen 2015) can also be seen to be present in the official distinctions between the non-deportability rights of EU nationals and TCNs. For instance, only in the Family Reunification Directive but not in Free Movement of Citizens Directive is polygamy explicitly an exception to the general rule of the non-deportability of family members of those with a right to stay. Article 4 of this Directive states that any further spouses of sponsors who are in polygamous marriages cannot be granted residence by a member state when a first spouse is already present on the territory. Moreover, Article 16 states that the residence permit of a spouse or partner may be revoked when it is found that either the sponsor or the spouse or partner is married to or in a stable long-term relationship with another person, revealing a somewhat moralised view of the family. Member states are granted flexibility when it comes to applying family reunification for any minor children the sponsor may have with other spouses in a polygamous marriage. In the case of family reunification, member states are also permitted to require the non-EU national and their spouse to be of a minimum age (though that age may not be higher than 21 years).[61]

[61] Another issue concerns the fundamental tension between the Europeanisation of free movement and residence rights for EU citizens and the fact that the status of EU citizens remains derivative of national citizenship and decision-making over granting and withdrawing EU citizenship is therefore controlled by national governments. Several rulings by the European Court of Justice, most notably *Rottmann*, have hinted that decisions over citizenship do not fall exclusively in within the competence of member state governments. In *Rottmann* (Case C-135/08), the ECJ ruled that withdrawal of naturalisation while not recovering the nationality of another member state falls within the ambit of EU law, and must observe the principle of proportionality. The *Zhu & Chen* ruling (Case C-200/02) led Ireland to hold a referendum to amend its constitution and nationality law (Mullally 2007). The controversy over the Maltese citizenship-

The limits of the protection of the Long-Term Residents Directive are also glaring. While the Directive has reduced the legal grounds for expulsion for this group of residents (as some member states, such as Germany, could even expel TCNs on general preventive grounds (Acosta Arcarazo 2011: 130), its overall impact remains weak. While the Directive covers more than half a million TCNs in the 25 Member States in which it applies (COM/2011/585 final), in 2009 around four fifths of all these LTRs were living in only four member states, namely Estonia, Austria, the Czech Republic and Italy, while in France and Germany only 2,000 TCNs had acquired LTR status. Moreover, only a small percentage of LTRs have made use of the new mobility rights within the territory of the Union, mostly due to lack of knowledge and information about the status and the rights attached to it by potential. To the extent that these mobility rights are taken up, destination countries make extensive use of the limits on secondary movement of LTRs, which the Directive allows, as they fear that LTR status has been mostly used by migrants as a stepping stone to gain this status in those countries where it is granted relatively easily and where low-skilled work is relatively accessible, such as Italy, in order to gain access to legal status in countries with stricter migration regimes but more favourable economic conditions, such as the Netherlands. Research has backed this up by showing that many mobile LTRs have made unsuccessful applications for a residence permit in their destination country before (Della Torre and de Lange 2018).

Moreover, the system of LTR protection still makes economic distinctions between otherwise similarly located long-term residents TCNs. Under the 2009-adopted Blue Card Directive, TCN skilled workers have more favourable access to LTR non-deportability than others. Whereas normal legal migrants must reside in the same member state for five years to be eligible for LTR status, Blue Card holders, whose intra-EU mobility is explicitly encouraged, can be residing in the whole EU for five years and be eligible, as long as the last two years have been in the member state where they apply for LTR status. Blue Card holders having made use of the possibility provided for in Article 18 of this Directive are thus allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence for LTR status. The integration of unskilled or lesser skilled migrant workers is thus seen as dependent on local residence more than that of skilled and highly paid migrant workers, revealing a conception of integration still based strongly on economic status.

More generally, there is a curious tension in the perceived relationship between mobility and integration underlying the EU's regulation of both internal and external movement. Whereas at

for-sale plan also points at the rise of the idea that some aspects of nationality law should fall under EU competence (Carrera 2014).

the national level mobility is often seen as a threat to integration, the European concept of integration is grounded precisely in mobility. Serhat Karakayali and Enrica Rigo argue that "Europe exists as a legal and political space (i.e. a space autonomous from the sum of the member states' territories) *only to the extent that it is circulated*, [and therefore] does not aim to stabilize migrants' movements into a sedentary juridical community" (2010: 140). But this is not quite the case even for EU nationals, let alone for long-term resident TCNs, to whom the EU applies a sort of two-step conceptualisation of integration as local integration through sedentarism and then supranational integration through mobility. To different extents, both EU nationals and TCNs are on the one hand incentivised to "become" EU citizens through sedentariness and local integration and on the other hand through mobility and transnational cultural exchange. This seemingly reflects that European citizenship and denizenship are "imbued with an 'uploaded' 'statist' rationality that does not unconditionally recognise the integrative effects of mobility" (Parker and Toke 2013: 373). According to critics, the "spatial–temporal waiting zone" that the LTR Directive has created is rather "counterproductive to the aim of integration" (Della Torre and de Lange 2018). Whatever the case may be, the logic underlying this approach is certainly somewhat schizophrenic.

Conclusion

Instead of regarding it as a mere recent "side effect" of the European project's core focus on economic integration, seeing the function of deportation regulation for the EU through the lens of its function for national polities (while keeping the important differences in view), allows us to recognise the central importance of gaining influence over expulsion for the European supranational enterprise. Rather than a development that came about only at the turn of this century, the first European regulation of expulsion dates back to its very foundations, when the exhaustive list of deportation grounds for workers in other member states was promulgated. The project of European integration has fundamentally transformed the parameters of deportability in the late 20th and early 21st centuries, and this chapter has argued that this reflects the emergence of a normative conception of belonging and citizenship at the supranational European level. Arguably, the seeds of this conception were already there from the earliest stages of integration, when many of Europe's political leaders saw the common market as an "interim measure towards a genuine European political community with a common citizenship" (Maas 2014: 410).

Today's EU is heavily involved in regulating the deportation practices of its member states. On the one hand, it encourages and facilitates the EU-wide expulsion of those seen as criminal

nuisances or public security threats in the context of an increasingly securitising perspective on migration, asylum and, to some extent, national (and perhaps by implication religious and ethnic) difference. On the other hand, the EU restrains its member states from deporting others, granting legal protections against both internal and external expulsion to, most notably, EU citizens, long-term resident and well-integrated "denizens" of non-European origins, and the family members of both these groups. A conception of Europe as a political community of persons, based primarily on inclusionary considerations of national origin, residence, family ties and social integration, and exclusionary grounds of welfare dependency, criminality and public security, is thus being constructed and enforced through the EU's regulation of deportation power. However, the conditionality of non-deportability of EU citizens, and even more so that of EU denizens, shows the limits of the protective effects of these legal statuses compared to national citizenship.

To say that the overall development is one of an increasingly restrictive, punitive and xenophobic turn in the European regulation of national expulsion and deportation regimes would be an unfair characterisation, as EU law has progressively extended the rights of both EU citizens and certain groups of non-EU nationals who reside in its territory. On the other hand, it is also clearly too optimistic to see in the rights granted to certain Third Country Nationals in Europe a "cosmopolitan outlook" which "transcends the binary distinction between citizenship and alienage"—or even as thinking of EU citizenship as developing towards a "cosmopolitan citizenship" (Thym 2016). One (perhaps) pessimistic reading is that the inclusive and exclusive sides of EU involvement in deportation are two sides of the same coin, that the progressive extension of rights and protections to "deserving" in-groups has only been possible while at the same time strengthening the "hard" outer edge of this emerging supranational membership community.

In the wake of the 2015 "migrant crisis", there is a renewed urgency to pushing forward the Europeanisation of the deportation regime. The Commission has declared that it "stands ready to launch a revision of the Return Directive" (COM/2017/200final). It has also proposed to use visa policy as a tool to enhance its deportation policy, suggesting stricter conditions for processing visa applications for nationals of non-EU countries that "do not cooperate satisfactorily on return and readmission" (COM/2018/250final). It is an open question, though, as to what extent Europe's supranational institutions remain able to counter ever more restrictivist pressures from national governments and impose their integration logic on unwilling member states, as is evidenced by opposition to a refugee resettlement scheme based on the idea that newcomers must be spread for integration to work. Some have pointed towards recent efforts at the local level to counter such trends and protect those unjustly targeted from

deportation. The next chapter will explore the precise role of the local governmental level in Europe in this increasingly multilevel deportation regime.

Chapter 4
Localities of Belonging
Local government and the politics of deportation

Introduction

The previous chapter moved up from the national level by looking at how governmental actors above the level of the nation-state, namely the supranational institutions of the European Union, have become increasingly involved in regulating expulsion and deportation rules and practices. This chapter instead moves below the level of the state and investigates how local level political communities are implicated in shaping expulsion regimes and deportation practices. The chapter will argue that such an examination can illuminate our understanding of the meaning and content of local citizenship as well as the relationship between local and national conceptions of belonging.

Since decisions over territorial admission and exclusion are ultimately under national, rather than subnational, jurisdiction, the relevance of (non-)deportability for local conceptions of citizenship is not immediately clear. However, while national governments remain the dominant actor in the politics of territorial inclusion and exclusion, subnational governmental actors nevertheless play an important role, particularly in the implementation of nationally formulated policies. In recent decades, a significant portion of the execution of deportation policy as a tool of internal border control has been delegated by national authorities to subnational ones. In the existing literature, this top-down delegation has often been characterised as an "outsourcing" by the state of the "dirty work" of border control to local governments who have little choice but to follow top-down orders (Guiraudon and Lahav 2000; Lebuhn 2013, 2014). But such accounts risk underappreciating the significant leverage that local communities have gained through this devolvement of the power to instigate and execute removals. This chapter aims to fill this gap by shedding light on the ways in which local political communities have created significant spheres of autonomy in deportation practices. Such actors do not always simply follow top-down decisions in this regard, but often either take on a proactive role in identifying and targeting certain individuals or groups for deportation, or contest or frustrate national deportation efforts by shielding those targeted for deportation from national authorities, either in individual cases or as a matter of policy. Local political forces also sometimes lobby for changes to national expulsion policy by appealing to their expertise, knowledge or role in the wider regime. All such bottom-up efforts of local political forces in shaping national deportation regimes remain largely unexplored in the literature (exceptions are Ellermann 2009; Gravelle et al. 2013).

The chapter starts by briefly describing the top-down delegation of the execution of deportation policy to local authorities. The rest of the chapter then focuses on instances of local-national conflict in the field of deportation. The first of these sections highlights examples of local governments opposing or frustrating national deportation efforts in individual cases. The next section zooms in on the opposite phenomenon of local forces requesting or instigating individual expulsions. The following section then describes instances of local governments trying to influence national deportation policy, often through concerted efforts. The last part of the chapter discusses different explanations for these sorts of conflicts over deportation between the national and the local level. Based on an analysis of the dominant normative arguments that were appealed to by local political actors in the conflicts described, the chapter argues that arguments about belonging and non-belonging are the recurring theme running through virtually all examples identified. It concludes by discussing the implications of the findings for our understanding of local citizenship as a distinct status in the multilevel citizenship structure.

The examples of local-national disputes in this chapter are drawn from a large sample of newspaper articles from publications in five major European languages (German, Italian, English, French and Dutch) selected from the LexisNexis database. Through a key search term in each of these languages that combined at least one word indicating expulsion or deportation with at least one word indicating involvement from a subnational level of government for the 1996-2016 period, samples of 200 articles per language were analysed to identify instances of conflict as well as the arguments used by local actors to justify their actions.[62] It should be noted that whereas the chapter will occasionally touch upon the middle levels of political community in modern states, such as provinces, regions or federated states, the focus is mostly on the municipal level of political community. One reason for this focus is the fact that the vast majority of local-national conflicts over expulsion identified in the sample of newspaper articles involve municipalities. A related reason is that the municipal level is typically the lowest level of government and thus closest to and most directly involved in the lived environment of a country's inhabitants (some large cities which are subdivided into boroughs are the exception). They are thus likely to offer the greatest contrast with the national level when it comes to conceptions of belonging. Lastly, while the role of intermediate levels in multilevel political communities varies widely, the powers, responsibilities and institutional design of municipal government is much more similar across Europe, facilitating comparisons between countries with different political systems.

[62] For a more detailed methodological explanation, see Appendix C.

The role of the local level in the national deportation regime

The previous chapter described how the creation of a free movement regime within the EU moved many aspects of migration control away from the national borders between member states towards the external borders of the Union, a process which started when the EEC was founded and which was stepped up in the 1990s. Interestingly, however, this outward turn was accompanied by a roughly simultaneous inward turn of border control: namely, away from the geographic border into the interior of each country's territory.[63] In line with the growing realisation that geographic borders can never be fully sealed and therefore that their monitoring is inevitably inadequate as a policy tool to prevent and combat illegal residence, national agencies tasked with enforcing migration policy moved their attention away from these physical borders and increasingly targeted city squares, trains and train stations, public city transportation, highways and rest stops, and other spaces of transit (Lebuhn 2014). The distinction between who may legally reside within a country and who may not, or no longer may, was thus increasingly enforced within the territory as opposed to at its border (Leerkes et al. 2013: 910). Increasingly, then, "the border is everywhere" (Lyon 2005). While the United States and other developed countries have gone through similar developments, the expansion of border control to the interior has generally progressed further in Europe (Leerkes et al. 2012: 447).

This inward move did not stop with the increased presence of national authorities in the local environment. Through processes of decentralisation, national governments have delegated substantial decision-making and executive powers to local elected officials (Guiraudon and Lahav 2000: 181). In-country migration policing is often primarily a task of local police forces that answer to local officials. These police forces have become responsible for the detection, arrest and sometimes the temporary detention of those under an obligation to leave the national territory. Checking the residence status of people has often simply been added to the regular work that such forces are tasked with. Leerkes et al. (2012: 466-467) note that when residence is checked in the course of regular policing activities, the costs of apprehension are lower (in terms of police resources spent and moral outrage caused given that "innocent" well-behaved residents are not directly targeted), and the benefits higher (excluding "deviant" irregular residents fulfils a double function: lowering crime or nuisance on top of border control).

[63] Indeed, this development lay at the very heart of the rise in the use of deportation as a policy tool described in Chapter 1.

Moreover, the local level has not been drawn into the national border regime solely through its police forces. In many countries, schools, hospitals and housing and welfare agencies controlled by local administrations have become involved, as have its administrative functions, for example the issuing of permits and licenses.[64] In France, for example, mayors target undesirable foreign residents with irregular status by refusing to sign housing certificates for non-nationals or preventing marriages involving a non-national when these cannot produce valid residence documents. The power of municipalities to check residence status and refer those who fail to provide proof of legal residence to the *Procureur de la République* was officially introduced in France after several mayors who had already engaged in this practice were condemned by the courts for exceeding their authority. In the Netherlands, city halls now have similar prerogatives to inspect the veracity of marriages between nationals and foreigners (Guiraudon and Lahav 2000: 182). Italy passed a "security law" in 2008 which expanded the power of mayors to identify and report irregular immigrants (as well as regular immigrants including those with EU citizenship thought to pose a "security risk") to judicial and national authorities as an "extraordinary emergency measure". The bill also gave local police the power to access information about residence permits, ordering them to report to the mayor when any irregularities were found with those individuals they come in contact with.[65] Thus, whereas classically the verification of identity papers and visa documents was a "core function of the sovereign state exercised almost exclusively by law enforcement agencies and immigration authorities, it has now become an inflationary practice that seems almost completely disconnected from the physical location of any national border or moment of border crossing" (Lebuhn 2013: 42).

Not content with simply *allowing* local authorities to check the status of their residents, many European countries have gone further and introduced a legal *obligation* of public agencies and institutions (including subnational ones) to report those found to reside in the country illegally to immigration authorities. The German *Übermittlungspflight* ("reporting obligation"), for example, while softened in 2011 to exclude educational facilities, applies to most other public institutions, including social welfare offices (Parkin 2013: 8). In the Netherlands, the so-called *koppelingswet* ("linking law") introduced in 1998 links each municipal personal records database (*gemeentelijke basisadministratie*) directly to immigration authorities and forces

[64] This development has not been limited to the local state: private actors such as house owners, employers, private schools and hospitals, and banks and insurance agencies have been similarly drawn into the migration control regime.

[65] Francesco Cerisano and Stefano Manzelli (2008, July 16) "I sindaci staneranno i clandestini; La camera ha votato la fiducia al dl sicurezza. Più poteri ai vigili, stretta sul codice della strada." Italia Oggi. Retrieved from http://www.lexisnexis.com

municipalities to check status before providing most services. The Italian criminal code obliges every authority, public officer and civil servant to report any irregular stay they are aware of (Carrera et al. 2016). The crucial idea behind such reporting obligations seems to be to "incorporate the everyday sphere of urban life and its various institutions into the system of data mining and monitoring, control and management, and inclusion and exclusion of migrants" (Lebuhn 2013: 43).

While local government thus plays an increasingly important role in the executive side of deportation policy, this involvement does not extend to formal participation in the formulation of policy. The rules governing who can be expelled from the national territory, and under what conditions, remain under national control, unsurprisingly given their importance for the notion of state sovereignty. The issuing of expulsion decisions also usually remains under national control and the actual enforcement of removal from the territory is likewise normally undertaken by national immigration police.[66] The most prominent exception to this rule is the German Federation, where the federated states (*Länder*) have the formal responsibility to issue expulsion orders and carry out the deportation of those without the right to stay under federal law. Although each *Land* must formally apply the same federal law, this system leaves the *Länder* with almost full discretion as to how strictly it is enforced. Indeed, the implementation of these federal laws varies greatly between the states. In 2015, for example, Bremen deported only 43 of its 3,100 *Ausreisepflichtigen*, or less than 1 in 70, while Bavaria deported 4,195 or a quarter of all those under an obligation to leave the German territory.[67]

The top-down delegation of parts of the execution of deportation policy was driven by the aim to make the policing of residence more effective. Due to their proximity to residents and prominent role in the provision and administration of public services, local governments have a better view of the status of residents and more and better tools available to enforce the laws of legal presence. Furthermore, Guiraudon and Lahav (2000: 181) have suggested that the process of shifting monitoring and implementation powers downward to local authorities is a response to international and global migration constraints. But the success of these measures depends on the willingness of municipalities to take over this role from the national government. Often, local governments are not very keen to act as an extension of the national state and be pushed to the forefront of enforcement efforts in the field of deportation. At such moments, they may

[66] When expellees have been arrested and sometimes detained by local police, they are commonly handed over to national immigration police who actually enforce their departure.
[67] Jan Drebes and Joris Hielscher (2016, February 11) "Das Abschiebe-Roulette: Eigentlich müssten über 200 000 Ausländer Deutschland verlassen; Bundesländer gehen unterschiedlich damit um." Aar-Bote. Retrieved from http://www.lexisnexis.com

choose to contest top-down decisions and publicly denounce or even frustrate deportation proceedings. The following section will provide examples of this.

Opposing deportations

With some regularity, representatives of local government use their position to denounce orders or efforts to deport residents in individual cases. Often, such actions follow local public outcry when the individuals involved or their neighbours, colleagues or classmates have organised actions to call attention to their plight. Such support can be given in an informal way when mayors or municipal councillors publicly declare their opposition. On the municipal level, both mayors and municipal councils have passed motions, sent letters, or given press interviews to indicate their opposition to a particular deportation ordered from above. This occurred for example in the case of then 15-year-old Arigona Zogaj and her family, who were ordered to leave Austria and return to Kosovo in May 2007 after several failed attempts to claim asylum, having lived in the country for five years. Initiated by classmates of Arigona and her siblings, the municipality of the town of Frankenburg became involved in setting up a petition to let the family stay, and the municipal council unanimously passed a motion expressing the intention to fight for their right to stay in the country.[68] In September, Arigona's family was arrested and detained in order to carry out their deportation, but the girl herself managed to go into hiding before she was found by the police.[69] Following this, the mayor of Frankenburg, Franz Sieberer, gave an emotional press conference where he pleaded with the national authorities to grant the family the right to stay. However, while Arigona's mother Nurie could stay in Austria as long as her daughter's whereabouts were unknown, her father and four siblings were deported to Kosovo. The local mobilisation was ultimately unsuccessful: after a protracted legal battle, Arigona and her mother were finally forced to leave Austria in July 2010.

A strikingly similar case from the Netherlands concerned 14-year-old Sahar Hbrahim Gel and her family, who were facing deportation to Afghanistan in 2010 after being refused asylum in a procedure that had started ten years earlier in 2000. Under the slogan "Sahar must stay", a social media campaign was started by her classmates in November. Mayor Gerrit Knol of Het Bildt, the municipality in northern Friesland in which Sahar lived and was going to school, backed the campaign and declared in a local newspaper interview that Sahar would be able to

[68] Retrieved from https://web.archive.org/web/20110703140651/http://oesterreich.orf.at/ooe/stories/402562/
[69] Günther Hörbst (2007, October 11) "Arigonas mutiger Kampf gegen den Staat; Eine 15-jährige Kosovarin ist in Österreich aus Angst vor Abschiebung seit zwei Wochen untergetaucht." Berliner Morgenpost. Retrieved from www.lexisnexis.com

stay in the Netherlands if it was up to him.[70] Mayor Fred Crone of nearby Groningen did the same in an interview in which he emphasised the dangers for a "Westernised" girl like Sahar to be returned to a conservative Muslim society like Afghanistan's (Versteegt and Maussen 2012: 56-59). In January 2011, a court in Den Bosch took over this line of argumentation which halted the family's deportation. While immigration minister Gerd Leers appealed the case because of the precedent it set, he did state on national television that in some cases mayors should be able to decide whether a person may stay.[71] In response to the ruling, new rules were introduced which protected Westernised girls from deportation to Afghanistan on the basis of the specific risks they would run there and discrimination they would suffer in the education system and wider society through being perceived as "unclean", and Sahar and her family were given permanent permission to stay.

Somewhat more formal than public declarations or council motions are those cases where municipal governments use their position to lobby directly for a reversal of the expulsion decision of the national authorities in charge, often in the form of an official written request. In the Dutch case, the sending of such *brandbrieven* (literally: fire letters) by mayors to the minister requesting use of his or her discretionary competence (*discretionaire bevoegdheid*) to grant relief from deportation on exceptional, humanitarian grounds in particular cases (without re-opening an asylum procedure and irrespective of the reasons for which someone ended up in the country) has become common practice. Examples include Opheusden mayor Kees Veerhoek's letter protesting the deportation of a Colombian mother of three children with Dutch nationality, the youngest only three months old, in which he asked minister Teeven to use his discretionary competence in the case.[72] Another example was Nijmegen mayor Ter Horst's letter to minister Verdonk to request recognition of the Chen family, who lived in the village of Lent for 12 years, as a "distressing case" (*schrijnend geval*), which would stop the family's deportation to China. This came after Nijmegen's city council had already passed a motion that vowed to protect the family from deportation.[73] In 2011, the municipal council of Heerlen unanimously signed a letter to minister Leers to stop the expulsion of single Iraqi mother Samira Disho Shammo and her three minor children of 16, 14 and 12 who had lived in the

[70] Majelle Hoek (2011, February 24) "Sahar mag blijven als het aan de Burgemeester is." Fries Dagblad. Retrieved from http://www.frieschdagblad.nl/index.asp?artID=53879
[71] Pauw & Witteman uitzending 22 feb 2011; article in De Pers 2 dec 2010
[72] "Burgemeester en raad in de bres voor gezin" (2012, December 27) De Gelderlander. Retrieved from http://www.lexisnexis.com
[73] "Gemeenteraad steunt familiie Chen" (2004, April 22) De Gelderlander. Retrieved from http://www.lexisnexis.com

Netherlands for 13 years.[74] The letter was successful: minister Leers recognised Shammo's case as a *schrijnend geval* and applied his discretionary competence.[75] Higher levels of subnational government also sometimes get involved. When the council and mayor Piet Bruinooge of the Dutch city of Alkmaar opposed the deportation of Jossef and his mother, who had been in the country for eight years, to Eritrea, the provincial council of Noord-Holland passed a motion in support, with councillor Den Uyl, who introduced the motion, explaining his action by declaring that Jossef "is an inhabitant of the province too".[76]

In France, mayors can officially ask the *préfet*, the top-ranking civil servant who represents the central government in the *département*, to annul expulsion orders in specific cases. In 2001, a collective of sympathisers and politicians in the town of Montataire protested the deportation of 45-year-old Aissa Bouraya to Algeria, who had received an order to leave the French territory as a result of having served prison sentences for two convictions for drug possession and trafficking. Bouraya, who had lived in France since the age of 5 and was father to two French-born children, won the support of the mayor of Montataire who asked the prefect to annul the expulsion order.[77]

Such bottom-up appeals can also be made by members of parliament in systems where they represent single member electoral districts and are thus directly representing a locally defined constituency, such as in the United Kingdom. UK MPs do indeed sometimes use their position to appeal the Home Secretary who has the power to stop a deportation. One example of this was when Richard Younger-Ross, MP for Teignbridge, sent a letter (supported by the mayor of Teignmouth and the unanimous town council) to the Home Office to protest the planned deportation of 34-year-old Bedri Haziri to Kosovo in 2003 and asking for its deferral until the case could be looked into further.[78] Bedri admitted having entered the UK illegally but had since become a "model citizen" who was "hardworking" and "never got into trouble", and had in the meantime met and married the British Susan Giesler. Younger-Ross stated: "He is someone who has worked hard and has become part of the community. He deserves to stay." Cllr Brenda Battershil declared: "Susan (Bedri's wife) comes from generations of a local family and Bedri is

[74] Marcel van Veen (2011, April 23) "Verzet tegen uitzetten Irakezen." Dagblad de Limburger. Retrieved from http://www.lexisnexis.com
[75] Marcel van Veen (2011, May 14) "Dank aan Leers, maar vooral Heerlen." Dagblad de Limburger. Retrieved from http://www.stichtingvlot.nl/pdf/DDL-shammo-14-05-2011.PDF
[76] Matthie Bergman (2011, December 14) "Ernstig signaal aan de regering." Noordhollands Dagblad. Retrieved from http://www.lexisnexis.com
[77] "Nous voulons empêcher l'expulsion d'Aissa Bouraya" (2001, July 20) Le Parisien. Retrieved from http://www.lexisnexis.com
[78] http://www.indymedia.org.uk/en/2003/11/280018.html

regarded as one of the family and is close to their hearts."[79] When Bedri was allowed to return on a spouse's visa after spending nine weeks in Albania, Teignmouth mayor Fusco stated: "I will be personally welcoming him home".[80]

In Germany, the right to issue such requests to reconsider an expulsion takes place in a more institutionalised framework through the system of *Härtefallkommissionen* which can suggest individual cases to be considered for deportation relief (and submit reports in their favour). In an attempt to address local resistance to national deportation efforts in individual cases, during the 1990s several subnational governments introduced commissions with the task to identify cases in which deportation was particularly "heartrending" (*Härtefall*) and the acceptance of continued residence justified in the public interest (*in öffentlichen Interesse*). Until 2005, such commissions had no legal basis in federal law, limiting their influence, but article 23a of the new immigration law (*Aufenthaltsgesetz*) effective from January 1st 2005 introduced the possibility to grant residence rights in heartrending cases and established the legal ground for *Land* authorities to install a *Härtefallkommission* which could request these authorities to grant permission to stay to someone who is under a legal obligation to leave the German territory and has exhausted all their federal options to regularise their stay. The inclusion of these provisions was controversial since they were seen by some as countering federal deportation policy. While the *Länder* are under no obligation to install such a commission, all of them have taken up the possibility. Everyone can suggest a case to the commissions, but they are under no obligation to accept it: the decision to put forward a case lies with the commission (*Selbstbefassung*). The final decision to grant a residence permit lies with representatives of the *Land* authorities (*Innenminesterium* or *Innensenatoren)*. There is no possibility of appealing decisions by the commission or *Land* authorities. None of the *Härtefall* regulations include specific regulations for deciding cases, but typically, linguistic, economic, cultural and social integration into German society is a dominant consideration for the commissions. Successful education, long-term employment, intensive social contacts and a well-developed knowledge of German society resulting from these are regularly mentioned. Many cases regard children who have been born and/or raised in Germany and are in the final stages of their schooling, and their parents. Article 23a excludes those who have committed substantial criminal acts from accessing the commissions, although there is no common interpretation of what counts as substantial here. Most states also exclude those who have been given deportation orders on the basis of public order considerations, and those suspected of terrorist attacks or seen as a security threat. Some

[79] John Ware and Dave Macauley (2003, November 13) "Deport Dad loses fight." Herald Express (Torquay). Retrieved from http://www.lexisnexis.com
[80] John Ware (2004, February 17) "Bedri told he can return." Herald Express (Torquay). Retrieved from http://www.lexisnexis.com

Land authorities also exclude those who bring forward only asylum grounds, those who have mostly relied on public support for their subsistence even though they had access to the labour market, those expected to not be able to support themselves or cover their health costs in future, those without fixed abode, and a range of other categories.

The precise composition of these commissions is left to the *Länder*, but usually includes around 7 to 10 members from civil society organisations, business societies, churches, refugee organisations and sometimes doctors or other independent persons. The commissions are supported by secretariats made up partly of civil servants "on loan" from *Land* ministries. The number of cases dealt with by these commissions is substantive. In 2010, the commission in Bayern got 204 cases (424 persons), of which it took into consideration 59 (124 persons), leading to 49 *Härtefallersuchen* (112 persons). All requests were accepted by the *Innerministerium*. In the same year, Baden-Württemberg took into consideration 66 cases (142 persons) out of 93 (197) suggested, requested for 34 cases (74) of which 30 (67) were accepted. In 2009, Niedersachsen had 141 cases suggested to it, considered 111, requested for 27, of which 15 were accepted by the *Innerministerium*. The system has occasionally led to clashes between the federal government and the local state government, especially since the law does not specify whether someone can be deported while her case is being considered by the commission. While this unwritten rule is usually respected (and in some cases explicitly mentioned in the *Länderverordnung*), such a situation has occasionally led to a judicial conflict (ACVZ 2011: 55-59).[81]

Due to the growing responsibilities that local governments have when it comes to the detection, arrest, and pre-removal detention of those targeted for deportation, local political action can also take more forceful and controversial forms. In some cases, local governments have actively sought to frustrate deportation proceedings against residents, most commonly by ordering municipal police to ignore national instructions to arrest them. In 2011, mayor Bert Bouwmeester of the Dutch municipality of Coevoorden ordered the police not to assist in the expulsion of the Qadiri familty to Afghanistan, after the municipal council had unanimously come out against the deportation. The two parents and their children Dawud (11) and Amina (9) had been living in the Netherlands for 10 years, and Bouwmeester echoed the argument from the Sahar case claiming that the children were too westernised to be sent back to Afghanistan, [82] and that "you cannot plant western children in a country where they do not

[81] Beschluss des Oberverwaltungsgericht für das Land Nordrhein Westfalen, 19 april 2011, 18 B 422/11, 8 L 180/11 Münster

[82] "Verzet tegen uitzetting gezin Qadiri" (2011, July 21) Nederlands Dagblad. Retrieved from http://www.lexisnexis.com

belong".[83] The mayor was supported by local residents of Aalden who emphasised how "well integrated" the children were, that they did well in school and that Dawud was a gifted football player who was even on the radar of football scouts.[84] [85] In another incident in 2012, mayor Els Boot van Giessenlanden ordered police not to cooperate with the deportation of Afghan Rafiq Naibzay on the grounds that he was suspected of war crimes. A main argument made by the mayor was that Naibzay's family and psychologically-instable wife need him and that war crimes can only be a ground for expulsion when due criminal law process is followed. But she also pointed out that his family had resided in the Netherlands for 15 years.[86]

Such action brings local authorities into direct conflict with national authorities which can accuse them of overstepping their authority. Indeed, Boot's actions were criticised by several other mayors who accused her of wanting to "sit on the minister's chair". In both cases, the mayors relied on the legal framework which allows them to overrule national instructions in order to protect public order. By invoking the argument that an individual or family's deportation would disrupt public order by risking protests from the local community, the mayors thus claimed to remain within their legal competence. Both Boot and Bouwmeester pushed the argument on public order disruption based on the active involvement of local residents and pupils of the school the children attend, which had already organised several protest actions. After these clashes, a collective of 40 mayors sent a *brandbrief* to minister Leers asserting their authority to order police not to cooperate with a deportation when this could disrupt public order.[87] Asked in an interview if she was not overstepping her authority, mayor Boot replied: "I am not getting involved in the authority of the minister or his decision. What I am getting involved with are the consequences of this decision. That affects me, that is about my municipality, about my residents."[88]

---

[83] Anneke Stoffelen (2011, July 22) "Heel Aalden strijdt voor de Qadiri's: Asielzoekers Gemeenteraad Coevoordern is unaniem tegen uitzetting gezin Qadiri." De Volkskrant. Retrieved from http://www.lexisnexis.com

[84] Bouwmeester: "Do you see that girl (Amina 9yo) going to school in full cover clothing in Afghanistan? If she can go to school – most girls there don't." "Burgemeester wist van illegale actie asielzoekers" (2011, July 22) NRC Handelsblad. Retrieved from http://www.lexisnexis.com

[85] Danielle Pinedo (2011, July 25) "Uitzetting zou het dorp ontwrichten; zegt de burgemeester." NRC Next. Retrieved from http://www.lexisnexis.com Article also suggests that Leers may be too insensitive to emotions of the local population, and implies a village in which people are well integrated will be more affected by a deportation than large cities.

[86] "Burgemeester moet uitzetting Naibzay gewoon accepteren" (2012, April 6) Reformatorisch Dagblad. Retrieved from http://www.lexisnexis.com

[87] "Burgemeester in verzet tegen asielbeleid van Leers" (2012, April 3) NRC Next. Retrieved from http://www.lexisnexis.com

[88] Marjolijn de Cocq (2012, March 27) "Wie zegt dat hij een misdadiger is?" Dagblad van het Noorden. Retrieved from http://www.lexisnexis.com

Instigating deportations

The scope of action of local authorities in the national deportation regime is not limited to either following or contesting and frustrating top-down orders. They can also play a pro-active role in facilitating or instigating the national expulsion of certain local residents. An example of local government playing a facilitative role is when they set up programmes to assist local residents issued with an expulsion order in their voluntary departure. The previously-mentioned rise of the "voluntary return" programmes across Europe as a more palatable (and cheaper) alternative to forced deportation,[89] have provided a space for municipal governments to increase their role. In the Netherlands, for example, municipal governments have on their own initiative set up "local return programmes". The "Perspective" programme was started by Utrecht in 2003, and adopted by 20 other municipalities by 2011, to deal with the specific group of underage failed asylum applicants. By providing support and guidance to this group, these programmes have outperformed national ones in terms of voluntary return rates (40 percent return rather than 20 percent) (Versteegt and Maussen 2012: 51). However, they also sometimes result in requests to reassess the grounds for refusing residence, meaning the local return programmes do not simply take over national decisions but rather reassess these decisions in a local context (Kos et al. 2015: 14-15). While these local return programmes were more effective, there was little political support for continuing or expanding them primarily because of a belief that return programmes should remain under the responsibility of the national government.

Local action becomes more forceful when it instigates deportations aimed at those residents that are seen as undesirable or dangerous by appealing to the national level to instigate deportation or using their policing power to force the national government's hand. Such bottom-up calls for action are most straightforward in the case of people whose presence in the country is already unauthorised. Municipalities that are home to large and often impoverished populations of irregular immigrants have used municipal powers to break up and evacuate illegal camps sending its inhabitants to processing centres from where they are expelled (when they cannot make a successful claim for asylum). The 2002 evacuation of the Sangatte camp in the French town of Calais, which lead to most of its inhabitants being sent to asylum processing

[89] See Chapter 2.

centres, was ordered by Calais' mayor Jacky Henin.[90] In 2014, a similar evacuation of the Calais camps of all 550 inhabitants was ordered by then-mayor Natacha Bourchart.[91]

Evacuating illegal camps is not the only way in which local authorities target specific irregular residents and actively orchestrate their deportation. In 2000, Milan established a special police force, officially to guarantee the safety of passengers on buses and trams, but its focus later shifted to actions to "stop and identify" irregular immigrants on the city's public transport. These operations have become so streamlined that they involve a separate "jail bus" (which looks exactly like a normal public transport bus but with metal grates so that people cannot escape) on which people are placed if they could not present proper documentation. This bus then takes them to the police station to be identified and possibly expelled from the country.[92] It should be noted that such pro-active local behaviour to promote deportations seems to take place mostly against a background of relatively lax attitudes or ineffectiveness of national authorities. Most of these examples found in the media sample were from Italy and France, which had the third and fifth largest gaps between the number of expulsion orders issued and those effectively enforced within the EU in 2008-2017.[93]

The specific targeting of criminal offenders or others within the irregular population who are considered to pose a nuisance to the local community frequently originates at the local level. Several studies (e.g. Johnson 2002; Leerkes et al. 2012) have found, on the basis of an analysis of police apprehension data, that there is a strong tendency of in-country migration policing to focus on "criminal" and "deviant" unauthorised migrants, partly because local officers were influenced by police culture in which "real police work is crime work" and partly because such prioritisations were encouraged by local governments. In Dutch police lingo, for example, a distinction is made between the *kale illegaal* (literally: "bald illegal"), meaning those for whom illegal residence is the only reason for police attention, and the *overlastgevende* or *criminele illegaal* ("nuisance-causing" or "criminal illegal") that local police have traditionally focused on. As such, Leerkes et al. argue that irregular populations are not as homogeneous in their vulnerability as is often supposed in discussions on the topic. Rather than being a more or less undifferentiated group at the bottom of the social hierarchy, there are significant stratifications within such populations (2012: 450). Specifically, based on research in Amsterdam and Rotterdam, these authors identify those irregular residents suspected of crime, those whose

[90] « L'avenir incertain des clandestins de Calais » (2002, November 15) Le Parisien. Retrieved from http://www.lexisnexis.com
[91] Jean-Baptiste Isaac (2014, May 22) « Calais saturé par les migrants; Les trois principaux camps, où vivent 550 personnes, vont être démantelés. » Le Figaro. Retrieved from http://www.lexisnexis.com
[92] Retrieved from http://www1.adnkronos.com/AKI/English/Security/?id=3.0.3828950771
[93] See Chapter 2.

residence is connected to nuisance (usually due to overcrowded housing or homelessness), or when there is concern about contagious diseases (such as HIV or tuberculosis) as those most likely to be targeted by local police tasked with immigration enforcement.

Locally-instigated deportation efforts occasionally take the shape of public appeals by local leaders to the national level. Often these are directed at those with criminal convictions, particularly repeat offenders that are considered "incorrigible". In 1998, Munich mayor Christian Ude (SPD) publicly called for the deportation of 14-year-old Mehmet, the German-born son of Turkish parents who had been in the country for 30 years. A serial offender from a young age, these locally instigated expulsion efforts came after Mehmet was convicted of his 61st offense. Ude acknowledged that normally when someone is born in Germany they should be considered a native and that Mehmet would be returned to a country that was foreign to him, but that he was obviously "also not well integrated here. All attempts at prevention, education and improvement of his behaviour have failed, as is evident from this hopeless case, and expulsion is the ultimate resort. (…) Mehmet's parents have not learned German in 30 years and (…) have a house in Turkey. (…) Had the family attempted to integrate, we would not have this problem at all." Ude also insisted that he had an obligation towards the security of other residents and referred to the preventive effect this action would have on "many others". He acknowledged that the state has a similar responsibility towards German children and those born in Germany to foreign parents, but that with the latter it simply had an instrument that could not be applied to those with German citizenship—and that this was therefore not unequal treatment since it was lawful.[94] Following the incident, the Bavarian state government submitted a legislative initiative which would make it easier for young offenders without a German passport to be deported together with their parents.[95]

In a somewhat similar case, in 2009 Ahmed Marcouch, leader of the district council of Slotervaart, a borough of Amsterdam publicly called for the expulsion of two brothers (21 and 22) of Moroccan origin who had grown up and lived there for 15 years. They had been convicted of between 30 and 40 criminal offenses, mostly violence and burglaries, and were thought to be part of a street gang. Based on the fact that the two had let their residence permits expire, Marcouch argued that their "serious crimes" were a "great nuisance" to the area and that immigration authorities should declare them "undesirable aliens" and instigate deportation proceedings. He was supported by the centre-right CDA and VVD factions in the council, but

[94] "Jugendkriminalitat, 'Risiko reduziert'" (1998, August 3) Der Spiegel. Retrieved from http://www.spiegel.de/spiegel/print/d-7955943.html
[95] "Bayern fordert Sippenhaft; Fall "Mehmet" Anlass zu Bundesratsvorstoss" (1998, July 8) taz, die tageszeitung. Retrieved from http://www.lexisnexis.com

heavily opposed by his coalition partner GroenLinks (GreenLeft), who criticised what it saw as the unjustified treatment of those with and without citizenship when it came to punishing criminality. Marcouch's own Labour party (PvdA) was divided on the issue, although PvdA-mayor Job Cohen and the party's whole faction supported him at the city level.[96] While deportation proceedings against the two were eventually started following Marcouch's request, at least one of the brothers eventually got his residence permit renewed after he appealed the decision.[97]

Such bottom-up calls for issuing expulsion orders can also have a more formal character. While the decision to expel someone from the national territory always lies with national authorities, municipal governments in some European countries can directly request that these authorities issue an expulsion order against one of their residents when they have been found to lack a valid resident permit or have breached the condition of their permit. In France and Italy, two countries with a prefecture system, municipal governments can request the prefect to issue expulsion orders against undesirable residents. The targets of such local actions are again often those convicted or suspected of crimes. In April 2015, UMP mayor of the French city of Orléans, Serge Grouard, requested the prefect to expel from the national territory the suspect of an attempted rape of a young woman a day after the incident. This decision was criticised by Socialist opposition leader Corinne Leveleux-Teixeira, who urged the mayor to wait at least until the criminal procedure had been completed.[98]

While some such cases involve violent crime, it is interesting to note that local involvement in criminal expulsions seem directed particularly at what criminologists have called "public order offenses", a type of crime that is often called "victimless" since it does not have clear discernible individual victims, but instead is seen to "victimise" the entire community by offending against its norms and social values, interfering with the proper functioning of society (Siegel 2007). More specifically, the type of public order crimes that prompt local expulsion efforts are those that take place in the public space, such as using and dealing illegal drugs, prostitution, vagrancy and begging. In Italy, for example, the "fight against prostitution" that several municipalities have declared themselves to be engaged in has regularly involved requesting the expulsion of those arrested on this basis. Vincenzo de Luca, mayor of the southern coastal city of Salerno, requested the prefect to expel eleven prostitutes arrested by the municipal police during a

[96] Addie Schulte (2009, April 23) "Uitzetten broers splijt stadspolitiek; Grote woorden warden gebruikt, de emoties laaiden hoog op." Het Parool. Retrieved from http://www.lexisnexis.com
[97] Addie Schulte (2009, April 23) "Broer toch niet uitgezet." Het Parool. Retrieved from http://www.parool.nl/amsterdam/broer-toch-niet-uitgezet~a238783/
[98] « Le maire demande l'expulsion du suspect » (2015, April 21) La République du Centre. Retrieved from http://www.lexisnexis.com

control operation he had orchestrated in 2007. He declared that "despite a tolerant approach on the national level, [prostitution] offends the dignity of the people, (…) and creates significant problems in terms of security, public order and decorum".[99] Italian cities have also invoked public security grounds in order to call for the expulsion of EU citizens arrested for prostitution, as the mayoral office of Rome did with a Romanian sex worker in 2009.[100]

Under mayor Flavio Tosi, municipal efforts in Verona to expel unwanted residents were mostly targeted at those involved in begging. In one example, the expulsion of a homeless Romanian woman was requested after she received her 61st sanction for begging in the historic town centre in 2011 and was followed by an order in 2012. After her deportation, however, the woman returned, leading Tosi to demand a new expulsion order while publicly blaming the national government for not issuing a re-entry ban (even though this would have been forbidden under EU law in this case since the woman was an EU national).[101] Earlier in 2010, after having requested the expulsion of a few dozen people of Roma ethnicity (mostly EU nationals), Tosi justified his actions declaring: "They're always the same people, arrested by the police on multiple occasions, begging professionals who live by their wits, with no intention whatsoever to integrate into our community."[102] On another occasion, he stated furthermore that his expulsion policy was a "response to the requests of citizens, (…) to start with those from the Romanian community."[103] When the mayors of Padova and Treviso followed his example, Tosi welcomed them "to the club". The Verona example also shows the limited effectiveness of such locally-instigated deportation efforts. In an interview, Tosi described his difficulties with two Romanian nationals of Roma ethnicity which were stopped by municipal police 119 and 128 times respectively in the space of a year and a half. After they were served with expulsion orders, they went to Bucharest to get a stamp from the Italian embassy as proof of return, only to immediately travel back to Italy. While this cannot be prevented under EU law, Tosi swore to request new expulsion orders immediately in such cases.[104] The Verona example shows that such locally-instigated deportations can amount to significant numbers. Under mayor Tosi, the

[99] "Prostituzione: Sindaco Salerno, via le lucciole dalla città" (2007, November 28) ANSA. Retrieved from http://www.lexisnexis.com
[100] "Prostituzione: Romena rimpatriata, è la prima volta a Roma" (2009, May 7) ANSA. Retrieved from http://www.lexisnexis.com
[101] "Accattonaggio: giunta Verona chiede allontanamento romena; A suo carico 61 sanzioni, già allontanata era rientrata Italia" (2013, August 9) ANSA. Retrieved from http://www.lexisnexis.com
[102] "Nomadi: Tosi, chiesto allontanamento da Veronca decine di Rom" (2010, August 31) ANSA. Retrieved from http://www.lexisnexis.com
[103] "Rom: Tosi, espulsione di chi delinque è risposta a cittadini" (2010, September 22) ANSA. Retrieved from http://www.lexisnexis.com
[104] "Accattonaggio: Tosi a sindaci veneti, benvenuti nel club" (2014, March 18) ANSA. Retrieved from http://www.lexisnexis.com

municipal office sent 516 expulsion requests to the prefect between 2010 and the summer of 2013, resulting in 207 issued expulsion orders (only 42 of which were effectively enforced).[105]

It is worth noting that people of Roma origin living in camps and caravans serve as a particular target for locally-instigated deportations in both the French and Italian examples identified, often through a particular connection to the sort of nuisance crimes (like begging and prostitution) that have elicited expulsion enthusiasm in these contexts. In France, mayors of different political stripes in Evry,[106] Aulnay-sous-Bois,[107] Chelles,[108] Taverny[109] (all suburban towns in the Paris region) and Nantes[110] have used their evacuation powers to get rid of illegal Roma camps, handing their inhabitants over to immigration authorities. Mayor Jean-Paul Planchou of Chelles declared in 2006 that the "removal of these groups [Roma] from the community is the most opportune solution". But the targeting of Roma camps in expulsion efforts is not limited to illegal camps. In 2008, mayor Gianni Allemanno of Rome ordered police to undertake a "blitz" in the nomadic camp in Settecamini on the periphery of Rome in which 50 foreigners without documents were found. These were brought to the detention centre in Ponte Galeria to await their expulsion procedure. The action was justified by reference to a supposed prostitution racket exploiting minors. The mayor argued that, even though the camp is itself legal, this showed that also in such camps "areas of illegality and severe criminality" persist. Against the suggestion that such actions and comments might instigate vigilante justice, Alemanno countered that strong and decisive action in the face of the insecurity "emergency" was needed precisely to counter this risk.[111]

Influencing deportation policy

While previous examples have all focused on local involvement in particular deportation cases, conflict between the local and national levels sometimes focuses on deportation policy more

[105] "Sicurezza: Tosi, sanzione per cho non ottempera allontanamento; lettera sindaco a ministry, possibili anche per cittadini UE" (2013, July 5) ANSA. Retrieved from http://www.lexisnexis.com
[106] Peter Allen (2012, august 28) "French rout gipsy camp in migrant crackdown." Daily Mail (London). Retrieved from http://www.lexisnexis.com
[107] « On prétend gérer localement un problème présenté comme insoluble » (2014, May 26) La Gazette des Communes, des Departements, des Regions. Retrieved from http://www.lexisnexis.com
[108] Grégory Plesse (2013, June 20) « Une semaine de sursis pour les Roms. » Le Parisien. Retrieved from http://www.lexisnexis.com
[109] Carole Sterlé (2002, September 13) « Les gens du voyage réclament une aire d'accueil. » Le Parisien. Retrieved from http://www.lexisnexis.com
[110] Nicolas de la Casinière (2010, November 10) « Intégration Les Roms de la discorde. » L'Express. Retrieved from http://www.lexisnexis.com
[111] "Sicurezza: Roma, blits in campo rom, si giro vite norme" (2008, May 15) ANSA. Retrieved from http://www.lexisnexis.com

generally. Rather than contesting, frustrating or instigating the expulsion of particular individuals or families, local governments in such cases generally oppose national deportation policy as either too lenient or too harsh. In the latter case, lobbying to change these laws can be accompanied by actions to frustrate national policy, either in the form of blanket non-cooperation or by shielding specific groups from national deportation efforts.

While examples of blanket opposition to and non-cooperation with national deportation policy are more common in the United States, there have been such cases in Europe too. For example, in 2003 the four largest Dutch cities as well as all municipalities in the three northern provinces of Friesland, Groningen and Drenthe categorically refused to cooperate with the new immigration minister Rita Verdonk's strict deportation policy.[112] More often, however, municipal non-cooperation is limited to specific groups of residents that are seen as deserving to stay, which is commonly accompanied by a criticism of specific practices and an appeal to change the national law. For example, the municipal councils of the Dutch towns of Dongen and Amersfoort both objected to the practice of deporting those who had resided in the country for over five years in 2004 and 2006 respectively. In Amersfoort, the council formally asked the mayor to stop cooperating with the deportation of people who had resided in the Netherlands for over five years.[113] The council of Dongen unanimously supported a letter sent by mayor van Brummen to minister Verdonk indicating his refusal to cooperate with the deportation of five families who had lived in the Netherlands for over five years.[114] There can also be specific groups of residents whom the local community feels obliged to protect on the basis of historical ties. In the UK, Warwickshire County Council passed a motion to give the automatic right to stay and protection against deportation to Gurkhas, ethnic Nepalis of Indian nationality who had been recruited for the British army. The county has had strong links with the Gurkhas for decades, with more than 200 Gurkha officers and soldiers currently based at Gamrock Barracks, Bramcote, near Nuneaton.[115]

In several cases, various municipal governments have joined forces in order to make a concerted appeal to the national government to change its policies. Faced with a hardening of the use of public power to deport unwanted Roma to Romania when Sarkozy was France's

---

[112] "Noordelijke gemeenten weigeren uitzetting" (2003, December 13) Trouw. Retrieved from http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1762756/2003/12/13/Noordelijke-gemeenten-weigeren-uitzetting.dhtml

[113] "Amersfoort moet niet meewerken aan uitzetting" (2006, December 12) Amersfoortse Courant. Retrieved from http://www.lexisnexis.com

[114] Mariette Mulkens (2004, February 7) "Dongen in acite in Den Haag; Tegen uitzetting asielzoekers." BN/De Stem. Retrieved from http://www.lexisnexis.com

[115] Sian Powell (2008, March 22) "Gurkha petition gathers force." Coventry Evening Telegraph. Retrieved from http://www.lexisnexis.com

interior minister in 2002, the municipalities of Achères, Bezons, Eragny (Val-d'Oise), l'Ile-Saint-Denis, Lieusaint (Seine-et-Marne) and Nanterre (Hauts-de-Seine) organised a press conference on October 25th 2002 in which they expressed their worries and perplexity with the minister's actions.[116] Another example is the active role that municipalities in the Netherlands played in 2012 in the adoption of the so-called *Kinderpardon* (children's amnesty) for those children who had been in the country for over eight years. The law was the result of an initiative supported by 105 of the Netherlands' 415 municipalities,[117] and came after the refusal of subnational governments to cooperate with the expulsion of "rooted" children. For example, the provincial council of Noord-Holland passed a motion in 2011 opposing the deportation of children who had come to the Netherlands before the age of 11 and had been in the country for over eight years.[118] In 2014, two years after the Kinderpardon was signed into law, over 300 (and more than three quarters of all) mayors signed a petition to extend the amnesty to children who had not been registered in the national database (a condition for the pardon) but had for such a period been registered with the municipal administration, for example by being enrolled in school.[119]

Local non-cooperation with general deportation policy can also take the form of passing laws or ordinances by subnational legislatures to protect residents from the reach of the state's deportation regime by ordering those municipal institutions which have been drawn into the national deportation regime, such as schools and hospitals, to refrain from passing on information to immigration authorities and police. In response to the German *Übermittlungspflight* law, the state of North Rhine-Westphalia issued an ordinance that made elementary and high schools exempt from this law in order to protect school-going children from being targeted in these environments. Other *Länder* including Berlin, Hamburg and Hessen later followed its example, and some expanded the exemption to hospitals and doctors (Lebuhn 2013: 44-45). Eventually, the federal coalition government of CDU/CSU and FDP adopted a law in 2011 that made this exemption nation-wide, echoing these states' argument that children and

[116] Bissuel Bertrand (2002, November 28) "Les municipalités confrontées à la réapparition des bidonvilles." Le Monde. Retrieved from http://www.lexisnexis.com
[117] Rob Pietersen (2012, February 25) "Lokale overheden steunen kinderpardon." Trouw. Retrieved from http://www.trouw.nl/tr/nl/4500/Politiek/article/detail/3202172/2012/02/25/Lokale-overheden-steunen-kinderpardon.dhtml
[118] "Ruim kwart gemeenten achter Kinderpardon" (2012, March 2) Binnenlands bestuur. Retrieved from http://www.binnenlandsbestuur.nl/sociaal/nieuws/ruim-kwart-gemeenten-achter-kinderpardon.4305425.lynkx
[119] "Dreikwart ondertekent petitie" (2014, May 16) NOS. Retrieved from http://nos.nl/artikel/648832-driekwart-ondertekent-petitie.html; "Eerlijk Kinderpardon moet" (2014, July 16) De Weekkrant. Retrieved from http://www.lexisnexis.com

young people were not responsible for their irregular presence and that their fundamental right to education should not be compromised.[120]

There is also lobbying of the opposite variety, when local governments criticise the national level for failing to deport enough people. In 2007, shortly after Romania joined the EU, the centre-left mayor of Rome Walter Veltroni was one of the driving forces behind the eventual adoption of a degree to facilitate the expulsion of EU nationals from Italy on public security grounds, a decree which was aimed principally at the many Romanians of Roma ethnicity who clustered around big cities like Rome. Veltroni originally made this request after a local uproar around the murder of a 47-year old woman of which a young Romanian of Roma origin was suspected. Veltroni stated: "We have the moral and political obligation to guarantee the security of our inhabitants. We must regulate immigration flows, integrate those who respect our laws but also punish and expel those who commit offenses and violate life's and society's rules".[121] In 2008, the newly elected Rome mayor Gianni Alemanno requested the prefect and interior ministry to consistently expel and deport criminal foreigners, announcing his own administration's objective to deport 20,000 foreigners who had been in touch with justice and evacuate 85 nomad camps with links to criminal activity.[122]

Explaining national-local conflict

What explains such instances of conflict between local and national governments over individual deportations and deportation policy? Two main explanations have been suggested in the literature, and this chapter will argue—based on the survey of conflicts—that neither sufficiently captures the local-national dynamics in such cases.

The first and perhaps most obvious explanation focuses on the observation that party politics and ideological conflicts occasionally play out between different levels of government. In any multilevel system of democracy where different levels of representative government are elected in separate elections, different parties will inevitably be in power on different levels, also because of the different political leanings of the population in different areas of a country. Guiraudon and Lahav point out that locally-elected officials facing pressure from local far right

[120] Retrieved from http://www.migazin.de/2011/07/28/ubermittlungspflicht-fur-bildungseinrichtungen-aufgehoben/
[121] Françoise Michel (2007, November 4) "Rome fait appel à la "compréhension" de Bucarest, hausse des expulsions." Agence France Presse. Bertrand (2002, November 28) "Les municipalités confrontées à la réapparition des bidonvilles." Le Monde. Retrieved from http://www.lexisnexis.com
[122] « Le nouveau maire de Rome veut armer la police municipal » (2008, April 30) Agence France Presse. Retrieved from http://www.lexisnexis.com

parties sometimes "seek to attract attention to receive more funds or gain votes by adopting exceptionally harsh measures against immigrants" (2000: 81).[123] Conversely, when right-wing or conservative governments are in power nationally, left-leaning local politicians may refuse to cooperate with a hardening of deportation policy on ideological grounds. In a study of the passing of municipal ordinances relating to the rights and treatment of the undocumented population in different US counties, Ramakrishnan and Wong found that the proportion of voters registered as Republicans or Democrats in the county was one of the strongest explanatory variables for the passing of restrictionist and "pro-immigrant" ordinances (Ramakrishnan and Wong 2010). We can see in the examples in this chapter that partisanship can indeed be a factor. In Germany, for example, where expulsions are carried out by the federated states, those states where the conservative CDU/CSU is in power tend to deport far larger number of those who are expellable than those with left-leaning administrations. In Italy, both Verona mayor Tosi of the anti-immigration Lega Nord and Rome mayor Alemanno of Berlusconi's PdL party zealously pursued higher expulsion rates shortly after being voted into office, while Romano Prodi's centre-left government was in power nationally. However, local-national conflict over deportation also frequently arises when such party political or ideological opposition does not seem to apply. In the Netherlands, the frequent clashes of immigration minister Verdonk (of the conservative liberal VVD) and her successor Leers (of the Christian-democratic CDA) with mayors and local councils often pitted them against members of their own parties. The petition for a more generous application of the *Kinderpardon* to include those children registered locally but not nationally was signed by 66 of 111 VVD mayors, putting them in direct opposition to the VVD-led national government which refused to change the law. When the municipal council of Frankenburg contested the Zogajs' deportation, even the local chapter of the anti-immigrant FPÖ voted in favour of the motion. So, party political and ideological opposition cannot account for the whole story.

Another explanation focuses instead on the visibility and consequences of policy outcomes in the local environment. While the national and EU levels establish the formal deportation regime, it is local communities which shoulder the bulk of their concrete consequences. In the case of residents that are perceived as a nuisance or a threat, they can feel burdened by the failure of the national enforcement of removal policies. Indeed, Guiraudon and Lahav (2000: 181-182) already noted that local leaders often underline that because they shoulder the burden of receiving and integrating newcomers, they should be able to decide who comes and to intercede if the national government is unable to control borders. Conversely, at the local level, people

[123] Guiraudon and Lahav made their remarks at a time when the electoral success of far-right anti-immigration was largely limited to the municipal level. This is of course no longer the case.

have a closer view of the human costs of the implementation of the deportation regime, which can lead to a conflict between support for abstract norms of deportation and resistance to individual deportations. As Matthew Gibney writes: "Deportation is a 'cruel' power, one that sometimes seems incompatible with the modern liberal state based on respect for human rights" (2008: 147). Antje Ellerman has argued that once policies move from legislation to the stage of implementation, "public attention shifts from the purported benefits of migration control to its high human costs" (2006: 294), and that many of those targeted for expulsion "do not fit the criminalising images conjured up by national debates surrounding policy reform" (Gravelle et al. 2013: 61). The involvement of municipal governments, and especially mayors, is then explained by the fact that they are far more accessible and susceptible to local grassroots activism and therefore more likely to oppose national or regional level deportation orders (Ellermann 2009: 17-18), especially where these are taken by bureaucratic agencies that are mostly immune from such grassroots activism.

While there is much truth to this account, in focusing too much on the humanitarian arguments used by local anti-deportation campaigns it seems to miss an important factor explaining not only why but *when* local communities are prompted to intervene in individual cases. This is the fact that national and local understandings of civic membership and belonging are unlikely to always converge, partly because local and national communities are fundamentally different by nature. Against the more abstract notion of an "imagined community" (Anderson 1991) that comprises the national polity, the local political community is where many important things happen that actually "affect [citizens'] lives, their social positions and their future" (Penninx et al. 2004: 6). While it goes too far to say that local level policies have *more* impact on, or more important consequences for, people's lives than national laws and policies, they are often felt more acutely on a daily basis. Non-citizen residents' day-to-day involvement in economic life, religious, educational and political institutions and neighbourhood activities can generate solidarity. In such a context even irregular residents can come to be perceived by the local community to be part of "the public that the locality is pledged to protect" (Wells 2004: 1314-1315). While an analysis of the cases in this chapter shows that human rights arguments are sometimes invoked (for example with reference to the dangers of persecution or violence someone would face upon return, the breaking up of family unity, or an illness which cannot be properly treated in the country of destination), these remain far less common than arguments about belonging, which are dominant in almost all instances of local oppositions to deportation identified in this chapter. Indeed, in only one case identified in the media sample were humanitarian considerations dominant: mayor Boot's main reason for non-cooperation with the deportation of Rafiq Naibzay was the harm his deportation would cause to his suicidal wife.

Even here, though, the argument that the deportation of the individual concerned would cause harm was not about his suffering, but rather about that of his wife and children who would stay behind, and who were considered legitimate members of the community. Correspondingly, in calling for the deportation of particular public nuisance or criminal offenders, mayors and councillors consistently point to the "otherness" of those they wish to expel by contextualising criminal behaviour as part of a larger refusal to integrate into the local community. Criminal behaviour thus becomes a "confirmation of difference" (Barker 2013: 249).

Therefore, diverging conceptions of belonging and membership may lie at the root of local-national conflicts over individual expulsions and deportation policy. As such, these conflicts, which often involve participation by large groups of members as well as the representatives of the local community, go to the heart of citizenship practices and contribute significantly to the autonomous definition of the institution of local citizenship. The following section will explore what the empirical practices and developments described above mean for subnational forms of citizenship in Europe today.

Local citizenship and deportation

What does it mean to speak of local citizenship? A first thing to note should be that, unlike national and European citizenship, local forms of citizenship cannot usually be traced back to a formalised legal status. But a subnational political community nested within a sovereign state can still be a site for (democratic) citizenship when a local demos is specified which elects representatives who can allocate rights and benefits to the population within the local jurisdiction.[124] Moreover, despite this lack of formal status, the local political arena is often precisely where substantive citizenship practices play out, especially when it comes to the social rights dimension of citizenship. As Brubaker (1992) points out: "Formal citizenship is neither sufficient nor a necessary condition for the practice of substantive citizenship".

As a non-formal yet substantive form of citizenship, the status of local citizenship has several features that distinguish it from national citizenship. Where national citizenship is typically allocated to people through birth in the territory or to citizen parents or acquired through naturalisation, local citizenship is typically acquired through residence. Unlike state citizenship, local citizenship is not based on the consent or the circumstances of birth of the individual who is bestowed the status, but is rather an automatic consequence of residence. As such, local

[124] Again, here I consider primarily municipalities, but will sometimes extend the argument to provincial and regional subnational polities.

citizenship is acquired, but also lost, through the act of moving into and out of the local territory. Holding the formal status of national citizenship is not generally a precondition for enjoying local citizenship rights. In contemporary European municipalities, most social rights and entitlements for which the municipal government is responsible are extended to all (legal, and sometimes even irregular) residents no matter what their nationality is. When it comes to the political rights of local citizenship, i.e. the right to vote and stand as a candidate in local elections, it is interesting to note that the traditional norm that holding national citizenship is a precondition for access to the local franchise has been progressively abandoned. While in countries like Germany, France, Austria, Greece and Italy local initiatives or legislative proposals to extend the local franchise have been blocked by constitutional courts or national legislatures, in 12 of the 28 EU member states such rights have been extended to non-national residents.[125]

But what about the non-deportability rights that this thesis has identified as a core feature of national—and, in the case of the EU, supranational—citizenship? When we consider direct expulsion from the local territory as the relevant measure here, the first thing to note is that there is no substantive difference between the status of residents who are national citizens and those residents who are not but who reside in the country in accordance with national immigration law. As we have seen in Chapter 1, subnational polities have lost the right to expel and ban residents from their territory when that power was usurped by the national sovereign and became a core feature of national sovereignty. As a result, neither citizens nor legally resident non-citizens can be expelled beyond the city walls as in pre-modern times,[126] since internal freedom of movement has come to be seen as a fundamental human right which applies to national and non-national residents alike.[127] We can arguably see some residual practices of local expulsion power in the use of spatial exclusion tools as part of public order policing, but this also applies to nationals and non-nationals in the same way. So on the face of it, the non-deportability that has become such a defining feature of national citizenship cannot be a part of the definition of local citizenship in the same way.

This chapter hopes to show, however, that in a more indirect way, local political communities have claimed for themselves significant space for dependent yet autonomous local expulsion regimes through their engagement with the national expulsion regime. The many ways in which local political communities have actively sought to change, challenge and use the national

[125] Moreover, under EU law, EU nationals have local political rights wherever they live in the Union territory, and several countries have nationality-based non-deportability regulations, for example on the basis of reciprocity (Spain and Portugal) or historical ties (the UK).
[126] See Chapter 1.
[127] Article 13(1) of the Universal Declaration of Human Rights states: "*Everyone* has the right to freedom of movement and residence within the borders of *each* state" (emphasis added).

expulsion regime reveal the continuing importance of control over legitimate residence for the local polity. Especially when compared to the complete disappearance of the power to control local borders by filtering those who enter the local territory, the enduring influence of local polities over the shape of expulsion is telling. The autonomy of local expulsion is asserted through inclusion as well as exclusion. The former occurs when local authorities effectively shield certain residents seen as belonging to the local community from the national state's deportation machine, either in individual cases or as a matter of policy for specific groups. Local authorities hereby create a curious situation in which those residents enjoy *de facto* non-deportability but only while they remain within the territory of the local polity: as soon as they move beyond the borders of the locality, they become vulnerable to deportation. Indeed, Bernt Schneider, mayor of Haarlem and head of the Dutch Association of Mayors (*Genootschap van Burgemeesters*), has expressed his concern about the "danger" that those who enjoy *de facto* protection from deportation in their own municipality might not be aware that if they go shopping in a neighbouring town they become essentially "outlaws" (*vogelvrij*).[128] But local autonomy is also asserted when local authorities target those seen as transgressing the norms of the local community in locally-instigated national deportations, and thereby similarly engage in asserting local boundaries. What has changed compared to historical local expulsion is that local polities are now largely confined to exploiting national deportation regimes to expel undesirables, and the local power to deport is thus limited to those without national citizenship status, which transfers the national inequality between citizen and non-citizen transgressors to the local level. Of course, those that the local polity cannot get rid of in this way because they have national citizenship or because the national state is not willing to issue an expulsion order or enforce it can still be excluded through spatial exclusion measures, but this is a far more limited tool.[129]

What image of the local community of belonging emerges from the examples of local expulsion politics described above? While the precise conception of local belonging will vary between different communities, we can identify some common themes. From the sample of instances

[128] "Illegaal die niet wordt uitgezet, is vogelvrij" (2012, April 4) Haarlems Dagblad. Retrieved from http://www.lexisnexis.com

[129][129] This is not to deny that there is a noteworthy overlap between the use of local exclusion ordinances and local authorities instigating national expulsions, as both instruments are frequently used as a way to combat (petty) crime, begging and homelessness, and in that both instruments are usually administrative rather than criminal measures (Vols and Duran 2014; Schuilenburg 2015). There are also, however, important differences. Local exclusion ordinances tend to be mostly limited geographically to neighbourhoods or even single streets (or a particular radius around a certain landmark) as well as limited in time (usually measured in weeks or months) and tend to be punishable only with fines and not with arrest, detention and physical removal. Moreover, they are often aimed at protecting individuals against harassers or vulnerable categories such as children against sex offenders, rather than the long-term expulsion of the person concerned from a membership group or entire jurisdiction.

discussed in this chapter, four main indicators emerge: length and type of residence, age of arrival, contribution to society and community life, and level of integration in the society. Regarding duration of residence, in virtually all cases of local opposition to deportations identified, local leaders justified their actions by emphasising the length of residence of the person or family involved. The shortest length of residence which prompted local action in a deportation case was that of Arigona Zogaj, who had been in Austria for five years, and the longest was that of Aissa Bouraya (40 years). In the Dutch sample, the average length of residence in locally-opposed deportation efforts identified was just over 11 years. But residence itself is less objective a measure than it might seem. Given the importance of residence for local citizenship rights, compared to national citizenship which can be retained by non-residents and withheld from residents, the emphasis on stable and non-segregated residence becomes critical. The persistent targeting of Roma or destitute asylum seekers living in caravans and camps in countries such as France and Italy, often on the fringes of urban or suburban areas where they live separately from ostensibly more settled communities but close enough to cause disturbance and annoyance, seems connected to the notion that, regardless of the duration of their presence, they cannot be seen as proper residents. In the case of Roma, their supposed nomadic lifestyle, even when this nomadism is often partly a result of their continuous expulsion from illegally-occupied land, risks becoming part of a racialised stereotype that prevents their inclusion in the community by definition.

Secondly, a majority of cases involved people who were either born in the country or had moved there as young children, and the normative arguments used in such cases emphasised the fact that such children had not simply spent a significant amount of time in the country, but more importantly a substantial part of their formative childhood years. In cases involving children it is also often stressed that they are innocent and not to blame for their parents' choices to enter or remain in the country illegally or to repeatedly appeal rejections of asylum claims, and that therefore they should not be punished by being deported.

A third factor of relevance in local expulsion action is behaviour. On the one hand, local action in favour of residents' right to stay often seems to favour those who are seen as contributing to the society of which they are a part. Those who can count on the support of local communities and authorities tend to be families with school-going children, members of sports clubs and other leisure activity associations, and those in employment, specifically when such employment is visible to others, such as shop owners or factory workers. While this is partly because such engagements increase the number of people that know the would-be deportees personally and therefore the likelihood that they can elicit sympathy and support from community members, there is also a sense in which such activity is constructed as part of an ideal of active citizenship.

This assumption is strengthened by the fact that those who are perceived locally as deserving relief from expulsion are frequently framed as assets to that community. Thus, testimonies are often given that such individuals are "model citizens", who are economically active and therefore contributing to the tax base, are engaged in voluntary work, or excel at particular sports or other skills. In the case of children, it is routinely pointed out how well they do in school and sometimes that they go to elite schools (with the implication that this makes them likely to be economically successful later in life). While such arguments are seemingly invoked to counter the more abstract national political narratives that frame migrants or foreigners as fortune-seeking welfare scroungers, they also imply that those who cannot or do not contribute in the same way are less deserving of membership and continued residence. On the other hand, behaviour that transgresses the criminal or social norms of the community is typically framed as a "confirmation of difference" (Barker 2013: 249). In calling for the deportation of particular criminal offenders or people whose behaviour otherwise offends the norms or values of the community, mayors and councillors consistently point at the "otherness" of those they wish to expel by contextualising criminal behaviour as part of a larger refusal to integrate into the local community. This can of course contradict the other factors. Thus, length of residence or childhood do not seem in themselves guarantees that someone is included in the community of belonging. Some examples of locally-instigated deportations involved children or families with young children who had lived most or all of their lives in the country, such as in Mehmet's deportation which was sought by Munich city hall or the two Moroccan brothers whom Slotervaart had sought to expel.

A final dominant theme that appears in many of the examples that overlaps to some degree with this behavioural theme concerns the notion of social and cultural integration in the society of residence. One dimension of this involves the sort of social ties that people establish with family, friends, neighbours, colleagues, classmates and sports teammates in the place where they live. The strength of such local ties is generally a direct product of length of residence. But it is the idea that adoption of what are perceived as the dominant cultural norms and values is the marker of true "integration" which has become a prevalent line of argument in more recent years. This cultural integration logic often specifically references a local cultural identity. Opponents of Arigona's deportation frequently alluded to the fact that she spoke the Upper Austrian dialect fluently, [130] and in the case of Mauro it was pointed out that he spoke Dutch

[130] Retrieved from http://www.taz.de/1/archiv/digitaz/artikel/?ressort=sw&dig=2009%2F11%2F16%2Fa0038&cHash=dbd2cdcbb6a6e089f729d99e245b7225

with a strong Limburgish accent.[131] In Sahar's case, it was pointed out that her knowledge of the local Frisian language was much better than her knowledge of any Afghani language. The language in the petition for the *Kinderpardon* that was signed by many representative of local government referred to Mauro as "*Limburgser dan vlaai*" (more Limburgish than *vlaai*, a locally popular sweet pie), and to Sahar as "*Frieser dan de Elfstedentocht*" (more Frisian than the Eleven Cities Tour, a popular skating event).[132] Moreover, cultural integration in the host society is often invoked as a marker of *non*-belonging in the country to which the person involved faces deportation. The argument here is that some people cannot be returned to (especially) non-western countries not because they would be harmed by a dramatic fall in standard of living or the dangers of continuing civil war, but because they have become too "Westernised" to function well in culturally different (and by implication more conservative or backward) contexts. In Sahar's case, the fact that she did not wear a headscarf in the Netherlands and that this would get her into trouble upon return to Afghanistan became one of the main themes of the opposition campaign. Emile Roemer, leader of the Socialist Party openly chastised anti-Islam politician Geert Wilders, who supported Sahar's deportation, for effectively "chasing her into the burqa".[133] This logic essentially presupposed that cultural integration is a zero-sum game, that belonging elsewhere necessarily implies belonging "here" less. By using Sahar's non-wearing of the headscarf as an argument that she belonged in the Netherlands, it was implied that similar girls and women who did wear the headscarf are inevitably closer to being "Afghani" on a scale between being Dutch and Afghani.[134]

How the balance is struck between such different considerations as length of residence, behaviour, social ties, and cultural integration is of course likely to vary strongly between local communities. Sociological differences between different types of local communities may play a role here. The modes of community life and resident interaction differ noticeably between urban, suburban and rural communities. Based on the analysis in this chapter, however, there is no clear-cut urban-rural divide when it comes to how or when local communities intervene. On the one hand, strong interpersonal interactions in smaller towns and villages seem to strengthen the community's willingness to fight for the right to stay of those who have been accepted as members. This might be expected to be weaker in large cities where relative anonymity is more common, although neighbourhoods in such cities sometimes tend to be

[131] "Volledig ingeburgerd moet Mauro terug naar Angola" (2011, October 26) NRC. Retrieved from
[132] Retrieved from https://groenlinks.nl/nieuws/marco-borsato-angela-groothuizen-en-khalid-boulahrouz-willen-kinderpardon
[133] "Roemer: PVV wil Sahar (14) de boerka injagen" (2011, January 22) Algemeen Dagblad. Retrieved from http://www.ad.nl/ad/nl/1012/Nederland/article/detail/1885130/2011/01/22/Roemer-PVV-wil-Sahar-14-de-boerka-injagen.dhtml
[134] http://www.socialevraagstukken.nl/het-kinderpardon-roept-veel-vragen-op/

home to similarly closely-knit communities. On the other hand, familiarity with and tolerance of ethnic, cultural or religious difference generally tends to be stronger in larger cities, which could affect the local authorities' willingness to act. Local communities for whom such difference has been "humanised" because they are in daily close contact with co-residents of different ethnic descent or religious persuasion might be more inclusive than national political representatives driven by electoral concerns that are often driven by abstract fears of "foreigners" and "others". Moreover, those whose cultural or ethnic difference might make it more difficult to integrate in rural communities where this difference stands out more than in neighbourhoods where they are surrounded by others of similar origins, might find they are less vulnerable to deportation in larger cities where immigrant communities tend to cluster. Moreover, immigrant-origin residents living in such communities might easily adopt a local identity and strong attachment to their local community, without integrating into the more culturally-biased national identity. Rainer Bauböck speaks in this regard of the potential of cities to surpass their "nested" positions within nation-states by becoming the basis of transnationalised, cosmopolitan communities which intersect with national political communities (2003: 149). However, we have seen that members of ethnic minorities are not necessarily "safe" from deportation in city neighbourhoods where they are surrounded and politically represented by those of the same group: Ahmed Marcouch, Slotervaart's district leader who sought the expulsion of the two Moroccan brothers, is himself of Moroccan origin.

Conclusion

The very word "citizenship" comes from the concept's close association with the city, the lived experience of community in which the body of citizens was able to know each other, meet, and directly share the same living space. In a sense, while citizenship in the contemporary setting is strongly (and often uniquely) associated with the level of the nation-state, this "lived" experience of citizenship, and the lines it draws between those who belong to that community and those who do not, continues to be most prominently present at the local level. This may be the reason why contestation over the membership implications of citizenship regimes mostly plays out at the local level. Indeed, as we have seen in this chapter, despite having lost the formal power to use expulsion as a way to strengthen local conceptions of belonging, subnational polities continue to claim for themselves significant spheres of autonomy in effecting local expulsion regimes. This chapter has sought to reject two dominant interpretations of local political involvement with national deportation policy and practice—that this is largely a top-down process of outsourcing the dirty work of migration control to local political actors eager to capitalise on anti-foreigner sentiment in their constituencies

(Guiraudon and Lahav 2000), or rather a bottom-up effort of spontaneous public mobilisation based on a humanising discourse which seeks to counter the demonising and generalising public discourse that focuses on the control of unwanted migrants and associated behaviours (Gravelle et al. 2013: 61). While the interference of local communities to challenge the national exclusion of those who are seen as local members of the community is sometimes lauded as offering the prospect of a more cosmopolitan ideal of belonging based on residence, the strength of the cultural integration argument at the local level shows that local efforts to protect non-citizens' right to stay may ultimately be contingent upon the subjectively perceived "integration" of the individuals involved. Together with residence, good behaviour and social ties, cultural integration becomes part of a narrative of belonging through which certain local residents benefit from the local community's role in the deportation regime while others are burdened by it. To what extent the growing influence of local government on deportation regimes is normatively desirable against this background, is a question which will be taken up in Chapter 7. But before that argument can be made, the next two chapters will formulate a normative theory of deportability for the national level.

Part II

The Ethics of Deportation

Chapter 5
Deportability, Domicile and the Human Right to Stay

Introduction

The first and last time Anthony Bryan travelled by plane was when he was eight years old. It was September 1965, and Anthony left Jamaica to join his mother who was working as a seamstress in London. Since then, he has lived continuously in the British capital, having attended primary and secondary school there, working and paying taxes as a painter and decorator, helping to bring up his children and seven grandchildren. In late 2017, now 60 years old and having been in the UK for 52 years, Anthony was suddenly told he was in the country illegally and was facing forced removal. He was sent to an immigration detention centre and a British Airways flight to Kingston, Jamaica was booked for him by Home Office officials.[135] Anthony's case was one of many long-settled, retirement-age UK residents who were being aggressively pursued over their immigration status in what was quickly termed the "Windrush scandal": named thus as many of those targeted were from Caribbean countries who had been born British subjects and who had arrived in the UK before 1973 when British immigration law tightened for those coming from Commonwealth countries. They were termed the Windrush generation after a troop ship which had brought 800 Caribbean migrants across the Atlantic in 1948 and the name has come to symbolise the beginning of modern British multicultural society.

The Windrush episode became a scandal because many of those targeted with orders to leave had arrived in the UK from a Commonwealth country before 1973 and were thus automatically entitled to remain permanently. More generally, though, people were appalled by the British government's treatment of elderly residents who had often spent more than 50 years in the country and many of whom had arrived as children. Even if the abstract idea of strict deportation policies for those without authorisation to be in the country garners widespread support, in the UK and throughout Europe, the idea that people who have spent their entire adult lives can be forced to leave their homes of decades strikes many (perhaps most) as deeply unfair. While this outrage focused here on residents of more than 50 years, a similar logic might find the deportation of those who have spent 40, 30 or 20 years in the place they are forced to move away from problematic. At what point this outrage diminishes as the persons concerned have spent less time, and whether its invocation is unconditional, are less clear. This raises the question: What exactly is morally wrong with deporting long-term residents?

[135] https://www.theguardian.com/uk-news/2017/dec/01/man-detained-threatened-with-removal-after-52-years-in-the-uk. Last accessed August 2018.

There is also broad unease with the idea of deporting long-term residents among normative political theorists. Most of those who have commented on deportation practices subscribe to the idea that residing in a country for a significant period of time, usually somewhere between five and ten years, gives someone a strong moral claim to remain in that country, and many draw from this the conclusion that the (liberal) state simply loses its legitimate immigration enforcement powers against someone after a significant period of continuous residence. The most prominent defence of the right to stay of long-term residents, formulated by Joseph Carens (2010, 2013) and echoed by many others, grounds this claim in the observation that these individuals have become *de facto* members of the society in which they live through the deep social ties they establish through residence. Others have made additional arguments based on the contribution that long-term residents have made to their society of residence through participation in the labour market and by paying taxes and social contributions, the specific harm that deportation is thought to inflict on long-term residents, or a combination of such arguments.

In this chapter, I will argue that each of these accounts suffers from problems of over- and under-inclusion and thus fails to ground the general exemption from deportation for long-term residents they profess to offer. Instead, I suggest a domicile principle of non-deportability which grounds such a moral and legal status in the fact that someone has made the territory in which they reside the centre of their most fundamental life projects. The first half of the chapter explores the limits of current arguments in favour of long-term resident non-deportability. In the first three sections, I outline the attempts to ground long-term resident non-deportability in social membership, contributions and harm-avoidance, respectively, and I argue why each of these fail to convincingly do so as they all suffer from problems of both over- and under-inclusion. The second half of the chapter then turns to the positive account defended here. I draw on the work of theorists such as Margaret Moore and Anna Stilz on the importance of stable territorial residence as a fundamental background condition for human flourishing (fourth section), to propose and develop what I call the domicile principle of non-deportability (fifth section). I argue that such a principle takes seriously the territoriality of the power to deport and the normative considerations behind it in a way that the other arguments cannot. Section six compares the non-deportability rights of domiciled residents with those of citizens and discusses where these rights come apart. In section seven, I discuss and reject the main objections against extending non-deportability to certain non-citizens. In the last section, I investigate whether there should be an exception to the general theory of domicile and citizen non-deportability in cases where public security concerns are in play.

Social membership and its limits

The idea that people gain a strong moral right to remain in their place of habitual residence after having lived there a significant period of time because this makes them members of society has been defended by several political theorists, most prominently Joseph Carens, Ruth Rubio-Marín and Ayelet Shachar. This social membership, Carens argues, implies a "dense network of relationships and associations", and this gives rise to moral claims in relation to the political community, which deepen over time (2013: 158). "The longer people stay in society," Carens writes, "the stronger their moral claims become. After a while they pass a threshold that entitles them to virtually the same legal status as citizens, whether they acquire formal citizenship or not" (2013: 89). Most prominently, this includes an unqualified right to stay, because "what is at stake is a person's ability to maintain and develop a rich and highly particular set of human ties". Rubio-Marín agrees that "membership is first, and above all, a social fact, determined by social factors such as living, working, or raising a family and participating in the social and cultural life or community" (2000: 21). Long-term resident immigrants, for Rubio-Marín, "qualify as societal members (…) because they live and work in a place in which they naturally develop a set of attachments" (2000: 85). Shachar also subscribes to this account when she grounds the right to stay of non-citizen residents in the "social fact of membership" (2009: 165). She elaborates a principle of *jus nexi* or "rootedness" which she sums up as follows: "the longer the stay, the deeper the social connectedness, the stronger the claim for inclusion" (Shachar 2009: 171).

The social membership account thus relies on two ideas. First, that living within a community over time generates social ties there, and, second, that after some period of time a threshold is crossed after which the extent and depth of these ties are sufficiently similar to those of the typical citizen to ground a claim to inclusion. This sociological similarity grounds, in the first instance, a right to remain, and eventually a right to full inclusion on equal footing with citizens. Presence in the territory and time spent there are thus together taken as a proxy to see whether the web of social relationships established through living and working on that territory is likely to have reached a threshold which warrants inclusion in the group for whom the territorial state can be said to be responsible for and responsive to. There is thus a direct link between the right to stay and the right to full inclusion in the citizenry.[136]

[136] A similar account of social "affiliation" grounding a right to stay is defended by Sarah Song (2016), though she argues that to successfully do so it must be supplemented with considerations of "fair play", which I will discuss below as the contributions argument.

Consider the implications of such an argument for two individuals who are long-term residents of the territory of the state. The first is a social recluse who does not interact, or only minimally, with the people with whom she shares her place of residence. She does not establish many (or any) social connections, is not employed, and does not participate in associational life through sports or leisure organisations, volunteering, or going to church. On the social membership account, it is unclear why such an individual would have a strong moral claim to remain where she lives. Consider, secondly, someone who interacts predominantly or exclusively with other non-citizen residents who form a tight insular community within the larger society. All his fundamental social ties are with other members of this community. In this case, the social membership account's exclusive focus on social relationships might even lead us to the troubling implication that in this case the collective removal of the entire community is less damaging than individual expulsion (Moore 2015: 38). It seems intuitively unfair to defend the right to stay of someone with strong social ties to a wider society but not the social recluse or the insular community. If both these implications are indeed counterintuitive, it seems that the focus on social relations thus risks making the social membership principle of non-deportability under-inclusive.

Moreover, the focus on social ties may also be over-inclusive. It is not so difficult to imagine someone without a (long) history of residence on the territory who has more (and stronger) social ties to members of a society than some permanent residents do. Social relationships are not naturally bounded by national societies, and the boundaries of social networks within which people develop strong ties do not necessarily coincide with the political borders of the countries in which they reside. Membership in a society at a national level, as Rainer Bauböck points out, is not "a concept with any obvious empirical content" (2015a: 396-397). As Linda Bosniak rightly observes, "many people reside within a common territory who are distinctly unattached to their co-inhabitants, and correspondingly, plenty of territorial residents maintain very close affiliations and attachments with people located outside the territory" (2007: 406). Co-residence within the same territory, then, is at best an imperfect measure for social attachments and affiliations.

One could respond that the examples of the social recluse, the insular immigrant community and the non-resident with strong social ties to residents are relatively rare exceptions to the general pattern of human life. This may be true. However, my discussion of them here serves to highlight the wider point that the social membership account seems to allow for a weighing of the strength of social ties which makes it unclear why presence and time are the only, or for that matter the most important, considerations in determining non-deportability. There are probably more straightforward ways to measure someone's ties to the territorial society than

presence and the passage of time. If we can do this, it would imply that very social individuals who establish many and deep social relationship relatively easily would reach the threshold of moral non-deportability much earlier than more isolated individuals. Some social membership theorists may be happy to accept these conclusions. Indeed, Shachar explicitly argues that, although length of residence should be taken into account when decisions on the right to stay are made, it should be considered alongside "concrete factors that indicate attachment, such as employment status and membership in voluntary organisations". She thus explicitly qualifies her claim that long-term unauthorised residents must "be allowed to remain and eventually acquire secure legal status" with the condition that they "can provide evidence of their actual membership and community ties" (Shachar 2009: 188).[137] Those without deep social connections to citizens are most clearly left out of the framework when the non-deportability of *de facto* social members is justified primarily with reference to the rights of the citizens with whom she is in those relationships. Indeed, for some, the "legitimate expectations" of citizen members of society "whose life plans centrally involve the presence of the long-term migrant will also be frustrated by the act of deporting this migrant" are viewed as the most appealing justification for the "establishment of a cut-off point beyond which [even] the irregular migrant can regularize their status" (Owen 2013: 336; Motomura 2014).

Carens is less comfortable with these conclusions and resists the idea that factors other than time and residence should be considered. However, he makes this argument on prudential rather than principled grounds. Carens writes: "If we want to institutionalise a principle that gives weight to the degree to which a person has become a member of society and if we expect to have to deal with a large number of cases, we will want to use indicators of social membership that are relevant, objective, and easy to measure. Residence and time clearly meet these requirements. Other ways of assessing social membership do not." (2013: 165). According to Carens, then, the state cannot be trusted to make the judgement whether someone is or is not a member of society but on objective grounds of length of residence. It is unclear why this is the case. While it may admittedly be difficult to measure precisely how strong someone's social ties are, it surely would at least be possible for the state to identify individuals who are far below the threshold of social embeddedness despite their long residence, as in the example of the social recluse. Even if we accept the prudential argument, however, residence and time are thus still "proxies" for social membership on Carens' account and are not in themselves morally relevant for his argument. Carens does explicitly argue that even those lacking social relationships

[137] Formulated in this way, the social membership account of just deportability loses much of its critical edge towards real-world deportation decisions, as these frequently turn on the existence of community ties and "community spirit", as we have seen in the empirical part of this thesis and specifically Chapter 4.

should be considered social members, however, by comparing the immigrant recluse with the citizen recluse (2013: 167-168). If the latter has a right to stay, so does the former since their sociological similarity demands equal treatment. The problem is, however, that if the social membership argument relies on the importance of human ties alone, it cannot preclude the deportation of either the citizen or the immigrant recluse.

There is a further problem with grounding non-deportability in the idea of social membership, one that is illustrated well in the empirical part of this thesis, and that is that there are possible perverse incentives arising from it. Societies may, for example, decide to shun certain unwanted immigrant groups (as is the case with many Roma communities across Europe) in order to prevent them from establishing wider ties to society and thereby establishing a moral right against deportation. Moreover, prompted by anti-deportation campaigns that rely precisely on the argument that would-be deportees have become members of the communities they live in, governments increasingly rely on the use of detention of asylum seekers and irregular migrants that they cannot (yet) deport in order to prevent them from establishing such ties and facilitate their deportation at a later date. While the social membership theorist may object to the, frequently indefinite, detention of non-criminals on other grounds, on the social membership account, their resulting isolation from wider society does imply that they do not build up a right to stay.

In sum, territorial residence does not seem to do any real normative work in social membership accounts. If social ties are what generates a right to stay, it is not clear why long-term territorial residence in itself matters. The problem with the social membership account, then, is that it risks not taking the territoriality of the right of non-deportability seriously enough. The idea that "membership is first, and above all, a social fact" (Rubio-Marín 2000: 21) is misleading in that it suggests that non-deportability is exclusively a membership right grounded in social ties. Many, but by no means all, of our ties to the specific places in which we have made our lives are connected to our social relationships with other human beings. Instead, I believe we should focus on the question of what makes the possibility of continued residence where one lives so fundamentally important for human beings. Before turning to this argument, I will first turn to some other grounds which have been suggested to explain what is wrong with deporting long-term resident non-citizens.

Contributions and harm-avoidance

Social membership is not the only reason put forward why deporting long-term residents is wrong. Two other prominent explanations have focused on the contributions that such

individuals have made to the social and political institutions of the society of residence and the prospective harm that deportation inflicts on them, respectively. I will briefly discuss the merits of each of these arguments, and suggest that, while they may highlight relevant considerations in individual cases, neither of them can ground a general right to non-deportability for all long-term residents. This is again because in each case, what is important is not long-term territorial presence per se, but rather something for which long-term residence is (wrongly) thought to be the best proxy.

The first argument concerns the contributions which long-term resident non-citizens have made to the communities in which they live. This argument relies on the idea that national economies and societies are schemes of cooperation which give rise to associate obligations among those who participate in them. Long-term residents have often made significant contributions to these schemes, and for that reason are thought to deserve a right to stay so that they can reap the benefits of their input. Allowing political communities to expel long-term residents who have contributed substantially through their labour and the payment of taxes and social contributions would mean allowing the rest of society to benefit from their input but then breach their obligations to such individuals by removing them from the territory. Indeed, Rubio-Marín notes that many non-citizen residents, and particularly those whose presence is unauthorised, do unpleasant, low-paid work that most citizens are unwilling to do, often without claiming (or being able to claim, in the case of irregular residents) social benefits (2000: 87).

An argument in favour of the non-deportability of long-term residents based on the contributions they have made, however, suffers from several shortcomings. First, it has difficulties accounting for the non-deportability of irregular residents. When the society of residence has never agreed to the presence of the long-term resident contributor, it is not clear why it has an obligation to let the unauthorised participant reap the benefits of his input.[138] Secondly, even when we think someone does acquire a right to such benefits, it is not clear why this necessarily requires a right to continued territorial residence. We can imagine other ways in which a deported long-term resident may be compensated for their contributions, for example by paying back any financial contributions made to social assistance schemes or pension funds during their residence upon expulsion. Thirdly, length of residence is unlikely to be the best proxy for contributions made, especially when these are principally measured in monetary terms, as the way that such arguments are usually phrased implies. For example, one perverse implication of the contributions argument is that the wealthy non-domiciled owner of

[138] See Pevnick (2011: 165-167) for a useful discussion of this point.

an expensive vacation house in the territory, who contributes significantly to the state coffers through the taxes she pays on this house and the money she spends there during her holidays thereby gains a moral right to stay should she choose to want to do so. Relatedly, the contributions argument is often used to claim that only those years that a new resident is economically active should count towards her right to stay, and other activities such as studying should not. Rogers Brubaker, for instance, argues that residence for the purpose of studying cannot confer the same right as residence as a worker since it "primarily prepares an individual for his or her own projects" (1989a: 19). This is echoed in many European jurisdictions, where years spent studying are excluded from counting towards the residence threshold which confers some status of non-deportability.

The second argument focuses specifically on the harm that is inflicted upon someone when she is removed from the territory after having lived there a significant amount of time. Indeed, Carens himself places great emphasis on the observation that the disruption of people's most important social relationships "harms them in a fundamental way" (2013: 101). If the liberal state has a duty not to impose harm on those subject to its power, it should refrain from deporting those who would be harmed by this action—so the argument goes. Drawing on John Stuart Mill's harm principle, Barbara Buckinx and Alexandra Filindra have recently developed this idea that harm-avoidance should be at the core of a just deportation policy further. They propose a normative framework for just deportations which they call *jus noci* and which posits that any deportation decision must weigh the harm done to the individual against that which the continued presence of the individual causes to the society (Buckinx and Filindra 2015). Their core argument is that the harm done to the individual by deportation after a certain period of residence is much greater than any conceivable harm done to society if she is allowed to remain.

The problem with relying on a such a general harm-avoidance framework, however, is that it too risks becoming both too narrow and too broad to succeed in explaining why *all* long-term residents and *only* long-term residents must be categorically exempt from deportation. Buckinx and Filindra's conceptualisation of harm is too narrow because, although it explicitly seeks to go beyond the "depth and rootedness of social ties" (2015: 397), it remains exclusively focused on social and economic indicators of harm, not on attachment to place as such. The authors' main concern beyond social ties seems to be with would-be deportees' prospective depreciation of economic opportunities and job opportunities upon return. But if we must measure whether someone's objective living standard will suffer as a result of deportation, it seems unproblematic to deport long-term residents to countries whose economic circumstances equal or superior to those in the country doing the deporting. An emphasis on economic harm-

avoidance also risks being too broad since it is unclear what work previous residence does on such an account. Buckinx and Filindra suggest that living in a society long-term generally brings about a compatibility of "skills and abilities required for success in that economy and society", and that it is therefore problematic to remove long-term residents from these societies and send them back to ones where they may "suffer greatly from a lack of social acumen and savoir faire, not to mention from social discrimination" (2015: 389-400). But if the general principle is that states are "obligated to protect from removal long-term residents who can demonstrate that their expulsion will result in substantial social and economic harm" (Buckinx and Filindra 2015: 400), there does not seem to be any principled reason to distinguish between someone who has been in the country for many years and someone has been there for only a few months if they both face a significant relative fall in economic prospects upon removal to another country. Indeed, as Arash Abizadeh (2015: 381-382) has pointed out in his critique of Carens' harm-argument, there is no reason that being territorially present is a precondition here anyway: coercively keeping a would-be immigrant out may also make her socially and economically worse off relative to when she would be allowed entry. So Buckinx and Filindra cannot explain why they insist that their framework is compatible with a general right of entry control (2015: 401), and why they focus exclusively on the harm done to people who have already been present in the territory long-term.

The importance of place

To correct for the flaws of the accounts described above, a theory of long-term resident non-deportability must do two things. It must be able to extend to *all* long-term residents, not just those who have established deep social ties or made significant contributions; and it must make sense of the moral value of continued territorial presence in itself, rather than as a proxy for something else.

Rejecting the exclusively social focus of the social membership account, I start with the basic observation that human beings are not only social but also spatial creatures. The enjoyment of our basic needs, individual autonomy and much of what makes life valuable takes place against the background of, and in constant interaction with, a distinct geographical space, and depends therefore on the possibility of stable and secure residence there. The importance of the geographical space we inhabit for our wellbeing, flourishing and the pursuit of our life plans is universal. Even if many people move from one place to another at one or several points in their life, modern humans are distinctly sedentist in the sense that, for most of our lives we are not constantly roaming around but rather "settled" in those places where most of our projects and

activities take place.[139] The type of everyday social experiences we have in the place in which we live, which the social membership account is focused on, form an important part of the story. Yet there is much more to the importance of place for human beings and their flourishing. Place is the background not just for most social relationships, but our attachments to the natural and built environment and the social, economic and cultural activities which take place in it more generally.

This wider idea of the importance of place was hinted at by Michael Walzer who termed it a "locational right" (1983: 43), which he describes as distinct from and preceding a right to membership. What exactly this locational right entails or what it is grounded in remains unclear, but Walzer quotes Hobbes' inclusion of "a place to live in" among the fundamental rights that is not given up when the social contract is signed. In this formulation, this right is not, Walzer notes, a right to a particular place, but it is "enforceable against the state, which exists to protect it; the state's claim to territorial jurisdiction derives ultimately from this individual right to place. (…) The state owes something to its inhabitants simply without reference to their collective or national identity. And the first place to which the inhabitants are entitled is surely the place where they and their families *have lived and made a life*. The attachments and expectations they have formed argue against a forced transfer to another country" (Walzer 1983: 43, emphasis added).

This notion has been further developed in recent work on the moral link between individuals and place by authors such as Margaret Moore and Anna Stilz. Moore derives a "moral right to residency" from the observation that as physical beings we occupy space, and in that space we "develop projects and relationships and pursue a general way of life to which we are typically attached" (2015: 38). Stilz similarly describes what she calls an individual "occupancy right" as "a liberty to reside permanently in a particular space and to make use of that area for social, cultural and economic practices [and] a claim-right against others not to remove one from the area" (2013: 327-328), when occupancy of that particular place is "of central importance for an individual's life plans and projects" (2013: 334).

Drawing on Moore's and Stilz's writings, I think we can establish two reasons why the right to continued residence in one's place of habitual residence is of such fundamental importance to individuals. The first concerns the importance of the preservation of existing life plans and continuing projects to which one is committed. As Moore argues, "individuals make choices and develop aims and activities on the assumption that they live in that place, and, often, that place

[139] This is the case even for many so-called nomadic people who typically move around within a distinct geographical space.

is integral to their choices and projects" (2015: 38). Stilz writes about such geographically-situated goals and projects as "located life plans", i.e. projects and relationships and commitments that are very fundamental to the structure of one's life and that have a geographical situatedness to them (2013: 336). David Lefkowitz argues that the individual right of residence is grounded in a person's exercise of his or her capacity to form and pursue a territorially grounded conception of the good (2014: 529). If we are to have any control over our lives, over the most fundamental elements in the background conditions of our existence, the ability to stay where we are seems essential. In this sense, secure residence is connected to a basic sense of autonomy.[140] While the relationships we have with other people are typically an important part of the projects and plans around which we build our lives, they are not everything.

The second reason can be found in one's emotional attachments to place and people. Social relations here are, again, of great importance, but they do no exhaust our emotional connections to place. Rather, geographical familiarity with a place, the sense of being at home in a particular natural, cultural and built environment are an important part of the story too (Lefkowitz 2014: 541). It is a direct connection to place itself as the background for much of what gives human life its value and purpose, then, rather than a contingent connection via the social relations which are presumed to take place mainly if not exclusively within a given territory, which adequately captures what is so important about the right to stay where we have made our home. From this then derives a moral right of stable residence and to be free from the threat of being removed or expelled from that place. We see here that the right to prevent immigration and the right to deport come apart. As Walzer writes, "though the recognition of national affinity is a reason for permitting immigration, nonrecognition is not a reason for expulsion" (Walzer 1983: 42).

There are several other important things to notice about this notion of a moral right of continued residence. The first is that this individual right does not presuppose that the individual is a member of a group. It is grounded in the individual circumstances of a person, and not derivative of the collective residence rights a group is presumed to have. Secondly, a right to secure residence somewhere is not like a property right in the sense that it is not exclusively assigned to a particular individual or group. Rather, it confers, in Stilz's words, a "right to use that place as one's permanent residence, to conduct important social, cultural and economic activities there (…), and to be immune from expropriation by others" (2013: 329).

[140] Stilz writes that "occupancy is connected to autonomy because it plays an important role in almost all of our plans. We build our lives on the assumption that our goals, relationships and pursuits will not be unexpectedly destroyed through forced displacement" (2011: 583).

Thirdly, the extent of the geographical space in which one's life projects, plans and relationship are located is not clearly bounded. For this right to be violated, it is not enough to simply be evicted from one's home (Moore 2015: 39), or unable to afford the rent in a specific neighbourhood, for example. On the other hand, the continuity of one's located life project does not typically require access to the entirety of a country's territory. It is however, necessarily located within a particular territorial jurisdiction and life plans and projects are typically deeply interwoven with this institutional context and the legal and governance structures of the country in which the more limited place of belonging is located.[141]

Extending non-deportability: the domicile principle

Perhaps surprisingly, none of the authors discussed above say much about the political or legal status of those to whom this individual moral right of residence attaches. However, it is clear from the use of the terminology of personhood rather than citizenship that they do not necessarily want to restrict this right to those with the status of citizenship. Moreover, many citizens are not permanently resident on the state's territory. Yet as was mentioned earlier, legally, *all* citizens and *only* citizens enjoy absolute protections against expulsion and deportation. In this section, I will use the concept of domicile to argue for an extension of the right to non-deportability to what I call "*de facto* domiciled" non-citizens. I define domicile in a way that captures the moral relationship between person and place described in the previous section.[142]

First it is necessary to conceptually distinguish between presence, residence and domicile. While presence can be defined in purely physical terms, residence implies actually living in a place, rather than just visiting or passing through. Domicile, however, implies something

[141] An alternative account which defends the right to stay with reference to the importance of place, defended by Paulina Ochoa Espejo, argues that (long-term) residence brings about place-specific duties to uphold local schemes of cooperation, and that a *pro tanto* right to stay is necessary to fulfil one's place-specific duties (2016: 82). Apart from the fact that this account seems to ground non-deportability of non-citizen residents in the rights (and "moral agency") of the *citizens* with whom they co-inhabit localities rather than in any rights which those non-citizen residents themselves may have, it is also unclear why such a right to stay would be indefinite, i.e. why it would not be justified to deport someone after making sure they have fulfilled all their outstanding local duties. Moreover, while Ochoa Espejo herself holds that her account is an alternative to Carens' social membership argument, the sort of place-related duties she describes are always held towards other people, therefore her account cannot escape the fundamental problem of the social membership account, namely that the right to stay is conditional upon social ties.

[142] While the domicile terminology is not much used by political theorists writing on citizenship and migration ethics today, it featured extensively in the writings of Tomas Hammar, who has referred to what he calls the "principle of domicile" (1990: 199) as the basis for giving rights and eventually citizenship to domiciled denizens. But while Hammar briefly mentioned that this principle must ground a right to domicile itself (1994), he does not defend or explain this.

further. Derived from the Latin *domicilium*, which is thought to derive from *domus* (house) and *colere* (to dwell), the term denotes the place one has made into one's permanent home. It is helpful here to look at the definition given to the concept in 1972 by the Committee of Ministers of the Council of Europe:

> The concept of domicile imports a legal relationship between a person and a country governed by a particular system of law or a place within such a country. This relationship is inferred from the fact that a person voluntarily establishes or retains his sole or principal residence within that country or at that place with the intention of making and retaining in that country or place the centre of his personal, social and economic interests. This intention may be inferred, inter alia, from the period of his residence, past and prospective, as well as from the existence of other ties of a personal or business nature between that person and that country or place (quoted in Hammar 1990: 193).

Domicile thus implies someone's *permanent* place of dwelling, which has both a past-oriented dimension in that permanent residence can only be established after some period of time, and a future-oriented dimension in that it implies an *intent* to remain. This past-orientation is visible in the practice that many jurisdictions only recognise someone's domicile after a significant period of time of residence has already elapsed. This does justice to the notion that, while someone's ties to a territory typically grow over time, there is a moment in which some threshold is passed after which someone can be said to be domiciled.[143] Setting the threshold when someone is *de facto* domiciled inevitably involves some level of arbitrariness. However, the broad parameters are clear—any reasonable proposal for this should be broadly between three and 10 years.

It also implies that the place in question is someone's *primary* place of dwelling, and in that sense one can be a resident in more than one place at the same time, but one is typically domiciled in only one. Formulated in this way, domicile seems connected to several legal concepts which aim to measure the relationship between the individual and the territorial state, often in order to decide which state holds the main responsibility for the individual in question. Such terms include "centre of life gravity", centre of "main" or "vital interests", or "genuine link".[144] Of course, someone can have genuinely strong connections to two places, for example because she works in one, but (most of) her family live in another. If this is the case, it seems that she should be considered to be domiciled in both. What the idea of domicile excludes,

[143] Lefkowitz writes: "the structure of territorially grounded relationships, goals and projects (the integrity of which a right to residence serves to protect) typically develops over time. The right that protects it emerges only once the structure reaches a certain stage of development, just as a heap of sand emerges at some (perhaps indeterminate) point from the continued addition of grains of sand" (Lefkowitz 2014: 540)

[144] In its adjudication of the famous 1955 *Nottebohm* case, the International Court of Justice influentially used the concept of genuine link as a basis for nationality. However, in this understanding the genuine link is between an individual and a state, whereas I conceive of it as a link between an individual and her place of residence.

however, is that anyone who has partial residence in a territory builds up a robust right to remain there. A seasonal worker who spends several months of the year working in one place, but whose centre of life gravity is in the country where he maintains family, social, cultural and emotional ties, for example, does not. Moreover, long absences from the territory—both before and after attaining the threshold—detract from domiciliation.

What does grounding non-deportability in a domicile principle imply? Most importantly, it subscribes to the idea that long-term residence becomes in and of itself morally pertinent; not as a proxy for membership, but because the longer someone's life is located within a particular geographical space, the stronger their connection to that place will inevitably be. Domicile-based non-deportability is thus not vulnerable to the objection which faces the social membership, contributions and general harm-avoidance account, namely that it does not make sense to insist that long-term residence is the only, or even the main, factor which should be taken into account when deciding whether or not someone is legitimately subject to the state's deportation power. But the moral force of the domicile argument does not rely only on the direct relevance of long-term and permanent residence *here*, it also draws strength from the observation that this means non-domicile *elsewhere*. The logic of geographically located life projects implies that someone's centre of life gravity inevitably shifts when they establish permanent resident elsewhere. After a long period of absence from the country of origin or previous domicile, someone's geographically located projects and attachments there are per definition strongly diminished. This does justice to the intuition that, part of what is wrong with deporting long-term residents is their lack of ties to the place they are deported to.

Domicile is sometimes understood to imply *legal* residence,[145] or residence with explicit authorisation to remain indefinitely by the state which controls the territory in which one's place of residence is located. For the importance of stable and secure continued residence in the place where one has established one's fundamental life projects, the legality of residence status is irrelevant, and for this reason I explicitly speak of *de facto* rather than *de jure* domicile which entails including those whose residence is irregular in the account of domicile-based non-deportability. It could be objected that the absence of state authorisation is a crucial moral consideration in deciding whether someone should be deportable or not, and I will address this objection later. For now, just note that on a domicile account of non-deportability, both regular

[145] In American legal usage, for example, the term is connected to where one pays taxes. The Council of Europe's definition also stipulates a domicile as a legal relationship.

and irregular non-citizen residents acquire a right to stay after the time threshold of domiciliation is passed.[146]

Domicile and citizenship non-deportability

The upshot of the domicile-based argument for non-deportability outlined above is that the status must be, at least partially, unlinked from citizenship. Non-citizen residents who are effectively domiciled in a state should enjoy equally robust protections against deportation as citizens in order to protect the integrity of their geographically-grounded life project. However, it does not imply that domicile should *replace* citizenship as the basis for non-deportability, nor that the rights to secure residence of citizens and domiciled non-citizens should be exactly the same. While most citizens are domiciled in the territory which their state of citizenship controls, many of course are not. The unconditional right to secure residence of citizens implies not just exemption from deportation, but also an indefinite right to (re-)enter the national territory from abroad and (re-)establish residence there.[147] If domicile would replace citizenship as the basis for non-deportability, we could not hold on to the moral intuition and legal practice that gives non-domiciled citizens an indefinite right to return to their national territory even in the absence of an individual link to that territory. To make sense of this right of return, I think we need to conceive of it as grounded in the collective right that the members of a political community have to occupy the territory over which they have exclusive jurisdiction. This is thus not a right deriving from individual circumstances but rather from membership of a collective.

Let us examine the status of non-domiciled citizens and what their right to return entails. Consider those who voluntarily give up their citizenship, or whose citizenship we think may be legitimately withdrawn. In the latter category, we might think of second- or third-generation emigrants who inherit the citizenship of (one of) their parents but never take up residence in that country and do not establish deep ties to the political community in any other sense. Would it be wrong for them to lose their right to return with the loss of citizenship? I think not. The indefinite right to return that citizens have *qua* citizens, as a membership right, is in this sense directly derivative of collective occupancy rights, which means both that it is not contingent upon previous, current or future residence in the national territory, and that it can be lost when

[146] There may be some practical worries in this regard related to the determination when someone started living on a territory in the case of at least some irregular residents. However, the practice of amnesty and regularisation programmes has shown that such problems are usually surmountable.
[147] Article 13(b) of the Universal Declaration of Human Rights states: "Everyone has the right to leave any country, including his own, and to return to his country." Article 12(4) of the International Covenant on Civil and Political Rights states: "No one shall be arbitrarily deprived of the right to enter his own country."

membership is (legitimately) lost.[148] The domiciled non-citizen's right to non-deportability, conversely, is individually held and does not change with membership status. It can, however, be lost when domicile is given up. Giving up domicile is of course not an immediate result of leaving the territory. Short stays abroad do not cancel the domiciled non-citizen's right to return and enjoy secure residence. But given that it is gained after a time threshold of residence is passed, it makes sense that it can also be lost after a significant period of non-residence. While it seems problematic to force people to naturalise in order to enjoy the right of non-deportability, it does not seem unfair to make their unconditional right to return dependent upon such naturalisation.

In contrast to the social membership account, which links non-deportability tightly to membership, then, the domicile account starts from the assumption that individuals have a strong and legitimate interest in stable residence in their place of domicile which is in a sense pre-political, in that it is prior to and exists independently of such political communities. This also explains why, if national borders shift through secession, irredentism or the like, we consider it unjust for those who were domiciled in the new territory before this change in borders to be uprooted because they lack membership in the new polity. However, it could be objected that whatever grounds non-deportability, even if it is not social membership, also grounds a right to eventual full political inclusion and citizenship, and that what we really need is a theory of just citizenship. Otherwise the risk is that we allow for the formation of a subjugated class of denizens and lose the ideal of equality at the heart of democratic theory (Walzer 1983).[149] However, the "eventual" here is crucial. We might have reasons to believe that domiciled non-citizens, even when they do not have a right or obligation to become citizens, should enjoy absolute non-deportability. Thus, the principle of domicile grounds first and foremost a right of secure residence and an absolute status of non-deportability. The distinction between two types of non-deportability rights can then be summed up as follows: domicile non-

[148] It is possible to interpret the human right to return to one's country more broadly then through the lens of nationality. The UN Human Rights Committee has interpreted the wording of Article 12 (see above), paragraph 4 of the International Covenant on Civil and Political Rights (which speaks of "no one" and thus makes no distinction between nationals and aliens) to imply a definition of "his own country" broader than the concept of "country of nationality". The Committee writes: "it is not limited to nationality in a formal sense, that is, nationality acquired at birth of by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered a mere alien" (UN Human Rights Committee 1999, emphasis added). The language, according to the Committee, "permits a broader interpretation that might embrace (…) categories of long-term residents". The Committee applied this understanding in its 2012 decision in *Nystrom v. Australia* (Gibney 2013b: 128).

[149] Michael Walzer noted that citizens "cannot claim territorial jurisdiction and rule over the people with whom they share the territory. (…) [This] is a form of tyranny. Indeed, the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history" (Walzer 1983: 63).

deportability is a fundamental human right not to be uprooted from the place one has made one's home, while citizen non-deportability is a membership right which legitimately depends upon membership in a political community.

Separating the question of non-deportability in this way from the question of inclusion in the citizenry also helps separating it from the discussion on just *democratic* inclusion. The best-known debate about principles of citizenship inclusion departs from the idea that inclusion here means becoming an equal part of the self-governing political community. The suggested inclusion principles, known as the "all-affected" (Goodin 2007), "all-subjected" (Abizadeh 2008) and "stakeholder" (Bauböck 2008) principles, do not seem appropriate for a discussion on just inclusion in the non-deportable population. Although subjection to government has been suggested by Rubio-Marin as grounding the right to non-deportability, this seems logically incoherent, in a way that is analogous to the so-called "democratic boundary problem". If subjection to coercive government is what grounds any rights, it is not clear why non-deportability would be included since deportation would precisely result in the end of a problematic subjection to territorial jurisdiction and its coercive enforcement. We may want to argue that long-term subjection connects someone's life plans to the legal and institutional framework of the state, and that this grounds a right to non-deportability, but then the normative work is not done by the subjection per se, but rather by a person's life plans and projects.[150] Moreover, on in my account this still does not cover the whole non-deportable population, because even someone living a geographically-situated life with only minimal interaction with the state's governance apparatus (say, someone living in a remote area where the government presence is difficult to detect on a daily basis) would still be uprooted from her place of domicile if she would be forced to leave.

Some objections

While many take seriously the importance of long-term residence and the ties and attachments which result from it, there is nonetheless pushback against the idea that this grounds an absolute moral right against deportation, and that there is a duty of justice to refrain from deporting domiciled non-citizens. I will briefly consider what I think are the main objections.

[150] The argument for legalising the status of long-term non-citizen residents defended by Adam Hosein does not work for this reason. Hosein posits that "we should have a legalization program because it is necessary to secure autonomy for the many long-term unauthorized migrants. And the state must secure their autonomy because otherwise the authority it continues to exercise over them will be illegitimate" (Hosein 2014: 618). This notion that the legitimacy of states' authority depends on safeguarding the autonomy of those subject to this authority does not protect against deportation precisely because states can resolve this legitimacy gap through deportation as well as through legalisation.

Perhaps the most forceful and intuitively compelling argument against extending non-deportability to all domiciled non-citizens as an automatic result of passing a threshold of permanent long-term residence concentrates on the idea that most of those who are subject to deportation are responsible for their own plight. Such an argument has been most forcefully put forward by David Miller (2008, 2016) and Michael Blake (2010). Even if domiciled non-citizens have made the place in which they reside the centre of their existence and they suffer in this respect from being deported, they have knowingly and freely chosen this situation[151] and it is therefore not unjust for them to suffer the consequences of their actions. This argument concerns those who have established domicile in the territory without authorisation from the state but equally extends to those whose residence permits are conditional upon non-criminal behaviour or economic circumstances. The crux of this argument is that the right to remain where one has made one's life is not absolute and considering under what conditions this situation has come about is morally relevant.

One common way to respond to this objection is to argue that the state loses its right to deport even unauthorised residents after a certain time threshold because the passing of this threshold implies that the state has tacitly consented to the presence of such individuals. The long-term toleration of the "visible presence" of many irregular residents (Motomura 2014: 199) and the apparent unwillingness of states to enforce their border laws against irregular entrants or visa-overstayers before they manage to become settled on their territories on this argument is taken to indicate that they have "chosen to turn a blind eye" (Shachar 2009: 186). It is through this implicit acquiescence in which defenders of this argument believe the state forfeits its moral right to enforce immigration laws against such people. But this reliance on the idea that the absence of government action is somehow indicative of implicit consent is problematic. An aggressive deportation policy to prevent the settlement of irregular immigrants entails significant financial and human costs, so inaction might simply reflect an unwillingness to incur these costs or lack of capacity to do so. Indeed, this argument has the perverse consequence that states must tighten their immigration control (by militarising the border, by pervasive individual checks inside the border) in order to gain legitimacy for their deportation of irregular migrants.

Thus, the argument about unauthorised residents retains some intuitive force (at least if we presume the right of legitimate states to exclude non-citizens in the first place). Nonetheless, it is worth taking it further apart. The argument seems to draw most of its force from the idea that

[151] This argument assumes of course that someone is a voluntary migrant and not a refugee or other kind of forced migrant.

the irregular or criminal regular migrants have "wronged" their host society. Even if unauthorised migrants have made the society in which they reside the centre of their existence, they have knowingly done this against the wishes of the state and its citizenry, and so it is not unjust for them to suffer the consequences of their actions. In the case of criminal non-citizens, they have knowingly breached the implicit or explicit contract with the state which made their presence conditional upon law-abidance. Granting such individuals immunity from deportation rewards wrongful behaviour. However, the idea that the blameworthiness of the irregular resident systematically overrides their deep interests in continuing their located life project seems too strong when we consider that many to whom it ostensibly applies are less blameworthy then they might initially appear. Children are not responsible for their parents' decision to settle in the country illegally, for instance, as some proponents of the above argument concede (Pevnick 2011; Miller 2016: 163-170). Asylum seekers who spent years waiting for their claims to be adjudicated, and visa-overstayers who do the same attempting to regularise their permanent stay are also not people we would usually consider having done something deeply wrong that justifies uprooting them.

That still leaves us with the group of "blameworthy" irregular residents who entered and settled explicitly without the authorisation of the state and have made significant efforts to evade immigration authorities. But even in their case a wholesale rejection of the idea that such people over time build up any rights against deportation at all based on the "original sin" (Shachar 2011) of illegal entry seems unduly harsh. Here the question is one of balancing this wrong against the current wrong of uprooting them. Have those who have become domiciled and developed a strong interest in staying but have wronged the citizens and legal residents of the country through their unauthorised residence forfeited their right to stay? For this to be the case, it needs to be shown that the latter group continues to suffer from such persons' irregular domiciliation in a way that balances out the suffering imposed on them through deportation. The fact that they were able to build a life in the country of residence without being removed by the authorities almost means that by definition their presence is not a nuisance significant enough to warrant overriding arguments in favour or removal. Similarly, the domiciled citizen who commits a crime should not be punished by being permanently uprooted from her place of domicile. She should be punished through the criminal law system and have a chance of rehabilitation in the same way that a citizen resident who commits a crime does.[152]

[152] Related to the issue of convicted long-term residents, one challenge to the domicile theory of non-deportability is that it has trouble explaining why time spent in prison or detention would count towards the domicile threshold, since it may seem unlikely for people to develop attachments and life projects in such a situation. In response, I find it implausible to believe that no territorial ties can be formed while

A second objection also focuses on the wrongfulness of irregular entry and stay, but instead of approaching this from the point of the view of the host community it raises the question of fairness and equality of treatment vis-à-vis would-be immigrants. Both Miller and Blake make the argument that rewarding irregular residents who "hold out" until they pass the required time threshold with an exemption from deportation is unfair towards those would-be migrants who "played by the rules", who obeyed the immigration laws that excluded them from entering and/or settling on the territory. Miller writes that those who evade border controls "have acted unfairly in relation to those who submitted applications either as economic migrants or as asylum seekers, and therefore ran the risk that their applications would be turned down" (2016: 126). Blake believes that the mistake of the "right-to-stay" argument is that it compares unauthorised non-citizen residents to citizens and authorised residents; he thinks that this is the wrong standard of equality and that, rather, "equality here means treating would-be immigrants and undocumented aliens as morally equivalent" (2010: 114). This idea finds agreement among those sympathetic to right-to-stay arguments but who come to a diametrically opposing conclusion. Arash Abizadeh (2015), for instance, argues, against Carens, that if resident irregular migrants can have a right to stay, then would-be immigrants have a right to enter: you cannot accept one but not the other. There is perhaps indeed some unfairness here that must be taken seriously. However, the fact remains that the irregular migrant has effectively established domicile while the would-be immigrant has not, and that this changes the moral equation. There is a special type of responsibility that the territorial state has towards those present on its territory, and particularly those directly dependent upon continued residence there for their continuing life project; a responsibility that it does not have towards those outside it. Specifically, a state can lack the right to uproot those who have settled permanently within the territory it controls even if it does have a right to keep would-be immigrants out.

A third line of objection does not challenge the importance of territorial ties but puts in question that this is a matter of justice and rights. Matthew Gibney, for example, agrees that the fact of growing ties problematises the right of states to deport irregular migrants, but does not want to go as far as to argue that irregular migrants have a strong claim in justice not to be deported after a certain period of time. Rather, he appeals to the principle of humanitarianism, and argues that states should be obliged to establish some mechanism by which legal status can be granted to individual irregular residents on humanitarian grounds, taking due account of a range of factors, including "the hardship faced due to lack of regular migration status" (Gibney 2000: 25).

---

imprisoned or detained, and would point out that domiciliation is not only about growing ties in one's place of residence but also diminishing ties to one's place of origin.

Blake similarly believes that, while irregular migrants cannot have a right in justice to remain, the state nevertheless has a "Samaritan duty" to refrain from deporting long-term resident irregular migrants with deep roots in a society (2013: 118-121). However, if what I have argued is right, the right to territorial jurisdiction of the state is conditional upon its recognition of all permanent residents on that territory and is thus indeed an issue of justice. Specifically, if we consider the right not to be uprooted from one's place of domicile as a fundamental human right, it is clear that we should think of its protection not in terms of humanitarian or Samaritan duties but as a question of justice and rights. It would be equally wrong to insist that a right to stay cannot be thought to place any strong limits on the states' deportation power as there must always be a balancing of this right to stay with the state's right to deport derived from its right to control migration and non-citizen residence. As Kanstroom has argued, one should not balance a "right" of states against basic human rights but recognise that "the legitimacy of deportation and expulsion depends upon its compliance with (…) basic human rights" (2016: 5).

Fourthly, some might argue that the problem with my account which describes continued territorial residence as being of such vital importance to a flourishing human life is that it is somewhat paradoxical to apply this to migrants. Migrants have per definition given up the territorially-grounded life project they had before to establish a new life elsewhere. Assuming they have done this voluntarily, perhaps it is implausible to argue that, for them at least, moving to another place entails such excessive costs that it should be protected as a fundamental right (Miller 2016: 123). There are two things to note about this argument. The first is that choosing to move and being forced to move are very different things, and that we can hold on to our account of the importance of the option of stable residence without claiming that *all* migration and resettlement is harmful to the individual involved. The second observation is that in many cases moving from one country to another does indeed come with significant costs, and this allows us to turn the argument around and destabilise even further the assumption of culpability on the part of irregular migrants. Given that they made the decision to leave their social networks and ties to their country of birth or previous residence, perhaps their migration was not so "voluntary" after all: they were likely to have in some way or another been "forced" to move even if economic rather than persecution motives drove them.

A public security exception?

A last argument now sometimes made to question the non-deportability of citizens relies on the idea that the presence of some relies on a security risk. As I noted earlier, the notion of public security is even sometimes invoked to argue that certain citizens may have forfeited their right

to non-deportability through terrorist affiliations or acts. Should public security be an exception to the general rule of domicile (and citizen) non-deportability?

Let us work back from the more extreme case. Should any citizen be susceptible to deportation after involuntary denationalisation? It is widely accepted that making someone stateless is severely damaging and should be avoided in all cases, so those with only one citizenship should always be (and, at least in principle, are) exempt from the possibility of denationalisation. But perhaps it is only fair that those who chose to keep or acquire another citizenship and who gain benefits from it pay the price of injecting a level of conditionality into their citizenship status? Perhaps those who naturalised by choice (rather than becoming citizens at birth or as a child) can be punished for severe political crimes that invalidate the pledge of allegiance they signed at their naturalisation (in a way that birthright citizens cannot), at least for a certain period after their naturalisation. However, the power to denationalise will always create problematic inequalities within the citizenry that touch at the heart of it as a status of equal membership (Gibney 2013c; Macklin 2018). This is, I believe, enough to invalidate the justifiability of denaturalisation on public security grounds.

But what about deportation of domiciled non-citizens on public security grounds? For them, the problem of inequality with citizens is not problematic, as they are not holders of this status. Public security is a fundamental value, and if there is any legitimate ground on which to deport long-term residents it is this. Therefore, in principle we might have to grant the state this exception to the general rule of domicile non-deportability. Yet in practice it is hard to imagine circumstances under which deportation can effectively neutralise a security threat—especially because such people are frequently deported back to countries where intelligence services and police are much less effective than in the deporting countries. When someone can be convicted of terrorism-related crimes, incarceration or electronic ankle monitors seem far more effective and appropriate. For this reason, deportation is resorted to mainly in cases where there is not enough evidence to convict someone in a criminal court but the intelligence services have indications that someone poses a threat. The potential of abuse and *de facto* punishment of persons presumed innocent in case of deportation also seems hard to square with core principles of the criminal justice system. Furthermore, even when a domicilee is thought to have forfeited their right to continued residence, it can still be unfair towards the state forced to accept a deportee who poses a security risk if they have not resided there for a significant period of time (or ever). There may then be prudential reasons not to use deportation as a counterterrorism measure even if there may not be principled reasons against it.

Conclusion

In the end, the British government apologised for the Windrush affair and Amber Rudd, the Home Secretary, resigned. It is estimated that over 60 members of the Windrush generation may have been wrongfully deported.[153] The new Home Secretary Sajid Javid has said he would like to personally apologise to them and that they will be given the option to return to the country if abroad and made aware of their right to compensation.[154] The deportation of people resident for decades is relatively rare, though it does happen. Yet, as I have tried to argue, the same logic that finds it morally absurd to deport a resident of fifty years may be applied to a resident of ten years. In this chapter, I have argued that beyond a certain residence threshold, those who have made the territory they live on the centre of their fundamental life projects, (who can, in other words, be said to be *de facto* domiciled), should be exempted from the state's power to deport non-citizens. The precise threshold at which such domicile status kicks in is difficult to establish with purely moral arguments and will always contain some arbitrariness, as the cut-off point between those with a fundamental right to stay and those with no such right can come down to a day. Nonetheless, we need to set the threshold somewhere. Following others who have made a similar argument for long-term resident non-deportability (albeit on different grounds) and standard practice in the European context and beyond, I think five years of continued residence is a reasonable threshold.

But even if we can agree on one, merely exempting residents beyond that threshold of residence is not enough to make deportation policy morally justifiable. Even if those below the threshold do not enjoy a right to be exempted from the state's deportation power, their deportability and deportation is still subject to (and restrained by) certain moral principles. In the following chapter, I will argue that the main moral concerns regarding the application and execution of deportation are best captured by the notion of domination, and that deportation policy must be designed so as to avoid the risk that it engenders domination either directly or indirectly.

[153] https://www.theguardian.com/uk-news/2018/may/15/windrush-row-63-people-could-have-been-wrongly-removed-says-javid. Last accessed September 2018.
[154] http://www.theweek.co.uk/92944/who-are-the-windrush-generation-and-why-are-they-facing-deportation. Last accessed September 2018.

Chapter 6
Deportation without Domination?

Introduction

At first, Tipu Chowdhury thought the men were joking when they came in armed with shotguns and a pistol, just three farm guards against 200 strawberry pickers, mostly Bangladeshi nationals like Tipu and all without authorisation to be in Greece. But as soon as the men opened fire, everyone started "howling and crying", yet the men "kept firing and there was blood everywhere, people lying head-down in the field as if they were dead", Tipu would later recall. The shooting, which left 35 people injured (four critically—with one man spending three days in intensive care and several left incapable of working for months), took place shortly after Tipu, who had travelled overland to Greece in November 2007, and three other workers had gone to see Nikos Vangelator, the wealthy fruit producer they worked for. They had complained about the fact that none of them had been paid the €22 a day they had been promised for the last five months. This €22 was to be minus €3 for food and €3 for lodging in what were makeshift tents built with cardboard boxes, nylon and bamboo by the migrants themselves, with no toilets, running water or electricity. The farmer had threatened these workers, who had already gone on strike twice, that they could be replaced by others and that detention and deportation could follow if he were to alert the authorities. The four pickers had left the meeting determined to tell the others the truth—that Vangelator had promised to pay just them individually, as long as they convinced the others they still needed to wait longer. The subsequent attack, in April 2013, would go down as one of the worst attacks on workers in modern times, and threw a light on the appalling conditions in which cheap, unauthorised migrant labour is employed to toil on Europe's agriculturally rich southern lands, and caused outrage in Greek and throughout Europe. Nonetheless, in July 2014 a Greek court acquitted Vangelator of charges ranging from grievous bodily harm to forced labour, and even allowed the gunmen to walk free with the option of paying off their initial prison sentences of 14 and 8 years upon appeal.[155]

While the case of the Bangladeshi strawberry pickers is an extreme one, the lives of those subject to the state's power of deportation are often significantly conditioned by its ever-present possibility, in ways that are potentially harmful and morally problematic. Such possible effects must be considered in a normative evaluation of deportation regimes. It is therefore not enough to argue, as I did in the last chapter, who should be categorically exempt from the state's deportation power—instead we also need an account of how deportation rules and their

[155] https://www.theguardian.com/world/2014/sep/01/greece-migrant-fruit-pickers-shot-they-kept-firing. Last accessed: August 2018.

implementation should take shape *even when* their application is formally limited to those who are, in principal, subject to justifiable deportation. In this chapter I will argue that the main problems that remain with deportation are best captured by the notion of domination, and that avoiding or mitigating these problems requires eliminating or minimising domination. The notion of domination is most elaborately discussed in the (neo)republican tradition of political theory, which stresses the ideal of non-domination as the "bedrock of justice" (Shapiro 2012) and thus the primary concern of social and political institutions. On one influential definition put forth by Philip Pettit (1999), domination is subjection to the threat of arbitrary interference, understood as resulting from the unchecked exercise of the dominator's will which fails to track the interests of those subject to that power.[156] The traditional focus of (neo)republicans was squarely on the ideal-typical nation-state and thus primarily about the relationship between such a state and its citizens. However, the concept of domination seems to apply more widely to the exercise of (political) power in general, not just in respect to those understood to be members of the political community.

Of late, there has been significant interest in connecting the notion of domination with the controversies around migration control. Yet the specificity of deportation remains curiously underexplored in recent republican literature on ethics of migration. The main focus has been on the question of whether entry controls are inherently dominating (Fine 2014; Honohan 2014) and on enfranchisement or a "stairway to citizenship" as the solution to the dominated status of non-citizen residents (Benton 2014; Hovdal-Moan 2014; Beckman and Rosenberg 2017).[157] The idea that admission controls can be dominating relies on a controversial reading of border policies as coercive.[158] It seems likely that this is only plausibly the case in specific circumstances, if at all. The subjection of those already actually present, on the other hand, is undeniable. The subjection of resident non-citizens to the web of laws and the coercive enforcement powers of the state in which they reside has long been problematised in debates on the ethics of migration. The coercive power held over non-citizen individuals is nowhere more striking then in the ability to issue them with a deportation order and remove them by force from the national territory. Michael Walzer already noted, "in tones reminiscent of contemporary republicanism" (Fine 2014: 16), that the "ever-present threat of deportation" causes resident non-citizens to "experience the state as a pervasive and frightening power that

[156] While I work with a specific definition of what domination and non-domination entail, I do not commit myself to any comprehensive civic republican agenda.
[157] In Marit Hovdal-Moan's suggestions for reducing domination of non-citizen residents through "incremental" access to increasing rights, which go through civil rights and labour market access through social assistance rights, workplace voting rights, local voting rights to eventual full national enfranchisement, deportation protections are conspicuously absent (Hovdal-Moan 2014: 84).
[158] See the debate between Arash Abizadeh (2008, 2010) and David Miller (2010).

shapes their lives and regulates their every move – and never asks their opinion" (Walzer 1983: 59), but he did not suggest any solutions short of the need to have a pathway to eventual citizenship for long-term residents. Subsequent debates have equally focused mostly on the latter part of Walzer's diagnosis and the question of enfranchisement. This has clear limits. A diagnosis that all subjection of coercive laws necessitates (and can only be remedied through) political participation rights ignores the specificity of the (non-)right to stay. A pathway to democratic inclusion and full citizenship cannot by itself solve the domination-potential of deportation.

There are a few exceptions. Meghan Benton (2014) briefly discusses deportation in her broader analysis of the position of "denizens" yet remains vague about how precisely deportation power over denizens should be limited to be justifiable. Alex Sager has argued that "there may be cases in which the deportation of unauthorized migrants is justifiable (e.g. upon entry to a territory without a valid visa). However, the deportation of a substantial population of vulnerable, long residing, unauthorized migrants involves a disproportionate use of coercion that neo-republicans should reject" (Sager 2014: 205-206), though without elaborating on why the use of coercive deportation is only problematised in the case of vulnerable long-term residents.[159] Patti Lenard, in an article discussing the ethics of deportation (2015), takes a largely implicit republican approach to the ethics of deportation but does not elaborate much on the normative reasons for her "wish list" of constraints on deportation power.

The chapter starts by exploring the ways in which the power to deport can be seen to dominate those it subjects, as a direct form of *imperium* or public domination over non-citizen residents and those in close relationships with them, and as indirectly facilitating forms of *dominium* or private domination. The next section refutes two diametrically opposed responses to this diagnosis of potentially dominating deportation power: one takes this to imply that *all* deportation is dominating and therefore illegitimate, the other denies that deportation is dominating because the status of deportability is voluntarily chosen and has an exit option. Instead, the rest of the chapter defends a middle position between these extremes, which holds that deportation can and must be made non-dominating through a number of substantive and procedural constraints. Section four emphasises that the power to deport must be restricted to a finite, clearly circumscribed, and publicly justified list of grounds which may trigger a deportation, and that a proportionality test must be established for each individual deportation decision which takes into account certain countervailing factors. Section five focuses on the

[159] In a later article, Sager (2017) goes much further and argues that *all* immigration enforcement measures are inherently dominating—see below.

procedural requirements of a deportation regime which aspires to be non-dominating, and argues that deportation decisions must be made contestable, their execution should observe strict human rights standards, and that efforts should be made to limit the reach of deportation enforcement. The final section addresses the objection that all these constraints make deportation prohibitively difficult and expensive and shows that this need not to be the case nor is relevant from a moral perspective.

A domination framework

To begin with, we need both a (mostly) descriptive argument why deportation power can be dominating, and a normative argument which explains the significant bad of domination and why there is a *prima facie* moral obligation to eliminate or minimise it, and conversely why non-domination is an important good to pursue (i.e. a primary good in the Rawlsian sense). In terms of the descriptive argument, I do not have the space to defend why I define domination in the way that I do, but it is important to begin by outlining my understanding of it before I move on to apply it to the issue of deportation.

The shortest and, at least in neorepublican circles, mostly widely-accepted interpretation of domination defines it as dependency on arbitrary power. More elaborately, and largely drawing on the terminology of Frank Lovett, it is thus a condition, and frequently also a "felt experience" (Lovett 2010: 14), suffered by persons or groups whenever they are dependent on a social relationship in which some other person or group wields arbitrary powers over them (Lovett 2010: 20). Conceptually, domination thus consist of three core building blocks: dependency (on a social relationship), power (of one person or group over another person or group) and (the possibility of) arbitrariness (of the exercise of that power). A first thing to note about this understanding of domination is that it pertains not just to any real or potential exercise of coercion of one party over another but rather is interested more broadly in the structural power relationship between parties which makes such arbitrary exercise of power possible. It does not mean, however, that the idea of structural domination should be taken to imply that structures themselves can dominate without reference to a dominating agent (Pettit 1999: 52; Lovett 2010). It is important to keep in mind the distinction between the need to secure people against the natural effects of chance, incapacity and scarcity and securing them against the things that they may try to do to one another and non-domination is only concerned with the latter (Pettit 1999: 53).

This idea of a structural relationship involving domination also implies that there must be some level of dependency in the relationship on the part of the dominated party. Even if there is a

structural relationship of domination, why does the dominated party not simply "leave the scene of their domination" (Lovett 2010: 94)? Dependency is thus another necessary condition for domination, but not in itself a sufficient one. Dependency is not in itself a bad thing, and in any case an unavoidable fact in social relationships. It only becomes a potential source of domination in combination with an imbalance of power between the parties in the relationship (Lovett 2010: 82-83). It is important to note, nonetheless, that dependency is not a dichotomous concept but is, rather, gradual—which means we must specify some minimum degree of dependency in order to describe a relationship as one of domination. Here, it is helpful to use the notion of "exit costs" to make more calibrated judgements about the precise level of dependency.

The last crucial element in the definition of domination is the notion of arbitrariness. This notion can be fleshed out in different ways, but I understand it as the unchecked exercise of the dominator's will which fails to track the interests of those subject to that power. I thus follow what could be termed an interest-based substantivist account of domination (as against a purely proceduralist accounts like Lovett's or control-based substantivist accounts like Pettit's current one) that is close to Pettit's original conception of domination (1999). While Pettit has since moved to a control-based substantivism (2012, 2014), others have come to the defence of interest-based domination (Arnold and Harris 2017). Such an account must rely both on a substantive interpretation of what basic interests (or, alternatively, capabilities) must be tracked as well as on a proceduralist interpretation of how this tracking must take place, i.e. what procedures of influence count as sufficient control to make power non-dominating. The proceduralist dimension implies that arbitrary is not simply unpredictable, or even discretionary exercise of power. It rather implies something more: namely, power whose potential exercise is not externally constrained by effective rules, procedures or goals that are common knowledge to all concerned.

The substantive conception goes further, and insists that power is only non-dominating when constrained in a way that compels power holders to track the welfare and worldview of those affected (Pettit 1999: 55-56). This implies that power and its exercise does not just need to be actually (empirically) justified to those subject to it through the existence of democratic procedures, contestatory channels and external control, but *justifiable* in the normative sense by reference to public and individuals' interests and their respective weight. Samuel Arnold and John Harris go perhaps too far in their interest-substantivism in dismissing the importance of control. They argue that control is not sufficient, which I agree with, but also not necessary, in that a state can constrain its power in a way that tracks the interests of those subjected by that power without giving them any form of control (Arnold and Harris 2017: 63-64, 69fn67). Here I

disagree, since this misses the central republican insight that you need precisely some form of political power (or anti-power) in order to secure non-domination. A last thing to note about domination as a descriptive concept, is that domination and non-domination are sometimes seen as status concepts (following the paradigmatic slave/master relationship which has informed much of its conceptualisation), but it is clear that they come in degrees. As Pettit writes, domination may be more or less intense, depending on the severity and ease of arbitrariness of the interference available, and more or less extensive, depending on the range of choices affected (1999: 56-57).

The main reason I believe domination to be bad is that it seems to be the clearest violation of Immanuel Kant's maxim that humans should be treated as ends in themselves and not just as mere means. In dominating relationships this principle is precisely at risk. Following Lovett, we can agree that "given the sort of creatures we are, it presents a serious obstacle to human flourishing (…) roughly understood as achieving success in autonomously formulated, reasonable life plans, through fellowship or community with others, over a complete life" (Lovett 2010: 130-131). There are both direct, material harms of domination through the exercise of arbitrary power in the form of exploitation, and indirect exploitation through strategic anticipation even in the absence of power exercise. But domination also imposes the additional harms of insecurity, which can have severe material and psychological consequences, as well as a negative impact on self-respect by inducing "courtier spirit" on the part of the dominated party, a constant need to curry favour with and flatter the dominator.

Domination can be a starting point for discussions about justice and morality in many different domains, but here I am specifically interested in its application to the just exercise of political power as a subset of such wider concerns. Specifically, I follow Lovett in regarding a state legitimate "to the extent that its configuration of political and legal institutions, as compared with feasible alternative configurations, will tend to minimise the domination that it inflicts on those persons subject to its authority" (Lovett 2010: 211). On this account, a just state must be an "undominating protector against domination", invoking and connecting the concepts of private domination (*dominium*) as well as public domination (*imperium*). The general institutional implications of the republican conception of non-domination include many institutions familiar from wider liberal theory, namely an insistence on the rule of law, on separation of powers, federalism and constitutionally-entrenched basic rights. However, what republicanism adds to these is a realisation that they can only go so far and a lot of discretionary authority is necessarily left to courts and administrative and bureaucratic agencies—because no system of explicit rules and regulations can possibly cover all contingencies and circumstances.

This comes on top of the extensive discretion of legislatures to set public law and policy in the first place.

The answer for republicans like Pettit and others is the idea(l) of "contestatory democracy", of properly-designed democratic institutions that should give citizens the effective opportunity to contest the decisions of their representatives. This possibility of contestation makes government agents with discretionary authority answerable to public understandings of the goals they are meant to serve and the means they are permitted to employ. This entails three things. First, relevant decision-makers such as legislatures, bureaucrats and courts must be required to present reasons for their decisions which are, moreover, subject to open public debate. Second, opportunities for contestation must be equally open to all persons and groups in society. Third, a requirement of institutionalised forums for contestation where citizens can raise objections of public laws and policies.

Why may a focus on domination provide a useful framework for evaluating deportation policy? First, it starts from identifying clear injustices (as in the paradigmatic cases of slavery, tyranny), rather than by formulating an ideal conception or standard of justice. We can therefore take the descriptions of real-world deportation in the empirical part of this thesis as a starting point for normative evaluation. Much of contemporary normative theory (at least in the analytic tradition), by contrast, departs from the question of what the right interpretation of concepts such as "equality", "liberty", "autonomy" and "democracy" implies and what law, arrangements or principles are required by ideal justice (Shklar 1998; Sen 2006). Even if we follow John Rawls' (1999) strategy of seeking reflective equilibrium between abstract principles and our judgements in real-world (or otherwise specific) cases, starting from the diagnosis of injustice has the added advantage that it is usually much easier to find agreement on examples of clear injustice than on what ought to happen or be done in a certain case or situation. The chosen focus on domination here is thus a matter of strategy to arrive at normative judgements about a particular issue (deportation) rather than the inverse strategy—to apply a comprehensive doctrine to this issue.[160]

Another clear advantage of a domination perspective is that it is a structure-based rather than outcome-based approach to identifying injustice. It is not solely the outcomes of social relationship which constitute domination but the structure of these social relationships themselves. To be subject to public power is not, in the republican account, exhausted by the actual imposition of a coercive sanction (Beckman and Rosenberg 2017). This is in line with the claim made in the earlier, empirical chapters that deportation power does not subject just those

[160] Note that using this strategy does not mean subscribing to the contemporary civic republican agenda.

actually forcibly removed or even those served a deportation order, but all those who are *in principle* subject to it. Moreover, also non-subjected people can be affected—such as family members of those subject to deportation. The justification of such power must thus refer to that entire group of people, not just those directly affected. A third advantage concerns the explicit connection that republican theories of domination make between public and private forms of domination. As stated, a just state must be an "undominating protector against domination", it must seek to prevent relationships of domination between those subject to its laws without thereby itself becoming a dominating force. As we will see below, the tensions between public and private domination are clearly apparent in the deportation case. Lastly, a focus on domination is not only helpful in diagnosing the wrongs of deportation, but also suggests more useful strategies of reducing these than alternative theories. I say more about each of these points below.

Deportation's domination potential

In what ways may deportation be dominating? As described in earlier chapters, the power to deport is typically held indefinitely over non-citizen residents and leaves a large degree of discretion to the executive. As such, it may in itself be a direct form of *imperium*, or public domination, of the state (as the constituted people, see Pettit 2012: 287) over those it targets, if it can be shown to be operating arbitrarily in terms of procedural and substantive considerations. There are several elements to deportation power which form the basis for potential domination here. The first is that it is a power with potentially severe and far-reaching consequences for those directly subjected to it. The threat of forced removal is an effective one in that its exercise often has pervasive effects on the subject's life and future. As argued before, the perennial "specter of deportability" (Bosniak 2006: 68) conditions the lives not just of those who are actually served a deportation order or who, by virtue of their irregular status, are instantly "deportable" if they come to the attention of the authorities, but that of *all* non-citizen residents. Many legal residents can have their authorisation to reside revoked at any time on the basis of, for instance, changes in their financial or employment position, a criminal conviction, or public security considerations. The insecurity inherent in the status of deportability may be a serious obstacle to human flourishing by undermining the individual's autonomy through preventing or disrupting the formation of long-term life plans. Adding to this problem of insecurity is that deportation often works retroactively, in that new grounds for deportation are introduced that may lead to deportation on the basis of facts that were not ground for deportation when they took place.

The second element is that the administration of deportation enforcement involves significant discretion on the part of the bureaucratic apparatus charged with it. Ronald Dworkin's description of discretion as a "hole in the doughnut" which "does not exist except as an area left open by a surrounding belt of restriction"—implying that when problematic it can be legislated away. However, as Alex Sager has noted in the context of immigration enforcement, discretion is better seen as a "positive form of power" which involves "complex, context-specific tasks that cannot be reduced to sets of rigid rules" (2017: 44). In the context of deportation, significant discretion is found in at least three forms, which Kanstroom has called prosecutorial, interpretative and ultimate discretion (2007: 232-240). Prosecutorial discretion concerns the power of often single public officials to decide whether to issue a deportation order. Interpretative discretion exists when vaguely-worded deportation grounds are open to a wide variety of interpretations by bureaucrats. Ultimate discretion, lastly, concerns the power often exercised by ministers to grant or deny relief from deportation after an order was already issued based on individual circumstances. As said earlier, this discretion is both unavoidable and, in many ways, necessary, but it may raise serious issues of transparency and accountability

The third is that deportation, as a form of pervasive state power, is distinctly uncontrolled directly by those over whom it is exercised. This sets it apart from its most closely related cousin, criminal enforcement. As non-citizen residents are generally excluded from the franchise and have few other venues for political voice, they have no direct control over the power to deport. Moreover, deportability also risks indirectly undermining the political standing of those subject in that the threat of deportation makes them less likely to speak up and use the few avenues for political voice they do have access to. Even legal residents may be hesitant to engage in political activities for fear of triggering a revocation of their residence permits. This is of course even more the case for those whose residence is irregular and who have great incentives not to "rock the boat" by going public with any grievances they have.

In a similar way to deportation's effect on the deportable, deportation risks dominating those citizens and non-citizen residents with whom targeted individuals have important social relationships, including family members, friends, colleagues and neighbours. The deportability of their loved ones can have similarly adverse effects on the formation of their life plans as deportations significantly disrupt their lives too. Moreover, the discretionary police state which directly results from the perceived need to police immigration internally has negative consequences for the non-domination of all. Hannah Arendt already observed in *On the Origins of Totalitarianism* that immigration control gave police independent power and a level of autonomy not seen before (1951). There is a risk that internal immigration controls may lead to

a police state with negative effects for all residents, and in practice specifically members of ethnic minorities likely to be associated with irregular immigration.

Deportation regimes may also facilitate and encourage *dominium*, or private forms of domination and exploitation. It puts irregular residents in a very vulnerable position vis-à-vis employers, landlords or others who can threaten to signal the authorities. The example of Tipu Chowdhury and his colleagues at the beginning of this chapter is an extreme example of this, but there are many other ways in which deportability puts irregular residents in an extremely precarious position vis-à-vis private non-state agents in terms of economic and sexual exploitation as well as other forms of physical and verbal abuse. But the conditionality of the residence permits of regular non-citizen residents may also tie regular labour migrants to unscrupulous employers, or force family migrants to stay in abusive marriages (Benton 2014: 50). It thus risks instilling in those in a situation of deportability a "courtier spirit", i.e. the feeling that they need to curry favour and flatter not just public officials with the formal power to decide on their residence status or removal but also many others with whom they engage in a profoundly unequal relationship based on their deportability.[161]

Does deportation dominate?

How should we respond to the potential domination of deportation? One answer would be to deny that the power to deport irregular residents and those whose permission to reside is explicitly conditional upon certain economic and behavioural factors engenders problematic domination since they have freely chosen to live with the risk of deportation and have an exit option from such domination though voluntary departure (Blake 2010; Miller 2016). Lovett specifically mentions migrant workers' consensual submission to the arbitrary power of their employers (2010: 147). Indeed, one could argue that the dependency that is necessary for domination to exist can be assumed away when someone has a (safe and stable) home country to go back to. However, such a response does not take into account the exit costs faced by those leaving the site of their domination.[162] Rather, a domicile theory needs to explain what binds people to certain territorial polities. In the case of long-term permanent residents, as I argued in

[161] It is worth noting that all the harms described in this section do not apply to would-be immigrants.
[162] Lovett and Pettit describe dependency of citizens as the inability to simply leave by emigrating since they have no absolute right of entry elsewhere—moreover, "there is no possibility of emigrating to a stateless territory that is free of coercive law: the Earth's habitable surface has been divided up without remainder between states" (Lovett and Pettit 2009: 24). This is implausible, as many citizens have such rights as dual nationals, family members of citizens of other countries, and simply because they have secure options of immigration elsewhere. This indicates that the exit costs of leaving may be found in the country of residence as much as in the country of prospective immigration.

the previous chapter, such exit costs are high enough to warrant a fundamental right to stay and exemption from deportation. Yet those who have not reached that threshold may also face significant exit costs through both links they have built up in their country of residence and through circumstances in the country to which they would be forced to return or move to. The fact that the status may be voluntarily chosen does not undermine this diagnosis either. When exit costs are high enough, as they may be (even for those who have not resided in the country long enough to be categorically exempted from deportation power), we cannot maintain that previous consent can be meaningful indefinitely, in the same way that choosing slavery or tyranny is not a legitimate choice. In short, significant exit costs may mean that the state needs to take these into account when considering the domination potential of its deportation policy.[163]

Another response would be that non-citizen residents cannot be dominated by deportation law because they are not owed non-domination. Some might insist that non-domination is a communitarian good upheld collectively and mutually by members of political communities, and that those who are explicitly non-members cannot demand to share in this good if they have not been formally invited to join the community. Moreover, an argument along these lines might counter that rather than the state dominating the would-be deportee, it is the would-be deportee who dominates the community through her illegal presence. Irregular residents, on this reading, impose themselves and thereby also certain obligations (Blake 2013) upon the existing members of the community without their consent or considering how this impacts these members' welfare.

The first thing to note here is that members of the political community are not necessarily only those with formal citizenship. In his later work, Pettit concedes as much and clarifies that he takes "citizens in this discussion to comprise, not just citizens in the official sense, but all the more or less settled residents of a state who, being adult and able-minded, can play an informed role at any time in conceptualizing shared concerns and in shaping how the state acts in furthering those concerns" (2012: 75). This seems to imply the non-deportability threshold defended in the previous chapter, but it says nothing about the standing of those (residents) who are not (yet) considered "citizens" even in this inclusive sense, and their subjection to political power and specifically deportation power. The more general counterargument to those taking this perspective is to insist that there is no reason to restrict the possibility or the problematisation of domination to the domestic sphere. Domination can characterise

[163] In general, however, it is helpful to think of these two strategies as substitutive or compensatory, in that the less domination can be decreased through reducing dependency, the more it must be decreased through reducing arbitrariness.

relationships between individuals (as in the dominium case), between collectives (e.g. between states), or between collectives and individuals (states and individual citizens, but also states and individual non-citizens, and states are not the only collectives). It is a problematic fiction that relationships of domination only exist or are only of a political concern in the domestic sphere.

Conversely, some of the critical literature implies that *all* deportation involves domination, and as such is an illegitimate exercise of political power (e.g. De Genova 2002; De Genova and Peutz 2010). Alex Sager has also argued that it is impossible to overcome the inherent "bureaucratic" domination in immigration enforcement since "for bureaucracies to be just, they need to be in a meaningful sense accountable to the people under their power" and immigration bureaucracies cannot be made accountable to those directly targeted by them as this is a distinctly vulnerable and necessarily politically marginalised population (Sager 2017). For Sager, this means that even if immigration control could in principle be justified, its practical enforcement cannot, as it is inherently dominating. The problem with this reading, however, is that it becomes difficult to make distinctions between the differential effects of deportation and deportability on different persons. Not all of those who are in principle subject to deportation are marginalised, let alone marginalised to the same extent. This perspective also has difficulty suggesting institutional improvements to minimise the domination potential of deportation power.

Instead, I posit that both these antipodal positions should be rejected and that a middle ground between them should instead be defended. Deportation regimes can and must be rendered non-dominating. In the rest of the chapter I will outline how. The main insight of republican theory, to recall, is that for political power to be non-dominating, it must track the interests of those subjected, not be applied arbitrarily, and be contestable. A focus on non-domination suggests procedural as well as substantive requirements. Together they aim to ensure that deportation is non-arbitrary, proportional and contestable.

How to deport

To think through what procedural requirements would be needed to minimise the domination inherent in deportation regimes, it is helpful to go back to the neorepublican ideal of contestatory democracy. This ideal requires, first of all, explicit formal procedures, known to all, by which the agencies and branches of the government exercise their authority, and that the relevant decision-makers (legislatures, courts, bureaucrats, etc.) must be required to present reasons for their resolutions, reasons that are subject to open public debate (Lovett and Pettit 2009: 25). Such restrictions must ensure that individuals subject to these procedures are indeed subject to the law and not to the whim of individuals in positions of authority. In the case of

deportation, the publicity requirement holds that the rules that govern deportability must be clarified and more consistently applied. Particularly, as Lenard has also argued, this implies that deportation regimes must operate from a finite list of clearly defined and unambiguous grounds that can trigger deportation proceedings (2015: 8). In practice, there has been a trend towards ever more vaguely formulated grounds for deportation, for instance in the UK where deportations may be ordered on the grounds that a non-citizen's "continued presence is not conducive to the public good". It relatedly implies a significant restriction of ministerial discretion and a need for the ministry issuing the deportation order to publicise the grounds for doing so, and what kind of considerations have been taken into account in its decision. In many jurisdictions, ministers are currently not required to do so (Lenard 2015: 9).[164]

But the provision of public reasons is not enough. There must be some form of external control, which implies the need for unelected agencies that are appointed by elected representatives but do not serve at their pleasure (executive and contestatory authorities), as long as they "operate with publicly dictated beliefs, under publicly imposed constraints, and are exposed to public challenge and review" (Pettit 2012: 306). The main form of external control in the case of deportation happens through the judiciary, although there is variation in how extensive the judicial control on deportation is, and there has been a development to restrict judicial overview over the deportation procedure in several jurisdictions. In order to render deportation non-dominating, however, it is arguably not enough to (re-)establish proper judicial oversight, but also to establish additional external oversight by independent third parties with no stake in the outcome of the procedure in question, such as an Ombudsperson, an arrangement which exists in Finland (Lenard 2015: 12), or independent boards made up of representatives of civil society, such as the Hardship commissions in Germany. Related to this is the requirement that there are clear lines of accountability in deportation. The processes by which deportation has been outsourced to private agencies must be reversed if the deportation regime is to be made non-dominating.

Perhaps most notably, contestatory democracy requires robust and open avenues for public contestation of both general rules and particular decision. General institutionalised forums for contestation where people can raise objections to public laws and policies and demand a response, with some chance of success, include the press and the street as well as formal channels of protest (Lovett and Pettit 2009: 25). As Pettit writes, discretion in the exercise of public power is unavoidable, but the only way for a republican regime to guarantee that this

[164] The reasons must also be public in the sense of publicly justifiable. I say more on this in the next section.

exercise of discretion is not hostile to the interests and ideas of the public at large or some section of it is to introduce systematic possibilities for ordinary people to contest the doings of government (Pettit 1999: 277). This implies enhancing deportation's contestability by giving all non-citizen residents robust powers to contest their deportation, including access to free legal representation and relief from removal pending appeal procedures. Advance notification of deportation is needed to ensure the possibility of contestation. States should also consider setting up deliberative institutions which inform deportation law and its workings to which all non-citizen residents, including unauthorised ones, have access. But contestation should not be limited in time either, there should be a possibility of post-deportation redress and states should actively facilitate (and finance) easy return in cases where deportations have been proven to have been wrongful after their execution (Kanstroom and Chicco 2015; Kanstroom 2017).[165]

We can add to this a final procedural requirement concerning the spill-over effect of deportability into other spheres of justice (Walzer 1983), i.e. the requirement that basic rights unrelated to deportability or residence status are protected and that the possibility of exploitation in the private sphere is minimised. This implies, first of all, putting limits on the reach of deportation enforcement to minimise the negative effects of deportability on irregular residents' enjoyment of basic rights. Joseph Carens has convincingly suggested that in order to ensure that the basic human rights of irregular residents apply in practice, states must establish a "firewall" between all agencies tasked with protecting basic human rights or basic services and immigration enforcement (2013: 132-135). In other words, it should be legally prohibited for these agencies to report any information about irregular migration status to immigration enforcement authorities, and when such information is reported it cannot be treated as evidence. Of particular importance here is the "firewalling" of the right of children of irregular migrants to a free public education. It also importantly implies, moreover, giving labour and family migrants fast-track access to a residence status which is independent of their employment or marital status.

[165] The European Convention on Human Rights (ECHR) already includes some protections along the lines of the suggestions made so far, even if their application is limited to lawful residents. Article 1 of Protocol 7 states that "an alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed: (a) to submit reasons against his expulsion, (b) to have his case reviewed, and (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority".

When to deport

The domination perspective has not only procedural but also substantive implications for deportation policy. In the previous chapter I already defended the claim that permanent long-term non-citizen residents must be granted an absolute exemption from deportation regardless of their immigration status after a certain time threshold, on the basis of their human right to stay. We should note, however, that putting a time limit on the state's power to deport is important not just to recognise someone's relationship to her place of long-term residence through the establishment of domicile, but also to minimise the domination which this status can cause. Limiting the power to deport in time ensures that an indefinite status of vulnerability is avoided. The analogy with statute of limitations provisions in the criminal justice system is helpful for illuminating this: in the same way that subjecting someone to an indefinite risk of prosecution is unjust, so is indefinite deportability. A recent proposal by Antje Ellermann makes similar arguments of limiting the state's deportation power in time. Ellermann (pointing at the limits of Carens' social membership account of the right to stay) defends the regularisation of resident undocumented migrants after a certain time period based on the rule of law principle of legal certainty, which "recognises the right of individuals to make long-term plans for their lives by requiring state action to be reasonably predictable and nonarbitrary" (Ellermann 2014: 293) explaining that "in the absence of a statute of limitation, deportation can be said to be arbitrary when the state does not pursue undocumented migrants in a reasonably predictable and timely manner" (Ellermann 2014: 300). Serial temporal stays of deportation, such as under the German practice of *Duldung*, are for the same reason a problematic way of recognising the moral limits of deportability, especially when given to vulnerable categories—as is the case in Germany where temporary suspension from deportation has been mostly employed in the case of well-integrated or traumatised refugees, pregnant women and ill people (Castañeda 2010: 253-256).

But even before this "deportation deadline" is reached, the substantive grounds which trigger deportations must pass the test of public *justifiability*. In other words, public reasons must be given for it, reasons which in some sense are justifiable or acceptable to all those persons over whom the rules purport to have authority.[166] As I argued earlier, applying deportation non-arbitrarily means restricting it to a finite list of clearly defined and publicly justified grounds. I posit that the four main grounds typically invoked, irregular status, economic grounds, criminal

[166] Along similar lines, Lenard proposes the "collective interest criterion", according to which "justifications offered for deportation in the public sphere must serve identifiable collective interests" (2015: 7).

convictions and public security suitably circumscribed, can all be *prima facie* deportation grounds as they may indeed protect legitimate public interests.

The case of irregular presence is perhaps the most straightforward of these, and the fact that the receiving state never consented in the first place to someone's presence (in the case of irregular entrants) or settlement (in the case of visa-overstayers) is indeed a strong moral argument to allow the state to deport such individuals—within a certain time limit, at least. Indeed, deporting relatively recent illegal residents seems a legitimate way to enforce border laws, ensure fairness towards those excluded who did abide by the rules, and act as a deterrent for future irregular immigration. Deportation based on economic considerations, such as of those who have entered on temporary conditional visas when the conditions of their permits cease to apply, i.e. when they become unemployed (in the case of those on temporary worker visas), require social assistance they are not (yet) entitled to, or fall ill, similarly may be *prima facie* acceptable if they are meant to protect the integrity of the social welfare system as a system of mutual cooperation. One of the most important values of having distinct political communities is that they form the background to durable schemes of social cooperation, and a country's first socio-economic duties are therefore towards its "own" needy. The fulfilment of that duty is compromised when large numbers of unemployed and poor foreigners make claims on the state (having come in legally or not). Moreover, it seems just to require that one needs to contribute to the scheme before being able to reap its benefits. Criminal deportations and the "double" penalty they impose may be justified by pointing at the "double" wrong when a non-citizen resident commits a crime, as they wrong not only the victim(s) of their crime but also the society that welcomed them in on the condition that they would abide by the laws. Deportations based on public security considerations are arguably easiest to justify, especially when it can be shown that someone's continued presence threatens to undermine the liberal democratic constitution of the state.

However, these four generally acceptable grounds are currently invoked and interpreted in problematic ways if the deportation system is to be grounded in public reason. In general, a deportation decision must also show that there is indeed a direct link between the public interest supposedly in play and the need for deportation in the individual case. If criminal deportation is justified with reference to the need to protect the community from dangerous (re)offenders, it must be restricted to crimes of a certain gravity. It seems plausible that only those whose behaviour shows that they may be a threat to society should be subject to criminal deportations. However, criminal deportations often target repeat offenders of any category. Deportation may be disproportional for someone with even multiple convictions for minor violations. In many jurisdictions, moreover, deportation is triggered not by a crime but by the

length of the prison sentence given (Lenard 2015: 471). This does not in itself seem to be a good indication as to whether someone constitutes a threat to society and is therefore problematic. For similar reasons, automatic and mandatory deportation orders upon convictions are problematic since they do not test for proportionality and they do not take individual circumstances into account and therefore may fail to treat individuals with due consideration.

For deportation to be nonarbitrary, each deportation must also be subject to a proportionality test[167] which weighs the public interest which the deportation presumptively protects against the individual circumstances of the would-be deportee. One problem is that invocations of the grounds mentioned above are often not sensitive to the responsibility of the would-be deportee for the situation she finds herself in. In the case of those whose presence is irregular, it should be noted that there are many paths into illegality, and it is unlikely that a harsh deportation policy which automatically expels those found with an irregular status will do justice to the individual circumstances and different levels of responsibility for the irregular position an individual find themselves in. Consideration must be given to a person's responsibility for the "original sin" of their unlawful entry or visa-overstay, their awareness of the irregularity of their status, and their different levels of responsibility for the "continuing wrong" of irregular stay. Most obviously, children cannot be held responsible for their parents' decisions. Similarly, the argument that criminal non-citizen residents deserve the double punishment of criminal prosecution and deportation since they were aware of the conditionality of their entry only works in the case of those who chose voluntarily to immigrate and thus excludes both forced migrants and those who were born in the country or moved there as children.

Such proportionality testing must also consider whether the would-be deportee has certain rights or entitlements based on their individual circumstances. Family ties and length of residence (before the domicile threshold) are two factors which must be considered when a deportation is ordered. Length of residence must, moreover, be given added weight in the case of those who came to the country as minors, as their links to the community and territory of origin are necessarily weaker (if not non-existent) than for those who arrived in adulthood and spent their formative childhood years in the country of origin. For deportations justified on economic grounds there is an important distinction between needs-based welfare schemes, such as basic assistance, emergency health care and compulsory school education, and contributions-based ones, such as unemployment benefits, and accident and pension insurance. For the latter, deportation is an unnecessary exclusion mechanism for those who have no right

[167] For a legal analysis of what proportionality implies in the context of crime-based deportation in the US, see Banks (2009, 2013) and Kanstroom (2016).

to it (since a contributions-conditionality is already built into it), and an illegitimate exclusion mechanism for those who do (since they have contributed regardless of their nationality or residence status). For the former, deportation is only legitimate for irregular residents and for temporary migrants for whom admission was explicitly conditional upon not becoming a burden on the social assistance system. Even then, in order to ground deportation on the protection of a needs-based welfare scheme depends on a further argument that someone's reliance on this scheme (or the aggregate effect of many individuals' reliance on the scheme) is disproportionate to the contributions they have made to it (inter alia through working and paying taxes). Only when the individual or collective detrimental effects of temporary residents' risk significantly burdening the national welfare system, may deportation be a justifiable route to consider. It should be clear that in many real-case examples of economic deportation, there is no such significant pressure. This would imply that whether someone is deportable for claiming social assistance in such cases should depend on the length of time they have spent in the country and the contributions they have made to specific schemes as well as in the form of taxes paid, years worked, etc. To some extent these are separable from continued residence, for instance when pension contributions can be taken back to the country of origin, but often they are not. In those cases, such labour market participation and tax contributions must be given their due weight in deciding on someone's deportability.

A final factor which must be taken into account when invoking these grounds is the vulnerability that the would-be deportee might be in. One reason why we might be sceptical about the justifiability of deporting people with severe health problems is that forcing them to relocate in such circumstances is cruel and might contribute to the further deterioration of their health situation.[168] Similar attention must be paid to other vulnerable categories of people, such as children, pregnant women and victims of human trafficking.

Conclusion

In this chapter, I have argued that deportation, even if only applied to relatively recent entrants and short-term residents, cannot be the discretionary power it now mostly is. This is because of the ever-looming risk of domination inherent in the coercive power to deport and its potential

[168] One could argue that if such people have a moral claim against deportation based on the vulnerability that results from their health situation then a would-be immigrant with a serious illness should also have a moral claim to entry and receive health care in the country in question. I do not think there is a problem of unequal treatment here, as the problem has to do with forcing people in a vulnerable situation (due to their health problems) to relocate, which explains why this does not apply to would-be health immigrants.

marginalising effects. Even in the absence of the actual ordering or execution of deportation, the laws that make it possible to deport are likely to severely affect those subjected to them. But while many of its moral problems come out well when looking at deportation through a republican lens with its focus on the danger of domination and the ideal of non-domination, this perspective also suggests ways in which this domination potential can be minimised—short of giving all would-be deportees full citizenship in order not to be dominated by deportation laws. Making the state's deportation power non-dominating requires that it is applied non-arbitrarily, meaning that it tracks the interests of all relevant parties by properly weighing the public interests that deportation is meant to serve and the individual circumstances of would-be deportees, and that it is properly constrained and contestable.

In the end, the migrant strawberry pickers who were shot at by agents hired by their employers for asking for their unpaid wages took their case to the European Court of Human Rights, and in March 2017 this court issued a landmark judgment vindicating them and it ordered the Greek state to pay damages of up to €16,000 each for having "failed in its obligations to prevent the situation of human trafficking". At €588,000 in total, the compensation award is among the largest ever made by the court. While the existence of this legal precedent will be an important resource for future cases of abuse, it is doubtful to claim, as Simon Cox, the British lawyer who represented the claimants said, that "from now on irregular workers would be safeguarded from employers using the threat of deportation for exploitation".[169] As this chapter has sought to make clear, a much more fundamental overhaul of the deportation system is necessary to achieve this. Until that happens, it may be necessary for those subject to unjust deportations or deportability and for others who assist them to engage in actions which aim to protest or frustrate these laws. The next chapter will turn to the moral questions thrown up by such actions.

[169] https://www.theguardian.com/world/2017/mar/30/bangladeshi-strawberry-pickers-shot-at-by-greek-farmers-win-european-rights-case. Last accessed August 2018.

Chapter 7
The Ethics of Resisting Deportation

Introduction

In the evening of Monday July 23rd 2018, 21-year old Swedish student named Elin Ersson boarded a Turkish Airlines flight from Gothenburg to Istanbul, but once on board she remained standing in the aisle and refused to sit down. She had in fact no intention of travelling to Turkey, but had bought a plane ticket that morning, after finding out that a 26-year old Afghan asylum seeker would be deported on this plane from Sweden to Kabul via Istanbul. As it turned out, the young Afghan in question was not on the plane, but an older Afghan man in his 50s was on board for deportation.[170] Elin declared that she would not sit down nor leave the plane until the man was removed from the flight, starting a Facebook livestream to broadcast the standoff.[171] She initially faced mostly criticism from cabin crew as well as other passengers. A British man can be heard in the video telling her "I don't care what you think" and to sit down as she is delaying the flight and "frightening the children"—to which Elin defiantly responded "I don't want a man's life to be taken away just because you don't want to miss your flight" and "he is not safe in Afghanistan, (…) it's not right to send people to hell". Others can be heard yelling "shut up" and "these are the rules of *your* country". Eventually, she also garners support—from a Turkish man who voices his agreement and a football team near the back of the plane that stands up in solidarity. When a flight attendant announces that the Afghan man will be taken off the plane, there is applause. When the plane departs with a two-hour delay, both the Afghan man, the three security personnel guarding him, and Erin are back in the terminal.

While the man's deportation was called off for the moment, he remained in custody and was deported at a later date, possibly on a specially chartered flight. Ismail Khawari, the 26-year old whose deportation Elin originally tried to prevent, turned out to have been deported on a different flight the next day.[172] Meanwhile, Elin has become something of a social media sensation. Her Facebook video had been viewed 4.7 million times by the end of the week and versions of the video on YouTube and news websites added significantly to that view count. While she declares in the video that what she was doing is "perfectly legal" and that she had "not committed a crime", in October Swedish prosecutors announced they would prosecute Elin "for

[170] https://www.nytimes.com/2018/07/25/world/europe/elin-ersson-afghanistan.html, https://www.theguardian.com/world/2018/jul/25/swedish-student-plane-protest-stops-mans-deportation-afghanistan. Last accessed August 2018.
[171] https://www.facebook.com/elin.k.ersson/videos/10155723956991274/. Last accessed August 2018.
[172] https://www.dw.com/en/the-man-whose-deportation-elin-ersson-tried-to-prevent/a-44841129. Last accessed August 2018.

crimes against aviation law" at Gothenburg district court, where she is now facing a fine and up to six months in jail.[173]

Elin's action, along with the actions of Lily and Howick and those who assisted them described in the Introduction to this thesis, are two examples of many attempts to resist or frustrate deportation proceedings that are considered manifestly unjust by those engaged in them. A variety of actors have increasingly sought to challenge deportation decisions taken by national immigration control bureaucracies and national government's deportation policies and their implementation more widely. These include would-be deportees themselves and ordinary citizens, but also civil society organisations, representatives of local authorities (as Chapter 4 discussed at length), and the receiving states to which they seek to send their deportees. Their acts of resistance can take the form of public contestation, non-cooperation, active frustration or violent resistance. How should we morally evaluate such acts and the agents that engage in them? Can such anti-deportation resistance be justified? If so, how and by whom may (or perhaps should) unjust deportations be resisted?

In this chapter, I seek to provide an answer to these questions. There is a small but growing literature on the morality of resisting migration controls generally (Cabrera 2010; Hidalgo 2015, 2016; Yong 2018). However, this literature currently focuses primarily on a) the rights of migrants *themselves* to evade or resist controls, not that of other actors; and b) the right to resist *entry controls* specifically, leaving aside the specificity of resisting deportation. This chapter makes a novel contribution to this literature by having a narrower focus when it comes to the policy but a broader focus when it comes to the agents of resistance. The narrowing of the focus is relevant because of deportation's distinctiveness from entry controls. Unlike the would-be immigrant, the would-be deportee is already present so has a different standing vis-à-vis the state that enforces migration control. The broader focus on different agents is necessary for the same reason, as the would-be deportee not only has different standing vis-à-vis the state but also vis-à-vis the other agents I wish to focus on here—ordinary citizens, local communities and destination states on whose cooperation the deporting states relies.

The chapter can also be seen as a contribution to the debate on the justification of disobedience and resistance to state laws and dictates generally. Contributions to this debate often focus on specific types of action, most notably under the headers of "conscientious objection" and "civil disobedience", each supposedly neatly distinguishable and with their own justifications and restrictions. However, precise distinctions between such categories are difficult to maintain

[173] https://www.theguardian.com/world/2018/oct/19/elin-ersson-swedish-student-video-grounded-deportation-flight-prosecution. Last accessed December 2018

when we seek to apply it to a real-world case of disobedient action, such as deportation resistance. Often, such action can potentially invoke more than one type of justification, blurring the lines between categories established in the abstract by normative theorists. Most notably, the justification of different types of action may, even if the goal of the action is broadly the same, vary between the different *agents* which may be involved in the action. This brings to the fore the problem of the one-size-fits-all approach to justifying resistance and disobedience dominant in academic debates. Instead, this chapter will argue that in order to defend a normative framework for disobedience in the real world, we need an agent-sensitive account of justified resistance.

The chapter starts by describing the main forms and agents of anti-deportation action in the contemporary context. I then examine how different justifications for principled resistance and disobedience, namely a necessity defence, a moral communication defence and a personal integrity defence, may each be invoked in the case of deportation resistance. I then explore how worries about the resister's motivation for engaging in the action and their epistemic position apply in the specific context of anti-deportation action and consider in what circumstances there is not merely a right but a duty to resist deportation. The upshot of this argument, I conclude, it that the liberal state ought to respond to anti-deportation action not by criminalising disobedience and resistance in this field, as many states have done, but rather by creating legal avenues for such actors to influence deportation decision-making.

Forms and agents of anti-deportation action

There are several ways to distinguish between types of anti-deportation action. The first, and perhaps most obvious distinction is between legal and illegal types of action. Only the latter are arguably in need of a specific justification, but it is important to note that the distinction between ordinary political action and principled but unlawful disobedience is of course entirely relative to a given country's laws and policies—and there is wide variation in how states approach this. Nonetheless, the trend seems to be going in the direction of increasing criminalisation of deportation disobedience. A growing number of states are introducing laws that make it possible or easier to impose criminal sanctions on those resisting their own deportation or those helping others to do so. Of the 28 EU member states, for instance, 25 explicitly penalise irregular stay and 10 prescribe imprisonment as a punishment for non-cooperation with an obligation to leave the territory (European Union Agency for Fundamental Rights 2014: 5). Facilitating irregular entry is punishable in all EU states except Ireland, though most either require that those engaged in the facilitation have a profit motive or exempt certain

forms of "humanitarian assistance" (or both).[174] However, eight EU states criminalise all forms of assistance, including humanitarian and non-profit assistance (European Union Agency for Fundamental Rights 2014: 11).

Another way of distinguishing within the category of anti-deportation action is by looking at the precise forms it takes. There are broadly three forms of anti-deportation action: public contestation, non-compliance and active resistance. Examples of public contestation include demonstrations, political or media interventions. These can be engaged in by would-be deportees themselves, such as when "deportables" go onto the streets to protest their deportability. One example are the 2006 protest marches in several US cities against proposed legislation which was to raised penalties for illegal immigration and classify undocumented immigrants and anyone who helped them enter or remain in the US as felons. The most high-profile of these marches came on May 1st of that year and was nicknamed "a day without immigrants", when many undocumented Latino immigrants quit their job for a day to highlight the extent of their collective contribution to US society. These and other such peaceful protests ordinarily remain within the boundaries of the laws of liberal democracies. However, sometimes protest strategies by those vulnerable to deportation can include unlawful actions, such as the occupation of buildings. The first time the *sans-papiers* movement in France received worldwide media attention was in 1996 when the government ordered special police forces to break down the doors of a church in Paris to expel those *sans-papiers* who had been staging a hunger strike inside (Freedman 2008). More recently, a collective of failed asylum seekers in the Netherlands have occupied and squatted several public spaces and buildings since 2012 in protest against their deportability, including setting up tents in the streets and parks of Amsterdam and (visibly) squatting in an empty church, a garage, a warehouse, a former bank, a former arts academy, a school, flats and office buildings around the city.[175] Such protests are also often instigated by those who are not themselves subject to deportation, including friends and family members of the would-be deportee, schools, employers, work colleagues, neighbourhood associations, churches and other religious groups, migrant support groups and activist networks or organisations. Sometimes such protest does not have the state or wider society as its audience but rather private companies that profit from the detention and

[174] Austria, France and Malta exempt assistance provided to family members. France additionally exempts the provision of legal advice. Germany exempts persons who carry out "specific professional or honorary duties". The United Kingdom exempts persons who act on behalf of an organisation that aims to assist asylum seekers and does not charge for its services (European Union Agency for Fundamental Rights 2014: 11).

[175] http://wijzijnhier.org/tijdslijn/geschiedenis-van-wij-zijn-hier/. Last accessed August 2018.

deportation industries, as in the case of the boycotts of Codex (a catering company) and Lufthansa (an airline) (Nyers 2003: 1081).

Non-compliance with deportation law, secondly, may include both evasion of authorities tasked with implementing removals and refusal to cooperate with such proceedings. Non-compliance occurs, of course, when deportees themselves do not obey the obligation to leave and make efforts to hide from the authorities to avoid detection. But it may also take the form of service providers who do not act on their obligation to ask for or pass on information about residence status as they are required, or public officials refusing to cooperate in effectuating a deportation order, such as when mayors order municipal police forces not to use their powers of arrest to detain those under an order to leave—or even actively help those targeted for deportation to go into hiding, as the mayor of the Dutch town of Weert did with a Syrian family in 2016.[176] While this regularly happens in specific cases where a mayor or local council disagrees with the deportation of a particular individual or family, non-cooperation of a lower political level with a higher one is also sometimes adopted as policy. Sanctuary cities and states in the US are the best-known example of this, but similar practices are found in other countries. When the German federal government passed the *Übermittlungspflight* law requiring all public institutions to report on the legal status of those they came in touch with, several *Länder* including North Rhine-Westphalia, Berlin, Hamburg and Hessen issued ordinances exempting elementary and high schools and hospitals and doctors from this law (Lebuhn 2013: 44-45).

Active resistance, lastly, would be the best way to describe when deportees or others act in ways which use physical force or the threat of force (at least as defensive force) to try and prevent their deportation. Would-be deportees who physically resist their arrest or deportation obviously fall under this header, but so do people who refuse to allow a plane carrying a deportee to take off, either as fellow passengers (such as Elin Ersson) or by chaining themselves to the aircraft or runway, as activists at Stansted airport in the UK did last year.[177] Another example is the shutting down of pre-deportation detention centres (as has happened to Via Corelli in Milan and Campsfield House in England) (Nyers 2003: 1081). Forceful or active resistance is, at least in its violent variant, universally outlawed.

[176] https://www.trouw.nl/home/burgemeester-weert-helpt-vluchtelingengezin-onderduiken~ab5ce4d0/. Last accessed August 2018.
[177] https://www.theguardian.com/world/2017/mar/29/arrests-as-stansted-anti-deportation-protesters-lock-themselves-to-plane. Last accessed August 2018.

Three justifications for resistance and disobedience

There are good reasons for insisting that there is a general duty to obey the law in mostly just political orders, even if we disagree with any particular laws. Some emphasise that such political obligation derives from a natural duty to uphold institutions that are (at least mostly) just (Rawls 1999), others from our membership in political communities governed by laws (Horton 2010) or from the benefits we derive from the law as a system of mutual cooperation (Dagger 1997), and still others from the procedural (Christiano 2008) or epistemic (Estlund 2008) legitimacy of laws that are the product of democratic procedures. However, nearly all authors believe that there are limits to this political obligation and that there are conditions under which laws may be broken. As a type of action which breaks a particular state law or injunction for principled reasons but is distinguishable from revolutionary action in its more limited aims (in that it aims at changing particular parts of the system rather than overthrowing it), this category of permissible law-breaking is usually discussed under the header of "civil disobedience", a term coined by Henry David Thoreau in his 1848 essay justifying his refusal to pay a state poll tax he believed the US government used to finance its war with Mexico and enforce the Fugitive Slave Law (Thoreau 1996). The case for civil disobedience, and for limiting its justification to very specific circumstances and types of action, was elaborated by John Rawls in his 1971 *Theory of Justice*. While elements of Rawls' account have been criticised by political theorists since, and alternative accounts defended (Feinberg 1979; Raz 1979; Morreall 1991; Lefkowitz 2007; Brownlee 2012), Rawls' definition of civil disobedience remains highly influential.

There are (at least) three grounds on which principled law-breaking can be justified: grounds of necessity, moral communication, and personal integrity. Each will be discussed in turn below, along with their applicability to the case of anti-deportation action.

Necessity

The argument of necessity focuses on situations in which disobedience to laws or legal dictates may be the only way to prevent harm to vital interests or violation of fundamental rights. For such a situation to occur, it is not enough that a law or its implementation is merely unjust. Rather this injustice must be of a certain gravity and certainty. It must be, in Rawls' phrasing, a "substantial and clear injustice" and there must be "a lot at stake" (Rawls 1999) for disobedience to be justified. But this way of justifying disobedience also implies certain restrictions on when and how it may be used to prevent or redress the injustice. It must be, first of all, a *proportional response* to the injustice in question, and it must be a *last resort* after other,

legal, avenues of seeking redress have been exhausted. However, the last resort requirement must be sensitive to the circumstances of the sufferer of the injustice. As A. John Simmons writes, "the most pressing moral causes are often those most intransigently opposed by those in power, leading inevitably to intolerably long delays in the pursuit of legal means of redress" (Simmons 2003: 56). Relatedly, in cases where the victims of the unjust law or policy are members of groups within society who are persistently marginalised in different spheres of life, this gives additional weight to the particular injustice suffered by an unjust law (Rawls 1999: 312).

Do cases of deportation reach the "substantial and clear injustice" threshold? There is of course widespread disagreement on this. Some believe all deportations are rights-violating and an unjustified exercise of political power (De Genova 2002; Walters 2002) while others insist that the state has broad discretionary powers to order non-nationals to leave the territories they control (Blake 2010; Miller 2016). In the previous two chapters, I have argued that deportation regularly risks violating fundamental rights, both through its end-result and through its execution. To recall, Chapter 5 argued that the right to stay in a place where one is a long-term and permanent resident and has extensive ties is a fundamental right limiting deportation practice. While this not a fully-accepted part of the human rights cannon, on some interpretations international human rights principles do support such a right.[178] This right should be taken alongside more established human rights. The most notable of these is the right not to be returned to a situation where one faces an acute and serious threat to life, liberty or wellbeing, an integral part of the international asylum system meant to guarantee that political and war refugees are not sent back to their demise. Another prominent one is the right to family life, which covers not only the right to privacy but also the preservation of the family unity, which forbids deportations which break apart family units, and thereby protects for instance parents of children with a right to stay from deportation. These two rights are familiar enough from human rights practice and constitute formal legal limits on states' power to deport—albeit ones not always respected in practice. When any of these three rights are in play, disobedience and resistance can be justified ways of seeking to prevent the territorial removal from taking place. What adds to the case for disobedience here is that deportation is, in practice at least, usually an *irreversible* act. Once a deportation has been successfully carried out, it is exceedingly difficult for the deportee to seek redress and return to the deporting country, even when her deportation turns out to have been unjust. Given the speed with which many countries now

[178] Recall the UN Human Rights Committee's (1999) interpretation of Article 12 ICCPR ("No one shall be arbitrarily deprived of the right to enter his own country) as including long-term resident non-nationals (footnote 147 page 166).

carry out deportations and the increasingly limited possibilities of challenging a deportation order pre-removal, the last resort requirement must be interpreted very loosely in the case of deportation.

Rights violations may also occur in the *execution* of a deportation. For instance, the use of excessive force, the practice of detaining would-be deportees for long and sometimes indefinite periods of time, and the separation of families in the deportation procedure may constitute a violation of fundamental rights in certain circumstances. In those cases, resistance or disobedience may be justified when the aim is not so much to prevent the deportation itself, but rather to stop the injustices committed as part of the highly coercive deportation procedure. Relatedly, and referring back to some of the issues discussed in Chapter 6, disobedience may be justified even when it is not aimed at preventing a deportation per se but rather seeks to alleviate and protest the unjust effects of *deportability*. The logic behind sanctuary cities, while being sometimes explicitly about defending the right to stay, often is (also) specifically justified with reference to the marginalising effects of deportability, and as such can be and is defended without reference to a right to stay.

Moral communication

A second way of justifying law-breaking and disobedience is by defending it as a way of communicating moral concern. The aim of such communicative disobedience is to convey disavowal or condemnation of a particular law or policy and draw public attention to it, with the ultimate aim of instigating a change in the law or policy. It can thus be justified as a way of contributing to the overall justness of the polity and system of laws. As Rawls writes, "the social value of principled disobedience is that it acts as a stabilising force in society by inhibiting departures from justice and correcting departures when they occur" (1999: 336). In confronting state authorities openly, principled disobedients force them to justify their conduct in controversial policy areas (Brownlee 2007: 179). Moreover, against critique of actions by an individual or minority group against laws which enjoy the approval of a democratic majority, the moral communication argument emphasises that principled resistance to specific laws or injunctions can contribute to, rather than threaten, the democratic legitimacy of a liberal state. Disobedience can play a vital role in democratic processes, as a way of getting a particular issue which has been stalled or silenced on the political agenda (Markovits 2005; Smith 2011), or of addressing the imbalance of political power between minorities and majorities (Lefkowitz 2007; Brownlee 2012). Indeed, for Kimberly Brownlee the communicative value of

disobedience is that it contributes "centrally to the democratic exchange of ideas by forcing the champions of dominant opinion to reflect upon and defend their views" (2012: 22).

It is perhaps not immediately clear how deportation resistance can be justified on grounds of moral and democratic communication. If, as Daniel Lefkowitz (2007) has argued, rights to principled disobedience are derived from the right to political participation, and seen as an extension of this right in the sense that is a right to continue contributing to the democratic debate even after a certain law has been decided on by a majority, it is not clear that those who are explicitly defined as non-members of the political community (exemplified by their deportability) can have that right. However, precisely because they lack access to many of the regular channels of political voice available to full citizens, those subject to deportation rely on irregular ways of getting their voices heard more than citizens and legal residents, and they may more justifiably rely on disobedient action as a counterbalance to their marginalised status. Moreover, as would-be deportees might be unjustly excluded from that community, the possibility of communicative disobedience is of democratic value to both them and to those who speak up in their favour. Anti-deportation action frequently challenges precisely the democratic exclusion of long-term residents by challenging the state's definition of belonging and membership (Anderson et al. 2011). Anne McNevin interprets acts of contestation by irregular migrants themselves as the "new frontier of the political—that moment of confrontation and destabilization when one account of justice competes with another to shape what we think of as 'common sense' justifications for particular status hierarchies" (2011: 5).

Personal integrity

A third argument concerns what is more commonly discussed under the header of "conscientious objection" and is about whether people's personal conscience should be accommodated by allowing them not to live up to formal expectations, either as subjects of the law or as occupants of official positions. The aim of allowing disobedience on this account is not (mainly) to prevent or correct injustice or contribute to the moral or democratic conversation, but rather to protect the sense or personal moral integrity of the disobedient herself—to, as Joseph Raz put it, "protect the agent from interference by public authority" (1979). When those in official positions responsible for executing governmental decisions with which they fundamentally disagree make a deliberate decision not to discharge the duties of their office, this is also known as what Joel Feinberg (1979) has referred to as "rule departure". While such acts involve dissociation from and condemnation of certain policies or practices, they are not necessarily communicative or even public. Following Rawls, we may distinguish two kinds of

conscientious noncompliance: conscientious refusal with a more or less direct legal injunction or administrative order, when authorities are aware of the breach of the law, order or injunction, and conscientious evasion, when the act is covert (1999).

When it comes to deciding on the justifiability of top-down order refusal, a distinction should be drawn between those working for agencies whose main purpose is to enforce immigration law and those working for organisations which have an entirely unconnected purpose. In recent decades, deportation has been increasingly "outsourced" by national authorities to actors whose core tasks do not encompass deportation enforcement, including schools, hospitals and other service providers, regular police, forces of local authorities, private actors like airlines and their crew, and in some cases private citizens with a "reporting duty" (Aliverti 2015). All such actors may have a right to refuse to be made complicit in the state's deportation efforts, which cannot be legitimately expected from them given their job description. Moreover, their role in deportation enforcement may directly conflict with, or undermine their capacity to fulfil their core functions. For instance, police efforts to combat crime are undermined by their duty to report those with an irregular status as this prevents the latter from reporting crimes or assisting in criminal investigations.[179]

Having now discussed the three justifications which may be invoked to resist deportation, I turn to three questions which I believe to be central to the normative evaluation of acts of deportation disobedience. First, what if the three different motivations corresponding to the three justifications outlined above conflict? Second, how can the argument for justified deportation disobedience respond to what could be called the epistemic objection? Third, when is it merely permissible to resist deportation and when, if ever, is there a duty to do so? Each of these questions is discussed in turn below.

Motivation and communication

Often, the three arguments outlined above are assumed to be complimentary and mutually reinforcing. Particularly, the notion that the "clear and substantial injustice" and communication requirements must both be satisfied for disobedience to be justifiable, as Rawls seemed to argue, is one that remains dominant. On such views, resistance cannot be justified when motivated by purely self-interested reasons, and the disobedient must therefore prove "conscientiousness" through publicity of their actions and non-evasion of any punishment

[179] There is an interesting analogy with doctors refusing to assist in carrying out death sentences since this conflicts with the Hippocratic Oath.

which is prescribed for the disobedient act. What sets principled disobedience apart from militant or radical action, then, is that it is aimed at moral persuasion rather than coercing change, making the communicative element all-important to disobedience's justification. Conscientiousness requires that a certain level of seriousness, sincerity and moral conviction is demonstrated, as well as a consideration of the interests of society as a whole, not just individual ones: they must, in Rawlsian terms, provide public reasons for their action. These "fidelity to law" requirements of publicity and non-evasion are also meant to sharply distinguish principled disobedience from ordinary law-breaking, with only the latter being characterised as acting wholly self-interestedly.[180]

As others have already noted, there is actually a fundamental tension between necessity and communication defences of disobedience, as they point at different motivations for engaging in the disobedient action and different-level ultimate goals which imply possibly contradictory strategies, namely directly preventing grave injustice on the one hand and achieving structural change on the other. It is unfair to demand those facing substantial injustice themselves to prove that their motivations are not wholly self-interested (which they may well be), let alone that they abide by publicity and non-evasion requirements. When the goal of disobedient action is to avoid severe injustice (rather than, say, to gain unfair advantages), whether one is motivated only by one's own wellbeing and not by society's as a whole is irrelevant. Often, in order to be an effective way of preventing harm to vital interests, such action must be the opposite of public: covert, done without exhausting legal avenues for contesting the laws in question, and evading punishment.[181] As Simmons writes, "the aim of paradigm civil disobedients (…) has just as often been simply to affect directly social practices, to frustrate evil, or to avoid complicity in wrongdoing; and these aims require neither public performance of illegal acts nor acceptance of legal penalties for disobedience" (2003: 43).

[180] The ultimate goal of disobedience based on protecting the personal moral integrity of the disobedient is different still, namely to evade complicity in injustice. A similar conflict can occur between the aim of preventing an unjust deportation and the self-interested motive on the part of those not themselves victims of unjust deportation, who wish to protect their own moral integrity by not cooperating with the dictates of the national deportation authorities.

[181] The point about the tension here is not captured by Brownlee's comprehensive discussion of the topic. She does distinguish between civil disobedience (as law-breaching for the purpose of communicating our condemnation of a law of policy and, in the case of direct civil disobedience, for the purpose of not lending ourselves to the wrong we condemn) both from what she calls "assistive disobedience", which is acting for the purpose of aiding what one sees as a suffering being "openly and non-evasively because this will communicate opposition to laws" (2012: 28) and from "personal disobedience" as conscientious objection. But Brownlee's claim that assistive disobedience is necessarily communicative leaves out an important category of non-communicative assistive disobedience (in which some anti-deportation efforts may fall).

In the case of deportation action, the fact that the different ultimate goals require strategies that are often contradictory comes out clearly. To prevent deportation from happening, would-be deportees themselves and those who support them directly (by hiding them or shielding them from immigration authorities) must usually keep their action hidden for them to be successful. In this sense, the deportable are in a particular situation compared even to others facing systemic injustice and marginalisation. Monica Varsanyi (2008) contends that the constant vulnerability of irregular migrants to the whims of sovereign power when they make themselves public as rights-seizing subjects distinguishes their claims from the claims made by other marginalised groups whose formal citizenship status is not in question. As she writes "it is one thing for homeless individuals or protesters to struggle and fight for their rightful space and place in the city. The challenges they face are certainly dire at times, but these individuals do not, overall, face the added and very real possibility of deportation when attempting to claim their rights. (…) If [undocumented residents] come forward and claim their rights due to them, they may only gain a pyrrhic victory: a win accompanied by a deportation order" (Varsanyi 2008: 40). Ellerman also notes that acts of noncompliance by those on the polity's margins rarely amount to collective acts of civil disobedience (2010: 408). Being at risk of serious injustice has strong marginalising effects which mean that requirements to abide by strict rules of "conscientiousness" are out of reach or directly contradict the aims of the disobedience.

Therefore, would-be deportees will often resort not to the communicative actions considered the archetype of justified disobedience but rather to what James Scott calls "the weapons of the weak": non-organised forms of everyday resistance in situations of serious marginalisation concerned with immediate, *de facto* gains rather than public and symbolic goals and often using passive forms of noncompliance, evasion and deception, such as "foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage" (1985: xvi).[182] Feasible acts of resistance for would-be deportees are often limited to hunger strikes, self-mutilation, suicide attempts, physical struggle, escape, destruction of identity documents, adoption of false identities, concealing their irregular status from employers and public officials,

[182] Scott writes: "the most subordinate classes throughout most of history have rarely been afforded the luxury of open, organized, political activity. Or, better stated, such activity was dangerous, if not suicidal. Even when the option did exist, it is not clear that the same objectives might not also be pursued by other stratagems. Most subordinate classes are, after all, far less interested in changing the larger structures of the state and the law than in what Hobsbawm has appropriately called 'working the system….to their minimum advantage'" (1985: xv). He goes on: "everyday forms of resistance make no headlines" so the publicity requirement is not met, but also claims that "just as millions of anthozoan polyps create, willy-nilly, a coral reef, so do the multiple acts of peasant insubordination and evasion create political and economic barrier reefs of their own. It is largely in this fashion that the peasantry makes its political presence felt" (xvii).

or mutilating fingerprints to make them illegible (Broeders and Engbersen 2007: 1598; Ellermann 2010: 408).

The use of such non-organised, non-public strategies by deportation disobedients is not, I contend, more morally suspect than their public, communicative counterparts. What is more, it would be immoral for outside supporters to advertise the position of would-be deportees in order to convince others of the injustice of their deportation—even if to change minds and laws, such communication and publicity is indispensable. This puts those wishing to resist unjust deportations in a bind.[183] The dilemma is not purely academic. Much real-world deportation resistance is not easily categorisable as either aimed at solving individual cases or a focus on structural (legal) change. Often the two aims are combined when the contestation of deportation in individual cases is accompanied by arguments against deportation that apply to a larger category of people, even if this argument can be made more or less explicitly. Even within the category of anti-deportation action focused on individual cases we can then draw a distinction between what Bader and Probst (2018) call "personifying" and "exemplifying" protests, between those aimed primarily at preventing an individual deportation and those who, rather, use their action in the individual case in order to achieve a broader change in public opinion and the law.[184] Some, following the traditional account of justified disobedience, have criticised the former type of action for focussing on the deservingness of individual would-be deportees or even on protecting specific categories (such as long-term residents, nationals from unsafe countries, families with school-going children) at the expense of the larger goal of ending all deportations (Maira 2010: 322). The *sans-papiers* and other anti-deportation campaigns have sometimes been criticised (McNevin 2006; Walters 2008; McNevin 2011; Tyler and Marciniak 2013; Barker 2015) for reinscribing and reinforcing the territorial and membership boundaries against which they should struggle. But this seems to put an unfair burden on those seeking to stop immediate rights-violations. In those cases in which the aims of preventing immediate injustice and that of achieving structural change conflict, it is important to establish that the priority always lies with necessity and the individual threatened with deportation rather than

[183] The problem of not distinguishing properly between the different goals and strategies of disobedience based on necessity and on communication, respectively, comes out well in the discussion between Luis Cabrera and William Smith on the morality of illegally crossing borders (Cabrera 2010; Smith and Cabrera 2015).

[184] Which form of anti-deportation action is more common is unclear. In their longitudinal analysis of anti-deportation protests in Germany, Austria and Switzerland (1993-2013), Ruedin, Rosenberger and Merhaut (2018: 111) have found that their dominant form is as what they call "solidarity protests organised on a local level focusing on individual solutions rather than social or legal change of the migration and border regime", with "little evidence of diffusion or transnational mobilization". Yet the protests they studied are largely within the boundaries of the law, and there is some evidence that law-breaking anti-deportation action more often invokes the need for structural change.

with the idea of moral communication and structural change (or, indeed, protecting personal integrity of those running the risk of complicity with injustice). Looking at the deportation case, the common assumption that disobedience aimed at communication is easier to justify than other types of disobedience[185] is wrong and possibly dangerous.[186]

The epistemic problem

One challenge to those who believe that resistance is justified when it is aimed at redressing a "clear and substantial injustice" is to ask simply: clear to whom? How does the disobedient know that their interpretation of the situation as unjust is the right one? Especially when such laws have been the outcome of legitimate democratic procedures, it may seem unlikely that the judgement of individuals should be trusted over that of the democratic community as a whole or its political or bureaucratic representatives—and it might be anti-democratic to do so in any case. This epistemic question also came up in the case of Elin's airplane protest. When a passenger complained that she was preventing many people from reaching their destination, Elin replied: "but they're not going to die, he's going to die". The man replied, "how do you know that?" (to which Elin responded "because it's Afghanistan"). Political scientist Andreas Heinemann-Grüder also commented disapprovingly on Elin's actions: "She wasn't familiar with the concrete case. Was the Afghan in danger? Where in Afghanistan was he being deported [*sic*]? Not all parts of the country are dangerous."[187]

In response, we should start by noting that the strength of the epistemic objection varies with the precise aim of the disobedient act. I noted earlier that anti-deportation action can be found on a spectrum between those contesting individual case decisions and those who seek to demonstrate their belief that all deportations are illegitimate. The former do not (necessarily) contest the abstract principles or general rules of the deportation regime, but only how the

[185] Brownlee, for instance, insists that from a moral perspective communicative disobedience is easier to justify than non-communicative disobedience because the willingness to run certain risks in order to communicate our convictions to others is evidence of our sincerity of our moral conviction: what she calls "the communicative principle of conscientiousness" (2012: 29). This is problematic when the main risks involved are carried by those whom we are assisting (as in the case of deportation resistance). According to Brownlee, "although intervening, thwarting and sabotaging are potential ways to honour our convictions in the short run, ultimately, on their own, they do not take other people seriously as reasoning moral agents with whom we can discuss the merits of our cause and whose conduct we should try to change through reasoned argument" (2012: 42-43).

[186] However, what does seem problematic is the invoking of what I believe are morally arbitrary features of the deportable: their level of cultural or social integration, their contribution to the community, etc. This does serve to strengthen an integrationist logic which has adverse effects for others.

[187] https://www.dw.com/en/deportation-protester-elin-ersson-too-much-emotion-too-few-arguments/a-44841640. Last accessed: August 2018.

executive authorities have used their discretionary power to decide on an individual case. Therefore, they are not discarding the democratic right of the community to decide on its laws and thus are not facing this objection. As I noted earlier, classical defences of civil disobedience either require or praise when disobedience is aimed at changing laws rather than the outcome of individual cases—and may thus find it easier to accept deportation resistance with more all-encompassing rather than with more limited aims. But from a democratic egalitarian perspective, saying that the discretionary interpretation of the law in a particular case was wrong seems less intrusive than saying that a democratically formulated law is unjust, and thus *easier* to justify.

We could also point out that certain actors are in a better epistemic position to know the (in)justice of a particular deportation. Those with direct relationships to the deportee may well have a better understanding of the individual circumstances of the would-be deportee than the democratic majority. Anti-deportation protests are often organised locally, and local communities may have a better understanding of who deserves to stay, who is well integrated, who would be harmed by deportation than executive bureaucratic agencies which purportedly implement the abstract preferences of the national electorate. Moreover, even if we accept the epistemic value of democratic procedures to decide on the law, it is not clear where this leaves the argument when disagreement occurs between different levels of democratic government, in other words when democratically elected and accountable local governments or the democratically elected national governments of the countries to which the would-be deportee is destined to be sent frustrate deportation proceedings based on perceptions of justice and belonging that conflict with those of the democratically elected deporting government. Some have argued that the emancipatory and progressive potential of local conceptions of belonging and membership should lead us to empower urban communities to challenge national monopolies in immigration enforcement (Bauböck 2003; Lebuhn 2014).

This does not, however, yet justify the involvement in deportation resistance by those like Elin Ersson who do not know much about the individual circumstances of the deportee whose removal they are trying to prevent. Here we can again turn the epistemic argument on its head, though, by pointing out that deportation is a particularly murky policy field in which the full effects of the law and its implementation are not well understood by the general public. In such circumstances, disobedience and resistance may well be necessary strategies to render the effects of deportation visible, to reveal the extent to which deportation is not a "routine administrative process" but rather, as William Walters describes it, "a site where sovereignty is (violently) performed, either the state negotiating with the subjects (thereby recognising them

as subjects) or the state as armed bodies of men smashing down church doors, seizing, arresting, pacifying, terrifying, removing bodies in full display of the public" (2002: 287).

A duty to resist deportation?

So far in this chapter, I have assumed that the question of just resistance is about permissibility and impermissibility. Most theoretical discussions also take this as the core question. However, we should use more fine-grained distinctions in considering the moral status of anti-deportation action. It can not only be forbidden and (merely) permissible but also laudable and even obligatory. There are hints in the literature that "[d]eliberate conscientious or principled law-breaking, by virtue of its apparently laudable motive, appears to be itself laudable (unlike law breaking that is merely self-interested or malicious)" (Simmons 2003: 50), but precise analyses when disobedience is actually laudable rather than merely excusable remain rare.

In the case of deportation resistance, it is clear which category of action is laudable, namely that in which disobedients incur significant risks to prevent the deportation of others or publicise their own unjust deportability. Especially when those who are themselves at risk of deportation do engage in public and communicative action, despite thereby putting themselves at risk, this may be seen to contribute not to the *justifiability* of their action (as I argued earlier) but to its *laudability*. In very material ways, becoming visible and demanding rights "expose irregular migrants to the full force of state border controls" (Tyler and Marciniak 2013: 152). Those who protest while being held in pre-deportation detention centres, for instance, are sometimes fast-tracked for deportation.[188] And by coming out of the shadows of irregularity, those in the *sans-papiers* and similar movements put themselves at considerably increased risk of deportation. Etienne Balibar wrote that "French citizens of all sexes, origins and professions, are greatly indebted to the '*sans-papiers*' [for] breathing life back into democracy" (2000).

The more difficult question is whether deportation resistance is ever obligatory. While most authors writing on principled disobedience mention that in certain circumstances there may not only be a right to disobey but in fact a duty to do so,[189] few of them specify when those

[188] Women detainees on hunger strike in the UK's Yarl's Wood Immigration Removal Centre were told in a formal letter sent by the Home Office that their protest may "lead to your case being accelerated and your removal from the UK taking place sooner". See: https://www.independent.co.uk/news/uk/home-news/yarls-wood-home-office-women-deported-more-quickly-hunger-strike-a8239611.html. Last accessed January 2019.

[189] Rawls writes (in the context of unjust warfare and the right of conscientious refusal of draftees): "if the aims of the conflict are sufficiently dubious and the likelihood of receiving flagrantly unjust demands is sufficiently great, one may have a duty and not only a right to refuse" (1999: 334-335). Raz writes: "civil disobedience is sometimes justified and occasionally is even obligatory" (1979: 262).

conditions hold, and why and when a right to disobey turns into a duty to do so. In the deportation case, I want to suggest that there may be an obligation to resist and disobey for at least three types of actor. First are those whose actions are *instrumental* to the successful execution of an unjust deportation. These include the agents of the deportation machine, such as street-level bureaucrats and specialised police forces, as well as "enlisted" service providers, such as local officials, school and hospital employees, and (perhaps particularly) those private companies who benefit financially from the deportation system. The general public is also increasingly "enlisted" in the policing of immigration through legal obligations to monitor, report and refrain from interacting with irregular residents (Aliverti 2015), a process through which the actions (and non-actions) of ordinary citizens have become directly implicated in unjust deportation regimes. In those cases, the regular individuals in question may be under an obligation at least not to comply with such requirements. Javier Hidalgo (2016) goes even further by arguing that citizens of states that enforce unjust immigration restrictions have duties to actively disobey legal obligations imposed on them by the state to refrain from interacting with unauthorised immigrants.

Second, those who by virtue of their institutional position have specific *responsibilities* towards the would-be deportees arguably have a duty to make efforts to stop their unjust deportation. Particularly, local authorities and destination countries come to mind here. Local political communities must generally comply with national dictates, but also have protection duties towards all those who are considered local citizens, and the conception of citizenship on the local level is, unlike national citizenship, based purely on residence (Bauböck 2015b). Therefore, mayors and local councillors, such as those described in Chapter 4, would have not only a right but a duty to disobey top-down deportation orders and to shield local residents from unjust deportation efforts. Those states to which deportation states seek to send their deportees have an international legal duty to accept back their own nationals, but they also have a duty to protect the fundamental interests of their citizens, which includes efforts to protect their right to stay in their place of residence when this is beyond the confines of the national territory.[190] The potential problem is that origin states face important epistemic limitations, as they are far removed from the case, and may be guided by mixed motivations, as they have a strong interest in keeping out unwanted, "unreformed" criminals or public security risks and ensuring the flow of remittances of citizens working abroad, which may cloud their judgement. In any case, when destination states simply frustrate deportations on other grounds than the

[190] Here it is important to clearly contrast between deportation and extradition, as the latter concerns mainly the rights of states to try and punish those who committed crimes in their jurisdiction, and the obligation of other states to reasonably facilitate this.

injustice of the deportation (i.e. pretend not to believe the deportees are their nationals), this is unlikely to work towards changing the unjust laws and practices in the long term. Moreover, setting the precedent of barring entry to your own nationals risks leading to an infringement of the right to return to one's country of nationality. Rainer Bauböck therefore argues against applauding the practice of refusing to accept one's own nationals as an appropriate response to unjust deportations, claiming that destination states must use instead diplomatic means to lobby for the rights of their nationals to stay in their country of residence (2009: 486). Of course, poor countries are not always in the best position to do this. Therefore, while intentional identity denial on the part of destination states is potentially problematic as it may render someone effectively stateless, in those cases where individuals themselves deny being from the country in question, the destination state could have a policy of non-cooperation (foot-dragging) with deportations that is permissible, laudable, or even obligatory.

Third, a more general (and necessarily weaker) duty of citizen and non-citizen residents to resist the unjust deportation of their co-residents may be grounded in the *associative* duties they have towards their fellow residents. Republican theory, already invoked for its useful domination-centred perspective in Chapter 6, may provide insights here as well. Specifically, its emphasis on good citizenship as consisting in a "vigilant commitment to holding the state to its domination-reducing aims, while preventing it from becoming a source of domination itself" (Lovett and Pettit 2009: 23) seems relevant. On such an account, we could argue that individuals have moral reasons to engage in anti-deportation activism not just for their friends, neighbours and colleagues, but because they share in the responsibility to keep their state's power non-dominating, both because they themselves enjoy a non-dominated status in this state and because domination in one area might spill over into others and thus start affecting them. On Philip Pettit's account, non-domination is a common good which "no one in a society enjoys unless everyone enjoys it" (1999). Matthew Hoye has on these grounds made the case that members of a political community have a duty to "stand up" for their fellow residents threatened with deportation in the interest of communitarian/republican liberty and non-domination "for immigrants and citizens alike" (2017: 164).

Conclusion

In this chapter I have argued that differently situated agents have different moral rights and duties to resist unjust deportations. An agent-sensitive normative framework for anti-deportation action must consider the justifications which any particular agent may rely on and their motivation for engaging in the action, their epistemic position, and relationship to the

injustice and its victim. I have tried to sketch what such a framework would look like. By way of conclusion, I want to consider what the arguments in this chapter imply for how the state should respond to resistance from these diverse actors.

What conclusions can we draw for how the state should respond to resistance from these diverse actors? The first is that the state should listen to such signals and take them seriously, since some of these actors are epistemically better placed to judge whether someone's individual circumstances indicate that they have a moral right to stay. They should design the deportation regime in such a way that there are ways of contesting deportation for a variety of actors. One example which could be emulated by other countries are the Hardship Commissions in Germany described in Chapter 4. The second is that the state should refrain from punishing disobedience harshly or even at all, since the state must recognise that deportation decisions have far-reaching consequences and it therefore must operate on the assumption that opposition comes from a place of deep and often justified moral conviction. Moreover, to some extent the state should welcome such resistance as "the activism of non-status immigrants and refugees is re-creating citizenship in ways that demands recognition and support, not criminalisation and securitisation" (Nyers 2003: 1090). Thirdly, the state must design its rules and policies in a way that does not place unnecessarily heavy burdens on people in official capacities, so it cannot incorporate school, hospitals and other service providers in its deportation enforcement regime. Brownlee has rightly argued that "when many office-holders refuse to perform certain tasks, and appeal to the very spirit of their office to legitimate their refusals, this signals that the minimum moral burdens principle may not be satisfied and that revision of the office or institution may be required" (2012: 116). If there is widespread dissatisfaction among those who have been made agents of the enforcement state, the state should take this seriously.

Conclusion

The case of Lily and Howick with which this thesis opened reveals many of the themes which the subsequent chapters sought to explore. There was widely shared unease with forcing people who had been living in the country that was seeking to deport them to move "back" to a country they had never set foot in, compounded with the fact that as children they were vulnerable and could not be held responsible for their predicament. This was exemplified by the fact that even some deportation "hardliners" within the Dutch debate expressed feelings torn between allowing them to stay or upholding the credibility of the asylum system and preventing an incentive for those under an obligation to leave the territory to prolong deportation procedures as much as possible. Lily and Howick themselves vividly described in televised interviews the effects that living under the constant threat of removal for as long as they could remember had on their daily lives. The mobilisation of many different actors, including the mayor of the town the two were living, in trying to convince the national authorities to change course eventually turned into a recourse to illicit means to frustrate the deportation process. The symbolic posturing of the minister in charge who declared that "sometimes we have to be harsh" in order to uphold the law, days later using his discretionary privilege to reverse the deportation decision after all, earned him criticism from many of his own bureaucrats for sending mixed signals and undermining their decisions in other deportation cases.

This example shows the many different dynamics and normative beliefs driving the phenomenon of deportation, in Europe as well as beyond, that this thesis has sought to identify and discuss. Taking its findings together reveals at least three somewhat paradoxical trends in deportation policy and practice across Europe. The first is that, as the Introduction made clear, in some ways deportation is a distinctly modern phenomenon with a steady rise over the last few decades which has become known as the "deportation turn", and which can be partly measured in numerical terms (even if for now at least aggregate numbers of deportation have plateaued in Europe) but more importantly in terms of the ever-expanding machinery which seeks to streamline removals and make it easier for states to effectively get rid of ever more unwanted residents. At the same time, as Chapter 1 has argued, much can be learned about modern deportation by tracing it back to its ancient historical roots and by recognising the perennial nature of the politics of enforcing departure, especially that its core perceived functions of protecting the security, social and economic wellbeing, norms and values and shape of the political community can be found as justifications for expulsion practices throughout history. The second paradoxical finding is that deportation regimes in Europe seem to be at the same time diverging in important respects, as Chapter 2 showed, while also converging through processes of Europeanisation, explored in Chapter 3. Thirdly, the turn to deportation by

national authorities serves the, in many ways symbolic, purpose of reaffirming national sovereignty and control over migration and residence, while at the same time this control is eroding through supranational constraints on national deportation policies and practices, as outlined in Chapter 3, as well as through increasingly assertive subnational political actors which use the means at their disposal to shape deportation regimes to local preferences, as discussed in Chapter 4.

If the practice of deportation plays a fundamental role in the definition of political communities, this brings up not only the empirical questions explored in the first part of this thesis, but also a normative question concerning its moral justifiability. From a liberal perspective, the main question is what deportation regimes must look like in order to respect the fundamental rights of those subject to them. Galina Cornelisse rightly describes deportation and pre-removal detention as constituting a "litmus test" for the universality of the human rights regime in a world effectively organised by the principle of territoriality (2010b: 101). In the second part of the thesis, I argued that, while such a liberalised, human rights-respecting deportation regime is in principle possible, it would look very different from what deportation looks like today in Europe's liberal democracies, and that it would be so limited in its operation that it might be far less appealing as a policy instrument than it currently is. In Chapter 5 I argued that long-term permanent residents, both those whose presence is authorised as well as those whose presence is not, should be categorically exempt from the state's deportation power on the basis of their domiciliation in the territory. Chapter 6 argued that deportation can and should be applied in a way that does not dominate those it subjects by ensuring its non-arbitrary application through a limiting of executive discretion and by establishing proportionality testing in deportation procedures. And in Chapter 7, finally, I argued that until these two fundamental constraints on the state's deportation power are effectively instituted, would-be deportees and those assisting them retain a right, and in some circumstances a duty, to unlawfully resist deportations as long as certain conditions are met.

While this thesis has sought to take a broad perspective in both substantive and disciplinary terms, important strands of inquiry have been left unaddressed. The limited geographical focus on the European context does not allow us to say much about the specificity of deportation in this context as compared to other, and especially non-Western, contexts.[191] Each of the perspectives taken in this thesis could fruitfully be applied to such contexts and provide a further contribution to the existing literature. For instance, it would be worthwhile to broaden

[191] Analyses of deportation law and practice in non-Western contexts remain regretfully thin on the ground. Important exceptions include work on the use of deportation in South Africa by Rebecca Sutton and Darshan Vigneswaran (2011) and in Bahrain by Andrew Gardner (2010).

the historical analysis to include, for instance, the precise form that punitive banishment took in different ancient legal codes from the near to the far east. Similarly, while the Ancient Assyrian Empire's population transfers have briefly been mentioned in Chapter 1, a broader exploration might include the Incan Empire's use of dispersing conquered ethnic groups throughout the empire or the early Ottoman Empire's use of forced population transfers.

It would also be enlightening to compare the supranational regulation of deportation in the European context to that of other regional organisations. While the elaboration of a free movement regime is a stated aim of many such organisations, for the majority, including the Russia-dominated Commonwealth of Independent States (CIS), the Association of Southeast Asian Nations (ASEAN) and the Caribbean Community (CARICOM), this has not gone past the stage of ensuring visa-free travel for short-term purposes—sometimes only for certain categories of travellers. Both the South-American Southern Common Market (MERCOSUR) and the Economic Community of West African States (ECOWAS), however, do have more forceful free movement and residence agreements in place for citizens of member countries, providing interesting comparative cases for the EU.[192]

While this thesis has sought to cover the most important moral questions raised by deportation, much normative analysis remains to be done around this multifaceted phenomenon. For instance, more in-depth analysis is needed on the normative questions thrown up by particular deportation grounds. The increasingly common practice of deporting people on the basis of views, speech or action deemed "extremist" and incompatible with liberal democracy is but one example. Evaluating the justifiability and desirability of this practice involves a weighing of the importance of protecting liberal democratic institutions and the rights of citizens and residents

[192] The MERCOSUR agreement, adopted in 2002 and implemented in 2009, grants MERCOSUR citizens as well as natives of Chile and Bolivia an automatic visa and the freedom to work and live within another state party (Acosta Arcarazo 2016). On some dimensions, this agreement grants more expansive rights than the EU. Beneficiaries do not have to demonstrate employment or sufficient resources to take up residence in another state and they can transform their temporary residence into permanent residence status after two years rather than five. But in crucial respects, the agreement is more limited. The right to take up residence elsewhere is conditional on not having a criminal record within the past five years and does not extend to residents who are not nationals of the participating states. Crucially, it is never transformed into a fundamental right, has no supranational enforcement mechanisms, and the agreement includes no robust and specific protections against expulsion. In ECOWAS, the right of member state nationals to take up residence in another member state is subject to stricter conditions, but they do enjoy more explicit protections against expulsion—which may only be considered for reasons of national security, public order or morality, public health or if an essential condition of their residence permit is not fulfilled. Moreover, the deporting state must provide written notice not just to the person concerned and the country of origin, but also to ECOWAS' Executive Secretariat (Article 14 of the Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Residence and Establishment [1986]). While all this is still very far removed in both legal formulation and practical implementation from a robust non-deportability compared even to EU non-deportability, the inclusion of such provisions is nonetheless telling.

who are members of marginalised groups against hate speech, on the one hand, and the dangers of censorship and the fundamental rights of the extremists in question, on the other, and I have not been able to address these issues in this thesis. The interstate duties surrounding deportation constitute another area which has been hinted at in this thesis but this merits far more thorough normative analysis.

The twin challenges of migratory pressures on the member countries of the EU and the electoral success of nativist and populist political forces mean that the issue of deportation is unlikely to get off the political agenda anytime soon. Several recently elected European leaders, including President Emanuel Macron of France and Matteo Salvini, Deputy Prime Minister and Interior Minister in the populist coalition of his own far-right Lega party with the Five Star Movement, have pledged to dramatically step up the deportation efforts of two European countries which currently have some of the lowest deportation enforcement rates. The (as yet) unclear outcome of the negotiations over Brexit may have important consequences for the deportability of EU nationals living in the UK and UK nationals living in other EU countries. Even a cursory look at the long history of states' efforts to expel unwanted individuals and groups from the territories they control, however, demonstrates that expulsion in some form or another is a feature of human communities in all times and places. Deportation, in other words, is here to stay. One does not have to be a soothsayer to predict that states will continue to use expulsion and deportation in order to shape political communities. The EU will likely continue to claim a (growing) role for itself in regulating and facilitating such practices, and subnational authorities will continue to seek to assert their influence as well. Deportation will remain a politically and morally contentious issue, not just between different levels of government but between governments and individual citizens, residents and (would-be) deportees too.

Bibliography

Abizadeh, Arash. (2008). Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders. *Political Theory, 36*(1), 37-65.

Abizadeh, Arash. (2010). Democratic Legitimacy and State Coercion: A Reply to David Miller. *Political Theory, 38*(1), 121-130.

Abizadeh, Arash. (2015). The Rights of Migrants and the Protection of Fundamental Human Interests: On Carens' The Ethics of Immigration. *Political Theory, 43*(3), 380-387.

Acosta Arcarazo, Diego. (2009). The Good, the Bad and the Ugly in EU Migration Law: Is the European Parliament becoming Bad and Ugly? (the Adoption of Directive 2008/115: the Returns Directive). *European journal of migration and law, 11*(1), 19-39.

Acosta Arcarazo, Diego. (2011). *The Long-Term Residence Status as a Subsidiary Form of EU Citizenship: An Analysis of Directive 2003/109*. Leiden: Brill.

Acosta Arcarazo, Diego. (2016). Free Movement in South America: The Emergence of an Alternative Model? Washington, DC: Migration Policy Institute.

ACVZ. (2011). Om het Maatschappelijk Belang: Advies over het Betrekken van het Lokale Bestuur en de Lokale Gemeenschap bij de Uitoefening van de Discretionaire Bevoegdheid. The Hague: Adviescommissie voor Vreemdelingenzaken.

Adjei Sowah, Steven. (2014). Deporting EU Citizens: The Legality of Expulsions of EU Citizens under the Current Legal Framework and the Value of EU Citizenship. *The Student Journal of Law*(6).

Aliverti, Ana. (2015). Enlisting the Public in the Policing of Immigration. *British Journal Of Criminology, 55*(2), 215-230.

Anderson, Benedict. (1991). *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.

Anderson, Bridget. (2013). *Us and Them? The Dangerous Politics of Immigration Control*. Oxford: Oxford University Press.

Anderson, Bridget, Gibney, Matthew J., & Paoletti, Emanuela. (2011). Citizenship, Deportation and the Boundaries of Belonging. *Citizenship Studies, 15*(5), 547-563.

Anderson, Bridget, Gibney, Matthew J., & Paoletti, Emanuela. (2013). Introduction. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation*. New York: Springer.

Andreas, Peter. (2000). *Border Games: Policing the U.S.-Mexico Divide*. Ithaca: Cornell University Press.

Arendt, Hannah. (1951). *The Origins of Totalitarianism*. New York: Schocken Books.

Aristotle. ([350BC]1908). *Nichomachean Ethics. Translated by W. D. Ross*. Oxford: Clarendon Press.

Arnold, Samuel, & Harris, John R. (2017). What is Arbitrary Power? *Journal of Political Power, 10*(1), 55-70.

Azoulai, Loïc. (2011). A Comment on the Ruiz Zambrano Judgment: A Genuine European Integration. Retrieved from http://eudo-citizenship.eu/news/citizenship-news/457-a-comment-on-the-ruiz-zambrano-judgment-a-genuine-european-integration.

Bader, Dina, & Probst, Johanna. (2018). Saving the Deportee: Actors and Strategies of Anti-deportation Protests in Switzerland. In Sieglinde Rosenberger, Verena Stern, & Nina Merhaut (Eds.), *Protest Movements in Asylum and Deportation* (pp. 141-160). Cham: Springer International Publishing.

Baele, Stéphane J., & Sterck, Olivier C. (2015). Diagnosing the Securitisation of Immigration at the EU Level: A New Method for Stronger Empirical Claims. *Political Studies, 63*(5), 1120-1139.

Baldaccini, Anneliese. (2009). The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Returns Directive. *European journal of migration and law, 11*(1).

Balibar, Etienne. (2000). What We Owe to the *Sans-Papiers*. In Len Guenther & Cornelius Heesters (Eds.), *Social Insecurity* (pp. 42-43). Toronto: Anansi.

Banks, Angela M. (2009). Proportional Deportation. *Wayne Law Review, 55*(4), 1651-1682.
Banks, Angela M. (2013). The Normative & Historical Cases for Proportional Deportation. *Emory Law Journal, 62*, 1243-1307.
Barker, Vanessa. (2013). Democracy and Deportation: Why Membership Matters Most. In Katja Franko Aas & Mary Bosworth (Eds.), *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press.
Barker, Vanessa. (2015). Border Protests: The Role of Civil Society in Transforming Border Control. In Leanne Weber (Ed.), *Rethinking Border Control for a Globalizing World: A Preferred Future* (pp. 133-152). London: Routledge.
Bauböck, Rainer. (2003). Reinventing Urban Citizenship. *Citizenship Studies, 7*(2), 139-160.
Bauböck, Rainer. (2007). Recombinant Citizenship. In Alison Woodward & Martin Kohli (Eds.), *Inclusions and Exclusions in European Societies*. London: Routledge.
Bauböck, Rainer. (2008). Stakeholder Citizenship: An Idea Whose Time Has Come? Washington, DC: Migration Policy Institute.
Bauböck, Rainer. (2009). The Rights and Duties of External Citizenship. *Citizenship Studies, 13*(5), 475-499.
Bauböck, Rainer. (2015a). From Moral Intuition to Political Change: On Joseph Carens' Theory of Social Membership and Open Borders. *Political Theory, 43*(3), 393-401.
Bauböck, Rainer. (2015b). Three Levels of Citizenship in the European Union. *Phenomenology and Mind,* (8), 66-76.
Beckett, Katherine, & Herbert, Steven Kelly. (2010). *Banished: The New Social Control in Urban America*. Oxford: Oxford University Press.
Beckman, Ludvig, & Rosenberg, Jonas Hultin. (2017). Freedom as Non-domination and Democratic Inclusion. *Res Publica*, 1-18.
Benhabib, Seyla. (2004). *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.
Benton, Meghan. (2014). The Problem of Denizenship: A Non-Domination Framework. *Critical Review of International Social and Political Philosophy, 17*(1), 49-69.
Blake, Michael. (2010). Equality without Documents: Political Justice and the Right to Amnesty. *Canadian Journal of Philosophy, 40*(sup1), 99-122.
Blake, Michael. (2013). Immigration, Jurisdiction, and Exclusion. *Philosophy & Public Affairs, 41*(2), 103-130.
Bleichmar, Javier. (1999). Deportation as Punishment: A Historical Analysis of the British Practice of Banishment and its Impact on Modern Constitutional Law. *Georgetown immigration law journal, 14*(1), 115-163.
Bloch, Alice, & Schuster, Liza. (2005). At the Extremes of Exclusion: Deportation, Detention and Dispersal. *Ethnic and Racial Studies, 28*(3), 491-512.
Boe, Carolina Sanchez. (2018). Banished Yet Undeported: The Constitution of a "Floating Population" of Deportees Within France. In David C. Brotherton & Philip Kretsedemas (Eds.), *Immigration Policy in the Age of Punishment: Detention, Deportation, and Border Control*. New York: Columbia University Press.
Boehm, Christopher. (2013). The Biocultural Evolution of Conflict Resolution Between Groups. In Douglas P. Fry (Ed.), *War, Peace, and Human Nature: The Convergence of Evolutionary and Cultural Views*. Oxford: Oxford University Press.
Boehm, Deborah. (2016). *Returned: Going and Coming in an Age of Deportation*. Oakland: University of California Press.
Bosniak, Linda. (2006). *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton: Princeton University Press.
Bosniak, Linda. (2007). Being Here: Ethical Territoriality and the Rights of Immigrants. *Theoretical Inquiries in Law, 8*(2), 389-410.
Boswell, Christina. (2007). Migration Control in Europe After 9/11: Explaining the Absence of Securitization. *Journal of Common Market Studies, 45*(3), 589-610.
Bosworth, Mary. (2014). *Inside Immigration detention*. Oxford: Oxford University Press.

Braginton, Mary V. (1944). Exile under the Roman Emperors. *The Classical Journal, 39*(7), 391-407.
Broeders, Dennis, & Engbersen, Godfried. (2007). The Fight Against Illegal Migration: Identification Policies and Immigrants' Counterstrategies. *American Behavioral Scientist, 50*(12), 1592-1609.
Brotherton, David C., & Kretsedemas, Philip. (2018a). *Immigration Policy in the Age of Punishment: Detention, Deportation, and Border Control*. New York: Columbia University Press.
Brotherton, David C., & Kretsedemas, Philip. (2018b). Introduction. In David C. Brotherton & Philip Kretsedemas (Eds.), *Immigration Policy in the Age of Punishment: Detention, Deportation and Border Control*. New York: Columbia University Press.
Brotherton, David C., & Kretsedemas, Philip (Eds.). (2008). *Keeping Out the Other: A Critical Introduction to Immigration Enforcement Today*. New York: Columbia University Press.
Brownlee, Kimberley. (2007). The Communicative Aspects of Civil Disobedience and Lawful Punishment. *Criminal Law and Philosophy, 1*(2), 179-192.
Brownlee, Kimberley. (2012). *Conscience and Conviction: The Case for Civil Disobedience*. Oxford: Oxford University Press.
Brubaker, Rogers. (1989a). Introduction. In Rogers Brubaker (Ed.), *Immigration and the Politics of Citizenship in Europe and North America*. Lanham: University Press of America.
Brubaker, William Rogers. (1989b). Membership without Citizenship: The Economic and Social Rights of Noncitizens. In William Rogers Brubaker (Ed.), *Immigration and the Politics of Citizenship in Europe and North America*. Lanham: University Press of America.
Brubaker, William Rogers. (1992). *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press.
Buckinx, Barbara , & Filindra, Alexandra. (2015). The Case Against Removal: Jus Noci and Harm in Deportation Practice. *Migration Studies, 3*(3), 393-416.
Bundesamt für Migration und Flüchtlinge. (2015). Migrationsbericht 2013 (Referat Öffentlichkeitsarbeit, Trans.). Berlin: Bundesministerium des Innern.
Burke, Edmund. (1999). *Select works of Edmund Burke: A New Imprint of the Payne Edition. Foreword and Biographical Note by Francis Canavan*. Indianapolis: Liberty Fund.
Cabrera, Luis. (2010). *The Practice of Global Citizenship*. Cambridge: Cambridge University Press.
Cainkar, Louise, & Maira, Sunaina. (2005). Targeting Arab/Muslim/South Asian Americans: Criminalization and Cultural Citizenship. *AMERASIA JOURNAL, 31*(3), 1-28.
Campesi, Giuseppe. (2015). Hindering the Deportation Machine: An Ethnography of Power and Resistance in Immigration Detention. *Punishment & Society, 17*(4), 427-453.
Carens, Joseph H. (1987). Aliens and Citizens: The Case for Open Borders. *The Review of Politics, 49*(2), 251-273.
Carens, Joseph H. (2010). *Immigrants and the Right to Stay*. Cambridge, MA: MIT Press.
Carens, Joseph H. (2013). *The Ethics of Immigration*. Oxford: Oxford University Press.
Carrera, Sergio. (2014). How Much Does EU Citizenship Cost? The Maltese Citizenship-For-Sale Affair: A Breakthrough for Sincere Cooperation in Citizenship of the Union? *CEPS Paper in Liberty and Security in Europe* (Vol. No. 64). Brussels: Centre for European Policy Studies.
Carrera, Sergio, Guild, Elspeth, Aliverti, Ana, Allsopp, Jennifer, Manieri, Maria Giovanna, & Levoy, Michele. (2016). Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants. Brussels: European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs.
Cassarino, Jean-Pierre. (2015). Return Migration and Development Platform. Florence: Robert Schuman Centre for Advanced Studies.
Castañeda, Heide. (2010). Deportation Deferred: "Illegality," Visibility, and Recognition in Contemporary Germany. In Nicholas De Genova & Nathalie Peutz (Eds.), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press.

Cholewinski, Ryszard. (2000). The EU Acquis on Irregular Migration: Reinforcing Security at the Expense of Rights. *European journal of migration and law, 2*(3/4), 361-405.
Christiano, Thomas. (2008). *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford University Press.
CLANDESTINO Project. (2009). Size and Development of Irregular Migration to the EU: Comparative Policy Brief - Size of Irregular Migration. Brussels: European Commission.
Cohen, Robin. (1997). Shaping the Nation, Excluding the Other: The Deportation of Migrants from Britain. In Jan Lucassen & Leo Lucassen (Eds.), *Migration, Migration History, History: Old Paradigms and New Perspectives*. Bern: Peter Lang.
Cornelisse, Galina. (2010a). *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty*. Leiden: Martinus Nijhoff Publishers.
Cornelisse, Galina. (2010b). Immigration Detention and the Territoriality of Universal Rights. In Nicholas De Genova & Nathalie Peutz (Eds.), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press.
Costello, Cathryn, & Hancox, Emily. (2014). The UK, EU Citizenship and Free Movement of Persons *Migrant Observatory policy primer*. Oxford: University of Oxford.
Coutin, Susan Bibler. (2007). *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States*. Ithaca: Cornell University Press.
Coutin, Susan Bibler. (2015). Deportation Studies: Origins, Themes and Directions. *Journal of Ethnic and Migration Studies, 41*(4), 671-681.
Coy, Jason Philip. (2008). *Strangers and Misfits: Banishment, Social Control, and Authority in Early Modern Germany*. Leiden: Brill.
Dagger, Richard. (1997). *Civic Virtues: Rights, Citizenship, and Republican Liberalism*. New York: Oxford University Press.
De Genova, Nicholas. (2002). Migrant 'Illegality' and Deportability in Everyday Life. *Annual review of anthropology, 31*, 419-447.
De Genova, Nicholas. (2013). Spectacles of Migrant 'Illegality': The Scene of Exclusion, the Obscene of Inclusion. *Ethnic and Racial Studies, 36*(7), 1180-1198.
De Genova, Nicholas, & Peutz, Nathalie. (2010). Introduction. In Nicholas De Genova & Nathalie Peutz (Eds.), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press.
Della Torre, Lucia, & de Lange, Tesseltje. (2018). The 'Importance of Staying Put': Third Country Nationals' Limited Intra-EU Mobility Rights. *Journal of Ethnic and Migration Studies, 44*(9), 1409-1424.
Drotbohm, Heike, & Hasselberg, Ines. (2015). Deportation, Anxiety, Justice: New Ethnographic Perspectives. *Journal of Ethnic and Migration Studies, 41*(4), 551-562.
Drotbohm, Heike, & Hasselberg, Ines. (2018). Deportation, Crisis and Social Change. In Cecilia Menjívar, Marie Ruiz, & Immanuel Ness (Eds.), *The Oxford Handbook of Migration Crises*. Oxford: Oxford University Press.
Düvell, Franck. (2011). Irregular Immigration, Economics and Politics. *CESifo Dice Report, 9*(3), 60-68.
Eley, Geoff. (2011). A Disorder of Peoples: The Uncertain Ground of Reconstruction in 1945. In Jessica Reinisch & Elizabeth White (Eds.), *The Disentanglement of Populations: Migration, Expulsion and Displacement in Postwar Europe, 1944-49*. Basingstoke: Palgrave Macmillan.
Ellermann, Antje. (2006). Street-level Democracy? How Immigration Bureaucrats Manage Public Opposition. *West European Politics, 29*(2), 293-309.
Ellermann, Antje. (2009). *States Against Migrants: Deportation in Germany and the United States*. Cambridge: Cambridge University Press.
Ellermann, Antje. (2010). Undocumented Migrants and Resistance in the Liberal State. *Politics & Society, 38*(3), 408-429.
Ellermann, Antje. (2014). The Rule of Law and the Right to Stay: The Moral Claims of Undocumented Migrants. *Politics & Society, 42*(3), 293-308.

Estlund, David M. (2008). *Democratic Authority: A Philosophical Framework*. Princeton: Princeton University Press.
Ette, Andreas. (2017). *Migration and Refugee Policies in Germany: New European Limits of Control?* Opladen: Barbara Budrich.
European Migration Network. (2014). Good Practices in the Return and Reintegration of Irregular Migrants: Member States' Entry Bans Policy and Use of Readmission Agreements between Member States and Third Countries. *Synthesis Report for the EMN Focussed Study 2014*. Brussels: European Migration Network.
European Migration Network. (2017). Annual Report on Migration and Asylum 2016. Brussels: European Migration Network.
European Migration Network. (2018). Annual Report on Migration and Asylum 2017. Brussels: European Migration Network.
European Union Agency for Fundamental Rights. (2014). Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them. Vienna: FRA.
Eurostat. (2014). Technical Guidelines for the Data Collection under Art. 5 and 7 of Regulation 826/2007 - Enforcement of Immigration Legislation (EIL) Statistics. Luxembourg.
Eurostat. (2015a). Enforcement of Immigration Legislation (migr_eil) Reference Metadata.
Eurostat. (2015b). General Compliance with Definitions from EIL Technical Guidelines (Unit of Measure: Persons).
Eurostat. (2018). Enforcement of Immigration Legislation. Retrieved from http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database.
Falkner, Gerda, Hartlapp, Miriam, Leiber, Simone, & Treib, Oliver. (2004). Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor? *West European Politics, 27*(3), 452-473.
Feinberg, Joel. (1979). Civil Disobedience in the Modern World. *Humanities in Society, 2*(1), 37-60.
Fekete, Liz. (2005). The Deportation Machine: Europe, Asylum and Human Rights. *Race & Class, 47*(1), 64-78.
Fekete, Liz. (2006). Europe: 'Speech Crime' and Deportation. *Race & Class, 47*(3), 92-92.
Fekete, Liz. (2011). Accelerated Removals: The Human Cost of EU Deportation Policies. *Race & Class, 52*(4), 89-97.
Fine, Sarah. (2014). Non-Domination and the Ethics of Migration. *Critical Review of International Social and Political Philosophy, 17*(1), 10-30.
Fischer, Nicolas. (2013). Negotiating Deportations: An Ethnography of the Legal Challenge of Deportation Orders in a French Immigration Detention Centre. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation* (pp. 123-141). New York: Springer.
Forsdyke, Sara. (2000). Exile, Ostracism and the Athenian Democracy. *Classical Antiquity, 19*(2), 232-263.
Forsdyke, Sara. (2005). *Exile, Ostracism, and Democracy: The Politics of Expulsion in Ancient Greece*. Princeton: Princeton University Press.
France, Roger. (2013). The Influence of European Community Law on the Criminal Law of the Member States. In Hans-Jörg Albrecht & André Klip (Eds.), *Crime, Criminal Law and Criminal Justice in Europe* (pp. 137-180). Leiden: Nijhoff.
Freedman, Jane. (2008). The French "Sans-Papiers" Movement: An Unfinished Struggle. In Wendy Pojmann (Ed.), *Migration and Activism in Europe Since 1945* (pp. 81-96). New York: Palgrave Macmillan.
Gardner, Andrew M. (2010). Engulfed: Indian Guest Workers, Bahraini Citizens and the Structural Violence of the Kafala System. In Nicholas De Genova & Nathalie Peutz (Eds.), *The Deportation Regime: Sovereignty, Space, and Freedom of Movement*. Durham: Duke University Press.
Geddes, Andrew. (2000). *Immigration and European Integration: Towards Fortress Europe?* Manchester: Manchester University Press.

Gibney, Matthew J. (2000). Outside the Protection of the Law: The Situation of Irregular Migrants in Europe. Oxford: Refugee Studies Centre.
Gibney, Matthew J. (2008). Asylum and the Expansion of Deportation in the United Kingdom. *Government and Opposition, 43*(2), 146-167.
Gibney, Matthew J. (2013a). Deportation, Crime, and the Changing Character of Membership in the United Kingdom. In Katja Franko Aas & Mary Bosworth (Eds.), *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press.
Gibney, Matthew J. (2013b). Is Deportation a Form of Forced Migration? *Refugee Survey Quarterly, 32*(2), 116-129.
Gibney, Matthew J. (2013c). Should Citizenship Be Conditional? The Ethics of Denationalization. *Journal of Politics, 75*(03), 646-658.
Gibney, Matthew J., & Hansen, Randall. (2003). Deportation and the Liberal State: The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom *Working Paper No. 77*. Geneva: UNHCR.
Gibney, Matthew J., & Hansen, Randall. (2005). Deportation. In Matthew J. Gibney & Randall Hansen (Eds.), *Immigration and Asylum: From 1900 to the Present* (Vol. 1). Santa Barbara, CA: ABC-CLIO.
GLOBALCIT. (2017). Global Database on Modes of Loss of Citizenship, version 1.0. from Global Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute. Retrieved from http://globalcit.eu/loss-of-citizenship.
Golash-Boza, Tanya Maria. (2015). *Deported: Immigrant Policing, Disposable Labor, and Global Capitalism*. New York: New York University Press.
Goodin, Robert E. (2007). Enfranchising All Affected Interests, and Its Alternatives. *Philosophy & Public Affairs, 35*(1), 40-68.
Gousseff, Catherine. (2011). Evacuation versus Repatriation: The Polish-Ukrainian Population Exchange, 1944–6. In Jessica Reinisch & Elizabeth White (Eds.), *The Disentanglement of Populations: Migration, Expulsion and Displacement in postwar Europe, 1944-49*. Basingstoke: Palgrave Macmillan.
Gravelle, Matthew, Ellermann, Antje, & Dauvergne, Catherine. (2013). Studying Migration Governance from the Bottom-Up. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation*. New York: Springer.
Gray, Benjamin. (2011). From Exile of Citizens to Deportation of Non-Citizens: Ancient Greece as a Mirror to Illuminate a Modern Transition. *Citizenship Studies, 15*(5), 565-582.
Guild, Elspeth. (2009). *Security and Migration in the 21st Century*. Cambridge: Polity.
Guild, Elspeth, & Minderhoud, Paul (Eds.). (2001). *Security of Residence and Expulsion: Protection of Aliens in Europe*. The Hague: Kluwer Law International.
Guiraudon, Virginie. (2000). European Integration and Migration Policy: Vertical Policy-making as Venue Shopping. *Journal of Common Market Studies, 38*(2), 251-271.
Guiraudon, Virginie, & Joppke, Christian. (2001). *Controlling a New Migration World*. London: Routledge.
Guiraudon, Virginie, & Lahav, Gallya. (2000). A Reappraisal of the State Sovereignty Debate: The Case of Migration Control. *Comparative Political Studies, 33*(2), 163-195.
Hammar, Tomas. (1990). *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration*. Aldershot: Avebury.
Hammar, Tomas. (1994). Legal Time of Residence and the Status of Immigrants. In Rainer Bauböck (Ed.), *From Aliens to Citizens: Redefining the Status of Immigrants in Europe*. Aldershot: Avebury.
Hasselberg, Ines. (2016). *Enduring Uncertainty: Deportation, Punishment and Everyday Life*. New York: Berghahn Books.
Henckaerts, Jean-Marie. (1995). *Mass Expulsion in Modern International Law and Practice*. Dordrecht: Martinus Nijhoff Publishers.
Hidalgo, Javier. (2015). Resistance to Unjust Immigration Restrictions. *Journal of Political Philosophy, 23*(4), 450-470.

Hidalgo, Javier. (2016). The Duty to Disobey Immigration Law. *Moral Philosophy and Politics, 3*(2), 165-186.
Honohan, Iseult. (2014). Domination and Migration: An Alternative Approach to the Legitimacy of Migration Controls. *Critical Review of International Social and Political Philosophy, 17*(1), 31-48.
Horton, John. (2010). *Political Obligation*. Basingstoke: Palgrave Macmillan.
Hosein, Adam. (2014). Immigration: The Argument for Legalization. *Social Theory and Practice, 40*(4), 609-630.
Hosein, Adam. (2016). Arguments for Regularization. In Alex Sager (Ed.), *The Ethics and Politics of Immigration* (pp. 159-179). London: Rowman & Littlefield International.
Hovdal-Moan, Marit. (2014). Unequal Residence Statuses and the Ideal of Non-Domination. *Critical Review of International Social and Political Philosophy, 17*(1), 70-89.
Hoye, J. Matthew. (2017). Neo-republicanism, Old Imperialism, and Migration Ethics. *Constellations, 24*(2), 154-166.
Huysmans, Jef. (2000). The European Union and the Securitization of Migration. *Journal of Common Market Studies, 38*(5), 751-777.
Jansen, Yolande. (2015). Deportability and Racial Europeanization: The Impact of Holocaust Memory and Postcoloniality on the Unfreedom of Movement in and to Europe In Yolande Jansen, Robin Celikates, & Joost de Bloois (Eds.), *The Irregularization of Migration in Contemporary Europe. Detention, Deportation, Drowning*. London: Rowman & Littlefield.
Jansen, Yolande, Celikates, Robin, & Bloois, Joost de (Eds.). (2015). *The Irregularization of Migration in Contemporary Europe : Detention, Deportation, Drowning*. London: Rowman & Littlefield International.
Johnson, Kevin R. (2002). U.S. Border Enforcement: Drugs, Migrants, and the Rule of Law. *Villanova law review, 47*, 897-920.
Joppke, Christian. (2010). The Inevitable Lightening of Citizenship. *European Journal of Sociology, 51*(1), 9-32.
Kälin, Walter. (2010). Aliens, Expulsion and Deportation. *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press.
Kalir, Barak, & Wissink, Lieke. (2016). The Deportation Continuum: Convergences between State Agents and NGO Workers in the Dutch Deportation Field. *Citizenship Studies, 20*(1), 34-49.
Kanstroom, Daniel. (2007). *Deportation Nation: Outsiders in American History*. Cambridge, MA: Harvard University Press.
Kanstroom, Daniel. (2012). *Aftermath: Deportation Law and the New American Diaspora*. Oxford: Oxford University Press.
Kanstroom, Daniel. (2016). Deportation as a Global Phenomenon: Reflections on the Draft Articles on the Expulsion of Aliens. *Harvard Human Rights Journal ILC Forum Essays*.
Kanstroom, Daniel. (2017). The "Right to Remain Here" as an Evolving Component of Global Refugee Protection: Current Initiatives and Critical Questions. *Journal on Migration and Human Security, 5*(3), 614-644.
Kanstroom, Daniel, & Chicco, Jessica. (2015). The Forgotten Deported: A Declaration on the Rights of Expelled and Deported Persons. *New York University journal of international law and politics, 47*(3), 537-592.
Kanstroom, Daniel, & Lykes, M. Brinton. (2015a). Introduction. In Daniel Kanstroom & M. Brinton Lykes (Eds.), *The New Deportations Delirium: Interdisciplinary Perspectives*. New York: New York University Press.
Kanstroom, Daniel, & Lykes, M. Brinton (Eds.). (2015b). *The New Deportations Delirium: Interdisciplinary Responses*. New York: New York University Press.
Karakayali, Serhat, & Rigo, Enrica. (2010). Mapping the European Space of Circulation. In Nicholas De Genova & Nathalie Peutz (Eds.), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press.

Kaunert, Christian. (2009). Liberty versus Security? EU Asylum Policy and the European Commission. *Journal of Contemporary European Research,* (2), 148-170.
Kercher, Bruce. (2003). Perish or Prosper: The Law and Convict Transportation in the British Empire, 1700-1850. *Law and History Review, 21*(3), 527-584.
Khosravi, Shahram. (2009). Sweden: Detention and Deportation of Asylum Seekers. *Race & Class, 50*(4), 38-56.
Khosravi, Shahram (Ed.). (2018). *After Deportation: Ethnographic Perspectives*. Basingstoke: Palgrave Macmillan.
Kingston, Rebecca. (2005). The Unmaking of Citizens: Banishment and the Modern Citizenship Regime in France. *Citizenship Studies, 9*(1), 23-40.
Knight, Bernard. (2007). Crowner Part 4: The Right of Sanctuary. *Encyclopædia Britannia*.
Koch, Anne. (2013). Assisted Voluntary Return Schemes. *Forced Migration Review,* (44), 65.
Kochenov, Dimitry, & Pirker, Benedikt. (2013). Deporting the Citizens Within the European Union: A Counter-Intuitive Trend in Case C-348/09, P.I. V. Overburgemeisterin der Stadt Remscheid. *COLUMBIA JOURNAL OF EUROPEAN LAW, 19*(2), 369-390.
Kos, Sanne, Maussen, Marcel, & Doomernik, Jeroen. (2015). Policies of Exclusion and Practices of Inclusion: How Municipal Governments Negotiate Asylum Policies in the Netherlands. *Territory, Politics, Governance,* (10), 1-21.
Koslowski, Rey. (2001). Personal Security and State Sovereignty in a Uniting Europe. In Virginie Guiraudon & Christian Joppke (Eds.), *Controlling a New Migration World*. London: Routledge.
Kraler, Albert. (2011). The Case of Austria. In Giovanna Zincone, Rinus Penninx, & Maren Borkert (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present*. Amsterdam: Amsterdam University Press.
Kuschminder, Katie. (2017). Taking Stock of Assisted Voluntary Return from Europe: Decision Making, Reintegration and Sustainable Return: Time for a Paradigm Shift (Vol. EUI Working Paper RSCAS 2017/31). Florence: European University Institute.
Lebuhn, Henrik. (2013). Local Border Practices and Urban Citizenship in Europe: Exploring Urban Borderlands. *CITY. Analysis of Urban Trends, Culture, Theory, Policy, Action, 17*(1), 37-51.
Lebuhn, Henrik. (2014). Urban Citizenship, Border Practices and Immigrants' Rights in Europe: Ambivalences of a Cosmopolitan Project. *Open Citizenship, 4*(2), 12-21.
Lecadet, Clara. (2013). From Migrant Destitution to Self-organization into Transitory National Communities: The Revival of Citizenship in Post-deportation Experience in Mali. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation*. New York: Springer.
Leerkes, Arjen, Bachmeier, James D., & Leach, Mark A. (2013). When the Border Is Everywhere: State-level Variation in Migration Control and Changing Settlement Patterns of the Unauthorized Immigrant Population in the United States. *International Migration Review, 47*(4), 910-943.
Leerkes, Arjen, & Broeders, Dennis. (2013). Deportable and Not So Deportable: Formal and Informal Functions of Administrative Immigration Detention. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation* New York: Springer.
Leerkes, Arjen, & Kox, Mieke. (2017). Pressured into a Preference to Leave? A Study on the "Specific" Deterrent Effects and Perceived Legitimacy of Immigration Detention. *Law & Society Review, 51*(4), 895-929.
Leerkes, Arjen, Os, Rianne, & Boersema, Eline. (2017). What Drives 'Soft Deportation'? Understanding the Rise in Assisted Voluntary Return among Rejected Asylum Seekers in the Netherlands. *Population, Space and Place, 23*(8), e2059.
Leerkes, Arjen, Varsanyi, Monica, & Engbersen, Godfried. (2012). Local Limits to Migration Control: Practices of Selective Migration Policing in a Restrictive National Policy Context. *Police Quarterly, 15*(4), 446-475.
Lefkowitz, David. (2007). On a Moral Right to Civil Disobedience. *Ethics, 117*(2), 202-233.

Lefkowitz, David. (2014). Autonomy, Residence, and Return. *Critical Review of International Social and Political Philosophy, 18*(5), 529-546.
Lenard, Patti Tamara. (2015). The Ethics of Deportation in Liberal Democratic States. *European Journal of Political Theory*.
Lewis, Mary Dewhurst. (2002). The Strangeness of Foreigners: Policing Migration and Nation in Interwar Marseille. *French Politics, Culture & Society, 20*(3), 65-96.
Lovett, Frank. (2010). *A General Theory of Domination and Justice*. Oxford: Oxford University Press.
Lovett, Frank, & Pettit, Philip. (2009). Neorepublicanism: A Normative and Institutional Research Program. *Annual Review of Political Science, 12*(1), 11-29.
Lucassen, Leo. (1998). Eternal Vagrants? State Formation, Migration and Travelling Groups in Western Europe, 1350–1914 *Gypsies and Other Itinerant Groups: A Socio-Historical Approach* (pp. 55-73). London: Palgrave Macmillan.
Lyon, David. (2005). The Border is Everywhere: ID Cards, Surveillance and the Other. In Elia Zureik & Mark B. Salter (Eds.), *Global Surveillance and Policing: Borders, Security, Identity*. Portland: Willan Publishing.
Maas, Willem. (2007). *Creating European Citizens*. Lanham: Rowman & Littlefield.
Maas, Willem. (2014). European Union Citizenship in Retrospect and Prospect. In Engin F. Isin & Peter Nyers (Eds.), *Routledge Handbook of Global Citizenship Studies*. Hoboken: Taylor and Francis.
Macklin, Audrey. (2018). The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship? In Rainer Bauböck (Ed.), *Debating Transformations of National Citizenship* (pp. 163-172). Cham: Springer International Publishing.
Maira, Sunaira. (2010). Radical Deportation: Alien Tales from Lodi and San Francisco. In Nicholas De Genova & Nathalie Peutz (Eds.), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press.
Markovits, Daniel. (2005). Democratic Disobedience. *Yale Law Review, 114*, 1897-1952.
McNevin, Anne. (2006). Political Belonging in a Neoliberal Era: The Struggle of the Sans-Papiers. *Citizenship Studies, 10*(2), 135-151.
McNevin, Anne. (2011). *Contesting Citizenship: Irregular Migrants and New Frontiers of the Political*. New York: Columbia University Press.
Migreurop (Cartographer). (2013). Encampment Map 2012. Retrieved from http://www.migreurop.org/IMG/pdf/carte_atlas_migreurop_8012013_version_anglaise_version_web.pdf
Miller, David. (2010). Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh. *Political Theory, 38*(1), 111-120.
Miller, David. (2016). *Strangers in Our Midst: The Political Philosophy of Immigration*. Cambridge, MA: Harvard University Press.
Miller, Gerald R. (1956). Banishment: A Medieval Tactic in Modern Criminal Law. *Utah Law Review, 5*, 365-380.
Mitsilegas, Valsamis. (2014). *The Criminalisation of Migration in Europe: Challenges for Human Rights and the Rule of Law*. New York: Springer.
Moloney, Deirdre M. (2012). *National Insecurities: Immigrants and U.S. Deportation Policy since 1882*. Chapel Hill, N.C.: University of North Carolina Press.
Moloney, Deirdre M. (2013). Muslims, Mormons and U.S. Deportation and Exclusion Policies: The 1910 Polygamy Controversy and the Shaping of Contemporary Attitudes. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation*. New York: Springer.
Moore, Margaret. (2015). *A Political Theory of Territory*. Oxford: Oxford University Press.
Morgan, Gwenda, & Rushton, Peter. (2004). *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic*. New York: Palgrave Macmillan.
Morreall, John. (1991). The Justifiability of Violent Civil Disobedience. In Hugo Adam Bedau (Ed.), *Civil Disobedience in Focus* (pp. 130-143). London: Routledge.
Motomura, Hiroshi. (2014). *Immigration Outside the Law*. Oxford: Oxford University Press.

Mullally, Siobhan. (2007). Children, Citizenship and Constitutional Change. In Bryan Fanning (Ed.), *Immigration and Social Change in the Republic of Ireland*. Manchester: Manchester University Press.
Nyers, Peter. (2003). Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement. *Third World Quarterly, 24*(6), 1069-1093.
Ochoa Espejo, Paulina. (2016). Taking Place Seriously: Territorial Presence and the Rights of Immigrants. *Journal of Political Philosophy, 24*(1), 67-87.
Oded, Bustenay. (1979). *Mass Deportations and Deportees in the Neo-Assyrian Empire*. Wiesbaden: Reichert.
Orwell, George. (1946). Politics and the English Language. *Horizon: A Review of Literature and Art, 13*(76), 252-265.
Owen, David. (2013). Citizenship and the Marginalities of Migrants. *Critical Review of International Social and Political Philosophy, 16*(3), 326-343.
Paoletti, Emanuela. (2010). Deportation, Non-Deportability and Ideas of Membership *Refugee Studies Centre Working Paper No. 65*. Oxford: Oxford Department of International Development.
Park, Lisa Sun-Hee. (2018). Medical Deportations: Blurring the Line between Health Care and Immigration Enforcement. In David C. Brotherton & Philip Kretsedemas (Eds.), *Immigration Policy and the Age of Punishment*. New York: Columbia University Press.
Parker, Owen, & Toke, David. (2013). The Politics of a Multi-level Citizenship: French Republicanism, Roma Mobility and the EU. *Global Society, 27*(3), 360-378.
Parkin, Joanna. (2013). The Criminalisation of Migration in Europe: a State-of-the-Art of the Academic Literature and Research. *CEPS Paper in Liberty and Security in Europe*. Brussels: Centre for European Policy Studies.
Parsons, Victoria. (2014). Citizenship Revoked: What Do We Know about Citizenship Stripping? *The Bureau of Investigative Journalism.* Retrieved from https://www.thebureauinvestigates.com/stories/2014-12-10/what-do-we-know-about-citizenship-stripping.
Peers, Steve, Guild, Elspeth, Acosta Arcarazo, Diego, Groenendijk, Kees, & Moreno-Lax, Violeta. (2012). *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition. Volume 2: EU Immigration Law* (Vol. 2). Leiden: Martinus Nijhoff.
Penninx, Rinus, Kraal, Karen, Martiniello, Marco, & Vertovec, Steven. (2004). Introduction: European Cities and Their New Residents. In Rinus Penninx, Karen Kraal, Marco Martiniello, & Steven Vertovec (Eds.), *Citizenship in European Cities: Immigrants, Local Politics, and Integration Policies*. Aldershot: Ashgate Publishing.
Pettit, Philip. (1999). *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press.
Pettit, Philip. (2012). *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge University Press.
Pettit, Philip. (2014). *Just Freedom: A Moral Compass for a Complex World*. New York: Norton & Company.
Pevnick, Ryan. (2011). *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty*. Cambridge: Cambridge University Press.
Provera, Mark. (2015). The Criminalisation of Irregular Migration in the European Union *CEPS Liberty and Security in Europe No. 80/2015*. Brussels: Centre for European Policy Studies.
Radner, Karen. (2012). Mass Deportation: the Assyrian Resettlement Policy. *Assyrian Empire Builders.* Retrieved from http://www.ucl.ac.uk/sargon/essentials/governors/massdeportation/.
Ramakrishnan, S. Karthick, & Wong, Tom K. (2010). Partisanship, Not Spanish: Explaining Municipal Ordinances Affecting Undocumented Immigrants. In Monica Varsanyi (Ed.), *Taking Local Control: Immigration Policy Activism in US Cities and States*. Palo Alto: Stanford University Press.
Rawls, John. (1999). *A Theory of Justice (Revised Edition)*. Cambridge: Harvard University Press.
Raz, Joseph. (1979). *The Authority of Law: Essays on Law and Morality*. Oxford: Clarendon Press.

Rebenich, Stefan. (1998). Fremdenfeindlichkeit in Sparta? Überlegungen zur Tradition der spartanischen Xenelasie. *Klio - Beiträge zur Alten Geschichte, 80*(2), 336–359.
Reinisch, Jessica. (2011). Introduction. In Jessica Reinisch & Elizabeth White (Eds.), *The Disentanglement of Populations: Migration, Expulsion and Displacement in Post-War Europe, 1944-9*. Basingstoke: Palgrave Macmillan.
Rich, Anthony. (Ed.) (1875) *A Dictionary of Greek and Roman Antiquities.* London: John Murray.
Ripoll Servent, Ariadna. (2013). The European Parliament and the Returns Directive: The End of Radical Contestation, the Start of Consensual Constraints. In Bridget Anderson, Matthew J. Gibney, & Emanuela Paoletti (Eds.), *The Social, Political and Historical Contours of Deportation*. New York: Springer.
Rubio-Marín, Ruth. (2000). *Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States*. Cambridge: Cambridge University Press.
Sager, Alex. (2014). Political Rights, Republican Freedom, and Temporary Workers. *Critical Review of International Social and Political Philosophy, 17*(2), 189-211.
Sager, Alex. (2017). Immigration Enforcement and Domination: An Indirect Argument for Much More Open Borders. *Political Research Quarterly, 70*(1), 42-54.
Said, Edward W. (1978). *Orientalism*. London: Penguin Books.
Schuilenburg, Marc. (2015). Behave or Be Banned? Banning Orders and Selective Exclusion from Public Space. *Crime, Law and Social Change: An Interdisciplinary Journal, 64*(4-5), 277-289.
Schulze, Rainer. (2011). Forced Migration of German Populations During and After the Second World War: History and Memory. In Jessica Reinisch & Elizabeth White (Eds.), *The Disentanglement of Populations: Migration, Expulsion and Displacement in Postwar Europe, 1944-49*. Basingstoke: Palgrave Macmillan.
Schuster, Liza. (2005). A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe. *Social Policy & Administration, 39*(6), 606-621.
Schuster, Liza, & Majidi, Nassim. (2015). Deportation Stigma and Re-migration. *Journal of Ethnic and Migration Studies, 41*(4), 635-652.
Scott, James C. (1985). *Weapons of the Weak: Everyday Forms of Peasant Resistance*. New Haven: Yale University Press.
Sen, Amartya. (2006). What Do We Want from a Theory of Justice? *THe Journal of Philosophy, 103*(5), 215-238.
Shachar, Ayelet. (2009). *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge, Mass.: Harvard University Press.
Shachar, Ayelet. (2011). Earned Citizenship: Property Lessons for Immigration Reform. *Yale Journal of Law and the Humanities, 23*, 110-158.
Shapiro, Ian. (2012). On Non-Domination. *University of Toronto Law Journal, 62*(3), 293-336.
Shklar, Judith N. (1998). The Liberalism of Fear. In Judith N. Shklar & Stanley Hoffmann (Eds.), *Political Thought and Political Thinkers*. Chicago: University of Chicago Press.
Siegel, Larry J. (2007). *Criminology: Theories, Patterns, and Typologies*. Belmont, CA: Thomson/Wadsworth.
Simmons, A. John. (2003). Civil Disobedience and the Duty to Obey the Law. In R.G. Frey & Christopher Heath Wellman (Eds.), *A Companion to Applied Ethics* (pp. 50-61). Malden: Blackwell Publishing.
Smith, William. (2011). Civil Disobedience and the Public Sphere. *Journal of Political Philosophy, 19*(2), 145-166.
Smith, William, & Cabrera, Luis. (2015). The Morality of Border Crossing. *Contemporary Political Theory, 14*(1), 90-99.
Snider, William Garth. (1998). Banishment: The History of its Use and a Proposal for its Abolition under the First Amendment. *New England Journal on Criminal and Civil Confinement, 24*(summer), 455-509.
Song, Sarah. (2016). The Significance of Territorial Presence and the Rights of Immigrants. In Sarah Fine & Lea Ypi (Eds.), *Migration in Political Theory: The Ethics of Movement and Membership* (pp. 225-248). Oxford: Oxford University Press.

Soysal, Yasemin. (1994). *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago Press.
Stebbins, Robert A. (2001). *Exploratory Research in the Social Sciences*. London: Sage.
Stilz, Anna. (2011). Nations, States, and Territory. *Ethics, 121*(3), 572-601.
Stilz, Anna. (2013). Occupancy Rights and the Wrong of Removal. *Philosophy & Public Affairs, 41*(4), 324-356.
Stumpf, Juliet. (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review, 56*(2), 367-419.
Sutton, Rebecca, & Vigneswaran, Darshan. (2011). A Kafkaesque State: Deportation and Detention in South Africa. *Citizenship Studies, 15*(5), 627-642.
Thoreau, Henry David. (1996). *Thoreau: Political Writings* (Nancy L. Rosenblum Ed.). Cambridge: Cambridge University Press.
Thym, Daniel. (2014). Residence as De Facto Citizenship? Protection of Long-term Residence under Article 8 ECHR. In Ruth Rubio-Marín (Ed.), *Human Rights and Immigration*. Oxford: Oxford University Press.
Thym, Daniel. (2016). 'Citizens' and 'Foreigners' in EU Law. Migration Law and its Cosmopolitan Outlook. *European Law Journal, 22*(3), 296-316.
Torpey, John. (2000). *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge: Cambridge University Press.
Tyler, Imogen, & Marciniak, Katarzyna. (2013). Immigrant Protest: An Introduction. *Citizenship Studies, 17*(2), 143-156.
Ugelvik, Thomas. (2013). Seeing Like a Welfare State: Immigration Control, Statecraft, and a Prison with a Double Vision. In Katja Franko Aas & Mary Bosworth (Eds.), *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press.
Ugelvik, Thomas. (2014). The Incarceration of Foreigners in European Prisons. In Shannon Pickering & Julie Ham (Eds.), *The Routledge Handbook on Crime and International Migration*. New York: Routledge.
UN Human Rights Committee. (1999). *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*.
van Middelaar, Luuk. (2013). *The Passage to Europe: How a Continent Became a Union*. New Haven: Yale University Press.
Varsanyi, Monica W. (2008). Immigration Policing Through the Backdoor: City Ordinances, the "right to the City," and the Exclusion of Undocumented Day Laborers. *Urban Geography, 29*(1), 29-52.
Versteegt, Inge, & Maussen, Marcel. (2012). Contested Policies of Exclusion: Resistance and Protest against Asylum Policy in the Netherlands. *ACCEPT-Pluralism report*. Amsterdam: Amsterdam Institute for Social Science Research (AISSR), University of Amsterdam.
Vols, Michel, & Duran, Dewi. (2014). Tackling Anti-Social Behaviour and Homelessness with Exclusion Orders in the Netherlands, Belgium, England and Wales. In G. J. Vonk & A Tollenaar (Eds.), *Homelessness and the Law. Constitution, Criminal Law and Human Rights*. Nijmegen: Wolf Legal Publishers.
Voltaire. ([1764]2006). *Philosophical Dictionary*: Project Gutenberg.
Walters, William. (2002). Deportation, Expulsion, and the International Police of Aliens. *Citizenship Studies, 6*(3), 265-292.
Walters, William. (2008). Acts of Demonstration: Mapping the Territory of (Non-)Citizenship. In Engin F. Isin & Greg M. Neilsen (Eds.), *Acts of Citizenship* (pp. 182-207). London: Zed Books.
Walters, William. (2015a). Migration, Vehicles, and Politics: Three Theses on Viapolitics. *European Journal of Social Theory, 18*(4), 469-488.
Walters, William. (2015b). On the Road with Michel Foucault: Migration, Deportation and Viapolitics. In Sophie Fuggle, Yari Lanci, & Martina Tazzioli (Eds.), *Foucault and the History of Our Present* (pp. 94-110). London: Palgrave Macmillan.
Walters, William. (2016). The Flight of the Deported: Aircraft, Deportation, and Politics. *Geopolitics, 21*(2), 435-458.

Walzer, Michael. (1983). *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.
Webber, Frances. (2011). How Voluntary are Voluntary Returns? *Race & Class, 52*(4), 98-107.
Weber, Leanne. (2014). Deciphering Deportation Practices Across the Global North. In Shannon Pickering & Julie Ham (Eds.), *The Routledge Handbook on Crime and International Migration*. New York: Routledge.
Weber, Leanne, & Bowling, Benjamin. (2008). Valiant Beggars and Global Vagabonds: Select, Eject, Immobilize. *Theoretical Criminology, 12*(3), 355-375.
Wells, Miriam J. (2004). The Grassroots Reconfiguration of U.S. Immigration Policy. *International Migration Review, 38*(4), 1308-1347.
Willis, James J. (2005). Transportation versus Imprisonment in Eighteenth- and Nineteenth-Century Britain: Penal Power, Liberty, and the State. *Law & Society Review, 39*(1), 171-210.
Wilsher, Daniel. (2012). *Immigration Detention: Law, History, Politics*. Cambridge: Cambridge University Press.
Wong, Tom K. (2015). *Rights, Deportation, and Detention in the Age of Immigration Control*. Stanford: Stanford University Press.
Yong, Caleb. (2018). Justifying Resistance to Immigration Law: The Case of Mere Noncompliance. *Canadian Journal of Law & Jurisprudence, 31*(2), 459-481.

Appendix A
Statistics on European Union deportations

General source: Eurostat database. https://ec.europa.eu/eurostat/data/database. Last accessed August 2018.

Variables used:

Asylum and Managed Migration, Enforcement of Immigration Legislation (migr_eil):

Third country nationals refused entry at the external borders - annual data (rounded) (migr_eirfs)
Third country nationals found to be illegally present - annual data (rounded) (migr_eipre)
Third country nationals ordered to leave - annual data (rounded) (migr_eiord)
Third country nationals returned following an order to leave - annual data (rounded) (migr_eirtn)
Third-country nationals who have left the territory by type of return and citizenship (migr_eirt_vol)

Demography and migration, population (demo_pop):

Population on 1 January by age and sex (demo_pjan)
Population on 1 January by age group, sex and citizenship (migr_pop1ctz)

Shorthands used (by author):

TCNs = Third Country Nationals
Deportation orders = TCNs ordered to leave
Deportations = TCNs returned following an order to leave
Total population = population on 1 January
Total TCN population = population on 1 January by non-EU28 (current composition) nor reporting country citizenship

AT	BE	BG	HR	CY	CZ	DK	EE	FI	FR	DE	GR	HU	IS	IE	IT	LV	LI	LT	LU	MT	NL	NO	PL	PT	RO	SK	SI	ES	SE	UK
Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy	Latvia	Liechtenstein	Lithuania	Luxembourg	Malta	Netherlands	Norway	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	United Kingdom

EU total (since 2013 incl. Croatia)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Average
TCNs refused entry at external border	634,975	499,640	394,800	344,440	317,170	326,320	286,805	297,860	388,280	439,505	3,929,795	392,980
TCNs found to be illegally present	583,255	568,525	508,850	474,690	439,420	452,270	672,215	2,154,675	983,860	618,780	7,456,540	745,654
TCNs ordered to leave	603,360	594,600	540,080	491,310	483,650	430,450	470,080	533,395	493,785	516,115	5,156,825	515,683
TCNs returned following order to leave	241,965	252,790	225,415	194,110	206,675	215,885	196,280	227,975	250,015	213,525	2,224,635	222,464
total refused entry + ordered to leave	1,238,335	1,094,240	934,880	835,750	800,820	756,770	756,885	831,255	882,065	955,620		
refused entry as % of total	51%	46%	42%	41%	40%	43%	38%	36%	44%	46%		
ordered to leave as % of total	49%	54%	58%	59%	60%	57%	62%	64%	56%	54%		
deportations as % of deportation orders	40%	43%	42%	40%	43%	50%	42%	43%	51%	41%	43%	43%

Source variables: migr_eirfs, migr_eipre, migr_eiord, migr_eirtn

Total TCN deportation orders

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	average	total
Belgium	28,545	24,035	22,865	36,885	50,890	47,465	35,245	31,045	33,020	32,235	34,223	342,230
Bulgaria	1,405	1,465	1,705	1,355	2,050	5,260	12,870	20,810	14,120	2,600	6,364	63,640
Czech Republic	3,770	3,805	2,915	2,520	2,375	2,405	2,460	4,510	3,760	6,090	3,461	34,610
Denmark				2,170	3,295	3,110	2,905	3,925	3,050	3,185	3,091	
Germany	11,985	14,595	19,190	17,550	20,000	25,380	34,255	54,080	70,005	97,165	36,421	364,205
Estonia	185	150	110	480	580	600	475	590	505	645	432	4,320
Ireland	1,285	1,615	1,495	1,805	2,065	2,145	970	875	1,355	1,105	1,472	14,715
Greece	146,335	126,140	132,525	88,820	84,705	43,150	73,670	104,575	33,790	45,765	87,948	879,475
Spain	82,940	103,010	78,920	73,220	60,880	32,915	42,150	33,495	27,845	27,340	56,272	562,715
France	97,515	88,565	76,590	83,440	77,600	84,890	86,955	79,950	81,000	84,675	84,118	841,180
Croatia						4,355	3,120	3,910	4,730	4,400	4,103	
Italy	68,175	53,440	46,955	29,505	29,345	23,945	25,300	27,305	32,365	36,240	37,258	372,575
Cyprus	3,355	3,205	2,845	3,205	3,110	4,130	3,525	2,250	1,575	1,850	2,905	29,050
Latvia	265	220	210	1,060	2,070	2,080	1,555	1,190	1,450	1,350	1,145	11,450
Lithuania	910	1,210	1,345	1,765	1,910	1,770	2,245	1,870	1,740	2,080	1,685	16,845
Luxembourg		185	150		1,945	1,015	775	700	655	915	793	
Hungary	4,205	4,850	5,515	6,935	7,450	5,940	5,885	11,750	10,765	8,730	7,203	72,025
Malta	3,015	1,690	245	1,730	2,255	2,435	990	575	415	470	1,382	13,820
Netherlands	33,200	35,575	29,870	29,500	27,265	32,435	33,735	23,765	32,950	31,565	30,986	309,860
Austria	8,870	10,625	11,050	8,520	8,160	10,085		9,910	11,850	8,850	9,769	
Poland	8,145	11,875	10,700	7,750	7,995	9,215	10,160	13,635	20,010	24,825	12,431	124,310
Portugal	8,185	10,295	9,425	8,570	8,565	5,450	3,845	5,080	6,200	5,760	7,138	71,375
Romania	3,695	5,125	3,435	3,095	3,015	2,245	2,030	1,930	2,070	1,975	2,862	28,615
Slovenia	1,555	1,065	3,415	4,410	2,055	1,040	1,025	1,025	1,375	1,220	1,819	18,185
Slovakia	1,655	1,180	870	580	490	545	925	1,575	1,735	2,375	1,193	11,930
Finland	1,775	3,125	3,835	4,685	4,300	4,330	3,360	4,905	17,975	7,255	5,555	55,545
Sweden	12,555	17,820	20,205	17,600	19,905	14,695	14,280	18,150	17,585	20,525	17,332	173,320
United Kingdom	69,840	69,745	53,700	54,150	49,365	57,415	65,365	70,020	59,895	54,910	60,441	604,405
Iceland	30	30									30	
Liechtenstein	15	30	10	10	10	10	15	15	15		14	
Norway				14,540	13,790	13,480	13,305	13,705	15,380	9,795	13,428	
Switzerland					3,460	3,320	3,335	3,730	3,420		3,453	

Source variable: migr_eiord

Total TCN deportations

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	average	total
Belgium	3,965	4,060	4,415	5,890	7,840	7,170	5,575	5,835	7,355	5,695	5,780	57,800
Bulgaria	275	285	295	665	835	1,100	1,155	735	1,215	1,755	832	8,315
Czech Republic	585	850	920	530	430	330	320	1,715	530	805	702	7,015
Denmark	825	800	520	455	1,375	2,070	1,400	2,655	1,485	1,590	1,318	13,175
Germany	14,295	11,900	13,895	14,075	13,855	19,180	21,895	55,340	75,815	47,240	28,749	287,490
Estonia	95	115	80	415	480	575	445	560	465	630	386	3,860
Ireland	690	830	805	755	745	635	345	365	585	315	607	6,070
Greece	68,565	62,850	51,785	10,585	16,650	25,465	27,055	14,390	19,055	18,765	31,517	315,165
Spain	29,785	28,865	21,955	23,350	18,865	17,285	15,150	13,315	10,185	10,785	18,954	189,540
France	19,470	18,400	17,045	20,425	22,760	20,140	19,525	18,245	14,065	15,665	18,574	185,740
Croatia						2,530	2,245	1,940	1,890	2,125	2,146	
Italy	7,140	5,315	4,890	6,180	7,365	5,860	5,310	4,670	5,715	7,045	5,949	59,490
Cyprus	3,480	4,520	4,065	4,605	4,370	4,025	2,990	1,840	1,035	770	3,170	31,700
Latvia	255	205	190	1,055	2,065	2,070	1,550	1,030	1,355	1,275	1,105	11,050
Lithuania	855	925	1,235	1,655	1,825	1,665	1,930	1,720	1,550	1,860	1,522	15,220
Luxembourg		105	75	345	1,010	605	605	720	410	445	480	
Hungary	1,745	2,245	2,445	4,610	5,440	4,395	4,345	5,975	780	2,445	3,443	34,425
Malta	305	530	270	160	570	460	495	465	420	475	415	4,150
Netherlands	9,350	8,980	10,355	9,475	9,635	8,010	7,995	8,620	12,530	8,515	9,347	93,465
Austria	5,855	6,410	6,335	5,225	4,695	6,790	2,480	5,275	6,095	6,115	5,528	55,275
Poland	8,595	6,945	6,770	7,050	6,845	8,465	9,280	12,930	18,575	22,210	10,767	107,665
Portugal	1,345	1,220	1,335	1,245	1,330	1,135	820	610	405	295	974	9,740
Romania	3,820	4,670	3,015	2,875	2,890	2,235	2,085	1,995	1,865	1,815	2,727	27,265
Slovenia	1,995	2,220	1,940	1,745	1,090	885	840	840	330	250	1,214	12,135
Slovakia	1,295	900	600	445	320	375	695	1,230	1,410	1,740	901	9,010
Finland	910	1,720	1,930	3,235	3,070	3,155	3,195	3,365	6,005	4,000	3,059	30,585
Sweden	9,015	11,980	14,645	13,470	16,140	14,315	6,630	9,830	11,865	9,950	11,784	117,840
United Kingdom	47,455	64,945	53,615	53,600	54,180	54,960	49,920	51,765	47,020	38,970	51,643	516,430
Iceland	20	15									18	
Liechtenstein	15	30	10	10	5	10	15	15	15		14	
Norway	1,665			3,960	4,045	4,450	5,365	5,450	5,940	3,605	4,310	
Switzerland								0	0		0	

Source variable: migr_eirtn

TCN deportation orders per 100,000 total population

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	average
Belgium	268	224	211	335	459	426	315	276	292	284	309
Bulgaria	19	20	23	18	28	72	178	289	197	37	88
Czech Republic	36	36	28	24	23	23	23	43	36	58	33
Denmark	0	0	0	39	59	56	52	69	53	55	38
Germany	15	18	23	22	25	32	42	67	85	118	45
Estonia	14	11	8	36	44	45	36	45	38	49	33
Ireland	29	36	33	39	45	47	21	19	29	23	32
Greece	1,323	1,137	1,192	798	764	392	674	963	313	425	798
Spain	182	223	170	157	130	70	91	72	60	59	121
France	152	138	118	128	119	129	132	120	121	126	129
Croatia						102	73	93	113	106	97
Italy	116	91	79	50	49	40	42	45	53	60	63
Cyprus	432	402	347	382	361	477	411	266	186	216	348
Latvia	12	10	10	51	101	103	78	60	74	69	57
Lithuania	28	38	43	58	64	60	76	64	60	73	56
Luxembourg		37	30		371	189	141	124	114	155	145
Hungary	42	48	55	69	75	60	60	119	110	89	73
Malta	739	411	59	417	540	576	231	131	92	102	330
Netherlands	202	216	180	177	163	193	200	141	194	185	185
Austria	107	127	132	102	97	119		115	136	101	115
Poland	21	31	28	20	21	24	27	36	53	65	33
Portugal	78	97	89	81	81	52	37	49	60	56	68
Romania	18	25	17	15	15	11	10	10	10	10	14
Slovenia	77	52	167	215	100	51	50	50	67	59	89
Slovakia	31	22	16	11	9	10	17	29	32	44	22
Finland	33	59	72	87	80	80	62	90	328	132	102
Sweden	137	193	216	187	210	154	148	186	179	205	181
United Kingdom	113	112	86	86	78	90	102	108	92	83	95
Iceland	10	9									9
Liechtenstein	42	84	28	28	27	27	40	40	40		40
Norway				296	277	267	260	265	295	186	264
Switzerland					43	41	41	45	41		42

Source variables: migr_eiord, demo_pjan

TCN deportations per 100,000 total population

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	average
Belgium	37	38	41	54	71	64	50	52	65	50	52
Bulgaria	4	4	4	9	11	15	16	10	17	25	11
Czech Republic	6	8	9	5	4	3	3	16	5	8	7
Denmark	15	15	9	8	25	37	25	47	26	28	23
Germany	17	15	17	18	17	24	27	68	92	57	35
Estonia	7	9	6	31	36	44	34	43	35	48	29
Ireland	15	18	18	17	16	14	7	8	12	7	13
Greece	620	566	466	95	150	231	248	133	177	174	286
Spain	65	62	47	50	40	37	33	29	22	23	41
France	30	29	26	31	35	31	30	27	21	23	28
Croatia						59	53	46	45	51	51
Italy	12	9	8	10	12	10	9	8	9	12	10
Cyprus	448	567	496	548	507	465	348	217	122	90	381
Latvia	12	9	9	51	101	102	77	52	69	65	55
Lithuania	27	29	39	54	61	56	66	59	54	65	51
Luxembourg		21	15	67	192	113	110	128	71	75	88
Hungary	17	22	24	46	55	44	44	61	8	25	35
Malta	75	129	65	39	137	109	115	106	93	103	97
Netherlands	57	54	62	57	58	48	48	51	74	50	56
Austria	70	77	76	62	56	80	29	61	70	70	65
Poland	23	18	18	19	18	22	24	34	49	58	28
Portugal	13	12	13	12	13	11	8	6	4	3	9
Romania	19	23	15	14	14	11	10	10	9	9	14
Slovenia	99	109	95	85	53	43	41	41	16	12	59
Slovakia	24	17	11	8	6	7	13	23	26	32	17
Finland	17	32	36	60	57	58	59	61	109	73	56
Sweden	98	129	157	143	170	150	69	101	120	100	124
United Kingdom	77	105	86	85	85	86	78	80	72	59	81
Iceland	6	5									6
Liechtenstein	42	84	28	28	14	27	40	40	40		38
Norway	35			80	81	88	105	105	114	69	85
Switzerland											

Source variables: migr_eirtn, demo_pjan

TCN deportation orders per 1,000 TCN population

	2014	2015	2016	2017	average
Belgium	83	71	74	71	75
Bulgaria	1,708	2,725	1,768	317	1,629
Czech Republic	23	40	32	48	36
Denmark	34	42	30	29	34
Germany	20	29	34	45	32
Estonia	98	66	53	63	70
Ireland	5	4	7	5	5
Greece	1,014	1,426	451	634	881
Spain	41	34	28	28	33
France	117	105	104	105	108
Croatia	712	726	734	601	693
Italy	43	45	52	58	49
Cyprus	65	44	31	35	44
Latvia	434	296	397	369	374
Lithuania	1,006	715	554	585	715
Luxembourg	7	6	6	7	7
Hungary	126	252	218	189	196
Malta	125	57	32	28	61
Netherlands	169	111	144	130	138
Austria	0	35	39	27	25
Poland	534	663	1,174	1,234	901
Portugal	72	96	112	93	93
Romania	129	73	55	48	77
Slovenia	99	94	124	103	105
Slovakia	32	52	53	69	52
Finland	72	98	342	133	161
Sweden	94	116	108	123	110
United Kingdom	53	50	39	31	43
Iceland					
Liechtenstein	5	4	4		4
Norway	74	70	76	48	67
Switzerland	5	5	5		5

Source variables: migr_eiord, migr_pop1ctz

TCN deportations per 1,000 TCN population

	2014	2015	2016	2017	average
Belgium	13	13	16	13	14
Bulgaria	153	96	152	214	154
Czech Republic	3	15	4	6	7
Denmark	16	29	14	14	18
Germany	13	30	37	22	25
Estonia	92	63	49	62	66
Ireland	2	2	3	1	2
Greece	373	196	255	260	271
Spain	15	13	10	11	12
France	26	24	18	19	22
Croatia	512	360	293	290	364
Italy	9	8	9	11	9
Cyprus	56	36	20	15	32
Latvia	433	256	371	348	352
Lithuania	865	658	494	523	635
Luxembourg	5	6	3	4	5
Hungary	93	128	16	53	72
Malta	62	46	33	29	42
Netherlands	40	40	55	35	43
Austria	10	19	20	19	17
Poland	488	628	1,090	1,104	828
Portugal	15	12	7	5	10
Romania	133	76	50	44	76
Slovenia	81	77	30	21	52
Slovakia	24	41	43	50	40
Finland	69	67	114	73	81
Sweden	44	63	73	60	60
United Kingdom	40	37	31	22	33
Iceland					
Liechtenstein	5	4	4		4
Norway	30	28	29	18	26
Switzerland					

Source variables: migr_eirtn, migr_pop1ctz

Deportations as share of deportation orders

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	average
Belgium	14%	17%	19%	16%	15%	15%	16%	19%	22%	18%	17%
Bulgaria	20%	19%	17%	49%	41%	21%	9%	4%	9%	68%	26%
Czech Republic	16%	22%	32%	21%	18%	14%	13%	38%	14%	13%	20%
Denmark				21%	42%	67%	48%	68%	49%	50%	49%
Germany	119%	82%	72%	80%	69%	76%	64%	102%	108%	49%	82%
Estonia	51%	77%	73%	86%	83%	96%	94%	95%	92%	98%	84%
Ireland	54%	51%	54%	42%	36%	30%	36%	42%	43%	29%	42%
Greece	47%	50%	39%	12%	20%	59%	37%	14%	56%	41%	37%
Spain	36%	28%	28%	32%	31%	53%	36%	40%	37%	39%	36%
France	20%	21%	22%	24%	29%	24%	22%	23%	17%	19%	22%
Croatia						58%	72%	50%	40%	48%	54%
Italy	10%	10%	10%	21%	25%	24%	21%	17%	18%	19%	18%
Cyprus	104%	141%	143%	144%	141%	97%	85%	82%	66%	42%	104%
Latvia	96%	93%	90%	100%	100%	100%	100%	87%	93%	94%	95%
Lithuania	94%	76%	92%	94%	96%	94%	86%	92%	89%	89%	90%
Luxembourg		57%	50%		52%	60%	78%	103%	63%	49%	64%
Hungary	41%	46%	44%	66%	73%	74%	74%	51%	7%	28%	51%
Malta	10%	31%	110%	9%	25%	19%	50%	81%	101%	101%	54%
Netherlands	28%	25%	35%	32%	35%	25%	24%	36%	38%	27%	31%
Austria	66%	60%	57%	61%	58%	67%		53%	51%	69%	60%
Poland	106%	58%	63%	91%	86%	92%	91%	95%	93%	89%	86%
Portugal	16%	12%	14%	15%	16%	21%	21%	12%	7%	5%	14%
Romania	103%	91%	88%	93%	96%	100%	103%	103%	90%	92%	96%
Slovenia	128%	208%	57%	40%	53%	85%	82%	82%	24%	20%	78%
Slovakia	78%	76%	69%	77%	65%	69%	75%	78%	81%	73%	74%
Finland	51%	55%	50%	69%	71%	73%	95%	69%	33%	55%	62%
Sweden	72%	67%	72%	77%	81%	97%	46%	54%	67%	48%	68%
United Kingdom	68%	93%	100%	99%	110%	96%	76%	74%	79%	71%	87%
Iceland	67%	50%									58%
Liechtenstein	100%	100%	100%	100%	50%	100%	100%	100%	100%		94%
Norway				27%	29%	33%	40%	40%	39%	37%	35%
Switzerland											

Source variables: migr_eiord, migr_eirtn

Voluntary return of TCNs

	2011	2012	2013	2014	2015	2016	2017
Belgium				2,935	3,310	4,725	3,060
Bulgaria				465	180	870	1,270
Czech Republic						265	145
Denmark				85	170	185	120
Estonia				175	475	370	495
Ireland					115	160	175
Spain				2,855	2,355	905	1,310
France				7,110	5,920	4,845	5,935
Croatia				830	1,250	940	1,040
Italy				980	1,015	1,015	1,805
Latvia				1,460	695	1,040	1,100
Luxembourg					545	295	305
Hungary				0	210	170	430
Malta				400	285	325	300
Austria							4,440
Poland					12,080	17,785	21,305
Portugal				450	240	65	5
Romania				1,795	1,810	1,515	1,380
Slovenia				85	90	155	150
Slovakia				420	670	1,095	1,385
Sweden				4,685	7,285	9,375	7,005
Iceland							0
Liechtenstein					15	5	15
Norway	1,625	1,525	1,585		820	700	470

Enforced return of TCNs

	2011	2012	2013	2014	2015	2016	2017
Belgium				2,640	2,525	2,630	2,615
Bulgaria				665	555	345	485
Czech Republic						265	265
Denmark				1,315	2,480	1,305	1,470
Estonia				305	85	95	135
Ireland					250	425	140
Spain				12,295	10,960	9,280	9,470
France				12,415	12,325	9,220	9,730
Croatia				1,415	690	950	1,085
Italy				4,330	3,655	4,505	4,935
Latvia				100	340	315	175
Luxembourg					175	110	140
Hungary				3,745	5,765	610	2,020
Malta				100	180	95	170
Austria							1,670
Poland					850	790	905
Portugal				370	370	385	315
Romania				290	180	350	440
Slovenia				115	110	175	100
Slovakia				275	560	315	355
Sweden				1,945	2,545	2,490	2,945
Iceland							0
Liechtenstein					0	10	0
Norway	2,335	2,515	2,865		4,630	5,240	3,605

Source variable: migr_eirt_vol

	Detention								Criminalisation	
	Number of detainees	(Year)	deportations that year	detainees per 1,000 deportations	**Maximum length (days)**	(Year)	**Average length (days)**	(Year)	**Punishment irregular entry**	**Punishment irrregular stay**
Belgium	6,229	2015	5,835	1,068	150	2016	26	2016	Fine and/or imprisonment	Fine and/or imprisonment
Bulgaria	9,530	2015	735	12,966	540	2017	21	2013	Fine and/or imprisonment	Fine
Czech Republic	5,261	2016	530	9,926	545	2016	80	2014	Fine	Fine
Denmark	5,242	2015	2,655	1,974	540	2016			Fine and/or imprisonment	Fine and/or imprisonment
Germany	1,850	2014	21,895	84	540	2017			Fine and/or imprisonment	Fine and/or imprisonment
Estonia	94	2013	575	163	660	2017	85	2013	Fine and/or imprisonment	Fine and/or imprisonment
Ireland	335	2015	365	918	56	2017			Fine and/or imprisonment	Fine and/or imprisonment
Greece	14,864	2016	19,055	780	540	2017			Fine and/or imprisonment	Fine
Spain	7,597	2016	10,185	746	60	2013	24.06	2016	None	Fine
France	45,937	2016	14,065	3,266	45	2013	12.7	2016	Fine and/or imprisonment	None
Croatia	258	2015	1,940	133	540	2016			Fine and/or imprisonment	Fine and/or imprisonment
Italy	5,242	2015	4,670	1,122	90	2017	25.5	2015	Fine	Fine
Cyprus									Fine and/or imprisonment	Fine and/or imprisonment
Latvia	196	2014	1,550	126	540	2017	20	2013	Fine and/or imprisonment	Fine
Lithuania	353	2015	1,720	205					Fine and/or imprisonment	Fine
Luxembourg	493	2017	445	1,108	365	2018	27	2017	Fine and/or imprisonment	Fine and/or imprisonment
Hungary	8,562	2015	5,975	1,433	365	2016			Fine	Fine
Malta	1,900	2013	460	4,130	540	2017	90	2016	None	None
Netherlands	2,176	2015	8,620	252	540	2016	55	2015	Fine	Fine and/or imprisonment
Austria	1,920	2014	2,480	774	305	2017	11	2015	Fine	Fine
Poland	1,322	2014	9,280	142	540	2015	65.8	2015	Fine	Fine
Portugal	2,444	2016	405	6,035	60	2017			None	None
Romania	671	2012	2,890	232					Fine and/or imprisonment	Fine
Slovenia	2,338	2015	840	2,783	480	2016	18	2014	Fine	Fine
Slovakia	412	2016	1,410	292	540	2016			Fine	Fine
Finland	444	2013	3,155	141	365	2017	12	2013	Fine and/or imprisonment	Fine
Sweden	3,714	2016	11,865	313	365	2016	5	2013	Fine and/or imprisonment	Fine
United Kingdom	32,526	2016	47,020	692	none	2016			Fine and/or imprisonment	Fine and/or imprisonment
Iceland										
Liechtenstein										
Norway	4112	2016	5,940	692	none	2018				
Switzerland	5732	2016	3,420	1676	540	2015	25	2016		

Source: migr_eirtn; globaldetentionproject.org; European Migration Network 2017

Source: EU Agency for Fundamental Rights 2014

Appendix B
List of EU documents

Treaties

Treaty establishing the European Coal and Steel Community, as signed in Paris on 18 April 1951

Treaty establishing the European Economic Community and Related Instruments, as signed in Rome on 25 March 1957

Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders

Single European Act, as signed in Luxembourg on 17 February 1986 and in the Hague on 28 February 1986 (OJ L 169, 29.6.1987, p. 1–28)

Treaty on European Union, signed in Maastricht on 7 February 1992 (OJ 92/C 191/01)

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, as signed in Amsterdam on 2 October 1997 (OJ 97/C 340/01)

Charter of Fundamental Rights of the European Union (OJ 2007/C 303/01)

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, as signed in Lisbon on 13 December 2007 (OJ 2007/C 306/01)

EEC/EU secondary law

Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health

Council Directive 72/194/EEC of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of the Directive of 25 February 1964 on coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health Directive 90/365/EEC

Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services Directive 75/34/EEC

Council Directive 75/35/EEC of 17 December 1974 extending the scope of Directive No 64/221/EEC on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity Directive 93/96/EEC

Council Directive 90/364/EEC of 28 June 1990 on the right of residence Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals

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

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

Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air

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

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

Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the member states

Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

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

Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection Text with EEA relevance

EU Communications

Council of the European Union, Presidency Conclusions, Tampere European Council, 15-16 October 1999

COM (2001) 0127 final: Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents

Council, The Hague Programme: Strenghtening Freedom, Security and Justice in the European Union (2005/C 53/01)

COM (2005) 391: Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals {SEC(2005) 1057}

COM (2001) 672 final: Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration

COM (2002) 175 final: Green paper on a community return policy on illegal residents

COM (2002) 564 final: Communication from the Commission to the Council and the European Parliament on a community return policy on illegal residents

COM (2011) 585 final: Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents

2011/C 308 E/12: European Parliament resolution of 9 September 2010 on the situation of Roma and on freedom of movement in the European Union

COM (2013) 837: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Free movement of EU citizens and their families: Five actions to make a difference

COM (2014) 199 final: Communication from the Commission to the Council and the European Parliament on EU Return Policy

COM (2015) 453 final: Communication from the Commission to the European Parliament and to the Council: EU Action Plan on return

COM (2016) 385 final: Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration

COM (2017) 200 final: Communication for the Commission to the European Parliament and the Council on a more effective return policy in the European Union – A renewed Action Plan (+ Annex)

C(2017) 6505: Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks (+Annex)

COM (2018) 250 final: Communication from the Commission to the European Parliament, the European Council and the Council – Progress report on the Implementation of the European Agenda on Migration

Court of Justice of the European Union case law

Judgment of the Court of 26 February 1975, *Bonsignore* , C-67/74, ECLI:EU:C:1975:34

Judgment of the Court of 27 October 1977, *Bouchereau*, C-30/77, ECLI:EU:C:1977:172

Judgment of the Court of 7 July 1992, *Surinder Singh*, C-370/90, ECLI:EU:C:1992:296

Judgment of the Court (Sixth Chamber) of 10 February 2000, *Nazli*, C-340/97, ECLI:EU:C:2000:77

Judgment of the Court of 20 September 2001, *Grzelzcyk*, C-184/99, ECLI:EU:C:2001:458

Judgment of the Court (Fifth Chamber) of 29 April 2004, *Orfanopoulos*, C-482/01, ECLI:EU:C:2004:262

Judgment of the Court (Fifth Chamber) of 29 April 2004, *Olivieri*, C-493/01, ECLI:EU:C:2004:262

Judgment of the Court (Full Court) of 19 October 2004, *Zhu & Chen*, C-200/02, ECLI:EU:C:2004:639

Judgment of the Court (Second Chamber) of 11 November 2004, *Cetinkaya*, C-467/02, ECLI:EU:C:2004:708

Judgment of the Court (Grand Chamber) of 2 March 2010, *Rottmann*, C-135/08, ECLI:EU:C:2010:104

Judgment of the Court (Grand Chamber) of 8 March 2011, *Ruiz Zambrano*, C-34/09, ECLI:EU:C:2011:124

Judgment of the Court (Third Chamber) of 5 May 2011, *McCarthy*, C-434/09, ECLI:EU:C:2011:277

Judgment of the Court (Grand Chamber) of 15 November 2011, *Dereçi*, C-256/11, ECLI:EU:C:2011:734

Judgment of the Court (Grand Chamber) of 22 May 2012, *Mr. I.*, C-348/09, ECLI:EU:C:2012:300

Judgment of the Court (Grand Chamber) of 12 March 2014, *O. and B.*, C-456/12, ECLI:EU:C:2014:135

Judgment of the Court (Grand Chamber) of 12 March 2014, *S. and G.*, C-457/12, ECLI:EU:C:2014:136

Judgment of the Court (Fourth Chamber) of 23 April 2015, *Zaizoune*, C-38/14, ECLI:EU:C:2015:260

Appendix C
LexisNexis analysis

Method used for identifying instances of local-national deportation conflict:

The analysis of local-national disputes in Chapter 4 is based partly on a large sample of newspaper articles from publications in five major European languages (German, Italian, English, French and Dutch) selected from the LexisNexis database. Through a key search term in each of these languages that combined at least one word indicating expulsion or deportation with at least one word indicating involvement from a subnational level of government for the May 1996 – May 2016 period, samples of 200 articles per language (the first 200 found in each search sorted by relevance) were analysed to identify instances of conflict as well as the arguments used by local actors to justify their actions. Only in the English sample, a geographic limitation to UK newspapers was added, to avoid including North-American news sources in the sample.

Source: LexisNexis Academic https://academic.lexisnexis.nl/.

Download date: 4 May 2016.

Search parameters:

Dutch: Terms: (((uitzet! OR uitgezet) AND (burgemeester OR gemeenteraad OR provincie)) and Date(geq(05/04/1996) and leq(05/04/2016))) --Source: Dutch Language News

German: Terms: (((Abschiebung OR abgeschoben) AND (Burgermeister OR Gemeinderat OR Stadtverwaltung OR Bundesland)) and Date(geq(05/04/1996) and leq(05/04/2016))) --Source: Presse - Deutsche Sprache

Italian: Terms: (((espulsione OR allontanamento) AND (sindaco OR municipal! OR communal! OR region!)) and Date(geq(05/04/1996) and leq(05/04/2016))) --Source: Italian Language News

French: Terms: (((eloigne! OR expuls!) AND (maire OR municipal! OR region)) and Date(geq(05/04/1996) and leq(05/04/2016))) --Source: Presse en français

English: Terms: ((((deport!) AND (mayor OR municipal! OR local OR council))) AND ((#GC329#)) and Date(geq(05/04/1996) and leq(05/04/2016))) --Source: Newspaper Stories, Combined Papers

Local-national deportation conflicts identified:

The Netherlands

1. Schneider's intervention (opposing)

Bernt Schneiders, mayor of Haarlem and *voorzitter van het Genootschap van Burgemeesters*, complaining about how irregular residents who are protected against expulsion in one municipality on public order grounds, remain "outlaws" (*vogelvrij*) when visiting another. In reaction to the conflict between minister Leers and 40 mayors who resisted his deportation policy.

[NL1: "Illegaal die niet wordt uitgezet, is vogelvrij" (2012, April 4) Haarlems Dagblad]

2. Amersfoort council (opposing)

Majority of the Amersfoort municipal council asking the mayor to stop cooperation with the deportation of people who have resided in NL for over 5 years, in anticipation of the expected general amnesty (*generaal pardon*).

[NL2: "Amersfoort moet niet meewerken aan uitzetting" (2006, December 12) Amersfoortse Courant]

3. Qadiri family (opposing)

Mayor Bert Bouwmeester of Coevoorden ordering the police not to assist in the expulsion of the Qadiri familty in Aalden, since the parents of children Dawud (11) and Amina (9) have lived in NL since 10 years. His argument is that the children are too "westernised" to be sent back to Afghanistan.

[NL4: "Verzet tegen uitzetting gezin Qadiri" (2011, July 21) Nederlands Dagblad]

Pressured by local residents of Aalden who emphasised how "well-integrated" the children were, that they did well in school and that sun Dawud was a gifted football player who football scouts enquired after.

[NL20: "Burgemeester wist van illegale actie asielzoekers" (2011 July 22) NRC Handelsblad]

Municipal council unanimously (also CDA, Minister Leers' party) against deportation of Qadiris. Mayor Bouwmeester: "Do you see that girl (Amina, 9yo) go to school in full cover clothing in Afghanistan? If she can go to school – most girls there don't".

[NL34: Anneke Stoffelen (2011, July 22) "Heel Aalden strijdt voor de Qadiri's; Asielzoekers Gemeenteraad Coevoordern is unaniem tegen uitzetting gezin Qadiri" De Volkskrant]

Mayor's argument invokes public order disruption based on the active involvement of local residents and pupils of the school the children attend, which had organised several protest actions already. Bouwmeester: "You cannot plant western children in a country where they do not belong." The family is "fully integrated". Schooldirector calls Dawud and Amina "model pupils", and football coach of Dawud highlights his "exemplary behaviour" and the fact that scouts have enquired after him.

[NL38: Danielle Pinedo (2011, July 25) "Uitzetting zou het dorp ontwrichten; zegt de burgemeester" NRC Next]

4. Gilze en Rijen (opposing)

Municipality Gilze en Rijen refusing to cooperate with the deportation of a Turkish family partly because "Turkey might be part of the EU next year".

[NL22: "Verzet tegen uitzetting asielzoekers (2004, February 4) Brabants Dagblad]

5. Opheusden (opposing)

Mayor Kees Veerhoek of Opheusden protesting the deportation of a Colombian mother of three children with Dutch nationality, the youngest only 3 months old. Requested staatssecretaris Teeven to use his *discretionaire bevoegheid*.

[NL30: Burgemeester en raad in de bres voor gezin (2012, December 27) De Gelderlander]

6. Naibzay (opposing)

Mayor Els Boot van Giessenlanden orders police not to cooperate with the deportation of Afghan Rafiq Naibzay on the grounds that he is suspected of war crimes (though family has resided in NL for 15 years). Argument that his family and psychologically instable wife need him, and that his deportation would affect public order. Article states that several other mayors disapprove of this action, warn that Boot should not take over minister Leers' function, but also say that Leers may be too insensitive to emotions of the local population. Also implies that a village in which people are well-integrated will be more affected by a deportation than perhaps large cities.

[NL 31: Burgemeester moet uitzetting Naibzay gewoon accepteren (2012, April 6) Reformatorisch Dagblad]

Boot argued that if possible war crimes can only be a ground for expulsion when due criminal law process if followed. Asked if she was not overstepping her authority, she replied: "I am not getting involved in the authority of the minister or his decision. What I am getting involved with are the consequences of this decision. That affects me, that is about my municipality, about my residents."

[NL76: Marjolijn de Cocq (2012, March 27) 'Wie zegt dat hij een misdadiger is?' Dagblad van het Noorden]

7. Brandbrief (opposing)

40 Mayors write a *brandbrief* to minister Leers in which they assert their authority to order police not to cooperate with a deportation when this could disrupt public order. Response to the conflict between Els Boot and Leers.

[NL133: Burgemeester in verzet tegen asielbeleid van Leers (2012, April 3) NRC Next]

8. Chen family (opposing)

Nijmegen council pass motion to protect Chen family from deportation to China, since they lived in the village Lent for 12 years. Mayor Ter Horst sends letter to minister Verdonk to recognised the family as *schrijnend geval*. [NL33: "Gemeenteraad steunt familiie Chen" (2004, April 22) De Gelderlander].

9. Marcouch (instigating)

Stadsdeelvoorzitter Ahmed Marcouch (Slotervaart in Amsterdam) of the Labour party (PvdA) initiates the expulsion of two criminal Moroccan brothers (though not in his power to take the decision), in which he is supported by CDA and VVD but heavily opposed by coalition partner GroenLinks (PvdA itself divided).

[NL51: Addie Schulte (2009, April 23) Uitzetten broers splijt stadspolitiek; Grote woorden werden gebruikt, de emoties laaiden hoog op. Het Parool]

10. Shammo family (opposing)

Municipal council of Heerlen unanimously sign letter to minister Leers to stop the expulsion of single Iraqi mother Samira Disho Shammo and her three minor children (16, 14, 12) who has lived in NL for 13 years.

[NL61: Marcel van Veen (2011, April 23) Verzet tegen uitzetten Irakezen. Dagblad de Limburger]

11. Dongen (opposing)

Municipal council Dongen unanimously signs support letter sent by mayor van Brummen to minister Verdonk indicating refusal to cooperate with the deportation of five families who have lived in NL for over 5 years.

[NL64: Mariette Mulkens (2004, February 7) Dongen in actie in Den Haag; Tegen uitzetting asielzoekers. BN/De Stem.]

12. Jossef (opposing)

Alkmaar council and mayor Piet Bruinooge oppose effort to deport Jossef and his mother to Eritrea after 8 years of residence.

[NL68: Ype Minkema (2011, December 13) Langedijk staat op voor Jossef. Noordhollands Dagblad]

In response to the case of Jossef, the provincial government of Noord Holland passes a motion that opposes the deportation of those children who have come to the Netherlands before the age of 11 and have lived in the country for over 8 years, naming Jossef explicitly. Statenlid Den Uyl who introduced the motion stated that he felt it was needed to support the municipal council of Alkmaar in their efforts to stop Jossef's deportation because "he is also an inhabitant of the province".

[NL94: Matthie Bergman (2011, December 14) Ernstig signaal aan regering. Noordhollands Dagblad]

12. Koole call (opposing)

In response to the call by PvdA *voorzitter* Koole on municipalities not to cooperate with the deportation of 26,000 rejected asylum seekers (*uitgeproceerde asielzoekers*) which was heeded by a large number, some mayors were unhappy. Mayor de Prieelle of Midden Delfland said: "If municipalities will simply follow their own direction the country becomes a jungle. A mayor has by definition the task to follow/uphold the law. We shall cooperate with national policy in a responsible and humane way."

[NL98: 'Rebels Delft enige tegen uitzetting' (2004, February 7) Haagsche Courant]

13. Kinderpardon (opposing)

Three-quarters of Dutch mayors sign a call to broaden the *Kinderpardon* to those who were only under municipal (and not national) supervision for at least five years: a group of about 600 children.

[NL156: Eerlijk Kinderpardon moet (2014, July 16) De Weekkrant]

United Kingdom

14. Haziri (opposing)

The mayor of Teignmouth, Cllr Vince Fusco, and the unanimous town council, as well as the MP for Teignbridge Richard Younger-Ross sent a letter to the Home Office to protest the planned deportation of 34-year-old Bedri Haziri to Kosovo. Bedri was married to a British woman. MP Younger-Ross stated: "He is someone who has worked hard and has become part of the community. He deserves to stay." Cllr Brenda Battershil: "Susan (Bedri's wife) come from generations of a local family and Bedri is regarded as one of the family and is close to their hearts."

[UK19: John Ware and Dave Macauley (2003, Novermber 13) Deport Dad loses fight. Herald Express (Torquay)]

When Bedri was allowed to return on a spouse's visa after spending 9 weeks in Albania, mayor Fusco stated: "I will be personally welcoming him home."

[UK30: John Ware (2004, February 17) Bedri told he can return. Herald Express (Torquay)]

15. Warwickshire Gurkhas (opposing)

Warwickshire County Council passing motion to give automatic right to stay and protection against deportation to Gurkhas who fought in the British army. The county has had strong links with the Gurkhas for decades, with more than 200 Gurkha officers and soldiers currently based at Gamrock Barracks, Bramcote, near Nuneaton.

[UK54: Sian Powell (2008, March 22) Gurkha petition gathers force. Coventry Evening Telegraph]

France

16. Asnieres (instigating)

The socialist mayor of Asnieres Sebastien Pietrasanta evacuates eight immigrant women with irregular status and their children from their *hotel social*, after which they protest in front of the *mairie* to demand housing. In response to this, the prefecture tries to get them deported.

[FR4 : Garde à vue pour des étrangères "mal-logées" qui manifestaient devant la mairie d'Asnières (2008, August 1) Agence France Presse]

17. Roma camps (instigating)

On French local powers to order expulsions. Interior minister Manuel Valls continuing the Sarkozy era policy of linking Roma camps with crime. E.g. Evry socialist mayor Francis Chouat ordering the deportation of residents of the camp saying "in addition to being unhealthy, the site is extremely dangerous."

[UK50: Peter Allen (2012, august 28) French rout gipsy camp in migrant crackdown. Daily Mail (London)]

18. Bouraya (opposing)

Mayor of Montataire asks prefect to annul the expulsion order of 45-year-old Aissa Bouraya to Algeria, issued after two convictions (for drug possession and trafficking). Bouraya has lived in France since the age of 5 and has two children born in France.

[FR8: « Nous voulons empêcher l'expulsion d'Aissa Bouraya » (2001, July 20) Le Parisien]

19. Orleans (instigating)

UMP mayor of Orleans Serge Grouard asks the prefect to expel from the national territory the suspect of an attempted rape of a young woman a day after the incident. Criticised by Socialist opposition leader Corinne Leveleux-Teixeira : « On mélange un peu tout. Vous ne pouvez pas, à ce stade, prendre une décision tant que la procédure n'est pas arrivée à son terme. »

[FR24 : Le maire demande l'expulsion du suspect (2015, April 21) La Republique du Centre]

20. Aulnay-sous-Bois (instigating)

PS mayor of Aulnay-sous-Bois in his election campaign asks his supporters to demand the expulsion of a Roma camp.

[FR27: « On prétend gérer localement un problème présenté comme insoluble » (2014, May 26) La Gazette des Communes, des Departements, des Regions]

21. Calais /Henin (instigating)

PCF mayor of Calais, Jacky Henin, requests the evacuation of Sangatte, which leads to a majority of its inhabitants being sent to asylum processing centres.

[FR40: L'avenir incertain des clandestins de Calais (2002, November 15) Le Parisien]

22. Nantes (instigating)

Mayor Jean-Marie Ayrault of Nantes on the evacuation of Roma camps: "Pas question de tolerer l'existence de bidonviles." Alain Robert, PS elected official for the département and for Nantes Métropole: "A partir de 2002 les premiers campements illégaux ont créé une prise de conscience soudaine dans chaque commune. Nous, collectivités, avons été mis devant le fait accompli, sans être vraiment armés pour y répondre. Nous nous sommes trouvés bien seuls. Ni l'Etat ni l'Union européenne n'avaient anticipé. Nous avons tâtonné et en avons pris plein la figure. En cherchant des solutions, nous sommes des précurseurs. Depuis l'été, nous sommes stigmatisés de manière injuste."

[FR42 : Nicolas de la Casinière (2010, November 10) Intégration Les Roms de la discorde. L'Express.]

23. Chelles (instigating)

Mayor Jean-Paul Planchou (PS) of Chelles declaring in 2006 that the "removal of these groups [Roma] from the community is the most opportune solution".

[FR43: Grégory Plesse (2013, June 20) Une semaine de sursis pour les Roms. Le Parisien]

24. Calais /Bourchart (instigating)

The evacuation of three of the camps at Calais, in which 550 persons lived, by the municipality of Calais under the order of mayor Natacha Bourchart.

[FR44: Jean-Baptiste Isaac (2014, May 22) Calais saturé par les migrants; Les trois principaux camps, où vivent 550 personnes, vont être démantelés. Le Figaro]

25. Montpellier (instigating)

The controversy when the municipality of Montpellier asked a marrying couple (French woman Turkish man) to show the residence permit of the man, upon which they immediately informed the police that such documentation could not be produced after which the couple was met by border police upon leaving city hall. The municipality defended its actions by saying that they received instructions to warn the police when foreigners presented themselves without papers.

[FR53: La mairie accusée de dénoncer les clandestins (2007, October 4) Midi Libre]

26. Taverny (instigating)

Socialist mayor of Taverny ordering the evacuation of Roma camps. « Ces familles ne posent pas de problème particulier, c'est vrai, mais nous ne pouvons pas tolérer de campement, sinon c'est la porte ouverte et la protestation assurée des riverains, tente d'expliquer Jean-Pierre Barentin, premier adjoint au maire socialiste de Taverny. Nous sommes donc obligés d'expulser, même si ce n'est pas très valorisant. »

[FR81: Carole Sterlé (2002, September 13) Les gens du voyage réclament une aire d'accueil. Le Parisien]

27. Valls (instigating)

Manuel Valls a vertement tancé, sans le nommer, le député-maire UMP de Nice, Christian Estrosi, qui a publié récemment un "guide pratique" pour aider les maires à expulser les campements illégaux de populations non sédentaires. Ce guide "véhicule des préjugés, "est source de nombreuses confusions entre les différents types de procédures", "entretient des amalgames choquants" et "encourage des mesures attentatoires aux libertés publiques", a-t-il dit. Il "cache bien mal ses visées politiciennes". Proposant dix recettes pour "lutter contre l'occupation illégale de terrain" et dix autres pour "anticiper l'installation des populations non sédentaires et éviter les squats", le guide détaille également les possibles procédures judiciaires.

[FR89: Valls soutient l'idée de forcer les maires à créer des aires pour gens du voyage (2013, July 18) LePoint.fr]

28. Sarkozy (opposing)

Faced with a hardening of the use of public power to deport unwanted Roma to Romania when Sarkozy was still interior minister, the municipalities of Achères, Bezons, Eragny (Val-d'Oise), l'Ile-Saint-Denis, Lieusaint (Seine-et-Marne) and Nanterre (Hauts-de- Seine) expressed their “worries and perplexity” in a press conference on 25 October 2002.

[FR129: Bissuel Bertrand (2002, November 28) Les municipalités confrontées à la réapparition des bidonvilles. Le Monde]

29. L’Oise (opposing)

Dans un courrier adressé aux maires du département, le préfet de l'Oise pousse même le zèle jusqu'à menacer de sanctions pénales tous les élus qui s'aventureraient à accorder leur parrainage républicain à des familles de sans-papiers : « Les parquets compétents seront

aussitôt saisis de telles pratiques. » La haute fonction publique prend donc le chemin de l'intimidation, de la menace et des poursuites.

[FR140: Alain Cwiklinksi (2007, August 13) Quand les préfets jouent l'intimidation. L'Humanité]

Italy

30. Montacini (instigating)

Mayor Giuseppe Bellandi of Montacini requests the deportation of six "nomads" from the Italian national territory.

[IT2: Daniele Bernardini (2013, August 15) «Espulsioni, i vigili lavorano»; Bellandi ricorda che la procedura deve seguire regole precise. La Nazione]

Against criticism that he was not doing enough against the nuisance of begging by "gypsies and illegals", he responded that the mayor "cannot impose decisions on the prefect"; "the reports should be made by the state police". Opposition leader (PdL) Riccardo Sensi countered: "the norm here is quite clear. It is the mayor of needs to signal to the prefect the persons who can be made object of and expulsion decree (…); it is the mayor, in terms of surveying the individuals to be expelled, who must use the police corps at his direct disposition".

[IT37: Marco A. Innocenti (2013, June 1) Missione a Roma per la sicurezza «Stranieri irregolari da espellere»; Sensi (Pdl): «E' il sindaco Bellandi che deve segnalarli al prefetto». La Nazione]

31. Alemanno 1 (instigating)

Rome mayor Gianni Alemanno asks the prefect and the interior ministry to effectuate the expulsion and deportation of criminal foreigners. Alemanno announces the objective to deport 20,000 foreigners who have been in touch with justice, and the evacuation of 85 nomad camps.

[FR5: Le nouveau maire de Rome veut armer la police municipal (2008, April 30) Agence France Presse]

32. Alemanno 2 (instigating)

Mayor Gianni Allemanno of Rome orders his police to undertake a "blitz" in the nomadic camp in Settecamini on the periphery of Rome in which 50 foreigners without documents were found. These were brought to the detention centre in Ponte Galeria to await their expulsion procedure. The action was justified by reference to a supposed prostitution racket exploiting minors. Even though the campement is not itself illegal, this showed, according to the mayor that also in such camps areas of illegality and severe criminality persist. Against the suggestion that all this might institigate vigilante justice, Alemanno countered that strong and decisive action in the face of the insecurity "emergency" was needed precisely to counter this.

[IT9: SICUREZZA: ROMA; BLITZ IN CAMPO ROM,SI' GIRO VITE NORME (2008, May 15) ANSA Notiziario Generale in Italiano]

33. Tosi (instigating)

Under Verona mayor Flavio Tosi, the municipal police between 2010 and summer 2013 sent 516 expulsion proposals to the prefect, resulting in 207 issued expulsions orders (but only 42 which were effectively followed).

[IT14: SICUREZZA:TOSI, SANZIONI PER CHI NON OTTEMPERA ALLONTANAMENTO; LETTERA SINDACO A MINISTRI, POSSIBILI ANCHE PER CITTADINI UE (2013, July 5) ANSA]

The local council of Verona asks the prefect to issue a new expulsion order for a homeless woman of Romanian origin who begs in the historic centre of the city. After already receiving 61 sanctions, an earlier expulsion proposal in 2011 followed by an order in 2012, which was followed by the woman returning. Mayor Flavio Tosi blamed the government that did not issue a re-entry ban (even though this would have been impossible under EU law since it involved an EU national).

[IT38: Accattonaggio: giunta Verona chiede allontanamento romena; A suo carico 61 sanzioni, già allontanata era rientrata Italia (2013, August 9) ANSA]

Tosi jusifies Roma expulsions by saying that "it is a response to the requests of citizens". "To satisfy citizens, to start with those from the Romanian community". [IT44: ROM: TOSI, ESPULSIONE DI CHI DELINQUE E'RISPOSTA A CITTADINI (2010, September 22) ANSA]

Verona's administration asks the prefect to issue and enforce the expulsion of a few dozen Roma, mostly EU citizens. Flavio Tosi: "They're always the same people, arrested by the police on multiple occasions, begging professionals who live by their wits, with no intention whatsoever to integrate into our community".

[IT61: NOMADI: TOSI, CHIESTO ALLONTANAMENTO DA VERONA DECINE DI ROM (2010, August 31) ANSA]

Tosi "welcomes to the club" the mayors of Padova and Treviso who follow in his footsteps in using expulsion as a way to combat the "racket of begging". He gives examples of the kind of Roma he wants to target: two Romanian nationals of Roma ethnicity which were stopped by municipal police 119 and 128 times respectively in the space of a year and a half. After they were served with expulsion orders, they went to Bucharest to get a stamp from the Italian embassy as proof of return, only to immediate travel back to Italy (which is legal). So the municipal authorities have asked again for expulsion.

[IT107: Accattonaggio: Tosi a sindaci veneti, benvenuti nel club; (v. 'Venezia, Padova e Treviso in campo...', delle 15:54) 2014, March 18] ASNA]

34. Liguria (instigating)

After the national parliament passed a law to pardon a large group of people convicted of minor crimes (about 25,000 were released from prison) in order to lessen the burden of Italy's overcrowded prisons in 2006, the regional councilor of Liguria Alessio Saso asked the prefect to expel all irregular migrants released from prison under the law, explaining that most of them were convicted for theft or drug dealing and therefore that safeguarding the "security of citizens" meant more than just serving them with an "expulsion paper" without any practical effect. Rather, he advocated forced removal.

[IT48: INDULTO: 59 IMMIGRATI SCARCERATI IN PROVINCIA DI IMPERIA; CONSIGLIERE REGIONALE AN CHIEDE A QUESTORE ESPULSIONE (2006, August 3) ANSA]

35. Sant'Elpidio (instigating)

In an incident in which municipal police were ordered to locate a 60-year-old Bosnian who had breached his expulsion order, mayor of Sant'Elpidio a Mare Alessio Terrenzi invoked "territorial security" as a priority of his administration. "We implement the necessary measures to counter incidents that threaten the community".

[IT62: Controlli sui rom a Bivio Cascinare e Casette: denunciato un bosniaco (2012, August 1) Il Resto del Carlino]

36. 2007/08 decrees (instigating)

Shortly after Romania joined the EU, Mayor of Rome and leader of the Italian centre-left Walter Veltroni was one of the driving forces behind the Italian adoption of a degree to facilitate the expulsion of EU nationals on public security grounds, aimed principally at Romanians. This move followed the murder of a 47-year old woman of which a young Romanian of Roma origin was suspected. Veltroni: "We have the moral and political obligation to guarantee the security of our inhabitants. We must regulate immigration flows, integrate those who respect our laws but also punish and expel those who commit offenses and violate life's and society's rules."

[FR65: Françoise MICHEL (2007, November 4) Rome fait appel à la "compréhension" de Bucarest, hausse des expulsions. AFP]

In response to the EU rule that forbids the expulsion of EU nationals without taking individual cirumstances are taken into account, Italy passes a law in 2007 which makes it possible for the mayor of the community in which an EU national resides to provide a report on their "undesirability".

[IT66: Stefano Manzelli (2007, December 8) Espulsioni anche su segnalazione; Il decreto legge sulla sicurezza approvato dal senato affida i ricorsi al tribunale ordinario. Italia Oggi.]

A 2008 Italian security law (Decree 92/2008) which expanded the power of mayors to identify and report to judicial and national authorities irregular immigrants as well as EU citizens as an "extraordinary emergency measure". The bill also gave local police the power to access information about residence permits, ordering them to report to the mayor when any irregularities are found with those individuals they come in contact with. The mayor must then turn the information over to judicial authorities to issue expulsion measures.

[IT95: Francesco Cerisano and Stefano Manzelli (2008, July 16) I sindaci staneranno i clandestini; La camera ha votato la fiducia al dl sicurezza. Più poteri ai vigili, stretta sul codice della strada. Italia Oggi]

37. Rome (instigating)

The Rome municipal police expelling a Romanian prostitute on public security grounds as part of the mayor's battle against the phenomenon of prostitution.

[IT86: PROSTITUZIONE: ROMENA RIMPATRIATA, E' LA PRIMA VOLTA A ROMA (2009, May 7) ANSA]

38. Salerno (instigating)

Mayor of Salerno Vincenzo de Luca requests the expulsion of eleven prostitutes identified by the municipal police during a control operation arranged by the mayor. According to the mayor, prostitution, "despite a tolerant approach on the national level, offends the dignity of the people, (…) and creates significant problems in terms of security, public order and decorum".

[IT92: PROSTITUZIONE: SINDACO SALERNO, VIA LE LUCCIOLE DALLA CITTA' (2007, November 28) ANSA]

Austria

39. Arigona (opposing)

The local council of Frankenburg (Austria) unanimously decides to fight for the right of 15-year-old Kosovar Arigona Zogajs and her family, in Austria since 5 years.

[DE2: Günther Hörbst (2007, October 11) Arigonas mutiger Kampf gegen den Staat; Eine 15-jährige Kosovarin ist in Österreich aus Angst vor Abschiebung seit zwei Wochen untergetaucht. Berliner Morgenpost]

Germany

40. Mehmet (instigating)

Munich mayor Christian Ude (SPD) calls for the deportation of 14-year-old Mehmet, son of Turkish parents who report being in the country for 30 years (Mehmet was born in Germany), after committing his 61st offense. In response, the Bavarian state government submits a legislative initiative which would make it easier for young offenders without a German passport to be deported together with their parents.

[DE3: Bayern fordert Sippenhaft; Fall "Mehmet" Anlass zu Bundesratsvorstoss (1998, July 8) taz, die tageszeitung]

Ude acknowledged that normally when someone is born in Germany they should be considered a native and that Mehmet would be returned to a country that was foreign to him, but that he was "obviously also not well integrated here. All attempts at prevention, education and improvement of his behaviour have failed, as is evident from this hopeless case, and expulsion is the ultimate resort. (…) Mehmet's parents have not learned German in 30 years and (…) have a house in Turkey. (…) Had the family attempted to integrate, we would not have this problem at all". He also pointed out that he had a responsibility for the security of other residents and made reference to the preventive effect this action would have on "many others". He acknowledged that the state has a similar responsibility towards German children and those born in Germany to foreign parents, but that with the latter it simply had an instrument that could not be applied to those with German citizenship – and that this was therefore not unequal treatment since it was lawful.

[JUGENDKRIMINALITÄT „Risiko reduziert" (1998, August 3) Der Spiegel[1]]

41. Bundesländer

On how the enforcement of expulsion laws varies greatly from *land* to *land*. "So wurden in der Hansestadt Bremen [also a Land, RB] 2015 lediglich 43 von etwa 3100 ausreisepflichtigen Ausländern abgeschoben und damit nur etwa jeder 70. Ganz anders in Bayern: Dort waren es 4195 Rückführungen und damit jeder vierte Ausreisepflichtige, die das Land im vergangen Jahr wieder verlassen mussten." This disparity is criticised by many on the federal level (specifically by CSU spokesperson for the interior Stephan Mayer), since the same deportation laws apply across Germany. Partly an ideological result: Bremen traditionally very left wing and Bayern right wing conservative. When people do not leave voluntarily, they can be passed over to the Bundespolizei (federal police) to enforce the deportation.

[1] http://www.spiegel.de/spiegel/print/d-7955943.html

[DE21: Andreas Herholtz (2016, February 10) Union mahnt Abschiebungen an. Passauer Neue Presse]

The governments of the *Länder*, which have to cope with the flow of refugees, being critical of instructions from the federal government to step up deportations as a response to the asylum crisis. In late 2014, several *Länder* announce a winter deportation stop until March, although Baden-Württemberg wants to suspend deportations only to 7 January.

[DE22: Rainer Wehaus (2014, December 20) Abschiebungen lösen das Flüchtlingsproblem nicht; Angesichts des Ansturms von Asylbewerbern fordert Bund von Ländern mehr Härte – vergeblich. Stuttgarter Nachrichten]

In 2015, in Bavaria and Hessen deportations increased by more than 300 or 200 percent compared to the previous year. By contrast, in Berlin less than 50 percent more people were deported. In Bavaria and Hesse the risk to be deported is also highest. Against 4200 people who had been forced to leave Bavaria by the end of November, 16,481 who were required to leave remained - which corresponds to a ratio of 1:4. In addition, 13,400 people left voluntarily, the highest in Germany. By contrast, the risk of deportation in Bremen is extremely low with 52 deportations against 3177 people required to leave the end of November (1:62 ration), closely followed by Rheinland-Pfalz. When comparing the relevant government parties it is clear that the dividing line is mostly between high-deportation CDU/CSU-governed *Länder* and low-deportation SPD/Greens-governed *Länder* (Bremen, Rhineland-Palatinate, Lower Saxony, Baden-Württemberg and North Rhine-Westphalia). Berlin is the only *Land* with few deportations where the CDU participates in the governing coaltion. Die Zeit reported that it had seen an internal report of the Working Group on Implementation Deficits which identified a "lack of political deportation will" (*mangelnden politischen Abschiebewillen*) of certain Lander.

[DE32: Jan Drebes und Joris Hielscher (2016, February 11) Das Abschiebe-Roulette; ASYL Eigentlich müssten über 200 000 Ausländer Deutschland verlassen / Bundesländer gehen unterschiedlich damit um. Aar-Bote]

Another example of *Länder* variation: Hamburg state organises charter flight with other *Länder* to fly deportees to West-Africa, even though Mecklenburg-Vorpommern still has a deportation stop for Togo (which is also serviced by the flight).

[DE75: Breiholz (2006, April 25) Flüchtlingen droht Abschiebung nach Westafrika; Bundesländer bereiten Flug vor / Für Togo gibt es keine "Hindernisse auf Grund der Menschenrechtssituation". Frankfurer Rundschau]

42. Schwerin (opposing)

In 1998, the interior minister Armin Jaeger of the State of Mecklenburg-Vorpommern (CDU) had a clash with Schwerin's SPD mayor Juergen Kwaschik about the *Härtefallkommission* he set up which was the first in East Germany. Jaeger stated that the Commission had usurped powers incompatible with the municipal constitution: "Whether a rejected asylum seeker will be deported, is solely a question of law and order and will also in future not be a question of majority decisions by city representatives." The mayor responded by stressing the commission had a purely advisory capacity, and stated he would ignore the instruction.

[DE52: Heike Haarhoff (1998, September 18) Haertefallkommission fuer Abschiebungen verboten. Taz, die tageszeitung]